

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NOTICE OF CLASS ACTION SETTLEMENT

If you own or owned an Athena Universal Life II policy issued by AXA Equitable Life Insurance Company that was subject to a cost of insurance rate increase announced in October 2015, you may be affected by a class action settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A proposed settlement has been reached in a class action lawsuit called *Brach Family Foundation, Inc., et al. v. AXA Equitable Life Ins. Co.*, No. 16 Civ. 740 (JMF) (S.D.N.Y.) (the “Settlement”).
- Plaintiffs allege that Defendant AXA Equitable Life Insurance Company (“AXA Equitable”), now known as Equitable Life Insurance Company breached its contracts with certain policyowners of Athena Universal Life II (“AUL II”) policies and circulated illustrations with misrepresentations. On October 1, 2015, AXA Equitable announced that AUL II insurance policies would be subject to a cost of insurance (“COI”) rate scale increase. Plaintiffs assert the COI rate increase violated the terms of the policyowners’ contracts. Plaintiffs also allege that AXA Equitable planned to increase the COI rates of the AUL II policies as early as July 10, 2006, but concealed that fact in illustrations promulgated in connection with the issuance and maintenance of the policies until the COI Rate Increase was announced in October 2015. Plaintiffs and members of the Classes have been damaged as a result. AXA Equitable denies Plaintiffs’ claims and asserts multiple defenses. The Court has not decided who is right or wrong. Instead, both sides have agreed to the Settlement to avoid risks, costs, and delays of further litigation.
- The case is currently pending before Judge Jesse M. Furman of the United States District Court for the Southern District of New York (the “Court”). If the Court approves the Settlement, Class Members will be eligible to receive payment from a cash Settlement Fund of up to \$307,500,000.00, as further detailed in Question 10.
- In addition, AXA Equitable agrees that the COI rate scales on AUL II policies will not be increased until May 16, 2030. AXA Equitable also agrees that it will not take certain legal action or assert certain legal defenses challenging death claims for any Class Member as outlined in the Settlement Agreement available at www.AXACOILitigation.com.
- ***Please read this Notice carefully.***

YOUR LEGAL RIGHTS AND OPTIONS

Do Nothing	<ul style="list-style-type: none"> • Get certain benefits from the Settlement — Automatically receive a payment in the mail if you are entitled to one • Be bound by the Settlement • Give up your right to sue or continue to sue AXA Equitable for the claims in this case 	
Object	<ul style="list-style-type: none"> • Tell the Court what you do not like about the Settlement. The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Classes are not bound by the Settlement. 	<p>Filed and served by August 28, 2023</p>

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, cancelled, or otherwise modified, so please check www.AXACOILitigation.com regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	PAGE 4
1. Why was this Notice issued?	
2. What is this lawsuit about?	
3. Which life insurance policies are affected by the lawsuit?	
4. What is a class action and who is involved?	
5. Why is this lawsuit a class action?	
6. Why is there a Settlement?	
THE SETTLEMENT CLASSES	PAGE 6
7. Am I part of the Classes?	
8. Are there exceptions to being included?	
9. What if I am still not sure if I am included?	
WHAT CLASS MEMBERS GET	PAGE 7
10. What does the Settlement provide?	
HOW TO GET A PAYMENT	PAGE 7
11. How can I get a payment?	
12. When will I get my payment?	
THE LAWYERS REPRESENTING YOU	PAGE 8
13. Do I have a lawyer in this case?	
14. How will the lawyers be paid?	
15. Should I get my own lawyer?	
OBJECTING TO THE SETTLEMENT	PAGE 8
16. How can I tell the Court if I do not like the Settlement?	
THE COURT’S FAIRNESS HEARING	PAGE 9
17. When and where will the Court decide whether to approve the Settlement?	
18. Do I have to come to the hearing?	
19. May I speak at the hearing?	
IF YOU DO NOTHING	PAGE 10
20. What happens if I do nothing at all?	
GETTING MORE INFORMATION	PAGE 10
21. How can I get more information?	

BASIC INFORMATION

1. Why was this Notice issued?

You have a right to know about a proposed Settlement and your rights and options before the Court decides whether to approve the Settlement.

Judge Jesse M. Furman of the United States District Court for the Southern District of New York is in charge of this case. The case is called *Brach Family Foundation, Inc., et al. v. AXA Equitable Life Ins. Co.*, No. 16 Civ. 740 (JMF) (S.D.N.Y.). The Brach Family Foundation, Inc., Barbara Currie, as the personal representative of the estate of Malcolm Currie, and Mary J. McDonough, as Trustee of the Currie Children Trust (“Plaintiffs”) own AUL II policies that were subjected to the COI rate increase at issue in the case and are the Plaintiffs in this case. The Brach Family Foundation, Inc. and Mary J. McDonough, as Trustee of the Currie Children Trust are Court-appointed class representatives in this case. The company sued, AXA Equitable, is called the Defendant.

In May 2023, Plaintiffs and AXA Equitable reached an agreement and proposed Settlement of the claims in this case.

2. What is this lawsuit about?

The class action lawsuit alleges that AXA Equitable breached its contracts with certain policy owners and circulated illustrations with misrepresentations. In October 2015, policyholders were issued letters announcing that their insurance policies would be subject to the COI Rate Increase, and Plaintiffs assert the COI Rate Increase violated the terms of the policyholders’ contracts, and that Plaintiffs and members of the Policy-Based Claims Class have been damaged as a result. With respect to the Illustration Classes, Plaintiffs allege that AXA Equitable planned to increase the COI rates of the AUL II policies as early as July 10, 2006, but concealed that fact in illustrations promulgated in connection with the issuance and maintenance of the policies until the COI Rate Increase was announced in 2015. AXA Equitable denies Plaintiffs’ claims and asserts multiple defenses, including that AXA Equitable’s challenged actions are consistent with the terms of the policy contracts and applicable laws and regulations, justified, and have not harmed Plaintiffs or caused any damages.

On August 13, 2020, the United States District Court for the Southern District of New York granted Plaintiffs’ motion for class certification for two nationwide Classes and a New York Sub-Class: the Policy-Based Claims Class and the Illustration-Based Claims Class, as well as the New York Illustration-Based Claims Sub-Class. The Policy-Based Claims Class relates to allegations that AXA Equitable’s COI Rate Increase breached the terms of AUL II policies. The Illustration Classes relate to allegations that AXA Equitable circulated illustrations with misrepresentations. The Court also certified one New York Sub-Class for the Illustration Classes, which relates to allegations that AXA Equitable’s illustration misconduct was materially misleading to reasonable consumers, in violation of G.B.L. § 349.

In October 2020, the Court-appointed Notice Administrator provided notice to members of the certified Classes and an opportunity to opt-out of the class action lawsuit.

On January 17, 2023, the Court revised the definition of the Illustration Classes by substituting in entitlement holders as Class Members in place of their securities intermediaries.

3. Which life insurance policies are affected by the lawsuit?

All registered owners of AUL II policies issued by AXA Equitable that were subject to the COI Rate Increase are affected by the lawsuit. Certain entitlement holders who own or owned affected AUL II

policies through a securities intermediary are also affected by the lawsuit. AUL II policies are flexible-premium universal life policies, pursuant to which a policyholder is required to make an initial premium payment and, thereafter, can choose when and how much to pay in premiums.

4. What is a class action and who is involved?

In a class action, one or more persons called a “Class Representative” sues on behalf of all individuals who have a similar claim. Here, Plaintiffs represent other eligible AUL II policyowners and together they are called the “Classes” or “Class Members.” The person(s) who sued are called the “Plaintiff(s)”; a party being sued, such as AXA Equitable, is called a “Defendant”.

5. Why is this lawsuit a class action?

The Court decided that the breach of contract claim, Section 4226 claim, and G.B.L § 349 claim against AXA Equitable in this lawsuit can proceed as a class action because, at this point of the lawsuit, those claims meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, which governs class actions in federal court. The Court found that:

- There are numerous Class Members whose interests will be affected by this lawsuit;
- There are legal questions and facts that are common to each of them;
- The Class Representatives’ claims are typical of the claims of the rest of the Classes;
- The Class Representatives and the lawyers representing the Classes will fairly and adequately represent the interests of the Classes;
- A class action would be a fair, efficient and superior way to resolve this lawsuit;
- The common legal questions and facts predominate over questions that affect only individual Class Members; and
- The Classes are ascertainable because they are defined by identifiable objective criteria.

In certifying the Classes, the Court appointed Susman Godfrey L.L.P. as Class Counsel. For more information, visit the Important Documents page at www.AXACOILitigation.com.

6. Why is there a Settlement?

AXA Equitable denies any and all liability or wrongdoing of any sort with regard to the 2015 COI rate increase. The Court has not decided in favor of Plaintiffs or Defendant; in March 2022, however it denied Defendant’s motion for summary judgment on the Class claims and in January 2023, it denied Defendant’s motion to decertify the Illustration Classes. Trial was scheduled to start on October 30, 2023. With the assistance of an experienced, neutral mediator, the parties were able to reach a compromise subsequently memorialized in the Settlement Agreement. Doing so avoids the risks, costs, and delays of further litigation for both sides. Plaintiffs and Class Counsel think the Settlement is in the best interests of the Classes and is fair, reasonable, and adequate.

THE SETTLEMENT CLASSES

7. Am I part of the Classes?

The Settlement Classes are defined as:

Nationwide Policy-Based Claims Class: All persons or entities who, on or after March 8, 2016, are or were registered owners of AUL II policies that were issued by AXA Equitable and subjected to the cost of insurance rate increase announced by AXA Equitable on or about October 1, 2015, as well as those persons' or entities' heirs, successors, or assigns.

Nationwide Illustration-Based Claims Class: All individuals who, on or after March 8, 2016, are or were registered owners of an AUL II policy unaccompanied by a Lapse Protection Rider that was issued by AXA after July 10, 2006 and subjected to the COI rate increase announced by AXA on or about October 1, 2015, unless the registered owner of such policy is a securities intermediary, in which case the securities intermediary is not a class member but the entitlement holder with respect to that policy is. Entitlement holders for policies that were previously opted out of the Illustration Class through a securities intermediary are excluded from the Illustration Class with respect to those policies.

New York Illustration-Based Claims Sub-Class: All members of the Nationwide Illustration-Based Claims Class who reside in New York.

8. Are there exceptions to being included?

Yes. Excluded from the Settlement Classes are Defendant AXA Equitable, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing, and the plaintiffs in already pending related actions filed against AXA Equitable in federal and state courts.

Also excluded from the Settlement Classes are owners of policies that previously opted out during the prior notice round in 2020. For example, if a securities intermediary previously opted out of one or more of the Illustration Classes with respect to a policy, and you are or were an entitlement holder of that policy, then you are excluded from those Classes with respect to that policy.

This Settlement Notice is also being sent to some entitlement holders who were added to the Nationwide Illustration-Based Claims Class and New York Illustration-Based Claims Sub-Class in the Court's January 17, 2023 Order revising those class definitions. As part of their Settlement package delivered with this Settlement Notice, these entitlement holders are being sent a Special Notice that permits them to exclude themselves from this Action. To exclude themselves from the case and Settlement, such entitlement holders must submit a written, signed exclusion requests to the AXA COI Litigation Settlement Administrator (see address in Response to Question 21) postmarked no later than August 28, 2023.

9. What if I am still not sure if I am included?

If you are still not sure whether you are a Class Member, please visit www.AXACOILitigation.com, call the Settlement Administrator toll-free at 1-888-681-1196, or write to: AXA Equitable COI Life Insurance Settlement, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111.

WHAT CLASS MEMBERS GET

10. What does the Settlement provide?

A Settlement Fund of up to \$307,500,000.00 will be established for Class Members. After payment of the cost to administer the Settlement Fund as well as attorneys' fees and expenses and the payments to the Class Representatives (*see* Question 14 below), the Settlement Administrator will distribute the remaining amounts to Class Members in proportion to their share of the overall COI overcharges collected from the Classes through March 31, 2023. No portion of the Settlement Fund will be returned to AXA Equitable.

AXA Equitable has also agreed not to:

- Raise COI rate scales on policies covered by the Settlement for a period of seven (7) years from the date the parties reached a settlement. In other words, AXA Equitable is prohibited from imposing another COI rate scale increase on the policies in the Classes until May 16, 2030, at the earliest.
- Cancel, void, rescind, or deny a death claim submitted under the Class Members' policies or contest the validity of a policy based on:
 - An alleged lack of valid insurable interest under any applicable law or equitable principles; or
 - Any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy.

More details are in a document called the Settlement Agreement, which is available at www.AXACOILitigation.com.

If you are a Class Member, you cannot sue, continue to sue, or be part of any other lawsuit against AXA Equitable about the facts that arise from the same factual predicate of the claims released in this Settlement. It also means that all the decisions by the Court will bind you. The Released Claims and Released Parties are defined in the Settlement Agreement. They describe the legal claims that you give up if you stay in the Settlement. The Settlement Agreement is available at www.AXACOILitigation.com.

HOW TO GET A PAYMENT

11. How can I get a payment?

You will automatically receive a payment in the mail if you are entitled to one. No claims need to be filed.

12. When will I get my payment?

Payments will be mailed to Class Members after the Court grants "final approval" of the Settlement and after all appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them can take time. Please be patient.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court has appointed the following lawyers as “Class Counsel.”

Seth Ard
Mark Musico
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019-6023
sard@susmangodfrey.com
mmusico@susmangodfrey.com
Telephone: 212-336-8330

Steven G. Sklaver
Rohit D. Nath
Glenn C. Bridgman
Halley W. Josephs
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-4405
ssklaver@susmangodfrey.com
rnath@susmangodfrey.com
gbridgman@susmangodfrey.com
hjoosephs@susmangodfrey.com
Telephone: 310-789-3100

14. How will the lawyers be paid?

The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will file a motion seeking an award for attorneys’ fees not to exceed 33 1/3% of the Final Settlement Fund (i.e., \$102,500,000.00). Class Counsel has an agreement to share 5% of the fees awarded by the Court less any expenses not recovered to The Law Office of Joseph Lichter, P.C., 445 Central Ave., Suite 340, Cedarhurst, NY 11516. In addition to seeking an award for attorneys’ fees, Class Counsel will seek reimbursement for expenses incurred or to be incurred in connection with the Settlement, as well as a Service Award up to \$100,000 for each Class Representative for their service as the representatives on behalf of the Classes, to be paid from the Final Settlement Fund. You will not be responsible for direct payment of any of these fees, expenses, or awards.

15. Should I get my own lawyer?

You do not need to hire your own lawyer to pursue the claims against AXA Equitable because Class Counsel is working on behalf of the Classes. However, if you want to be represented by your own lawyer, you may hire one at your own expense and cost.

OBJECTING TO THE SETTLEMENT

16. How can I tell the Court if I do not like the Settlement?

Any Class Member may object to the fairness, reasonableness, or adequacy of the proposed Settlement. Class Members who wish to object to any term of the Settlement must do so, in writing, by filing a written objection with the Court, and serving copies on Class Counsel and Counsel for Defendant. The written objection must include:

- Your full name, address, telephone number, and email address (if any);
- The case name (*Brach Family Foundation, Inc., et al. v. AXA Equitable Life Ins. Co.*);

Questions? Call 1-888-681-1196 or visit www.AXACOILitigation.com

- The policy number(s);
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A list of all persons who will be called to testify in support of the objection (if any);
- A statement of whether you intend to appear at the Fairness Hearing; and
- Your or your counsel's signature.

If you intend to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Your objection, along with any supporting material you wish to submit, must be filed with the Office of the Court, with a copy served on Class Counsel and Counsel for Defendant by **August 28, 2023** at the following addresses:

Clerk of the Court	Class Counsel
Thurgood Marshall United States Courthouse 40 Foley Square New York, NY 10007	Seth Ard Mark Musico SUSMAN GODFREY L.L.P. 1301 Avenue of the Americas, 32nd Floor New York, NY 10019-6023
Counsel for Defendant	
Scott A. Edelman David R. Gelfand MILBANK LLP 55 Hudson Yards New York, NY 10001	Steven G. Sklaver Rohit D. Nath Glenn C. Bridgman Halley W. Josephs SUSMAN GODFREY L.L.P. 1900 Avenue of the Stars, Suite 1400 Los Angeles, CA 90067-4405

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on **October 12, 2023** at 2:30 p.m. ET at the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, Courtroom 1105, 40 Foley Square, New York, NY 10007. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, adequate, and in the best interest of the Classes. The Court will also consider how much to pay and reimburse Class Counsel and any Service Award payment to Plaintiffs. If there are objections, the Court will consider them at this time. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. But you or your own lawyer may attend at your expense. If you submit an objection, you do not have to come to Court to talk about it. As long as you filed and served your written objection on time to the proper addresses, the Court will consider it.

19. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intent to Appear.” Your request must state your name, address, and telephone number, as well as the name, address, and telephone number of the person that will appear on your behalf. Your request must be filed with the Clerk of the Court and served on Class Counsel and Defendant’s Counsel no later than **August 28, 2023**. See Question 16 for addresses.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

Those who are eligible to receive a payment from the Settlement do not need to do anything to receive payment; you will automatically receive a payment from the Settlement. You will be bound by the Settlement, and you will give up your right to sue or continue to sue AXA Equitable for the claims in this case.

GETTING MORE INFORMATION

21. How can I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, available at www.AXACOILitigation.com. You can also call the Settlement Administrator toll-free at 1-888-681-1196, or write to:

AXA Equitable COI Life Insurance Settlement
c/o JND Legal Administration
P.O. Box 91238
Seattle, WA 98111