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. Dorothy K. Kinnaird**
Defendants.	)	
PATRICIA WROBLEWSKI, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	
METROPOLITAN LIFE INSURANCE COMPANY,	)	
Defendant.	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on the 10th day of June 2010, I caused to be filed with the Clerk of the above court the attached **REPLY MEMORANDUM OF DEFENDANTS METROPOLITAN LIFE INSURANCE COMPANY AND NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**, a copy of which is hereby served upon you.

Respectfully submitted,

By: ______________________
Attorney for Defendants,
Metropolitan Life Insurance Company; and
New England Mutual Life Insurance Company

Warren von Schleicher
SMITH, VON SCHLEICHER & ASSOCIATES
39 South LaSalle Street, Suite 1005
Chicago, Illinois 60603
P: (312) 541-0300
Attorney ID 19544

CERTIFICATE OF SERVICE

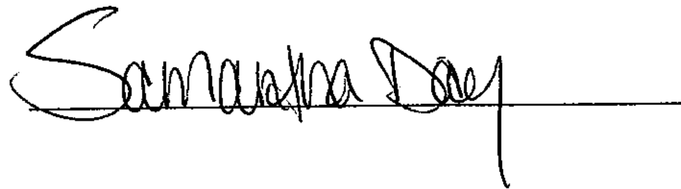
I, Samantha Day, pursuant to penalties as provided by 735 ILCS 5/1-109, hereby certify that I have served the attached Notice of Filing, along with any documents listed therein, on the attorney(s) as addressed below, by depositing same in the U.S. Mail, postage pre-paid, at 39 South LaSalle Street, Chicago, Illinois on the 10th day of June, 2010.

Gary P. Hollander
Potratz & Hollander, P.C.
30 N. LaSalle Street, Suite 3900
Chicago, Illinois 60602

Dennis T. Trainor, Esq.
100 W. Monroe St., Suite 1300
Chicago, Illinois 60603

M. Scott Barrett
Barrett & Associates
520 N. Walnut St.
P.O. Box 5233
Bloomington, Indiana 47404

Thomas A. Zimmerman, Jr.
Adam M. Tamburelli
Zimmerman Law Offices, P.C.
100 W. Monroe St., Suite 1300
Chicago, Illinois 60603



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. METROPOLITAN LIFE INSURANCE COMPANY; and NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, Defendants.	)	No. 05 CH 12181 No. 07 CH 00783 Hon. Dorothy K. Kinnaird
PATRICIA WROBLEWSKI, individually and on behalf of all others similarly situated, Plaintiff, v. METROPOLITAN LIFE INSURANCE COMPANY, Defendant.	)	

REPLY MEMORANDUM OF DEFENDANTS METROPOLITAN LIFE INSURANCE COMPANY AND NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Warren von Schleicher
SMITH, VON SCHLEICHER & ASSOCIATES
39 S. LaSalle St., Suite 1005
Chicago, Illinois 60603
P: 312-541-0300
F: 312-541-0933
Attorney ID 19544

TABLE OF CONTENTS

Table of Authorities iii

Introduction 1

Argument 2

I. *Due Proof Of Loss* Under §224 Permits Payment Of Claims Within 15 Days After The Insurer Concludes A Reasonable Investigation 2

II. New England Mutual Paid The Beneficiary Of The Klee Policy Within 15 Days Of Receipt Of *Due Proof Of Loss* 4

III. Issues Of Law Are Decided By The Court And Not By Judicial Admission 7

IV. MetLife Paid The Beneficiaries Of The Winkler Policy Within 15 Days Of Receipt Of *Due Proof Of Loss* 9

V. Plaintiffs Do Not Have A Private Right Of Action Under §224(1)(*l*) 13

Conclusion 14

TABLE OF AUTHORITIES

Cases

Anderson v. Inter-State Business Men's Accident Ass'n of Des Moines, Iowa,
354 Ill. 538 (1933) 3

Charter Bank and Trust of Illinois v. Edward Hines Lumber Co.,
233 Ill.App.3d 574, 599 N.E.2d 458 (2nd Dist. 1992) 8

Collins v. Peake,
No. 04-1840, 2008 WL 4963351 (Vet.App. Feb. 7, 2008) 12

Cook County v. Thomas Recreational Vehicle,
68 Ill.App.3d 582, 386 N.E.2d 591(1st Dist. 1979) 2

Croissant v. Joliet Park Dist.,
141 Ill.2d 449, 566 N.E.2d 248 (1990) 2

Dept. of Public Health v. Wiley,
348 Ill.App.3d 809, 810 N.E.2d 614 (1st Dist. 2004),
aff'd, 218 Ill.2d 207, 843 N.E.2d 259 (2006) 8

DiLeo v. U.S. Fidelity & Guaranty Co.,
109 Ill.App.2d 28, 248 N.E.2d 669 (1969) 3

Doe v. Mutual of Omaha Ins. Co.,
999 F.Supp. 1188 (N.D. Ill. 1998),
rev'd on other grounds, 179 F.3d 557 (7th Cir. 1999),
cert. denied, 528 U.S. 1106 (2000) 13

Elliott v. Industrial Com'n of Illinois,
303 Ill.App.3d 185, 707 N.E.2d 228 (1st Dist. 1999) 8

Holbrook v. Institutional Ins. Co. of Am.,
369 F.2d 236 (7th Cir. 1966) 3

Hopkins House Hotel Corp., v. Commissioner of Revenue,
No. 6183, 1993 WL 220368 (Minn.Tax June 21, 1993) 12

In re Donald A.G.,
221 Ill.2d 234, 850 N.E.2d 172 (2006) 9

In re Estate of Wernick,
127 Ill.2d 61, 535 N.E.2d 876 (1989) 2

Langendorf v. Travelers State Ins. Co.,
625 F.Supp. 1103 (N.D. Ill. 1985) 13

McGath v. Price,
342 Ill.App.3d 19, 793 N.E.2d 801 (1st Dist. 2003) 12

O'Casek v. Children's Home and Aid Soc. of Illinois,
229 Ill.2d 421, 892 N.E.2d 994 (2008) 9

Reid v. Potter,
No. 06 cv 267, 2007 WL 3396424 (W.D.N.C. Nov. 9, 2007) 12

Steiner v. Steiner,
Nos. 1950, 1964, 1994 WL 175121 (Ohio App. 4th Dist. May 4, 1994) 12

Statutes

215 ILCS 5/224(1)(*l*) 1, 2, 3, 4, 8, 9, 10, 13, 14

735 ILCS 5/2-1005 14

S.Ct. Rule 191 14

INTRODUCTION

The Illinois legislature did not enact §224(1)(*l*) to punish insurance companies which act reasonably. To achieve the legislature's goal of punishing unreasonable delay, the statutory 15-day period does not commence until the insurer receives *due proof of loss*. An insurer receives *due proof of loss* when it obtains information reasonably necessary to determine its payment obligations under the insurance contract.

New England Mutual received conflicting information about Mr. Klee's date of birth, which affected the amount of benefits payable under the Klee Policy. New England Mutual promptly requested one document—Mr. Klee's Birth Certificate—to resolve the question of Mr. Klee's date of birth and confirm the amount of benefits due. New England Mutual received *due proof of loss* when it received Mr. Klee's Birth Certificate. Three days after receiving the Birth Certificate, New England Mutual's Home Office paid the Trustee's claim in full.

MetLife received *due proof of loss* under the Winkler Policy when it obtained completed Claim Forms signed by the three beneficiaries, which confirmed that all three beneficiaries had not predeceased the insured and established the amount of benefits payable. MetLife paid full benefits to Ms. Wroblewski, Ms. Geotis and Ms. Caveney on November 20, 2006, within 14 days of receipt of all three Claim Forms at MetLife's Downers Grove field office, and within 4 days of receipt of all three Claim Forms at MetLife's Home Office.

This is not a case where the insurer engaged in unreasonable foot-dragging to delay paying a claim, which is the type of conduct §224(1)(*l*) was enacted to punish. New England Mutual and MetLife acted reasonably by paying full benefits within 15 days of receiving *due proof of loss*. There are no genuine disputed issues of material fact, and this case is appropriately resolved as a matter of law. It is time for the saga of the Klee and Winkler claims to end.

ARGUMENT

I. *Due Proof Of Loss* Under §224 Permits Payment Of Claims Within 15 Days After The Insurer Concludes A Reasonable Investigation.

Illinois' post-mortem interest statute is penal in nature. As a penal statute, §224(1)(*l*) must be strictly construed and applied only in cases clearly falling within the statute's terms. "Penal statutes will be construed strictly, and not extended beyond their terms, and ambiguities will be resolved in favor of lenity." *Croissant v. Joliet Park Dist.*, 141 Ill.2d 449, 455, 566 N.E.2d 248, 251 (1990) (internal citations omitted). See also *Cook County v. Thomas Recreational Vehicle*, 68 Ill.App.3d 582, 584, 386 N.E.2d 591, 593 (1st Dist. 1979) ("Penal statutes should be strictly construed ... and must be strictly limited in their interpretation to such objects as are obviously within their terms.); *In re Estate of Wernick*, 127 Ill.2d 61, 77, 535 N.E.2d 876, 883 (1989) (A penal statute "should be invoked only in cases falling strictly within its terms.").

The legislative policy underlying §224(1)(*l*) is to penalize insurers who unreasonably delay paying valid claims more than 15 days after receipt of *due proof of loss*, taking into account the specific circumstances of each case. Because §224(1)(*l*) was not enacted to punish insurers who act responsibly, the statute permits insurers to conduct a reasonable investigation to determine its contractual obligations before paying a claim.

The Plaintiffs' desired interpretation of §224(1)(*l*) disregards these legislative goals. The Plaintiffs advocate a zero tolerance approach that imposes strict liability on insurers who investigate a claim more than 15 days, even if the investigation was diligent and reasonable. The Plaintiffs' interpretation of §224(1)(*l*) leads to absurd results by punishing insurers who act reasonably. See *Croissant*, 141 Ill.2d at 455, 566 N.E.2d at 251 ("Statutes are to be construed in a manner that avoids absurd or unjust results.").

The Plaintiffs try to fortify their strict liability interpretation of §224(1)(*l*) by noting that the statute "does not expressly provide for a hold on the 15 day grace period to conduct a reasonable investigation." (Pl. Response, pg. 4). According to the Plaintiffs, if an insurer desires to investigate a claim's validity, the insurer must insert magic language into the insurance policy reserving the right to obtain "such other information as we may reasonably require" or similar language. (Pl. Response, pgs. 4-5).[1]

But the concept of a reasonable investigation is implicit in the phrase *due proof of loss.* The statutory 15-day period does not mechanically commence when an insurer receives a claim form and death certificate, and fall like an iron curtain 15 days later irrespective of whether the insurer has sufficient information to determine its coverage obligations. Rather, the statute incorporates the flexible terminology of *due proof of loss. Due proof of loss* is the quantum of information an insurer reasonably needs to determine its obligations under the insurance contract, based on the circumstances of each case. See, e.g., *Anderson v. Inter-State Business Men's Accident Ass'n of Des Moines, Iowa*, 354 Ill. 538, 546 (1933) (holding that the insurer needs to be able to "form an intelligent estimate of his rights and liabilities under his contract"); *DiLeo v. U.S. Fidelity & Guaranty Co.*, 109 Ill.App.2d 28, 248 N.E.2d 669 (1969) ("[T]he time from which interest is computed largely depends on the terms of the policy and the circumstances of the particular case"); *Holbrook v. Institutional Ins. Co. of Am.*, 369 F.2d 236 (7th Cir. 1966) (the time of accrual is the date that the insurer completes its investigation).

In the present case, New England Mutual and MetLife required additional information from the beneficiaries in order to determine the amount of benefits payable. New England

---

[1] In their Response, the Plaintiffs violate the Court's February 3, 2010 Order by citing and presenting extensive argument regarding an unpublished Rule 23 Decision of the Illinois Court of Appeals, which the Court's February 3, 2010 Order expressly forbids. In order to enforce the Court's Order and protect the record on appeal, all citations and arguments in Plaintiffs' Response regarding the Rule 23 Decision should be stricken.

Mutual and MetLife received *due proof of loss* when they obtained the quantum of information reasonably necessary to determine their payment obligations under the insurance contracts. With respect to the Klee Policy, New England Mutual received *due proof of loss* when it received Michael Klee's Birth Certificate, which resolved the discrepancy over Michael Klee's date of birth and established the amount of benefits payable. With respect to the Winkler Policy, MetLife received *due proof of loss* when it obtained completed Claim Forms signed by the three beneficiaries, which confirmed that all three beneficiaries had not predeceased the insured and established the amount of benefits payable to each beneficiary. As a matter of law, based on the undisputed facts, the Defendants paid the beneficiaries of the Klee Policy and the Winkler Policy within 15 days of receipt of *due proof of loss*.

II. New England Mutual Paid The Beneficiary Of The Klee Policy Within 15 Days Of Receipt Of *Due Proof Of Loss*.

The Plaintiffs argue that New England Mutual possessed all the information necessary to determine its payment obligations under the Klee Policy on December 3, 1996, when New England Mutual received at its Home Office the beneficiary's Claim Form, the Trust documents, and Mr. Klee's certified Death Certificate. (Pl. Response, pg. 7). Mechanically applying the 15-day payment period, the Plaintiffs claim payment was due on December 18, 1996. New England Mutual paid the Trustee's claim five days later, on December 23, 1996. The Plaintiffs argue that the additional *five days* taken by New England Mutual to complete its investigation and pay benefits violates §224(1)(*l*) and warrants imposition of a statutory interest penalty.

But New England Mutual did not have the information necessary to determine the amount of benefits payable on December 3, 1996. To the contrary, the Death Certificate submitted by the Trustee's counsel, James Arndt, provided conflicting information about Mr. Klee's date of birth. The Death Certificate identified "January 4, 1929" as the date of birth,

whereas the Policy Application identified "January 4, 1930" as the date of birth. It was necessary for New England Mutual to obtain documentation verifying Mr. Klee's correct date of birth to determine the amount of benefits payable. The following timeline illustrates New England Mutual's reasonable investigation:

(i) **December 3, 1996:** New England Mutual received at its Home Office the beneficiary's Claim Form, the Trust documents, and Mr. Klee's certified Death Certificate. (Pl. Response, pg. 7).

(ii) **December 4, 1996:** New England Mutual calculated the amount of benefits payable under the Klee Policy based on the two proffered alternative dates of birth. If January 4, 1929 was the correct date of birth, then the face value of the Klee Policy would total $24,694.00 (minus $14,803 in loans). But if January 4, 1930 was the correct date of birth, then the face value of the Klee Policy would total $25,405.00 (minus $14,803 in loans). The difference in the dates of birth yields a $711.00 difference in the amount of benefits payable. (Def. Mem., Ex. G, Worksheet).

(iii) **December 5, 1996:** New England Mutual requested that Mr. Arndt submit documentation such as a Birth Certificate verifying Michael Klee's correct date of birth. (Def. Mem., Ex. H, Dec. 5, 1996 Letter).

(iv) **December 10, 1996:** Mr. Arndt mailed the Birth Certificate to New England Mutual's Oak Brook office. (Def. Mem., Ex. I, Dec. 10, 1996 Arndt Letter & Birth Cert.).

(v) **December 16, 1996:** The Birth Certificate was transmitted to New England Mutual's Home Office. (Def. Mem., Ex. J, Dec. 16, 1996 Transmittal Letter).

(vi) **December 20, 1996:** New England Mutual received the Birth Certificate at its Home Office. (Def. Mem., Ex. J, Dec. 16, 1996 Transmittal Letter).

(vii) **December 23, 1996:** New England Mutual paid benefits in full. (3rd Am. Comp., ¶ 25; Def. Mem., Ex. K, Dec. 20, 1996 Claim Approval Letter).[2]

Because confirmation of Mr. Klee's correct birth date was necessary to determine the amount of benefits payable, New England Mutual received *due proof of loss* when it received Mr. Klee's Birth Certificate. New England Mutual paid benefits to the Trustee within *three days*

[2] Citations to "Def. Mem., Ex. __" are to the corresponding Exhibit attached to Defendants' Memorandum in Support of their Motion for Summary Judgment, filed on December 31, 2009.

of receipt of the Birth Certificate at New England Mutual's Home Office. In fact, benefits were paid within 15 days of the date Mr. Arndt *mailed* the Birth Certificate to New England Mutual's Oak Brook office.

The Plaintiffs argue that the Policy's value was unaffected by the discrepancy over Mr. Klee's date of birth. They claim the Policy's value was fixed and certain in 1965, when the Klee Policy lapsed and became payable in the amount of the Policy's "Paid-Up Non-Forfeiture Value." The Plaintiffs refer to an Endorsement page of the Klee Policy which states, "This Policy having lapsed for non-payment of the premium due April 23, 1965: has become paid-up for $25,405.—in accordance with the Paid-Up Non-Forfeiture provision of the Policy." (Def. Mem., Ex. B, Klee Policy, pg. 2).

The Paid-Up Non-Forfeiture Value of the Klee Policy, however, is determined according to the insured's age at the time the Policy lapsed. Ascertaining Mr. Klee's correct date of birth was crucial. The Table of Values in the Klee Policy, titled "Values for Paid-Up Life Policy Per $1000 of Paid –Up Amount," specifically sets the numerical Paid-Up Non-Forfeiture Value based on the insured's "Attained Age." Moreover, the Klee Policy provides that if the date of birth has been misstated, the amount payable under the Policy will be adjusted to account for the level of premiums that should have been charged based on the correct date of birth. The Policy provides: "If the age of the Insured has been misstated, the amount payable shall be that which the premium for this Policy would have purchased at the rate for the correct age according to the Company's published rates at date of issue." (Def. Mem., Ex. B, Klee Policy, pg. 3).

The Paid-Up Non-Forfeiture Value of $25,405.00 noted in the 1965 Endorsement was based on the January 4, 1930 date of birth stated in the Klee Policy Application. If Mr. Klee's correct date of birth was January 4, 1929, as stated in the certified Death Certificate, however,

the Paid-Up Non-Forfeiture Value of the Policy would be $24,694.00 (minus loans taken out by Mr. Klee during his lifetime), as reflected in New England Mutual's calculation worksheet. (Def. Mem., Ex. G, Worksheet). So the Plaintiffs' argument that the value of the Klee Policy was fixed and certain in 1965, and could not be affected by a discrepancy over Mr. Klee's date of birth, is simply incorrect.

New England Mutual promptly and reasonably requested the Trustee's counsel to submit one document—Mr. Klee's Birth Certificate—to resolve the question of Mr. Klee's date of birth and correctly determine the amount of benefits payable. New England Mutual received *due proof of loss* when it received Mr. Klee's Birth Certificate. Three days after receiving the Birth Certificate, New England Mutual's Home Office paid the Trustee's claim in full. New England Mutual paid benefits to the Trustee within 15 days of receipt of *due proof of loss*.

III. Issues of Law Are Decided By The Court And Not By Judicial Admission.

The Plaintiffs argue that purported "judicial admissions" in Defendants' Motion to Enter Judgment, filed on September 27, 2006 by prior counsel, precludes summary judgment on the Klee claim. Prior counsel, in the Motion to Enter Judgment's prayer for relief, asked the Court to enter an Order finding that Defendants "admitted to under-paying post-mortem interest to The Klee Living Trust in the amount of $78.62." (Pl. Response, pg. 2, quoting Motion to Enter Judgment, pg. 4).

The Plaintiffs objected to the Motion to Enter Judgment as "unsupported by authority or logic," and the Court agreed and denied the Motion. (Dec. 21, 2006 Order; Pl. Oct. 30, 2006 Response to Motion to Enter Judgment, pgs. 4-5). Now the Plaintiffs shift their position to suit the moment by trying to use the Motion to Enter Judgment to preclude adjudication of the Klee claim, as if Judgment had been entered in 2006.

Whether a statement constitutes a judicial admission is a question of law. *Elliott v. Industrial Com'n of Illinois*, 303 Ill.App.3d 185, 187, 707 N.E.2d 228, 230 (1st Dist. 1999). A judicial admission is an admission of fact contained in a verified pleading. Parties are bound by verified admissions of fact. But a party is not bound by unverified statements of fact, or by statements in pleadings that constitute conclusions of law. Under Illinois law, a party cannot judicially admit a legal conclusion. Moreover, MetLife and New England Mutual, in their Answer to the Third Amended Consolidated Class Action Complaint, deny they have any liability for payment of post-mortem interest under §224(1)(*l*). (Answer, ¶¶ 28, 29, 44, 54, 56, 59, 68-71).

MetLife and New England Mutual could not judicially admit to "liability" under §224(1)(*l*), because the issue of liability is a conclusion of law for the Court to decide. Litigants cannot supplant the Court's function by deciding legal issues on their own, whether by stipulation or "judicial admission." As explained in *Dept. of Public Health v. Wiley*, 348 Ill.App.3d 809, 819, 810 N.E.2d 614, 623 (1st Dist. 2004), *aff'd*, 218 Ill.2d 207, 843 N.E.2d 259 (2006):

> [A] fact admitted in a verified pleading is a formal conclusive judicial admission which is binding on the pleader and which dispenses wholly with the proof of that fact.... However, a party is *not bound by admissions regarding conclusions of law* since it is for the trial court to determine the legal effect of the facts adduced.

(Emphasis added). See also *Charter Bank and Trust of Illinois v. Edward Hines Lumber Co.*, 233 Ill.App.3d 574, 578-579, 599 N.E.2d 458, 461-462 (2nd Dist. 1992) ("[A] party is not bound by admissions regarding conclusions of law, since it is the province of the trial court to determine, based upon properly admitted evidence, the legal effects of the facts adduced.").

The only *factual* representations made by prior counsel in Defendants' Motion to Enter Judgment relate to the amount of interest paid under the Klee Policy and were unverified. The thrust of these unverified representations was that New England Mutual paid interest at a lower rate than the statutory interest rate set in §224(1)(*l*). For purposes of summary judgment, the numerical rate of interest paid to the beneficiary of the Klee Policy is irrelevant. New England Mutual was not *legally* obligated to pay any post-mortem interest under §224(1)(*l*). The dispositive issues for the Court to decide on summary judgment are purely legal in nature, namely, the judicial interpretation of *due proof of loss* in §224(1)(*l*), and the application of the statute to the undisputed facts of the case. Issues of statutory construction are questions of law for the Court to decide. *O'Casek v. Children's Home and Aid Soc. of Illinois*, 229 Ill.2d 421, 440, 892 N.E.2d 994, 1007 (2008); *In re Donald A.G.*, 221 Ill.2d 234, 246, 850 N.E.2d 172, 178-179 (2006).

Because Illinois law prohibits judicial admissions on issues of law, the statements made by prior counsel in Defendants' Motion for Entry of Judgment cannot be construed as a judicial admission of legal liability to pay post-mortem interest under the punitive strictures of §224(1)(*l*).

IV. MetLife Paid The Beneficiaries Of The Winkler Policy Within 15 Days Of Receipt Of *Due Proof Of Loss.*

The Winkler Policy designates Patricia Wroblewski, Roberta Geotis and Marcella Caveney as the Policy's primary beneficiaries. (Def. Mem., Ex. N, Change of Beneficiary). If one of the beneficiaries predeceased Mr. Winkler, that beneficiary's share of the proceeds would be divided equally among the surviving beneficiaries, in accordance with the Policy's terms. (Def. Mem., Ex. N). The amount payable to each beneficiary depends upon the number of beneficiaries who survive the insured. To confirm the amount properly payable to each

beneficiary, either a completed Claim Form signed by each surviving beneficiary, or proof that one or more beneficiaries predeceased the insured, needed to be submitted to MetLife. MetLife's Claim Form specifies that each beneficiary must submit a separate Claim Form: "Each claimant must submit his or her own claim form." (Def. Mem., Ex. O, Wroblewski Claim Form; Ex. P, Geotis Claim Form; Ex. Q, Caveney Claim Form). *Due proof of loss* was received when MetLife obtained a completed Claim Form from each surviving beneficiary.

The Plaintiffs concede that "the amount ultimately due Ms. Wroblewski or Ms. Geotis might have been greater if Ms. Caveney predeceased the decedent...." (Pl. Response, pg. 9). The Plaintiffs, however, try to create an artificial distinction between proof of "entitlement" to benefits and proof of the "amount" of benefits payable. The Plaintiffs contend that *due proof of loss* is received when a beneficiary provides documentation establishing her entitlement to benefits, even if further documentation is required to confirm the amount of benefits payable. The Plaintiffs fail to cite any legal authority that obligates an insurer to pay a claim before receiving information necessary to confirm the amount payable.

Nothing within §224(1)(*l*) requires insurers to jump the gun and issue potentially incorrect benefit payments before the insurer receives *due proof of loss* establishing the correct amount payable. It is reasonable for an insurer to require documentation needed to confirm the amount of benefits due, as part of the insurer's reasonable investigation. In this case, *due proof of loss* was received when MetLife obtained a Claim Form from each beneficiary establishing the beneficiary's entitlement to benefits *and the amount of benefits payable*. Otherwise, insurers would be required to issue potentially incorrect payments based on guesswork, or pay penalty interest under §224(1)(*l*).

The Plaintiffs present the extreme hypothetical of a secluded surviving beneficiary who is "out of communication" with society and fails to make a claim for years, or never makes a claim. The Plaintiffs argue that an insurer might delay payment to the remaining beneficiaries indefinitely while awaiting a claim form from the missing beneficiary. Depending on the unique facts, obviously there would be a reasonable point in time, after conducting a reasonable investigation, when payment should be made to the known beneficiaries notwithstanding one beneficiary's *in absentia* status. But it is unnecessary in this case to define the precise contours of *due proof of loss* applicable in every conceivable hypothetical case. *Due proof of loss* is an intentionally flexible concept that resists a simplistic one-size-fits-all definition.

Based on the undisputed facts of this case, it was reasonable for MetLife to pay the beneficiaries of the Winkler Policy after receipt of all three Claim Forms, in order to confirm the amount of benefits payable to each beneficiary. MetLife's Downers Grove office received Wroblewski's Claim Form on October 23, 2006 (and was told by Wroblewski that her sisters' forms would be forthcoming), received Geotis's Claim Form on November 2 or 3, 2006, and received Caveney's Claim Form on November 6, 2006 at the earliest. All three Claim Forms were received and processed at MetLife's Home Office on November 16, 2006. MetLife paid full benefits to the three beneficiaries on November 20, 2006, within 14 days of receipt of all three Claim Forms at MetLife's Downers Grove office, and within 4 days of receipt of all three Claim Forms at MetLife's Home Office.

The Plaintiffs strain to create an issue of fact where none exists. They claim that "the issue as to the date Ms. Caveney's claim form was delivered is a question of fact not resolvable on summary judgment." (Pl. Response, pg. 9). The Plaintiffs speculate that Caveney's Claim Form, which undisputedly was mailed at the Bedford Park Post Office on Saturday afternoon on

November 4, 2006, theoretically might have been transported to the Downers Grove Post Office, processed, sorted, given to a mail carrier, and delivered to MetLife on *the same Saturday afternoon* the Claim Form was mailed.

Mere speculation or conjecture will not defeat a motion for summary judgment. *McGath v. Price*, 342 Ill.App.3d 19, 27, 793 N.E.2d 801, 808 (1st Dist. 2003). This Court may take judicial notice that the U.S. Postal Service takes at least one day to deliver first class mail in the Chicago metropolitan area, and does not deliver first class mail on Sunday. See *Steiner v. Steiner*, Nos. 1950, 1964, 1994 WL 175121, at *2 (Ohio App. 4th Dist. May 4, 1994) ("This court takes judicial notice that when the Civil Rules were adopted, local mail was delivered the next day, but now it sometimes takes two days to receive a letter mailed in the same city."); *Hopkins House Hotel Corp., v. Commissioner of Revenue*, No. 6183, 1993 WL 220368, at *2 (Minn.Tax June 21, 1993) ("Absent any direct evidence to the contrary, we take judicial notice that within the metropolitan area mail is delivered within one to two business days of its deposit in the U.S. Mail."); *Reid v. Potter*, No. 06 cv 267, 2007 WL 3396424, at *2 (W.D.N.C. Nov. 9, 2007) ("The Court takes judicial notice that mail delivered in the normal course is not delivered on Sunday.").[3]

The Court may take judicial notice that it takes one business day for the U.S. Postal Service to deliver a letter mailed in Bedford Park on a Saturday to Downers Grove, based on the U.S. Postal Service's published postal calculator (attached hereto as Exhibit A). See *Collins v. Peake*, No. 04-1840, 2008 WL 4963351, at * (Vet.App. Feb. 7, 2008) (taking judicial notice of mail delivery time based on the U.S. Postal Service's postal calculator). The Court may take

[3] See also Chicago Sun-Times, "Chicago Mail Is Still The Worst In The Nation!" (published Nov. 20, 2007), http://blogs.suntimes.com/neighborhoods/2007/11/chicago_mail_is_still_the_wors.html.

judicial notice that the Bedford Park Post office closes at 1:00 pm on Saturday and is closed on Sunday, based on the U.S. Postal Service's website (attached hereto as Exhibit B).

MetLife received *due proof of loss*, for purposes of §224(1)(*l*), when MetLife received *all three* completed Claim Forms. That occurred no earlier than Monday, November 6, 2006, when Caveney's Claim Form was received in the mail. Payment was made on November 20, 2006. Accordingly, MetLife paid all three beneficiaries of the Winkler Policy within 15 days of receipt of *due proof of loss*.

V. Plaintiffs Do Not Have A Private Right Of Action Under §224(1)(*l*).

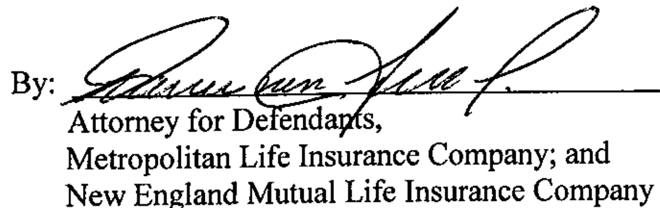
In Count II of the Consolidated Third Amended Class Action Complaint, Plaintiffs seek a declaratory judgment that New England Mutual and MetLife violated §224(1)(*l*) by failing to provide notice to claimants of their right to obtain post-mortem interest under Illinois law. There is no private right of action to enforce the disclosure requirements of §224(1)(*l*). *Doe v. Mutual 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), *cert. denied*, 528 U.S. 1106 (2000) (the primary concern of the Illinois Insurance Code is "direct regulation of the insurance industry" by the Department and creation of an implied private cause of action was not necessary to effectuate the statutory purposes: "[N]o Illinois court has found an implied private right of action under any provision of the Act."); *Langendorf v. Travelers State Ins. Co.*, 625 F.Supp. 1103, 1105-06 (N.D. Ill. 1985) ("[T]he consistent holdings of the Illinois appellate courts denying the private claim and the absence of any evidence that the Illinois legislature wanted the 'private attorney general' concept extended to the Insurance Code.").

CONCLUSION

New England Mutual and MetLife paid the beneficiaries of the Winkler and Klee Policies within 15 days of receipt of *due proof of loss*. Because the putative class lacks a representative, the class action allegations of the Consolidated Third Amended Class Action Complaint also should be dismissed. Moreover, the "reasonableness" determination required by §224(1)(*l*) is inherently case specific and ill-suited for adjudication as a class action. Accordingly, summary judgment should be entered in favor of New England Mutual and MetLife pursuant to 735 ILCS 5/2-1005 and S.Ct. Rule 191.

WHEREFORE, defendants, METROPOLITAN LIFE INSURANCE COMPANY, of itself and as successor in interest to NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, request entry of judgment in their favor as a matter of law.

Respectfully submitted,

By: 
Attorney for Defendants,
Metropolitan Life Insurance Company; and
New England Mutual Life Insurance Company

Warren von Schleicher
SMITH, VON SCHLEICHER & ASSOCIATES
39 S. LaSalle St., Suite 1005
Chicago, Illinois 60603
P: 312-541-0300
F: 312 541-0933
Attorney ID. 19544

USPS Home | Postal Explorer Home

Postage Price Calculator

Domestic Services

available for a Letter of 0 lbs 1 oz
mailed from BEDFORD PARK IL 60499 to DOWNERS GROVE IL 60515 on May 29

No Product Selected

Speed

Post Office Price

Paid Online

Print Postage >

Products	Speed	Post Office Price	Paid Online
Express Mail®	Tue, Jun 1	$13.65	$12.96
Express Mail® Sunday/Holiday Delivery	Sun, May 30 by 3 PM	$26.15	$25.46
Express Mail® Flat Rate Envelope USPS Supplied Envelope: 9-1/2" X 12-1/2"	Tue, Jun 1	$18.30	$17.40
Express Mail® Sunday/Holiday Delivery Flat Rate Envelope USPS Supplied Envelope: 9-1/2" X 12-1/2"	Sun, May 30 by 3 PM	$30.80	$29.90
Express Mail® Hold For Pickup	Tue, Jun 1	$13.65	$12.96
Express Mail® Flat Rate Envelope Hold For Pickup USPS Supplied Envelope: 9-1/2" X 12-1/2"	Tue, Jun 1	$18.30	$17.40
Priority Mail®	1 day	$4.90	$4.80
Priority Mail® Flat Rate Envelope USPS Supplied Envelope: 9-1/2" X 12-1/2"	1 day	$4.90	$4.75
First-Class Mail® Letter	1 day	$0.44	Not available

Express Mail Items need to be mailed by a certain time for us to meet our delivery commitment.
See the table below labeled "Express Mail Service Commitments" for details.
Use the Express Mail Services Commitments lookup tool to locate additional drop-off times and locations in other ZIP Code areas.

|< Start Over < Back Add Extra Services >

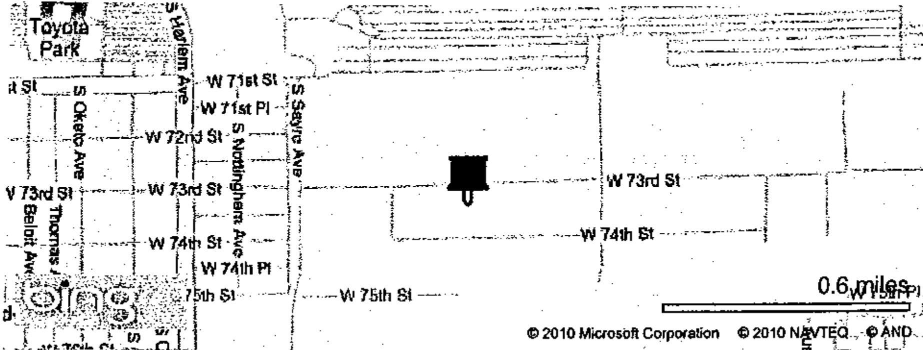
Express Mail Service Commitments

Product	Drop-Off By	Facility Type	Address
Express Mail® Flat Rate Envelope	1:00 PM	POST OFFICE	6801 W 73RD ST BEDFORD PARK IL 60499
Express Mail® Flat Rate Envelope	1:00 PM	EXPRESS MAIL COLLECTION BOX	6801 W 73RD ST BEDFORD PARK IL 60499
Express Mail® Flat Rate Envelope	2:00 PM	AIR MAIL FACILITY	11600 W IRVING PK CHICAGO IL 60666
Express Mail® Flat Rate Envelope Hold For Pickup	7:00 PM	POST OFFICE	6801 W 73RD ST BEDFORD PARK IL 60499
Express Mail® Flat Rate Envelope Hold For Pickup	1:00 PM	EXPRESS MAIL COLLECTION BOX	6801 W 73RD ST BEDFORD PARK IL 60499
Express Mail® Flat Rate Envelope Hold For Pickup	7:00 PM	AIR MAIL FACILITY	11600 W IRVING PK CHICAGO IL 60666

Post Office™ Locations

PRINT | BACK

BEDFORD PARK Post Office™ Location



Post Office™ Location - BEDFORD PARK
6801 W 73RD ST
BEDFORD PARK, IL
60499-9998
(800) ASK-USPS

(708) 563-7800

TTY Service
(877) 889-2457
for hearing impaired

Business Hours
Mon-Fri
8:00am-7:00pm
Sat
8:00am-1:00pm
Sun
closed

Last Daily Collection
Mon-Fri
7:00pm
Sat
1:00pm
Sun
closed

Services
Passport Application Services

Service hours may vary. Please check link for business hours.

Post Office™ Locations near BEDFORD PARK, IL

SUMMIT ARGO
CPU CENTRAL CLEARING #934
CPU ARCHER PHARMACY #952
CPU LITHUANIAN CATHOLIC #982
SOUTHWEST CARRIER ANNEX
CLEARING
OAK LAWN
BRIDGEVIEW
VILLAGE OF HODGKINS
ASHBURN

People and Business Search

Find people and businesses at WhitePages.com

People Search
Search for a person and perform a reverse lookup on phone numbers and addresses.

Business Search
Search for a business by name or category nationwide.

Reverse Phone Number
See who is calling you

Copyright ©1996-2010 WhitePages.com. Legal Notice and Terms Yellow Pages, White Pages, also nearby