

Due Diligence Concerns from US Litigation: Rescission Risk and COI Rate Increases

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Primary Due Diligence Topics

- Policy Information
- Status of Insured
- Status of Insurer

Litigation-Related Due Diligence

- Rescission Risk
- Cost-of-Insurance Rate Increases
- Attacks by Estates

Rescission Risk

- Historically, so-called “STOLI” policies have been susceptible to validity challenges asserted by insurers



Rescission Risk

- Certain insurers have aggressively challenged “STOLI” policies – even outside the two-year contestability period



Rescission Risk

- Appellate Court decisions in key states have clarified the law, allowing investors to better assess rescission risk

Low Risk	Higher Risk	Still Uncertain
California	Delaware	Pennsylvania
Florida (?)	New Jersey	South Dakota
Minnesota		
New York		
Wisconsin		

Rescission Risk

- Even in situations where a policy is invalidated, policy owner may be able to recover premiums paid
- Secondary issue is whether policy owner is entitled to all premiums paid or just those paid by owner

COI Rate Increases

- Current COI rates can be factored into diligence efforts
- Future COI rate increases cannot
 - ❖ Whether and to what extent insurers can raise COI rates will not be known until US courts provide clarity in ongoing litigation
 - ❖ If nothing else, current litigation may prevent COI rate increase contagion from spreading
- Regulatory action may alleviate some of the COI risk

COI Rate Increases

Insurers that have increased COI rates starting in 2015:

Parent	Insurer
AXA	AXA Equitable US Financial MONY
Aegon	Transamerica Western Reserve
Voya (ING)	Reliastar Security Life Of Denver Voya America
Conseco	Conseco Life
Legal & General	William Penn Banner Life
Lincoln Financial	Aetna Lincoln National
Phoenix	PHL Variable Phoenix Life

COI Increases and Litigation Activity

Insurer	Increases	Litigation Status
AXA Equitable	25%-70%	<ul style="list-style-type: none"> ➤ 1 class action and 2 individual investor actions pending in New York federal court, all in front of the same judge ➤ 1 individual investor action pending in Arizona federal court; AXA has moved to transfer the case to New York ➤ 4 individual investor actions pending in New York state court
Transamerica	90%-100%	<ul style="list-style-type: none"> ➤ 1 class action and 3 individual investor actions pending in California federal court ➤ Motions for class certification and preliminary injunction pending in class action
Banner Life	95%-600%	<ul style="list-style-type: none"> ➤ 2 class actions and 1 individual investor action pending in Maryland federal court
Lincoln Life & Annuity (formerly Aetna Life)	15%-55%	<ul style="list-style-type: none"> ➤ 1 class action pending in New York federal court
Lincoln National (Jefferson Pilot book)	60%-190%	<ul style="list-style-type: none"> ➤ 1 consolidated class action and 1 individual investor action pending in Pennsylvania federal court, coordinated in front of the same judge
John Hancock	N/A	<ul style="list-style-type: none"> ➤ 1 class action pending in New York federal court

Current COI Litigation

Status of AXA Litigation

- Breach of contract claims survived motion to dismiss in *Brach Family Foundation* class action
- AXA has filed a second motion to dismiss the claim relating to N.Y. Ins. Law §4226 based on misleading illustrations and regulatory submissions
- Two other federal court cases have been transferred to the same judge handling the *Brach Family Foundation* case
- AXA has moved to transfer the Arizona class action to NY
- Motions to dismiss are pending in NY State court cases

Current COI Litigation

Status of Transamerica Litigation

- Motions to dismiss have been denied in all cases
- Motions to transfer CA cases to Iowa have also been denied
- In *Feller* class action, motion to certify class and for preliminary injunction to prevent lapses due to non-payment of COI rate increases is pending
- Trial in *DCD Partners* started on September 5

Current COI Litigation

Status of Lincoln National Litigation

- Several putative class actions were consolidated into one class action currently pending in the United States District Court for the Eastern District of Pennsylvania, captioned *In re Lincoln National COI Litigation*.
- Lincoln National filed a motion to dismiss in June 2017, but no decision has yet been reached by the court.
- Another action was filed by life settlement investors in federal court in California, but was subsequently transferred to Pennsylvania for coordination with the class action. That case also has a pending motion to dismiss.