

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND MUTUAL LIFE )  
INSURANCE COMPANY )  
SALES PRACTICE LITIGATION ) MDL-1105 (MLW)  
 ) C.A. No. 1:96-11534-MLW  
 )

MEMORANDUM AND ORDER

WOLF, D.J.

September 25, 2009

Clyde A. Wilson, Jr. ("Wilson Jr.") is the trustee for the Wilson 1989 Children's Trusts. Metropolitan Life Insurance Co. and MetLife Group (collectively "MetLife") are successors in interest to New England Mutual Life Insurance Company ("New England"). Larry Stegent is a MetLife agent. On June 19, 2009, MetLife moved for an order enjoining Wilson Jr. from pursuing a lawsuit against MetLife in the District Court of Harris County, Texas ("the Texas Action"). On July 2, 2009, Wilson Jr. moved for an expedited oral hearing. On July 22, 2009, MetLife moved for leave to file a reply brief. On September 4, 2009, Wilson Jr. moved for leave to file a supplemental response based on new evidence.

This class action arose out of allegedly deceptive life insurance sales practices by New England. On October 4, 2000, this court issued the Final Order Approving Class Action Settlement ("the Final Order"). The final class certification included all persons who owned a policy issued by New England between January 1, 1983, and August 31, 1996, ("the Class Period"), and who did not

opt out of the settlement. The Final Order released certain claims by class members against New England.

The Texas Action complaint (as amended June 26, 2009) alleges that Clyde A. Wilson Sr. ("Wilson Sr.") purchased a life insurance policy from New England through Stegent in early 1989. Wilson Jr. further alleges that, between 2004 and 2008, MetLife and Stegent made confusing statements about the status of the policy and the need for additional premium payments to prevent the policy from lapsing. Additionally, Wilson Jr. alleges that, in 2007 and 2008, MetLife made new enforceable promises not to cancel the policy and then canceled the policy in violation of both the new promises and the policy itself. Wilson Jr. alleges that MetLife did not pay any benefits upon the death of Wilson Sr. in November, 2008. Wilson Jr. brings various state law causes of action against MetLife and Stegent.

The central issue is the scope of the claims released by the Final Order. See Reppert v. Marvin Lumber and Cedar Co., 359 F.3d 53, 58, 59 (2004) (holding that the release "is an . . . imposing hurdle" to post-settlement suits when the release "is sufficiently broad to encompass the . . . complaint and the allegations therein"). The Final Order did not release claims by a Class Member "that independently arise from acts, facts or circumstances arising after the end of the Class Period." Oct. 4, 2000 Order ¶12(B)(2)(ii).

Wilson Jr.'s claims arose independently from alleged acts by

MetLife and Stegent in or after 2004. Wilson Jr.'s amended complaint does not challenge the legality of the terms of the policy or of New England's behavior during the Class Period. Rather, the essence of Wilson Jr.'s claims is that, starting in 2004, MetLife and Stegent unlawfully caused harm by interfering with attempts by Wilson Sr. and Wilson Jr. to maintain the policy, by breaching the policy through unjustified cancellation, and by failing to perform enforceable promises made in 2007 or 2008.<sup>1</sup> Thus, the Final Order did not release the claims asserted by Wilson

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<sup>1</sup>The narrow scope of the claims in the amended complaint distinguishes this case from instances of prior enforcement by this court and from cases, not cited by the parties, in which other districts courts barred similar claims despite similarly worded exceptions to the release. For example, this court's June 22, 2006 Order enjoined class members' claims alleging misrepresentation and concealment that began when the policy was sold during the Class Period. Similarly, in Greene v. Metro. Ins. and Annuity Co., the court held that the plaintiff's claims were not released, in part because the complaint "appear[ed] to concern allegations of misrepresentation in conjunction with the sale and performance of" the policy and relied in part on "yearly decisions by MetLife to set the actual costs associated with the policies" that occurred during the Class Period. See C.A. No. 07-2903, 2009 WL 1045016, at \*8-9 & n.6 (D.N.J. Apr. 20, 2009) (emphasis added); see also Benacquisto v. Am. Express Fin. Corp., C. No. 00-1980, 2007 WL 274834, at \*2 (D. Minn. Jan. 29, 2007); Wemer v. Ohio Nat'l Life Ins. Co., No. C-1-97-950, 2007 WL 2769694, at \*4, 12 (S.D. Ohio Sept. 18, 2007); Ross v. Metro. Life Ins. Co., 411 F.Supp.2d 571, 578 (W.D. Pa. 2006). The instant case is materially different. The only relevant event alleged to have occurred during the Class Period was the honest sale of a unobjectionable policy. Barring claims arising only from events after the end of the class period would release MetLife from its duty to honor policies issued by New England between January 1, 1983, and August 31, 1996. This result is inconsistent with the Final Order, which preserved class members' rights to make claims for benefits payable in the future. See Oct. 4, 2000 Order ¶12(B)(2)(i).

Jr.'s amended complaint.

MetLife's arguments that this interpretation of the Final Order is incorrect are unpersuasive. Both of MetLife's arguments address the meaning of paragraph 12(B)(2), subsection (ii) of which the court has concluded excludes Wilson Jr.'s claims from the scope of the released claims. Paragraph 12(B)(2) reads in relevant part:

Nothing in this Release shall be deemed to . . . (ii) release a Class Member's right to assert any claims that independently arise from acts, facts or circumstances arising after the end of the Class Period, or (iii) release or waive a claim not encompassed by "Released Transactions," including, but not limited to, theft, embezzlement or wrongful taking of premiums or customer benefits or funds.

MetLife argues that, if a claim is encompassed by the term "Released Transactions", defined in paragraph 12(A)(5), then paragraph 12(B)(2) does not apply. If MetLife were correct, then this limitation on the applicability of paragraph 12(B)(2) would be significant because the Released Transactions include the "administration . . . of . . . the Policies." Oct. 4, 2000 Order ¶12(A)(5). MetLife, however, is not correct, because "[n]othing in [the] Release" limits the scope of paragraph 12(B)(2). Therefore, the application of subpart (ii), which makes no mention of the Released Transactions, is not limited to claims outside the scope of the Released Transactions.

MetLife also argues that this interpretation of subpart (ii) of paragraph 12(B)(2) renders superfluous in whole or in part subpart (iii) of the same paragraph. MetLife's assertion is

incorrect. Unlike subpart (ii), subpart (iii) is limited by its own terms to "a claim not encompassed by 'Released Transactions.'" This limitation on subpart (iii) survives intact because it is logical to conclude that, although the subparts of paragraph 12(B)(2) are not generally limited by other terms of the Release, those subparts are individually limited by their own terms. Consequently, it is not contradictory to say that subpart (ii) applies to claims encompassed by the term Released Transactions but subpart (iii) does not.

Furthermore, only subpart (ii) is limited in application to claims arising out of events that occur after the end of the class period. Consequently, although there may be some overlap between subparts (ii) and (iii), subpart (iii) as a whole retains independent significance with respect to claims arising from acts, facts, or circumstances arising before the end of the Class Period.

Accordingly, it is hereby ORDERED that:

1. Defendants' Motion for Leave to File Reply in Support of Motion to Enforce Court's Final Order and Judgment and to Enjoin Class Member Wilson from Prosecuting Texas Action (Docket No. 397) is ALLOWED.

2. Defendants' Motion to Enforce Court's Final Order and Judgment and to Enjoin Class Member Wilson from Prosecuting Texas Action (Docket No. 392) is DENIED.

3. Plaintiff's Motion for Expedited Oral Hearing (Docket No. 395) is DENIED.

4. Plaintiff's Motion for Leave to File Supplemental Response  
Based on New Evidence (Docket No. 399) is MOOT.

/s/ Mark L. Wolf  
UNITED STATES DISTRICT JUDGE