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# Joseph M. Belth

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## No. 253: Long-Term Care Insurance—Metropolitan Life Suffers a Setback in a Class Action Lawsuit Relating to Premium Increases

On February 6, 2018, a federal appellate court handed Metropolitan Life Insurance Company a setback in a class action lawsuit relating to premium increases on certain long-term care (LTC) insurance policies. A district court judge granted the company's motion to dismiss the complaint, but a three-judge appellate panel unanimously reversed the decision and sent the case back to the district court for further proceedings. Here I discuss this extraordinary case. (See *Newman v. Metropolitan*, U.S. District Court, Northern District of Illinois, Case No. 1:16-cv-3530, and U.S. Court of Appeals, Seventh Circuit, Case No. 17-1844.)

### The Complaint

On March 23, 2016, Margery Newman, an Illinois resident, filed a class action complaint against Metropolitan. The case was assigned to U.S. District Court Judge Thomas M. Durkin. President Obama nominated him in May 2012, and the Senate confirmed him in December 2012.

On June 29, 2016, Newman filed a first amended complaint, on which the discussion here is based. She was aged 56 when she purchased an "LTC Premier" policy that was effective September 1, 2004. The policy included a "reduced-pay at 65 option," which she selected. Metropolitan's marketing brochure described the option as follows:

**By paying more than the regular annual premium amount you would pay each year up to the Policy Anniversary on or after your 65th birthday, you pay half the amount of your pre-age 65 premiums thereafter.**

Before Newman turned 65, the semiannual premium was \$3,813.68. On September 1, 2012, the semiannual premium declined by 50 percent, to \$1,906.84. On March 1, 2015, Metropolitan increased the semiannual premium by 102 percent, to \$3,851.81.

In her complaint Newman suggested a definition of the "class" for purposes of this case. Here is her suggestion:

**All persons age 65 and older in the United States who purchased an individual long-term care insurance policy from MetLife (or a subsidiary or affiliate thereof) and selected the "Reduced-Pay at 65 Option" at any time during the period from June 1, 1986 to the present and have been subjected to a class-wide rate increase that increased their premiums above and beyond the promised 50% of their pre-age 65 premiums.**

Newman alleged breach of contract, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, fraud, and fraudulent concealment. She sought class certification, compensatory and punitive damages, statutory and exemplary damages, imposition of a constructive trust, a claims resolution facility, attorney fees, and costs. She attached several exhibits to the complaint, including Metropolitan's marketing brochure and the policy under discussion.

### The Dismissal

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On July 29, 2016, Metropolitan filed a motion to dismiss the complaint for failure to state a claim. On March 9, 2017, after briefing, Judge Durkin issued a memorandum and order dismissing the complaint without prejudice. Here is the concluding paragraph (persons interested in Judge Durkin's reasoning are invited to read his ruling, which is part of the complimentary package offered at the end of this post):

**For the reasons stated above, Plaintiff's complaint is dismissed. The dismissal is without prejudice, however, and Plaintiff may move to amend her complaint within 30 days of the date of this Order. Any such motion should attach a proposed amended complaint and be supported by a brief of no more than five pages describing how the proposed amendments cure the deficiencies in the current complaint. Defendant should not respond to the motion to amend unless ordered to do so by the Court. If after 30 days no motion to amend is filed, this dismissal will be converted into a dismissal with prejudice.**

On April 7, 2017, Newman filed a motion for leave to file a second amended complaint, attached the second amended complaint, and submitted a short memorandum in support of the motion. On April 12, at a motion hearing, Judge Durkin denied the motion for reasons he stated orally, and he dismissed the complaint with prejudice.

### **The Appellate Court Case**

On April 21, 2017, Newman filed a notice of appeal to the Seventh Circuit. On June 12 she filed her brief. On July 12 Metropolitan filed its brief. On July 26 Newman filed a reply brief.

The case was assigned to a panel consisting of Chief Judge Diane P. Wood and Circuit Judges Frank H. Easterbrook and Ilana Diamond Rovner. President Clinton nominated Judge Wood in March 1995, the Senate confirmed her in June 1995, and she became Chief Judge in 2013. President Reagan nominated Judge Easterbrook in February 1985, the Senate confirmed him in April 1985, and he served as Chief Judge from 2006 to 2013. President George H. W. Bush nominated Judge Rovner in July 1992, and the Senate confirmed her in August 1992.

On February 6, 2018, the panel filed its unanimous decision, which Chief Judge Wood wrote. The decision reversed the district court's dismissal of the complaint and sent the case back to the district court for further proceedings. Here is the final paragraph of the panel's decision:

**Newman asserts that MetLife lured her into a policy by promising a trade of short-term expense for long-term stability. She took the deal and spent nine years investing in a plan, only to have MetLife pull the rug out from under her. Neither MetLife's brochure nor the terms of the policy forecast this possibility. These allegations were enough to entitle her to prevail on the liability phase of her contract claim, and they are enough to permit her to go forward on her other theories. We therefore REVERSE the district court's grant of MetLife's motion to dismiss and REMAND for further proceedings.**

On the same day Judge Durkin set a status hearing for the morning of February 16. What will emerge from the hearing and what will happen in the "further proceedings" remain to be seen.

### **General Observations**

At the outset I said this case is extraordinary. It may also be unusual, because I think it is unlikely that many policyholders would have signed up to pay higher premiums initially in order to qualify for lower premiums later. If the complaint survives dismissal, which seems likely now, if Metropolitan does not settle quickly, if a class is certified, and if the parties agree to settle the case rather than go to trial, we may learn about the magnitude of the problem through the terms of the settlement agreement. It is also important to recognize that Metropolitan stopped selling LTC insurance policies several years ago, and is currently engaged in administering and running off its existing block of LTC insurance policies. I plan to follow this case and report further developments.

### **Available Material**

I am offering a complimentary 58-page PDF consisting of the first amended complaint without exhibits (14 pages), Judge Durkin's memorandum and order (28 pages), and the appellate court panel's ruling (16 pages). Email [jmbelth@gmail.com](mailto:jmbelth@gmail.com) and ask for the February 2018 package about *Newman v. Metropolitan*.

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