Fiala v Metropolitan Life Insurance Co.
2006 NY Slip Op 30068(U)
May 2, 2006
Supreme Court, New York County
Docket Number: 0601181/1812
Judge: Herman Cahn
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SCANNED ON 5/12/2006
[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Cahn, Justice — PART 49m

Eugenia J. Ciala

INDEX NO. 601181/00

MOTION DATE 12/8/05

- v -

MOTION SEQ. NO. 008

Metropolitan Life Insurance

MOTION CAL. NO.

The following papers, numbered 1 to ______ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE ......

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ______

Dated: 5/2/06

[signature], J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

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EUGENIA J. FIALA, PAULETTE BELIUNAS, THERESA HAZEN, VIJAY J. SHAH, JOHN T. BROPHY, IRA J. GELB, JUNE A. GELB, MARK D. SMILOW, on behalf of themselves and all other similarly situated policyholders of Metropolitan Life Insurance Company, and PAUL HAZEN and RICHARD E. SCHWEINBERG, individually,
Plaintiffs,

-against-

METROPOLITAN LIFE INSURANCE COMPANY, METLIFE, INC., ROBERT H. BENMOSCHE, CURTIS H. BARNETTE, GERALD CLARK, JOAN GANZ COONEY, BURTON A. DOLE, JR., JAMES R. HOUGHTON, HARRY P. KAMEN, HELENE L. KAPLAN, CHARLES M. LEIGHTON, ALLEN E. MURRAY, STEWART G. NAGLER, JOHN J. PHELAN, JR., HUGH B. PRICE, ROBERT G. SCHWARTZ, RUTH J. SIMMONS, WILLIAM C. STEERE, JR.,
Defendants.

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Index No. 601181/00
Mot. Seq. No. 008

CAHN, J.:

Plaintiffs, the Proposed Class Representatives move for class certification of the remaining causes of action, CPLR 901.[1] Plaintiffs also seek to appoint the four law firms, currently involved in representing them in this consolidated class action, as co-lead counsel for the proposed Class.

BACKGROUND

The facts of this case have been detailed in several prior

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[1]Theresa Hazen has withdrawn her request to serve as a Class Representative on her own behalf, although she still seeks to serve as a Class Representative on behalf of her husband, who withdrew as a Proposed Class Representative for health reasons. She has not yet established her legal right to appear on her husband's behalf in the instant action.

decisions and orders of this court, familiarity with which is presumed.

Briefly, in April 2000, defendant Metropolitan Life Insurance Company (MetLife) converted itself from a mutual life insurance company to a domestic stock company, a process known as demutualization, pursuant to Insurance Law § 7312 (the Conversion Law). The demutualization was accomplished in accordance with a Plan of Reorganization (Plan) that was approved by a majority of eligible voting policyholders, and the Superintendent of Insurance, as required under the Conversion Law.

Prior to the scheduled vote on the demutualization, each eligible policyholder was sent a copy of the Plan. Upon the Plan's effective date, each eligible policyholder's intangible membership interests in MetLife were extinguished in return for common stock in MetLife, Inc., cash, or policy credits, in amounts that were determined and allocated pursuant to a formula, summarized in the Plan.

In March and April 2000, plaintiffs commenced several separate proposed class actions against MetLife, MetLife, Inc., and the officers and/or directors of MetLife. These actions, since consolidated, challenged the fairness of the Plan and MetLife's compliance with the provisions of the Conversion Law. Only two claims, alleging violations of the Conversion Law and common law fraud, have survived defendants' motions to dismiss

(see Shah v Metropolitan Life Ins. Co., 2003 WL 728869, 2003 NY Slip Op. 50591 [U] [Sup Ct, NY County 2003]; affd as mod Fiala v Metropolitan Life Ins. Co., 6 AD3d 320 [1st Dept 2004]); see also Fiala v Metropolitan Life Ins. Co., Index No. 601181/2000 [Sup Ct, NY County Oct. 11, 2005]).

Plaintiffs now seek class certification of these two surviving claims: (1) for violation of the Conversion Law, based on (a) MetLife's undisclosed preferential treatment of Armstrong Tire & Rubber (Armstrong), and other complaining policyholders, in allocating to these policyholders shares of stock in excess of amounts calculated under the Plan's formula, and (b) MetLife's undisclosed plan to buy back shares of its stock after the IPO; and (2) for common law fraud, based on MetLife's failure to disclose the planned stock buy back in the Policyholder Information Booklet (PIB).

Plaintiffs propose to certify a Class comprised of

> all Eligible Policyholders of MetLife as of September 28, 1999. The Class includes all persons who purchased and had outstanding, as of September 28, 1999, life insurance, annuity or other policies of MetLife or its subsidiaries

(Second Amended Complaint, at ¶ 15). The proposed Class specifically excludes defendants, their officers, directors, subsidiaries, affiliates, and legal representatives, etc. (see id., at ¶ 16).

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DISCUSSION

CPLR § 901

In determining whether an action should proceed as a class action, the court must consider whether the Class is sufficiently numerous that joinder of all members individually is impracticable; whether common questions of law and fact predominate; whether plaintiffs' claims are typical of the Class' claims; whether plaintiffs will fairly and adequately protect the interests of the Class; and whether a class action is the superior method for the fair and efficient adjudication of the controversy (see CPLR 901 [a]; Small v Lorillard Tobacco Co., 94 NY2d 43, 53 [1999]). Plaintiffs bear the burden of establishing that these prerequisites are met (Bettan v Geico Gen. Ins. Co., 296 AD2d 469 [2d Dept], lv dismissed 99 NY2d 552 [2002]).

1. Numerosity

Here, there is no dispute that millions of policyholders were eligible to vote and receive compensation under the Plan; thus, the requirement of numerosity is met (CPLR 901 [a] [1]).

2. Commonality

CPLR 901 (a)(2) requires that questions of law or fact common to the Class predominate over questions affecting individual members. In this action, common questions relate to defendants' actions or failure to act; whether defendants had planned or intended to implement a buy back of stock following

the IPO; whether the Superintendent was aware of the alleged excessive allocation and/or proposed buy back plan when he passed upon the Plan; whether the failure to disclose the claimed preferential treatment and/or proposed buyback plan violated the Conversion Law; and, whether the preferential allocations, and/or planned buy back of stock, injured policyholders by reducing the compensation that policyholders were to receive under the Plan, or by diluting policyholders' equity in MetLife, Inc.

A. Violation of the Conversion Law

The predominance requirement is met with respect to plaintiffs' claims under the Conversion Law. With respect to these causes of action, defendants' liability to the entire Class will be established if the Proposed Class Representatives prove that there was a violation of the Conversion Law, and that a cognizable injury resulted therefrom.

B. Common Law Fraud

With respect to plaintiffs' common law fraud claim, however, it is not clear that common issues will predominate over the individual issues of reliance.

Plaintiffs argue that where, as here, the claimed fraud is based on an omission contained in a standardized document that was sent to all policyholders prior to their vote, courts may find a presumption of reliance. Plaintiffs additionally argue that reliance on the omission should be presumed, as the omission

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was material and actionable. Plaintiffs further argue that where policyholders, as a group, vote on a matter, reliance is satisfied where the vote is an essential link in the approval of the transaction, the omission was material, and it is likely that policyholders, as a group, would have voted differently had disclosure been made.

Reliance is an essential element in every fraud action (Stellema v Vantage Press, Inc., 109 AD2d 423 [1st Dept 1985]). "[W]here a defendant makes materially misleading omissions, justifying a presumption of reliance, class certification should not be denied on the ground that individual issues of reliance exist" (Ackerman v Price Waterhouse, 252 AD2d 179, 198 [1st Dept 1998], citing Weinberg v Hertz Corp., 116 AD2d 1, 7 [1st Dept 1986], affd 69 NY2d 979 [1987]). Courts have held that reliance issues will not bar class certification where identical representations are made in writing to a large group (id.; citing Pruitt v Rockefeller Ctr. Props., Inc., 167 AD2d 14 [1st Dept 1991]), especially where it is difficult to conceive of a situation where the plaintiff would not have relied on the omission or representation at issue (see e.g. Stellema v Vantage Press, Inc., 109 AD2d 423, supra; Friar v Vanguard Holding Corp., 78 AD2d 83 [2d Dept 1980]; King v Club Med, Inc., 76 AD2d 123). "[O]nce it has been determined that the representations alleged are material and actionable, thus warranting certification, the

issue of reliance may be presumed subject to such proof as is required on the trial" (Weinberg v Hertz Corp., 116 AD2d at 7).

Defendants contend that reliance should not be presumed here, as the evidence shows that a variety of factors may have induced Class members to vote in favor of the demutualization (see Hazelhurst v Brita Prods. Co., 295 AD2d 240 [1st Dept 2002]; Vermeer Owners, Inc. v Guterman, 169 AD2d 442 [1st Dept], affd 78 NY2d 1114 [1991]). Defendants contend that the evidence further shows a lack of actual reliance on the omission. In support of their contentions, defendants proffer the deposition testimony of each of the Proposed Class Representatives, which shows that six of these eight plaintiffs either (a) had voted against the demutualization for reasons other than the alleged omission, and thus can not establish individual reliance, or (b) did not recall voting at all, but testified that they probably would have voted against the demutualization, regardless of the alleged omission (see Micarelli Affirm., Exh. 3: Fiala EBT, at 92-93, 104-105; Exh. 4: Hazen EBT, at 36-37; Exh. 5: Shah EBT, at 62-63; Exh. 6: Brophy EBT, at 16-17; Exh. 7: Smilow EBT, at 52; Exh. 10: Beliunas EBT, at 46). Additionally, defendants proffer the deposition testimony of the remaining two Proposed Class Representatives, who voted in favor of the demutualization, which shows that both testified that they cast their votes based on their prior experiences with other demutualizations of life

insurance companies, and not based on the representations or omissions contained in the PIB (id., Exh. 8: I. Gelb EBT, at 44-46; Exh. 9: J. Gelb EBT, at 34-35).

Defendants additionally contend that, because the evidence establishes that none of these plaintiffs relied on the allegedly misleading statements or omissions in voting on the demutualization, their claims are atypical of the proposed Class claims, and provide another reason why class certification should be denied.

Because the proffered testimony establishes that a number of factors could, and apparently did, influence the way in which policyholders' voted, plaintiffs have failed to establish that reliance can be presumed, or readily inferred in this case. Nor have plaintiffs shown that the omission was material, and would have affected the way policyholders' voted.

Alternatively, plaintiffs argue that reliance need not be pleaded or proved in this action, as the circumstances establish a causal connection between the omission and plaintiffs' injury, regardless of how policyholders may have voted. However, although a showing of causation is sufficient, and proof of reliance is not required, in actions brought under General Business Law § 349 (see Stutman v Chemical Bank, 95 NY2d 24 [2000], or under the Federal Securities Exchange Act of 1934 (see Affiliated Ute Citizens of Utah v U.S., 406 US 128 [1972]; Mills

v Electric Auto-Lite Co., 396 US 375 [1970]), such actions are distinct from claims of common law fraud (see Basic Inc. v Levinson, 485 US 224, fn 22 [1988]). Plaintiffs have cited no authority to establish that a showing of causation, by itself, is sufficient to plead and prove common law fraud.

As plaintiffs have not demonstrated that common questions will necessarily predominate over individualized issues with respect to the common law fraud claim, this court finds that the requirements of CPLR 901 [a] [2] have not been met with respect to that claim.

Notwithstanding the above, plaintiffs have shown that common questions of law and fact predominate herein. There is no requirement that all the questions of law and fact be common, only that the common questions predominate. Here the common questions certainly predominate.

3. Typicality

CPLR 901 (a) (3) requires that the claims or defenses of representative parties be typical of the claims or defenses of the class. The requirement of typicality has been met with respect to plaintiffs' Conversion Law claims, as the claims and alleged injuries of the Proposed Class Representatives derive from the same acts and course of conduct as those of the Class. Additionally, as the legal theory of the Proposed Class Representatives is identical to that of the Class, the

requirement of typicality is met (Friar v Vanguard Holding, Corp., 78 AD2d 83, supra).

4. Adequacy of Representation

CPLR 901 (a) (4) requires that "the representative parties ... fairly and adequately protect the interest of the class."

Defendants oppose class certification of that portion of plaintiffs' Conversion Law claim, which is based on defendants' claimed preferential treatment of certain policyholders in allocating them excess stock, on the ground that this claim creates an irreconcilable conflict of interest between those members of the proposed Class that allegedly received the preferential treatment, and those that did not. Specifically, defendants argue that plaintiffs cannot be adequate Class Representatives because they have interests antagonistic to Armstrong, and any other policyholder who may have received an excess allocation. Defendants further argue that merely defining the Class to exclude policyholders who received a "discriminatory allocation" is insufficient, as the definition would be too imprecise, and leave no intelligible way to determine who is, or is not, part of the Class.

Defendants also challenge the qualifications of plaintiff Mark Smilow to serve as a representative of the Class, based on his status as an associate at one of the four law firms appearing as co-lead counsel in this action. Defendants challenge the

qualifications of the remaining Proposed Class Representatives, as well, on the ground that they are not sufficiently independent of counsel to fulfill the function of Class Representative.

In determining whether the named plaintiffs are suitable Class Representatives, a variety of factors are considered, including whether a conflict of interest exists between the representatives and Class members, the representative's independence and familiarity with the lawsuit, and, significantly, the competence and experience of the representative's attorneys (see Pruitt v Rockefeller Ctr. Props., Inc., 167 AD2d at 24).

It is correct that the Proposed Class Representatives have interests adverse to those policyholders who may have received excess allocations of stock in the demutualization. However, that is one of the points of the action, i.e., the preferential treatment of certain policyholders in that there is no clear or precise way to limit the Class definition to exclude those policyholders.

Plaintiffs have alleged, and defendants do not disagree, that the Plan allocated and distributed MetLife stock to policyholders based on a formula. The complaint alleges that defendants allocated excess shares, over and above the amount that should have been allocated pursuant to that formula, to large policyholders, such as Armstrong, who complained about

their allocations. Plaintiffs have been granted an opportunity, through discovery, to ascertain whether such other policyholders exist. To the extent such policyholders are identified through discovery, those policyholders who, like Armstrong, have been identified as having received stock in excess of the amount that would have been allocated pursuant to the Plan's formula, can be excluded from the class.

Nor does the court find that the plaintiff Smilow must be disqualified as a Proposed Class Representative. Although it has generally been held that a partner or associate of the law firm which represents the plaintiffs may not be a class representative (see Tanzer v Turbodyne Corp., 68 AD2d 614, 620 [1st Dept 1979]; Meachum v Outdoor World Corp., 171 Misc 2d 354, 371 [Sup Ct, Queens County 1996]), under the particular circumstances of this case, the disqualification of plaintiff Mark Smilow is not required.

First of all, Smilow is only one of a number of Proposed Class Representatives, and the court notes that the law firm for which Smilow works is only one of the four co-lead law firms. Each of these circumstances serve to minimize the potential for impropriety, conflict, or undue influence arising out of Smilow's dual relationship. Further, to the extent Smilow might be motivated to take some action or decision based on the potential for financial benefit to his law firm, it is noted that courts in

New York maintain discretion to approve settlements and attorney's fees in class actions, ensuring that any financial benefits sought by counsel would not come at the expense of individual benefits to Class members.

As for the qualification of the remaining Proposed Class Representatives, in an action such as this, a complex commercial case involving compliance with the Conversion Law and non-disclosure, the plaintiffs' general awareness of the claims and litigation is sufficient to qualify them to act as Class Representative (see Ackerman v Price Waterhouse, 252 AD2d 179, supra; Brandon v Chefetz, 106 AD2d 162, supra). Additionally, the four proposed Class counsel have each demonstrated that they are competent, skilled, and experienced in class action litigation, and will adequately represent the interests of all Class members.

5. Superiority of Action

The requirement of CPLR 901(a)(5), that a class action be "superior to other available methods for the fair and efficient adjudication of the controversy," has been amply established both by the sheer size of the proposed Class, and the relatively small amount of potential recovery on each individual's Conversion Law claims.

CPLR 902

Once the prerequisites of CPLR 901 are satisfied, the court

must consider the factors set out in CPLR 902: the possible interest of Class members in maintaining separate actions and the feasibility thereof; the existence of pending litigation regarding the same controversy; the desirability of the proposed class forum; and, the difficulties likely to be encountered in the management of a class action (CPLR 902 [1]-[5]).

Here, given the general impracticality of individuals bringing multiple suits alleging the violation of Conversion Law, and the desirability of concentrating litigation involving this state's Conversion Law in New York, this court finds that the prerequisites for class certification of these particular claims have been met.

However, it does appear, that plaintiffs' Class definition is overly broad, and would likely include policyholders of subsidiaries of MetLife, who were not eligible either to vote or receive compensation under the Plan (see Krisiloff Affirm., Exh. B: PIB, at 15 and 18). Accordingly, the Class definition will be amended to read, as follows:

> All Eligible Policyholders of MetLife, who owned and had in force, as of September 28, 1999, life insurance policies, annuity contracts, or accident and health insurance policies issued by MetLife, or other certificates or interests identified in the Plan, excluding defendants, their officers, directors, subsidiaries, affiliates.

Further, as that part of the Conversion Law claim, which is based on MetLife's undisclosed preferential treatment given to certain

policyholders, will be adverse to the interests of those policyholders, this court will certify the following to be omitted from the class:

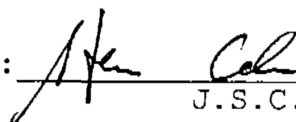
> All Eligible Policyholders of MetLife, who owned and had in force, as of September 28, 1999, life insurance policies, annuity contracts, or accident and health insurance policies issued by MetLife, or other certificates or interests identified in the Plan, who were granted or awarded common stock in excess of that allocated under the Plan's formula in the course of the demutualization, and defendants, their officers, directors, subsidiaries, and affiliates.

Appointment of Class Counsel

That part of plaintiffs' motion that seeks the appointment of all four law firms, as co-lead counsel, is granted. Although none of the law firms has sought to be first among equals, it appears that the law firms have selected an attorney at Lovell Stewart Halebian, LLP, to serve as the Chair of all co-lead counsel in this action.

Accordingly, in accordance with, and as limited by, the foregoing, plaintiffs' motion for class certification is granted. Settle Order.

DATED: May 2, 2006

ENTER: 
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