



VALMARK

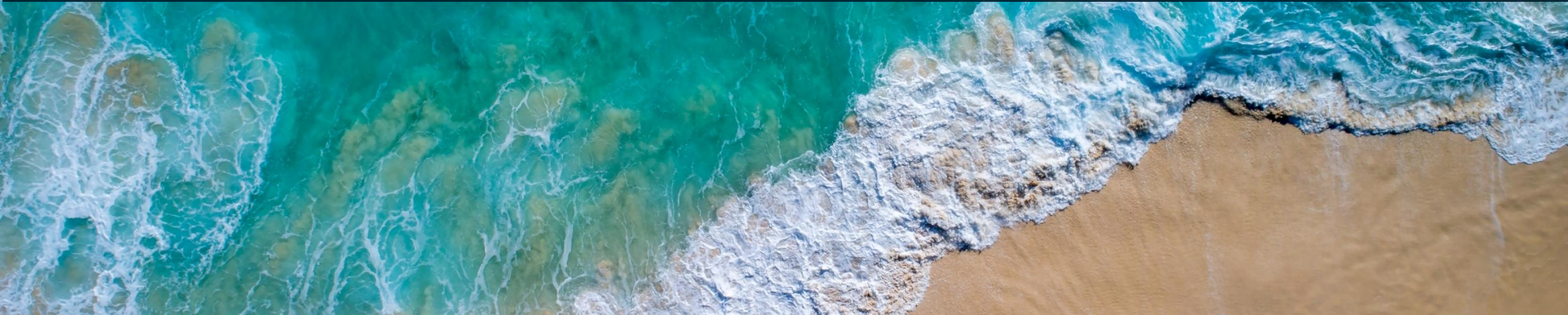
Larry J. Rybka | Chairman & CEO

VALMARK FINANCIAL GROUP

Yale Club Study Group

Update DOL Impact on Life Insurance and Premium Finance Litigation

May 6, 2024





Are IUL Premium-Financed Policies Really in Clients' Best Interest? Results from the Debate at Forum 400



1

DOL Rule

Impact on Life Insurance



New DOL Rule

- Effective: Sept. 2024
- Full Enforcement: Sept. 2025
- Definition of Fiduciary changed including advice to IRA
- Advice provided for a fee or other compensation, direct or indirect



Elements of the Rule

- Recommendation
- Based on a review of particular needs or individual circumstances of retirement investor
- Reflects application of judgment to particular needs or circumstances.
- May be relied on by the retirement investor as intended to advance the best interest and removes language requiring mutual agreement
- Recommendations must be made for compensation fees or other compensation.



Definition of ‘Recommendation’

- Under the Final Regulations, consistent with the Proposal, a “recommendation” is, under the applicable facts and circumstances, a communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the retirement investor engage in or refrain from taking a particular course of action.
- The advisability of acquiring, holding, disposing of (or exchanging) securities or other investment property, investment strategy, or how securities or other investment property should be invested after the securities or other investment property are rolled over, transferred or distributed from the plan or IRA.
- Rolling over, transferring or distributing assets from a plan or IRA, including recommendations as to whether to engage in the transaction, the amount, the form and the destination of such a rollover, transfer or distribution.



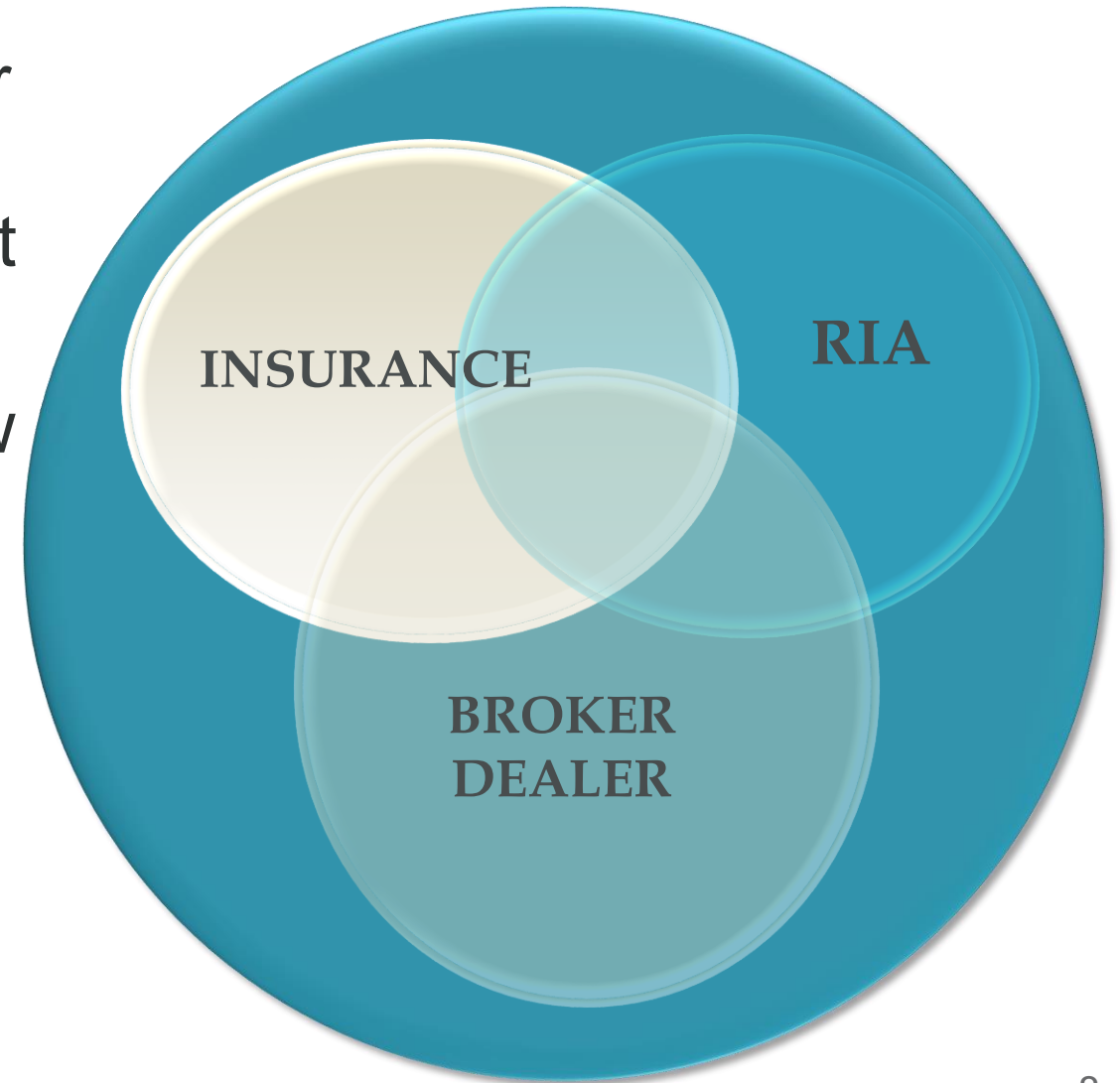
Requirements to Receive Commission

- Acknowledge their fiduciary status *in writing*
- Disclose their services and material conflicts of interest
- Adhere to certain impartial conduct standards
- Adopt policies and procedures prudently designed to ensure compliance with the impartial conduct standards
- Mitigate conflicts of interest



Scope of DOL Rule

- Advice rendered by SEC Advisor and broker-dealer-based advisors already covered subject to Fiduciary Standard
- Perception by regulators that low or no standard for fixed insurance transactions especially annuities sold by annuity sales organizations
- Rollover recommendations to fixed and index annuities are at the center of the bullseye



State Insurance Regulation

- Other than NY, Insurance Commissioners are the “Barney Fife” of regulators
- Insurance-only licensed producers 3 X more likely to be serious financial misconduct
- This is the ultimate outcome of the Harkin Amendment



Enforcement- Tough on the Companies

- “Each financial institution must establish, maintain, and enforce written policies and procedures prudently designed to ensure that the financial institution and its investment professionals comply with the Impartial Conduct Standards and other exemption conditions. The policies must mitigate conflict of interests.”
- Companies must conduct retrospective reviews at least annually





2

Premium Finance Litigation

Litigation Has Started

- Dozens of cases against agents, life companies, and banks. (several class actions)
- Most involve losses in seven figures
- None had clear disclosure of risks to clients
- Most promised little or no money out of pocket
- All but 2 cases reviewed, life-only agents sold the policy
- Damages make these attractive to plaintiffs' bar



Financed Policy					Non-Financed Policy			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Year	Annual Net Outlay	Total Net Outlay	Cash Value Net of Loan	IRR on Net Cash Value	Annual Net Outlay	Total Net Outlay	Net Cash Value	IRR on Net Cash Value
1	140,000	140,000	-422,080	N/A	494,148	494,148	0	N/A
2	140,000	280,000	-735,346	N/A	494,148	988,296	0	N/A
3	140,000	420,000	-1,015,788	N/A	494,148	1,482,444	0	N/A
4	140,000	560,000	-1,247,383	N/A	494,148	1,976,592	0	N/A
5	140,000	700,000	-1,421,160	N/A	494,148	2,470,740	0	N/A
6	140,000	840,000	-1,379,390	N/A	494,148	2,964,888	435,551	N/A
7	140,000	980,000	-1,258,347	N/A	494,148	3,459,036	703,181	-40.63%
8	140,000	1,120,000	-1,053,350	N/A	494,148	3,953,184	1,218,742	N/A
9	140,000	1,260,000	-719,251	N/A	494,148	4,447,332	1,700,959	-20.13%
10	140,000	1,400,000	-327,000	N/A	494,148	4,941,480	2,147,804	-15.93%
11	140,000	1,540,000	298,103	-31.62%	494,148	5,435,628	2,369,909	-14.69%
12	140,000	1,680,000	962,191	-8.95%	494,148	5,929,776	2,597,120	-13.59%
13	140,000	1,820,000	1,669,047	-1.24%	494,148	6,423,924	2,816,554	-12.69%
14	140,000	1,960,000	2,422,734	2.78%	494,148	6,918,072	3,026,314	-11.96%
15	140,000	2,100,000	3,225,133	5.20%	494,148	7,412,220	3,224,282	-11.36%
16	140,000	2,240,000	4,079,818	6.74%	494,148	7,906,368	3,404,686	-10.89%
17	140,000	2,380,000	4,987,145	7.77%	494,148	8,400,516	3,562,661	-10.54%
18	140,000	2,520,000	5,946,989	8.46%	494,148	8,894,664	3,692,482	-10.31%
19	140,000	2,660,000	6,946,838	8.91%	494,148	9,388,812	3,786,648	-10.20%
20	140,000	2,800,000	7,988,186	9.19%	494,148	9,882,960	3,799,680	-10.35%
21	140,000	2,940,000	9,072,895	9.36%	494,148	10,377,108	3,756,483	-10.65%
22	140,000	3,080,000	10,199,294	9.45%	494,148	10,871,256	3,645,168	-11.15%
23	140,000	3,220,000	11,365,331	9.48%	494,148	11,365,404	3,451,836	-11.93%
24	140,000	3,360,000	12,561,184	9.46%	494,148	11,859,552	3,160,475	-13.12%
25	140,000	3,500,000	13,773,078	9.40%	494,148	12,353,700	2,752,399	N/A
26	140,000	3,640,000	14,985,287	9.31%	494,148	12,847,848	2,208,912	N/A
27	140,000	3,780,000	16,150,998	9.17%	494,148	13,341,996	1,530,783	N/A
28	140,000	3,920,000	17,240,828	9.00%	494,148	13,836,144	691,649	N/A

How Much Premium for 50M ?

140,000

500,000



How Much Premium for 50M ?

2.9 Million

140,000

500,000



2017 Projections vs Today: Leverage Cuts Two Ways

2017

+ 6.92% Projected

— 4% Borrowing Rate

Today (2024)

+ 5.65% Current

— 7.5% Borrowing Rate

Maximum
Projected Collateral

\$1.4 M

Current Collateral
Required Today

\$4M

Projected Collateral
*if borrowing
continues*

\$8M

\$12M

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

FRED LEEDS, an individual; and DINA
LEEDS, an individual,

Plaintiffs,

v.

ROBERT MAYMAN, an individual; DAVID
MAYMAN, an individual; MAYMAN &
MAYMAN, LLP; JULIAN MOVSESIAN, an
individual; SUCCESSION CAPITAL
ALLIANCE INSURANCE SERVICES, LLC,
a Delaware limited liability company; and
DOES 1 - 20, inclusive,

Defendants.

Case No. 23STCV02227

**DECLARATION OF PETER S. SELVIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR LEAVE TO FILE A THIRD
AMENDED COMPLAINT**

*[Notice of Motion and Motion; Declaration of
Fred Leeds filed concurrently herewith]*

Date: January 17, 2024
Time: 9:30 a.m.
Dept.: 38

Reservation No.: 554769425638

Hon. Maureen Duffy-Lewis, Dept. 38

Action filed: February 1, 2023
SAC Filed: August 2, 2023
Trial Date: November 12, 2024

Alleged Facts: 3rd Amended Complaint

- 20M policy taken out 2017 issued in trust by Pacific Life IUL PDX
- Financed by Wintrust
- Agents on the Case are David Mayman and Succession Capital. Robert Mayman (father) is also a partner in the law firm representing clients who created documents
- Claimed damages because of lending proceeds of trusts would be included in the estate
- Approximately 900K of commission when policy could have been blended
- Sales materials showed self-sustaining by Year 6 with death benefit to 100
- In force illustration collateral gap of 1.3M and growing: projected lapse 81
- To keep coverage required paying interest and an additional \$330,000
- Exhibits include joint marketing materials CMS and Pacific Life
- Professional Negligence, Breach of Fiduciary Duty, Vicarious Liability, California's Unfair Competition Law, prohibits any "unlawful, unfair or fraudulent business act or practice



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

ESTER ARONSON, ESTER ARONSON in her
capacity as Trustee for the BEN ARONSON 2020
INSURANCE TRUST, BARUCH ARONSON, and
BARUCH ARONSON in his capacity as Trustee for the
ESTER ARONSON 2020 INSURANCE TRUST,

Plaintiffs,

-against-

BRAVE STRATEGIES, LLC, PENN MUTUAL LIFE
INSURANCE COMPANY, MASSMUTUAL LIFE
INSURANCE COMPANY, and NEW YORK LIFE
INSURANCE COMPANY,

Defendants.

Index No. 032514/2023

Justice Christe L. D'Alessio

**SECOND AMENDED
COMPLAINT**

Alleged Facts: 2nd Amended Complaint (Braver Case)

- \$150M of Death Benefit: policies w/ Penn Mutual, Mass Mutual, NYL Not clear if they were placed in two tranches
- Agent Moses Braver: represented he was an expert and transaction would require little money out of pocket (never more than \$1.5M of collateral)
- Braver allegedly stated if loan rates went up so would insurance credits
- Brave Strategies placed some policies in 2020 (\$2.5M/yr. of premium) Financed by Wintrust at 2.55%
 - At the time of litigation: 6.2%
- Total loan Year 2: \$7.7M
- Requirements for additional collateral
 - Year 2, \$1M
 - Year 3, \$1.3M
 - Year 4, \$900K
- Braver attempted to slip in *hold harmless* letter on surrender of policies



Fact Patterns

- Policies issued in excess of carriers' income and net worth guidelines
- Entities created to facilitate borrowing that have no tax rationale (voiding consumer protections for consumer loans)
- Loan documentation completed by agents in the transaction
- Producers running in-force illustrations for collateral purposes but not advising clients of deteriorating product performance (drops in cap)



No E&O for These Transactions

- Professional liability policies are claims made policies renewed annually
- It only takes 1 or 2 Million dollar claims to alert writers of risk
- Almost every policy renewing with exclusion for premium finance
- Chargebacks no warning, no litigation, no coverage

life annuity specialist

Critics Warn That Booming Indexed Life Insurance Sales May Hit This Snag

By Warren S. Hersch May 29, 2020

Sales of fast-rising indexed universal life insurance may be about to run into a speed bump, warns a broker-dealer executive.

Concerns are mounting about an advanced planning technique that underpins a sizable chunk of business: premium financing, according to **Larry Rybka**, CEO of broker-dealer **Valmark Financial**.

This allows borrowers, commonly using a bank loan, to buy large amounts of life coverage, typically to cover future retirement income needs from a policy's cash value. Indexed universal products are typically the product of choice for providing that nest egg, in part because of their signature attractions: The more sophisticated policies feature multipliers that can boost illustrated yields while also protecting principal against losses.

A problem arises when the illustrations that agents use to peddle the products are out of alignment with actual product performance, which can happen in periods such as now, when interest rates are low. If the index the insurance is linked to doesn't perform well enough, policyholders can't make enough money to pay off the loans within the time frame stipulated in the loan agreement.

That can substantially increase the cost of financing to the borrower.



Valmark Financial CEO Larry
Rybka

The issue has become a concern for providers of coverage of errors and omissions, or professional liability, according to Rybka. He says the policies are becoming harder to get for agents and advisors who sell indexed universal life. And if they don't have coverage, agents might not want to risk recommending premium financing to an applicant.

"I would anticipate that no one will have coverage a year from now," Rybka says. "It will just be an out-and-out exclusion on every policy because the claims are so big."

Legacy of the Financial Crisis

Errors and omissions coverage for premium-financed life insurance has been severely restricted or dropped from most independent agent programs, according to **Robert Erzen**, a senior VP at **Arthur J. Gallagher & Co.**, an insurance brokerage and risk management services firm. The 2008 financial crisis resulted in a significant number of "margin calls" on loans because they were secured with the client's financial portfolio or distressed assets, such as real estate. That led to policy lapses and large, multi-million dollar claims





Thanks
