

# Court asked to make lawsuit a class action

Case includes Black Hills Federal Credit Union

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Associated Press

**PIERRE** | A lawsuit alleging a Rapid City credit union and an insurance company improperly raised the rates for insurance that makes loan payments if borrowers become disabled should be handled as a class action, a lawyer for those borrowers told the South Dakota Supreme Court on Tuesday.

The lawsuit against the Black Hills Federal Credit Union and CUNA Mutual Insurance Society must be handled as a class action because it would be impossible for 4,461 borrowers to file individual lawsuits for the amount of money involved, James Leach, a Rapid City lawyer, said.

"There is no doubt the alleged wrong can only be remedied in a class action," Leach told the Supreme Court.

But an attorney for the insurance company argued that the dispute cannot be handled as a class action because each borrower would have to testify about whether each had waited too long to sue.

"That is simply not a fair and efficient adjudication of a controversy," Roger Heidenreich of St. Louis said.

A circuit judge had ruled that the lawsuit could not be handled as a class action. Leach asked the Supreme Court to overrule the circuit judge and order that the case proceed as a class action.

The high court will decide the case later in a written ruling.

The lawsuit alleges that the credit union and insurance company improperly changed the terms and rates for disability insurance without giving borrowers sufficient notice.

Court documents indicate that people who borrowed money and bought the disability insurance before July 1, 1999, had been told they would be notified before any premium rate was increased. The lawsuit alleges that a quarterly advertising newsletter sent to credit union members contained a notice that said the insurance terms would change and premium rates would increase on July 1, 1999, but few people would be able to understand the change would double the amount they would pay for the insurance.

Ed and Kathy Thurman of Rapid City discovered the change in 2009 when they decided to pay off their home equity loan early but found out they owed more than \$10,000 instead of \$4,260, according to court documents. Their monthly payments had not changed, but the loan was being paid off more slowly because more of the payment was going to insurance rather than the loan principal.

The state Division of Insurance told CUNA it had acted illegally because the newsletter notice did not comply with requirements. The division then asked the insurance company to waive the extra amount owed by the Thurmans, but the Thurmans instead filed a class action lawsuit on behalf of other borrowers.

Court documents indicate credit union officials were surprised when they discovered the insurance change had substantially increased the amount borrowers had to pay over the life of their loans.

The credit union and insurance company argue that the borrowers waited too long to sue because state law requires such claims to be made within six years of an alleged wrong. The borrowers contend they can still sue because they have six years to file after they discovered the wrong.

Heidenreich said such time limits are set in law because if too much time elapses before a lawsuit is filed, people have died, memories have faded and documents have been lost.

Leach said the notice placed in the credit union's newsletter was insufficient to let people know about the insurance rate increase.

"You can't jack up that price by sending them an advertising flier," Leach told the justices. "Nobody has a duty to check whether their bank has started to cheat them."

Heidenreich said the only issue before the Supreme Court is whether the circuit judge made a reasonable decision in refusing to let the case proceed as a class action.