IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE MICHAEL KLEE LIVING TRUST, by and through its Substitute Trustee, James P. Arndt; and KEVIN KLEE; and ROBERTA GEOTIS, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	**No. 05 CH 12181** **No. 07 CH 00783**
METROPOLITAN LIFE INSURANCE COMPANY; and NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY,	)	**Hon. Moshe Jacobius**
Defendants.	)	
PATRICIA WROBLEWSKI, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	
METROPOLITAN LIFE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER AND JUDGMENT

Pursuant to the Order entered on December 2, 2010, the Court has adjudicated and decided these consolidated actions by summary judgment pursuant to 735 ILCS 5/2-1005 and S.Ct. Rule 191.

1. Judgment is hereby entered in favor of defendants, Metropolitan Life Insurance Company and New England Mutual Life Insurance Company ("Defendants"), on the class action claims alleged in Count I – Breach of Contract and Count II – Declaratory Relief of the

Consolidated Third Amended Class Action Complaint, and the class action claims are dismissed with prejudice.

2. Judgment is hereby entered in favor of Defendants and against The Michael Klee Living Trust, by and through its Substitute Trustee, James P. Arndt, and Kevin Klee, on Count I – Breach of Contract and Count II – Declaratory Relief of the Consolidated Third Amended Class Action Complaint, and such claims are dismissed with prejudice.

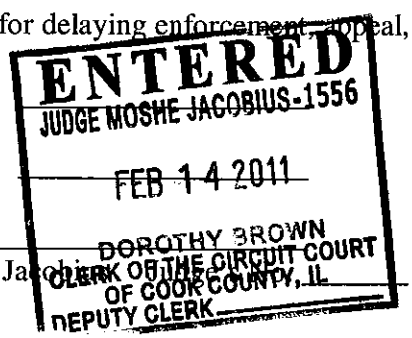
3. The claims by Roberta Geotis and Patricia Wroblewski, in their individual capacities, in Count I – Breach of Contract of the Consolidated Third Amended Class Action Complaint, are dismissed with prejudice based on Defendants tender of the correct amount claimed by Roberta Geotis and Patricia Wroblewski, and Roberta Geotis's and Patricia Wroblewski's rejection of such tender in order to preserve all of Plaintiffs' rights to challenge this Court's Order on appeal.

4. The Consolidated Third Amended Class Action Complaint, therefore, is hereby dismissed with prejudice and these consolidated actions are terminated. Pursuant to Illinois Supreme Court Rule 304(a) there is no just reason for delaying enforcement, appeal, or both.

ENTERED:

DATED:

Judge Moshe Jacobius



Order and Judgment drafted by Attorney for Defendants:

Warren von Schleicher
SMITH | VON SCHLEICHER + ASSOCIATES
180 North LaSalle St., Suite 3130
Chicago, Illinois 60601
P: 312-541-0300
warren.vonschleicher@svs-law.com
Attorney ID. 19544

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE MICHAEL KLEE LIVING TRUST, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 05 CH 12181**
	)	**Consolidated with: 07 CH 783**
METROPOLITAN LIFE INSURANCE COMPANY, *et al.*,	)	
	)	
	)	
Defendant.	)	

ORDER

This case came before the Court on Defendants' Motion for Summary Judgment and Plaintiffs' Motion to Strike. The Court has received and reviewed Plaintiffs' Motion to Strike, Defendants' Motion for Summary Judgment and Memorandum of Law in Support, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, and Defendants' Reply Memorandum in Support of Their Motion for Summary Judgment. The Court has considered the exhibits, the relevant statutory and case law, and the oral argument of counsel.

The material facts in this case are not in dispute, and center around two separate life insurance policies. The first policy was issued by Defendant New England Mutual to Michael Klee on April 23, 1958, and names the Michael Klee Living Trust as the beneficiary ("Klee Policy"). Michael Klee died on August 13, 1996. On December 3, 1996, New England Mutual received a Beneficiary's Statement, trust documents, and a certified copy of the death certificate from M. Scott Barrett, the Successor Trustee to the Michael Klee Living Trust.

The following day, New England Mutual noted a discrepancy between the date of birth listed on the death certificate and the one listed on the original policy application form. New England Mutual compiled a worksheet delineating the two different payout amounts depending on which birth date was correct. On December 5, 1996, New England Mutual sent a letter to the Successor Trustee requesting proof of the date of birth. On December 10, 1996, the Successor Trustee mailed a copy of Michael Klee's birth certificate, which was received by New England Mutual on December 20, 1996. New England Mutual approved the claim that same day. The proceeds were issued to the Successor Trustee on December 23, 1996.

The second policy was issued by Metropolitan Life Insurance Company ("MetLife") to Edward J. Winkler on November 18, 1931 ("Winkler Policy"). The original Winkler Policy named Mr. Winkler's mother as the beneficiary. On April 14, 2000, Mr. Winkler executed a Change of Beneficiary form naming his three daughters, Patricia Wroblewski, Roberta Geotis, and Marcella Cavaney, as beneficiaries. The Change of Beneficiary form provides for payment in equal shares, except that if one beneficiary predeceases the insured, that beneficiary's share is divided among the surviving beneficiaries.

Mr. Winkler died on September 19, 2006. Plaintiff Patricia Wroblewski submitted a MetLife Individual Life Death Claim Form at the MetLife office in Downers Grove, Illinois on October 23, 2006. She was given blank forms and stamped envelopes to give to her sisters. Ms. Geotis mailed her Claim Form to the Downers Grove branch office on November 1, 2006. The letter was stamped by the Downers Grove branch of the United States Post Office on November 2, 2006, but is not stamped as received by the Downers Grove branch of MetLife. The earliest it could have been received was November 2, 2006.

Ms. Cavaney signed her Claim Form on November 2, 2006. It was sent to the Downers Grove branch, and was postmarked at the Bedford Park Post Office on Saturday, November 4, 2006. Since November 5, 2006 was a Sunday, the earliest it could have been received at the Downers Grove branch office was November 6, 2006.

The Claim Forms were forwarded to MetLife's Home Office in Warwick, Rhode Island, and were stamped received on November 16, 2006. MetLife issued checks to the three beneficiaries on November 20, 2006.

The Consolidated Third Amended Class Action Complaint ("Complaint") is based entirely on Section 224 of the Illinois Insurance Code. Section 224 of the Illinois Insurance Code requires that life insurance policies issued after July 1, 1937 contain certain provisions, including the following:

> (l) Interest shall accrue on the proceeds payable because of the death of the insured, from date of death, at the rate of 9% on the total amount payable or the face amount if payments are to be made in installments until the total payment or first installment is paid, unless payment is made within fifteen (15) days from the date of receipt by the company of due proof of loss. This provision need not appear in the policy, however, the company shall notify the beneficiary at the time of claim of this provision. The payment of interest shall apply to all policies now in force, as well as those written after the effective date of this amendment.

215 ILL. COMP. STAT. 5/224(1)(*l*). Under the statute's express terms, this provision is not required to be included in the policy itself, provided that the insurance company notifies the beneficiary of the provision at the time of claim.

The Complaint is pled in four counts, two of which have already been dismissed. In Count I, Plaintiffs allege that Defendants breached the terms of life insurance policies of which the Plaintiffs and class members were beneficiaries by failing to pay the full amount of post-mortem interest required by law. In Count II, Plaintiffs allege that Defendants failed to either include the provision regarding post-mortem interest in their policies or to notify beneficiaries of

the provision at the time of claim. Both Counts I and II are pled as class actions, but no class has yet been certified. Defendants move for summary judgment as to Counts I and II.

In their Motion for Summary Judgment, Defendants assert that the statute only requires payment of post-mortem interest if the claim is not paid within fifteen days of receipt of "due proof of loss." Defendants maintain that "due proof of loss" includes information an insurer reasonably needs to determine its obligations under the policy, based on the circumstances of each case. Since Defendants paid within fifteen days of receipt of Mr. Klee's birth certificate and the Claim Forms of all three beneficiaries to the Winkler policy, Defendants insist that they were not required to pay any post-mortem interest.

Before addressing the merits of the Motion for Summary Judgment, the Court must first address Plaintiffs' Motion to Strike. Plaintiffs assert that Defendants have already admitted liability in this case through statements filed by Defendants' prior counsel and contained in Defendants' "Motion to Enter Judgment and Affirmative Relief." Plaintiffs rely on the following admissions:

- MetLife, after receiving said Complaint and Service of Process, investigated Plaintiffs' claims. After diligent research, MetLife concluded, when acquiring The New England, an internal error did not incorporate the increase(s) in the statutory increase required to be paid in Illinois on post-mortem interest.

- On or about November 1, 2005, MetLife, as successor in interest to The New England, filed its Answer. In paragraphs 21, 22, 23, 25 and beyond, MetLife admitted it had not properly calculated the post-mortem interest payable to The Michael Klee Living Trust.

- [F]or each calendar year from July 21, 1995 through July 21, 2005, MetLife discovered 134 claims in which a payment of post-mortem interest was made that was less than the amount required by 215 ILCS 5/224(1).

- Additionally, for each calendar year from 7/21/95 through 7/21/05, MetLife discovered 134 claims in which a payment of post-mortem interest was made that was less than the amount required by 215 ILCS 5/224(1).

Plaintiffs claim that these statements act as judicial admissions, evidentiary admissions, or create a genuine issue of material fact.

A fact admitted in a verified pleading is a conclusive judicial admission binding on the pleader, but a party to a lawsuit cannot judicially admit a conclusion of law. *People ex rel. Dep't of Pub. Health v. Wiley*, 348 Ill. App. 3d 809, 819 (1st Dist. 2004). Issues of statutory construction are questions of law for the Court to decide. *O'Casek v. Children's Home and Aid Soc'y of Ill.*, 229 Ill. 2d 421, 440 (2008).

The statements in question here were not judicial admissions of liability. The statements are not verified and are not contained in a formal pleading. In their formal pleading, the Answer to the Consolidated Third Amended Class Action Complaint, Defendants do not admit that they were required to pay post-mortem interest. Further, Defendants cannot admit that they were required to pay post-mortem interest; as such a statement is a conclusion of law. Defendants likewise cannot admit to a particular definition of "due proof of loss," as that is an issue of statutory interpretation.

Plaintiffs insist that the statements constitute evidentiary admissions that create a genuine issue of material fact. Even assuming that the statements were evidentiary admissions, Defendants did not admit any facts on which this Court could conclude that Defendants did or did not pay within fifteen days of "due proof of loss." Accordingly, Plaintiffs' Motion to Strike must be denied.

The merits of this case turn on the proper definition of the term "due proof of loss." "Due proof of loss" is not defined in the statute. There are no published Illinois cases

interpreting 215 ILCS 5/224(1)(*l*).[1] The policies at issue in this case do not specifically define "due proof of loss." Outside the realm of the post-mortem interest statute, Illinois courts have held that "due proof" does "not require any particular form of proof which the assured might arbitrarily demand, but such a statement of facts, reasonably verified, as, if established in court, would prima facie require payment of the claim." *Winkfield v. American Cont'l Ins. Co.*, 110 Ill. App. 2d 156 (1st Dist. 1969) (quoting *Zorger v. Prudential Ins. Co.*, 282 Ill. App. 444, 448 (1st Dist. 1935)).

This Court concludes that Defendants were not required to pay post-mortem interest on the Klee policy claim. "Due proof of loss" must be interpreted to allow the insurer to require receipt of any documentation reasonably necessary for the insurer to determine its obligations under a policy. Defendants could not have known their precise obligations under the policy without Klee's birth certificate. It is not disputed that if "due proof of loss" required receipt of the birth certificate, then Defendants paid within fifteen days of its receipt. As such, this Court must conclude that Defendants, as a matter of law, were not required to pay post-mortem interest on the Klee policy claim.

This Court cannot reach the same conclusion as to the Winkler policy claims. Defendants had sufficient information necessary to pay each beneficiary the amount they were due under the policy as soon as each beneficiary's Claim Form was received. Defendants assert that they could not know how much to pay each beneficiary until they have proof that each of them was alive. Yet such a requirement places each individual beneficiary at risk of unnecessary delays in payment based solely on the conduct of other beneficiaries outside of their control. Defendants knew that each beneficiary was entitled to at least one-third of the payment amount

[1] The only case cited by the parties on this issue is *Emily Foley Mutz Residuary Trust v. Pacific Life Insurance Company*, Case No. 1-05-3147 (Ill. App. Ct. 1st Dist. Apr. 18, 2007), which is an unreported opinion under Ill. Sup. Ct. R. 23(e). All references to that case were struck in the Court's Order of February 3, 2010.

and should have paid that amount as soon as it received the Claim Form. As such, this Court must conclude that Defendants were required to pay post-mortem interest on the claims of Ms. Wroblewski and Ms. Geotis, since each of them submitted their forms more than fifteen days before their claims were paid. Thus, summary judgment on these claims is improper.

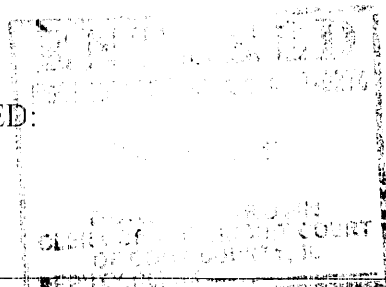
Defendants seek dismissal of Plaintiffs' class claims. A class has not been certified, and there is no class representative. Illinois courts have consistently recognized that a class action complaint should be dismissed at the pleading stage if the complaint fails to meet the statutory requirements for class certification. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 450 (2004) (citing *McCabe v. Burgess*, 75 Ill. 2d 457, 466-67 (1979); *Bruemmer v. Compaq Computer Corp.*, 329 Ill App. 3d 755, 764 (1st Dist. 2002)). Class action allegations may be properly dismissed if there is no possibility that a claim can be maintained as a class action. *Id.* at 447. The plaintiff's complaint must contain allegations which implicate, or bring the complaint within, the statutory prerequisites. Section 2-801 sets out the prerequisites for the maintenance of a class action. It requires: (1) the class to be so numerous that joinder of all members is impracticable; (2) there to be questions of fact or law common to the class, which predominate over any questions affecting only individual members; (3) that the representative parties fairly and adequate y protect the interests of the class; and (4) that the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILL. COMP STAT. 5/2-801. In light of the particularized nature of the term "due proof of loss," this Court must conclude that the issues of fact in each class member's claim differ so substantially as to make a class action proceeding impractical. Accordingly, the class action claims must be dismissed.

Finally, Defendants maintain that there is no private right of action under the Illinois Insurance Code, such that Count II must be denied. There is no private right of action to enforce the disclosure requirements of Section 224(1)(*l*). *Doe v. Mut. of Omaha Ins. Co.*, 999 F. Supp. 1188, 1197 (N.D. Ill. 1998), *rev'd on other grounds*, 179 F.3d 557 (7th Cir. 1999). Plaintiffs have cited no case law to the contrary. Accordingly, Count II must be dismissed.

IT IS, THEREFORE, HEREBY ORDERED:

1. Plaintiffs' Motion to Strike is denied.
2. Defendants' Motion for Summary Judgment is granted in part, and denied in part.
3. As to Count I, summary judgment is granted in favor of Defendants on the Klee Policy claims, and summary judgment is denied as to the Winkler Policy claims.
4. The class claims in Count I are dismissed with prejudice.
5. As to Count II, summary judgment is granted in favor of Defendants.
6. This case is set for status on January 5, 2011 at 10:30 A.M.

ENTERED:



December 2, 2010 Judge Dorothy Kirie Kinnaird No. 276