UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In Re	:	
	:	00 CV 2258 (TCP) (AKT)
METLIFE DEMUTUALIZATION LITIGATION	:	
	:	Judge Platt
	:	
This document relates to All Actions.	:	
	:	

MOTION REQUESTING PERMISSION TO FILE AMICUS CURIAE BRIEF

1. Thomas P. Tierney ("Tierney") hereby requests that this honorable court grant him permission to file, as a pro se amicus curiae, the 25-page brief attached hereto. Biographical detail for Tierney is presented in the noted attachment.

2. Tierney is requesting said permission from the Court because he has not received the consent of both parties to file this brief.

3. His interest in the subject of mutual insurance company reorganization comes from practicing in this area over the past 32 years and watching the process deteriorate to a point where, in the instant case, MetLife's year-2000 policyholders now have aggregate accumulated damages of approximately $20-25Billion. This activity includes an influence involvement in MetLife's 1996 acquisition of New England Life and a no-influence(at least not yet) involvement in their 2000 demutualization. The settlement of this litigation could bring much needed correction to the mutual insurance company reorganization process throughout our Country.

4. The brief should be helpful to the Court because it explains fundamentals that have not been previously briefed to the court and it offers an actuary's perspective on the case that differs significantly from other actuaries who have come before the Court.

5. The brief should also be helpful to the Court because it suggests a settlement procedure that would be very easy to implement - - - a bookkeeping process that wouldn't require MetLife to disburse any cash [except for implementation expenses] and one that would preserve the Company's total value [Policyholder equity plus stockholder equity].

6. The brief is relevant to the instant case because it exposes material misrepresentations and material omissions in MetLife's disclosure to policyholders that bear directly upon the securities fraud claims made in the Plaintiff's complaint.

I declare under penalty of perjury, and under the laws of the United States, the Commonwealth of Massachusetts and the State of New York, that the foregoing, to the best of my knowledge, is true and correct.

Executed this twenty-sixth day of August 2009 in Framingham, Massachusetts

/s/ *Thomas P. Tierney*
THOMAS P. TIERNEY, FSA, MAAA, EA

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AMICUS CURIAE BRIEF of THOMAS P. TIERNEY

1. Thomas P. Tierney has a long interest in the subject of life insurance company demutualizations and the Metropolitan Life Insurance Company [“MetLife”] process in particular. Tierney is an actuary whose FRCP Rule No. 26(a)(2)(B) disclosure is displayed on pages 1-5 of the attachment hereto.

2. This purpose of this brief is threefold:

a. To provide the Court and the parties in the instant case with a basic understanding of the way a mutual life insurance company works;

b. To explain to the Court and the noted parties the mechanics of the process a mutual life insurance company should undergo [the “demutualization” process] if it changes its basic organizational dynamic from one where the people buying insurance protection therefrom own the company to one where there is third-party ownership of the company; and

c. To comment on the April 2000 demutualization of MetLife.

<u>The Way a Mutual Life Insurance Company Works</u>

3. A mutual life insurance company is an assembly of individuals [wanting to receive life insurance coverage] who gather together in a cooperative association to provide each other with the desired protection.

4. The assembled individuals [known as **"policyowners"** or **"policyholders"**], once they've been organized as a cooperative association [known as a **"mutual life insurance company"**], will then secure the insurance protection they desire by entering into individual contracts with the noted and newly created mutual life insurance company.

5. These contracts [known as **"insurance policies"**] will provide respectively, in exchange for the payment of monies [called **"premiums"**] by the noted policyowners to the mutual life insurance company, for the payment of monies [called **"insurance benefits"**] by the noted mutual life insurance company to individuals [called **"beneficiaries"** who are specified in the noted policies] when other individuals [called the **"insureds"** who are also specified in the noted policies] die. The policyowner, the insured and the beneficiary under an insurance policy may be three different individuals or, except for a few capacity situations, there may be overlap.

6. Once a mutual life insurance company has been organized, other individuals will normally be allowed thereafter to become a member of the cooperative association and to enter into contracts [**"purchase insurance policies"**] with it; and the company will normally operate thereafter with an expectation of perpetual continuation.

7. Every policyholder, as noted above, in a mutual life insurance company is a party to **two separate contracts**. There is the contract of cooperative association whereby the mutual life insurance company is formed; and there is the individual insurance policy that said policyholder buys from the noted company.

8. There is only one **contract of cooperative association** per company and every policyholder in that company is a party to it. In MetLife's case, there were approximately10-11 Million policyholders who were parties to MetLife's cooperative association contract in April 2000 when MetLife demutualized. The MetLife cooperative association contract was administered at that time pursuant to New York State law and its terms were supposed to dictate how the shares of stock in the new stock insurance company [which MetLife morphed into when it was demutualized] were to be distributed among the noted 10-11 Million policyholders.

9. The **individual insurance contracts** that are issued by a mutual life insurance company are almost always governed by the laws of the state where the respective policyowners live. The distinctive feature of insurance policies that are issued by mutual life insurance companies is that these contracts are designed to operate under what is known as an **"at-cost" basis**.

10. Under an at-cost paradigm, the amount by which (i) the sum of the premiums that are paid on these policies plus the investment income generated on the corresponding premium accumulations exceeds (ii) the sum of the insurance benefits paid on the policies plus the associated administrative, sales and tax expenses is returned to the policyowners. This excess [know as the **"gain from operations"**] accumulates within the company [where it appears on the company's books as **"surplus"**].

11. The mutual life insurance company's board of directors will periodically pay portions of this surplus [which payments are called **"policyowner dividends"**] to its policyowners. The at-cost constraint requires that all of the surplus associated with a particular policy group [called a **"block"**] must be returned to the policyowners in the particular block by the time the last policy in the particular block is settled. A block is a group of policies with similar characteristics [such as date of issue, age at issue, type of policy, investment and mortality expectations, etc.] that are

grouped together for certain processing purposes by a company. A company is free to set up its blocks as it sees fit.

12. A company's dividend policy will normally pay out less than the gain from operations in the early years of a block with the portion that's not being currently paid out accumulating within the company as surplus funds. These surplus funds provide an important safety cushion for the block in case the block incurs some adverse experience [such as investment losses, high mortality, unusual expenses, etc.]. In the later years of a block, less surplus will be required as the size of the block shrinks and the company's board of directors will normally authorize dividends for the block at that time that pay out the entire current gain from operations plus a draw-down of surplus that's no longer needed with the operational goal, as stated above, to have all of the surplus associated with a particular block paid out by the time the last policy in the block has been settled.

13. The at-cost paradigm gets its name from the fact that policyowners get their insurance protection at the actual cost that a company expends to provide it. All periodic operating gains are either paid to policyowners as dividends or temporarily held as surplus and paid out at a later time. None of the gains are permanently kept by the company. A mutual insurance company is a classic not-for-profit cooperative enterprise.

The "Demutualization" Process

14. The value of a mutual life insurance company is often thought to be equal to the accumulated surplus that shows up on its financial statements [its **"book value"**]. However, as is the case with many organizations, its true value [sometimes called **"fair value"**] is usually worth quite a bit more than its book value.

15. By analogy a law firm might have a book value equal to the sum of its cash on hand, its receivable invoices and the depreciated value of its furniture and equipment. Its fair value [as any buying-in partner well knows] is much more because it also includes off-book embedded value components such as its client base and the talent of its assembled staff.

16. In a mutual life insurance company, its fair value includes huge amounts of off-book value related to its assembled administrative and sales staffs and the various processing systems and licenses by which it conducts its business. Interestingly enough, its fair value doesn't include its book value [aka its surplus] because this amount must eventually be returned to its policyowners as policyowner dividends.

17. When a company demutualizes: (i) it issues stock and its ownership is transferred from its policyowners to the holders of its newly issued stock [its **"stockholders"**] who at the outset should be but who thereafter need not be policyholders; and (ii) it stops issuing at-cost policies and instead starts selling policies where the periodic gains from operation are no longer returned to policyowners as policyowner dividends [because these policyowners don't own at-cost policies] but instead become company profit which is paid out [or momentarily accumulated as retained earnings and eventually paid out] as **"stockholder dividends"**.

18. The raw processing mechanics, including especially cash flow, of a mutual life insurance company and a stock life insurance company are similar but the contracting parties and their obligations and entitlements differ. One's insurance at the latter costs more because it's not being bought at-cost; the contracting relationship is debtor/creditor rather than trustee/beneficiary; operating gains become retained earnings rather then accumulated surplus; and retained assets ultimately become stockholder rather than policyholder dividends.

19. The total value of the newly issued stock [the new stock company's **"market capitalization"**], will, if the birthing demutualization process was proper and orderly, be equal to the company's aforementioned fair value.

20. The "proper and orderly" prescription requires that all of a company's contracts [its contract of cooperative association and each of its individual insurance policies] be fully honored throughout the demutualization process. More specifically: (i) shares of stock in the new company that the old mutual life insurance company has turned into should be distributed to policyowners in the old company pursuant to its contract of cooperative association and (ii) the at-cost provision in each of the old companies insurance policies should be honored.

The April 2000 MetLife Demutualization

21. The April 2000 **MetLife demutualization was flawed** principally **because (i)** the number of **shares of stock distributed** thereunder to policyowners **was not determined pursuant to the** manner prescribed by the **contract of cooperative association and (ii) the process did not preserve the at-cost contractual entitlement** of MetLife's insurance polices at that time.

22. The essential flaw with MetLife's demutualization was that it breached the contractual rights of MetLife's pre-demutualization policyholders.

23. The contract of cooperative association required that the amounts of distributed stock be proportionate to each policyholder's share of the total policyholder surplus reflected on MetLife's books at the time of demutualization. This "book surplus" [also known as **"Historic Surplus"**] proportionality requirement was not followed.

24. What MetLife did instead was to distribute approximately 100-110 Million shares of stock on a 10 share per policyholder basis and the remaining 590-600 Million shares in proportion to a synthetic quantity they called an Actuarial Equity Share [an **"AES"**]. The AES was defined as an insurance policy's share of MetLife's Historic Surplus at the time of demutualization plus an estimate of the present value, at the time of demutualization, of the insurance policy's expected future additions to MetLife's Historic Surplus. The total of all AESs for all MetLife policies at the time of demutualization approximated $15.34 Billion - a sum that equaled MetLife's Historic Surplus at that time plus the present value at that time of expected future additions by all policies thereto [a quantity sometimes called **"Historic-Plus Surplus"**].

25. The problems with distributing shares of stock in proportion to Historic-Plus Surplus are twofold. First, it's a breach of contract and, second, it's actuarially unsound. The actuarial difficulty is documented in the 2-page February 14, 2000 Tierney-to-Levin letter that is displayed on pages 6-7 of the attachment hereto. Note that the author of this letter is also one of the authors of this brief.

26. In brief, the reason an Historic-Plus Surplus basis for allocating shares of stock is actuarially unsound is that, in a solvent company [one with a zero or positive surplus at the time of demutualization - a condition MetLife met] that issues at-cost policies, the individual policy components of a company's total Historic-Plus Surplus will be zero - a number that's impossible actuarially and mathematically to use as an allocation basis. The reason the noted individual policy components will be zero is that the at-cost dividend paradigm requires that future withdrawals be made from that surplus until it eventually resolves to a no-balance amount.

27. The failure of MetLife to preserve the at-cost contractual entitlement of MetLife's insurance polices at the time of demutualization was a $15.34 Billion contractual breach. This is the value that MetLife reported its Historic-Plus Surplus to be at the time of demutualization. It represents

the monies MetLife was then holding as surplus plus the present value of the portion of future operating gains that its then in-force policies would be generating that would be added to surplus.

28. What MetLife did when it demutualized was to change its dividend formulae so that the value of future dividends that would be paid on its in-force policies at that time would be $15.34 Billion less than what it would have been had the company not demutualized and had it remained true to its at-cost contractual pledge to its policyholders. What it did through actuarial manipulation of its dividend formulae was to convert what should have been $15.34 Billion of [mostly after-tax] policyowner dividends into $15.34 Billion of [mostly pre-tax] stockholder dividends - - - an event which, of course, ballooned the value of the newly issued MetLife stock.

29. The process described in the preceding paragraph is the essence of the demutualization scam as it's been practiced in North America for most of the past 20 years - - - monies that are contractually required to be paid as policyholder dividends are converted [via actuarial skullduggery and smoke-'n-mirrors] to stockholder dividends; the associated stock rises in price; and the owners of same reap a windfall.

30. Those responsible for the scam include all the usual players - - - actuaries, lawyers, investment bankers, regulators, legislators and insurance company directors and officers - - - but it's hard, with one exception, to talk about culpability. That's because the extreme actuarial complexity of the swindle oftentimes results in involved professionals not even realizing they're in the midst of a theft as they do their work. The one exception, of course, is the actuarial profession - - - these individuals and their hit squad [a group called the Actuarial Standards Board which has promulgated a number of corrupt demutualization-related practice standards to facilitate the theft] usually know how the milk's being watered down and, for the most part, look the other way as the deed is done.

31. The bad Actuarial Standards of Practice ["ASOPs"] that facilitated the recent destruction of most of America's great mutual life insurance companies are three in number: No. 15 ["Dividends for Individual Participating Life Insurance, Annuities and Disability Insurance"], No. 33 ["Actuarial Responsibilities with Respect to Closed Blocks in Life Insurance Company Conversions"] and No. 37 ["Allocation of Policyholder Consideration in Mutual Life Insurance Company Demutualizations"]. The first two of these gave the blessing of the actuarial profession to a unilateral abrogation of the individual contractual rights of 10-11 Million pre-demutualization MetLife policyholders to receive their insurance on an at-cost basis [an event that robbed those people, as noted above, of $15.34 Billion back in the year 2000]. The third one [which was a de facto legal judgment and not an actuarial treatise] invented out of thin air a new contractual methodology for passing out shares of stock to the noted 10-11 Million policyholders who'd just had their Company stolen from them. Tierney's substantive comments to the Actuarial Standards Board concerning the bad ASOPs [which fell on deaf ears] are reproduced on pages 8-9, 10-11 and 12-14 of the attachment hereto.

Conclusion

32. The April 2000 demutualization of the Metropolitan Life Insurance Company was a flawed process that's begging for a judicial remedy.

33. The Court's recent observation that "MetLife marshals a convincing body of evidence that its demutualization was conducted in accordance with standard actuarial practices and in compliance with New York insurance law" is nominally correct but it doesn't absolve MetLife because: (1) those actuarial practices [which were technically complied with] are mathematically unsound, a violation of individual contract rights and a quasi-judicial and unauthorized promulgation of law; and (2) the noted New York law [which simply vested demutualization methodology approval in its Insurance Commissioner] was technically complied with when Commissioner Levin spoke but ultimately broken when the Commissioner allowed a New York

State interference with and a modification of individual insurance policy provisions [most of which were subject to the laws of states other than New York].

34. The easiest process modification to bring MetLife's pre-demutualization policyholders justice would be to augment what's called the Closed Block by the $15.34 Billion post-demutualization shortfall. If investments from MetLife's current portfolio in this amount were to be transferred to the Closed Block [along with additional funds that represented the hypothetical investment accumulation that would have been generated from the actual date of the demutualization until the actual date of the remedial transfer] then this would be a tolerance-acceptable cure of MetLife's breach of its obligation to provide insurance on at at-cost basis.

35. The class of policyholders entitled to this remedy should be all MetLife policyholders at the time of demutualization who owned policies containing an at-cost dividend entitlement [the owners of what are known as **"participating polices"**]. It would probably also be a good idea for the post-remedy administration of the Closed Block to have independent investment management; this would eliminate the conflicting tendency of MetLife to be unduly conservative [because they must make up losses but they don't get to share in gains] were they to continue in said management.

36. Fashioning an acceptable remedy to cure MetLife's mis-allocation stock is a more difficult correction since exactness would require that excess stock that was distributed at the time of demutualization be retrieved. If retrieval is thought to be too cumbersome then rough justice can be obtained by issuing additional stock [that might be of a different class] to those who were shorted at the time of demutualization. This might be an appropriate correction since the gross diversion in this contract breach is probably a lot less than the at-cost variance.

37. The class of policyholders entitled to this remedy should also be all MetLife policyholders at the time of demutualization who owned participating polices since it is these individuals who are collectively the parties to the contract of cooperative association.

I declare under penalty of perjury, and under the laws of the United States, the Commonwealth of Massachusetts and the State of New York, that the foregoing, to the best of my knowledge, is true and correct.

Executed this 25th day of August 2009 in Framingham, Massachusetts

/s/ *Thomas P. Tierney*

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CURRICULUM VITAE

THOMAS P. TIERNEY, FSA, MAAA, EA
CONSULTING ACTUARY

Date of Birth .... April 24, 1943

Residence............ Salem, Massachusetts [April 1943 - August 1966]
Newton, Massachusetts [August 1966 - June 1967]
Framingham, Massachusetts [June 1967 - Present]

Education............ Boston College [B.S. - Physics], Class of 1964
Northeastern U. [M.S. - Actuarial Science], Class of 1968

Military............... U. S. Marine Corps: Active duty ___August 1964---- > February 1965
Reserve duty __February 1965 - > August 1970

Professional Credentials .... Fellow, Society of Actuaries
Member, American Academy of Actuaries
Member, Boston Actuaries Club
Enrolled Actuary, U.S. Depts. of Labor and Treasury

Employment History........

Employer	Position	Period
John Hancock Life Ins.	various positions	Mar. 1965 -- > July 1977
William M. Mercer, Inc.	Consulting Actuary	July 1977 --- > Feb. 1979
Alexander & Alexander	Consulting Actuary	Feb. 1979--- > Feb. 1980
Tierney & Peters	Consulting Actuary	Sept. 1987 -- > Jan. 1993
Tierney Associates, Inc.	Consulting Actuary	Feb. 1980--- > Present

Practice Areas ..... Employee benefits consulting [general practice excluding asset management]
Life insurance company consulting [general practice excluding asset management]
Valuation of contingent assets and liabilities

Publications .... Approximately 40-50 articles, discussions and public opinions in the areas of pension plan forecasting , pension plan accounting, expert testimony, Social Security, employee benefit valuation, insurance company ownership and computer utilization

DEPOSITIONS [of T. P. Tierney on or after 1-1-1998]

Samuel Jacobsen and Jerry P. Kayle v. Prudential Insurance, et al.
California Superior Court(Los Angeles) Docket No. BC179323
Deposed on 8-11-1998 [and continued on 8-12-1998]

Casey, et al. v. Prudential Insurance, et al.
California Superior Court(Monterey) Docket No. 110178
Deposed on 10-6-1998 [and continued on 11-16-1998]

Michele Morgan, et al. v. The Hartford Financial Services Group, Inc. et al.
California Superior Court(San Diego) Docket No. 715498
Deposed on 4-11-2000

Kevin Laurent, et al. v. The Franklin Life Insurance Company
Illinois Circuit Court [3rd Circuit - Madison County] Cause No. 99-L-300
Deposed on 12-1-2000

William D. Martindale, et al. v. Southwestern Life Insurance Company, et al.
U.S. Dist. Court for the Eastern Dist. of Texas [Beaumont Div.] Cause No. 1:00-CV-687
Deposed on 3-12-2002

Ross T. Goldberg, et al. v. Conseco Life Insurance Company, et al.
California Superior Court(Los Angeles) Docket Nos. BC234413 and BC248752
Deposed on 5-29-2002

Walter Klein and Sharyn M. Klein v. No. Am. Co. for Life and Health Insurance
California Superior Court(Los Angeles) Docket No. BC257856
Deposed on 8-3-2004

Estate of Kevin McShane, et al. v. The Chilton Club
Massachusetts Superior Court (Middlesex) Docket No. 05-0783
Deposed on 10-8-2008

PUBLICATIONS [of T. P. Tierney on or after 1-1-1992 - - - Page 1 of 2]

1992-12-18 Comment presented to the Actuarial Standards Board regarding their then-pending standard entitled "Selection of Economic Assumptions for Measuring Pension Obligations"

1995-03-07 Presentation at a Key West meeting of the American Academy of Matrimonial Lawyers entitled "Important Factors in Pension Valuation"

1995-06-27 Comment/testimony presented to the Massachusetts Insurance Department at their "State Mutual Demutualization" hearing

1996-07-17 Testimony presented to the Massachusetts Insurance Department at their "Metropolitan Life/New England Life Merger" hearing

1996-10-04 Letter to the editor [captioned "Insurance scam revisited"] published in The Boston Phoenix

1997-06-04 Comment/testimony presented to the Joint Committee on Insurance of the Massachusetts General Court [aka the Mass. legislature] regarding then-pending legislation concerning mutual life insurance holding companies

1997-10-22 Comment presented to the New York State Assembly Standing Committee on Insurance regarding then-pending legislation concerning mutual life insurance holding companies [subsequently published in the May 1998 issue of Small Talk]

1998-01-20 "Return of the Robber Barons?" - a commentary regarding life insurance company organizational structure that's avalaible at www.demutualization.org and that's been hard-copy published, under the title "Watch out for Mutual Holding Companies", in the May/June 1998 issue of Contingencies

1998-09-01 Comment presented to the Actuarial Standards Board regarding their then-pending standard entitled "Actuarial Responsibilities with Respect to Closed Blocks in Mutual Life Insurance Company Reorganizations"

1998-10-21 Presentation at a New York City meeting of the Society of Actuaries entitled "Update On Mutual Holding Companies"

1998-12-09 Presentation at a local meeting of the Boston Actuaries Club entitled "Analyzing QDROs"

1999-04-01 Comment presented to the Actuarial Standards Board regarding their then-pending standard entitled "Actuarial Practice Concerning Retirement Plan Benefits in Domestic Relations Actions"

PUBLICATIONS [of T. P. Tierney on or after 1-1-1992 - - - Page 2 of 2]

1999-10-12 Presentation at a Boca Raton meeting of the Conference of Consulting Actuaries entitled "Demutualization and Mutual Holding Companies"

1999-12-18 Comment presented to the Actuarial Standards Board regarding their then-pending standard entitled "Allocation of Policyholder Consideration in Mutual Life Insurance Company Demutualizations"

2000-01-24 Comment/testimony presented to the New York State Insurance Department at their "Metropolitan Life Demutualization" hearing

2000-02-14 Supplemental written comment presented to the New York State Insurance Department regarding the still-pending "Metropolitan Life Demutualization"

2000-05-01 Comment presented to the Actuarial Standards Board regarding their still-pending standard entitled "Allocation of Policyholder Consideration in Mutual Life Insurance Company Demutualizations"

2001-07-17 Comment/testimony presented to the New Jersey Insurance Department at their "Prudential Life Demutualization" hearing

2001-08-15 Comment presented to the Actuarial Standards Board regarding their then-pending standard entitled "Expert Testimony by Actuaries"

2001-08-16 Supplemental written comment presented to the New Jersey Insurance Department regarding the still-pending "Prudential Life Demutualization"

2005-01-19 Letter to the editor [re: Actuarial Standard of Practice No. 27] published in the April/May 2005 issue of The Actuary

2005-09-30 Comment presented to the Actuarial Standards Board regarding their then-pending standard entitled "Dividends for Individual Participating Life Insurance, Annuities, Disability Insurance, and Long Term Care Insurance"

2006-10-31 Comment presented to the Critical Review of the U.S. Actuarial Profession ["CRUSAP"] Task Force regarding their then-pending report entitled "A Critical Review of the U.S. Actuarial Profession"

2009-06-30 Article entitled "Health Care Darwinism" published in the Metrowest Daily News

TESTIMONY [of T. P. Tierney on or after 1-1-1998]

Estate of John Kulikowski
Massachusetts Superior Court (Suffolk)
Testified in Court on 6-23-1998

Moss v. Moss
Massachusetts Probate & Family Court (Concord)
Testified in Court on 5-3-1999

Petition of Beverly Russell
Massachusetts Probate & Family Court (Worcester)
Testified in Court on 11-3-2000

Susan Stone v. Peter M. Stone
Massachusetts Probate & Family Court (Worcester) Case No. 93 DR 0755 DV2
Testified in Court on 5-11-2001

Benkert v. Tkacik
Massachusetts Probate & Family Court (Cambridge) Case No. 01D 1400 DV1
Testified in Court on 4-30-2003

Halperson v. Halperson
Massachusetts Probate & Family Court (Cambridge) Case No. 03D0159DV1
Testified in Court on 5-24-2004

Terral v. Terral
Massachusetts Probate & Family Court (Concord)
Testified in Court on 7-7-2006

Widoff Modern Bakery v. Bakery & Confectionery Union Pension Plan
American Arbitration Association (Boston, MA)
Testified at Hearing on 1-22-2007

Beliveau v. Town of Mansfield
Federal District Court (Boston, MA)
Testified in Court on 7-11-2007

Nowak v Nowak
Massachusetts Probate & Family Court (Fall River)
Testified in Court on 2-12-2009

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February 14, 2000

Neil D. Levin
Superintendent
New York State Insurance Department
25 Beaver Street
New York, NY 10004-2319

RE: MetLife's pending Plan of Reorganization under Section 7312 of the NY Insurance Law

Dear Superintendent Levin:

Thank you for the opportunity to testify, on behalf of MetLife policyholder Larry Mueller, at the January 24, 2000 public hearing regarding the referenced matter.

This letter is being provided to you as a supplement to my January 24th remarks. In particular, it will expand upon my comment that day that the "Historic-Plus" methodology for allocating demutualization compensation among "Eligible Policyholders" is actuarially unsound.

The fundamental problem with the "Historic-Plus" methodology is that it requires that the spreading of demutualization compensation to be in proportion to an allocation base that's defined as a policy's past contribution to company surplus plus the corresponding contribution that this policy is expected to make in the future. This approach differs from the "Historic-Only" methodology which allocates this compensation by referencing only the contributions to company surplus that a policy has made in the past.

The actuarial problem with the "Historic-Plus" methodology stems from the fact that the noted allocation base, in a mature and properly run mutual life insurance company, will normally aggregate to zero for said company [and it will usually also sub-total to zero for many of the blocks of business that are a part of the company's in-force]. This aggregate zero value means that the noted "Historic-Plus" allocation base can't be used for proportionate spreading [because of what's mathematically known as a zero-divide limitation] and any attempt at same would be, as I stated on January 24th, "actuarially unsound".

The reason the noted allocation base [a policy's past contribution to company surplus plus the corresponding contribution that this policy is expected to make in the future] will normally aggregate to zero in a mature and properly run mutual life insurance company is that these types of companies provide coverage to their policyholders on what's called an "at cost" basis.

This "at cost" concept simply means that insurance benefits are being provided for a "cost"

[consisting of a total premium consideration plus investment return on same] that's equivalent in value to the total provided benefits [plus expenses necessary to deliver same]. Under such a scenario, when a company is providing benefits on an "at cost" basis, the value of its aggregate "Historic-Only" contributions to surplus at any point in time must be offset by then-anticipated future surplus withdrawals that aggregate to an identical value. If this condition doesn't hold, then the company is either heading for insolvency [because its past and future surplus contributions are less than zero - i.e. it's providing benefits at less than cost] or it's skimming policyholder monies [because its past and future surplus contributions are greater than zero - i.e. it's providing benefits for more than cost].

For a discussion of the legal requirements relating to a mature mutual life insurance company's duty to provide benefits to its policyholders on an "at cost" basis, please reference the 11-9-1999 Weeks-to-Ruthardt letter that Attorney Weeks inserted into the MetLife Demutualization Hearing record on January 17, 2000.

Note also, as a matter of simple common sense apart from law and actuarial science, that a company operating on a mutual basis in perpetuity must be run on an "at cost" basis. If it's not operating this way, it will eventually either go bankrupt or wind up drowning in excess money.

The "Historic-Plus" process, in addition to being actuarially unsound, is also suspect because of its origins. It's a methodology that was created in a publication entitled "Report of the Task Force on Mutual Life Insurance Companies" that was published in Vol. 39 (1987) of the Transactions of the Society of Actuaries. In this document, the "Task Force" noted, as a factual observation, that most mutual life insurance companies in 1987 were skimming monies from their policyholders [through a process they euphemistically labeled "an entity capital financial approach"]; they then endorsed this process because it was a "model that could be considered to typify mutual company financial operations" at that time; and they then dismissed, presumably for having fallen into disuse, the "at cost" model on which mutual life insurance company operations had previously been based [a process they called the "revolving fund approach"]. With this sequence of events under their belt, the Task Force was then able to recommend an "Historic Plus" methodology for allocating policyholder consideration because the a priori condition for making such a process mathematically feasible [namely an on-going company skim of policyholders money] had been met. The fact, however, that the "Historic-Plus" methodology rests upon what may be an illegal skim means this approach itself is suspect.

Very truly yours,

Thomas P. Tierney, FSA, MAAA
Consulting Actuary

cc: Paul Benton Weeks III, Esq. [attorney for Mr. Mueller]

1999-10-01 Tierney Comment on ASOP No. 37 [Page 1 of 2]

The proposed standard is an abomination and I urge the ASB to think hard about what it will be doing, and the myriad implications of same, if it comes forth once again [as it shamelessly did earlier this year when promulgating the "Closed Block" ASoP] with the expected hasty rubber-stamp approval of the pending proposal.

Among the problems with the proposal are the following:

Promulgator perspective - The problem here is that the Perrott committee, while going by the "Policyholder Equity Task Force" moniker, is not acting on behalf of today's beleaguered mutual insurance company policyholders; they are, in fact, acting as management advocates. The latter role can, of course, be proper when one is working as a private consultant or company employee; but, when the role becomes one of an actuary promulgating a public standard, then the only client said actuary can serve must be the insuring public. This concept of actuaries standing up and doing the right thing is an especially important point nowadays when the concept of mutuality is under assault in many companies [usually from their own management] and the other professions who might have been expected to help have either been paid off [politicians] or wimped out [regulators].

Theoretical Inaccuracies - Section 3.2.3, which requires that the lion's share of company value "be allocated on the basis of actuarial contribution" is nothing more than an actuarial contrivance that'll enable management to scam the money that's to be divided any which way they choose. That's because the "actuarial contribution", as it's defined in Section 2.1, would normally have a value of zero. The only way that it won't be non-zero in a mature company is if policyholders are denied their reasonable dividend expectations. This, of course, is exactly what may happen now that the ASB has given its blessing to policyholder dividend rip-offs in the "Closed Block" standard noted above. In effect, what's proposed is a corrupt standard that'll only work [and then with gross inequity] if it's operated in tandem with another corrupt standard. The fact that that's what we're left with should not be surprising since the same committee that's pushing this guide for manipulation is the same gang [with one body switch] that wrote the aforementioned ASB-rubber-stamp-approved "Closed Block" standard.

Scope - The problem to be analyzed is much broader than "allocating consideration"; what the ASB should be studying is the "assignation of ownership". The subjects considered should include eligibility criteria and [besides "Eligible Policyholders"] former policyholders, the Public, the Insuring Public and non-owner insureds/payees/beneficiaries. And the activity studied should cover [besides "demutualizations"] mergers, spin-offs, acquisitions and liquidations.

Helpfulness - The single biggest "assignation of ownership" problem a demutualizing company will normally face is the split of equity between lines of business and here the proposed standard provides no assistance. In fact it [through the "surplus . . . contribution . . . expected . . . in the future" concept] actually exacerbates the situation. That's because this prospective surplus idea [even though it's theoretically improper and it lacks long-term historical validation] has worked its way into current practice [unfortunately, at times, with an actuarial blessing] in part because of management schemes to shift equity from individual to group policyholders.

Fixed Component theory and pricing - The propriety of canceling someone's vote and then paying them an arbitrary amount for it ought to be examined. The point has been made in some prior dmutualizations that vote-buying per se is repugnant and that the only way value can be extracted from a right to vote is to allow the free exercise thereof; this point, while involving prescription authority beyond the ASB, should at least be noted in the standard. The point also needs to be made that, if and when one gets by the matter of vote-buying repugnancy, then the ASB should call for the pricing of the canceled votes to have an analytical MPT basis [i.e. the ASB should move beyond ratifying the current practice sloppiness just because actuaries have always, on this point, been sloppy].

Historical Contribution Approach and Dividend Formulae - The laws regarding the assignation of company ownership, at one time, were based upon the historical contribution approach and they required a methodology that was consistent with a company's dividend practices. If the ASB decides, for a change, to go beyond their customary "let's shill for management and the public be damned" posture [when dealing with life insurance] and to actually give the Perrott proposal their considered attention then I suggest that their review, in addition to the obligatory look at the current scams that now surround us, extend back to the way things were. The ASB might also extend their research into the concepts of "embedded surplus" and "organizational dynamic value" and they might even request that the major actuarial organizations lift their bans on discussing the proposed ASoP at actuarial meetings and in actuarial publications.

I suggest that the ASB reject the pending Allocation of Policyholder Consideration in Mutual Life Insurance Company Demutualizations ASoP and table the subject matter for re-visiting at a later and more appropriate time.

My reasons for this suggestion are three-fold.

First, the subject matter [the specification of an allocation methodology] is primarily a matter of law [contract, common, case and/or statutory] rather than actuarial science and, as such, it should not be part of an ASoP mandate.

Section 1.1 of the proposal gives nominal recognition to this protocol ["purpose . . . is to give actuaries guidance . . . on the actuarial aspects of a proposed allocation . . ."]; but, unfortunately, the remainder of the proposal shows this lead to be little more than lip-service.

For example and in particular, I call your attention to Section 3.2.3 of the proposal which specifies ". . . consideration should be allocated on the basis of the actuarial contribution . . ."; I have been informed by knowledgeable lawyers, and based upon that information I believe, that the adoption of such a mandate by the ASB would be jurisdictionally inappropriate; said lawyers have also told me, and based upon that telling I believe, that the proper allocation process should be determined by ascertaining, among other things, the law defining ownership of cooperatives and the individual policyholder contractual entitlements. I strongly suggest that the ASB retain legal counsel to advise them on this point.

Second the Section 3.2.3 allocation prescription noted above is based upon an allegedly illegal [and I also believe criminal] foundation. This foundation, which requires the noted "actuarial contribution" to be non-zero, will only be operationally feasible if a demutualizing company has reduced its dividend scales by requiring its policyholders to make so-called "entity capital contributions"; I have been informed by knowledgeable lawyers, and based upon that information I believe, that such reductions [because they violate the so-called "insurance at cost" contractual entitlement of mutual policyholders] are illegal and thus, of course, inappropriate as an ASoP base; in this regard, note the astounding editorial comment [in the last sentence on page 19 of the applicable December 1999 ASoP booklet] saying ". . . the legitimacy of all past management practices . . . is beyond the scope of this standard."; I suggest that the ASB think long and hard about the implications of such a modus operandi and that it also retain legal counsel to advise it on this point as well.

Note also that the "entity capital contributions" approach, when studied as part of stylized insurance company modeling, will eventually collapse as actuarially unsound since the retained "contributions" must [unless they're stolen] eventually be returned to policyholders as individually-deferred or block-deferred dividends; and, because of this unsoundness, such an approach shouldn't be bed-rocking the proposed ASoP.

Third, and finally, the timing of the ASB's consideration should be deferred on account of legal actions that are currently underway in multiple jurisdictions; in brief, the ASB should, at least momentarily, back off and let the courts speak before continuing its bull-in-a-china-shop effort to create law.

It should also be noted, in connection with this point, that Mr. Perrott and this commenter are heavily involved in some of this litigation [even to the point where Mr. Perrott's questionable citation of the pending unissued ASoP (in an evidentiary fashion in a legally-mandated forum) is now a part of the court record in at least one of the noted actions]; and, as such and because of the obvious conflict-of-interest problems, this involvement is another reason suggesting an ASB tabling of the matter would be advisable.

2005-09-30 Tierney Comment on Revision to ASOP No. 15 [Page 1 of 3]

1. The proposed standard fails, with one small partial exception, by not stating the legal and contractual context into which the purported guidance falls. The standard should specify that the entitlement to and the amount of dividends payable with respect to a particular policy is a contractual right and it should clearly delineate the relationship between what is contractually required and what is a matter of company and/or laboring actuary discretion.

2. The exception noted in paragraph no. (1) is contained in Section 3.10 of the proposed standard where it is stated "In establishing or changing termination dividends, the actuary should consider the insurer's intent . . .". This is not exactly correct; this termination dividend statement is patronizing and unilateral but it is at least half right. It would be wholly correct if the expression "insurer's intent" were to be replaced with the expression "insurer's and policyholder's intent" or "parties' intent". The point is that it should be made clear in the proposed ASOP 15 revision that an insurance policy is a contract between an individual and an underwriter and that this contract governs the payment of dividends; the proposed ASOP 15 revision should delineate the details of what the laboring actuary is legally required to do and where he/she and/or his/her client/employer has discretion.

3. With regard to non-termination [aka "in-force", "annual" or "periodic"] dividends, the proposed ASOP 15 revision contains none of the contractual exactness noted in paragraph nos. (1) and (2). More specifically: the proposal doesn't address the current "at cost"/"entity capital contribution" conflict; it doesn't explain the origin of divisible surplus [what is current gain and what is withdrawal of previously retained surplus?] and it doesn't address the company/actuary responsibility with respect to retained surplus; and it grants, in a number of situations, ultra vires authority to a laboring actuary/company.

4. The ASB shouldn't ignore the elephant grazing in the middle of the Board Room. Its proposed ASOP 15 revision should briefly define the "at cost" and "entity capital contribution" theories of surplus disposition. It should note that the "at cost" methodology is generally accepted practice and, until recently, was universally employed. It should further note that the "entity capital contribution" methodology is not generally accepted practice; it is considered by many to be an illegal breach of contract; it is actuarially unsound [a/c it produces an emerging operating gain stream that is non-convergent]; and, until recently, it was not employed anywhere. For more detail on same I refer the ASB to my 2-14-2000 2-page letter to the New York Insurance Department which is is a matter of public record and which is embedded at the bottom of this e-mail. I also call the ASB's attention to the 19-page statement on this subject that I submitted to the New Jersey Department of Insurance on 7-17-2001 in connection with my oral testimony on that date at their public hearing on Prudential of Newark's then-pending plan of demutualization; this Prudential demutualization document is also in the public record and I incorporate it herein by reference.

5. The proposed ASOP 15 revision should note that the source of divisible and retained surplus is an insurer's operating gain, that this origin is singular and that all of this return, under all generally accepted and properly legal actuarial practice ethics, belongs to a mutual insurer's policyholders. Said revision should note that over the life of a particular dividend factor class, all of the generated surplus associated with same must be returned, via dividends, to that class.

6. Among the places in the proposed ASOP 15 revision where ultra vires authority is erroneously granted to a laboring actuary/company are Sections 3.3.2, 3.6, 3.9.

7. The context of the word "changing" in Section 3.3.2 implies that a dividend factor class, as defined at the time of policy issue, may be split sometime thereafter. This is an example of "event subsequent" recognition and attribution which, unless specifically contracted for at issue, is not allowable under the risk transfer ethic that is a part of normal insurance dealings.

8. The second paragraph of Second 3.6, by obfuscation, seems to be blessing the current practice in many companies of post-issue splitting of a dividend investment factor class into sub-grouping variants that reflect individual policy loan histories. This is a particular crystallization of the prohibited transaction activity referenced in paragraph no. 7 above. A related problem is that the second paragraph of Section 3.6 seems to allow the introduction of per policy expense factors in the dividend treatment of policies that have never had any per policy premium components. Note also the Section 3.9 comment that follows.

9.a. Section 3.9 has a couple of problems:

9.b. First, the "Issued by a Stock Company" limitation of the Section begs the larger question of the proper dividend treatment of participating policies in a stock company that were originally issued by a mutual company - a particular "big elephant" behavior the pending ASOP 15 revision is ignoring. Most mutuals, when demutualizing, have, via actuarial contrivance and with only a few wilderness actuaries objecting, converted a major portion of what should be post-demutualization policyholder dividends into stockholder dividends. I roughly estimate the amount of theft damage, as of today, to be on or about $100 Billion and I implore the ASB, which through its prior improper behavior is partially responsible for this theft, to take corrective action.

9.c. Second, the imperative that the "actuary should comply with applicable state law" needs forewarning that there is bad "state law" in at least 2 areas [law that allows splitting of dividend investment factor classes a/c loan histories and law allowing the aforementioned "Entity Capital Contribution" theory of divisible surplus determination]. The proposed ASOP 15 revision should inform the laboring actuary that state law can't modify the contractual obligations of private contracting parties and, if one purportedly does so, then it must be ignored and the original contract terms must be followed.

10.a. Minor Point No. 1 - The Sections 2.3 and 2.6 definitions appear to be one and the same; should they be merged or more finely delineated?

10.b. Minor Point No. 2 - The word "marketing" as it appears in Section 3.2 of the pending standard is repulsive and ought to be replaced. It's symptomatic of the imperial, condescending and myopic view that mutual insurer managers usually have of the policyholder associations that they work for - seeing these groupings as being either sales-and-services organization or as financial institutions. They are neither and this is the wrong perspective; the proper viewpoint is that of the individual policyholder where an enlightened eye will see the mutual insurance company organizational dynamic as it truly is: a combination of a consumer cooperative and a public charity - the former being the entity where the associating policyholders mutually protect each other and the latter being the facility where these policyholders [using monies that would otherwise redound to themselves] charitably provide an extension of this protective capacity to the Public. I suggest you change the word "marketing" to "charitable".

Thank you ASB and your associates for your laboring on the pending re-write of ASOP 15. While I've been disappointed in the past with the ASB's tooling for management and its dumping on policyholders and the Public when blurbing on dividends, I have not yet lost hope. The pending re-write of ASOP No. 15 gives the ASB an excellent chance to correct its prior misdeeds by issuing proper topical guidance in the matter of actuarial dividend stewardship.

I wish the ASB well.