

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. )

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PATRICIA WROBLEWSKI, individually and )  
on behalf of all others similarly situated, )

Plaintiff, )

v. )

METROPOLITAN LIFE INSURANCE )  
COMPANY, )

Defendant. )

No. 05 CH 12181

No. 07 CH 00783

Hon. Dorothy K. Kinnaird

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

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## INTRODUCTION

The Illinois Insurance Code provides for the payment of post-mortem interest on life insurance benefits when payment is made more than 15 days after the insurer receives *due proof of loss*. 215 ILCS 5/224(1)(I). Illinois' post-mortem interest statute is penal in nature. It was enacted to penalize insurers who unreasonably delay the payment of life insurance benefits beyond 15 days, taking into account the policy's terms and the circumstances of each case. To achieve that legislative goal, §224(1)(I)'s 15-day period does not commence until the insurer receives *due proof of loss*.

*Due proof of loss* is a flexible term that is determined according to the unique circumstances of each case. Because it is reasonable for the insurer to conduct an investigation into a beneficiary's claim, the statutory 15-day period does not begin to run until the insurer's reasonable investigation is complete. *Due proof of loss*, therefore, is not synonymous with proof of the insured's death. Rather, *due proof of loss* permits an insurer to conduct a reasonable investigation without imposition of a post-mortem interest penalty. Section 224(1)(I) does not apply in the present case because New England Mutual Life Insurance Company ("New England Mutual") and Metropolitan Life Insurance Company ("MetLife") paid life insurance benefits to the Plaintiffs within 15 days of completion of a reasonable investigation, and therefore, within 15 days of receipt of *due proof of loss*.

The amount of benefits payable under the Policy issued to Michael Klee ("Klee Policy") by New England Mutual was contingent on determining Mr. Klee's correct date of birth. The Klee Policy Application identified Mr. Klee's date of birth as January 4, 1930. But the beneficiary of the Klee Policy submitted a certified Death Certificate identifying January 4, 1929 as Mr. Klee's date of birth. This discrepancy over the two proffered dates of birth affected the

amount of benefits payable under the Klee Policy. New England Mutual promptly requested a copy of Mr. Klee's Birth Certificate to confirm his date of birth. New England Mutual received *due proof of loss*, therefore, when it received Mr. Klee's Birth Certificate. It is undisputed that New England Mutual paid the beneficiary of the Klee Policy within 15 days of receipt of Mr. Klee's Birth Certificate.

The amount of benefits payable to each beneficiary under the Policy issued to Edward Winkler ("Winkler Policy") by MetLife was contingent on whether one or more beneficiaries predeceased the insured. Under Illinois law, MetLife received *due proof of loss* once it obtained a signed Claim Form from each surviving beneficiary, or alternatively written confirmation that one or more beneficiaries predeceased the insured. This information was necessary in this case to confirm the amount of benefits payable to each beneficiary. It is undisputed that MetLife paid the beneficiaries of the Winkler Policy within 15 days of receipt of the signed Claim Form from all three beneficiaries.

In each instance, the documentation requested directly impacted the amount of benefits payable under each Policy. New England Mutual and MetLife paid the beneficiaries of the Winkler and Klee Policies within 15 days of receipt of *due proof of loss*.<sup>1</sup> 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. Because the putative class lacks a representative, the class action allegations also should be dismissed.

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<sup>1</sup> Defendants maintain that *due proof of loss* must be received at their Home Office rather than at a field office. Because New England Mutual and MetLife, in fact, paid the Policies' beneficiaries within 15 days of receipt of *due proof of loss* by the field office, it is not necessary for the Court to decide where *due proof of loss* must be received in order to resolve this case on summary judgment.

## ARGUMENT

### I. Summary Judgment Standard.

In Illinois, summary judgment “is encouraged as an aid to the expeditious disposition of a lawsuit.” *Wilgus v. Cybersource Corp.*, --Ill.App.3d--, No. 5-08-0057, 2009 WL 2762700, at \*5 (5<sup>th</sup> Dist. Aug. 27, 2009) (citing *Levat v. Fruin Colnon Corp.*, 232 Ill.App.3d 1013, 1023, 597 N.E.2d 888, 894 (1<sup>st</sup> Dist. 1992)). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS §5/2-1005(c). The determination of rights and obligations under an insurance policy presents a question of law appropriate for determination on summary judgment. See *Insurance Corp. of Hanover v. Shelborne Associates*, 389 Ill.App.3d 795, 798, 905 N.E.2d 976, 981 (1<sup>st</sup> Dist. 2009); *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill.2d 384, 391, 620 N.E.2d 1073 (1993).

The Plaintiffs’ claims for post-mortem interest under 215 ILCS 5/224(1)(I) require the Court to determine the rights and obligations of the parties under the Klee and Winkler Policies, and there are no disputed issues of material fact. Therefore, this case is appropriate for resolution by summary judgment.

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

The Illinois Insurance Code provides for the payment of 9% post-mortem interest on the proceeds of life insurance policies “unless payment is made within fifteen (15) days from the date of receipt by the company of *due proof of loss.*” 215 ILCS 5/224(1)(I) (emphasis added).<sup>2</sup>

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<sup>2</sup> Prior to July 24, 2001, §224(1)(I) provided for the payment of post-mortem interest at the rate of 6% per annum. Effective July 24, 2001, that rate was amended to 9% per annum. (215 ILCS 5/224(1)(I), amended by Public Act 92-139 §5, eff. July 24, 2001).

*Due proof of loss* is not specifically defined by the statute. However, the Illinois Court of Appeals has held that §224(1)(l) allows the insurer to conduct a reasonable investigation prior to paying the proceeds of a life insurance policy. Section 224(1)(l) is penal in nature and “puts insurers on notice that they must abide by the 15-day grace period *after a reasonable investigation is completed*, or suffer the consequences.” *Emily Foley Mutz Residuary Trust v. Pacific Life Ins. Co.*, Case No. 1-05-3147, slip. op. pgs. 12-13 (Ill. App. Ct. 1<sup>st</sup> Dist. Apr. 18, 2007) (emphasis added) (attached hereto as Exhibit A).

The reasonableness of the insurer’s investigation depends on the language of the policy, the nature of the investigation, and the length of time taken to complete the investigation. In *Mutz Residuary Trust*, the insurer, Pacific Life, paid the policy’s beneficiary 72 days after receiving the beneficiary’s completed claim form and a certified certificate of death. Even though Pacific Life paid the claim more than 15 days after receipt of proof of death, the Court of Appeals held, as a matter of law, that no penalty interest was payable under §224(1)(l).

The insured in *Mutz Residuary Trust* died by drowning. The manner of the insured’s death led to a three month police investigation which ultimately confirmed the death to be accidental. The Residuary Trust, as the policy’s beneficiary, submitted the requisite documentation establishing proof of death, but Pacific Life waited until it received the police investigation report—72 days after receipt of proof of death—before paying the claim. The Residuary Trust argued *due proof of loss* under §224(1)(l) means due proof of death, and that Pacific Life violated §224(1)(l) by failing to pay the claim within 15 days of receipt of the Residuary Trust’s claim form and the certificate of death. *Mutz Residuary Trust*, slip. op. pg. 8.

The Court of Appeals, upholding the Circuit Court, refused to construe *due proof of loss* as synonymous with the insurer’s receipt of due proof of death:

Given the potential complexities of death investigations, it seems against common sense to construe section 224(1)(l) to mean that the defendant was limited to 15 days of investigation into the death claim from the date of receipt of the claim and subject to 9% interest penalty from the date of death if the investigation went beyond 15 days.

*Mutz Residuary Trust*, slip. op. pg. 11.

The Court of Appeals held that §224(1)(l)'s requirement for payment within 15 days of receipt of *due proof of loss* must be construed within the context of the policy's language. The policy's terms gave Pacific Life the right to request "such other information" as Pacific Life "may reasonably require." The Court of Appeals held that it was reasonable for Pacific Life to wait for receipt of the police investigation report before paying the beneficiary's claim:

The plaintiff's interpretation of due proof of loss is misplaced under these facts and would broadly penalize insurers even in circumstances where as here, they act reasonably. We are not aware of any legislative enactment or intent for such a potentially sweeping penalty.

*Mutz Residuary Trust*, slip. op. pg. 12. Section 224(1)(l)'s 15-day time period began to run, therefore, when Pacific Life received the police investigation report, which was the date of receipt of *due proof of loss* under the statute: "We conclude that *due proof of loss* was satisfied when the defendant received the completed investigation report on March 23, 2004." The claim was paid on April 2, 2004, within 15 days of the insurer's receipt of *due proof of loss*. *Mutz Residuary Trust*, slip. op. pg. 13.

In the present case, MetLife paid the beneficiaries of the Winkler and Klee Policies within 15 days of receipt of documentation necessary to confirm the amount of benefits payable to each beneficiary. With respect to the Klee Policy, the amount of benefits payable was contingent on identifying the insured's correct date of birth. To confirm the amount of benefits payable, MetLife properly required documentation establishing the insured's date of birth. MetLife received *due proof of loss* when it received the Trustee's claim form, proof of the



insured's death, and a copy of the insured's Birth Certificate. MetLife paid the Trustee's claim within 15 days of receipt of *due proof of loss*, in compliance with §224(1)(I).

With respect to the Winkler Policy, the amount of benefits payable to each beneficiary was contingent on obtaining confirmation of the number of living beneficiaries and whether any beneficiary predeceased the insured. To confirm the amount of benefits payable under these circumstances, MetLife requested a signed Claim Form from each of the three beneficiaries or alternatively, proof that one or more of the beneficiaries predeceased the insured. This documentation identified and confirmed the amount of benefits payable and to which beneficiary the payment should be made. MetLife, under Illinois law, received *due proof of loss* when it received proof of the insured's death and a signed Claim Form from the three designated beneficiaries. MetLife paid the beneficiaries' claim within 15 days of receipt of *due proof of loss*, in compliance with §224(1)(I).

MetLife complied with §224(1)(I) when it paid the beneficiaries of the Klee and Winkler Policies within 15 days of receipt of *due proof of loss*. As a matter of law, the Plaintiffs fail to state a viable claim for imposition of §224(1)(I)'s 9% penalty interest rate. Because the putative class lacks a representative, and the "reasonableness" determination required by §224(1)(I) is inherently case specific, the class action allegations also should be dismissed.

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

The timeline of events preceding New England Mutual's payment of the beneficiary of the Klee Policy is not in dispute. The only disputed issue is legal in nature, namely, whether New England Mutual paid the beneficiary of the Klee Policy within 15 days of receipt of *due proof of loss*. The undisputed facts and the terms of the Klee Policy establish that New England Mutual paid the Policy's beneficiary within 15 days of receipt of the insured's birth certificate.

Confirmation of the insured's date of birth was necessary to verify the amount of benefits payable under the Klee Policy.

New England Mutual issued the Klee Policy on April 23, 1958 to the insured, Michael Klee. (3<sup>rd</sup> Am. Comp., ¶ 16; Ex. B, Klee Policy).<sup>3</sup> Mr. Klee designated the "Michael Klee Trust" as the beneficiary of his Policy. (3<sup>rd</sup> Am. Comp., ¶ 17; Ex. B, Klee Policy, pg. 14). At the time of Mr. Klee's death on August 13, 1996, attorney M. Scott Barrett was the successor Trustee of the Michael Klee Trust. (3<sup>rd</sup> Am. Comp., ¶ 18).

On September 10, 1996, New England Mutual received notification of Mr. Klee's death from attorney James Arndt, legal counsel for the Michael Klee Trust. (Ex. C, NEM Computer Entry). Based on information provided by Mr. Arndt, New England Mutual noted "pneumonia" as the cause of Mr. Klee's death, "August 13, 1996" as the date of Mr. Klee's death, and "January 4, 1929" as the date of Mr. Klee's birth. (Ex. C). By letter dated September 13, 1996, New England Mutual requested Mr. Arndt to submit (a) a certified copy of Mr. Klee's Death Certificate, (b) a Beneficiary's Statement completed by the successor Trustee, and (c) a copy of the Appointment and Acceptance of the successor Trustee. (Ex. D, Sept. 13, 1996 NEM Letter). In the September 13, 1996 letter, New England Mutual informed Mr. Arndt that the face value of the Klee Policy was \$24,405.00, and that the total amount payable to the Trust, less \$14,803 in loans taken out by Mr. Klee during his lifetime, would total approximately \$10,600.00. (Ex. D).

When, after two months, the successor Trustee failed to provide the requested documentation, New England Mutual sent a follow-up letter to Mr. Arndt dated November 11, 1996 stating, "To date we have not received any of the requirements needed to settle this claim.

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<sup>3</sup> References to "3<sup>rd</sup> Am. Comp., ¶ \_" are to the corresponding paragraph of Plaintiffs' Consolidated Third Amended Class Action Complaint. The abbreviation "NEM" refers to New England Mutual.

If there is anything I can do to assist in getting this matter resolved in a timely manner, please do not hesitate to contact me.” (Ex. F, Nov. 11, 1996 NEM Letter).

Nearly three months later, by letter dated November 18, 1996, Mr. Arndt mailed to New England Mutual’s Oak Brook, Illinois office a Beneficiary’s Statement signed by M. Scott Barrett, as successor Trustee, a certified copy of the Death Certificate, and Trust documents reflecting M. Scott Barrett’s appointment and acceptance as successor Trustee. (Ex. E, Nov. 18, 1996 Arndt Letter). The Beneficiary’s Statement signed by the successor Trustee provided clear notice that New England Mutual may require further information or proof if necessary:

The furnishing of the Beneficiary’s Statement shall not be deemed a waiver of any defense nor constitute an acknowledgement of any liability of the Company under any Policy. *The Company reserves the right to require further information or proof if deemed necessary.*

(Ex. E, Beneficiary’s Statement, pg. 2) (emphasis added). Mr. Arndt’s November 18, 1996 letter and enclosures were forwarded by the Oak Brook Office to New England Mutual’s Home Office in Boston, Massachusetts, where they were received on December 3, 1996.

The Death Certificate and Klee Policy Application, however, provided inconsistent information about Michael Klee’s date of birth. The Death Certificate identified “January 4, 1929” as Mr. Klee’s date of birth. The Policy Application, on the other hand, identified “January 4, 1930” as Mr. Klee’s date of birth. Under the Klee Policy, the date of birth is a factor that determines the amount of benefits payable at death. 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.” (Ex. B, Klee Policy, pg. 3). The Policy also contains a table establishing the cash value of the Policy based on Mr. Klee’s age. (Ex. B, Klee Policy, pg. 4).

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), as stated in New England Mutual's September 13, 1996 letter to Mr. Arndt. (Ex. D). The different dates of birth yield a potential \$711.00 difference in the face value of the Klee Policy. (Ex. G, NEM Dec. 4, 1996 Worksheet).

On December 5, 1996, therefore, New England Mutual's Oak Brook office requested that Mr. Arndt submit documentation such as a Birth Certificate verifying Michael Klee's correct date of birth. As stated in New England Mutual's letter to Mr. Arndt:

I'm sorry to have to contact you again regarding the claim on the above policy; however, the Home Office has requested birth date evidence as the date of birth on the death certificate differs from the date of birth on the policy application. Please provide us with a copy of Mr. Klee's birth certificate or any other documentation indicating his DOB [date of birth].

(Ex. H, Dec. 5, 1996 NEM Letter).

Before making payment, an insurer needs to know the amount of benefits due and payable. As part of its reasonable investigation, an insurer has the right and obligation to obtain documentation needed to determine the correct amount of benefits payable. See *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."). It was reasonable for New England Mutual to request verification of Michael Klee's date of birth before paying benefits, in order to confirm the amount of benefits payable.

Mr. Arndt provided a copy of Michael Klee's Birth Certificate to New England Mutual's Oak Brook office by letter dated December 10, 1996. (Ex. I, Dec. 10, 1996 Arndt Letter & Birth

Cert.). The Birth Certificate confirmed January 4, 1930 as Michael Klee's correct date of birth. Thus, the date of birth stated in the Death Certificate was incorrect. On December 16, 1996, the Oak Brook Office sent the Trustee's December 10, 1996 letter and Michael Klee's Birth Certificate to the Home Office, where it was received on December 20, 1996. (Ex. J, Dec. 16, 1996 Transmittal Letter). New England Mutual approved the Trustee's claim on December 20, 1996 and paid the claim on December 23, 1996. (3<sup>rd</sup> Am. Comp., ¶ 25; Ex. K, Dec. 20, 1996 NEM Claim Approval Letter). New England Mutual paid the successor Trustee's claim well within 15 days of receipt of Michael Klee's Birth Certificate. In fact, during his deposition, the Trust's attorney acknowledged, "If adequate proof of loss was not given until December 10<sup>th</sup>, then yes, New England did pay its benefit within 15 days." (Ex. L, Arndt Dep., pgs. 84-85).<sup>4</sup>

New England Mutual received *due proof of loss*, therefore, when it received the Birth Certificate confirming Michael Klee's date of birth. New England Mutual paid benefits to the Trustee on December 23, 1996, within 15 days of receipt of *due proof of loss*.

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

The timeline of events preceding MetLife's payment of claims under the Winkler Policy also are not in dispute. The only disputed issue is legal in nature, namely, whether MetLife paid the beneficiaries of the Winkler Policy within 15 days of receipt of *due proof of loss*. The undisputed facts and the terms of the Winkler Policy establish that MetLife paid the Policy's beneficiaries within 15 days of receipt of a Claim Form from the surviving beneficiaries. Confirmation of the number of living beneficiaries, or alternatively, confirmation that one or

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<sup>4</sup> At the time of his deposition, Mr. Arndt was the substitute Trustee of the Michael Klee Trust, replacing the successor Trustee, M. Scott Barrett. Mr. Arndt further testified that if "adequate proof of loss" was submitted on November 18, 1996—the date he mailed the Beneficiary Statement and Death Certificate with the incorrect date of birth to New England Mutual—then New England Mutual did not pay the claim within 15 days. (Ex. L, Arndt Dep., pgs. 84-85).

more beneficiaries predeceased the insured, was requested in this instance to verify the amount of benefits payable to each beneficiary under the Winkler Policy.

MetLife issued the Winkler Policy to the insured, Edward Winkler, on November 18, 1931. (3<sup>rd</sup> Am. Comp., ¶¶ 30, 45; Ex. M, Winkler Policy). Mr. Winkler initially designated his mother as the Policy's beneficiary. (Ex. M). However, he executed a Change of Beneficiary form on April 14, 2000 designating his three daughters, Patricia Wroblewski, Roberta Geotis and Marcella Caveney, as the Policy's primary beneficiaries. (Ex. N, Change of Beneficiary).

The Change of Beneficiary form provides for payment of the Policy's proceeds to the surviving designated beneficiaries in equal shares. (Ex. N). If one of the beneficiaries predeceased Mr. Winkler, that beneficiary's share of the proceeds would be divided equally among the surviving beneficiaries:

If multiple beneficiaries are named above, payment will be made in equal shares or all to the survivor, unless otherwise specified. The share of any beneficiary who shall predecease the Insured will be divided among the surviving beneficiaries in proportion to their interest, with all to the survivor.

(Ex. N).

The amount payable to each beneficiary, therefore, depends upon the number of beneficiaries who survive the insured. Indeed, MetLife's Claim Form specifies that each beneficiary must submit a separate claim form: "Each claimant must submit his or her own claim form." (Ex. O, Wroblewski Claim Form; Ex. P, Geotis Claim Form; Ex. Q, Caveney Claim Form). To confirm the amount properly payable to each beneficiary under these circumstances, either a completed Claim Form by each surviving beneficiary, or if applicable, proof that one or more beneficiaries predeceased the insured, needed to be submitted to MetLife. *Due proof of loss* was received when MetLife, as part of its reasonable investigation, obtained a

completed Claim Form from each surviving beneficiary or, if applicable, when MetLife received verification that one or more beneficiaries predeceased the insured.

Wroblewski submitted her Claim Form in person at MetLife's Downers Grove, Illinois office on October 23, 2006. (3<sup>rd</sup> Am. Comp., ¶ 35; Ex. P).<sup>5</sup>

Geotis signed her Claim Form on October 31, 2006 and subsequently mailed it to MetLife's Downers Grove office. (Ex. P; Ex. S, Geotis Dep., pgs. 18-20). The postmarked envelope establishes that Geotis's Claim Form was received and processed at the Bedford Park Post Office on November 1, 2006. (3<sup>rd</sup> Am. Comp., ¶¶ 49-50). Geotis's Claim Form was received at the Downers Grove Post Office the next day, on November 2, 2006, as confirmed by the postmarked envelope. (3<sup>rd</sup> Am. Comp., ¶ 50; Ex. P). Geotis's Claim Form was delivered to MetLife's Downers Grove Office one or two days later, on November 2 or 3, 2006. (3<sup>rd</sup> Am. Comp., ¶ 51).

The third and final beneficiary, Caveney, signed her Claim Form on November 2, 2006 and subsequently mailed it to MetLife's Downers Grove office. (Ex. Q). The postmarked envelope establishes that Caveney's Claim Form was received at the Bedford Park Post Office on November 4, 2006 (a Saturday). (Ex. Q). The envelope does not contain a postmark from the Downers Grove Post Office. Because the Post Office does not deliver mail on Sunday, the following Monday, November 6, 2006, is the earliest date Caveney's Claim Form could have been received at MetLife's Downers Grove office. Consequently, Caveney's Claim Form was delivered to MetLife's Downers Grove Office *no earlier than* Monday, November 6, 2006, one business day after the Bedford Post Office received Caveney's Claim Form.

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<sup>5</sup> In the Consolidated Third Amended Class Action Complaint, Plaintiffs allege that Wroblewski submitted her Claim Form to MetLife's Downers Grove Office on October 26, 2006. In her Supplemental Affidavit, Wroblewski states that the correct date was October 23, 2006, which is the date on the Claim Form. (Ex. R, Wroblewski Supplemental Affid., ¶ 5).

Calculating the receipt of Caveney's Claim Form at the Downers Grove Post Office one working day after it was stamped at the Bedford Park Post office is consistent with the postal handling of Geotis's envelope and Claim Form, which was stamped and processed by the Downers Grove Post Office one day after it was stamped and processed at the Bedford Park Post Office. Similarly, in the Consolidated Third Amended Class Action Complaint, Plaintiffs allege that the MetLife Downers Grove office would have received mail stamped in the Downers Grove Post Office on either the date of the Downers Grove stamp or the following day. (3<sup>rd</sup> Am. Comp., ¶ 51).

November 6, 2006, therefore, is the earliest date that MetLife's Downers Grove Office had in its possession all three signed Claim Forms. It is undisputed that MetLife paid Wroblewski, Geotis and Caveney on November 20, 2006. (3<sup>rd</sup> Am. Comp., ¶¶ 30, 52; Ex. R, Wroblewski Supp. Affid. ¶ 22; Ex. T, Geotis check; Ex. U, Caveney check). Payment was made to all three beneficiaries of the Winkler Policy, therefore, within 15 days of receipt by MetLife's Downers Grove Office of all three Claim Forms.

Wroblewski attempts to sever her claim from those of her sisters. But to confirm the amount properly payable to each beneficiary in this case, MetLife requested a completed Claim Form from each surviving beneficiary or, alternatively, verification that one or more beneficiaries predeceased the insured. Submission of Wroblewski's Claim Form, therefore, did not trigger the 15 day period for payment of post-mortem interest. MetLife received *due proof of loss*, for purposes of §224(1)(I), when MetLife received *all three* completed Claim Forms. That occurred no earlier than November 6, 2006. Payment was made 14 days later, 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)(I).

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)(I) by failing to provide notice to claimants of their right to obtain post-mortem interest under Illinois law. As a threshold matter, MetLife's claim forms contain the required disclosure, which properly notify the beneficiary at the time a claim is made. (Ex. V, Claim Form).<sup>6</sup>

Moreover, there is no private right of action under §224 authorizing Plaintiffs to obtain either monetary or declaratory relief for alleged violations of §224(1)(I). The Illinois Insurance Code provides that the Director of the Department of Insurance "is charged with the rights, powers and duties appertaining to the enforcement and execution of all the insurance laws of this State," including the power "to institute such actions or other lawful proceedings as he may deem necessary for the enforcement of the Illinois Insurance Code." 215 ILCS 5/401(d). See, e.g., *Mutz Residuary Trust*, slip. op. at pg. 4 (noting that the Circuit Court, Judge Kinnaird, held that "there is no private right of action to enforce section 224 of the Insurance code because the purpose of the statute was for the state to regulate the insurance industry."); *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 (7<sup>th</sup> Cir. 1999) (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

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<sup>6</sup> The MetLife/New England Mutual Claim Form states, "For contracts issued in and resident of Illinois only: Unless a payment is made by the Company on this claim within fifteen (15) days after receipt by due proof of loss, interest on the claim settlement will accrue at the rate of 9% from the date of death to the date of payment for the total amount payable."

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

Section 224(1)(I)’s post-mortem interest penalty does not impose strict liability whenever insurers pay claims more than 15 days after receipt of due proof of the insured’s *death*. Rather, the 15-day time period for paying post-mortem interest under §224(1)(I) is triggered when insurers receive *due proof of loss*. The standard for *due proof of loss* allows insurers to conduct a reasonable investigation in light of the circumstances of death and the provisions of the applicable insurance policy.

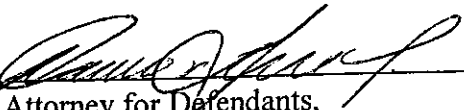
With respect to the Klee Policy, *due proof of loss* allowed New England Mutual to obtain verification of Michael Klee’s correct date of birth. This information was necessary to determine the amount of benefits payable under the Klee Policy. With respect to the Winkler Policy, *due proof of loss* allowed MetLife to obtain written confirmation of the number of beneficiaries seeking to recover the proceeds of the Policy. This information enabled MetLife to determine the amount of benefits payable to each beneficiary. In each instance, the information sought directly affected the amount of benefits payable to the beneficiaries. New England Mutual and MetLife paid the beneficiaries of the Winkler and Klee Policies within 15 days of receipt of *due proof of loss*, warranting entry of summary judgment for the Defendants.

Finally, because the putative class lacks a representative, the class action allegations of the Consolidated Third Amended Class Action Complaint also should be dismissed. Importantly, the “reasonableness” determination required by §224(1)(I) is inherently case specific, making the class action mechanism particularly ill-suited for this case.

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,

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

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

**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.** )

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**PATRICIA WROBLEWSKI, individually and** )  
**on behalf of all others similarly situated,** )

**Plaintiff,** )

v. )

**METROPOLITAN LIFE INSURANCE** )  
**COMPANY,** )

**Defendant.** )

**No. 05 CH 12181**

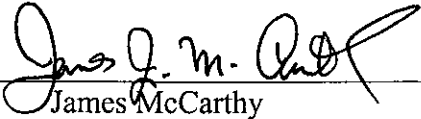
**No. 07 CH 00783**

**Hon. Dorothy K. Kinnaird**


**AFFIDAVIT – RECORDS VERIFICATION**

1. My name is James McCarthy. I am employed by Metropolitan Life Insurance Company as a Senior Technical Claims Advisor. I am familiar with the records maintained by Metropolitan Life Insurance Company, of itself and as successor to New England Mutual Life Insurance Company (collectively, "MetLife") and have responsibilities for maintaining MetLife's records.
2. Exhibits B, C, E, G, J, K, M, N, O, P, Q, T, U, and V to Defendants' Memorandum in Support of their Motion for Summary Judgment are true and correct copies of records maintained by MetLife as a regular practice, during regularly conducted activity, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person with knowledge of those matters, and are kept in the course of regularly conducted activity at MetLife.

3. Exhibits C, G and K to Defendants' Memorandum in Support of their Motion for Summary Judgment are true and correct copies of records made by MetLife as a regular practice, during regularly conducted activity, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person with knowledge of those matters, and are kept in the course of regularly conducted activity at MetLife.
4. The date stamp entries on Exhibits C, E, G, J, K and on the second page of Exhibits O and P to Defendants' Memorandum in Support of their Motion for Summary Judgment are record entries created by MetLife as a regular practice, during regularly conducted activity, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person with knowledge of those matters, and are kept in the course of regularly conducted activity at MetLife.
5. Exhibit V to Defendants' Memorandum in Support of their Motion for Summary Judgment is a true and correct copy of MetLife's Individual Life Death Claim Form, utilized to process MetLife life insurance claims.

  
James McCarthy

SUBSCRIBED and SWORN to before me  
this 7<sup>th</sup> day of December 2009.

  
Notary Public

