

Third Time Is the Charm: Class Certified in DMF-Related Shareholder Suit

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In *City of Westland Police & Fire Retirement System v. MetLife*, the plaintiffs allege that the insurer overstated its earnings because it did not hold sufficient reserves for death benefit claims on group life insurance policies that were incurred but not reported. Although MetLife used the Social Security Administration's Death Master File (DMF) to terminate annuity benefits, it did not use the DMF consistently enough to trigger life insurance benefits, according to the plaintiffs. The shareholders claim that it was only after regulators began investigating this activity that the insurers revealed the scope of the regulatory investigations, and that they also took tens of millions of dollars in charges against their reserves. The complaint alleges that stock prices fell after these revelations, causing shareholders economic harm. While the first two iterations of this lawsuit were largely dismissed by the Southern District of New York, the third amended complaint found a bit more traction with the court. The key difference was that the plaintiffs finally claimed that in 2007 MetLife searched the DMF for individual life policies, uncovered \$80 million in unclaimed benefits, and therefore increased its reserves by \$25 million; it did not, however, search its group life policies against the DMF until 2010 through 2011. In a November 2016 ruling, the district court found that the fact that its reserves increased after the initial search gave rise to a plausible allegation that MetLife's general statements about its reserving were material misrepresentations or omissions. The new allegation was insufficient, however, to lead to a plausible inference of scienter for plaintiff's Section 10(b) claims. Thus, the only claims to survive the pleading stage were claims under Sections 11 and 15 of the Securities Act of 1933, for losses allegedly traceable to two public offerings of approximately 230 million shares of common stock, because the court did not require a pleading of scienter, reliance, or loss causation for those claims. Nearly a year later, on September 22, the district judge adopted the magistrate's recommendation that the class be certified. The court determined that common issues predominated, as the plaintiffs alleged that MetLife made uniform misrepresentations through the offering materials, and each class member then purchased the stock. The materiality of the statements, held the judge, would be based on objective criteria.

Despite evidence that the lead plaintiff was in a precarious financial situation and that it previously agreed to a consent decree with its regulator years ago, the court also found that it was an adequate and typical representative. The plaintiffs have since filed a fourth amended complaint in an attempt to cure the scienter deficiencies, and MetLife has already moved to dismiss.

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