

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.

LEONARD D. SCHUTT and)
CAROL A. SCHUTT, individually and)
on behalf of all others similarly situated,)
)
Plaintiffs,)
)
)
)
)
vs.)
)
AMERICAN UNITED LIFE INSURANCE)
COMPANY,)
)
Defendant.)

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Leonard D. Schutt and Carol A. Schutt, for their complaint against defendant American United Life Insurance Company (AUL), state as follows:

- 1. Plaintiffs are individuals residing in Indianapolis, Indiana who are members and policy holders in AUL.
- 2. Plaintiff Leonard D. Schutt, as Trustee, owns seven AUL policies, including policy numbers 16-1229574, G 26-3, 1 116 194, 1 126 366, 1 036 561, 1 317 182, and 1 075 666, as identified in Exhibit A. Plaintiff Carol A. Schutt owns one AUL policy number 16-1781179 as identified in Exhibit B.
- 3. Defendant AUL is a mutual life insurance company organized under the laws of the State of Indiana. It maintains its headquarters in Indianapolis, Indiana.

4. As a mutual insurance company, AUL is owned by its members. It does not have stockholders or publicly traded shares.

5. Instead, it is owned by its policyholders.

6. AUL changed the definition of a mutual insurance company on its website to obscure this fact. In June 1999, AUL's website forthrightly and simply defined a mutual insurance company as "(a)n insurance company that is owned by its policyholders."

7. By September 1999, this definition had been changed to state that a mutual insurance company is one where policyholders who own participating policies are considered members, that membership rights include voting for directors, receiving participating dividends, and receiving some pro rata share of the remainder of the company if it is ever dissolved.

Introduction

8. AUL proposes to reorganize itself into a mutual insurance holding company structure pursuant to a Plan of Reorganization. The reorganization has fundamental implications for its policyholders – the most basic of which is that they will receive no consideration for their ownership interests whereas mutual insurance companies that have demutualized and gone to stock ownership have distributed hundreds of millions to dollars to their policyholders/members as payment for their ownership interests.

9. AUL has solicited the proxies of its members through a Policyholder Information Statement that buries this important disclosure.

10. As explained by the Court in Butler v. Provident Mutual Life Insurance Co., 1999 Phila. Cty. Rptr. LEXIS 16 (Common Pleas Ct. Phila. Co., September 16, 1999) (copy of Opinion attached as Exhibit C) when it enjoined a similar conversion unless revised disclosures were made:

To enable policyholders to make an informed decision to approve the plan, the information statement must “fairly describe the proposed conversion plan”. ... to fairly describe the proposed conversion, the information statement must not generalize the risks of the plan while specifying its benefits, must not omit information needed to give a balanced discussion to critical components of the plan, and must not fail to explain certain important words and phrases. The court finds that the information statement Provident provided to policyholders did all those things.

Op. at p. 23.

11. This suit is brought as a class action to require that revised improved disclosures be made to AUL members just as improved disclosures were ordered to be made to Provident Mutual policyholders (notwithstanding the approval of the statement by the Pennsylvania Department of Insurance).

12. The Policyholder Information Statement sent out by AUL buries the following disclosures so that AUL members (many of whom are senior citizens) will not be effectively aware of the following:

a. If AUL followed the alternative of demutualization, ie. if AUL became a publicly owned company with publicly traded shares, as other mutual insurers have recently done, then current AUL members, in aggregate, would receive \$575 million. Each AUL member would receive stock or cash.

b. For many AUL members, the value of this distribution would be several thousand dollars. Under AUL’s proposed plan, AUL members will receive nothing. These crucial facts are buried at page 24 of the present disclosure statement and the amount of the surplus does not appear in the Summary section. Furthermore, when the disclosure is finally made, AUL gives undue emphasis to stating that policy holders should not rely upon receiving, in aggregate, \$575 million.

c. AUL members are not plainly told that the mutual holding company concept has not fared well on Wall Street and that other recent mutual holding company reorganizations have not worked out well for members.

Exhaustion of Administrative Remedies and Demand to AUL Board

13. A hearing was held before the Department of Insurance on August 23, 2000 to get the approval of the Indiana Commissioner of Insurance for the reorganization plan. However, since AUL did not submit the revised Plan to the Commissioner on or about August 10th, AUL members/policyholders did not have reasonable time to review the revised Plan.

14. On September 27, 2000 the Commissioner issued an Order approving the Plan with certain revisions being required in the Policyholder Information Statement. On October 11, 2000, the Commissioner issued a further Order approving the revisions. On October 18, 2000, plaintiffs notified the Commissioner of their objections to the revised Policyholder Information Statement. (See letter dated October 18, 2000 attached as Exhibit D.) The Commissioner has not yet responded to the objections.

15. In addition, plaintiffs made a formal demand on the AUL Board by letter of October 20, 2000 asking that supplemental revised disclosures be made. (See letter dated October 20, 2000 attached as Exhibit E.) The Board did not respond to the demand letter.

Unfairness of AUL's Information Statement

16. One of the principal alternatives to the restructuring is a demutualization where members would receive cash or stock in return for their ownership interests. According to testimony of Alan Griswold, Vice President of Corporate Planning at AUL, given on August 23, 2000 before the Indiana Department of Insurance, "approximately \$575 million would be available for distribution"

to members if the company were to demutualize instead of its proposed reorganization. (See Transcript p. 78 attached as Exhibit F hereto.)

17. In the proxy materials asking members to vote “yes” on the proposed reorganization, it is crucial that AUL communicate to members that under the demutualization option, they would share in a \$575,000,000 distribution of stock and/or cash; whereas they will not do so under the company’s proposed reorganization plan.

18. The effect of the restructuring will be that \$575 million that would be distributed to members under a demutualization will not be distributed to them. Under the proposed reorganization, members will not receive compensation.

19. The reorganization is being done pursuant to a recently enacted statute, the Indiana Mutual Insurance Holding Company Law, Indiana Code 27-14 (Act).

20. Under the Act, a plan of reorganization filed with the Commissioner of the Indiana Department of Insurance must:

(A) describe the reasons for and purposes of the proposed reorganization;

(B) describe the manner in which the reorganization is expected to benefit and serve the best interests of the members; and

(C) include an analysis of the risks and benefits to the MIC [mutual insurance company] and its members of the proposed reorganization, and compare those risks and benefits with the risks and benefits of reasonable alternatives (including demutualization of the MIC) to the reorganization.

Ch. 2, Sec. 5(3) of Act.

21. The Policyholder Information Statement which AUL sent to its members to solicit their

votes in support of the plan is incomplete and misleading. The Summary Section of the Policyholder Information Statement is attached hereto as Exhibit G.

22. First and foremost, the Policyholder Information Statement fails to meaningfully disclose a simple point to AUL owners/members: that they are currently the owners of a valuable company, and that under the proposed restructuring, they will not receive \$575 million; whereas under the alternative of demutualization, they would receive \$575 million.

23. The Policyholder Information Statement omits to state that many other leading life insurance companies who recently reorganized into stock companies gave their members cash or shares in the new company to compensate them for their ownership interests. Companies that demutualized and paid their members cash or stock include Union Mutual, Maccabees Mutual, Northwestern National, Equitable Life Assurance of New York, Midland Mutual, Guaranty Mutual, State Mutual, Mutual of New York, John Hancock and the Metropolitan. AUL proposes to pay its members nothing.

24. AUL fails to disclose to its policy holders the magnitude of how much other insurance companies have given to members in the recent wave of demutualizations. Attached hereto as Exhibit H is a chart showing the status of other reorganizations. AUL fails to tell members any of the following relevant information about recent reorganizations:

- Indianapolis Life will distribute about \$332 million to policy holders in its reorganization;
- Canada Life will distribute \$2.5 to \$3.7 billion Canadian dollars to 388,000 policyholders in its demutualization;
- Central Life's 300,000 policy holders will receive \$750 million in a full demutualization;

- Equitable Life distributed over \$250 million in stock, cash and policy enhancements to policy holders;
- John Hancock distributed 229.7 million shares to 2.8 million eligible policy holders with an initial IPO shares price of \$17 on January 27, 2000 and trading at \$29 as of October 27, 2000;
- Manulife’s distribution is valued at \$8.3 billion;
- Metropolitan Life 11.2 million policy holders were allocated 493.5 million shares in an IPO with an initial price of \$14.25 on April 5, 2000 and trading at \$24 as of October 27, 2000;
- Mutual of New York completed a demutualization on October 16, 1998 with an IPO price of \$23.50 and its 800,000 policy holders received 34.1 million shares plus \$37.2 million in cash and policy enhancements with the stock trading at \$40 as of October 27, 2000;
- Provident Mutual Life Insurance Company was preliminarily and permanently enjoined by the Common Pleas Court of Philadelphia County from effectuating its plan of conversion to a mutual holding company unless it revised a Policyholder Information Statement that the court found to be misleading;
- Prudential announced plans to demutualize that would lead to \$12 billion in stock, cash and policy enhancements being given to members;
- Standard Insurance demutualized in 1990 with policyholders receiving 18.7 million shares initially priced at \$23.75;
- State Mutual demutualized with over \$600 million distributed to policyholders;
- Sun Life of Canada demutualized with an IPO on March 23, 2000 with an initial share price of \$12.50 Canadian dollars and the average shareholder getting 378 shares; and

– Union Mutual demutualized and distributed over \$600 million in stock to policyholders;

25. The significance of these large distributions was acknowledged in testimony by AUL Executive Vice President R. Stephen Radcliffe at the August 23, 2000 public hearing before the Commissioner of Insurance, he stated in reference to AUL's proposed reorganization:

Let me maybe answer it from the standpoint of how it could be unfair to the policyholders, and I guess that would be taking away something from them without any recompense.

Exhibit F – Transcript August 23, 2000 Hearing at p. 100.

26. The purpose of this lawsuit is to improve the Policy Information Statement that AUL will to send to its members so that members can understand the consequences of the restructuring that they are being asked to approve. Specifically, plaintiffs request that the materials sent to members include the letter of plaintiff attached as Exhibit I setting forth a dissenting opinion as to the advantages of the restructuring.

27. The plan to restructure AUL into a stock company and create a mutual insurance holding company is adverse to the financial interests of the policyholders/owners of the company. The current proxy materials fail to adequately disclose the implications of the restructuring.

28. Among the points that are either not disclosed at all, or not adequately disclosed, in the Policyholder Information Statement are the following:

a. The Policyholder Information Statement fails to adequately explain that members will receive no consideration for their ownership interests.

b. The Policyholder Information Statement fails to give any concrete examples to individual members of what they would receive in a demutualization.

c. The Policyholder Information Statement, for instance, fails to disclose that a policyholder

with a policy in force for 20 years with a cash value of \$100,000 might be eligible to receive \$6,000 in cash or stock in the event of a demutualization.

d. The Policyholder Information Statement fails to disclose that mutual holding companies have not been successful in raising additional capital which is a reason given for the plan.

e. The Policyholder Information Statement fails to disclose that mutual holding companies have not had their stock valued well in the market because investors do not want to invest in an entity where they can only control 49% of the ownership interests in the company.

f. On information and belief, the Policyholder Information Statement fails to disclose the true plans of the company concerning whether or not, and when, it will make an initial public stock offering.

g. The Policyholder Information Statement misleadingly fails to meaningfully explain to members how their ownership interests will be diluted.

h. The Policyholder Information Statement fails to adequately disclose the lack of success that recently reorganized mutual holding companies have had on Wall Street in attracting capital and attaining favorable stock valuations.

i. The Policyholder Information Statement fails to adequately disclose, by way of comparison, how members in other recent reorganizations received cash where demutualization, an alternative to the holding company structure, has occurred.

j. The Policyholder Information Statement fails to adequately disclose, by way of comparison, whether members' stock has appreciated in other insurance company reorganizations where members received consideration for ownership interests.

k. The Policyholder Information Statement fails to adequately disclose the range of potential

compensation and other consideration that the corporate insiders, officers, and directors stand to make from the reorganization.

l. The Policyholder Information Statement fails to adequately explain that the expected tax savings are not significant for a company with a \$575 million surplus.

m. The Policyholder Information Statement fails to adequately disclose that the AUL in its present form can already acquire subsidiaries, and that it is not necessary that there be a mutual holding company for this purpose.

n. The Policyholder Information Statement fails to adequately disclose the manner in which AUL in its present form can increase its debt and raise additional capital.

29. The Policyholder Information Statement also fails to disclose that other major insurance companies have recently abandoned the mutual insurance holding company concept. For instance, Principal Financial Group recently decided to drop its plans for such a reorganization. The Wall Street Journal reported on August 25, 2000:

J. Barry Griswell, president and chief executive officer of the Des Moines, Iowa, insurer, says that Principal's mutual-insurance holding-company structure, a complex structure that numerous insurers once aimed to adopt, "did not turn out to be as accepted as we thought it would." Thus, in order to tap the equity markets, one of the goals of the mutual holding company setup that Principal adopted in 1998, Principal opted to go with a full demutualization instead.

Under the hybrid structure, a mutual-insurance holding company always controls at least 50.1% of the stock in the underlying operating business. The holding company, through a separate entity, can tap into the stock market to raise money, but outside investors would never be able to own a majority of the shares.

The structure, adopted by roughly a dozen insurers in the late 1990s has been widely criticized by policyholder advocates who say the arrangement fails to compensate policyholders adequately for the ownership stake that they could end up relinquishing.

The realignment by Principal, the largest insurer to test the mutual holding company structure, “is a confirmation that it doesn’t accomplish what the industry hoped for - that is, do a public offering yet retain control by managers and directors,” says David Schiff, editor of Schiff’s Insurance Observer, an industry newsletter in New York.

While the setup was supposed to give companies access to Wall Street through stock offerings, few mutual holding companies actually made it that far. One that did, AmerUS Life Holdings Inc. also of Des Moines, hasn’t been a standout performer. Now, it, too, is going through a demutualization process.

The article goes on to quote Vanessa Wilson, an insurance industry analyst at Donaldson Lufkin and Jenrette, as saying with respect to the mutual company holding concept “the setup is dead; a complete waste of time”.

30. The Policyholder Information Statement further fails to disclose that another insurance company, Provident Mutual Life Insurance Company, was enjoined by a Pennsylvania court from proceeding with its planned mutual insurance holding company reorganization.

31. The draft of the Policyholder Information Statement is further misleading on page 16 in that it contains a paragraph heading stating that the “Policyholders’ Governance Role is Continued”.

CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this suit on behalf of a class of similarly situated persons.

33. The class consists of all policyholders/ members of AUL as of November 1, 2000 who are eligible to vote on the plan of reorganization. Class members are so numerous that joinder of them is impracticable. It is estimated that there are 150,000 individual policyholders and 12,000 group annuity contract holders.

34. There are questions of law and fact common to the class, which questions predominate

over individual issues. Among the common questions are:

- a. Has defendant fully complied with the Indiana Act?
- b. Has defendant made full and fair disclosure of all relevant facts concerning the proposed reorganization including what members would be paid in a demutualization?
- c. Should the Policyholder Information Statement be amended to meaningfully disclose that \$575 million will not be distributed to members?
- d. Should the Policyholder Information Statement be amended to disclose the difficulties that mutual insurance holding companies have had raising capital and retaining share value?

57. Plaintiffs' claims are typical of the claims of all members of the class and plaintiffs have the same interests as the other members of the class. All claims are based on the same remedial and legal theories.

36. Prosecution of individual actions would create a risk of inconsistent adjudications.

37. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have retained counsel who are experienced and competent in class action litigation. Neither plaintiffs nor counsel have interests adverse to the class.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because (a) the size of many of the individual claims does not justify the cost of litigation in most cases, (b) most class members are unaware of their legal rights, and (c) and most class members are not sophisticated with respect to evaluating the materials that AUL proposes to send them.

Count One - Request for Injunctive Relief For Failure to Make Adequate Disclosure Under the Indiana Mutual Insurance Holding Company Law

39. Plaintiffs repeat and reallege paragraphs 1 to 40 as this paragraph.

40. Under the Indiana Act, AUL is required to file a plan of reorganization with the Commissioner of Insurance that includes an analysis of the risks and benefits to AUL members of the proposed reorganization and compares those risks and benefits with the risks and benefits of reasonable alternatives, including demutualization. Act, Chap. 2, Sec. 5.

41. Further, under the Act, if the plan of reorganization is approved by the Commissioner, then the plan must be submitted for approval by eligible members of AUL. The notice to members must include a copy or summary of the plan. The Policyholder Information Statement that AUL sent to members is misleading in that it fails to effectively tell them of the \$575 million that would be distributed to them in the alternative of a demutualization and fails to effectively make the disclosures set forth above.

42. Plaintiffs request that the defendants be enjoined from proceeding with the November 30, 2000 Special Meeting until the dissenting letter of plaintiff Leonard Schutt, attached as Exhibit I , is also sent to AUL members and/or a revised Policyholder Information Statement is sent correcting the deficiencies enumerated herein. In the alternative, plaintiff request that if the meeting proceeds and the Plan is approved by members that the vote be set aside for failure to provide members with meaningful disclosures.

WHEREFORE, plaintiffs pray that the Court enter judgment in their favor and against defendants and in favor of the class for the following relief against defendant:

a. An injunction postponing November 30, 2000 Special Meeting until supplemental disclosures are made and/or a mailing is made with the attached dissenting letter of plaintiff Schutt,

or that if the meeting proceeds and the Plan is approved by members that the vote be set aside for failure to provide members with meaningful disclosures;

b. A determination that the case may be maintained as a class action;

c. An award of attorney's fees, litigation expenses, and costs for improving the notice being sent to class members concerning the reorganization; and,

d. Such other and further relief as the Court deems just.

Respectfully Submitted,

EMSWILLER, WILLIAMS, NOLAND & CLARKE

By: _____
Russell T. Clarke, Jr. (3707-49)

LAW OFFICES OF HOWARD PROSSNITZ

By: _____
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