[* 1]

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

PRESENT: Cahn Justice

PART 49m

Eugenia S. Fiala

INDEX NO. 601181/00

MOTION DATE 6/1/07

- v -

MOTION SEQ. NO. 015

MOTION CAL. NO.

Metropolitan Life Insurance

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 .....

Dated: 8/28/07

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

----------x

EUGENIA J. FIALA, PAULETTE BELIUNAS, THERESA HAZEN, VIJAY J. SHAH, JOHN T. BROPHY, IRA J. GELB, JUNE A. GELB, and MARK D. SIMILOW, 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-

Index No. 601181/2000

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, STEWART G. NAGLER, JOHN J. PHELAN, JR., HUGH B. PRICE, ROBERT G. SCHWARTZ, RUTH J. SIMMONS, and WILLIAM C. STEERE, JR.,

Defendants.

----------x

CAHN, J.:

Plaintiffs in this class action were policyholders in Metropolitan Life Insurance Company (MetLife), a mutual company, until MetLife converted to a stock insurance company.

Plaintiffs now move for an Order approving their proposed method of class notice by publication, CPLR § 904(c).

Background:

Plaintiffs allege that, prior to the adoption of the plan to turn MetLife into a stock company, Defendants had an undisclosed plan, to issue excess shares of MetLife stock and then buy them back, which caused injury to the Class members by: (i) policyholders receiving a

lower initial public offering price for the shares of stock allotted to them; (ii) diluting the policyholders' interest in the resulting stock company; (iii) preventing the policy holders from making an informed decision on the vote to convert the company; and (iv) preventing policyholders from making an informed decision about the fairness of the plan or the desirability of their making a cash election, versus policy credits or shares. Third Am Compl at ¶ 49, 51. The claims brought against MetLife include: intentional deceit or actual or constructive fraud; and violation of Section 7312 of the Insurance Law, which provides that a demutualization transaction must be "fair and equitable."

The Class is comprised of all people who purchased, and/or had outstanding, as of September 28, 1999, life insurance, annuity or other policies issued by MetLife or its subsidiaries (the Class).[1] The number of policyholders who are eligible to participate in the Class has been estimated to be in excess of 10,000,000. Third Am Compl at ¶ 17.

The large Class size has brought the issue of class notice, pursuant to CPLR § 904, to the forefront. Providing notice to a class of this size can be quite costly. As a result, the parties are vehement in their opposing positions of what constitutes reasonable notice.

Plaintiffs emphasize that New York law permits the form of notice in class actions to take the cost of the notice into account. They aver that individual notice would result in the Class members being taxed millions of dollars, which is not to their benefit, and argue that even if mailed notices were more effective in reaching Class members, the value of the individual notices would not justify the expense. They further argue that due process concerns should be

[1] Excluding, defendants, and any entity in which defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs successors, subsidiaries and/or assigns of any such individual or entity. Third Am Compl at ¶ 16.

alleviated by the Court's prior determination that they and their counsel adequately represent the interests of the Class members.[2]

Plaintiffs contend that notice by publication only is the most reasonable method of notice here and that it fully comports with constitutional due process requirements. They initially proposed a single publication in the weekday edition of the Wall Street Journal. At a conference on the matter, the Court proposed that a single publication in each of the three New York daily newspapers, in lieu of or in addition to the Wall Street Journal, might well be more appropriate. Plaintiffs note that if a publication only notice is ordered, they are willing to work with MetLife to develop an appropriate notice program.

Defendants argue that individual mail notice is required whenever such notice is reasonably possible. They contend that when the notice is not by mail, the alternative form of notice must not be substantially less likely to reach the class members than other alternatives. Defendants stress that 87% of the class members reside outside New York and contend that publication in New York papers is an inadequate means to reach a class with members both across the country and abroad.

As to the logistics of giving notice to such a large class, Plaintiffs argue that a number of the Class members' addresses will have changed in the seven years since the lists were

---

[2] Plaintiffs also put forth the argument that the only action a potential Class member may take, at this time, is the decision to opt out of the Class. They contend that this option for a potential Class member only has value in the event of a settlement - - where the individual may wish to seek a larger recovery. They argue that in the event of a full victory for either Defendants or Plaintiffs, there is no advantage to opting out. Pl Br at 4. However, inasmuch as the persuasiveness of this argument is dependent on accepting the premise that settlement is an unlikely outcome in this class action, the Court declines to further examine this argument, except to note that it does not consider the possibility of settlement to be an unlikely outcome in any action of this size and presumes that it is a possibility. In any event, the argument is not a convincing one.

assembled for use by Defendants to inform them of MetLife's conversion to a stock insurance company. However, Defendants contend that the address to which the materials at issue were sent remain on file and MetLife's transfer agent has updated addresses for many of the Class members.

Discussion:

Form of Notice:

Class actions require reasonable notice of the commencement of the action to the potential class members "in such manner as the court directs." CPLR § 904 (b). Thereafter, the CPLR is silent on the form of the notice, except for directing that:

> In determining the method by which notice is to be given, the court shall consider
>
> i. the cost of giving notice by each method considered
> ii. the resources of the parties and
> iii. The stake of each represented member of the class, and the likelihood that significant numbers of represented members would desire to exclude themselves from the class or to appear individually, which may be determined, in the court's discretion, by sending notice to a random sample of the class.

CPLR § 904 (c).

The court has considered the factors enumerated above, and concludes that the following form(s) of notice are sufficient and are reasonably calculated to give fair notice to the members of the class. In doing so, the court has particularly noted that:

1. The cost of giving individual mail notice to the class-members at this time, is very high. In view of the large number of class-members, such cost will certainly run into the millions of dollars.

2. It seems doubtful that significant numbers of class-members would desire to exclude themselves, because there appears to be almost no risk to them to remain members of the class. Further, apparently no individuals other than plaintiffs have commenced or are continuing an action relating to the issues raised in the amended complaint. It is doubtful that any new plaintiff would seek to commence such an action at this late date.

In view of the above, the court directs that the following forms of notice should be given at this time.

1. Notice by Publication (a) in the national and local editions of the Wall Street Journal; and (b) in the New York Post; once a week for three consecutive weeks; and

2. Sending a mail notice to a random sample of plaintiffs. Said random sample shall be obtained from MetLife's records and list used to mail the materials issued in connection with the within IPO. The Notice shall be mailed to 500,000 persons or firms from such list.

3. In addition, to the extent that MetLife periodically mails notices, etc. to members of the putative class, such notice shall include the notice of the pendency of this action. Counsel shall periodically report to the court and to all counsel who have appeared, the details of the mailing, i.e. the members mailed, responses, if any received, etc., and shall maintain a record of the mailing including when and to whom mailed.

All of such notice shall be given within sixty days. A report thereof shall be submitted within ninety days.

The court has considered the resources of the parties, and therefore directs, that plaintiff shall be required to pay the cost of the newspaper publication and one-half of the cost of the 500,000 mailing (except that since the list of names already exists, the expense of culling through and preparing the list for publication shall be borne by MetLife). MetLife shall pay one

half of the cost of the 500,000 mailing, as above described, and the cost of preparing and mailing the notices described in (3) above.

Based on the number of "opt outs" received within a reasonable period, the court will revisit the issue of whether additional notice is required.

The court notes that the notice discussed herein relates solely to the existence of the action, and the ability of a class member to "opt out." If and when a settlement is proposed, an additional notice will be required. At that time, the court will also again consider how such notice, which in some ways is more substantive, should be communicated.

Settle order, containing a draft of the notice to be communicated to the class as above.

So ordered.

Dated: August 28, 2007

ENTER:

J.S.C.