

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA.

CASE NO.: 502003CA012523XXCDAB

MARK LUTZ,

Plaintiff,

vs.

PROTECTIVE LIFE INSURANCE
COMPANY, a corporation,

Defendant.

AMENDED CLASS ACTION COMPLAINT

Plaintiff, MARK LUTZ, on behalf of himself and all others similarly situated, by and through his undersigned counsel, bring this action pursuant to F.R.C.P. 1.220(b)(1)(B) and 1.220(b)(3) against the Defendant, PROTECTIVE LIFE INSURANCE COMPANY (hereinafter "PROTECTIVE LIFE"), and all facts being extant and material hereto allege:

I. GENERAL ALLEGATIONS

1. This is a Class Action Complaint for both damages in excess of Fifteen Thousand (\$15,000.00) Dollars and equitable relief.
2. Plaintiff, MARK LUTZ, is, in all respects, sui juris.
3. The Defendant, PROTECTIVE LIFE, is a corporation authorized to do and is doing business in Palm Beach County, Florida.
4. American Chambers Life Insurance Company ("American Chambers") was a health insurance company that initially issued a group health insurance policy (The "Flex-A-Plan") to a "dry trust" called "The American Association of Employed

Persons" Trust, ("AAEP Trust") which was marketed and sold to individuals and families in the State of Florida, including Plaintiff, MARK LUTZ, and other members of the putative Class. (A copy of Group Insurance Certificate Booklet issued to the Plaintiff is attached hereto as Exhibit "A").

5. Plaintiff, MARK LUTZ applied for and purchased the aforesaid policy in March of 1992. (Exhibit "B").

6. At least as early as 1993, after the first renewal of his individual certificate, American Chambers merely administered the subject AAEP Trust group health insurance policy, which was underwritten by Defendant, PROTECTIVE LIFE, pursuant to a series of "Reinsurance, Marketing and Administrative Services Agreements" between PROTECTIVE LIFE and American Chambers, that were revised and amended until 2000, when American Chambers was declared insolvent and administratively dissolved by the Ohio Department of Insurance. (The July 1, 1993 Amendment and Restatement of Reinsurance, Marketing and Administration Services Agreement between American Chambers and Protective Life is attached hereto as Exhibit "C").

7. Alternatively, as early as 1996, American Chambers merely administered the subject AAEP Trust group health insurance policy, which was underwritten by Defendant, PROTECTIVE LIFE, pursuant to the December 31, 1996 Amendment and Restatement of Reinsurance, Marketing and Administration Services Agreement between American Chambers and PROTECTIVE LIFE, attached hereto as Exhibit "D").

8. In 1996, LUTZ received a letter informing him of a change to a different PPO under the AAEP Trust group health insurance policy. (See attached Exhibit "E") That letter contains a box that states:

In Florida, United Chambers Insured Plans, American Employee Plan, Vantage Plus, FLEX-A-PLAN, and flex-a-plan II are insured by Protective Life Insurance Company and Administered by American Chambers Life Insurance Company.

9. On January 31, 1997 and again on July 31, 1997 American Chambers wrote to LUTZ as the "Administrator of the Flex-A-Plan" in an attempt to justify premium increases. (Composite Exhibit "F").

10. In 1998, LUTZ himself complained to the Florida Department of Insurance about PROTECTIVE LIFE, and PROTECTIVE LIFE responded as the insurer, and informed the Florida Department of Insurance that it had insured LUTZ since 1992. (Exhibit "G"). Finally, PROTECTIVE LIFE communicated with the Plaintiff and various Class members as the insurer.

11. On September 3, 1999, LUTZ was advised that his "Flex-A-Plan" would be discontinued effective December 1, 1999 and that a comparable plan of coverage, "Vantage Plus" would be immediately available. (Exhibit "H"). PROTECTIVE LIFE did not offer LUTZ a conversion plan as required by §627.6675, Florida Statutes.

12. On September 20, 1999, the Plaintiff received a letter wherein he is again advised that his "coverage is insured by PROTECTIVE LIFE. (See attached Exhibit "I").

13. In 2000, PROTECTIVE LIFE wrote a letter to LUTZ (Exhibit "J") stating:

"Your medical insurance policy was issued to you by Protective Life under an agreement between Protective and American Chambers Life Insurance Company. Under this agreement, American Chambers was responsible for the administration of your policy, including the review of claims and other customer service."

14. The "Vantage Plus" Group Insurance Certificate issued by PROTECTIVE LIFE to LUTZ under the group policy issued to the AAEP is attached hereto as Exhibit "K".

15. Over the course of the next several years, Defendant, PROTECTIVE LIFE unilaterally and irregularly drastically increased the approximate monthly premiums it charged to Plaintiff, MARK LUTZ as follows:

Initial premium	-	\$	68.00
December 2000	-		378.82
June 2001	-		471.28
November 2001	-		702.48
December 2002	-		875.84
August 2003	-	\$	1,122.76

16. Unable to continue to afford the monthly premiums, LUTZ allowed the policy to lapse for non-payment of premiums as of October 31, 2003.

17. Such policy contains language which purports to qualify it as an out-of-state group in accordance with Fla. Stat. §627.6515.

18. The subject contract adopts and incorporates pertinent Florida Statutes and Administrative Code Sections governing group health insurers in this state.

19. Therefore, the requirements of Fla. Stat. §627.6515; 627.6675 and 627.6571 are to be read not only as requirements governing the group health insurance industry in general, but also as actual contractual provisions contained within the contract issued by the Defendant, PROTECTIVE LIFE, within the State of Florida.

20. All group health insurance policies must incorporate the Florida Statutes §627.6515; 627.6675 and 627.6571 by virtue of long established common law as well

as Fla. Stat. §627.418(1) which states:

"627.418. Validity of noncomplying contracts

(1) Any insurance policy, rider, or endorsement otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. In the event an insurer issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this code, such insurer shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed under this code."

21. Accordingly, even if Defendant's contract does not specifically enumerate the provisions of Fla. Stat. §627.6515; 627.6675; 627.6571, Plaintiff' cause of action herein still arises from the group insurance contract, which pursuant to long established common law as well as Fla. Stat. §627.418 incorporates such statutory provisions.

22. All conditions precedent to bringing this action have occurred, been performed or excused.

II. CLASS REPRESENTATION ALLEGATIONS

23. Pursuant to F.R.C.P. 1.220(b)(1)(B) and 1.220(b)(3), Plaintiff brings this claim on behalf of a Class of all insureds who are injured by the Defendant, PROTECTIVE LIFE, which: improperly marketed its insurance policy as an out-of-state group policy, thereby depriving them of important statutory rights contained within Part VII of the Florida Insurance Code; improperly discriminating against them in assessing premium rates based on claims history/health status; and failing to provide benefits and/or coverages

mandated by Part VII of the Florida Insurance Code.

24. This Class consists of: all PROTECTIVE LIFE insureds in Florida insured under the same group health insurance policy issued by Defendant, PROTECTIVE LIFE.

25. Plaintiff alleges, on information and belief, that the number of Class members is so numerous that joinder of all of them is impractical. Plaintiff's belief is based on the fact that the Defendant, PROTECTIVE LIFE:

(a) has issued a large number of American Association of Employed Persons Plan Group health insurance certificates in Florida;

(b) that all certificates purported to comply with the out-of-state group law, Fla. Stat. §627.6515;

(c) that the Defendant, PROTECTIVE LIFE, improperly raised premiums based on health status related factors for all such insureds;

(d) that the Defendant, PROTECTIVE LIFE, failed to provide benefits and/or coverages mandated by Part VII of the Florida Insurance Code.

26. The members of this Class will be easily ascertained from the records of the Defendant when discovery commences herein.

27. The Class Representatives' claim raises questions of law and fact that are common to the claims of each member of the Class, specifically, the central issues raised by this action is whether the Defendant, PROTECTIVE LIFE, failed to comply with the clear and strict provisions of Fla. Stat. §627.6515, and as a result, whether Defendant's business practices are subject to the provisions of Part VII of the Florida Insurance Code; whether the conduct of Defendant, PROTECTIVE LIFE, by drastically increasing

premiums for its insureds based on health status related factors violated Florida law; and whether the Defendant, PROTECTIVE LIFE, failed to provide benefits and/or coverages mandated by Part VII of the Florida Insurance Code.

28. The claim of the Class Representative, MARK LUTZ, is typical of the claim(s) of each member of the Class.

29. Plaintiff, MARK LUTZ, the Class Representative, will fairly and adequately protect and represent the interests of each member of the Class. Additionally, the Class Representative is fully cognizant of his responsibility as Class Representative and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

30. The questions of law or fact common to the Class Representative's claim and the claim of each member of the Class predominate over any question of law or fact affecting only individual members of the Class. Additionally, the prosecution of separate claims for or against individual members of the Class would create a risk of adjudication concerning individual members of the Class which would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication(s), or would substantially impair or impede the ability of other members of the Class who are not parties to the adjudication(s) to protect their interest. Class Representation is therefore clearly superior to other available methods for the fair and efficient adjudication of this controversy.

III. DECLARATORY JUDGMENT

Plaintiff, MARK LUTZ, adopts, realleges, and reaffirms each and every allegation contained in paragraphs 1 through 30 as though fully alleged herein and further alleges:

31. This is an action for Declaratory Relief pursuant to Chapter 86 of the Florida Statutes.

32. This action is not subject to the provisions of the Employment Retirement Income Security Act (ERISA) 29 U.S. Code §1001 et. seq., in that:

- (a) Such policy insured only MARK LUTZ individually and thus, MARK LUTZ, is exempt from ERISA pursuant to 29 C.F.R. §2510.3-3(b)&(c);
- (b) MARK LUTZ neither maintains an ERISA plan nor is involved in the "administration" of this insurance policy whatsoever;
- (c) The Plaintiff, MARK LUTZ, is neither an "employee" nor a dependant of any employee and therefore is not a "participant" as defined by ERISA;
- (d) Such policy is neither issued to a Multiple Employer Welfare Arrangement (MEWA) nor Multiple Employer Group (MEG) as defined by ERISA;
- (e) That such policy was marketed, sold and issued to prospective insureds irrespective of their employment status or whether they particularly would be subject to ERISA.

33. Plaintiff, MARK LUTZ, individually, and as Class Representative, contends that the Defendant, PROTECTIVE LIFE, by failing to comply with the clear and strict provisions of Florida Statute §627.6515 incorporated into the contract of insurance by virtue of Florida Statute §627.418 and long established common law, improperly failed to comply with the provisions of Part VII of the Florida Insurance Code, thereby depriving its insureds of protections that Part VII affords.

34. Further, the Defendant, PROTECTIVE LIFE, improperly and differentially raised the premiums for members of the Class, discriminating against them on the basis of

claims history and/or health status.

35. Further, the Defendant, PROTECTIVE LIFE, failed to provide benefits and/or coverages mandated by part VII of the Florida Insurance Code.

36. On the facts of this case the Plaintiff, MARK LUTZ, individually and as Class Representative is in doubt as to his rights and the rights of all other purported Class members under the terms and provisions of the subject insurance policy and Florida law.

WHEREFORE, Plaintiff, MARK LUTZ, on behalf of himself and on behalf of all purported Class members, respectfully request that this Court:

(a) Take jurisdiction over this matter for purposes of rendering a declaratory decree;

(b) Having taken jurisdiction, that this Court enter an Order declaring that under the policy and Florida law that the Defendant, PROTECTIVE LIFE, was guilty of violation of Fla. Stat. §627.6515 and thus is subject to the requirements of Part VII of the Florida Insurance Code and thus comply with all applicable portions of Part VII;

(c) Having jurisdiction, that this Court enter an Order declaring that the Defendant, PROTECTIVE LIFE'S, drastic premium increases of insureds based on claims history and/or health status violated Florida law;

(d) Require that the Defendant, PROTECTIVE LIFE, properly notify each and every such Class member of this Court's findings and further require that such Defendant fully compensate each Class member injured as a result of such wrongful conduct;

(e) Grant both preliminary and permanent injunctive relief to prevent any further harm resulting from acts and/or omissions of the Defendant, PROTECTIVE LIFE;

(f) Grant such other relief as this Court deems proper;


(g) Retain jurisdiction over the parties in the subject matter to assess reasonable attorney's fees and costs to Class counsel and any and all penalties this Court deems meet and just.

WHEREFORE, Plaintiff, MARK LUTZ, individually and as Class Representative, respectfully request this Honorable Court to enter judgment in favor of the Plaintiff and the Class of persons which he seeks to represent, and award declaratory judgment against the Defendant, PROTECTIVE LIFE INSURANCE COMPANY'S and to further award pre-judgment interest on all liquidated sums, attorneys fees and costs, pursuant to Florida Statute §627.428 and 627.6698 or such other statutory provision that may apply and such other relief as this Court deems appropriate and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and facsimile this 21st day of July 2010 to: **PHILLIP E. STANO, ESQ., and BRIAN C. SPAHN, ESQ.**, Sutherland Asbill & Brennan, LLP, 1272 Pennsylvania Avenue, N.W. Washington DC 20004-2414; **KEN COLLIER, ESQ.**, Sutherland, Asbill & Brennan, LLP, 999 Peachtree Street, NE, Atlanta GA 30309-3996; and **ANTHONY C. HARLOW, ESQ.**, Starnes & Atchison, LLP, P O Box 598512, Birmingham AL 35259-8512.

LIGGIO, BENRUBI
1615 Forum Place
Suite 3B, The Barristers Building
West Palm Beach, FL 33401
(561) 616-3333 (o)
(561) 616-3266 (fax)
Email: Rbenrubi@liggiolaw.com

By: 
Richard M. Benrubi, Esq.
Florida Bar No.: 796573