

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MAI NHIA THAO, individually  
and on behalf of a class of  
others similarly situated,  
Plaintiffs,

No. 2:09-C-1158-LA

vs.

MIDLAND NATIONAL LIFE  
INSURANCE COMPANY,

Defendants.

/

Deposition of  
ROBERT E. WILCOX  
Tuesday, March 13, 2012

Reported by:

KIMBERLEE SCHROEDER, CSR, RPR, CCR

License No. 11414

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Case 2:09-cv-01158-LA Filed 03/29/12 Page 1 of 9 Document 66-1

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1 MR. PAUL. Q. I just want to make sure, when  
2 you say "limitation," would that include -- if the word  
3 expenses were in there, is that what you're meaning when  
4 you say the word "limitation"?

5 MR. HIGGINS: Objection. Vague.

6 THE WITNESS: If the language specifically, for  
7 example, excluded expenses, that would be a limitation  
8 language in the absence of language to that effect, then  
9 there would be, again, the only limitation based on the  
10 statutory maximum.

11 MR. PAUL: Q. Let me ask the other side of  
12 that then. Are you familiar with any policies,  
13 universal life policies that include a COI rate  
14 provision that says it is based on and among other  
15 elements, includes expenses?

16 MR. HIGGINS: Objection. Vague.

17 THE WITNESS: I may have, but I don't recall  
18 specifically.

19 MR. PAUL: Q. Going back to this first bullet  
20 point on page 4 where you say, "Midland may use  
21 different tables of cost-of-insurance rates for  
22 different UL products," did Midland in fact use  
23 different tables of cost-of-insurance rates for each of  
24 the products at issue in this case?

25 A. I can't say that they're mutually exclusive,

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1 again so we're clear.

2 MR. HIGGINS: You might want to.

3 MR. PAUL: Q. So hypothetical, same policy  
4 form, one product, maybe I should say same product.

5 A. Okay.

6 Q. Same five characteristics.

7 A. Yes.

8 Q. Two different people, they are going to have  
9 the same cost-of-insurance charge; is that right?

10 MR. HIGGINS: Objection. Vague and incomplete  
11 hypothetical.

12 THE WITNESS: Given the complexity of the  
13 issue, probably any hypothetical would be incomplete,  
14 but in general, if that were to vary between individuals  
15 that had those same five characteristics, there would be  
16 a discrimination issue that insurance regulators would  
17 have a problem with.

18 MR. PAUL: Q. Okay. All right. Looking down  
19 the further sentence, page 4 of your declaration, you  
20 say, "The remedy proposed by the plaintiff..."

21 What is your understanding of the remedy  
22 proposed by the plaintiff in this case?

23 MR. HIGGINS: I'm sorry. Where are you?

24 MR. PAUL: Fourth line on the first bullet  
25 point, paragraph 4.

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1 or virtually identical to paragraph 7.8 in this  
2 contract.

3 Q. Okay. What part of that paragraph 7.8 do you  
4 see as authorizing Midland to make a change in premium  
5 load, expense charge, or interest rate if the add-on  
6 were changed to zero?

7 A. The first sentence, "We may declare  
8 cost-of-insurance rates, expense amount, premium loads  
9 and interest rates that differ from those stated in the  
10 policy."

11 Q. Okay. Is the second sentence of paragraph 7.8  
12 a limitation on that in any way in your view?

13 A. I think it is. It says that, "The changes in  
14 the cost-of-insurance rates, expense amounts, premium  
15 loads and interest rates will be based upon changes in  
16 future expectations for such elements as investment  
17 earnings, mortality, persistency and expenses."

18 Q. Would you anticipate that Midland's future  
19 expectations for any of the elements of investment  
20 earnings, mortality, persistency or expenses would  
21 change as a result of taking the add-on to zero?

22 A. Yes.

23 Q. Which one?

24 A. Probably all of them. But certainly  
25 persistency is likely to change because policyholders

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1 are now looking at a contract that is different from  
2 what they expected to have, and the way in which they  
3 respond to that will to some extent be a result of the  
4 changes in benefits that result from a change in the  
5 cost-of-insurance rate.

6 But also, it will vary based on their ability  
7 to make changes. They -- I mentioned before someone who  
8 is now uninsurable, and so even though they may wish to  
9 terminate their contract as a result of this change,  
10 they would pay a heavy penalty for doing so because they  
11 couldn't go out and buy a policy to replace it.

12 So persistency would change. If you change  
13 persistency, mortality is going to change. And  
14 certainly if you -- if you go through the process of  
15 doing this, Midland will incur additional expenses.

16 They would have to estimate how significant  
17 those would be. My guess is they would be significant  
18 expenses as a result of administering the change and  
19 addressing the policyholder communications that it would  
20 generate. So that one would change.

21 The investment earnings, probably ought to  
22 separate that between investment earnings and investment  
23 rates, but the actual crediting rate is likely to  
24 change. It may be that the -- it's highly likely that  
25 future cash flows will be different. And that is likely

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1 where there have been industry practices that have been  
2 unlawful?

3 MR. HIGGINS: Objection. Vague.

4 THE WITNESS: I can't think of one right now.

5 MR. PAUL: Q. During your tenure as insurance  
6 commissioner, did you ever see issues come up that you  
7 had to address within your department that you thought  
8 needed to be changed, either from a regulatory  
9 perspective or a consumer protection standpoint that was  
10 industry practice?

11 A. Yes, but that's different from the question you  
12 asked me before.

13 Q. I understand. Do you recall the vanishing  
14 premium litigation?

15 A. Very well.

16 Q. Would you agree that the sales practices that  
17 were used in the vanishing premium -- in selling those  
18 policies was problematic?

19 MR. HIGGINS: Objection. Vague.

20 THE WITNESS: In a limited number of cases,  
21 that was true. But again, that's a different question  
22 than you asked before. Problematic is not the same as  
23 unlawful.

24 MR. PAUL: Q. Do you not believe that the  
25 sales practices used -- that were at issue in the

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1 vanishing premium issue were unlawful?

2 MR. HIGGINS: Objection. Vague.

3 THE WITNESS: There may have been a few  
4 instances where it was unlawful. In general, it was  
5 not.

6 MR. PAUL: Q. You understand that there were  
7 widespread -- let me strike that.

8 There were a lot of settlements with a lot of  
9 insurance companies over vanishing sales premiums  
10 tactics; correct?

11 A. Yes.

12 Q. What about the modal premium litigation? Are  
13 you familiar with that?

14 A. Yes.

15 Q. You understand that were Court judgments  
16 condemning that practice at issue in that litigation?

17 MR. HIGGINS: Objection. Vague. Go ahead.

18 THE WITNESS: Those were very limited  
19 geographically, those instances that I'm aware of where  
20 the Court ruled it was contrary. And the position of  
21 insurance regulators relative to those cases was  
22 contrary to the Court decisions.

23 They felt that the Courts erred in those  
24 conclusions regarding modal premiums.

25 MR. PAUL: Q. In that regard, let's deal with

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REPORTER'S CERTIFICATE

I, KIMBERLEE SCHROEDER, CSR 11414, duly authorized to administer oaths pursuant to Section 30(c) of the Federal Rules of Civil Procedure, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me and thereafter transcribed by me and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties to said cause of action, nor in any way interested in the outcome of the cause named in said cause of action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 16th day of March, 2012.

KIMBERLEE SCHROEDER, CSR, RPR, CCRR  
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