

19TH JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH, LOUISIANA

DONALD W. ABSHIRE, ET AL.

-versus-

THE STATE OF LOUISIANA, ET AL.

CIV. ACTION NO. 377,713 c/w NO. 412,265

DIV. "M"
THE HONORABLE KAY BATES

FILED: _____

DEPUTY CLERK

PETITIONERS' NINTH AMENDED AND SUPPLEMENTAL PETITION

NOW INTO COURT, through undersigned counsel, come the Petitioners referenced in Paragraph 1 below, all being either persons of the full age of majority or entities authorized by law to maintain legal actions, and all being either policyholders, annuity holders, noteholders, equity owners, or holders of some other financial interest in, or affected by, Public Investors Life Insurance Company and/or Midwest Life Insurance Company and/or Public Investors, Inc., who respectfully represent as follows:

CLASS ALLEGATIONS

1.

The Plaintiffs are individuals and associations who are either policyholders, annuity holders, and/or note holders of Public Investors Life Insurance Company (hereinafter "PILICO"), Midwest Life Insurance Company ("Midwest"), and/or Public Investors, Incorporated ("PICO"). Petitioners are residents of various parishes throughout the State of Louisiana.

1(A). Plaintiffs bring this action on behalf of themselves and, under Louisiana Code of Civil Procedure Articles 591 – 593, as representatives of a Class defined as follows:

1(A)(i). All persons or entities in the United States who filed suit against the State of Louisiana and/or its Department of Insurance or Office of Financial Institutions for damages caused by the State's conduct in connection with the failure of Public Investors Life Insurance Company, Inc., and whose claim was consolidated into Civil Action No. 377,713 or NO. 412,265 (captioned *Donald W. Abshire, et al., vs. The State Of Louisiana, et al.*);

1(A)(ii). All persons or entities in the United States who filed suit against the State of Louisiana and/or its Department of Insurance or Office of Financial Institutions for damages caused by the State's conduct in connection with the failure of Public Investors, Inc., and whose claim was consolidated into Civil Action No. 377,713 or NO. 412,265 (captioned *Donald W. Abshire, et al., vs. The State Of Louisiana, et al.*);

1(A)(iii). All persons or entities in the United States who filed suit against the State of Louisiana and/or its Department of Insurance or Office of Financial Institutions for damages caused by the State's conduct in connection with the failure of Midwest Life Insurance Company, and whose claim was consolidated into Civil Action No. 377,713 or NO. 412,265 (captioned *Donald W. Abshire, et al., vs. The State Of Louisiana, et al.*);

1(A)(iv). Excluded from the Class are any persons or entities to the extent their claims in Civil Action No. 377,713 or No. 412,265 have been resolved by a final, unappealable judgment, including those claims dismissed as a result of the rulings of the United States District Court, Western District of Louisiana, No. 06-1368.

1(B) For the benefit of efficiency and clarity, and pursuant to La. Code Civ. P. art. 592, the Class shall be divided into the following subclasses, with the identified Class Representative for each subclass representing all interest of the Class that fall within the corresponding subclass:

1(B)(i) Public Investors Life Insurance Company ("Pilico") Subclass:

Subclass Representative: Jimmie Nelle Rabalais Lewis, a PILICO life insurance policy owner and PILICO annuity owner and annuitant, who was deposed on September 5, 2001, in the above captioned matter, and resides at 2808 Hill Street, Alexandria, LA 71301.

Subclass Representative: Terry DeMoss Goodrich, a PILICO annuity owner and annuitant, who was deposed on November 29, 2001, in the above captioned matter, and resides at 248 Vance Road, Benton, LA 71006.

Subclass Representative: Bob Sparks, a PILICO annuity owner and annuitant, who was deposed on October 30, 2001 in the above captioned matter, and resides at 808 Windermere, Alexandria, LA 71303.

1(B)(ii) Public Investors, Inc. ("PICO") Subclass:

Subclass Representative: Patricia Dale Riddick DeWitt, a PICO note owner, who was deposed on September 6, 2001, and resides at 154 Sunridge Road, Alexandria, LA 71302.

Subclass Representative: Bob Wagner, a PICO employee savings account holder, who was deposed on August 23, 2001, in the above captioned matter, and resides at 116 Steeplechase Circle, West Monroe, LA 71291.

1(B)(iii) Midwest Life Insurance (“Midwest”) Subclass:

Subclass Representative: Sylvia Lemoine, a Midwest annuity owner and annuitant, who was deposed on October 29, 2001, in the above captioned matter, and resides at 147 William Guillory Road, Plaquemine, LA 71362

Subclass Representative: Marcelle D. Lacombe, a Midwest annuity owner and annuitant, who was deposed on August 20, 2001, in the above captioned matter, and resides at 101 Sandy Lane, Marksville, LA 71351.

1(C). Members of the Class are so numerous that joinder, while physically possible – *i.e.*, they can be named – makes management of the litigation impracticable from the standpoint of the Court and the parties and has proved prohibitive of progressing the matter to trial. There are hundreds of Class members. The members of the Class are readily identifiable from information and records in Civil Action No. 377,713 or NO. 412,265 (captioned *Donald W. Abshire, et al., vs. The State Of Louisiana, et al*) and are in the possession of Defendant, the State of Louisiana and its departments and agencies.

1(D). Plaintiffs’ claims are typical of the claims of the members of the Class, and its subclasses. Plaintiffs and all members of the Class were damaged by the same wrongful conduct by Defendants, *i.e.*, they lost funds placed in the care of certain companies regulated by the State of Louisiana through the negligent, grossly negligent, and/or intentional misconduct of the State of Louisiana by and through its employees, officials, departments, and offices, as more fully described in the following pages.

1(E). Plaintiffs will fairly and adequately protect and represent the interests of the Sub-Class they represent. Plaintiffs’ interests are coincident with, and not antagonistic to, those of their Sub-Class. Several of the Plaintiffs have shouldered the burdens of a fiduciary relationship to the Class members as Directors of the Pico/Midwest Action Group (“PMAG”).

1(F). Plaintiffs are represented by counsel who are experienced and competent. All undersigned counsel have particular experience with the complex facts of this case. The firms of Percy, Smith & Foote, LLP and Odom & Des Roches, LLP have experience in the prosecution of class action litigation, including extensive experience with complex multi-state antitrust class action litigation.

1(G). As the long history of this case makes abundantly clear, questions of law and fact common to the members of the Class predominate over questions, if any, that may affect only

individual Class members because Defendants have acted on grounds applicable to the entire Class. Such generally applicable conduct is inherent in the Defendants' wrongful conduct. Questions of law and fact common to the Class include: (1) whether Defendants owed a duty to the Class; (2) whether Defendants breached their duty to the Class; and (3) whether Defendants' breach of duty damaged the Class.

1(H). As the long and tortured history of Civil Action No. 377,713 or No. 412,265 (captioned *Donald W. Abshire, et al., vs. The State Of Louisiana, et al*) makes clear, class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons, whose claims range from moderate to sizable, to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions has already, and would further engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that it might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action. This is particularly true here, where the parties have completed extensive discovery (including far more than 500 depositions) and proclaimed to the Court on multiple occasions that they are ready for trial.

1(I). Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

2-166.*

Paragraphs 2-166 of the Seventh Amended Petition are hereby incorporated by reference without change.

167-201.

Paragraphs 167-201 of the Eighth Amended Petition are hereby incorporated by reference without change.

* For the Court's convenience, the Prayer for relief after paragraph 165 in the Seventh Amended Petition, as Amended pursuant to this Court's Order, has been relocated to and consolidated with paragraph 202, the Prayer for Relief from the Eighth Amended Petition to eliminate duplication

PRAYER FOR RELIEF

The acts and omissions of the Defendants, as described herein, entitle the Petitioners to a Judgment against the Defendants jointly, severally, and in solido, as follows:

- a. Rescinding their purchases of insurance policies, annuities, and notes, as the case may be, awarding them restitution of all monies tendered and consideration paid therefor, and ordering legal interest from the date the consideration was paid by each Petitioner; and
- b. Alternatively, for all damages, including, but not limited to, the following:
 - (i) Loss of insurability by certain Petitioners who became uninsurable over an extended period of time during which Defendants continued to engage in acts and omissions as herein alleged, and concealment by the Defendant of the financial condition of the insurance companies named herein;
 - (ii) Loss of payment of insurance and annuity proceeds and other amounts due and payable, as a consequence of the occurrence of events covered by insurance and annuity contracts between certain Petitioners and the insurance companies referred to herein;
 - (iii) Loss of cash values and any other amounts (together with any and all additions thereto, including, but not limited to, dividends and interest) accrued under and in accordance with insurance and annuity contracts between certain Petitioners and the insurance companies referred to herein;
 - (iv) Loss of premiums and any other consideration paid for all insurance and annuity contracts that were in fact worthless when purchased or which became worthless during such time periods that the companies named herein were hopelessly insolvent and during which time period such insolvency was concealed by the Defendants and/or such companies were misrepresented by the Defendants to be solvent thereby causing and/or inducing Petitioners to pay said premiums;
 - (v) Loss of principal and any other consideration invested in annuity contracts and income and additions accrued and accumulated on said amount or amounts invested in annuity contracts issued by the insurance companies referred to herein to certain Petitioners;
 - (vi) Loss of principal and any other consideration invested in notes and other securities, instruments, and contracts together with all income and additions accrued and accumulated on or in connection with same, between certain Petitioners and companies referred to herein;
 - (vii) Impairment of the financial condition and credit worthiness of certain Petitioners;

- (viii) Losses of homes, farms, businesses, income, profits and any and all immovable and movable property by certain Petitioners resulting from the financial ruin of these certain Petitioners due to the failure and collapse of the companies named herein;
- (ix) Damages to financial standing and reputation of certain of the Petitioners;
- (x) Pain, suffering, embarrassment, humiliation, emotional distress, and mental anguish resulting from the financial from the financial chaos and ruin experienced by the Petitioners;
- (xi) Any and all other damages of every nature and kind suffered and to be suffered by Petitioners as a consequence of the acts and omissions of the Defendants.
- (xii) The Court determine that this action may be maintained as a class action pursuant to Louisiana Code of Civil Procedure Articles 591 - 593, and direct that reasonable notice of this action, as provided by Code of Civil Procedure, be given to the Class;
- (xiii) Each member of the Class recover the damages determined to have been sustained by each of them;
- (xiv) The Class recover their costs of suit, including reasonable attorneys' fees as provided by law; and
- (xv) The Class be granted such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

203.

Paragraph 203 of the Eighth Amended Petition is hereby incorporated by reference without change.

Respectfully submitted, this 30th day of May, 2008, at Baton Rouge, Louisiana.

THE SMITH FOOTE LAW FIRM, LLP

By: 

David P. Smith (La. No. 12159)
David C. Raphael, Jr. (La. No. 22853)
P.O. Box 1632
Alexandria, LA 71309-1632
Telephone: (318) 445-4480

ODOM & DES ROCHES, LLP

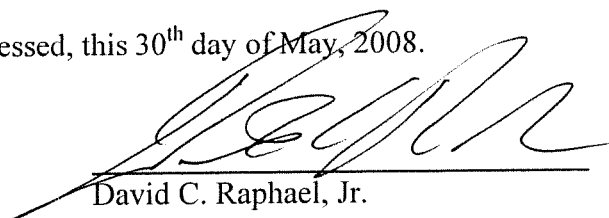
John Gregory Odom (La. No. 1109)
Stuart E. Des Roches (La. No. 21902)
Charles F. Zimmer II (La. No. 26759)
John Alden Meade (La. No. 29975)
Suite 2020, Poydras Center
650 Poydras Street
New Orleans, LA 70130
Telephone: (504) 522-0077

DAN B. MCKAY, JR.
404 Walnut Street
P. O. Box 720
Bunkie, LA 71322
Telephone: (318) 346-2336

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served pursuant to La.C.C.P. arts. 1311 through 1314, on all counsel of record for the parties herein identified, having been previously effectively served and having subjected themselves to the jurisdiction of this Court, electronically and by placing same in the United States mail (without exhibits pursuant to La. C.C.P. art. 1311), postage prepaid and properly addressed, this 30th day of May, 2008.



David C. Raphael, Jr.

All Counsel Service List

David M. Latham
Keary L. Everitt
Everitt, Pratt & Latham, LLC
400 Poydras, Suite 2107
New Orleans, LA 70130

Larry Larmann
Joseph Spilman, III
P. Michael Breeden
David C. Fawley
Hailey, McNamara, Hall, Larmann, & Papale, L.L.P.
One Galleria Blvd., Suite 1400
Metairie, LA 70001

James M Garner
Martha Y. Curtis
Thomas J. Madigan, II
Sher Garner Cahill Richter Klein McAlister & Hilbert, LLC
909 Poydras Street
28th Floor, Suite 2800
New Orleans, LA 70112

Craig V. Sweeney
Paul D. Palermo
Spyridon Koch & Palermo
3838 N. Causeway Blvd, Ste 3010
Metairie, LA 70002

Susan Luther
Jon E. Elenius
Cortner McNaboe Colliam & Elenius
333 S. Wabash, 25 Floor
Chicago, IL 60604

David Salley
John Hite
Salley, Hite, Rivera, & Mercer
365 Canal St., Suite 1710
New Orleans, LA 70130

John B. Dunlap, III
James E. Moore, Jr.
Scott Mercer
Carleton Dunlap Olinde & Moore, LLC
One American Place, Suite 900
Baton Rouge, LA 70825

Rachel S. Kellogg
Timothy G. Schafer
Schafer & Schafer
328 Lafayette Street
New Orleans, LA 70130

Ralph Hubbard
Joseph P. Guichet
Lugenbuhl, Wheaton, Peck, Rankin & Hubbard
Pan-American Life Center, Suite 2775
601 Poydras Street
New Orleans, LA 70130

Michael C. Pfister
Duplass, Zwain, Bourgeois & Morton
3838 N. Causeway Blvd, Ste. 2900
Metairie, LA 70002

Meredith Keenan
Emily K. Greenfield
Robert I. Seigel
Gieger, Laborde & Laperouse, LLC
One Shell Square
701 Poydras Street, Suite 4800
New Orleans, LA 70139-4800

Dan B. McKay, Jr.
404 Walnut Street
P.O. Box 720
Bunkie, Louisiana 71322

Charles F. Zimmer, II
John Gregory Odom
Stuart Des Roches
Odom & DesRoches, LLP
650 Poydras Street
Suite 2020, Poydras Center
New Orleans, LA 70130