

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

<p>SHERRI WEST, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>WILCO LIFE INSURANCE COMPANY, a corporation f/k/a CONSECO LIFE INSURANCE COMPANY,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.:</p> <p style="text-align: center;">CLASS ACTION COMPLAINT FOR DAMAGES</p> <p style="text-align: center;">DEMAND FOR JURY TRIAL</p>
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Plaintiff Sherri West alleges the following based on personal knowledge concerning all facts related to herself, and on information and belief concerning all other matters.

NATURE OF THE ACTION

1. This proposed class action arises from a cost of insurance rate increase on universal life insurance policies issued by Wilco Life Insurance Company (“Wilco”) and written on Policy Form CLIC-3002.¹ Wilco breached the express and implied terms of the policies and misleadingly stated that the increases were permitted due to Wilco’s past costs.

2. Under the terms of a universal life insurance policy, a policyholder pays variable premiums that are deposited into an accumulation account (sometimes referred to as the “cash value” or “accumulation value”). In turn, an insurer will credit and deposit a specified amount of interest on the accumulation account and withdraw the costs for the policy, including the central cost component—the cost of insurance (“COI”)—and other expense charges.

¹ Ms. West reserves the right to modify the Class (defined below) if evidence gathered during discovery reveals policy forms other than CLIC-3002 were subjected to the COI rate increase imposed by Wilco.

3. An insurer's ability to increase COI rates is limited by the policy itself, actuarial standards of practice, the insurer's redetermination procedures, and applicable law. Here, the CLIC-3002 Policies—which are non-participating (the policies do not share in Wilco's profits or losses)—only allow Wilco to adjust or increase COI rates prospectively and based on its insured's "age, sex, and premium class on the date of issue," i.e., factors that are inextricably linked to the mortality risk of the block of CLIC-3002 insureds. *See* Exh. A, Ms. West's Policy, at 4, 13.

4. Despite those limitations, beginning in July 2011 and continuing throughout the Class Period (defined below), Wilco increased COI rates by up to 42% to substantially increase profits and recover past losses and expenses, including to recoup hundreds of millions of dollars squandered through egregious self-dealing within Wilco's former corporate family; to recover hundreds of millions of dollars paid to settle civil lawsuits and regulatory actions involving similar unlawful tactics alleged by Ms. West here; and to offset the effects of *past* interest rate spread compression (or the amount Wilco earned on its portfolio of investments compared to the amount it pays in guarantees to its policyholders).

5. Wilco's COI rate increase served other impermissible purposes. Policyholders purchased their policies believing that the policies' interest rate and other guarantees would provide a stable and long-term investment return. Wilco's COI rate increase amounts to an end-run around those guarantees and undercuts one of universal life insurance's most critical components. Even worse, Wilco understood that its COI rate increase would cause a significant portion of policyholders to surrender their policies for remaining cash value or that policyholders would not be able to keep up with escalating COI charges and that their policies would lapse.

6. Ms. West—whose policy terminated without value in May 2018—was one of the policyholders most hurt by Wilco's tactics.

7. Wilco's COI rate increase was accompanied by a misleading letter stating that the 42% cost increase was permitted and was being imposed because Wilco "incurred greater costs on these policies" and had "paid more claims" for death benefits. *See* Exh. B, Wilco's July 6, 2011 letter to Plaintiff.

8. But Wilco's letter omitted key information, including that Wilco was improperly imposing the COI rate increase to recover past losses, including hundreds of millions of dollars Wilco had unjustifiably funneled to former corporate affiliates; to recover settlements Wilco had paid to end lawsuits and regulatory actions involving similar impermissible COI rate increases; to undercut Wilco's interest rate guarantees; and to cause widespread policy surrenders and lapses (commonly known as a "shock lapse" strategy).

9. Wilco's disclosed reasons for the COI rate increase—even if credited—cannot provide a valid basis for increasing COI rates by up to 42%. Wilco's discretion to increase COI rates is constrained to considerations relating to the future mortality risk of the CLIC-3002 pool of insureds, but contrary to that authority, the reasons included in the 2011 letter were based on past business and had nothing to do with prospective considerations relating to "sex, attained age and premium class on the date of issue." *See* Exh. A at 4 and 13.

10. Moreover, future mortality expectations alone could not have supplied the basis for Wilco's massive COI rate increase because the mortality expectations underlying the initial COI rates for CLIC-3002 Policies could have only substantially improved since Ms. West and other Class Members were issued their policies. Relevant data and surveys from insurers from the time between when the CLIC-3002 policies were issued to Wilco's COI rate increase show a marked improvement in life expectancy and lower mortality risk for insurers. In other words, Wilco's future mortality expectations called for decreasing COI rates, not raising them by a burdensome

42%.

11. In the pursuit of profit, Wilco defied policy terms and devised a plan to charge policyholders, like Ms. West, far more than Wilco was allowed to and to cause the widespread cancellation of policies, thus enabling Wilco to avoid its obligation to pay death benefits and guaranteed interest and to keep for itself decades' worth of premium payments and millions of dollars. However, Wilco's desire for profit does not provided a legitimate basis for its COI rate increase, particularly a 42% COI rate increase.

12. Although Wilco's COI rate increase occurred in 2011, its contractual violations continued throughout the Class Period (including to the present). Each month Wilco withdraws far more COI from policyholders' Accumulation Values than the policies allow. By extracting more COI than permitted, Wilco reduces by a sizable margin its monthly obligation to credit policyholders' Accumulation Values with interest and Accumulation Value Bonuses (extra payments Wilco credits to the Accumulation Value based on a declared "Index Factor" linked to the S&P 500 Composite Stock Price Index).

13. Here, Ms. West was subjected to Wilco's misconduct for years until the Policy lapsed in May 2018 due to Wilco's COI rate increase.

14. Wilco's contractual violations throughout the Class Period constitute separate actionable breaches subject to suit by Ms. West and the proposed Class she seeks to represent.

15. Ms. West brings this lawsuit on behalf of herself and all other current and former CLIC-3002 universal life insurance policyholders who Wilco charged more COI than the policies permit during the applicable statute of limitations. Ms. West brings a claim for breach of contract, including a breach of the implied covenant of good faith and fair dealing, and seeks a declaratory judgment that Wilco's COI rate increase throughout the Class Period is unlawful.

16. Ms. West seeks injunctive and equitable relief, as well as ancillary damages, to halt and reverse Wilco's misconduct. If Ms. West's policy is not reinstated and Wilco's impermissible COI rate increase halted (and the overcharges refunded), Ms. West and the Proposed Class will suffer irreparable injury and forfeit policies they have dutifully funded for decades with thousands or tens of thousands of dollars.

THE PARTIES

I. Plaintiff Sherri West

17. Plaintiff Sherri West is 54 years old and resides in Sparr, Florida.

18. On April 1, 1994 American Life and Casualty Insurance Company ("American Life") issued to Ms. West, as the owner and insured, a universal life insurance policy with a specified amount of \$50,000, plus certain rider benefits (Policy No. 0643613U).

19. Upon information and belief, American Life subsequently sold Ms. West's policy to Wilco's predecessor-in-interest, Consec Life Insurance Company ("Consec Life").

20. On August 1, 2001, pursuant to Section 1035 of the Internal Revenue Code, Ms. West exchanged the American Life policy with a universal life insurance policy issued by Consec Life with a specified face amount of \$100,000 and written on Policy Form CLIC-3002 (Policy No. 0701010944).² *See generally* Exh. A. Policy No. 0701010944 was the target of a 42% COI rate increase and is the subject policy in this case. Wilco later assumed all liability for Ms. West's policy as if Wilco had originally issued it.

II. Defendant Wilco

21. Wilco is a stock insurance corporation duly organized, existing, and in good

² Section 1035 of the Internal Revenue Code allows for a tax-free transfer of an existing annuity contract, life insurance policy, long-term care product, or endowment for another one of like kind.

standing under Indiana law, with its principal place of business located at P.O. Box 305017, Nashville, Tennessee.

22. During the Class Period, Wilco has used its Nashville, Tennessee address on communications with Ms. West and member of the Class, including sending annual reports and communications demanding payment from Ms. West and other Class Members and communications about the charges that Wilco was imposing on Ms. West and other Class Members' policies.

23. All of Wilco's shares are owned by Wilton Reassurance Company ("Wilton Re"), a Minnesota life insurance corporation with its headquarters at 20 Glover Avenue, Norwalk, Connecticut.

24. On July 1, 2014, Wilton Re acquired Conseco Life, and in October 2015, Conseco Life changed its name to Wilco.

25. At all times during the Class Period, Wilco had assumed all liability for the CLIC 3002 Policies at issue in this lawsuit.

JURISDICTION AND VENUE

26. This Court has original jurisdiction over this case under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). Minimal diversity exists between members of the Class and Wilco: Wilco is a domestic corporation of Indiana, which conducts business in Tennessee, and Ms. West is a citizen of Florida. The amount in controversy in this action exceeds \$5,000,000.00, exclusive of interests and costs, and there are more than 100 members of the Class.

27. This Court has personal jurisdiction over Wilco because Wilco has its headquarters in Nashville, Tennessee; sent its notices, demands for payment, and grace period letters to Ms. West and the Class from its Nashville, Tennessee headquarters; and represented its headquarters as

being in Nashville, Tennessee on correspondence to Ms. West and Class Members. In the alternative, Wilco's Nashville, Tennessee business operations facilitated the COI rate increase Ms. West challenges, and Ms. West's claims arise from those business operations. As a result, the Court's exercise of jurisdiction over Wilco is appropriate under traditional notions of fair play and substantial justice.

28. Venue is proper in this District pursuant to 28 U.S.C. § 1391. Wilco resides and operates its business in this District, and a substantial part of the events or omissions giving rise to Ms. West's claims occurred in this District, including that Wilco entered into transactions and received substantial profits in this District; sent notices and demands for payment from this District; sent annual statements from this District about the Policies at issue in this lawsuit; and because Class Members reside in this District.

29. All conditions precedent to this action have occurred, been performed, or have been waived.

STATUTE OF LIMITATIONS

30. Every month during the Class Period, Wilco charged Ms. West and Class Members more COI than the Policies allowed and impermissibly reduced Ms. West's and other Class Members' Accumulation Values.

31. As a result, Wilco credited Ms. West and other Class Members with less guaranteed interest and Accumulation Value Bonuses than required by the Policies because the interest and bonuses were credited to improperly depleted Accumulation Values. *See* Exh. A at 11-12.

32. Through this action Ms. West is seeking to recover damages only for Wilco's conduct during the applicable statute of limitations for Ms. West's and the Class's claims.

FACTUAL ALLEGATION

I. Background on Universal Life Insurance Policies

33. Traditionally, life insurance companies sold two types of policies: term and whole life insurance. Term life insurance is issued for a term of years, normally building up no cash value and expiring without value. Whole life insurance provides coverage for life and provides an increasing cash value that is available when needed. The premiums remain the same throughout the life of the policy.

34. Universal life insurance, on the other hand, is intended to provide more flexibility than whole or term life insurance. Premium payments are deposited into an accumulation account from which COI and expense charges are deducted. In turn, the accumulation account is credited with monthly interest that cannot fall below the minimum guaranteed interest rate and other guaranteed payments specified in the relevant policy. Universal life insurance policies generally allow policyholders to change the amount and frequency of premium payments if they make applicable planned periodic premium payments and their policies contains enough accumulation value to cover periodic COI charges and other expenses.

II. CLIC-3002 Policy Terms

A. COI and COI Rates

35. COI is deducted from the Accumulation Value each month as part of the Policy's Monthly Deduction. Exh. A at 12.

36. COI is the most important component of the Monthly Deduction. *Id.* at 12-13. Even small changes in the COI rate can produce a substantial increase in the COI deducted by Wilco. *Id.* at 13. When COI rates increase, a policyholder must pay more premiums to avoid a policy lapse and termination. *Id.* at 12-13. Furthermore, when Wilco deducts COI from the Accumulation Account, it avoids paying future guaranteed interest and Accumulation Value Bonuses on the

withdrawn amounts. *See id.* at 11-12.

37. The CLIC-3002 policies contain a “Cost of Insurance Rates” provision that permits Wilco to adjust COI rates based on the insured’s “sex, attained age and premium class on the date of issue[,]” providing:

The guaranteed monthly cost of insurance rates for the policy are based on the insured’s sex, attained age and premium class on the date of issue.... These rates are shown on a Policy Data Page.

Current monthly cost of insurance rates will be determined by the Company. The current monthly cost of insurance rates will not be greater than the guaranteed monthly cost of insurance rates which are listed on the Policy Data Page.

Exh. A. at 13.

38. The Policy Data Page contains a “Table of Guaranteed Monthly Cost of Insurance Rates” and states

“The cost of insurance rates shown above are based on the Commissioner’s 1980 Standard Ordinary Male Mortality Table [“1980 CSO Mortality Table”], Age Last Birthday. Actual monthly COI rates will be determined by the Company based on the policy cost factors described in your policy However, the actual cost of insurance rates will not be greater than shown above.”

Id. at 4.

39. Wilco’s discretion to adjust COI rates is limited to considerations of its future mortality experience. *Id.* at 4 and 13. Wilco is required to determine COI rates “based on the policy cost factors described” in the CLIC-3002 Policy: the “insured’s sex, attained age and premium class on the date of issue.” Moreover, the policy’s Table of Guaranteed Monthly Cost of Insurance Rates are “based on the Commissioner’s 1980 Standard Ordinary Mortality Table, Age Last Birthday.” *Id.* at 4.

40. The only factors impacting COI rates—namely underwriting risk classification,

attained age and the Guaranteed Monthly Cost of Insurance Rates—are all mortality-based concepts.

41. Therefore, Wilco cannot increase COI rates except where there is a verifiable, material adverse change in the underlying mortality rates of its insured—even if the adjusted COI rates do not exceed the Table of Guaranteed Monthly Cost of Insurance Rates included in the Policy.

B. Expense Charges

42. CLIC-3002 Policies are “unbundled,” meaning Wilco imposes a COI charge to cover the mortality risk and imposes other Expense Charges and earns interest on its portfolio of assets (its capital) to recover expenses and earn profit.

43. Wilco imposes a Premium Expense Charge for the CLIC-3002 Policies. Wilco charges “50% of the premiums paid to the company up to the qualifying annual premium and 2% of the premiums paid to the company in excess of the qualifying annual premium. After the first policy year, the premium expense charge is 2% of all premium paid to the company.” Exh. A at 5. Wilco also imposes an “expense charge of \$7.50 per month for all policy years” as well as “an expense charge of \$0.05 per month for each \$1,000 of initial specific face amount. *Id.*”

44. Unbundled policies like the CLIC-3002 policies differ from policies that contain a multi-factor COI provision allowing the insurer to include other costs besides mortality risk in its COI rate. For example, many universal life insurance policies have COI rate provisions that include a multitude of factors that the insurer may consider such as expenses, interest, persistency (the number of policyholders who keep their policies in force), and taxes.

C. Interest Rate Guarantee and Accumulation Value Bonus

45. The CLIC-3002 Policies provide a guaranteed minimum interest rate that is credited

to Policyholders' Accumulation Values on a monthly basis. Exh. A at 12 (Accumulation Values). Ms. West and Class Members' Policies provide a minimum guaranteed interest rate of 4%. *Id.* at 3A.

46. The CLIC-3002 Policies also provide an Accumulation Value Bonus. Upon information and belief, the Accumulation Bonus is an additional annual payment Wilco credits to Policyholder's Accumulation Value based on an "Index Factor" declared by Wilco that is linked to the S&P 500 Composite Stock Price Index. Exh. A at 3A; 11-12 (Accumulation Value Bonus).

47. The separation of COI, Expense Charges, and guaranteed interest and the existence of guarantees concerning the minimum or maximum values of each, means, under industry custom and practice, that the adjustment of each of those components will depend on future experience related to the affected component. For instance, it is not reasonable nor actuarially justifiable to adjust credited interest rates based on changing mortality experience. Similarly, if interest rates were to decline, it would be reasonable that the interest rate credited to policyholder funds would decline as well, but one would reasonably not expect COI rates to increase. Conversely, if interest rates were to increase, it would be reasonable that the interest rate credited to the account value would increase as well, but one would not expect the COI rates to decrease instead. To use a COI rate to cover an interest or expense deficiency due to interest guarantees or unforeseen circumstances would go against actuarial standards and undermine the distinction between COI, Expense Charges, and guaranteed interest and bonus provisions.

D. Nonparticipating Provision

48. The CLIC-3002 policies are also non-participating, meaning that policyholders do not participate in Wilco's business or surplus earnings or receive dividends. Exh. A at 7. Under the Actuarial Standards of Practice and applicable regulations, because Wilco does not share its

profits with universal life insurance policyholders, Wilco cannot offset or recover past losses by altering COI rates.³

49. From an actuarial perspective, an insurance company recovers past losses whenever it increases COI rates on universal life insurance products to produce more favorable future profits than those assumed when the products were priced. This definition of “recovering past losses” is generally recognized in the actuarial field and is based on generally accepted actuarial principles.

50. When a company designs and prices a universal life product, it establishes a fixed profit objective for the product. The product pricing actuaries conduct profit tests using actuarial models making assumptions about the future cash flows. The actuaries also typically test the overall expected profitability of the policies under multiple scenarios based on differing assumptions. Various measures of profitability are typically considered, based on metrics such as the projected internal rate of return, the present value of future profits and the present value of distributable earnings. Once the actuaries arrive at their final pricing assumptions, they are typically documented in an actuarial memorandum

51. As part of the pricing process, product actuaries assume a COI with a certain “slope” thereby establishing the projected pattern of future profits and losses associated with the policies. Policies may be designed to produce a relatively constant level of mortality profits over the life of the product (setting COI rates at a level to generate stable profits) or they may set mortality charges in a manner generating high mortality profits in the early years followed by mortality losses in later years.

³ Certain states, such as Washington and New York, have regulatory restrictions strictly prohibiting companies from recouping past losses when setting nonguaranteed elements like COI rates. [RCW 48.30.010; State of New York Department of Financial Services Circular LETTER NO. 18 (1980)].

52. In either case, it would be fundamentally unfair, and generally impermissible from an actuarial perspective, for a company to increase COI rates at some point during the life of the policies to a level producing higher profits (or lower losses) on a going forward basis than the profit level assumed at pricing for those later durations. Because universal life policies do not have a right to share in the profits generated by policy experience more favorable than projected at pricing, they should not be required to pay higher COI charges to defray prior losses sustained by the insurance company.

53. The prohibition against recovering past losses, in essence, prevents an insurance company like Wilco from “changing the rules of the game” midstream, to penalize persisting policyholders through increased COI rates and generate profits at a level higher than the company expected during future periods based on its initial pricing assumptions.

54. The foregoing provisions of the policies restrict Wilco’s ability to do any of the following:

- a) Set or increase COI rates in whatever amount or by whatever method Wilco determines up to Guaranteed Monthly Cost of Insurance Rates;
- b) Set or increase the COI rates except to account for the future mortality experience of the pool of insureds covered by CLIC-3002 Policies;
- c) Set or increase monthly COI rates to recoup past losses, including past losses stemming from mismanagement or based on diminished returns on Wilco’s general investment portfolio;
- d) Set or increase COI rates to make more profit on the CLIC-3002 Policies than assumed at issuance, including to increase revenue and profits to facilitate hundreds of millions of dividends to Wilco’s affiliates;
- e) Set or increase COI rates in order to negate or offset Wilco’s obligation to pay guaranteed interest or bonuses at the minimum guaranteed rates; and
- f) Set or increase COI rates to cause policyholders to cause policy surrenders and “shock lapses.”

55. A reasonable policyholder would construe the policy to mean that COI rates, which are based on Wilco's expectations as to future mortality experience and the 1980 CSO Mortality Table, would not change except for a material and prospective adverse change in the underlying mortality rates of the CLIC-3002 insureds.

56. As reflected in every subsequent version of the CSO Mortality Table, mortality rates have only improved since the policies were issued. For instance, subsequent mortality tables issued by the Society of Actuaries ("SOA") from 1980 to 2011 demonstrate a marked improvement in mortality levels (particularly at older ages), than the mortality levels contained in the 1980 CSO Mortality Table and upon which the original CLIC-3002 COI Rates were based.

57. Surveys conducted by SOA at large insurance companies corroborate those findings, as they have consistently showed mortality improvements since the 1980 CSO Mortality Tables were issued and the time Wilco issued Ms. West's policy. That means Wilco collected and is collecting substantially more premiums than it anticipated at policy issuance, and COI rates should have been lowered not increased by up to 42%.

58. A reasonable policyholder would also construe the policy's provisions governing the payment of guaranteed interest and bonuses on his or her Accumulation Value, and the policy's provisions governing COI and COI rates, as operating independently of one another, thereby precluding Wilco from offsetting or subsidizing its interest and bonus obligations by increasing COI.

59. Despite language in Wilco's policies limiting how Wilco may increase COI rates and language requiring guaranteed interest and bonus payments, Wilco increased COI rates based upon past events and to recover past losses, including to fund hundreds of millions of dollars in self-dealing within Wilco's corporate family; cover hundreds of millions of dollars in regulatory

and civil settlements; and recoup losses from death benefits paid in the *past*. Wilco has increased the COI rates based upon factors other than the insured's "sex, attained age and premium class" and has instead increased COI rates as part of a plan to recover past losses, offset its interest and bonus obligations, and increase its own profits and to cause policyholders to cancel their policies in the future.

60. By doing so, Wilco has violated its contractual duties and increased its own profits at the expense of its policyholders and has caused policyholders to cancel or forfeit their coverage, releasing Wilco from its obligation to pay the death benefit on the policies and enabling Wilco to keep decades' worth of premium payments by Ms. West and the Class.

61. At a minimum the policies are ambiguous with respect to whether Wilco can increase the COI rates for any reason other than an adverse change in in future mortality experience. Any ambiguity in the policies must be construed against Wilco and in favor of policyholders like Ms. West and the Class.

III. Wilco Increased COI Rates on Ms. West's CLIC-3002 Policy By Up to 42%

62. In 2011, Wilco suddenly announced it was increasing COI Rates for CLIC-3002 policies.

63. Wilco notified Policyholders of the COI Rate increase through a form letter dated July 6, 2011. *See* Exh. B.

64. In the letter, Wilco explained that it was "writing to notify [policyholders] of cost increases for the life insurance policy . . . purchased from Consec Life Insurance Company" and that it was increasing costs "because [it] . . . incurred greater costs on these policies than . . . anticipated" including paying "more claims for death benefits than . . . expected[.]" *Id.*

65. The form letter informed policyholders that "[Wilco] was increasing the COI rates

for all policies by up to 42%, except where that increase would result in charging . . . a COI rate that is greater than the maximum guaranteed monthly COI rate that your policy allows [Wilco] to charge.” *Id.*

66. Wilco’s letter reinforced an interpretation of the policies that links COI rates to future mortality risk and stated that Wilco “also incurred other expenses greater than . . . anticipated” and that Wilco was therefore “increasing expense charges that are deducted monthly from your policy.” *Id.*

67. Wilco informed Policyholders that due to “greater than anticipated expenses” it was now going to charge the full \$7.50 Expense Charge permitted by the policies per month and that, also due to “greater than anticipated expenses[,]” Wilco was going to increase the Expense Charge by \$.02 per month per each \$1,000 in coverage[,] but . . . [would] not increase this expense charge unless and until your policy reaches its tenth anniversary.” *Id.* at 2; *see also* Exh. A at 5 (Expense Charges”).

68. Wilco’s form letter failed to disclose that the primary driver of the COI rate increase was to allow Wilco to recover hundreds of millions of dollars of losses stemming from Wilco’s self-dealing, litigation losses, and past interest rate spread compression. While Wilco attributed the increases to past costs, including paid death benefits, Wilco did not disclose that past losses cannot provide a valid basis for increasing COI rates and, to the extent a COI rate increase was permitted by future adverse changes in Wilco’s mortality expectations, those expectations could not have supplied a basis for a 42% COI rate increase because Wilco’s mortality expectations in 2011 could have only been substantially more favorable than in 2001.

69. Wilco’s COI rate increase caused substantial increases in the amount taken from policyholders’ Accumulation Values and, as a result, the amount of premiums necessary to fund

their policies.

70. For example, when Ms. West exchanged for the CLIC-3002 Policy in August 2001, she agreed to pay a \$29.79 per month to keep the policy in force. Exh. A at 3A. Following Wilco's COI rate increases, Ms. West's COI jumped from \$27.62 per month in 2011 to \$40.29 per month in 2012.

71. Prior to the COI rate increase, Wilco consistently projected that, at the \$29.79 monthly premium, Ms. West's policy would remain in force until 2026-2028. Following the COI rate increase, Wilco projected that, at the \$29.79 monthly premium, Ms. West's policy would lapse and terminate by May 2018, a decade sooner than Wilco's prior projections.

72. By 2018, Ms. West's COI exceeded \$50 per month and she concluded that the quickly rising costs made it impracticable to maintain the policy.

73. In May 2018, Ms. West's policy lapsed and was terminated by Wilco without any Accumulation Value.

74. Insurance company actuaries are required to closely monitor and report on cost trends affecting non-guaranteed elements of its insurance policies, including COI rates. Material deviations between current and expected future expectations concerning mortality do not occur overnight or in a vacuum; they are gradual trends for which actuaries can and do make incremental adjustments.

75. Universal life policies generally permit the insurer to increase or decrease the COI rates if future expectations relating to enumerated pricing factors (here only future mortality risk) deviate significantly from those used when the policy was originally priced. The restrictions and requirements applicable to redeterminations include those reflected in the policy itself, actuarial standards, the actuarial memoranda, the insurer's redetermination procedures, and applicable law

76. In this case, it is inconceivable that the COI Rate increase (up to 42%) was attributable to legitimate changes in anticipated mortality risk that emerged over a very short duration of time.

77. From the time the policies were issued in 2001, mortality rates substantially improved in general and, upon information and belief, among the individuals covered by CLIC-3002 Policies.

78. Rather than address future mortality risk, Wilco's COI increases were principally designed to impermissibly recover past losses and earn substantially more money than Wilco anticipated when it priced and sold the Policies to Ms. West and other Class Members. Wilco's true motive to increase COI Rates—the desire for more significantly more profit—violated the terms of the CLIC-3002 Policies.

IV. Wilco's COI Rate Increase Violated the CLIC-3002 Policies

A. Wilco Sought to Recover Massive Losses Caused by the Self-Dealing of Its Corporate Parent and Other Affiliates

79. Wilco cannot impose a COI rate increase to recover past losses or earn more profit than Wilco anticipated when it priced and sold CLIC-3002 Policies.

80. By raising COI rates in 2011, Wilco sought to recover hundreds of millions of self-inflicted past losses caused by self-dealing within its then-corporate family and to make far more money than Wilco originally expected to further facilitate that profiteering.

81. For most of the time relevant to this action, Wilco was known as Consec Life, and the policies at issue were administered by Wilco's then-indirect corporate parent, CNO Financial Group, Inc. (formerly known as Consec, Inc.) ("CNO Financial"), and CNO Services, LLC (formerly known as Consec Services, LLC) ("CNO Services"), a subsidiary of CNO Financial. As used below, "Consec" refers collectively to Consec Life, CNO Financial, and CNO Services.

82. Along with other insurance companies in the CNO Financial family, Conseco Life was operated from above, with little regard for Conseco Life's own wellbeing or the wellbeing of its policyholders. CNO Financial's management made or directed all major decisions on behalf of Conseco Life. On a day-to-day basis, CNO Services implemented most decisions relating to company overhead and administration, and it did so under the direction of CNO Financial. CNO Financial completely dominated Conseco Life, and ignored Conseco Life's existence as a separate entity.

83. Conseco Life paid to CNO Financial tens of millions of dollars in dividends it could not afford. In one year alone, Conseco Life's dividend payment exceeded its net earnings by more than \$86 million. Decisions about whether to pay dividends or whether to enter into exorbitantly priced service contracts were all made at the CNO Financial level, not the Conseco Life level. Conseco Life's ostensible decision makers were also CNO Financial officers and/or employees or officers of CNO Services.

84. Among numerous examples of Conseco Life's self-destructive deference to CNO Financial, the most egregious involve the overhead expenses and service fees charged to Conseco Life by CNO Services and its affiliates. Conseco depleted Conseco Life's assets by requiring Conseco Life to enter into non-arms-length transactions with other CNO Services subsidiaries, to Conseco Life's substantial financial detriment.

85. CNO Financial dictated that Conseco Life pay grossly inflated fees to CNO Services and other CNO Financial affiliates as overhead and for services rendered in managing Conseco Life and its investments. Conseco Life began paying those massively inflated overhead charges and fees when Conseco Life and CNO Services (then known as Conseco Services, LLC) entered into an "Insurance Services Agreement" in January 1997. Over the next decade, and

continuing until shortly before CNO Financial’s recent sale of Consec Life to Wilton Re in 2014, CNO Financial and CNO Services required Consec Life to pay massively inflated sums that left Consec Life teetering on the brink of financial failure and regulatory takeover.

86. CNO Financial decided that CNO Services would charge Consec Life for overhead based on Consec Life’s “ability to pay” rather than on any fair valuation of the services and other benefits provided. When Consec Life was flush with cash, CNO Financial directed CNO Services to take the available cash. The amount of overhead “allocated” to Consec Life could and did increase or decrease by tens of millions of dollars from year to year based on the whims of CNO Financial and CNO Services.

87. The intra-family fees Consec Life paid to CNO Services functioned as huge *de facto* dividends that Consec Life could not actually afford to pay, and could not pay under state insurance laws. For a brief period of time, when Consec Life’s cash reserves had been so dangerously depleted as to place Consec Life at risk of a regulatory takeover, CNO Financial directed CNO Services to reduce the amounts it charged Consec Life—and directed CNO Services to impose corresponding increases on other members of the Consec Insurance Group that had more available cash at the time. By then, much of the damage had been done. CNO Financial had already bled Consec Life nearly dry.

88. Between 1997 and 2012, Consec Life’s transfers to other CNO subsidiaries and affiliates totaled \$954.7 million as follows:

Year	Amount Transferred
1997	\$ 1,846,000
1998	\$ 1,590,000
1999	\$ 120,591,000

2002	\$ 96,632,000
2003	\$ 51,899,000
2004	\$ 79,723,000
2005	\$ 66,102,000
2006	\$ 58,035,000
2007	\$ 53,934,000
2008	\$ 56,647,000
2009	\$ 49,260,000
2010	\$ 50,327,000
2011	\$ 67,148,000
2012	\$ 66,328,000
Total:	\$954.7 million

89. Intra-family payments by Conseco Life far exceeded industry norms. In some years, for example, Conseco Life's payments to CNO Services were double or even triple the industry average (calculating expense payments as a percentage of amounts paid to policyholders). Comparing industry norms to the inflated amounts charged by CNO Services, it appears that, in the aggregate, CNO Services overcharged Conseco Life by between \$414 million and \$756 million, from 1999 to 2012.

90. The table below compares the amounts paid by Conseco Life to the amount it would have paid based on the peer-group median:

	Conseco Life's Actual Payments for General Expenses, 1997- 2012	Conseco Life's Total Projected General Expenses Using Peer Company Median Ratio, 1997-2012	Conseco Life's Overpayment of General Expenses Compared to Peer Company Median Ratio, 1997-2012
General Expenses/ Net Admitted Assets	\$1,360.6 million	\$946.1 million	\$414.5 million
General Expenses/ Capital & Surplus	\$1,360.6 million	\$473.5 million	\$887.1 million
Affiliate Payments/ Net Admitted Assets	\$954.7 million	\$389.4 million	\$565.2 million
Affiliate Payments/Capital & Surplus	\$954.7 million	\$198.7 million	\$756.0 million

91. CNO Financial was able to loot Conseco Life as it did because Conseco Life had no employees of its own, and it had no independent management. Because of Conseco's management structure, neither Conseco Life nor CNO Services had any true ability to act independently of CNO Financial. In theory, Conseco Life's corporate officers had management authority and were supposed to make sure that Conseco Life made decisions consistent with its duties to policyholders. But in practice, because all of Conseco Life's officers simultaneously served as officers, directors or employees of CNO Financial, CNO Services, and/or other CNO Financial affiliates, they made decisions affecting all of the companies in the Conseco Insurance Group, including Conseco Life. Conseco Life's directors likewise were hand selected members of CNO Financial and/or CNO Services management, ultimately beholden and loyal only to CNO Financial.

92. Because of CNO Financial’s domination of Consec Life, the payment of dividends up from Consec Life, and—more importantly—the terms of service contracts between Consec Life and its corporate affiliates, including CNO Services, followed patterns wholly inconsistent with business dealings by companies engaged in arm’s length transactions.

93. Around the time the COI rate increase at issue in this case was implemented, Consec Life was a husk of its former self due to the wanton self-dealing of its corporate parent and affiliates. The money wrongly diverted to Wilco’s former corporate family should have been held and invested for the benefit of policyholders like Ms. West.

94. In 2011, Wilco sought to recover the money reaped by and lost to Consec and further facilitate exorbitant payments to its corporate affiliates by significantly raising monthly COI rates and by causing policyholders to either lapse on—or surrender—the policies they responsibly maintained for decades. The CLIC-3002 policies, actuarial standards, (upon information and belief) Wilco’s redetermination procedures, and applicable regulations all prohibit Wilco from exploiting COI rates for that purpose.

B. Wilco Sought to Recover Significant Losses Caused By Litigation Involving Wilco’s Other Insurance Policies

95. In addition to the exorbitant losses associated with Consec’s self-dealing, Wilco experienced substantial losses relating to private and regulatory litigation concerning the administration of its “Lifestyle,” “Lifetime,” “LifeTrend,” “ValueLife,” and “ValueTerm” life insurance policies.

96. In 2003 and 2004, Wilco (then doing business as Consec Life) changed the way it calculated COI charges on approximately 86,500 Lifestyle and Lifetime insurance policies, resulting in a slew of class action lawsuits—and ultimately a multidistrict litigation—alleging breach of contract, breach of the covenant of good faith and fair dealing, and various claims for

fraud. *See generally In Re Conseco Life Insurance Co. COI Litigation*, No. 04-md-1610 (C.D. Cal.) (“Lifestyle Litigation”).

97. In 2005, the court certified a nationwide class for breach of contract and injunctive relief, and in 2007, Wilco settled the lawsuits. CNO Financial noted in its 2007 Form 10-K that it “incurred total costs related to [the] litigation settlement of \$64.4 million, \$174.7 million, and \$18.3 million in 2007, 2006, and 2005, respectively.”

98. The Lifestyle Litigation settlement does not cover Ms. West’s claims.

99. In 2008, Wilco faced more litigation, this time concerning its LifeTrend policies, which were sold by Wilco or through one of its predecessors-in-interest in the 1980s and 1990s. LifeTrend policies contained an optional premium payment provision (“OPP”), which was widely described by Wilco employees, independent brokers, and policyholders as a “vanishing premium” provision. Moreover, LifeTrend policies also contained a guaranteed cash value table that listed the minimum amount that Wilco promised to pay the policyholder upon surrender of the policy, an amount described as the policy’s “guaranteed cash value” (“GCV”). The GCV amounts listed in the GCV table depended on the number of years for which the policy had been in force.

100. Each LifeTrend policy’s OPP provision allowed the policyholder to stop paying annual premiums after five years so long as the amount of money in the policy’s accumulation account exceeded the sum of the policy’s GCV plus the applicable surrender charge and any indebtedness. If a policy became “underfunded,”—if the accumulation account balance fell below that threshold—then Wilco could resume charging annual premiums. By contrast, if a policy was not underfunded—if the accumulation account balance exceeded the sum of the GCV, applicable surrender charges, and any indebtedness—then Wilco could not resume charging annual premiums.

101. However, in October 2008, LifeTrend policyholders who had paid the required premiums and elected to enter the OPP program received a letter from Wilco demanding “shortfall payments” amounting to several years’ worth of newly-announced, retroactively imposed, annual premiums (the “October 2008 Letter”). For many LifeTrend policyholders, the shortfall payments that Wilco demanded were in the tens of thousands of dollars. Wilco also used a new method for calculating OPP/vanishing premium eligibility and told policyholders that they would owe substantial premiums going forward. As with this case, Wilco ignored its contractual obligations, sought to offset its interest obligations, and recover prior losses.

102. Furthermore, like this case, Wilco expected and intended when it announced the increases in premiums and cost-of-insurance deductions that thousands of LifeTrend policyholders would respond to the shock of the massive increases by surrendering their Policies or letting them lapse.

103. Before, during, and after its implementation of the shock lapse strategy, CNO Financial hired actuarial experts at Milliman USA (“Milliman”) to estimate the effect of the administrative changes on Wilco’s bottom line. Milliman’s estimates of the financial benefits Wilco would reap by breaching the LifeTrend policies varied based on assumptions used, but they all exceeded \$100 million. Milliman attributed one-third to one-half of the anticipated benefit to Wilco to shock lapse—value transferred directly from thousands of former LifeTrend policyholders, who no longer would have their life insurance policies, to Wilco, which would be relieved of the obligation to pay death benefits on those policies. The actual lapse rate ended up exceeding 39%. Ultimately, more than 4,000 LifeTrend policyholders—over a third of LifeTrend policyholders—surrendered their policies or let them lapse in the two years following the October 2008 announcement. Wilco achieved its improper shock lapse objective.

104. Unsurprisingly, LifeTrend policyholders across the country approached attorneys seeking to challenge Consec Life's unlawful conduct, resulting in class action lawsuits across the country that were eventually coordinated into multidistrict litigation in the United States District Court, Northern District of California, *In re Consec Life Insurance Co. LifeTrend Insurance Sales and Marketing Litigation*, 10-cv-02124-SI (N.D. Ca.) ("LifeTrend Litigation").

105. During the LifeTrend Litigation, the court granted a preliminary injunction in part (Dkt. 369), certified a nationwide class (Dkt. 451), granted the plaintiffs' motion for summary judgment in part (Dkt. 495), and denied Wilco's motion for summary judgment in its entirety (Dkt. 495). In denying that motion for summary judgment, the Court found that (a) "a reasonable insured would not read the terms [of the LifeTrend policies] and believe that [Wilco] could amend the COI charge at its discretion, regardless of changes to mortality rates[;]" (b) "it would be a breach of [the LifeTrend policies] for [Wilco] to collect a charge called 'COI' that is not actually related to the COI and is instead related to 'expenses,' . . . or to make up a shortfall in [Wilco's] ability to pay out the guarantee[;]" and (c) it would be a breach of the policies "to pass [Wilco's] bad fortunes onto its customers." LifeTrend Litigation, Dkt. 451 at 11-17.

106. In November 2014, the Court in the LifeTrend Litigation approved a substantial final settlement between Wilco and a nationwide class of LifeTrend policyholders. Along with the \$27 million estimated value of the settlement terms, Wilco paid \$8 million dollars in administrative costs and payments to class counsel and class representatives. LifeTrend Litigation, Dkts. 495, 505, 526.

107. In addition to private lawsuits, LifeTrend policyholders also contacted state insurance regulators to express concerns about the additional COI and expense charges shortly after receiving the October 2008 letter. On May 28, 2010, Wilco reached a Regulatory Settlement

Agreement (“RSA”) with the various state regulators. Among other terms, the RSA required Wilco to create a \$10 million settlement pool for the benefit of LifeTrend policyholders.

108. The LifeTrend Litigation settlement does not cover Plaintiff’s claims.

109. Beginning in 2008, Wilco faced two lawsuits challenging proposed COI increases on Valulife and Valuterm universal life insurance policies, which Wilco or its predecessors-in-interest had sold in the 1980s and 1990s. *See generally Yue v. Conseco Life Ins. Co.*, 08-cv-1506 (C.D. Cal.) (“*Yue I*”); *Yue v. Conseco Life Ins. Co.*, 11-cv-9506 (C.D. Cal.) (“*Yue II*”) (collectively, “Valulife Litigation”).

110. In *Yue I*, in 2011, the court granted a declaratory judgment holding that a COI increase implemented by Wilco in 2002 breached the Valulife and Valuterm policies because “it [took] into account factors other than ‘mortality.’” *Yue I*, Dkt. 168 at 14. The court also noted “[Wilco’s] ‘mortality experience’ has been improving, not worsening . . . the expected mortality (rate of death) is not better than when [Wilco] originally priced and sold the Policies.” *Id.* Therefore, Wilco could not lawfully increase its COI rates.

111. In *Yue II*, plaintiffs brought, among other things, breach of contract claims, alleging that Wilco impermissibly increased COI rates in 2011 even though the policies at issue “prohibited changes in COI rates for reasons other than worsening mortality.” *Yue II*, Dkt. 135, ¶ 10. Plaintiffs also alleged that Wilco attempted “to evade” the court’s declaratory judgment in *Yue I* by “concoct[ing] yet another new ‘methodology’” for determining COI charges. *Id.* at ¶ 12.

112. In early 2013, Wilco reached a preliminary settlement with the Valulife Litigation plaintiffs, and the Court approved a nationwide settlement in July 2013. *Yue II*, Dkt. 208. The parties’ experts valued the settlement’s then-present value at \$65 million dollars or more (*Yue II*, Dkt. 183 at 51-51), and Wilco was further required to pay class counsel (i) \$7,098,916.46 in

attorneys' fees, and (ii) \$901,083.54 for expenses class counsel had incurred as a result of the Valuelife Litigation. *Yue II*, Dkt. 208, 3-4.

113. The Valulife Litigation settlement does not cover Plaintiff's claims.

114. Wilco's litigation losses included substantial settlements, attorneys' fees, and other expenses, as well as the severe loss of goodwill and corporate reputation. While some of the litigation was settled after the COI rate increase, the COI rate increase enabled Wilco to recover the money used to settle lawsuits prior to 2011 and to also defray the massive costs of ongoing litigation.

115. Rather than absorb the litigation losses itself, Wilco attempted to pass those costs to universal life insurance policyholders by dramatically increasing COI rates and, in turn, reducing the interest and death benefits that it was obligated to policyholders. Wilco cannot raise COI rates for those reasons and its motives violate the terms of Wilco's universal life insurance policies.

C. Wilco Increases COI Rates to Offset the Contractual Interest Payments It Owes to Policyholders and to Recoup Losses

116. Interest rates fell to historic lows in the wake of the Great Recession (from 2008 to 2011). Although those steadily declining interest rates, which fell sharply during the Great Recession adversely impacted insurers generally, they had extremely adverse consequences for the profitability of universal life insurance products, like the policies issued by Wilco, which have high guaranteed interest rates.

117. In the late 1980s, when many universal life policies were issued, the 10-year Treasury rate was around 9%. Throughout the 1990s the 10-year Treasury moved steadily downward, remaining at or above 5% until the post-2001 recession period when it pierced the 4% level for some months. Between 2003 and 2008 it fluctuated generally between 4% and 5%.

118. From mid-2008 to 2011, interests rates dropped even further, placing strain on insurers' reserves while making it difficult to achieving profit or break-even on certain blocks of insurance policies, including universal life insurance policies like those at issue here that have guaranteed interest rates. For example, in 2008, the 10-year Treasury rate started at around 3.9% and eventually declined to 3% by July 2011, just prior to the COI rate increase that forms the basis of Plaintiff's claims.

119. In April 2012, the Center for Insurance Policy & Research ("CIPR") branch of the National Association of Insurance Commissioners published a report describing the effect the prolonged period of low interest rates had on insurers, particularly those insurers like Wilco whose life and annuity products contained higher resource lofty guarantees. The CIPR Report stated:

Life insurance companies face considerable interest rate risk given their investments in fixed-income securities and their unique liabilities. For life insurance companies, their assets and liabilities are heavily exposed to interest rate movements. Interest rate risk can materialize in various ways, impacting life insurers' earnings, capital and reserves, liquidity and competitiveness. Moreover, the impact of a low interest rate environment depends on the level and type of guarantees offered. Much of the business currently on life insurers' books could be vulnerable to a sustained low interest rate environment

Life insurers typically derive their profits from the spread between their portfolio earnings and what they credit as interest on insurance policies. During times of persistent low interest rates, life insurers' income from investments might be insufficient to meet contractually guaranteed obligations to policyholders which cannot be lowered.

In a low interest rate environment, it is challenging to find relatively low-risk, high-yield, long-duration assets to match annuities that guarantee a minimum annual return (e.g., 4%). For many policies, low interest rates mean that some mismatch with assets is likely. For example, older fixed income insurance products that guarantee rates of around 6%—closely matching or conceivably even

surpassing current investment portfolio yields—are likely to put a strain on life insurers as a result of spread compression or possibly negative interest margins.

120. To recover the losses caused by spread compression from 2008 to 2011, insurers including Wilco, decided to dramatically increase COI Rates.

121. By increasing the COI Rates to offset its interest rate guarantees and Accumulation Value Bonus obligation, Wilco ignored the terms of the CLIC-3002 Policies, accepted actuarial standards, and (upon information and belief) its own internal redetermination procedures. By increasing COI rates, Wilco also is avoiding its obligation to credit the full amount of the guaranteed interest and bonuses under the policies—thereby denying policyholders their contractual benefits under the policies.

D. Wilco Sought to Inflict Widespread Shock Lapses Through the COI Rate Increase

122. By raising COI rates, Wilco intended to—and did—cause widespread policy lapses and surrenders. The likelihood of a surrender or lapse increases dramatically when there is an increase in COI rates, and a policyholder must decide whether he or she can afford to maintain the policy.

123. Wilco's shock-lapse playbook is a matter of public record and was fully revealed in the LifeTrend Litigation. There, Wilco's third-party consultant, Milliman, estimated that one-third to one-half of the anticipated benefit of the cost increases to Wilco would be from policy surrenders and lapses. Ultimately, the actual LifeTrend surrender and lapse rate ended up exceeding 39%, with more than 4,000 policyholders surrendering or lapsing on their policies in the two years following Wilco's October 2008 cost increase announcement

124. Here, by causing Ms. West and many other policyholders to abandon their policies despite years or decades of faithful premium payments, Wilco was able to retain millions of dollars

and avoid paying millions of dollars more in death benefits. However, the CLIC-3002 policies and the insurance industry standards and regulations do not permit a COI rate increase to facilitate a shock-lapse strategy.

V. The Court Should Enjoin Wilco's Unconscionable Conduct

125. Through the massive increase to COI rates, and the depletion of the Accumulation Value of the policies, Wilco is attempting to avoid its obligation to credit the guaranteed interest rates and bonuses under the policies, and is also attempting to recoup past losses and shed the policies by making the cost to maintain them prohibitive for policyholders, thereby frustrating policyholders' ability to receive their contractual benefits under the policies.

126. The Class Members hardest hit by Wilco's unconscionable business practices are policyholders who have dutifully paid premiums for years based on the expectation that in their twilight years the policies would provide protection for their families. Due to age-related underwriting considerations, life insurance protection for these policyholders is now either unavailable or prohibitively expensive.

127. Wilco's actions have stripped Ms. West and other Class Members of their life insurance protection and have deprived them of their Accumulation Values.

128. By depriving Plaintiff and class members of the primary benefit of their policies—paid for through years of premiums to the Accumulation Value—Wilco has violated its express and implied obligations under the policies.

129. Many Wilco policyholders affected by this increased COI charge are policyholders who have faithfully paid the premiums costs for years or decades and had accumulated significant cash value in the policies. Due to their advanced age, these individuals cannot obtain alternative life insurance coverage and will lose the cash value of the policy if they cannot pay the increased

costs to maintain the policy. Some have already Accumulation Values depleted by Wilco.

130. These elderly policyholders, who are effectively uninsurable due to their advanced ages, face the prospect of: (a) surrendering their policies and losing their death benefits at an age when obtaining other life insurance coverage is practically impossible; (b) having their Accumulation Values depleted by Wilco's increased COI charges until there is nothing left and the policy "shock lapses;" (c) paying vastly increased premiums with no assurance that COI rates will not continue to increase; or (d) accepting a decrease in the policy's death benefit in order to reduce the impact of the COI rate increase.

131. As a result of Wilco's actions, Ms. West was, and thousands of class members continue to be, faced with the difficult decision of either paying the exorbitant and unjustified COI charges, or forever forgoing the life insurance benefits for which they have paid premiums for many years.

132. Plaintiff therefore seeks immediate preliminary injunctive and equitable relief to preserve the status quo *pendente lite* by enjoining Wilco from imposing the higher COI charges and terminating policies, and undoing the cancellations due to the COI rate increase and by compelling Wilco to maintain coverage for Ms. West and members of the Class. Unless Wilco is enjoined, policyholders will be irreparably damaged and Wilco will succeed with its plan to cause mass cancellations of the policies—leaving hundreds or thousands of policyholders without coverage based on unlawful, unfair and abusive COI rate increases and Wilco's depletion of the policies' Accumulation Values.

133. Ms. West also seeks permanent declaratory and injunctive relief requiring Wilco to (i) reverse the unlawful monthly COI rate increase on the policies, and (ii) reinstate all policies that were surrendered or lapsed as a result of the COI rate increase. Plaintiff also seeks ancillary

damages flowing directly from Wilco's unlawful conduct.

CLASS ACTION ALLEGATIONS

134. Ms. West brings this action individually and on behalf of the Class described below pursuant to Rule 23 (a), (b)(1), (b)(2), and (b)(3).

135. Ms. West seeks certification of the following class:

All current and former CLIC-3002 policyholders who were subjected to Wilco's 2011 COI Rate increase, excluding policyholders covered by the settlements in the Lifestyle, LifeTrend, and Valuelife Litigations and excluding policyholders in Georgia.

Also excluded from the class are (1) any Judge or Magistrate Judge presiding over this action and their family members; Wilco, and its corporate parents, subsidiaries and affiliates, officers and directors, and any entity in which Wilco has a controlling interest; (3) persons who properly and timely request to be excluded; and (4) the legal representatives, successors, or assigns of any such excluded persons or entities. Plaintiff anticipates the need to potentially amend the class definition after discovery.

136. There are hundreds, if not thousands, of Class Members. Accordingly, the Class is so numerous that joinder of all members is impracticable. Although the exact number of members is unknown to Ms. West at this time, the identities and addresses of the Class Members can be readily determined from Wilco's business records.

137. Ms. West's claims are typical of those belonging to Class members. Ms. West's claims stem from Wilco's impermissible COI rate increase on Ms. West's policy and to other policies in the Class.

138. Ms. West will fairly and adequately protect the interests of the Class and has retained counsel experienced in complex class action litigation.

139. Ms. West and her counsel have no interests which are adverse to those belonging to the Class that Ms. West seeks to represent.

I. Rule 23(b)(1)

140. Class action status is warranted under Rule 23(b)(1)(A). Prosecuting separate actions by or against individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Wilco.

141. Class action status is also warranted under Rule 23(b)(1)(B). Prosecuting separate actions by or against individual Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests

II. Rule 23(b)(2)

142. This action is appropriate as a class action pursuant to Rule 23(b)(2). Ms. West seeks injunctive relief and corresponding declaratory relief for the Class. Wilco has acted in a manner generally applicable to each member of the Class by imposing the monthly expense and COI rate increase on all policies owned by Class Members.

143. Wilco's unlawful monthly COI rates increase, if not enjoined, will subject Ms. West and other Class members to enormous continuing future harm and will cause irreparable injuries to such policyholders, who are compelled to surrender valuable life insurance policies with no economically viable option for alternative life insurance. The adverse financial impact of Wilco's unlawful actions is continuing and, unless preliminarily and permanently enjoined, will continue to irreparably injure Plaintiff and Class Members.

III. Rule 23(b)(3)

144. This action is also appropriate as a class action pursuant to Rule 23(b)(3). Common

questions of law and fact predominate over any individualized questions. Common legal and factual questions include the following:

- a) Whether Wilco's COI Rate increase is authorized under the terms of the policies;
- b) Whether Wilco breached its contractual obligations owed to Ms. West and Class Members;
- c) Whether Wilco breached the implied duty of good faith and fair dealing owed to Ms. West and Class Members;
- d) Whether Ms. West and Class Members have been damaged, and if so, are eligible for and entitled to compensatory and punitive damages;
- e) Whether Ms. West and Class Members are entitled to declaratory relief; and
- f) Whether Ms. West and Class Members are entitled to preliminary or permanent injunctive relief, or other equitable relief, against Wilco.

145. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, for the following reasons:

- a) Given the age of Class Members, many of whom are elderly and have limited resources, the complexity of the issues involved in this action and the expense of litigating the claims, few, if any, Class Members could afford to seek legal redress individually for the wrongs that Wilco has committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- b) Once Wilco's liability has been adjudicated respecting the COI rate increase, claims of all Class Members can be determined by the Court;
- c) This action will ensure an orderly and expeditious administration of the Class's claims and foster economies of time, effort, and expense, and ensure uniformity of decisions and compliance by Wilco with the policies;
- d) Without a class action, many Class Members would continue to suffer injury, and Wilco's violations of law will continue without redress while Wilco continues to reap and retain the substantial proceeds and reductions in its future liabilities derived from its wrongful conduct; and
- e) This action does not present any undue difficulties that would impede its management by the Court as a class action.

146. A class action is superior to other available means for the fair and efficient adjudication of this controversy for other reasons as well. The injuries suffered by individual class members are, though important to them, relatively small compared to the burden and expense of individually prosecuting these claims to address Wilco's conduct. Individualized litigation presents a potential for inconsistent or contradictory judgments. In contrast, a class action presents far fewer management difficulties; allows the hearing of claims that might otherwise go unaddressed; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

147. Ms. West cannot be certain of the form and manner of proposed notice to Class Members until the Class is finally defined and discovery is completed regarding the identity of Class Members. Ms. West anticipates, however, that notice by mail or email will be given to Class Members who can be identified specifically. In addition, notice may be published in appropriate publications, on the internet, in press releases and in similar communications in a way that is targeted to reach Class Members. The cost of notice, after class certification, trial, or settlement before trial, should be borne by Wilco.

148. Ms. West reserves her right to modify or amend the definition of the proposed Class at any time before the Class is certified by the Court.

FIRST CLAIM FOR RELIEF

BREACH OF CONTRACT, INCLUDING A BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

149. Ms. West re-alleges and incorporates the allegations made elsewhere in the Complaint as if set forth fully herein.

150. Ms. West brings this claim on behalf of herself and the Class.

151. The policies are valid, enforceable contracts between Ms. West and other Class Members and Wilco.

152. At all relevant times, Ms. West and other Class Members have paid the premiums to Wilco established at the inception of the policies and have performed all other obligations under the policies.

153. Wilco owed duties and obligations to Ms. West and Class members under the policies, including to only charge COI Rates that the policies authorize; credit Accumulation Values with guaranteed interest and bonuses that reflect contractually permissible COI rates; and to provide a death benefit to policyholders that have paid premiums and maintained their policies until the death of the insured.

154. The policies only permit Wilco to increase COI rates when there is a verifiable, material change to the underlying mortality rates of the insureds covered by the policies. The policies distinguish between COI (which accounts for mortality risk), Expense Charges, and guaranteed interest and Accumulation Value Bonuses. The elements of the policy are discrete, and Wilco cannot exploit the COI charge to serve its desire for additional profit, to recover prior losses (particularly hundreds of millions of dollars of losses caused by its own avarice and misguided business practices), or offset its guaranteed interest and bonus obligations.

155. Wilco violated the express terms of the policies during the Class Period by:

- a) Increasing COI rates to account for factors other than the future mortality risk of Wilco's insureds;
- b) Increasing COI rates to recoup past losses, including past losses stemming from gross mismanagement and diminished returns on Wilco's general investment portfolio;
- c) Increasing COI rates to make more profit on the policies than assumed at issuance, including to increase revenue to facilitate hundreds of millions of dividends and *de facto* dividends to Wilco's

predecessor's affiliates;

- d) Increasing COI rates in order to negate or offset Wilco's obligation to pay guaranteed interest and bonuses at the minimum guaranteed rates; and
- e) Increasing COI rates to cause policyholders to cause policy surrenders and "shock lapses."

156. The policies further require Wilco to exercise its discretion under the policy in good faith and deal fairly and in a manner that does not frustrate the reasonable expectations of policyholders like Ms. West or deprive policyholders of the express benefits of the policies.

157. Here, Ms. West and Class Members reasonably expected that the policies' COI rate provision would not be abused to offset Wilco's guaranteed interest and bonus obligations or prevent them or the beneficiaries from receiving a death benefit provided that they paid contractually permissible premiums. Those expectations were further reinforced by projections provided by Wilco that showed the policies would remain in force for much longer than the policies did after Wilco imposed the COI rate increase.

158. To the extent Wilco had the discretion to increase the COI rates Wilco violated the implied covenant of good faith and fair dealing and undercut the reasonable expectations of policyholders, including Ms. West, by leveraging the policies' COI rate provision to:

- a) Recover hundreds of millions of dollars in past losses primarily caused by Wilco's profiteering and mismanagement and to enable Wilco's affiliates to unjustifiably reap hundreds of millions of dollars in profit from policyholders;
- b) Reduce the amount of guaranteed interest and bonuses that Wilco paid to policyholders; and
- c) Cause widespread policy surrenders and lapses

159. Wilco has materially breached the terms and provisions of the policies and defied policyholders' reasonable expectations by imposing improper COI charges and by depleting the

Class Members' Accumulation Values.

160. Wilco's conduct and material breaches of the policies during the Class Period have proximately caused damage to Ms. West and the Class Members in an amount to be determined at trial.

161. In addition, unless Wilco is preliminarily and permanently enjoined from deducting unlawful COI charges and required to reinstate surrendered and terminated policies, Ms. West and Class Members will suffer severe and irreparable injuries for which they have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

DECLARATORY RELIEF

162. Ms. West re-alleges and incorporates the allegations elsewhere in the Complaint as if set forth fully herein.

163. Ms. West brings this claim on behalf of herself and the Class.

164. An actual controversy has arisen and now exists between Ms. West and the Class members, on the one hand, and Wilco, on the other hand, concerning the respective rights and duties of the parties under the policies during the Class Period.

165. Wilco contends that it has (a) lawfully and appropriately increase COI Rates and, (b) has appropriately collected (and is still collecting) increase COI charges and, (c) it is permitted to continue to collect these charge for the duration of the policies.

166. On the other hand, Ms. West and Class members maintain that Wilco, through its COI rate increase has inappropriately and unlawfully, in material breach of the express and implied terms of the policies, collected inflated COI charges and has deprived Ms. West and the Class of their Accumulation Values and the interest and bonuses that Wilco was supposed to pay on the

misappropriated Accumulation Value during the Class Period. Wilco has also deprived Ms. West and the Class of the benefits and value of their policies.

167. Ms. West, on behalf of herself and the Class, requests the Court render a Declaratory Judgment that: (1) Wilco's COI rate increase is unlawful and (2) Wilco can only increase COI rates to address verifiable and material adverse changes in future mortality risk of its insureds. A Declaratory Judgment will set forth parties' respective rights under the policies and prevent future disputes.

PRAYER FOR RELIEF

WHEREFORE, Ms. West, on behalf of herself and the Class, prays for relief as follows:

- a) An Order certifying this action to proceed on behalf of the Class and appointing Ms. West and her counsel listed below to represent the Class;
- b) An Order awarding Ms. West and Class members entitled to such relief restitution and/or disgorgement and such other equitable relief as the Court deems proper;
- c) An Order enjoining Wilco, its representatives, and all others acting with it or on its behalf from unlawfully charging COI rates impacted by the COI rate increase and requiring COI rates to be at levels that are consistent with the terms of the policies, and other appropriate injunctive relief;
- d) An Order providing preliminary and permanent injunctive relief enjoining Wilco, its representatives, and all others acting with it or on its behalf, from terminating policies while Wilco imposes impermissible COI rates;
- e) An Order providing permanent injunctive relief requiring Wilco to (i) reverse the unlawful COI rate increase on the policies, and (ii) reinstate all policies that were surrendered or terminated as a result of the COI rate increase;
- f) An Order declaring that Wilco's COI rate increase was unlawful and that future COI rate increases be based on Wilco's future expectations of mortality risk;
- g) An Order awarding Ms. West and other Class members who might be entitled to such relief actual, compensatory, statutory, punitive, and/or exemplary damages;
- h) An Order awarding Ms. West's attorneys' fees and other costs; and
- i) An Order awarding such other and further relief as may be just and proper,

including pre-judgment and post-judgment interest on the above amounts.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Plaintiff and the Class demand a trial by jury.

Dated: June 2, 2020

Respectfully submitted,

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