

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ESTATE OF FRANK TOWNSEND,
(by Fiduciary and Administrator Carolyn
Townsend)
1357 West 91st Street
Cleveland, Ohio 44120

JUDY MARIK,
10983 State Rte. 44
Mantua, Ohio 44255

JACQUELINE DUNN SMITH,
6875 NW 219th Terrace
Starke, Florida 32091

Plaintiffs - On behalf of themselves and
all others similarly situated,

vs.

PROTECTIVE LIFE INSURANCE
COMPANY,
2801 Highway 280 South
Birmingham, Alabama 35223

PROTECTIVE LIFE INSURANCE
COMPANY OF OHIO,
2801 Highway 280 South
Birmingham, Alabama 35223

Defendants.

Case No. 1:10-cv-02365-SO

**AMENDED CLASS ACTION
COMPLAINT**

Jury Trial Demanded

Plaintiffs, the Estate of Frank Townsend, Judy Marik and Jacqueline Dunn Smith (formerly Jacqueline M. Dunn) (collectively "Plaintiffs") on behalf of themselves and all others similarly situated hereby allege as follows upon information and belief against Defendants

Protective Life Insurance Company and Protective Life Insurance Company of Ohio (collectively “Protective” or “Defendant”) in this Amended Class Action Complaint.

PARTIES

1. One Plaintiff is the Estate of Frank Townsend. Frank Townsend (hereafter “Townsend”) was a resident of Cuyahoga County, Ohio at the time of his death on December 11, 2002. Carolyn Townsend, a current resident of Cuyahoga County, Ohio, is Frank Townsend’s widow and the Fiduciary / Administrator of the Estate of Frank Townsend. Townsend purchased a credit insurance policy from Protective during the relevant time period as described below.

2. Plaintiff Judy Marik (hereafter “Marik”) is a resident of Portage County, Ohio. Plaintiff Marik purchased a credit insurance policy from Protective during the relevant time period as described below.

3. Plaintiff Jacqueline Dunn Smith (hereafter “Smith”) is a resident of Florida. During all relevant times to this case, Plaintiff Smith was a resident of Ross County, Ohio. Plaintiff Smith purchased a credit insurance policy from Protective during the relevant time period as described below.

4. Both Protective defendants are foreign corporations that have conducted and/or continue to conduct continuous and substantial business in the State of Ohio. At least one of the Protective defendants, Protective Life Insurance Company, is authorized to do business in Ohio. Protective Life Insurance Company of Ohio was, at all relevant times to this case, was authorized to do business in Ohio. Protective maintains their principal address in Birmingham, Alabama.

FACTUAL ALLEGATIONS

5. On August 17, 1996, Townsend leased a 1996 Ford Thunderbird, VIN 1FALP6244TH179988, from Bud Brady Ford in Cleveland, Ohio (Cuyahoga County). The

vehicle sale was evidenced by an Ohio retail installment contract between Townsend and Bud Brady Ford.

6. The vehicle was financed through National City Bank. In connection with that financing, Townsend executed a consumer installment loan and security agreement.

7. On the date Townsend purchased the vehicle, Townsend purchased a credit insurance policy from Protective. Upon information and belief, the terms, conditions, rights and duties under the Townsend Policy are contained in the Certificate of Insurance and the Group Policy between Protective and Bud Brady Ford.

8. Defendant has a copy of the Certificate and Group Policy in its possession. Attached hereto as Exhibit 1 is a copy of the Certificate of Insurance. Attached hereto as Exhibit 2 is a copy of the Group Policy. Collectively these documents make the "Townsend Policy".

9. Defendant Protective Life Insurance Company is listed as the insurance company on the Certificate of Insurance sold to Townsend.

10. Townsend paid a one-time premium in the amount of \$606.32 for the credit insurance.

11. Plaintiff Townsend caused the loan to be paid in full before the life of the loan had expired. By the terms of the insurance policy and the law, Plaintiff Townsend is entitled to a return of the premium for the time period from the date the loan was terminated through the remaining term that was left on the loan at the time it terminated.

12. On June 26, 1998 Plaintiff Marik purchased a 1997 Oldsmobile Aurora, VIN 1G3GR62C3V4117912, from Charles Chevrolet-Oldsmobile in Garrettsville, Ohio. The vehicle sale was evidenced by a retail installment contract between Plaintiff Marik and Charles Chevrolet-Oldsmobile.

13. The vehicle was financed through Bank One Corporation. In connection with that financing, Plaintiff Marik executed a consumer installment loan and security agreement.

14. On the date Plaintiff Marik purchased the vehicle, Plaintiff Marik purchased a credit insurance policy from Protective. Upon information and belief, the terms, conditions, rights and duties under the Marik Policy are contained in the Certificate of Insurance and the Group Policy between Protective and Charles Chevrolet-Oldsmobile.

15. Defendant has a copy of the Certificate and Group Policy in its possession. Attached hereto as Exhibit 3 is a copy of the Certificate of Insurance. Attached as Exhibit 4 is a copy of the Group Policy. Collectively these documents make the "Marik Policy."

16. Defendant Protective Life Insurance Company of Ohio is listed as the insurance company on the Certificate of Insurance sold to Marik.

17. Plaintiff Marik paid a one-time premium in the amount of \$705.04 for the credit insurance.

18. Plaintiff Marik caused her loan to be paid in full before the life of the loan had expired. By the express terms of the insurance policy and the law, Plaintiff Marik is entitled to a return of the premium for the time period from the date the loan was terminated through the remaining term that was left on the loan at the time it terminated.

19. On February 2, 1999, Plaintiff Smith purchased a 1999 Ford Ranger, VIN 1FTZR15V1XTA07006 from Norse Family of Dealerships ("Norse") in Chillicothe, Ohio. The vehicle sale was evidenced by a retail installment contract between Plaintiff Smith and Norse.

20. The vehicle was financed through Ford Motor Credit Corporation. In connection with that financing, Plaintiff Smith executed a consumer installment loan and security agreement.

21. On the date Plaintiff Smith purchased the vehicle, Plaintiff Smith purchased two credit insurance policies from Protective. Upon information and belief, the terms, conditions, rights and duties under the Smith Policies are contained in the Certificate of Insurance and the Group Policy between Protective and Norse.

22. Defendant has a copy of the Certificate and Group Policy in its possession. Attached hereto as Exhibit 5 is a copy of the Certificate of Insurance. This Certificate and the Group Policy attached as Exhibit 4 collectively make up the "Smith Policies."

23. Defendant Protective Life Insurance Company of Ohio is listed as the insurance company on the Certificates of Insurance sold to Smith.

24. Plaintiff Smith paid one-time premiums in the amount of \$688.48 and \$1,230.31 for the credit insurance.

25. Plaintiff Smith caused her loan to be paid in full before the life of the loan had expired. Protective received direct notice of this payoff from Ford Motor Credit Corporation. Protective's agent, its automobile dealers through whom it sells insurance, receives actual notice of loan payoffs, i.e., loan termination, through Ford Motor Credit Corporation. Protective knows this information is given to its agents yet Protective intentionally fails to properly refund unearned premiums.

26. Protective, however, intentionally failed to refund Plaintiff Smith her unearned premium even though by the express terms of the insurance policy and the law, Plaintiff Smith is entitled to a return of the premium for the time period from the date the loan was terminated through the remaining term that was left on the loan at the time it terminated.

27. Protective is in the business of issuing credit insurance policies (the "policies"). These policies are designed to assure those entities financing automobile purchases (e.g.,

automobile dealers, banks, and/or finance companies) that in the event the automobile purchaser/debtor becomes disabled or dies, an insurance payout(s) would be available to satisfy the loan payments or balance. This practice reduces the credit risk facing lenders.

28. Plaintiffs and those similarly situated (the “Class”) were purchasers of such credit insurance policies from Protective. As part of the contracts, if the automobile loans were terminated early, (e.g., prepayment of the loan), the policyholders were expressly entitled to a refund of the unearned premium.

29. Plaintiffs and the Class each paid a one-time, lump sum premium to purchase a credit insurance policy for the prescribed life of the subject loan.

30. By the terms of each subject policy, the insurance coverage would cease upon the termination of the loan.

31. By the terms of each subject policy and the statutory law of Ohio and other states, the debtor, (i.e., policyholder), is entitled to a refund of the unearned premium following an early termination, (i.e., full payment prior to final scheduled payment), of the loan.

32. For example, Ohio Revised Code §3918.05 states, in relevant part:

In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 3918.08 of the Revised Code.

33. Ohio Revised Code Annotated §3918.08 states, in relevant part:

(B) Each individual policy, group certificate, or notice of proposed insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, ***any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto***; provided, that the superintendent shall prescribe a minimum refund and no refund which would be less than such minimum need be made. [Emphasis added.]

34. Pursuant to the law and the policy, these statutory sections are incorporated into the policies as if fully rewritten therein.

35. Protective possesses information from various sources, including credit reporting agencies, lenders, banks, and their own agents, allowing it to ascertain readily which of its policyholders prepaid their loans (or otherwise caused early termination) and are therefore entitled to a refund of the unearned premium.

36. Protective did not return to Plaintiffs the unearned premiums, to which Plaintiffs are legally entitled, despite the fact that Plaintiffs have satisfied all conditions precedent to a refund of unearned premiums.

CLASS ACTION ALLEGATIONS

37. Plaintiffs bring this class action pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of a general class (the “Class”) consisting of:

All individuals from September 7, 1995 (the “Class Period”) who purchased a credit insurance policy from Protective, caused an early termination of the automobile loan for which the credit insurance policy was purchased, and did not receive a refund for the resulting unearned premium.

38. Excluded from the Class are all present and former agents of Protective during the Class Period; all present and former employees of Protective during the Class Period; any Class member who timely elects to be excluded from the Class; the judge to whom this case is assigned, and any member of his or her immediate family.

39. Plaintiffs are members of the Class and allege that all Class members sustained injury in fact as a proximate result of the unlawful conduct alleged herein, specifically deprivation of the unearned premium.

40. Membership in the Class is so numerous as to make it impractical to bring all Class members before the Court. The exact number of Class members is unknown, but Plaintiffs reasonably estimate and believe that there are thousands of persons in the Class. The identity of

the Class members is readily ascertainable using information within Defendant's, or its agent's, possession, custody or control.

41. There are questions of law and fact common to the Class which predominate over any questions which may affect only individual members of the Class, including but not limited to the following:

- (a) Whether Protective's credit insurance policies contractually obligate(d) it to return a certain portion of the premiums to its policyholders upon early termination of the associated loans;
- (b) Whether R.C. §3918.08, R.C. §3918.05 and related state statutes, by incorporation into the policies, create a legal duty for Protective to return a certain portion of the premiums to its policyholders upon early termination of the associated loans;
- (c) Whether Protective systematically did or did not return portions of premiums upon early loan termination; and
- (d) What manner of interest should be applied to a monetary judgment favoring Plaintiffs and the Class.

42. Plaintiffs are members of the Class they seek to represent. Plaintiffs' claims are typical of the Class members' claims. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs' claims are typical and representative of the Class.

43. There are no unique defenses which may be asserted against Plaintiffs individually, as distinguished from the Class. The claims of Plaintiffs are the same as those of the Class.

44. There exist no conflicts of interest as between Plaintiffs and the other Class members. Plaintiffs have retained counsel that is competent and experienced in complex class action litigation. Plaintiffs and their counsel will fairly and adequately represent and protect the interests of the Class.

45. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiffs are aware of the fiduciary responsibilities to the Class and agree to diligently discharge those duties.

46. The questions of law and/or fact common to the members of the Class predominate over questions that may affect only individual members. The common nucleus of operative fact herein centers on the conduct of Protective.

47. This class action is superior to any other method for the fair and efficient adjudication of this dispute. The damages suffered by many members of the Class are small in relation to the expense and burden of individual litigation and, therefore, it is highly impractical for individual Class members to attempt to vindicate their interests individually. There will be no extraordinary difficulty in the management of this Class action.

48. All Class members have been damaged in precisely the same fashion, by precisely the same conduct. The degree of damages suffered by individual Class members is calculable according to an ascertainable formula.

COUNT I

BREACH OF CONTRACT

49. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

50. Protective's consistent failure to refund unearned premiums, upon the early termination of loans linked to the credit insurance policies, breaches an express obligation to Plaintiffs and Class members uniformly present across such policies. Such provisions are also mandated by R.C. § 3918.08 and R.C. § 3918.05 and are incorporated into each policy.

51. Plaintiffs have satisfied all conditions precedent to the duty of Defendant to refund unearned premiums.

52. Protective has no available defenses to justify its contractual breach with respect to its credit insurance policyholders.

53. Plaintiffs and Class members have suffered pecuniary harm as the result of Protective's failure to return these premiums.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand the following relief:

- (a) For an order certifying this case as a class action and designating Plaintiffs as class representatives and the undersigned counsel as class counsel;
- (b) Compensatory damages in an amount to be determined at trial; and
- (c) Such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: July 27, 2011.

Respectfully submitted,

/s/ Daniel P. Goetz
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Daniel P. Goetz (0065549)
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