

ALDRIDGE v. METROPOLITAN LIFE INS. CO.

19-CVS-2298

NORTH CAROLINA SUPERIOR COURT, UNION COUNTY

August 28, 2019

Reporter

2019 NC SUP. CT. MOTIONS LEXIS 174 *

GENA A. STROUGH and JAMES M. ALDRIDGE, JR.,
Plaintiff's, v. METROPOLITAN LIFE INSURANCE
COMPANY and BENJAMIN LOWDER, JR.,
Defendants.

Type: Motion

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Title

**JOINT CONSENT MOTION TO DESIGNATE
CASE AS RULE 2.1 EXCEPTIONAL OR
COMPLEX BUSINESS CASE**

Text

[*1] To: Honorable Jeffery Carpenter, Senior Resident
Superior Court Judge

Pursuant to Rule 2.1 of the General Rules of Practice for
the Superior and District Courts, Defendants
Metropolitan Life Insurance Company ("MetLife") and
Benjamin Lowder, Jr. ("Lowder") hereby move the Senior
Resident Superior Court Judge to recommend to the Chief
Justice of the North Carolina Supreme Court that this case
(the "Aldridge Children's Lawsuit") be designated as
exceptional or complex and assigned to the Honorable

Michael L. Robinson of the North Carolina Business
Court. Plaintiff's consent to the relief sought in this
Motion. The parties have communicated with Judge
Robinson regarding this matter. Judge Robinson has
authorized the parties to advise this Court and the Chief
Justice of the North Carolina Supreme Court that he is
willing to serve as a Rule 2.1 judge for this case with the
understanding that the Business Court Rules, including the
e-filing Rules, will apply to this case upon designation and
assignment to him.

Assignment to Judge Robinson is appropriate because
Judge Robinson already has 12 cases currently pending
before him (the "Siskey Business Court Cases") regarding
the same subject **[*2]** matter as this case, *i.e.* the alleged
fraudulent actions of Richard Siskey in connection with an
alleged \$ 50 million Ponzi scheme and life insurance
policies issued by MetLife. MetLife is a defendant in each
of those cases, Benjamin Lowder is a defendant in several
of those cases, and Plaintiff's counsel is counsel to the
plaintiffs in every one of those cases. Most importantly,
the exact same life insurance policy which is the subject of
this action is already the subject of claims asserted by
Plaintiff's father and his wife in two of the Siskey
Business Court Cases before Judge Robinson.
Accordingly, designation is appropriate.

BACKGROUND

A. The Lawsuits

Richard "Rick" Siskey is a former insurance salesman
who committed suicide in December 2016 after federal
investigators concluded he had been engaged in a multi-
million dollar Ponzi scheme. Comp. P 26. Companies
that Siskey operated were subsequently placed into
Chapter 11 bankruptcy. In re TSI Holdings, LLC, 17-
30132 (Bankr. W.D.N.C.); In re WSC Holdings, LLC,
17-30338 (Bankr. W.D.N.C.); In re SouthPark Partners,
LLC, 17-30339 (Bankr. W.D.N.C.); In re Sharon Road
Properties, LLC, 17-30363 (Bankr. W.D.N.C.).

Investors **[*3]** who lost money filed claims against the bankrupt companies and against Rick Siskey's probate estate (*In re Estate of Richard C. Siskey*, 17-E-243, Mecklenburg County Superior Court). Some investors who claimed losses as a result of Rick Siskey's actions also filed state court lawsuits against MetLife (Siskey's former employer) and against Lowder. Each of those lawsuits against MetLife and Lowder were designated to the North Carolina Business Court and have been assigned to Judge Robinson. A list of those Siskey Business Court Cases (which are brought by 25 individual plaintiffs) is as follows: ¹

(1) *John "Kris" Kelly, et. al. v. Metropolitan Life Insurance Co., et. al*, 18-CVS-4978 (Guilford County);

(2) *Andrew Peterson v. Metropolitan Life Insurance Co., et. al*, 18-CVS-528 (Lincoln County);

(3) *Katherine Aldridge v. Metropolitan Life Insurance Co., et. al*, 18-CVS-1124 (Union County) ("Katherine Aldridge Lawsuit");

(4) *James Aldridge v. Metropolitan Life Insurance Co., et. al*, 18-CVS-01050 (Union County) ("James **[*4]** Aldridge Sr. Lawsuit");

(5) *James and Van Williams v. Metropolitan Life Insurance Co., et. al*, 18-CVS-307 (Yadkin County);

(6) *Adam Goulet v. Metropolitan Life Insurance Co., et. al*, 18-CVS-12201 (Mecklenburg County);

(7) *Donald B. Olin v. Metropolitan Life Insurance Co., et. al*, 18-CVS-19512 (Mecklenburg County);

(8) *Craig Brewer v. Metropolitan Life Insurance Co. et. al*, 18-CVS-21685 (Mecklenburg County)

(9) *Maria Spillars, et. al. v. Metropolitan Life Insurance Co., et. al*, 18-CVS-23038 (Mecklenburg County);

(10) *Shelly Martin, et. al. v. Metropolitan Life Insurance Co., et. al*, 18-CVS-22954 (Mecklenburg County);

(11) *Charlotte Dreibelbis et. al. v. Metropolitan Life Insurance Co., et. al*, 19-CVS-5033 (Mecklenburg County); and

(12) *Anthony William Packer, et. al. v. Metropolitan Life*

Insurance Co., et. al, 19-CVS-12902 (Mecklenburg County) ².

While Plaintiffs' counsel have served discovery requests in a number of those cases, discovery has been stayed by order of the Business Court until after a ruling on MetLife and Lowder's pending motions to dismiss. See generally September 4, 2018 Business Court Order Extending Stay of Discovery (attached as Exhibit A). The Business Court held a hearing on March 6, 2019 on MetLife and Lowder's motions to dismiss in seven (7) of the cases. Judge Robinson entered an Order on August 15, 2019 ruling on certain arguments raised in the Motions to Dismiss, but a ruling remains pending as to other issues raised in those Motions.

B. The Alleged Life Insurance Scheme

The Plaintiff's in this case, James M. Aldridge, Jr. and Gena Strough (the "Aldridge Children"), **[*6]** are the children of James Michael Aldridge who was married to Katherine Aldridge. (James Michael Aldridge and Katherine Aldridge are two of the plaintiffs with lawsuits pending before Judge Robinson). In the Siskey Business Court Lawsuits, the plaintiffs have alleged that Rick Siskey engaged in a life insurance scheme, which they describe as follows:

Rick Siskey approached MetLife customers and investors with existing whole life insurance policies placed by other insurance companies and convinced them to surrender their whole life policies and purchase new whole life policies with MetLife for the purpose of (a) earning commissions, (b) fraudulently designating himself as the "owner" of the policy so he could control the policies and borrow against the cash value of the policies and (c) fraudulently designating himself as a "beneficiary" of the policies in hopes of cashing in if one of his customers passed

¹ A number of the cases were originally assigned to Judge Bledsoe on the North Carolina Business Court, but were all reassigned to Judge Robinson in February 2019.

² In addition to these twelve cases, Judge Robinson also previously handled the Siskey-related lawsuit of *Evelyn Laynette Robinson v. The Estate of Richard C. Siskey, Metropolitan Life Insurance Co., et. al.*, 17-CVS-5843 (Mecklenburg County) which has now been dismissed. The Business Court also handled **[*5]** a related case brought by Rick Siskey's former business partners against Rick Siskey's estate, Rick Siskey's widow and MetLife. *See Stone Street Partners, LLC f/k/a Siskey Capital, LLC et. al. v. Williamson, et. al*, 2018 WL 3619518 (NCBC. July 16, 2018) (granting motions to dismiss of MetLife and Diane Siskey). Thus, to date, every North Carolina civil case asserting claims against MetLife or Lowder related to Rick Siskey has been handled by the Business Court.

away.

James Aldridge Sr. Lawsuit, First Amended Comp. P 98 (attached as Exhibit B); Katherine Aldridge Lawsuit, First Amended Comp. P 99 (attached as Exhibit C). That is the same insurance scheme which the Aldridge Children now allege in this lawsuit:

While employed with [*7] MetLife, Ben Lowder and Rick Siskey committed insurance fraud on numerous MetLife customers by fraudulently designating Rick Siskey as the "owner" of their life insurance policies, borrowing large sums of money from the value of their policies, and designating Rick Siskey as the beneficiary of the death benefits of their life insurance policies in hopes of cashing in when one of the insureds passed away.

Comp. P 14.

C. The Aldridge Life Insurance Policy

Not only does the Aldridge Children's Lawsuit involve the exact same insurance scheme as that alleged in the Siskey Business Court Lawsuits, it also involves the exact same life insurance policy involved in the two lawsuits brought by their father and Katherine Aldridge. In 2004, James Michael Aldridge purchased a MetLife term life insurance policy (Policy XXXXX664) in the face amount of \$ 1,000,000. Comp. P 10; Exh. B at P 145. The Aldridge Children were each named in the policy application as joint owners and beneficiaries of that policy. Comp. at P 11. Lowder is alleged to have been involved in the sale of the policy. Comp. P 10; Exh. B. at PP 146-150. In 2009, the Aldridge Children (as owners) converted the term life policy to a whole life insurance policy (which was assigned a new policy number XXXXX085) (the "Aldridge Policy"). Exh. D. In 2011, James M. Aldridge, Jr. and Gena Strough executed a Life Insurance Absolute Assignment form whereby they "absolutely assign[ed] all ownership and beneficial rights" in the Aldridge Policy to Rick Siskey. Exh. E. See also Comp. P 25 ("MetLife approved the change of ownership on the Plaintiff's' policy allowing its employee, Rick Siskey who was unrelated to the family to become the owner of their policy.") Notices confirming the change of ownership were mailed to each of the Aldridge Children on May 11, 2011. Exh. F.

James Aldridge (as the insured on the Aldridge Policy) and Katherine Aldridge (as an alleged "intended

beneficiary" of the Aldridge Policy) have already sued MetLife and Lowder regarding Siskey and the Aldridge Policy, asserting claims based upon Siskey being named the owner and beneficiary [*8] on the policy. See generally Exh. B. at PP 145, 153; Exh. C. at PP 128-130. In fact, Katherine Aldridge's complaint explicitly references the Aldridge Children and alleges that \$ 500,000 of the death benefit of the Aldridge Policy was supposed to "go to the children of James Aldridge upon his death." Exh. C at P 130. Although James Aldridge and Katherine Aldridge filed their lawsuits in April and May 2018 respectively, neither sought to have the Aldridge Children added as parties.

ARGUMENT

Rule 2.1(d) sets forth a non-exclusive list of factors which may be considered in determining whether to make a designation of a case as exceptional or complex. Those include:

- (a) the number and diverse interests of the parties;
- (b) the amount and nature of anticipated pretrial discovery and motions;
- (c) whether the parties voluntarily agree to waive venue for hearing pretrial motions;
- (d) the complexity of the evidentiary matters and legal issues involved;
- (e) whether it will promote the efficient administration of justice; and
- (f) such other matters as the Chief Justice shall deem appropriate.

Each of those factors weighs in favor of designation.

First, MetLife and Lowder have been sued in numerous lawsuits (including the present one) in which the same insurance scheme has been alleged. The Supreme Court has regularly granted Rule 2.1 designations in situations involving multiple lawsuits, even when the claims of a single lawsuit might not by itself be viewed as "exceptional" or "complex". See Justus v. Rosner, 821 S.E.2d 765, 767 (N.C. 2018) (designation granted in 24 medical malpractice lawsuits filed against doctor and medical practice); Beroth Oil Co. v. North Carolina [*9] Dept of Transportation, 808 S.E.2d 488, 494 (N.C. Ct. App. 2017) (designation granted for multiple cases related to

takings by NCDOT); *Newton v. Barth*, 788 S.E.2d 653, 657 (N.C. Ct. App. 2016) (designation granted in multiple cases involving claims alleging that individual officers misled customers, vendors and suppliers to do business with company by falsifying financial statements and misrepresenting financial condition); *Brunner v. The Lodge on Lake Lure, LLC*, 2016 WL 6562101 (N.C.B.C. 2016) (designating five related cases under Rule 2.1 and assigning them to the Business Court); *In re Southeastern Eye Center Pending Matters*, 2016 WL 4163928 (N.C.B.C. 2016) (same); *Travco Hotels, Inc. v. Piedmont Natural Gas Co., Inc.*, 332 N.C. 288, 289, 420 S.E.2d 426, 427 (1992) (designation granted in multiple liability cases stemming from a natural gas explosion in Winston-Salem).

Second, the amount and nature of discovery is a significant factor warranting designation and assignment to Judge Robinson. Since all of these lawsuits involve the same alleged insurance scheme, the amount of discovery which MetLife and Lowder would have to respond to could be voluminous and overwhelming absent coordination and possible consolidation of discovery. (For instance, without some coordination, MetLife witnesses could be subjected to duplicate depositions by the same Plaintiff's counsel [*10] regarding the same alleged insurance scheme. Lowder could be subject to being deposed three times by the Aldridge family members related to the same insurance policy, and both MetLife and Lowder could have to deal with multiple written discovery requests regarding that policy in at least three different cases). Assigning this case to Judge Robinson will ensure that a single judge can put appropriate discovery safeguards in place and allow the parties to consolidate discovery in order to avoid duplication.³

Third, efficient administration of justice is best served by having all lawsuits related to the same alleged insurance scheme (and the same insurance policy) heard by a single judge. Judge Robinson is already very familiar with the allegations contained in complaints filed by Plaintiff's counsel related to the alleged Siskey insurance scheme, has just ruled on portions of the motions [*11] to dismiss filed in related cases, and is currently considering portions

of the motions to dismiss filed by MetLife and Lowder as to numerous similar claims. Designating the present case to Judge Robinson will ensure consistency in rulings and will not prejudice any party since counsel are already before Judge Robinson on numerous related cases and all parties have consented to have this case heard before Judge Robinson.

Fourth, the matters involved are undeniably complex. Plaintiff's in the Siskey Business Court Lawsuits allege that "Rick Siskey operated an insurance Ponzi scheme and used his insurance sales commissions, funds from his investment Ponzi scheme and the funds borrowed from the cash value of the policies for which he was designated as the 'owner' to pay enormous premiums on the policies, which were upon information and belief, over fifty million dollars (\$ 50,000,000) in MetLife life insurance policies written by MetLife on the lives of the company's customers." Exh. B at P 109; Exh. C at P 110. These same allegations are included in the Aldridge Children's Lawsuit. Comp. PP 17, 20-21. Each of the lawsuits assert numerous claims related to this purported multi-million dollar Ponzi scheme. These are exactly the types of complex issues which a judge of the Business Court is well suited to handle.

CONCLUSION

For the reasons stated herein, MetLife and Lowder respectfully request that this Court grant the Motion and send a recommendation to the Chief Justice for this case to be designated [*12] as exceptional / complex and assigned to Judge Robinson.

Respectfully submitted this the 27th day of August, 2019.

PARKER POE ADAMS & BERNSTEIN LLP

/s/ [Signature]

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³ As with all of the cases pending before Judge Robinson from multiple counties, MetLife and Lowder have no objection to any pre-trial motions in this case being heard before Judge Robinson in the North Carolina Business Court in Winston-Salem and are prepared to waive venue for such hearings as necessary.

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CERTIFICATE [*13] OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION TO DESIGNATE CASE AS RULE 2.1 EXCEPTIONAL OR COMPLEX BUSINESS CASE** was served on the following by United States first class mail, postage prepaid:

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