

FINANCIAL CONCEPTS INC provides sophisticated insurance and wealth management services to families, business owners, corporate executives, professionals, and other successful high income and high net worth individuals. Our team of professionals utilizes a customized process of defining, understanding, researching, evaluating, and informing our clients of innovative and uniquely integrated solutions tailored to their diverse financial goals. Our desire is to help make the otherwise complex, more understandable as it applies to your unique situation.

Class Action Lawsuit Involving AXA COI Increase

On February 1, a class action lawsuit was filed against AXA Equitable Life Insurance Company (AXA). The plaintiff seeks to represent a class of AXA policyholders subject to an alleged unlawful and excessive cost of insurance (COI) increase by AXA.

This M Intelligence piece provides the relevant facts of the lawsuit and additional M Financial commentary.

AXA COI Lawsuit Facts:

- The policies at issue are all flexible-premium, universal life (UL) policies, issued by AXA from 2004 to 2007 from the Athena Universal Life II (AUL II) product line, for issue ages above 70 and face amounts more than \$1 million.
- The COI increases were to become effective on monthly anniversary dates on or after January 1, 2016, but the increases have since been delayed to March 8, 2016.
- AXA has communicated that less favorable “future mortality and investment experience” are the reasons for the COI increases.
- The lawsuit states the COI charge increase is not equitable to all policyholders of a given class and is not permitted by the contractual enumerated COI factors (expenses, mortality, policy and contract claims, taxes, investment).
- In AXA’s COI increase announcement to policyholders, AXA did address the equitable treatment question with the following:
 - » ***Is AXA Equitable allowed to make changes to certain policies within a block of business?***

Yes, we follow insurance law, as reflected in our policy form language, which requires us to treat all policies within the same class equitably.

On the surface, the lawsuit appears to have similarities to legal action against Phoenix Life Insurance Company (Phoenix) that was recently settled.

Phoenix Lawsuit and Settlement Facts:

- In November 2011, Phoenix announced it was imposing the 2011 COI Rate Adjustment; it changed the COI rates for some (but not all) of the PAUL policies.
- Phoenix analyzed funding ratios in the process of defining the class that would be subject to the 2011 COI Rate Adjustment. A policy’s funding ratio is equal to the Policy Value divided by the Total Face Amount. Phoenix determined which policies had low funding ratios (and thus, lower Policy Values) and then identified groups of policies that more or less matched the policies with low funding ratios (PAUL series IIIA policies with insureds age 68 or older and face amounts of \$1 million or more, and PAUL series IIIB/C policies with insureds age 65 or older and face amounts of \$1 million or more) and subjected these groups to the 2011 COI Rate Adjustment.
- A lawsuit was filed against Phoenix on April 29, 2014. The lawsuit stated that Policy Value (or funding ratio, which derives from Policy Value) is not among the factors that can be taken into consideration in adjusting COI rates because it is not one of the six factors enumerated in the policy contract (mortality, expenses, investment experience, persistency, taxes, reserve requirements). The lawsuit also stated that applying the COI increases to the subgroups violated the contractual requirement of equitable treatment among all policyholders of the same class.



Class Action Lawsuit Involving AXA COI Increase (continued)

- On May 29, 2015, Phoenix Life agreed to a \$42.5 million rate-hike class action settlement, resolving claims that the insurance company unlawfully raised its premium-adjustable universal life (PAUL) insurance policies' rates. In addition to the financial settlement, Phoenix also agreed to freeze the COI rates for the next five years.

M Financial commentary:

- The AXA lawsuit may send a strong signal to carriers that they need to consider potential legal action from policyholders in their decision-making process regarding potential COI increases. Such consideration may help to curtail similar actions.
- The result of the lawsuit will also more clearly define the court's opinion on the legality of COI increases, which will impact the feasibility of future potential COI increases.

M Financial White Paper – 2015 In-Force COI Increases: Background, Perspective, and Considerations

In January 2016, M Financial distributed a White Paper to address the 2015 actions by certain carriers (including AXA) to raise cost of insurance (COI) rates for in-force policies. The actions raised questions, within the industry and among clients and their advisors, about the drivers of the increases and expectations going forward.

The M White Paper analyzes the drivers of the actions and further educates interested parties on the complexities of life insurance products, and the White Paper seeks to:

- Describe the risk-sharing attributes and guarantees of universal life;
- Review insurance carrier profitability and the legal issues driving, and allowing, the COI increases;
- Provide direction and consideration for evaluating policies; and
- Address M Financial's management of the in-force block of M proprietary products.

[*Read the White Paper.*](#)

M Financial will continue to monitor the AXA lawsuit and update Member Firms as material developments occur.

Please contact Wayne Toning (wayne.toning@mfin.com) with questions.

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