

# Changing the rules in midstream

*A life insurance company's attempt to cancel policies it issued without a blood test leads to a wave of litigation*

by Richard Shumate

**F**or people living with HIV, the offer from the Universal Guaranty Life Insurance Company seemed too good to be true.

They could get up to \$100,000 in life insurance coverage, and up to \$1,000 a month in disability coverage, without a blood test and without having to answer any questions about their seropositive status. In an era when almost all life insurance companies routinely—and legally—screen HIV-positive people from their coverage pool, the existence of such a policy was quite a surprise.

But Universal, based in Springfield, Ill., sold the policy, called L-185, for nearly two years through its network of independent agents across the country. Seeing the potential benefit to people who might be excluded by a blood test, a handful of those agents began to publicize the policy in the gay and HIV communities, a marketing strategy that included advertising in gay publications.

When Universal officials caught wind of that, they tried to back out of hundreds of L-185 policies. That touched off a legal battle now raging in at least three states between the company, its agents, and more than 300 customers nationwide—a battle that raises questions about whether Universal sought to deliberately exclude gay people as a whole from coverage in order to protect itself from claims made by people with HIV.

Last September, Universal canceled all pending applications for L-185 policies that were written by five of its agents, unless the applicant would agree to a blood test. It then sent a letter to 263 people already approved for coverage—whose policies were written by those same agents—offering to buy back their policies for an amount of money that was a fraction of the policy's face

value. If they did not agree to the settlement, the company said it would cancel their policies.

The agents, the company claimed in the letter, had engaged in fraud by "actively soliciting applications for insurance from prospective insureds with health conditions that the agent knew the company would not knowingly accept." One of the agents, Bryan Freeman of Atlanta, had advertised L-185 in two local gay publications.

So far, at least 12 customers have filed suits against the company in Illinois, Florida and Georgia. In all three cases, the attorneys are asking that the suits be classified as class action suits, which could mean that all people affected by Universal's actions—at least 320 people—could become part of the cases. In addition, at least two of the agents are suing Universal for defamation.

And because the company sent cancellation notices to the customers of just five agents, and not to all of the people who bought L-185, another question has arisen from this case: Did company officials seek to cancel those policies because they believed those customers were likely to be gay and, therefore, more likely to be HIV positive?

"The question is whether they would have reacted the same way if [the policyholders] were a bunch of little old ladies with cancer," says Susan Lewis, a Philadelphia attorney who specializes in insurance law and represents a group of disgruntled Universal customers. "The homophobic and AIDS-phobic reaction kind of ups the ante."

Universal asked only two questions of people

who wanted to buy L-185—had they been hospitalized in the past five years, and did they have heart trouble, diabetes or high blood pressure. If they could truthfully answer no to both questions, they qualified for coverage. The company had the authority to check any existing medical or insurance records for evidence of other diseases, but, court documents claim, it did not routinely do so.

Freeman, who learned about the L-185 policy in late 1993, says he twice checked with company officials to confirm the company's minimal underwriting requirements. He says he was told that in order to compensate the company for its additional exposure, Universal was pricing the policy at a rate higher than what it charged for policies requiring more rigorous screening. (Court documents allege that premiums for L-185 were up to twice as much.) In the nine months before Universal lowered the boom, Freeman took 140 applications for L-185.

What prompted the company to abruptly change its mind? Universal officials apparently realized their potential exposure when a prospective customer, concerned the policy might be too good to be true, called the company's headquarters directly and asked if Universal was really selling life insurance to people who were HIV positive, according to Chip Rowan, an attorney with the AIDS Legal Project in Atlanta, who represents the plaintiffs in one of the lawsuits.

Why Freeman and the four other agents

were singled out is likely to be a key issue if any of the cases go to trial. In his suit against Universal, Freeman alleges that his advertising in the lesbian and gay press played a direct role in the decision to target his customers.

Universal's president, James Melville, citing a company policy about not commenting on pending litigation, declined to be interviewed. But in its response to Freeman's defamation lawsuit (he's asking for \$8 million in damages for being accused of fraud), the company maintained that as a result of his marketing efforts, Freeman "received applications from individuals that he knew or should have known suffered from health conditions that materially affected their insurability."

The latest suit against Universal was filed in February in U.S. District Court in Atlanta on behalf of four of Freeman's clients whose pending applications for L-185 were rejected, despite the fact that they met the criteria the company initially set for acceptance. The suit claims that about 70 other people had their applications rejected in the same manner.

Using an argument that will set a legal precedent if successful, the plaintiffs claim that Universal violated the Americans with Disabilities Act by treating them differently based on the perception that they have HIV, and they want a federal judge to force Universal to issue policies to them and all the other rejected applicants.

Lewis' three clients, on the other hand, were all approved policyholders who received the letter from Universal threatening cancellation. Their suit, filed in state court in Illinois, alleges the company acted in bad faith when it tried to extricate itself from a mess of its own creation.

"We feel that both parties acted in good faith in entering this contract, even if Universal Guaranty acted foolishly," she says. "It was just negligent to be underwriting policies this way in the '90s."

The third suit filed against Universal, by five people in federal court in Orlando, goes even further, alleging that the company's actions were part of a deliberate scheme. That suit claims Universal violated the federal RICO statute, a racketeering law originally designed to go after organized crime.

Because of the unusual circumstances of this case—particularly the fact that Universal's standards for issuing L-185 policies were so uniquely lenient—the outcome of these suits probably won't be applicable to other situations, according to the attorneys involved. The exception would be if the argument about the ADA in the Atlanta lawsuit prevails, which could set an important precedent.

In 1986, after negotiations with gay rights groups, the insurance industry adopted voluntary guidelines that say companies should not use factors unrelated to the health of applicants—such as their sexual identity, where they live or their occupation—in making decisions about who gets coverage.

"Those factors are irrelevant. There is no reason to deny coverage to someone who is healthy and can pay the premium," says Debbie Chase, spokesperson for the American Council of Life Insurance.



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