

II. INTRODUCTION

The Objectors have grave concerns that the proposed settlement of this private class action lawsuit is insufficient to curtail the defendants' marketing, pricing, and underwriting practices with respect to long-term care policies, or to provide class members with adequate redress. Moreover, the proposed settlement requires that class members agree to a release of claims that is overly broad, particularly in light of the absence of any requirement that defendants change the practices challenged in the underlying lawsuit and the lack of any monetary relief to class members (other than the Class Representatives). The Objectors also believe the Notice of Proposed Class Action Settlement and Hearing Thereon ("Settlement Notice") was extremely confusing, difficult to understand, and not reasonably designed to fully and fairly inform class members about their rights and options so as to allow them to make an informed decision as to what course to pursue. In addition, class members received an inadequate amount of time to respond to the Notice, especially in light of the complexity of the Notice itself and the Policyholder Election of Benefits Form.

For all of the foregoing reasons, discussed more fully below, the Objectors respectfully urge this Court to reject the proposed settlement.

V. THE NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING THEREON WAS SO DEFECTIVE AS TO RENDER THE PROPOSED SETTLEMENT UNFAIR, UNREASONABLE AND INADEQUATE

Objectors maintain that the Notice mailed to class members was inadequate as to both form and substance. First, the Notice was physically difficult, and even impossible, for many class members to read. Many parts of the notice were printed in an extremely small font size, a particular concern for the "senior consumers" targeted by defendants. Compl. at ¶ 32. The second procedural hurdle that faced the Objectors was that the Notice was fairly

incomprehensible, thereby precluding them from knowing whether they should opt out or elect a benefit and, if so, which one. Objectors have indicated that they simply could not understand the contents of the Notice, which was written almost entirely in legal vernacular and terminology that is unfamiliar and incomprehensible to laypersons. The incomprehensible language contained in the Notice prevented class members from make a knowing and intelligent decision regarding whether to participate in or opt out of the case. As such, it failed to adequately inform them of their rights, options, and the implications of their decisions. Objectors respectfully thus disagree with the Court's finding that the "Notice describes the Settlement in relatively simple terms," Op. at 22.

A particular deficiency in the Notice is its failure to adequately inform class members about the true nature of the benefit options being offered, and how they could decide what option, if any, was in their best interest. This defect was exacerbated by the relatively short period of time within which they had to make this decision. While the Election of Benefits Form need not be postmarked until February 4, 2002, class members could not make this choice without first deciding, by January 22, 2002, whether to opt out or object to the settlement. Since the Notice was not mailed until the end of December 2001, class members obviously had very little time within which to evaluate and decide on their options.

Objectors therefore submit that this Court should not approve the proposed settlement since the Notice was so seriously flawed that class members were not fairly and adequately informed regarding their rights, remedies and options. In short, the Notice failed to provide Objectors with minimal due process protections. *See Mullane v. Central Hanover Bank*, 339 U.S. 306, 313 (1950).

VII. CONCLUSION

The Objectors believe that the Settlement Notice was inadequate, in both form and substance, to apprise class members of their rights and the consequences of the choices they made once they received the Notice. Moreover, the proposed settlement will not provide past victims with adequate relief and, because it does not require that defendants change their practices and imposes a broad release on class members, will not provide adequate safeguards to protect future policyholders.

The Objectors thus respectfully request that this Court reject the proposed settlement.

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