



CASE REPORT:

SETTLEMENT REPAYS
THOUSANDS OF INDIVIDUALS-
THEN CONTRIBUTES \$226,000 TO
SOUTH DAKOTA LEGAL
SERVICES AND EDUCATION OF
CONSUMER ATTORNEYS

WRITTEN BY MIKE ABOUREZK



Mike Wilson, Ken Barker, and Jim Leach teamed up to engineer a class action settlement ending with several thousand people in western South Dakota opening their mail to find surprise checks. Some received thousands of dollars. One collected over \$20,000.

For those who either couldn't be located, or didn't cash their checks, Wilson, Leach and Barker asked the Court to split those funds -- totaling \$226,000 -- between the National Consumer Law Center and the South Dakota Commission on Equal Access to Our Courts.

THE CASE

In 1995, Ed and Kathy Thurman of Rapid City took out a \$30,000 home equity loan from their credit union. They also accepted the credit union's offer to add a policy of credit disability insurance to their loan, so if Ed became disabled, the policy would make the loan payments until Ed could work again. The credit union added the \$4,140 premium into the loan balance and set up a 15-year payment schedule of \$355 per month. Fourteen years later, the



Thurmans decided to pay off the last 12 installments ahead of schedule -- a total of \$4,260. But when they contacted the credit union they were told they still owed over \$10,000. The Thurmans eventually learned that in August 1999 the insurer increased the premium by 68%. The only notice given was a note at the bottom of page three in the credit union's July 1999 monthly newsletter-- along with advertising for a car sale and investment services. The newsletter said credit disability rates would increase from .14 per hundred to .235 per hundred. Translated, that meant the Thurman's premium went from \$4,140 to over \$10,000. The Thurmans never saw the notice.

None of this changed the Thurmans' \$355 monthly payment. The credit union just added the extra \$6,000 premium increase to the loan balance and tacked it onto the end of the payment schedule. When the Thurmans discovered the reason behind the \$10,000 loan balance, they went looking for legal advice, but found out it isn't easy finding a lawyer for a \$6,000 claim. They eventually found Mike Wilson.

After the Thurmans brought their claim, defendants offered to forego the remaining premium charges - but only if the Thurmans agreed to confidentiality. Realizing they would only get a quick fix of their own problem if they kept it secret from other people in the same predicament, Kathy Thurman said absolutely not. Ed backed her decision.

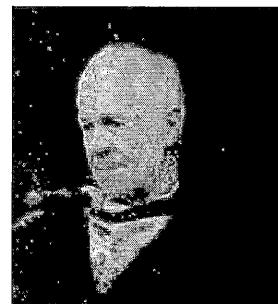
But that resulted in the case continuing for another 8 years. The defense initially persuaded the trial court to deny class certification.

The Thurmans appealed and overturned the ruling in *Thurman v. CUNA Mutual Ins. Society*, 2013 SD 63. While the case trudged forward, Kathy passed away from an unrelated illness. Ed pushed on.

The case finally settled in early 2019 just before trial, resulting in payments to 4,461 individuals. Few of them will ever know what Ed and Kathy Thurman did for them.

EPILOGUE

The payments to credit union members totaled \$1.7 million. Each member recovered their out of pocket loss and prejudgment interest, plus an additional 25%. About \$226,000 of those payments couldn't be distributed due to inability to locate some individuals, or uncashed checks. With Ed's approval, Leach, Barker and Wilson asked the Court to distribute the residual funds equally between the National Consumer Law Center for education and training of consumer attorneys, and the South Dakota Commission on Equal Access to Our Courts, which funds the South Dakota Legal Services Corporation. In mid-2020, each organization received a little over \$113,000. It's a fitting memorial for Kathy Thurman.



*Mike Abourezk practices in
Rapid City*