

## Transamerica To Settle Insurance Rate Class Action For \$195M

By **Jeff Sistrunk**

Law360 (October 4, 2018, 6:00 PM EDT) -- [Transamerica Life Insurance Co.](#) has agreed to pay \$195 million to settle a consolidated class action accusing the company of breaching its agreements with policyholders by drastically increasing their monthly costs, according to a Thursday filing in California federal court seeking preliminary approval of the deal.

***Transamerica Life Insurance Co. has reached a settlement that, if approved, would see the insurer pay \$195 million into a common fund for policyholders who were subject to monthly deduction rate increases.***

The settlement, if approved, would create a nationwide class of an estimated 70,000 Transamerica universal life policyholders who were subject to monthly deduction rate increases in 2015 and 2016. The insurer would pay \$195 million into a common fund to be distributed to both customers whose policies are currently in force and those whose policies were terminated or lapsed after the increases first took effect, according to Thursday's motion by the plaintiffs' counsel.

The fund represents about 62 percent of the past alleged overcharges, not accounting for legal fees and expenses, according to the motion.

The proposed pact also calls for Transamerica to pay class counsel the first \$10 million of attorneys' fees and expenses awarded by the court, with any additional sums to be paid out of the common fund. In addition, the insurer has 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, a development that is "considered highly unlikely," according to the plaintiffs' filing.

"The charges that Transamerica applied to people who owned these universal life insurance policies caused tremendous surprise and stress for the people who received them, many of whom are now senior citizens, and some of whom are quite elderly and on fixed incomes," said one of the plaintiffs' attorneys, Harvey Rosenfield of nonprofit consumer protection organization [Consumer Watchdog](#), in a prepared statement. "Our number one goal was to get as much money as we could back to these policyholders as quickly as possible. It took two years of hard-fought litigation, but we have accomplished our goal."

In a statement, a Transamerica representative said the proposed deal "removes the uncertainty of ongoing litigation for the company and its customers."

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 will profit, either through higher premium payments on the policies or by eliminating money-losing policies and keeping the premiums that policyholders have 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 proposed settlement announced Thursday followed months of negotiations between the parties with the assistance of mediator David Geronemus in New York, according to the motion. The plaintiffs said the deal easily exceeds the standards for approval.

"The settlement is the product of several years of complex and hard-fought litigation by experienced class action law firms from across the country, the exchange and review of approximately one million pages of complicated insurance related documents and electronic data, months of arms-length negotiations, extensive expert analysis and a mediation overseen by a nationally recognized and well-respected mediator, David Geronemus, of [JAMS](#)," the plaintiffs' attorneys wrote.

A hearing on the motion for preliminary approval is scheduled for Nov. 5 before U.S. District Judge Christina A. Snyder.

The plaintiffs are represented by Andrew S. Friedman and Francis J. Balint Jr. of [Bonnett Fairbourn Friedman & Balint PC](#), [Adam M. Moskowitz](#) and [Howard M. Bushman](#) of [The Moskowitz Law Firm](#), and Harvey Rosenfield and Jerry Flanagan of Consumer Watchdog.

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.

--Additional reporting by Daniel Siegal. Editing by John Campbell.