

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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EUGENIA J. FIALA, GEORGE KRESOVICH, MILDRED  
KRESOVICH, PAUL HAZEN, THERESA HAZEN, VIJAH J.  
SHAH, JOHN T. BROPHY, IRA J. GELB, JUNE A. GELB,  
GAIL TAMARIN, LLOYD TAMARIN, MARK D. SMILOW,  
PATRICK EMANUEL and RICHARD E. SCHWEINBERG,  
et al. on behalf of themselves and all other similarly situated  
policyholders of Metropolitan Life Insurance Company,

Index No.  
00/601181  
Index No. 00/108887

Plaintiffs,

Justice Cahn  
Part 49

-against-

METROPOLITAN LIFE INSURANCE COMPANY, METLIFE,  
INC., ROBERT H. BENMOSCHE, CURTIS H. BARNETTE,  
GERALD CLARK, JOAN GANZ COONEY, BURTON A.  
DOLE, JR., JAMES R. HOUGHTON, HARRY P. KAMEN,  
HELENE L. KAPLAN, CHARLES M. LEIGHTON,  
ALLEN E. MURRAY, STEWART G. NAGLER,  
JOHN J. PHELAN, JR., HUGH B. PRICE, ROBERT G.  
SCHWARTZ, RUTH J. SIMMONS, WILLIAM C. STEERE, JR.,  
GOLDMAN SACHS & COMPANY, and CREDIT SUISSE  
FIRST BOSTON,

Defendants.

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**SECOND AMENDED CONSOLIDATED COMPLAINT**

**LOVELL STEWART HALEBIAN LLP**

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Co-Lead Counsel for Plaintiffs

(Additional Counsel on Signature Page)

Plaintiffs complain of defendants as follows:

### **VENUE**

1. Venue is proper because, among other things, (a) one or more defendants reside in this County, (b) important parts of the unlawful conduct complained of occurred in this County, and (c) the standardized false document was prepared and the demutualization based on such false document occurred in this County.

### **PARTIES**

2. The pertinent allegations regarding the named plaintiffs are set forth in Exhibit A hereto. Plaintiffs expressly reserve the right to supplement this Complaint at or before the time of the filing of the class motion or the hearing on any motions so as to include additional named plaintiffs. To the extent necessary to preserve for appeal to the Court of Appeals **all** issues resolved against plaintiffs by the First Department decision dated April 27, 2004, plaintiffs allege and re-incorporate, for purposes of any appeal to the Court of Appeals and as if fully set forth herein, all of the allegations and causes of action of the Amended Consolidated Complaint in the Fiala action (00/601181) dated August 11, 2000 against all defendants therein and the Class Action Complaint in the Shah action (00/108887) against all defendants therein. Otherwise, plaintiffs amend their allegations in Fiala and Shah in this consolidated complaint consistent with the First Department order as follows.

3. Plaintiffs and each member of the Class were policyholders in the mutual company known as Metropolitan Life Insurance Company (“MetLife”) until MetLife converted to a stock insurance company in the “demutualization” transaction alleged hereinafter. Because Plaintiffs purchased and maintained their policies with MetLife, they had rights as members of a mutual

insurance company, including their rights to nominate and elect directors; to approve all changes to the charter and by-laws; to call special meetings of the Company; to receive any dividends declared or reflected in reduced premium payments; to share in all remaining assets upon dissolution; to transfer certain membership rights to another policyholder under some circumstances; to bring a derivative action on behalf of the corporation; to have the surplus of the mutual insurance company held for their exclusive benefit; and to vote, based upon an accurate disclosure document, on any change in MetLife's form from a mutual to a stock insurance company.

4. Defendant MetLife was a mutual life insurance company which has reorganized into a stock insurance company, under New York law, with its principal place of business in New York, New York and doing business in all fifty states.

5. Defendant MetLife, Inc. is a stock company organized under the laws of the State of Delaware, with its principal offices being in New York, New York. MetLife, Inc. was formed to succeed to the property and interests of MetLife upon its conversion to a stock corporation.

6. For all relevant times before April 5, 2000, Defendant Robert H. Benmosche ("Benmosche") was Chairman, President, Chief Executive Officer and a director of MetLife; Benmosche now holds these positions with MetLife, Inc.

7. For all relevant times before April 5, 2000, Defendant Gerald Clark ("Clark") was Vice Chairman, Chief Investment Officer and a director of MetLife; Clark now holds these positions with MetLife, Inc.

8. For all relevant times before April 5, 2000, Defendant Stewart G. Nagler ("Nagler") was Vice-Chairman, Chief Financial Officer and a director of MetLife; Nagler now holds these

positions with MetLife, Inc.

9. For all relevant times before April 5, 2000, Defendants Curtis H. Barnette (“Barnette”), Joan Ganz Cooney (“Cooney”), Burton A. Dole, Jr. (“Dole”), James R. Houghton (“Houghton”), Harry P. Kamen (“Kamen”), Helene L. Kaplan (“Kaplan”), Charles M. Leighton (“Leighton”), Allen E. Murray (“Murray”), John J. Phelan, Jr. (“Phelan”), Hugh B. Price (“Price”), Robert G. Schwartz (“Schwartz”), Ruth J. Simmons (“Simmons”), and William C. Steere, Jr. (“Steere”), were directors of MetLife; these defendants are now directors of MetLife, Inc.

10. Defendants Benmosche, Clark, Nagler, Barnette, Cooney, Dole, Houghton, Kamen, Kaplan, Leighton, Murray, Phelan, Price, Schwartz, Simmons and Steere shall be collectively referred to as the “Individual Defendants”.

### **JURISDICTION**

11. This Court has jurisdiction pursuant to common law and Section 7312 of New York’s Insurance Law.

### **INVESTMENT BANKER ADVISORS**

12. Goldman, Sachs & Company (“Goldman Sachs”) is a public corporation with its principal place of business in New York County. Goldman Sachs is a principal tenant of MetLife in various real properties owned by MetLife.

13. Credit Suisse First Boston (“Credit Suisse”) is a wholly-owned subsidiary of Credit Suisse Group of Zurich, Switzerland corporation with its principal place of business in New York County. Credit Suisse is a principal tenant of MetLife in various real properties owned by MetLife, and MetLife owned a substantial amount of the common stock of Credit Suisse.

14. The causes of action against the Investment Banker Advisors have been dismissed by the order of the First Department dated April 27, 2004. Plaintiffs preserve for appeal to the Court of Appeals, all allegations and causes of action relating to Goldman Sachs and Credit Suisse that were dismissed from the Amended Consolidated Complaint in Fiala by the order of this Court dated February 21, 2003 and the order of the First Department dated April 27, 2004. Goldman Sachs and Credit Suisse are not defendants on the causes of action herein. However, to the extent necessary to preserve plaintiffs' earlier allegations and causes of action against defendants Goldman Sachs and Credit Suisse for appeal to the Court of Appeals, the allegations against Goldman Sachs and Credit Suisse in the earlier complaint are incorporated and repeated herein.

#### **CLASS ALLEGATIONS**

15. Plaintiffs bring this action as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules ("CPLR"). Plaintiffs assert their claims individually and on behalf of a Class of all persons similarly situated, who are defined as All Eligible Policyholders of MetLife as of September 28, 1999. The Class includes all persons who purchased, and had outstanding, as of September 28, 1999, life insurance, annuity or other policies of MetLife or its subsidiaries.

16. Specifically excluded from the Class are the Defendants, and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such individual or entity.

17. CPLR § 901 a. 1. The members of the Class are numerous. Joinder is impractical. The number of policyholders throughout the United States who are eligible to participate in the

Class is over 10 million. Policyholders and other members of the Class may be identified from records maintained by MetLife, Inc. and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

18. CPLR § 901 a. 2. There are questions of law or fact common to the Class which predominate over any questions affecting only individual members. Common questions of law and fact include, inter alia:

- (a) whether defendants had a plan to cause MetLife to sell excess shares of Company stock on the IPO and then buy those shares back shortly thereafter;
- (b) whether MetLife or any defendants discriminated against policyholders by favoring certain policyholders in connection with MetLife's demutualization transaction alleged herein;
- (c) whether the standardized Policy Information Booklet on the basis of which the defendants obtained the required two-thirds vote of approval of policyholders in favor of the demutualization of Metlife, was materially misleading because it omitted to state the facts referred to in (a) or (b) above;
- (d) whether the PIB or defendants' wrongful conduct caused or was an essential link in the approval of MetLife's IPO;
- (e) whether defendants, through wrongful conduct, caused MetLife's IPO price (and, therefore, the consideration paid to policyholders for their interest in MetLife) to be lower than in the absence of such wrongful conduct;
- (f) whether class members who elected cash consideration or voted in favor of the demutualization or received the IPO price are legally entitled to an irrefutable presumption of reliance or are otherwise required to prove any reliance in order to establish the causes of actions alleged herein; and
- (g) whether defendants' wrongful conduct caused injury to plaintiffs and, if so, what are the appropriate measures of damages sustained as a result of defendants' conduct and/or what other relief, if any, may be appropriate.

19. CPLR § 901 a. 3. Plaintiffs are members of the Class. The claims of Plaintiffs are typical of those of the Class. Plaintiffs, as well as the other Class Members, were all subject to

the same standardized Plan or Reorganization. All received the same standardized Policyholder Information Booklet. All were subject to the same common course of conduct by defendants. The wrongs against Class Members will be proven through proof of the wrongs against Plaintiffs. Plaintiffs have no interests that are adverse or antagonistic to those of the Class.

20. CPLR § 901 a. 4. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel experienced in the prosecution of class actions.

21. Further, the acts of which plaintiffs complain are applicable to all Class Members. Plaintiffs share identical or similar legal and contractual rights. All Class Members seek common forms of relief and present a common factual underpinning. All plaintiffs suffered damages by reason of the material omissions alleged. Plaintiffs have no interests antagonistic to Class Members and will fairly and adequately represent them.

22. CPLR § 901 a. 5. A class action is superior to other available methods (if any) for the fair and just adjudication of Class Members' claims. The relatively small dollar amount of individual Class Members' claims when compared to the impact that an adjudication of liability in an individual action would present for Defendants makes costly individual suits impractical for Class Members. Defendants would pour tremendous resources into the litigation of an individual suit, forcing individual plaintiffs to expend comparable sums that would most likely consume the entire dollar amount of their claims. Absent a class action, Class Members will have no cost-effective form of relief.

23. A class action is in the best interest of judicial economy. Proof of the wrong committed against plaintiffs will provide proof of the wrong committed against all Class

Members. Identification of Class Members can be easily determined from records kept in the ordinary course of business by Defendants. Notice can be easily provided to all Class Members through ordinary mail addressed to addressees maintained by the Defendants. One court can thoroughly adjudicate all Class Members' claims with respect to the conduct complained of herein.

24. CPLR § 901 b. Plaintiffs and the Class do not allege any claims under or rely upon any statute creating or imposing a penalty or a minimum measure of recovery.

**A. For The Predominant And Main Purpose Substantially Increasing Officer-Director Compensation, The Defendants Decide To Cause MetLife To Demutualize, Issue Excess Shares On The IPO, And Buy Those Shares Back After The IPO**

25. (a) Under New York law, every domestic mutual insurance company is organized, maintained, and operated for the exclusive benefit of its policyholder members as a non-stock corporation.

(b) By purchasing individual policies of insurance, the policyholders become the members of the mutual company. As such, they (1) are the effective owners of the mutual insurance company, (2) provide virtually all of its equity capital, and (3) are owed all surplus in the event of a corporate liquidation. See e.g., New York Insurance Law §§ 1211, 4231 and 7434.

26. During the 1990s, as all Defendants well knew, it became clear that changing the legal form of an insurance company from a mutual company to a stock company (i.e., “demutualizing”) would “open the door” to and permit substantial increases in the compensation of officers and directors of an insurance company, and insurance experts began to refer to the demutualization of an insurance company as “an executive self-enrichment scheme developed by management and their corporate law firms”. See e.g., “Price It Right”, Best’s Review Magazine,

February 2000 at p. 99 (reporting that demutualizations have systematically underpaid for policyholder interests). On or about July 24, 1998, Goldman Sachs told the Individual Defendants (or prepared to state to the Individual Defendants) as follows:

The compensation plan to be implemented for a mutual company's management at the time of conversion is generally a sticking point with consumer advocates and state regulators. Throughout the debate over mutual holding company legislation in New York, **critics have levied charges that the real purpose of the reorganization sought is enrichment of management through stock options.** [Emphasis supplied]

27. For the predominant and main reason substantially increasing officer and director compensation, Defendants took various steps from 1996-2000. First, during 1996-1997, defendants took steps that were described as "selling their policyholders' interests out from under them" to convince the New York State Legislature to pass legislation permitting mutual holding companies to exist and issue public stock. See Business Week, December 14, 1998, "MetLife's Fighter Pilot", at pp. 124-26. However, the New York Legislature rebuffed the Individual Defendants' lobbying efforts (undertaken with policyholder monies) to enact mutual holding company legislation.

28. Second, in 1998-1999, the Individual Defendants considered and eventually proposed a demutualization. From the earliest beginnings and very start of such consideration, a central issue which the Individual Defendants discussed, studied, contemplated and investigated was whether, in such a demutualization, officer and director compensation could be increased through stock options and otherwise.

29. Third, defendants formed a plan well before November 1999, to issue excess shares on MetLife's IPOs and then buy those shares back beginning shortly after the IPO. See ¶¶ 41-58 below.

**B. In Order To Substantially Increase Director-Officer Compensation, The Defendants Had To Seek And Arrange For What They Repeatedly Represented Would Be The Payment To Policyholders Of The Book Value Of Policyholders' Ownership Interests Plus A "Premium"**

30. In taking away or liquidating policyholders' ownership interests through a demutualization, Defendants were obligated to cause MetLife to pay the value of those interests to policyholders. There were, in essence, three ways to try to do this: (1) dilutive ways, *i.e.*, ways in which policyholders were diluted and not paid the full book value; (2) non-dilutive ways, *i.e.*, ways which paid policyholders the book value or more for their interests, and (3) a combination of (1) and (2) which, on net, produced book value.

31. Non-dilutive methods included (a) purchases of policyholders' interests at book value (or more) for cash with the Company's capital, (b) sales of MetLife's real estate, such as various of MetLife's office buildings in Manhattan, at far more than the book value thereof with the payment of the proceeds therefrom paid to policyholders for their interests; and/or (c) sales of non-real estate assets under the conditions described in (b).

32. Dilutive methods included the public or other sale of MetLife stock for less-than-actual-book-value with the proceeds from such sales to be used to purchase policyholder interests at the same less-than-book-value price of the stock offering.

33. The defendants selected as the sole method for demutualizing, an initial public offering ("IPO") of MetLife common stock. Policyholders were to be paid for their interests in cash, stock or policy credits at the same price as the IPO price. This would be dilutive of the value of policyholders' interests if the IPO price was less than actual book value.

34. Defendants fully recognized that the IPO method could be dilutive of policyholder ownership interests and, therefore, objectionable if conducted at less than actual book value.

Accordingly, in a November 29, 1998 interview with Bloomberg News, defendants, per defendant Benmosche, represented that the Individual Defendants supposedly believed that policyholders would receive the book value of their ownership interests plus a “premium” above book value PROVIDED that MetLife’s IPO was conducted at a time when MetLife’s competitors’ stock prices were higher than their book values:

Mr. Benmosche:        We also believe that **if we’re going to do right for our policyholders, assuming the market is where it is today, we believe we will come out at a premium to our book value.** The only reason we would come out below our book value is if the market has brought other competitors to where their book values are now **higher than their stock price. So, if that happens, we may choose to do that, but right now we believe that, again, looking at the markets today, we should come out at a premium to our book.**”

[Emphasis supplied.]

35. Reinforcing their previous representation, defendants, per defendant Benmosche, represented in a November 30, 1998 article appearing in The New York Times:

“We are clearly going to give all the value of the company to policyholders from day one.”

Defendants’ foregoing statements were part of the context in which the defendants’ standardized disclosure document alleged below was prepared, sent to, and reviewed by policyholders.

**C. Defendants Fail In The Policyholder Information Booklet And Otherwise To Disclose Their Plan To Issue Excess Shares On the IPO And Buy Those Shares Back Beginning Shortly After The IPO**

36. In order to demutualize and substantially increase their compensation, the Individual Defendants had to induce two-thirds of policyholders to vote in favor of, and separately convince the Superintendent of Insurance to approve, a plan of demutualization proposed by defendants.

In order to obtain such favorable vote and regulatory approval, defendants had to prepare a

standardized document describing their demutualization plan and their associated plans including those alleged in par. 41 below.

37. On September 28, 1999, the Individual Defendants adopted a preliminary version of their Plan of Reorganization (“the Plan”). The Plan thereafter underwent a series of amendments until November 24, 1999, when the Plan, and the final version of the Policyholder Information Booklet and notice of the public hearing were formally submitted to the Superintendent of Insurance and mailed to policyholders.

38. Specifically, policyholders received a two volume Policyholder Information Booklet (the “PIB”). This was supposed to provide policyholders with adequate disclosure to enable them to make an informed decision (a) whether to vote in favor or against the reorganization, and (b) whether to elect to receive cash, policy credits or shares of MetLife stock as the consideration for their interests in the mutual insurer which were being taken and extinguished by such demutualization.

39. In the PIB, defendants expressly represented to policyholders that the Individual Defendants owed policyholders an unqualified fiduciary duty under New York law. Compare PIB, at page 26 with Meinhard v. Salmon, 249 N.Y. 458 (1928) (the “bending and inveterate” tradition of New York law is that not “honesty alone but the punctilio of an honor the most sensitive” is required of those “bound by fiduciary ties”).

40. Also in the PIB, defendants made various statements regarding the anticipated IPO price, MetLife’s use of the IPO proceeds, MetLife’s needs for capital, and MetLife’s plans for what it would do after the IPO. Defendants failed to disclose in the PIB the material facts alleged in ¶ 41 below that were highly relevant to and rendered grossly false or misleading

defendants' description of the anticipated IPO price, MetLife's plan for its use of the IPO proceeds, MetLife's needs for capital, and MetLife's plans for what it would do after the IPO, and other facts. Defendants had superior knowledge to class members' knowledge with regard to each of the foregoing matters as well as defendants' plans and the omitted facts alleged in par. 41 below. Defendants were obligated to disclose in the PIB the plans and facts alleged in par. 41 below but intentionally failed to make such disclosure.

41. As part of their demutualization plan, defendants specifically planned to issue and sell excess shares on the IPO and then use the funds raised thereby to buy back MetLife shares following the IPO. See ¶ 29. Defendants formed this plan prior to the mailing of the PIB to policyholders as is indicated by numerous facts and circumstances including various documents.

42. First, as early as July 1998, Goldman Sachs, in discussing with defendants a share repurchase program in connection with an IPO, reported **in writing** as follows: "the benefit of the **significant planned share repurchase** also would be seen as a catalyst for improving returns".

43. Second, on December 7, 1998, Credit Suisse suggested **in writing** as follows: **although there was an absence of any identified need for capital by MetLife** (i.e., MetLife had no identified use for the proceeds from the IPO), the funds raised on the IPO should be used to "provide additional capital to allow a consistent repurchase program by MetLife". Credit Suisse specifically noted that unlike other insurers (Equitable and AllAmerica) that sold shares to raise capital "to bolster weak financial positions . . . MetLife currently is well capitalized . . . and any substantial new

equity capital raised with no defined use could suppress return on equity.” Id. The solution was to issue excess shares on the IPO with the “defined use” of buying them back, such buy backs of shares would eliminate or reduce the “substantial new equity capital” raised by the IPO.

44. Third, in September 1999, Goldman Sachs advised MetLife that “MetLife should indicate in the prospectus that it will implement a stock repurchase program immediately post IPO.” See Fiala v. Metropolitan Life Ins. Co., 2004 NY SlipOp 03043.

45. Fourth, in September 1999, Goldman Sachs further advised defendants: “Announce company stock buyback program to commence immediately post IPO”.

46. Fifth, throughout 1999, the defendants continued to exchange numerous documents with the Investment Advisors in which the return on equity and other ratios that defendants were projecting for MetLife were all premised on MetLife engaging in a share buy-back plan post-IPO.

47. Sixth, MetLife’s official and final “2000-2002 Business Plan” dated December 1999, specifically stated that MetLife’s plan, following the IPO, was to engage in repurchases of shares on the open market of at least \$750 million:

“The Plan results for earnings per share and ROE reflect the expected capital raising activities at the time of our IPO, as well as share repurchases contemplated over the Plan period. Specifically, we expect to raise approximately \$1.7 billion of primary equity capital at the time of our IPO, which will consist of common and possibly preferred stock. Over time, we also expect to gradually increase our debt and leverage ratios, while maintaining such ratios that will enable us to maintain strong ratings. In the Plan, increases in leverage are achieved through share repurchases (\$750 million over the Plan period), which have an accretive [i.e., increasing] impact on EPS and ROE.”

“EPS”, as used above, means earnings per share, which is calculated by dividing the

shares outstanding into the earnings.. “ROE”, as used above, means return on equity which is calculated by dividing equity into earnings. By causing MetLife to issue excess shares on the IPO and then buy back those shares after the IPO, defendants caused MetLife to automatically reduce its number of shares outstanding and its amount of equity. This, in turn, automatically **increased** both the earnings per share (“EPS”) and percentage return on equity (“ROE”) calculations. See par. 58.

48. In the foregoing context and as a direct result of defendants’ omission to disclose their foregoing plan to issue excess shares on the IPO and buy them back shortly thereafter, the following occurred:

(a) on January 24, 2000, a hearing was held before the Superintendent of Insurance on the Plan of demutualization;

(b) on February 7, 2000, the policyholder voted regarding the demutualization, and approved same;

(c) approximately 25% of policyholders elected cash consideration instead of shares;

(d) on April 4, 2000, New York’s Superintendent of Insurance approved the demutualization; and

(e) on the same day, MetLife issued excess shares in its IPO at an IPO price of \$14.25 per share in order to buy them back later.

49. MetLife’s IPO had occurred in precisely the conditions in which defendant Benmosche had represented (see ¶ 34) that policyholders would receive book value plus a premium for their interests. That is, at the time of the IPO, MetLife’s competitors’ stock prices exceeded their book values. See Exhibit “B” hereto. In November 1998, the average firm in the S&P insurance composite index sold for approximately twice book value, in April

2000, the average firm sold for 2.78 times book. (Had the same increase in MetLife's competitors' book value been accorded to MetLife policyholders, as defendant Benmosche represented or implied it would, then policyholders would have received more than \$35.00 per share).

50. But policyholders did not receive book value plus a premium nor even book value for their interests. Indeed, even though the circumstances described by defendant Benmosche were fully satisfied, just the actual book value of policyholders' interests prior to the demutualization was almost 40% greater than the \$14.25 per share IPO price which policyholders received.

51. The reason the consideration to policyholders was so low was MetLife's issuance of excess shares and failure to disclose its foregoing plan.

52. Due to MetLife's depressed IPO price caused by defendants' foregoing wrongful conduct, the price of MetLife's stock increased substantially after the IPO to \$19 3/8 per share by June 27, 2000. On that day, MetLife belatedly announced its intention to buy back \$1 billion of shares that MetLife had just sold on the IPO at the depressed IPO price of \$14.25 per share. Consistent defendants' undisclosed plan all along, this plan was not contingent upon the actions of others, such as policyholders. This positive news of the buy-back plan caused the price of MetLife stock to rise further from its already increased post-IPO levels.

53. It made no sense (and is highly unusual to say the least) for defendants (a) to tell policyholders in April 2000 that defendants were getting full value for policyholders' interests by means of the \$14.25 per share IPO price, but (b) to turn around in June 2000 and tell the world that a \$20.00 per share value of MetLife was so undervalued

that the “best use” of MetLife’s capital was to buy back MetLife’s recently issued shares at \$20.00 and more (in fact as much as \$35.00) per share.

54. In engaging in the IPO, MetLife was selling shares out of the company and taking cash or capital into the company at a rate of \$14.25 per share. In the buy-back, MetLife was taking shares back into the company and paying cash out of the company at a rate of \$19.50 - 35.00 per share. In other words, MetLife lost at least \$5.00 per share and at times \$20.00 per share by issuing the excess shares and raising the excess capital on the IPO, and then buying the share back at higher prices in order to expend that capital.

55. This rapid loss and depletion of capital at the rate of \$5.00 - \$20.00 per share further indicates that MetLife’s buy-back of its own shares (a) was not based on any new developments because the developments between April and June 2000 exclusively **dis**avored any buy-back, and (b) was undertaken, as the documents indicate, pursuant to defendants’ long held plan to issue excess IPO shares and then buy them back.

56. At a time when policyholders were entitled to the mutual insurer’s surplus, defendants effectively dedicated MetLife’s surplus capital to be expended in order to purchase the ownership interests in MetLife of future stockholders. If defendants were going to plan to dedicate, dissipate and pay out \$1 billion in MetLife’s cash to MetLife’s owners, then defendants could and should have planned to dedicate those monies to be paid out to the policyholders whose interests were being extinguished in April 2000 in the conversion, **not** to the future shareholders in June 2000. Aiding the IPO consideration to policyholders with an extra \$1,000,000,000 from MetLife would have increased the consideration that all policyholders received (whether they accepted cash

or elected shares). Diverting the surplus to shareholders damaged all policyholders.

57. This planned but undisclosed nonsensical diversion of MetLife's capital made sense to the Individual Defendants because it helped officer and director compensation and made the directors look good to institutional investors.

58. Indeed, Individual Defendants may also have had a personal financial motive for their fraudulent omission to disclose the plan to issue excess shares on the IPO and then buy those shares back shortly thereafter. Such undisclosed plan would establish a lower IPO price, a lower initial EPS, and a lower initial percentage ROE. See ¶ 47. This helped defendants to show a greater improvement in total stockholder performance, EPS, and ROE for purposes of defendants' status with institutional and other investors as well as defendants' incentive, option and other compensation.

59. Defendants' undisclosed plan to issue excess shares and then buy them back caused class members injury in that (i) policyholders received a much lower IPO price and consideration for their interests; (ii) policyholders' interest in the resulting stock company was diluted; (iii) it was impossible for the policyholders to determine on an informed basis to vote in favor of defendants' real demutualization because such undisclosed plan tainted the demutualization and required policyholders to vote against it; and (iv) policyholders could not make an informed decision about the fairness of the plan or the desirability of making a cash election.

60. For one example, all policyholders were damaged by the dilution in share value caused by defendants' plan and failure to disclose same. The portion of MetLife that was retained by policyholders compared to the portion of the equity that went to new shareholders who purchased on the IPO was determined by the IPO consideration. The more favorable the information that was disclosed about MetLife to the public, the higher the

IPO price and the more that policyholders received for their interest in the Company, i.e., the greater the equity of MetLife that policyholders retained as shares. Disclosing defendants' plan or issuing less IPO shares (or both) would have increased the IPO price and, thereby, benefitted policyholders by increasing the proportion of MetLife that they received (any increase in the IPO consideration paid by the public, was, effectively, divided among policyholders). This organizational dilution and diminution in the portion of MetLife allocated to the policyholders and shareholders could never be "gained back" after the initial IPO established same.

61. For one other example, the PIB was supposed to enable policyholders to make an informed election to choose as consideration either cash, policy credits or shares. Because of defendants' omissions, policyholders could not make an informed decision. Therefore, an unexpectedly high portion of policyholders (including plaintiffs Mildred and George Kresovich and Theresa and Paul Hazen) accepted cash in lieu of shares. Because of defendants' undisclosed plan, taking MetLife stock was much better than accepting cash (or policy credits) as a means of obtaining value for policyholders' interests. Defendants had to disclose the foregoing material facts in order (a) to obtain an informed consent and approval of their real plan of demutualization, and (b) to inform policyholders of which option (cash, credits or shares) they should exercise thereunder.

**D. The MetLife Defendants Provided Discriminatory Compensation To Policyholders Who Contributed To MetLife Surplus And To Large Policyholders Who Complained**

62. The Individual Defendants discriminated in the amount actually paid or allocated to certain policyholders.

63. After Armstrong Tire and Rubber (“Armstrong”) expressed its dissatisfaction with the allocation plan, the MetLife Defendants agreed to allocate Armstrong 550,000 shares worth over \$7.8 million at the IPO price.

64. On information and belief, defendants discriminatorily benefitted other policyholders in addition to Armstrong.

65. Defendants failed to disclose the material fact of these discriminatory deals in the PIB or otherwise.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR INTENTIONAL DECEIT OR FRAUD**

66. Plaintiffs repeat and reallege each of their previous allegations as if fully set forth hereat.

67. By reason of the allegations herein, defendants omitted to disclose material facts. These material facts include (a) defendants’ plan (e.g., ¶¶ 41-59) and/or (b) defendants’ discriminatory allocations. E.g. ¶¶ 62-65. For either reason, the PIB itself was materially false and misleading.

68. The PIB was an essential and statutorily required link in the approval of defendants’ demutualization.

69. Defendants’ intended to deceive plaintiffs and class members or were recklessly indifferent to whether plaintiffs and class members were deceived.

70. As a direct and proximate result of defendants’ fraudulent omission to disclose any of the foregoing material facts, plaintiffs and class members were damaged regardless of whether they relied on defendants’ omissions.

71. Separately, plaintiffs and class members relied and/or are legally presumed to have

relied on these omissions of material facts.

72. Defendants knew and intended that policyholders would rely and act on the basis of the PIB as though full and complete disclosure of material facts had been made therein.

Defendants knew and intended that policyholders would and, in fact, did rely on the PIB in deciding whether to approve the reorganization and whether to elect to receive cash or shares or other consideration in connection therewith.

73. The Defendants intentionally or recklessly failed to make complete and candid disclosure to policyholders of all material facts regarding whether they should vote for the reorganization and elect cash or stock or other consideration.

74. Defendants intentionally omitted the material facts and deceived policyholders.

75. As a direct and proximate result of defendants' omissions and unlawful conduct, plaintiffs and all Class members have suffered money damages including the underpayment for and the dilution of their ownership interests in MetLife, and the Individual Defendants will be unjustly enriched.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS  
UNDER NY INS. LAW SECTION 7312**

76. Plaintiffs repeat and reallege each of the previous allegations as if fully set forth herein.

77. Section 7312 of the Insurance Law provides, among other things, that a demutualization transaction must be "fair and equitable" and that fair disclosure must be made.

78. Defendants violated Section 7312 in that (a) they gave discriminatory allocations of shares (see ¶¶ 62-65); (b) they planned to cause MetLife to issue and did cause MetLife to issue excess shares on the IPO in order to buy them back (see ¶¶ 41-59); and/or (c) defendants'

issuance of excess shares on the IPO and failure to disclose their plan to buy back such shares, caused the consideration to class members for their interests to be lower than such consideration would have been in the absence of such unlawful conduct.

79. As a direct and proximate result, plaintiffs and all class members were damaged..

80. Separately, the discriminatory allocation of shares in favor of certain large policyholders, including Armstrong Tire and Rubber, was not disclosed in the PIB and was not disclosed to the Superintendent of Insurance at the time he approved the PIB. Nor was the excess share issuance and buyback plan disclosed in the PIB. These non-disclosures constituted a separate violation of Section 7312.

81. As a direct and proximate result of this violation, plaintiffs and all class members were damaged.

WHEREFORE, Plaintiffs demand judgment for themselves and for the Class as follows:

- (A) An award of compensatory and punitive damages, including disgorgement of all unjust enrichment, as against all defendants, jointly and severally, in an amount to be determined at trial;
- (B) Interest, costs, attorneys' and experts' fees; and
- (C) An order that this action shall proceed as a class action under Article 9 of the New York CPLR; and
- (D) such other relief as the Court may deem just and proper.

Dated: New York, New York  
June 15, 2004

Yours, etc.,

By: \_\_\_\_\_

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## **EXHIBIT A**

1. (a) Plaintiff, Eugenia J. Fiala, is an individual residing in Gainesville, Florida and, at all times material hereto, has been and is a participating policyholder pursuant to and individual life insurance policy issued (under her previous (married) name Eugenia Schweinberg) by MetLife. Plaintiff Fiala's claims are identical to those of the class of policyholders he seeks to represent.

(b) Plaintiff, Richard E. Schweinberg, is a retired former firefighter residing in Lorain, Ohio, and, at all times material hereto, has been and is a participating policyholder pursuant to two individual life insurance policies, #852932071-A and #22242800-A, issued by MetLife. Plaintiff Schweinberg's claims are identical to those of the class of policyholders he seeks to represent.

(c) Plaintiff, George Kresovich, is an individual residing in West Mifflin, Pennsylvania, and, at all times material hereto, has been and is a participating policyholder pursuant to two individual life insurance policies, #833155402UL and #872334993A, issued by MetLife. In connection with the demutualization of MetLife, and the initial public offering that followed the demutualization, plaintiff George Kresovich elected to receive cash in lieu of shares from MetLife. Plaintiff George Kresovich's claims are identical to those of the class of policyholders he seeks to represent.

(d) Plaintiff, Mildred Kresovich, is an individual residing in West Mifflin, Pennsylvania, and, at all times material hereto, has been and is a participating policyholder pursuant to individual life insurance policy #902440129UL, issued by MetLife. In connection with the demutualization of MetLife, and the initial public offering that followed the demutualization,

plaintiff Mildred Kresovich elected to receive cash in lieu of shares from MetLife. Plaintiff Mildred Kresovich's claims are identical to those of the class of policyholders she seeks to represent.

(e) Plaintiff, Paul Hazen, is an individual residing in Boothwyn, Pennsylvania, and, at all times material hereto, has been and is a participating policyholder pursuant to individual life insurance policy #882545093UL, issued by MetLife. In connection with the demutualization of MetLife, and the initial public offering that followed the demutualization, plaintiff Paul Hazen elected to receive cash in lieu of shares from MetLife. Plaintiff Paul Hazen's claims are identical to those of the class of policyholders he seeks to represent.

(f) Plaintiff, Theresa Hazen, is an individual residing in Boothwyn, Pennsylvania, and, at all times material hereto, has been and is a participating policyholder pursuant to several individual life insurance policies, including #882645435UL, #892746816UL, #882747171UL, #882747170UL, #882447827UL, #882445204UL and #88254662OUL, all issued by MetLife. In connection with the demutualization of MetLife, and the initial public offering that followed the demutualization, plaintiff Theresa Hazen elected to receive cash in lieu of shares from MetLife. Plaintiff Theresa Hazen's claims are identical to those of the class of policyholders she seeks to represent.

(g) Plaintiff, Vijah J. Shah, is an individual residing in Boston, Massachusetts, and, at all times material hereto, has been and is a participating policyholder pursuant to a life insurance policy number 080503576AB issued by MetLife. Plaintiff Shah's claims are identical to those of the class of policyholders she seeks to represent.

(h) Plaintiff, John T. Brophy, is an individual residing in Weston, Connecticut, and, at all

times material hereto, has been and is a participating policyholder pursuant to a policy issued by MetLife. Plaintiff Brophy's claims are identical to those of the class of policyholders he seeks to represent.

(i) Plaintiff, Ira J. Gelb, is an individual residing in Boca Raton, Florida, and, at all times material hereto, has been and is a participating policyholder pursuant to a policy issued by MetLife. Plaintiff Gelb's claims are identical to those of the class of policyholders he seeks to represent.

(j) Plaintiff, June A. Gelb, is an individual residing in Boca Raton, Florida, and, at all times material hereto, has been and is a participating policyholder pursuant to a policy issued by MetLife. Plaintiff Gelb's claims are identical to those of the class of policyholders she seeks to represent.

(k) Plaintiff, Gail Tamarin, is an individual residing in Staten Island, New York, and, at all times material hereto, has been and is a participating policyholder pursuant to a life insurance policy number 870476781UL issued by Metropolitan Insurance and Annuity. Plaintiff Tamarin's claims are identical to those of the class of policyholders she seeks to represent.

(l) Plaintiff, Lloyd Tamarin, is an individual residing in Staten Island, New York, and, at all times material hereto, has been and is a participating policyholder pursuant to a life insurance policy number 840385680UL issued by Metropolitan Insurance and Annuity. Plaintiff Tamarin's claims are identical to those of the class of policyholders he seeks to represent.

(m) Plaintiff, Mark D. Smilow, is an individual residing in Brooklyn, New York, and, at all times material hereto, has been and is a participating policyholder pursuant to individual life insurance policy number 966912425 UM issued by MetLife. Smilow received 10 Trust shares in

the demutualization. Plaintiff Smilow's claims are identical to those of the class of policyholders he seeks to represent.

(n) Plaintiff, Patrick Emanuel, is an individual residing in Woodstock, Georgia, and, at all times material hereto, has been and is a participating policyholder pursuant to a group life insurance policy number 34250-G, certificate number 0610909, Lilley Emanuel (wife), certificate number 0610910, Rachelle Pinson (daughter), certificate number 0634172, Melinda Martinez (daughter), certificate number 0634171 and Patrick M. Emanuel (son), certificate number 168080. Plaintiff Emanuel's claims are identical to those of the class of policyholders he seeks to represent.

## **EXHIBIT B**

1. The Investment Bank Advisors supplied six companies as examples of MetLife's nearest competitors. Examining their closing prices on April 3, 2000, in relation to their March 31, 2000 financial statement book values, the facts are that every single one of these six "key comparable companies" was trading well above book value:

(a) American General (closing price \$60.00, book value \$26.85, trading at 223% of book value);

(b) AXA Financial (closing price \$36 13/16, book value \$14.07, trading at 262% of book value);

(c) Lincoln National (closing price \$33 1/16, book value \$22.29, trading at 148% of book value);

(d) Jefferson-Pilot (closing price \$64 1/8, book value \$24.93, trading at 257% of book value);

(e) Hartford Life (closing price \$47 1/2, book value \$19.87, trading at 239% of book value); and

(f) Nationwide Financial (closing price \$31.00, book value \$20.17, trading at 154% of book value).

Date-Market Close	S&P Insurance Composite Index	S&P 500 Index	Nasdaq Composite Index	Dow Jones Industrial Average	Defendants' Projected Price
November 30, 1998	593.56	1163.63	2821.52	9116.55	Book Value + Premium
September 28, 1999	541.02	1282.20	2979.49	10275.53	\$18.00 - \$28.00
April 4, 2000	604.59	1494.73	4148.89	11164.84	\$13.00 - \$15.00