

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SPRR LLC, on behalf of itself and all others  
similarly situated,

Plaintiff,

vs.

PHL VARIABLE INSURANCE CO.,

Defendant.

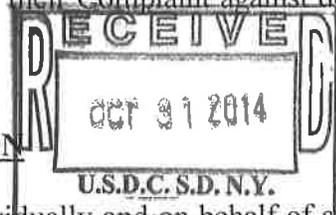
14 CV 8714  
Civil Action No.

ECF Case

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff SPRR LLC ("SPRR"), by and through its attorneys Susman Godfrey L.L.P. and on behalf of itself and all others similarly situated, as and for their Complaint against defendant PHL Variable Insurance Company, state as follows:



NATURE OF THE ACTION

1. This is a class action brought by Plaintiff individually and on behalf of similarly-situated owners of flexible-premium, universal life insurance policies issued by defendant PHL Variable Insurance Company ("PHL") who have been subject to an unlawful and discriminatory cost of insurance ("COI") increase imposed by PHL. PHL's COI increase violates the plain terms of Plaintiff's and all putative class members' insurance policies. Plaintiff seeks monetary relief to compensate it for the unlawful cost of insurance increase and to repay to all policyholders the unlawful charges that PHL has collected.

2. The policies at issue are all premium-adjustable, universal life policies issued by PHL called the Phoenix Accumulator Universal Life or "PAUL" policies. The principal benefit of PAUL policies is that they permit policyholders to pay the minimum amount of premiums necessary to keep the policies in-force. Unlike other kinds of whole life insurance that require fixed monthly premium payments, the premiums required for PAUL policies need only be

sufficient to cover the COI charges and certain other specified expenses. This allows policyholders to minimize their capital investment and generate greater rates of return through other investments. Any premiums paid in excess of COI charges and expense components are applied to a policy's "accumulated policy value," sometimes known as "policy value" or "cash value." These excess premiums earn a set amount of interest. PHL has promoted its flexible-premium policies as "appropriate for those looking to minimize long term insurance costs" because they "present the opportunity to pay lower premiums, as well as adjust the amount and timing of premium payments."

3. Despite the fact that PAUL policies are marketed and sold to enable policyholders to minimize their premium payments and keep policy values as low as possible, PHL has unlawfully sought to punish policyholders for doing exactly that. PHL has dramatically increased COI rates on PAUL policyholders, including on those who exercise their contractual right to keep their accumulated policy values as low as possible and pay flexible premiums.

4. This COI increase is yet another round in PHL's long-running assault on life settlement investors, who frequently purchase and own PAUL policies. PHL dislikes life settlement investors for a counter-intuitive reason: they timely pay their premiums. PHL makes large amounts of money when policies "lapse"—that is, when the policyholder stops paying premiums. When a policy lapses, all previously-paid premiums are forfeited, and PHL is relieved from paying death benefits. PHL also makes large amounts of money when policyholders surrender or "cash in" their policies. Life settlement investors, however, rarely let their policies lapse and rarely surrender their policies.

5. Life settlement investors provide an outlet for policyholders to sell policies for immediate liquidity. According to a GAO report, policy owners who sold their policies into

the secondary market typically receive more than eight times the cash surrender value that the policies' insurers (like PHL) would pay. Historically, a policy owner who no longer wished to continue paying premiums on a policy had few options because life insurance carriers wielded monopsony power of the repurchase of their own policies. The secondary market corrects this imbalance of power by providing buyers for unwanted policies as an alternative to compete with insurers and thus provide policy owners with a fair market value for their unwanted policies.

6. PHL's unlawful COI increases reflect its latest efforts to depress the life settlement market, discriminate against life settlement investors, and induce lapses and surrenders of policies.

7. By increasing COI rates based on accumulated policy value, PHL seeks to force Plaintiff and other PHL policyholders to either (a) pay exorbitant premiums that PHL knows would no longer justify the ultimate death benefits, or (b) lapse or surrender their policies and forfeit the premiums policyholders have previously paid. PHL, in turn, will make a huge profit—either through higher premium payments or by eliminating a large group of policies (through lapses or surrenders) and keeping the premiums they have paid to date.

8. As described in detail below, PHL's conduct is unlawful. While the policies permit PHL to adjust the cost of insurance rates periodically, they allow PHL to do so based only on certain specified factors, such as expectations of future mortality. "Accumulated policy value" is not one of those enumerated factors.

9. Further, the policies at issue expressly prohibit PHL from discriminating unfairly within any class of insureds with respect to COI rates. PHL has admitted that its COI increases are directed at only at a certain *subset* of policies of the same class at issuance. There is no

legal basis in the policies for PHL to increase COI charges on certain policies and yet not increase COI charges on other policies in the same class.

### **THE PARTIES**

10. SPRR is a limited liability company legally organized, validly existing, and in good standing under the laws of the State of New York. SPRR is the owner of a PAUL policy (number 97527123) insuring the life of Rose Rubinstein, which was issued by PHL on March 27, 2008, and has a face value of \$10 million (the “Rubinstein Policy”). The Rubinstein Policy was subject to PHL’s COI increase that began on policy anniversary dates after November 1, 2011, and first became effective for the Rubinstein Policy in March 2012.

11. Defendant PHL is a corporation organized and existing under the laws of Connecticut, having its corporate headquarters in Hartford, Connecticut. PHL also maintains a customer call center in East Greenbush, New York, which handles customer calls for PHL-issued products.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1332(d) because this is a class action with diversity between at least one class member and one defendant and the aggregate amount of damages exceeds \$5,000,000. Defendant PHL is a citizen of Connecticut. Plaintiff is not a citizen of Connecticut, and Plaintiff is aware of multiple class members that are citizens of states other than Connecticut, including California and New York. Upon information and belief, less than two-thirds of the members of the proposed plaintiff class in the aggregate are citizens of the State of New York. This action therefore falls within the original jurisdiction of the federal courts pursuant to the Class Action Fairness Act, 28 U.S.C § 1332(d).

13. This Court has personal jurisdiction over PHL because it regularly transacts business in the State of New York. PHL maintains a call center in East Greenbush, New York, where company employees handle calls for PHL-issued products. PHL has also previously consented to the jurisdiction of this Court in a related action with regard to COI increases. *See* Defendant PHL Variable Insurance Company's Notice of Motion and Motion for Transfer Pursuant to 28 U.S.C. § 1404, *U.S. Bank Nat'l Assoc. v. PHL Variable Ins. Co.*, No. 11-09517 (C.D. Cal.), *filed* July 23, 2012 (Dkt. 61) ("PHL's Motion to Transfer to New York") (moving to transfer case from California to New York because "PHL would have been subject to personal jurisdiction in New York based on its presence in that state").

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 1391(c) because PHL would have been subject to personal jurisdiction in New York at the time this action commenced and several of the events giving rise to Plaintiff's cause of action occurred in this District. *See* PHL's Motion to Transfer to New York at 1 ("New York is the more convenient venue because it is there that: (1) the parties and key witnesses are concentrated; (2) all of the decisions and actions relevant to the claims and defenses in this action occurred; and (3) related litigation involving identical allegations is transpiring."); *id.* at 9 ("Because [PHL] would have been subject to personal jurisdiction in New York at the time this action was commenced, it also would have been deemed to 'reside' there, 28 U.S.C. § 1391(c), and venue would have been proper in the Southern District of New York. 28 U.S.C. § 1391(b)(1)."); *id.* at 11 ("[PHL's] decisions regarding the cost of insurance rate increases were made at its corporate offices in Connecticut or New York.").

**FACTUAL BACKGROUND**

**A. The Policies at Issue**

15. The policies at issue are all flexible-premium, universal life policies issued by PHL. Universal life policies combine death benefits with an optional savings component, often known as the “cash value,” “policy value” or “accumulated policy value.” Under the terms of these “flexible premium” PAUL policies, a policyholder must pay a Minimum Initial Premium, which is specified in his contract. This amount covers the policyholder’s up-front costs. Any amount in excess of the Minimum Initial Premium that the insured chooses to pay is deposited into the optional savings component account on which PHL pays interest. Thereafter, the only requirement is that the policyholder pays enough each month to cover the monthly expenses including COI (referred in the policy as the “Monthly Deduction”). If the policyholder fails to do that, the policy will lapse.

16. Once the Policy Value is high enough, the policyholder may elect not to make premium payments for a while and instead allow PHL to draw down his or her Monthly Deduction from the accumulated Policy Value. The policyholder can do this until the Policy Value is depleted, at which point the Policy Value account must be replenished, or the policy will lapse. This strategy allows the policyholder flexibility in the timing of his payments; he can pay excess premiums in times when he has better cash flow and then use his accumulated Policy Value to cover the periods when his cash flow deteriorates. Meanwhile, the money in the policyholder's “savings account,” i.e. his Policy Value, accrues interest for as long as it sits in the “savings account.”

17. These features ensure that the policyholder has flexibility to determine the amount and timing of his premium payments. He may choose to make monthly payments equal to the

Monthly Deduction and nothing more. Although PHL asks each policyholder to estimate his “Planned Premium” during the application process, this premium is not required. The lack of any required premium payment, “Planned” or otherwise, is why these policies are referred to as “flexible premium.” It is entirely up to the policyholder whether to utilize the savings (or “Cash Accumulation”) feature of his or her policy.

18. Flexible-premium policies are preferred by policy owners because they allow the owners to pay the bare minimum required to keep the policy in force (that is, the policy owners can keep the policies’ cash value as low as possible) while preserving capital for other investments that yield higher-returns than what the insurance carrier would generate on the savings component. Policyholders can choose to keep their Accumulated Policy Value as close to zero as possible—in other words, they can choose not to pay any more premiums than the absolute minimum to cover COI and the other expenses. With fixed-premium policies, by contrast, the insurer has the use of the premiums in excess of the COI charge and earns investment income on those excess premiums. PHL has promoted its flexible-premium policies in press releases as “appropriate for those looking to minimize long term insurance costs” because they “present the opportunity to pay lower premiums, as well as adjust the amount and timing of premium payments.”

19. The policies at issue in this case state on their face that they are “flexible premium” policies. There are no fixed or minimum premium payments specified in the policies.

20. PHL’s insurance policies limit PHL’s ability to increase COI rates. The Rubinstein Policy contains the following limitations in Section 9:

- “The rates for the Cost of Insurance Charge as of the Certificate Date are based on the sex, if applicable, Age, Risk Classification, Basic Face Amount, Supplemental Face Amount, Net Amount at Risk, and duration that the coverage has been in force for the insured.”

- “[COI] rates will be based on our expectations of future mortality, persistency, investment earnings, expense experience, capital and reserve requirements, and tax assumptions.”
- “We review our Cost of Insurance Rates periodically, and may re-determine Cost of Insurance rates at such time on a basis that does not discriminate unfairly within any class of insureds.”
- “Any change in rates will be determined prospectively. We will not distribute past gains or recoup prior losses, if any, by changing rates.”

21. The relevant terms of all policies at issue in this litigation are substantively identical to those set forth in the Rubinstein Policy. The policies at issue are all form policies issued by PHL, and insureds are not permitted to negotiate different terms. The subject policies are all contracts of adhesion.

**B. PHL’s Unlawful COI Increase**

22. PHL imposed the 2011 COI Rate Adjustment on Plaintiff and all class members, effective on the next policy anniversary date after November 1, 2011, which for Plaintiff was in March 2012. This PHL COI rate adjustment changed the COI rates for some (but not all) of the PAUL policies, including those held by Plaintiff and the members of the proposed Class.

23. The letters sent to policyholders, including the Plaintiff, did not explain the basis of the increase. The letters state, in relevant part:

We are sending you this letter to inform you that on November 1, 2011, we are adjusting the cost of insurance rates on certain Phoenix Accumulator Life policies, including your policy referenced above. As a result, the rates used to determine your cost of insurance will be increased from the current rates. This change will go into effect on your next policy anniversary on or after November 1, 2011.

As background, we review our cost of insurance rates periodically to determine whether they should be changed and take action only when the rates are too low or too high relative to our current actuarial and financial expectations related to the policies. This change is in accordance with the terms of your policy, and all

currently payable rates for the costs of insurance remain below the maximum guaranteed rate contained in your policy contract.

24. “Actuarial and financial expectations” are not enumerated bases for COI increases under the terms of the policies.

25. “It is undisputed that PHL took Policy Values into consideration when planning the 2011 COI Rate Adjustment. PHL admits that it ‘analyzed funding ratios in the process of defining the class’ that would be subject to the 2011 COI Rate Adjustment. . . . Essentially, PHL determined which policies had low funding ratios (and thus lower Policy Values) and then identified groups of policies that more or less matched the policies with low funding ratios (PAUL series IIIA policies with insureds age 68 or older and face amounts of \$1 million or more, and PAUL series IIIB/C policies with insureds age 65 or older and face amounts of \$1 million or more) and subjected these groups to the 2011 COI Rate Adjustment.” *U.S. Bank Nat’l Assoc. v PHL Variable Ins. Co.*, 2014 WL 2199428, at \*5 (S.D.N.Y. May 23, 2014).

26. According to public reports, PHL targeted approximately 1400 policies with the 2011 COI increase, including the Rubinstein Policy. PHL refuses to disclose to individual policyholders the precise methodology used to calculate the new COI rates.

27. The amount of the COI increase is extraordinary and cannot be justified by any of the enumerated factors in the policies. Further, the 2011 COI increase discriminates unfairly within the same class of insureds. To Plaintiff’s knowledge, PHL has not announced an increase in COI rates for any other PAUL series IIIA or IIIB/C policies besides the subset of policies that are subject to the new COI rates announced in 2011. Had PHL dramatically revised its expectations of future mortality, persistency, or investment earnings, its COI rates would have increased for a broad range of life insurance policies. That it did not implement any such

increase confirms that the COI increases are being used to target certain policies and policyholders in a discriminatory manner and based on improper factors.

### CLASS ACTION ALLEGATIONS

28. This action is brought by Plaintiff individually and on behalf of a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. The class—referred to herein as the “PHL COI Increase Class”—consists of:

All owners of Phoenix Accumulator Universal Life insurance policies issued by PHL Variable Insurance Company that were subjected to a cost of insurance rate increase announced by PHL to go into effect on a policy’s next anniversary date on or after November 1, 2011 (excluding defendant PHL, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing).

29. The PHL COI Increase Class consists of hundreds of consumers of life insurance and is thus so numerous that joinder of all members is impracticable. The identities and addresses of class members can be readily ascertained from business records maintained PHL.

30. The claims asserted by the Plaintiff are typical of the claims of the PHL COI Increase Class.

31. The Plaintiff will fairly and adequately protect the interests of the PHL COI Increase Class and does not have any interests antagonistic to those of the other members of this class.

32. The Plaintiff has retained, as interim class counsel, attorneys who are knowledgeable and experienced in life insurance matters, as well as class and complex litigation.

33. Plaintiff requests that the Court afford class members with notice and the right to opt-out of any class certified in this action.

34. This action is appropriate as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure because common questions of law and fact affecting the classes predominate over those questions affecting only individual members. Those common questions include:

(a) the construction and interpretation of the form insurance policies at issue in this litigation;

(b) whether PHL's actions to increase the cost of insurance charges on certain PAUL policies violated the terms of those form policies;

(c) whether PHL breached its contracts with the class members; and

(d) whether Plaintiff and Class members are entitled to receive damages as a result of the unlawful conduct by defendants alleged herein and the methodology for calculating those damages.

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

(a) the complexity of 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 defendants committed against them, and absent class members have no substantial interest in individually controlling the prosecution of individual actions;

(b) when PHL's liability has been adjudicated, claims of all class members can be determined by the Court;

(c) this action will cause an orderly and expeditious administration of the class claims and foster economies of time, effort and expense, and ensure uniformity of decisions;

(d) without a class action, many class members would continue to suffer injury, and PHL's violations of law will continue without redress while defendants continue to reap and retain the substantial proceeds of their wrongful conduct; and

(e) this action does not present any undue difficulties that would impede its management by the Court as a class action.

### **FIRST CLAIM FOR RELIEF**

#### **Breach of Contract (on behalf of Plaintiff and the PHL COI Increase Class)**

36. Plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 35 of this complaint as if fully set forth herein.

37. The subject policies are binding and enforceable contracts.

38. PHL's rate increase has materially breached the Policies in several respects, including but not limited to the following:

(a) PHL breached the policies by increasing COI rates based on a policy's accumulated policy value because accumulated policy value is not one of the permissible and enumerated bases for increasing cost of insurance rates;

(b) PHL breached the policies by increasing the COI rates on bases that do not apply uniformly to a class of insureds, and which discriminate unfairly between insureds of the same class;

(c) PHL breached the policies because PHL's COI rate increase was not based on the permissible factors stated in the policies, such as PHL's expectations of future mortality and persistency;

(d) Plaintiff is informed and believes and on that basis alleges that PHL breached the policies because its COI increase was designed to recoup past losses; and

(e) Plaintiff is informed and believes and on that basis alleges that PHL breached the policies because its COI increase was not determined prospectively.

39. Plaintiff has performed all of his obligations under the policies, except to the extent that their obligations have been excused by PHL's conduct as set forth herein.

40. As a direct and proximate cause of PHL's material breaches of the policies, Plaintiff and the PHL COI Increase Class have been—and will continue to be—damaged as alleged herein in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. Declaring this action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding Plaintiff and the class compensatory damages pursuant to the First Claim for Relief;
3. Awarding Plaintiff and the class pre-judgment and post-judgment interest, as well as costs; and
4. Awarding Plaintiff and the class such other relief as this Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues so triable.

Dated: October 31, 2014

  
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