

Attys Score \$28M In Transamerica Insurance Rate Deal

By **Jeff Sistrunk**

Law360 (February 7, 2019, 7:10 PM EST) -- A California federal judge awarded attorneys for a class of [Transamerica Life Insurance Co.](#) policyholders nearly \$28 million in fees Wednesday as part of an order approving a \$111 million settlement of the policyholders' claims that the life insurer breached its agreements with them by drastically increasing their monthly costs.

U.S. District Judge Christina A. Snyder found that the attorneys' fees requested by the Transamerica policyholders' legal team — co-lead class counsel at [Bonnett Fairbourn Friedman & Balint PC](#), The Moskowitz Law Firm and nonprofit consumer advocacy group [Consumer Watchdog](#), as well as several other firms were “fair and reasonable,” and awarded them just under \$27.7 million, plus another \$1 million in litigation expenses. All told, the plaintiffs' attorneys and their support staff collectively poured 16,668 hours into the litigation, the judge noted.

“The hourly rates are commensurate with the skill and experience of the participating attorneys and their legal support,” Judge Snyder wrote. “Likewise, the amount of time devoted to the consolidated actions was reasonable, given Transamerica's vigorous defense of plaintiffs' claims.”

The award was part of Judge Snyder's order granting final approval to Transamerica's settlement of the consolidated class action litigation, which creates a nationwide class of an estimated 69,000 Transamerica universal life policyholders who were subject to monthly deduction rate increases in 2015 and 2016.

The insurer will pay about \$110.7 million into a common fund to be distributed to both customers whose policies are in force and those whose policies were terminated or lapsed after the increases first took effect, according to the order. Transamerica has also agreed to not impose any further increases in the monthly deduction rates applicable to class members' policies for a period of five years unless it is ordered to do so by regulators.

Transamerica [agreed to settle the litigation last year](#) for \$195 million. However, a handful of large institutional investor groups holding more than 500 in-force policies opted out of the settlement, and the relief that would have been distributed to those policyholders was subtracted from the overall settlement fund, resulting in the new total, according to court filings.

Judge Snyder's order requires Transamerica to immediately pay the first \$10 million of attorneys' fees and expenses awarded, with the remaining \$18.7 million to be paid out of the common fund. In addition, the judge approved service awards of \$10,000 to each of eight individual plaintiffs.

“At the end of the day, we were able to get people over 50 percent of the overcharges they paid and a guarantee of no further increases for five years,” one of the plaintiffs' attorneys, Harvey Rosenfield of

Consumer Watchdog, told Law360. “The class action system allowed us to achieve this significant victory for Transamerica policyholders.”

A Transamerica representative did not immediately respond to a request for comment on Wednesday's order.

Gordon and Mary Feller and George and Margaret Zacharia filed the first of the consolidated suits in California federal court in February 2016, contending that the premiums they paid on their \$500,000 and \$250,000 life insurance policies, respectively, earned interest at a rate guaranteed by Transamerica in their contracts, and that the amount the insurer could deduct from the accounts each month was strictly controlled by those agreements.

In June 2015, however, Transamerica made a "massive increase in the monthly deduction rate," according to the suit. By increasing its monthly deduction rates, Transamerica would profit, either through higher premium payments on the policies or by eliminating money-losing policies and keeping the premiums that policyholders had already paid, the suit alleged.

The way the policies at issue work is that policyholders have the option of paying a minimum premium to cover the cost of the insurance, or paying a higher premium, in which case the excess funds are put in a cash value accumulation account that earns interest at a guaranteed rate, either 4 percent or 5.5 percent for the majority of the policies at issue.

Once a month, Transamerica withdraws a monthly deduction from that accumulation account, which is calculated by multiplying a monthly deduction rate by the difference between the death benefits and the value of the account, plus a policy fee. Therefore, raising the monthly deduction rate directly leads to a higher monthly rate or a risk of the policy lapsing, according to the plaintiffs.

The plaintiffs argued that life insurance companies like Transamerica invest heavily in fixed-income securities. Thus, their assets are heavily tied to interest rate changes, and the policyholders asserted that low interest rates for the past several years had caused the company to lose money. Raising rates by a huge amount is simply an attempt to gain back lost profits, which is not permitted under the relevant policy agreements, according to the suit.

The complaint filed by the Fellers and Zacharias was later consolidated with four similar cases filed in either California or Florida federal court.

The plaintiffs are represented by Andrew S. Friedman and Francis J. Balint Jr. of Bonnett Fairbourn Friedman & Balint PC, [Adam Moskowitz](#) and [Howard M. Bushman](#) of [The Moskowitz Law Firm PLLC](#), Harvey Rosenfield and Jerry Flanagan of Consumer Watchdog, Gail M. McQuilkin of Kozyak Trop & Throckmorton LLP, Stephen R. Bassler, Mark R. Rosen and Samuel M. Ward of [Barrack Rodos & Bacine](#), John G. Emerson of Emerson Scott LLP, Christopher D. Jennings of Johnson Vines PLLC, James R. Patterson, Allison H. Goddard and Catherine S. Wicker of Patterson Law Group, Chip Merlin

of [Merlin Law Group PA](#), Jack Scarola of [Searcy Denney Scarola Barnhart & Shipley PA](#), and Lance A. Harke of Harke Law LLP.

Transamerica is represented by Thomas F.A. Hetherington, Jarrett E. Ganer and Hutson B. Smelley of [McDowell Hetherington LLP](#), and Dan Marmalefsky and Nancy R. Thomas of [Morrison & Foerster LLP](#). The case is Gordon and Mary Feller et al. v. Transamerica Life Insurance Co., case number [2:16-cv-01378](#), in the U.S. District Court for the Central District of California.

--Editing by Aaron Pelc.