

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

37 BESEN PARKWAY, LLC, on behalf of itself
and all others similarly situated,

Plaintiff,

vs.

JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.),

Defendant.

Civil Action No. 15-cv-9924

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant John Hancock Life Insurance Company (U.S.A.) (“John Hancock”) hereby answers the Complaint of Plaintiff 37 Besen Parkway, LLC’s (“Plaintiff” or “Besen”) filed December 22, 2015 (the “Complaint”) as follows:

NATURE OF THE ACTION

1. John Hancock admits that Plaintiff purports to bring this action as a class action on behalf of members of two alleged classes of John Hancock policyholders, but denies that Plaintiff has brought a proper class action and that Plaintiff is entitled to any relief from John Hancock. John Hancock denies the remaining allegations in paragraph 1.

A. Cost of Insurance Overcharges¹

2. John Hancock refers to the Plaintiff’s policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 2.

¹ For ease of reference, John Hancock uses the same headings as contained in the Complaint, but such use should not be deemed an admission of anything stated or implied in those headings. If and to the extent that the headings contained in the Complaint are deemed to be allegations, John Hancock denies those allegations.

3. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 3.

4. John Hancock refers to the documents referenced in paragraph 4 for their true, complete and accurate terms. John Hancock states that nationwide mortality rates as a whole have generally decreased over the last several decades. John Hancock denies the remaining allegations in paragraph 4.

5. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock states that the Cost of Insurance ("COI") charge can be the highest expense that a policyholder pays under a policy. John Hancock denies the remaining allegations in paragraph 5.

6. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock states that universal and variable life policies typically combine death benefits with a savings or investment component sometimes referred to as the "account value" and that COI charges are typically deducted from the account value. John Hancock denies the remaining allegations in paragraph 6.

7. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock is without knowledge or information sufficient to form a belief as to what "Counsel to the insurance industry" has said, when such statements were made, and under what circumstances such statements were made. John Hancock denies the remaining allegations in paragraph 7.

8. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 8.

B. Age 100 Rider Overcharges

9. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 9.

10. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 10.

11. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 11.

12. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 12.

13. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 13.

THE PARTIES

14. John Hancock is without knowledge or information sufficient to form a belief as to the first sentence of paragraph 14. John Hancock is without knowledge or information sufficient to form a belief as to the second sentence of paragraph 14, except that John Hancock states that it has records of issuing policy number 54010426, referred to in the Complaint as the

“Doe Policy,” and refers to that policy for its true, complete and accurate terms. John Hancock is without knowledge or information sufficient to form a belief as to the third sentence of paragraph 14 to the extent that that sentence alleges information beyond that contained in the policy. John Hancock admits that one of the joint insured under the policy is deceased. John Hancock further states that the Doe Policy is considered by John Hancock to be in force at this time, that the Doe Policy has not received a COI rate decrease since it was issued, and that the Doe Policy was issued on John Hancock Policy Form 96SURVUL. John Hancock denies the remaining allegations in paragraph 14.

15. John Hancock states that it is a corporation organized and existing under the laws of Michigan and admits that its principal place of business is Boston, Massachusetts. John Hancock admits the third sentence of paragraph 15 and admits that, in the Complaint, Plaintiff uses the term “John Hancock” to refer to John Hancock Life Insurance Company (U.S.A.) and all of its predecessors. John Hancock refers to the Plaintiff’s policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 15.

JURISDICTION AND VENUE

16. The first and third sentences of paragraph 16 are legal conclusions for which no response is required. John Hancock is without knowledge or information sufficient to form a belief as to the second sentence of paragraph 16.

17. John Hancock admits that it has confirmed that Besen is the owner of the Doe Policy and that John Hancock has collected premiums sent on behalf of Besen. John Hancock further states that the address on file for Besen is an address in New York. John Hancock further states that the remainder of paragraph 17 states a legal conclusion for which no response is required.

18. John Hancock admits that venue is proper in this District. John Hancock denies the remaining allegations in paragraph 18.

FACTUAL BACKGROUND

A. Cost of Insurance

19. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock states that the copy of the Doe Policy attached as Exhibit A to the Complaint is not a full, accurate, and complete copy of the Doe Policy. John Hancock denies the remaining allegations in paragraph 19.

20. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 20.

21. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 21.

22. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock states that COI charges can be the highest expense that a policyholder pays under a policy. John Hancock also states that a balance of premium payment is typically deposited to account value after deduction of expenses and then treated in accordance with the applicable contract. John Hancock denies the remaining allegations in paragraph 22.

23. John Hancock denies the allegations in paragraph 23.

B. Improving Mortality and John Hancock's Unlawful Failure to Base COI rates Solely on Expectations of Future Mortality

24. John Hancock states that nationwide mortality rates as a whole have generally decreased over the last several decades. John Hancock denies the remaining allegations in paragraph 24.

25. John Hancock admits the first, second, third, fourth, and fifth sentences in paragraph 25. John Hancock states that there are many uses of mortality tables. John Hancock denies the remaining allegations in paragraph 25.

26. John Hancock admits the first sentence of paragraph 26. John Hancock states that different insurers use the Commissioners Standard Ordinary mortality tables in different and varying ways depending upon circumstances. John Hancock denies the remaining allegations in paragraph 26.

27. John Hancock refers to the documents referenced in paragraph 27 for their true, complete and accurate terms. John Hancock admits the third sentence in paragraph 27. John Hancock denies the remaining allegations in paragraph 27.

28. John Hancock refers to the documents referenced in paragraph 28 for their true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 28.

29. John Hancock refers to the documents referenced in paragraph 29 for their true, complete and accurate terms. John Hancock is without information sufficient to form a belief as to the first sentence of paragraph 29. John Hancock denies the remaining allegations in paragraph 29.

30. John Hancock refers to the document referenced in the first sentence of paragraph 30 for its true, complete and accurate terms. John Hancock admits that the Society of Actuaries

performs surveys and publishes mortality tables, including the tables identified in paragraph 30. John Hancock denies the remaining allegations in paragraph 30.

31. John Hancock refers to the documents referenced in paragraph 31 for their true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 31.

32. John Hancock refers to the documents referenced in paragraph 32 for their true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 32, except admits that John Hancock Life Insurance Company (U.S.A.) is a wholly-owned indirect subsidiary of Manulife Financial Corporation.

33. John Hancock refers to the documents referenced in paragraph 33 for their true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 33.

34. John Hancock states that nationwide mortality rates as a whole have generally decreased over the last several decades. John Hancock denies the remaining allegations in paragraph 34.

35. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 35.

C. John Hancock's Unauthorized Age 100 Rider Overcharges

36. John Hancock states that some of the universal life policies it issues include an Age 100 Waiver of Charges Rider, and admits that Plaintiff refers to a purported subset of policies with that rider as the "Rider Class Policies." John Hancock denies the remaining allegations in paragraph 36.

37. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 37.

38. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 38.

39. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 39.

40. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 40.

41. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 41.

42. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 42.

43. John Hancock refers to the Plaintiff's policy for its true, complete and accurate terms. John Hancock admits that at all relevant times, the insureds on the Doe Policies have been older than 32 years old. John Hancock denies the remaining allegations in paragraph 43.

44. John Hancock refers to the Plaintiff's policy for its true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 44.

45. John Hancock refers to the Plaintiff's policy and to the individual policies of each purported class member for their respective true, complete and accurate terms. John Hancock denies the remaining allegations in paragraph 45.

46. John Hancock states that, when charged, premiums under an Age 100 Waiver of Charges Rider on a universal life insurance policy typically are subtracted from the account value. John Hancock otherwise denies the allegations in paragraph 46.

CLASS ACTION ALLEGATIONS

47. John Hancock admits that Plaintiff purports to bring this action on behalf of two classes, but denies that this action can properly be pursued or maintained as a class action, that Plaintiff is a qualified class representative, and that class relief is available from John Hancock.

48. John Hancock admits that Plaintiff purports to bring this action on behalf of the “COI Decrease Class,” but denies that this action can properly be pursued or maintained as a class action, that Plaintiff is a qualified class representative, and that class relief is available from John Hancock.

49. John Hancock admits that Plaintiff purports to bring this action on behalf of the “Rider Overcharge Class,” but denies that this action can properly be pursued or maintained as a class action, that Plaintiff is a qualified class representative, and that class relief is available from John Hancock.

50. John Hancock denies the first sentence of paragraph 50 except to the extent that it states a legal conclusion, for which no response is required. John Hancock states that it maintains the names and addresses of its policyholders. John Hancock denies the remaining allegations in paragraph 50.

51. John Hancock denies the allegations contained within paragraph 51 except to the extent that it states a legal conclusion, for which no response is required.

52. John Hancock denies the allegations contained within paragraph 52 except to the extent that it states a legal conclusion, for which no response is required.

53. John Hancock is without knowledge or information sufficient to form a belief as to the allegations in paragraph 53.

54. Paragraph 54 states or seeks a legal conclusion for which no response is required.

55. John Hancock denies the allegations contained within paragraph 55 and all its sub-parts except to the extent that it states a legal conclusion, for which no response is required.

56. John Hancock denies the allegations contained within paragraph 56 and all its sub-parts except to the extent that it states a legal conclusion, for which no response is required.

FIRST CLAIM FOR RELIEF

Breach of Contract (on behalf of the COI Decrease Class)

57. John Hancock realleges and incorporates its responses to the paragraphs above as if fully set forth herein. John Hancock admits that Plaintiff purports to bring this claim on behalf of both itself and the COI Decrease Class, but denies that this action can properly be pursued or maintained as a class action, that Plaintiff is a qualified class representative, and that class relief is available from John Hancock.

58. Paragraph 58 states a legal conclusion, for which no answer is required.

59. John Hancock denies the allegations contained within paragraph 59 except to the extent that it states a legal conclusion, for which no response is required.

60. John Hancock denies the allegations contained within paragraph 60 except to the extent that it states a legal conclusion, for which no response is required.

61. John Hancock denies the allegations contained within paragraph 61 except to the extent that it states a legal conclusion, for which no response is required.

62. John Hancock denies the allegations contained within paragraph 62 except to the extent that it states a legal conclusion, for which no response is required.

SECOND CLAIM FOR RELIEF

Breach of Contract (on behalf of the Rider Overcharge Class)

63. John Hancock realleges and incorporates its responses to the paragraphs 1 through 56 above as if fully set forth herein. John Hancock admits that Plaintiff purports to bring this claim on behalf of both itself and the Rider Overcharge Class, but denies that that this action can properly be pursued or maintained as a class action, that Plaintiff is a qualified class representative, and that class relief is available from John Hancock.

64. Paragraph 64 states a legal conclusion, for which no answer is required.

65. John Hancock denies the allegations contained within paragraph 65 except to the extent that it states a legal conclusion, for which no response is required.

66. John Hancock denies the allegations contained within paragraph 66 except to the extent that it states a legal conclusion, for which no response is required.

67. John Hancock denies the allegations contained within paragraph 67 except to the extent that it states a legal conclusion, for which no response is required.

PRAYER FOR RELIEF

No response to the Prayer for Relief is required as no new allegations are contained therein. To the extent necessary, John Hancock denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

The affirmative defenses below are directed to “Plaintiffs,” by which is meant both Plaintiff and members of any purported class.

FIRST AFFIRMATIVE DEFENSE

The first and second claims for relief fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to bring their claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have waived their claims against John Hancock.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the statute of limitations and laches.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from asserting or recovering any damages or receiving any other relief because of the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from asserting or recovering any damages or receiving any relief because of the doctrine of equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred or limited with respect to any policies that are void or voidable under applicable public policy or state law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against John Hancock are barred, in whole or in part, because Plaintiffs have suffered no damages.

NINTH AFFIRMATIVE DEFENSE

John Hancock is not liable because Plaintiffs ratified or otherwise acquiesced to the actions that are the subject of the Complaint.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed, in whole or in part, to mitigate any alleged damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from asserting or recovering any damages or receiving any relief because of the doctrines of unilateral or mutual mistake.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from asserting or recovering any damages or receiving any relief because Plaintiffs released their claims.

THIRTEENTH AFFIRMATIVE DEFENSE

Neither of the purported classes can be maintained as a class because they fail to meet the requirements for a class.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff cannot serve as an adequate representative of any purported class.

FIFTEENTH AFFIRMATIVE DEFENSE

John Hancock has not knowingly or voluntarily waived any applicable affirmative defense and reserves the right to assert, and rely upon, such additional affirmative defenses to the Complaint as may become available or apparent as discovery progresses in this action.

Dated: January 13, 2016

New York, New York

BOIES, SCHILLER & FLEXNER LLP

/s/ Alan B. Vickery

Alan B. Vickery

John F. LaSalle

Joshua J. Libling

575 Lexington Avenue

New York, New York 10022

Phone: (212) 446-2300

Fax: (212) 446-2350

Motty Shulman

333 Main Street

Armonk, New York 10504

Phone: (914) 749-8200

Fax: (914) 749-8300

*Attorneys for Defendant John Hancock Life
Insurance Company (U.S.A.)*