

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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, your rights may be affected.

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

- The Brach Family Foundation, Inc. (the “Brach Foundation”) and Allen Dyer, as Trustee of the Currie Children Trust (“Plaintiffs”) have filed a class action against AXA Equitable Life Insurance Company (“AXA Equitable”), now known as Equitable Life Insurance Company, for allegedly unlawful cost of insurance (“COI”) rate increases announced on October 1, 2015 on certain life insurance policies issued by AXA Equitable (the “COI Rate Increase”). The allegations against AXA Equitable are set forth in Plaintiffs’ Third Amended Complaint filed with the Court on March 16, 2018.
- The insurance policies at issue are flexible-premium, universal life (“UL”) policies issued by AXA on a product line called Athena Universal Life II (“AUL II”). A Court has allowed the lawsuit to proceed as a class action against AXA Equitable on behalf of all registered owners of these policies that were subject to the COI Rate Increase. This notice is to inform you of the certification of two nationwide Classes and a New York Sub-Class; the nature of your claims; the Court’s reservation of the rights for all absent class members outside of New York and California to participate in this case as an absent class member and later bring any claim not actually litigated in this case, as well as the rights of all absent class members to participate in this case as an absent class member and assert related claims under the California Elder Abuse Law; and your right to exclude yourself from the Classes. The effectiveness of the Court’s reservation of rights is not guaranteed and will be determined by a later court if you choose to bring a separate lawsuit against AXA Equitable. That later court may determine that, because you participated in this class action, you are precluded from asserting any claims relating to the COI Adjustment even if these claims were not actually litigated in this action.
- The Court has not decided whether any laws were broken. There is no money available now and no guarantee there ever will be. However, if you are a member of the Classes described in this Notice, your rights are affected, and you have a choice to make now.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION	
DO NOTHING	Stay in this lawsuit and await the outcome. By doing nothing, the certification ruling means that any judgment in this case – whether favorable to Plaintiffs or AXA Equitable – will bind all Class Members who do not timely elect to be excluded from the Classes in the manner described below.
ASK TO BE EXCLUDED	Get no benefits from lawsuit. Keep certain rights. If you ask to be excluded from this lawsuit and money is later awarded, you will not be allowed to request a payment. However, you preserve any rights to sue AXA Equitable at your own expense and with your own attorney about the COI Rate Increase, including the same legal claims asserted in this lawsuit, subject to applicable defenses that AXA Equitable may have to each legal claim.

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BASIC INFORMATION

1. Why was this Notice issued?

This Notice explains that a Court “certified” a nationwide Policy-Based Claims Class, a nationwide Illustration-Based Claims Class and a New York Illustration-Based Claims Sub-Class. These Classes impact registered owners of AUL II policies issued by AXA Equitable that were subject to the COI Rate Increase. *See* Question 6 for more details on who is affected. If you are a member of one or more of the Classes, you must choose to stay in the lawsuit, or exclude yourself from it, **prior to January 21, 2021**.

Judge Jesse M. Furman of the United States District Court for the Southern District of New York is overseeing this lawsuit, known as *In re: AXA Equitable Life Insurance Company COI Litigation*, Case No. 16-cv-740 (S.D.N.Y.), and has determined that claims against AXA Equitable for breach of contract, violations of New York Insurance Law § 4226 (“Section 4226”), and violations of New York General Business Law § 349 (“G.B.L. § 349”) can proceed as a class action (together, “Certified Claims”). The Court declined to certify as a class action Plaintiffs’ claims under California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (“UCL”) and California Elder Abuse Law, Cal. Welf. & Inst. Code § 15610.30.

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 Classes have been damaged as a result. 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 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: the Policy-Based Claims Class and the Illustration-Based Claims 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-Based Claims Class relates to allegations that AXA Equitable circulated illustrations with misrepresentations. The Court also certified one New York Sub-Class for the Illustration-Based Claims Class, which relates to allegations that AXA Equitable’s illustration misconduct was materially misleading to reasonable consumers, in violation of G.B.L. § 349. The Court denied class certification of three California Sub-Classes based on the UCL and Elder Abuse Law claims, which, as a result, are not part of this class action. In its class certification order, the Court also reserved the rights of all absent class members outside of New York and California to participate in this case as an absent class member and also later bring any claim arising out of the COI Rate Increase not actually litigated here, as well as the right of all absent class members to participate in this case as an absent class member and to assert related claims under the California Elder Abuse Law. In doing so, the Court cautioned that there is no guarantee that a later court would honor its reservation of rights.

The Court’s order certifying the Classes does not predict or guarantee that Class Members will receive any money or benefits; that will be decided later. In certifying this lawsuit as a class action, the Court has made no decision as to the merits of the Plaintiffs’ legal claims or AXA Equitable’s defenses.

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. 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 AXA insurance policy owners and together they are called the “Class” or “Class Members.” The person(s) who sued are called the “Plaintiff(s)”; a party being sued, such as AXA, is called a “Defendant”.

Any judgment in this case will resolve the issues for the Certified Claims for all Class Members, except for those who exclude themselves from the Classes. Class Members might receive money and other benefits if they stay in the Classes and if Plaintiffs and the Classes prevail on the merits, or Class Members might receive nothing in this case if they stay in the Classes and AXA Equitable prevails on the merits.

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 Class Member;
- The Class Representatives’ claims are typical of the claims of the rest of the Class Members;
- 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.

For more information, visit the Important Documents page of the website at www.AXACOILitigation.com.

WHO IS IN THE CLASSES

6. Am I part of this class action?

The Classes consists of the following two nationwide Classes and the New York Sub-Class:

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 persons or entities who, on or after March 8, 2016, are or were registered owners of an AUL II policy without a Lapse Protection Rider that was issued by AXA Equitable after

July 10, 2006 and subjected to the cost of insurance rate increase announced by AXA Equitable on or about October 1, 2015.

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

7. Are there exceptions to being included?

Yes. Excluded from the 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.

8. What happens if I do nothing at all?

By doing nothing, you will remain in the Classes. If you remain in the Classes and Plaintiffs obtain money or other value from this lawsuit—either as a result of any ruling, trial or Court-approved settlement—you may receive a payment, if you are entitled to one. Keep in mind that if you do nothing now, regardless of whether Plaintiffs win or lose, you will be legally bound by all Court orders and judgments made in this class action with respect to the Certified Claims asserted by Plaintiffs in this lawsuit, and you will not be able to maintain a separate lawsuit against AXA Equitable for the same legal claims that are the subject of this lawsuit. You also may be subject to a defense asserted by AXA Equitable that you are barred from later bringing any other claims related to or arising from the COI Rate Increase that could have been, but were not, asserted in this lawsuit, including but not limited to statutory claims under State consumer protection and elder abuse laws, and common law claims such as fraud, conversion, breach of the implied covenant of good faith and fair dealing. Although the Court did not certify as part of the class action Plaintiffs' UCL and California Elder Abuse Law claims, you may be barred from later bringing these claims as well. The Court has reserved the rights for all absent class members outside of New York and California to participate in this case as an absent class member and also later bring any claim not actually litigated, as well as the rights of all absent class members to participate in this case as an absent class member and assert related claims under the California Elder Abuse Law. However, there is no guarantee that a later court would honor such a reservation.

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

If you are still not sure whether you are included in the Classes or which Class(es) you are included in, please visit the website, www.AXACOILitigation.com, call the Notice Administrator toll-free 1-888-681-1196, or write to: AXA Equitable COI Litigation Notice Administrator, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111.

10. What happens if I ask to be excluded?

If you exclude yourself (or “opt out”) from the Classes, you will not receive any distribution that may result from a judgment or settlement favorable to Plaintiffs. If you exclude yourself, you will also not be legally bound by the Court's orders and judgments in this class action. You may sue or continue to sue AXA Equitable for the same legal claims that are the subject of this lawsuit or for related claims not raised in this lawsuit, now or in the future, subject to the applicable defenses that AXA Equitable may have to each legal claim. If you choose to pursue your own lawsuit against AXA Equitable, you may hire a lawyer at your own expense to prove your alleged claim(s).

11. How do I ask to be excluded?

To exclude yourself from the Classes, you must send a letter to the Notice Administrator requesting exclusion from *In re: AXA Equitable Life Insurance Company COI Litigation* class action, with your name, address, telephone number, email address, AXA Equitable policy number(s) for the AUL II insurance policy or policies you own, the time period you claim to have owned the policy or policies, and your signature. Your exclusion request **must be postmarked no later than January 21, 2021**. Send your exclusion request to: AXA Equitable COI Litigation

Notice Administrator, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111. For the avoidance of doubt, if a nominal owner (such as a securities intermediary or trustee) owns multiple class policies on behalf of different principals, that nominal owner may stay in or opt out of the classes separately for each principal. If you qualify as a member of more than one of the Classes, you may exclude yourself from some of the Classes while participating in the Class with respect to the other Classes.

IF YOU DO NOT EXCLUDE YOURSELF BY THE DEADLINE ABOVE, YOU WILL REMAIN PART OF THE CLASSES AND BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

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

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13. How will the lawyers be paid?

Class Counsel will represent your interests in presenting the claims against AXA Equitable. You will not be personally responsible for Plaintiffs’ attorneys’ fees or costs, except to the extent that the Court may approve or award any such fees and costs to Class Counsel, which would be paid out of the overall recovery in this action, if any.

14. Should I get my own lawyer?

If you stay in the Classes, 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.

GETTING MORE INFORMATION

15. Are more details available?

Yes. Key Dates and Important Documents related to the lawsuit can be found on the website at www.AXACOILitigation.com. For additional assistance, contact the Notice Administrator by calling, toll-free, 1-888-681-1196 or write to: AXA Equitable COI Litigation Notice Administrator, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, PLEASE DO NOT CONTACT THE COURT OR AXA EQUITABLE. ALL QUESTIONS SHOULD BE DIRECTED TO THE NOTICE ADMINISTRATOR OR CLASS COUNSEL.