

## **Dornberger v. Metropolitan Life Ins. Co.**

United States District Court for the Southern District of New York

March 26, 1997, Decided ; March 27, 1997, FILED

95 Civ. 10374 (LBS)

### **Reporter**

961 F. Supp. 506 \*; 1997 U.S. Dist. LEXIS 3549 \*\*

SALLY A. DORNBERGER, on behalf of  
herself and all other persons similarly situated,  
Plaintiff, v. METROPOLITAN LIFE  
INSURANCE COMPANY, et al., Defendants.

**Disposition:** [\*\*1] Defendants' motion to  
dismiss granted in part and denied in part.

### **Counsel:** APPEARANCES:

For Plaintiff: QUINN, MARANTIS &  
ROSENBERG, L.L.P., White Plains, NY,  
TIMOTHY C. QUINN, JR., BRADFORD D.  
CONOVER, -Of Counsel-.

For MetLife, Defendants: PROSKAUER,  
ROSE, GOETZ & MENDELSON, L.L.P.,  
New York, NY, BRUCE E. FADER, -Of  
Counsel-. For Vito Vitone, Defendant: ADLER,  
POLLOCK & SHEEHAN, INC., Providence, RI,  
JOHN A. TARANTINO, MARK O. DENEHY, -  
Of Counsel-. For M.S. Peress, Defendant:  
FOLKENFLIK & McGERITY, New York, NY,

MARGARET McGERITY, -Of Counsel-.

**Judges:** Leonard B. Sand, U.S.D.J.

**Opinion by:** Leonard B. Sand

### **Opinion**

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[\*513] OPINION

SAND, J.

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7. Statutory claims

Defendants seek dismissal of Plaintiff's claims  
under N.Y. Ins. Law §§ 2123, 4224, and 4226  
and N.Y. Gen. Bus. Law § 349.

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As to § 4224,<sup>40</sup> which is aimed at

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<sup>40</sup> § 4224 provides in pertinent part:

(a) No life insurance company doing business in this state . . . shall: (1) make or permit any unfair discrimination between individuals of the same class and of equal expectation of life,

discrimination between individuals of the same group).  
class and life expectancy, Defendants argue  
that this statute is limited to discrimination  
against members of "small, insular minority  
groups" and is therefore inapplicable to  
Plaintiff. Defendants cite no authority for this  
proposition, other than two opinions which  
considered § 4224 in the context of insular  
minority groups. See *Silver v. Equitable Life  
Assurance Soc'y of the United States*, 563  
N.Y.S.2d 78 (App. Div. 1990) (mental  
retardation); *Health Ins. Ass'n of America v.  
Corcoran*, 154 A.D.2d 61, 551 N.Y.S.2d 615  
(App. Div. 1990) (HIV status). Neither of these  
decisions purport to limit § 4224 in the manner  
which Defendants suggest. [\*548] Our  
independent research has not disclosed any  
authority so limiting the statute. Quite the  
contrary, § 4224 has been applied without any  
indication that the insured is a member of a  
discrete [\*\*124] minority group. See, e.g.,  
*Metropolitan Life Ins. Co. v. Trilling*, 194 A.D.  
178, 184 N.Y.S. 898, 902 (App. Div. 1920)  
(holding that statutory precursor to § 4224 was  
violated where insured was permitted to pay a  
different premium than others in his age

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in the amount or payment or return of premiums, or rates  
charged for policies of life insurance or annuity contracts, or in  
the dividends or other benefits payable thereon, or in any of  
the terms and conditions thereof.

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### III.

## CONCLUSION

For the foregoing reasons, Defendants' motion  
to dismiss is granted in part and denied in part.  
We dismiss Plaintiff's claims under 18 U.S.C.  
§§ 1962(a) and (b). We dismiss Plaintiff's  
rescission claims to the extent that a full  
premium refund is sought, but conclude that  
Plaintiff has stated rescission claims for a  
partial refund, with allowance to be made for  
the value of insurance coverage received by  
the Plaintiff. We dismiss Plaintiff's breach of  
contract claim to the extent that it is based on  
alleged promises to provide permanent local  
service representatives or guaranty fund  
protection. We dismiss Plaintiff's claim under  
N.Y. Ins. Law § 2123. We deny Defendants'  
motion to dismiss for forum non conveniens  
and Defendants' motion to dismiss for lack of  
personal jurisdiction.

The Court will schedule a pretrial conference  
approximately twenty days after the filing of  
this Opinion to discuss the further progress of

this litigation.

SO ORDERED.

Dated: [\*\*133] March 26, 1997

New York, New York

Leonard B. Sand

U.S.D.J.