CARLTON FIELDS

# COI Litigation Update

June 25, 2018

Life insurers that defend challenges to their exercises of discretion to adjust cost of insurance (COI) rates on universal life insurance policies continue to seek opportunities to narrow the scope of the claims through early dispositive motions. In May, an Ohio federal district court partially granted a defendant insurer's motion to dismiss, providing a recent example where an insurer had some success with this strategy. In *Farris v. U.S. Financial Life Ins. Co.*, the plaintiff, the trustee of a trust that purchased the subject policy in 2001, alleged that the insurer increased the COI to rid itself of liabilities and recoup prior losses, allegedly contrary to the permissible bases the policy articulated. In her putative class action complaint, plaintiff asserted six claims: breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, conversion, fraudulent misrepresentation, and fraudulent suppression.

USFL moved to dismiss all claims except the breach of contract claim, and moved to strike portions of the complaint it characterized as immaterial and impertinent to the case. The district court dismissed the unjust enrichment claim, as the dispute was governed by the contract. In so doing, the court rejected the plaintiff's contention that the claim could be maintained because of alleged evidence of fraud. The court pointed out her failure to cite controlling authority on the issue. The court also dismissed the fraud claim predicated on USFL's alleged concealment of the state of its financial solvency and alleged mismanagement, finding, *inter alia*, that alleged misrepresentations on its website and in corporate statements were too vague and ambiguous, and noting that the complaint was silent as to whether the plaintiff had even read them.

However, the court allowed other claims to proceed. The fraud claim regarding the 2015 rate increase survived as an alternative cause of action despite the court's recognition that it could not find that USFL owed a duty separate and apart from the policy. The remaining claims, for conversion and breach of the covenant of good faith and fair dealing, also survived, as the court ultimately found both were adequately pled. Finally, the court denied the motion to strike, finding that USFL did not demonstrate that the allegations — regarding a prior rate increase and alleged so-called "shadow insurance" — did not relate to the subject matter or cause significant prejudice to the defendant.

## Authored By

Brooke Patterson

## Related Practices

Life, Annuity, and Retirement Litigation
Financial Services Regulatory

## Related Industries

Life, Annuity, and Retirement Solutions
Securities & Investment Companies