Life and Annuity Series: Recent Cost-of-Insurance Decision

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Plaintiffs lawyers have been challenging cost of insurance (COI) charges for years, with mixed success. The recent decision by the Indiana Court of Appeals, titled *Lincoln National Ins. Co. v. Bezich,* is the latest in this line of cases.

Plaintiff Bezich raised the fairly standard claim that Lincoln National had breached his variable life insurance policy by including non-mortality factors in determining the COI rate charge under the policy. He also alleged that Lincoln improperly included administrative expenses in the COI charge to circumvent the policy's $6 per month "cap" on administrative charges.

The Indiana court agreed with these claims in the context of certifying plaintiff's proposed class. It held that the policy language unambiguously prevented Lincoln National from "pad[ding] the COI rate" with non-mortality expenses.

Specifically, the policy stated:

"The monthly cost of insurance rate is based on the sex, issue age, policy year, and rating class of the Insured. Monthly cost of insurance rates will be determined by the Company based upon expectations as to future mortality experience."

In the court's view, this language connoted "exclusivity": only mortality factors could be considered in setting COI charges.

The court went on to criticize what it called "the absurdity of Lincoln's own interpretation of the COI rate provision." Lincoln had apparently argued that the policy language allowed Lincoln to unilaterally *increase* the COI rates to reflect a change in mortality, but there was no parallel commitment to *decrease* those rates in the event of improvement in mortality. The court clearly disapproved of what it called Lincoln's "heads we win, tails you lose" power.

This decision is a reminder that some courts across the country are still interpreting basic policy language against insurers in ways that can have significant consequences.