# Life and Annuity Series: Captive Reinsurance/Cost-of-Insurance Complaint

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The complaint against Banner Life combines the "captive reinsurance" class action claims brought last year with the cost-of-insurance (COI) class action claims that are now popping up.

Instead of standing on their own, the captive reinsurance allegations in this complaint are used to support the theory that the COI increases were not contractually justified. Specifically, the plaintiffs allege that Banner Life's captive reinsurance arrangements created the company's financial problems, and its resulting need for COI increases, and thus those COI increases were not based on unexpected investment, mortality, lapse, and expense experience that would contractually permit such higher COI charges.

The plaintiffs have also tried to distinguish themselves from the usual COI case by pointing to their "no lapse guarantee" policies. They say they were induced by Banner Life's falsely-optimistic financial statements into making "excess premium" payments (and locking up money in the policy), rather than making "minimum premium" payments (and thereby retaining more financial flexibility) if Banner had made accurate disclosures about its captive reinsurance arrangements.

Notably, this complaint sets forth more specific policy data than usual, which allegedly show that the size of Banner Life's COI increases was not justified based on reasonable actuarial assumptions. These allegations could make it more difficult to dispose of the case as a matter of law.

Interestingly, the complaint does not allege facts that Judge McMahon found were sufficient to survive a motion to dismiss in the *Fleisher v. Phoenix* case: that the COI increases discriminated among classes of policyholders. Also, there is no suggestion in the complaint that companies maintained COI rates at artificially low levels for too long in order to sell more policies; instead, it alleges that mortality expectations could never increase for any class of policyholders, as the general public is living longer. Finally, the complaint does not address the fact that life settlement companies were buying UL policies in the post-2000 period, which could negatively affect lapse rates and investment results, and cause COI charges to go up, for some companies.