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Ohio State and Federal Courts Reject Class Actions Alleging That Life Insurers Have an Affirmative Duty to Undertake Death Matches

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In three putative class actions brought by private plaintiffs seeking to require life insurers to undertake death matches, Ohio state and federal trial courts have held that the plaintiffs lack standing to pursue such claims, with the state court also holding that the claims fail on the merits because they conflict with the policies' plain language. These cases, *Andrews v. Nationwide,*[2] *Stevenson v. Western & Southern,*[3] and *Range v. The Cincinnati Life Insurance Company,*[4] made up a series of putative class actions raising issues involving life insurers and the Social Security Death Master File (SSDMF) that were brought following significant regulatory activity relating to unclaimed property issues in the life insurance industry. The complaints had alleged that the defendant insurers had an affirmative duty to search the SSDMF at least annually for possible deaths of insureds under life insurance policies and to pay death benefits without requiring any further notice of death.

In the complaints, the plaintiffs alleged that although they were alive, the "actuarial probability" of their mortality was greater than 70%.[5] They alleged that the insurer's duty of good faith and fair dealing required it to check the SSDMF, at least on an annual basis, to see whether any insureds at or above the asserted 70% death probability threshold have died, and to pay insurance proceeds "even in the absence of a submission of proof of death." The plaintiffs proposed to represent a putative class of other individuals whose probability of death was greater than 70%. They sought an injunction requiring defendants to search for deaths at least annually, a declaratory judgment to the same effect and a further declaratory judgment that, as to deceased class members, defendants must "pay the proceeds of the insurance contract, without first requiring further notice of death, together with that rate of interest that the Court may determine . . . ." They also asserted a breach of the duty of good faith and fair dealing and a claim for unjust enrichment.

In three separate decisions, a state trial court and a federal district court for the Northern District of Ohio have held that plaintiffs lacked standing to bring these claims.[6] These courts reasoned that the alleged

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2 *Andrews v. Nationwide,* No. CV 11 756463 (Court of Common Pleas, Cuyahoga County, Ohio, filed May 31, 2011), order granting motion to dismiss (January 19, 2012). After filing, the case was removed to federal court. No. 1:11-CV-1379 (N.D. Ohio). On October 26, 2011, the court granted the plaintiffs' motion to remand, holding that the defendants had failed to establish that the amount in controversy exceeded $5 million. 2011 WL5118309. The insurer filed a petition with the Sixth Circuit seeking permission to appeal the remand, which was withdrawn after the state court issued its order dismissing the case on the merits.

3 *Stevenson v. Western & Southern Mutual Holding Co. et al.*, No. 1:11-cv-01354-JG (N.D. Ohio, removed July 1, 2011) (Order granting in part motion to dismiss and motion for summary judgment March 27, 2012), originally No. CV-11-755966 (Court of Common Pleas, Cuyahoga County, Ohio, filed May 24, 2011).

4 *Range v. The Cincinnati Life Insurance Co.,* No. 1:11-cv-01367-JG (N.D. Ohio, removed July 5, 2011) (Order granting in part motion to dismiss and motion for summary judgment March 27, 2012), originally filed as No. CV 11 756167 (Court of Common Pleas, Cuyahoga County, Ohio, filed May 26, 2011). A fourth case was settled on an individual basis. *Koenig v. Western & Southern,* No. 1:11-cv-01355-DAP (N.D. Ohio, removed on July 1, 2011), originally filed as No. CV LL 756614 (Court of Common Pleas, Cuyahoga County, Ohio, filed June 2, 2011).

5 In the *Range* case, the asserted death probability threshold was 60% rather than 70%, as in the other cases.

6 *Supra*, notes 2-4.

future injury was too speculative because the plaintiffs were still living. In the *Andrews* decision, the state court noted that "there is nothing more certain in human life than death," but found that it was "mere speculation" that plaintiffs' beneficiaries would be unaware of the policies and fail to submit claims after the plaintiffs died. In *Stevenson* and *Range* (issued on the same date by the same federal district judge), the court found that the plaintiffs' alleged injury was "highly speculative" and therefore insufficient to establish constitutional standing in federal court. Finding no standing in federal court, the district court remanded *Stevenson* and *Range* to the state court of Cuyahoga county.

The decision by the state court in *Andrews* also rejected the claims on the merits, holding that that the claims were foreclosed by the express terms of the policies. This decision is the first merits ruling on these issues in private litigation. The court held that the contract placed the burden on the beneficiaries to file a claim and submit proof of death as a condition precedent to payment of death benefits. The policies at issue required the insurer to pay benefits upon receipt of "due proof of death," a provision required by Ohio statutory law. The court held that this condition in the contract "creates a clear and unambiguous condition precedent . . . that requires . . . proof of death for their life insurance claims to be honored." With respect to the plaintiffs' claims that the insurer should be required to affirmatively undertake death matches, the court declined to "import additional unspoken duties and obligations onto the Defendants that will conflict with parties' contracted terms." For these reasons, the court granted the motion to dismiss in full. The plaintiffs have filed a notice of appeal to the Ohio Court of Appeals.

The death matching issues have primarily been the focus of state regulatory action rather than private litigation. Insurance industry practices regarding use of the SSDMF are already under scrutiny by state officials in multistate market conduct examinations and unclaimed property audits. The pace of state action continues to increase. Numerous insurance companies are subject to unclaimed property audits by multiple states, and a number of state insurance regulators are investigating insurers' practices with respect to SSDMF searches and payment of death benefits under life insurance policies.