

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

In Re METLIFE
DEMUTUALIZATION
LITIGATION

CV 00-2258
(TCP)(AKT)

**MEMORANDUM and
ORDER**

-----X
PLATT, District Judge.

Defendants MetLife Co. and MetLife Inc, (collectively “MetLife”) bring this Motion for a Determination Regarding the Membership of the Certified Class. Specifically, MetLife requests that this Court exclude from the Class Metropolitan Policyholders who exchanged their insurance policies for cash or policy credits, rather than for shares of MetLife, Inc. (this particular set of Policyholders is referred to herein as “the Disputed Group”). For the following reasons, Defendants’ Motion is hereby **DENIED**.

BACKGROUND

A thorough recitation of the facts may be found by reading this Court’s previous decisions in this matter: *In re Metlife Demutualization Litig.*, 156 F. Supp. 2d 254 (E.D.N.Y. 2001) *In re Metlife Demutualization Litig.*, 322 F. Supp. 2d 267 (E.D.N.Y. 2004), and *In re Metlife Demutualization Litig.*, 229 F.R.D. 369 (E.D.N.Y. 2005). Nevertheless, a few essential facts bear repeating.

On September 28, 1999, MetLife Co.’s Board of Directors approved a Plan of Reorganization (the “Plan”) that would convert MetLife Co. from a mutual life insurance company to a stock life insurance company. *In re*

MetLife Demutualization Litigation, 156 F. Supp. 2d at 258. The process of demutualization occurred in a number of stages. First, MetLife Co. Policyholders' interests were extinguished. Second, all Eligible Policyholders received in return for their policies, consideration in the form of shares of MetLife Co. common stock - with 100% of MetLife Co. common stock (about 700 millions shares) allocated to the Eligible Policyholders. (See Aff. of Jared B. Stamell ("Stamell Aff."), Ex. 1 ("Plan of Reorganization" or "Plan") at Article II (defining "allocable common shares"); see also Plan ¶ 7.1(a).) In reference to this second step of the demutualization, the Plan contained the following relevant language:

"Allocable Common Shares" means 700 million shares of [MetLife Co.] Company Common Stock, . . . representing the total number of shares that will be allocated to Eligible Policyholders in accordance with this Plan[.]

(Plan at Article II (defining "Allocable Common Shares").)

The Plan also contained relevant language in Section 7, under the heading "Allocation and Payment of Policyholder Consideration":

Section 7.1(a) The consideration to be given to Eligible Policyholders in exchange for their Policyholders' Membership Interests shall be shares of Company Common Stock^[1] (which shall then be exchanged for an equal number of shares of Common Stock^[2] to be held through the Trust), cash or Policy Credits.

In the third step of the demutualization, the former Policyholders exchanged their allocated shares of MetLife Co. common stock for cash, policy

¹ Both parties agree that the Plan refers here to MetLife Co. Common Stock.

² Both parties agree that the Plan refers here to MetLife, Inc. Common Stock.

credits, or beneficial interests in the MetLife Policyholder Trust (the “Trust”). (Plan ¶¶ 7.1-7.3.) The Trust held shares of stock in the newly formed holding company, MetLife, Inc.³ *In re MetLife Demutualization Litigation*, 156 F. Supp. 2d at 259.

On or about November 24, 1999, MetLife Co. issued each Policyholder a Policyholder Information Booklet (“PIB” or “prospectus”), wherein the Company recommended approval of the Plan. (Appx. to Second Amended Complaint (“SAC”), Ex. A (“Policy Information Booklet”).) The PIB, like the Plan of Reorganization, described the allocation of MetLife Co. shares to all Policyholders and the subsequent exchange for shares of MetLife, Inc., cash, or policy credits. (Policy Information Booklet at 18.)

Along with the PIB and Plan, MetLife Co. also distributed ballot cards to the Policyholders. These cards requested recipients to “Place an X in the box to the left if you elect to receive cash for **your Common Stock**,^[4] valued at the price at which the Common Stock is sold to the public in the initial public offering.” (Stamell Aff., Ex. 5 (emphasis added).) Thus, recipients of the ballot card were made to understand that they already had stock in MetLife, Inc. and could now exchange this stock for cash. It should also be emphasized that recipients *did not know* the value of their stock when they made their election as the ballots were signed prior to the IPO (which occurred a few months later).

³ MetLife’s motivation for creating such a convoluted demutualization process is not known to this Court. Nonetheless, this process will determine the size of the Class.

⁴ Both parties agree that the ballot card refers to MetLife, Inc. common stock.

At some point prior to January 30, 2000 (the record is unclear exactly when) MetLife Co. allocated its 700 million shares of common stock to all of its participating Policyholders, including the Disputed Group. (*See* Appx. of Cited Materials in SAC, Ex. C at 3.) According to MetLife documents, of the 700 million shares MetLife Co. distributed, 71% were exchanged for shares in the MetLife, Inc. Trust, 25% were exchanged for cash, and 4% were applied as policy credits. (Pls.' Mem. Opp. Defs.' Mot. Determination of Certified Class ("Pls.' Mem. Opp.") at 6.) This clearly shows, by Defendants' own records, that MetLife Co. stock was in the name of the Disputed Group at the time of the exchange for cash. As will be made clear below, the Disputed Group's ownership of Common Stock, and hence their membership in the class, hinges on whether they received MetLife Co. stock, not MetLife, Inc. stock. *See infra* p. 6. As the Disputed Group received MetLife Co. stock, they were members of the Class pursuant to the Class Definition.⁵ *See infra* p. 6.

Divided in terms of putative Class members (including the Disputed Group), 87% of Class members elected MetLife Inc. stock, 9% elected cash, and the other 4% of Policyholders were those forced to receive cash or policy credits for their MetLife Co. shares. (Pls.' Mem. Opp. at 6.) According to Defense counsel's estimates, about 2.5 million people elected cash or were forced to take policy credits. (00-2258, Transcript of Oral Argument, May 19, 2006 ("Tr.") at 8.)

⁵ It should also be noted that according to the ballot, members of the Disputed Group were also holders of MetLife, Inc. (not just MetLife Co.) shares at the time they exchanged their shares for cash.

On February 18, 2000, individuals holding an interest in MetLife Co. voted on the demutualization plan. On April 4, 2000, the N.Y. Superintendent of Insurance approved the Plan. In his decision, the Superintendent found that “[a] total of 700 million shares of Company Common Stock,⁶ representing 100% of the equity ownership of the Company prior to reorganization, will be allocated to Eligible Policyholders as consideration for the surrender of their Policyholders’ Membership Interests.” (Stamell Aff., Ex. 4.)

Also on April 4, 2000, MetLife, Inc. announced its IPO of MetLife, Inc. common stock at \$14.25 per share. *In re MetLife Demutualization*, 156 F. Supp. 2d at 258-59. On April 7, 2000, MetLife Co. became a wholly owned subsidiary of MetLife, Inc. *Id.* at 259.

Plaintiffs allege that MetLife, Inc. issued an excess supply of IPO shares, which depressed the stock price. Specifically, Plaintiffs claim that Policyholders received only 54 cents on the dollar for their policies, and that dividends were reduced. (SAC ¶ 55.) The excess shares were issued as part of MetLife Co.’s undisclosed (in the PIB) share buyback plan. (SAC ¶¶ 51-55.)

Between April 2000 and 2001, the market price of MetLife, Inc. stock almost tripled, and MetLife paid between \$20.00 and \$35.00 to buy back shares it had sold in the IPO for \$14.25. (*Id.*)

PROCEDURAL HISTORY

⁶ Both parties agree that the Superintendent’s Decision refers here to MetLife Co. common stock.

This Court has previously made three substantive rulings in this case. In July 2001, we denied Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6). In 2004, we denied Defendants' Motion to Dismiss Plaintiffs' second claim for relief in the Second Amended Complaint brought under Section 10b5 of the Securities Exchange Act of 1934. In 2005, this Court granted Plaintiffs' Motion to Certify the Class.

In the latter Opinion, we defined the scope of the class as follows:

All persons who were participating Metropolitan Life Insurance Co. ("MetLife") Policyholders on or about September 28, 1999, for whom MetLife Co. calculated a positive actuarial equity share ("participating policyholders") and *whose rights as participating policyholders were exchanged for shares of stock in MetLife Co., pursuant to defendants' plan of demutualization[.]*

In re MetLife Demutualization Litig., 229 F.R.D. at 372 (emphasis added).

This Opinion also described MetLife's demutualization as "an exchange of policies for stock, with the right to elect cash", thus indicating that Policyholders received shares before electing cash. *Id.*

Defendants argue that the Policyholders who elected cash and policy credits never received any interest in the shares of MetLife Co., and thus may not be considered part of the Class. (Defs.' Mem. Supp. Mot. Determination of Certified Class ("Defs.' Mem.") at 3.) Plaintiffs contend that the Policyholders who elected cash or policy credits exchanged their Membership interests for MetLife Co. shares, and are thus part of the Class. (Pls.' Mem. Opp. at 1.)

Defendants and Plaintiffs filed their motions on May 9, 2006. Oral argument was held on May 19, 2006.

DISCUSSION

We consider the following issues in this case: (i) whether the individuals who elected cash or policy credits meet the class definition, (ii) whether individuals who were forced to take cash or policy credits meet the class definition, (iii) whether the lead Plaintiffs adequately represent the members of the Disputed Group, (iv) whether the members of the Disputed Group have the right to bring claims under the federal securities laws, and finally (v) whether Plaintiffs' arguments are timely. We shall take each issue in turn.

A. Individuals who elected cash or policy credits

As both parties essentially concede, the Plan governs the Class definition. (Defs.' Reply Mem. at 3; Pls.' Mem. Opp. at 1.) Thus, we first look to the Plan to determine which Policyholders are in the Class.

1. The Language of the Plan

The Definitions section of the Plan states that MetLife Co. shares were allocated to all Policyholders, including those who received cash and policy credits. Other Plan provisions use similar language. (*See e.g.* Plan ¶ 7.1(b) (stating that "Each Eligible Policyholder shall be paid consideration based on the allocation to the Eligible Policyholder of a number of Allocable Common Shares[.]")

The central issue is whether the allocation of MetLife Co. shares gave the members of the Disputed Group any interest in the shares such that the

interest could have been exchanged for the members' rights as Policyholders. Defendants argue that the "allocation" was merely a calculation made by MetLife to determine the shares, cash, or credits Policyholders would receive, and thus, no interest was given. However, as Plaintiffs note, all Policyholders had some interest in the MetLife Co. shares because the allocation of such shares determined the amount of MetLife, Inc. shares, cash or policy credits they would receive. (*See* Plan ¶ 7.1.) Moreover, while the Plan offers no definition of the word "allocate" the dictionary defines it as "to assign", implying that certain rights are provided during an allocation. *See Webster's II New Riverside Dictionary* (Rev. Ed. 1996) at 20; *Cf Bynum v. Cigna Healthcare of N.C., Inc.*, 287 F.3d 305, 313-14 (4th Cir. 2002) (applying dictionary definition to undefined term in insurance contract).

On the other hand, Defendants point to Plan language which indicates that Policyholders directly exchanged their Membership Interests for Cash or policy credits without gaining any interest in MetLife Co. shares:

The consideration to be given to Eligible Policyholders in exchange for their Policyholders' Membership Interests shall be shares of [MetLife Co.] Common Stock (which shall then be exchanged for an equal number of shares of [MetLife, Inc.] Common Stock to be held through the Trust), cash or Policy Credits.")

(Plan ¶ 7.1(a).)

Defendants argue that the position of the parenthesis after the word "Trust" shows that (i) all Policyholders who received MetLife Co. common stock exchanged it for shares of MetLife, Inc., and (ii) other Policyholders received cash or policy credits, but no stock with which to make an exchange. (Defs.' Mem. at 3)

Defendants' interpretation of this section is arguably logical. Accordingly, we find that the Plan is ambiguous on the question of whether individuals electing cash received an interest in MetLife Co. shares because various terms of the Plan conflict with one another. (*Compare* Plan ¶ 7.1(b) (stating that each Eligible Policyholder will receive consideration based on an allocation of MetLife Co. common shares) *with* Plan ¶ 7.1(a) (stating that Eligible Policyholders will be given cash, policy credits, *or* MetLife Co. Common Stock.); *Cf Krumme v. WestPoint Stevens Inc.*, 238 F.3d 133, 139 (2d Cir. 2000) (internal quotations omitted) (“The language of a contract is ambiguous if it is ‘capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.’ ”)

Because of the ambiguity in the Plan, we turn to extrinsic evidence to shed light on the meaning of its terms.⁷ *See generally Deutsche Bank AG v. AMBAC Credit Products, LLC.*, 2006 WL 1867497, *13 (S.D.N.Y. June 6, 2006) (“If a contract is ambiguous . . . a court may look to extrinsic evidence[.]”) We note in passing that “as the drafter” of the Plan, MetLife “is responsible for the ambiguity” and will have the ambiguities interpreted against it. *See M. Fortunoff of Westbury Corp. v. Peerless Ins. Co.*, 432 F.3d 127 (2d Cir. 2005).

⁷ During oral argument, this Court suggested (and Plaintiffs' counsel agreed) that a jury would have to resolve the ambiguity in the Plan. *See Scholastic v. Harris*, 259 F.3d 73, 83 (2d Cir. 2001) (“When the language of a contract is ambiguous and there is relevant extrinsic evidence regarding the actual intent of the parties, an issue of fact is presented for a jury to resolve[.]”); (Tr. at 29.) This would normally be the proper course. However, we recognize that the purpose of this Motion is to determine the scope of the Class so that Notice may be distributed. In the interests of expediency, we will resolve the issues of fact in this Opinion.

2. *Extrinsic Evidence*

The relevant extrinsic evidence is the ballot, a Letter from the Chairman of MetLife to all Policyholders, the PIB, and a decision by the Superintendent of New York State Insurance. We shall discuss each in turn.

(a) The Ballot

The ballot was apparently distributed to Policyholders along with the Plan and the PIB. The wording of the ballot clear shows that it was shareholders, not Policyholders, who elected to take cash. (*See Stamell Aff.*, Ex. 5 (“you [may] elect to receive cash for *your* [MetLife, Inc.] Common Stock.”) (emphasis added).)

It should be noted that the ballot refers to shares of MetLife, Inc. not MetLife Co. (it is MetLife Co. stock which must be exchanged to meet the Class definition). However, this does not make the wording of the ballot any less persuasive. Under the Plan of Reorganization, Policyholders who received MetLife Inc. shares, must have first been allocated shares of MetLife Co. (Plan ¶¶ 7.1-7.3.) Thus, the ballot demonstrates that all individuals who elected cash had already received MetLife Co. shares.

(b) The Prospectus/ Policy Information Booklet/ Letter from the N.Y. State Superintendent of Insurance

Three documents outside the Plan - two of which were sent to all

Policyholders – make clear that Policyholders who elected cash or policy credits received an interest in the MetLife Co. shares. The Letter from the Chairman of MetLife states that “[t]he demutualization will allocate 100 percent of the stock of the company at the time of the demutualization to our eligible policyholders to be paid in the form of stock, cash, or policy credits.” (Stamell Aff., Ex. 2.) Similarly, the PIB states that “[r]egardless of whether you will be paid in the form of shares of [MetLife, Inc.] Common Stock (to be held in Trust), cash, or Policy Credits, the compensation you will receive for your Policyholders’ Membership Interest will be based upon the number of shares of MetLife [Co.] common stock allocated to you under the terms of the Plan[.]” (Stamell Aff., Ex. 8.)

Lastly, the Superintendent of Insurance described the transaction as follows: “A total of 700 million shares of [MetLife Co.] Company Common Stock, representing 100% of the equity ownership of the Company prior to reorganization, will be allocated to Eligible Policyholders *as consideration for the surrender of their Policyholders’ Membership Interests[.]*” (Stamell Aff., Ex. 4 (emphasis added).) MetLife apparently did not file an objection to this language.

Taken together, these documents resolve the ambiguity in the Plan and show that the MetLife Co. shares were allocated to all Policyholders (including those who elected cash or policy credits) in consideration (or in exchange) for their policy interests in Metropolitan. Therefore, individuals who elected cash or policy credits satisfy the Class definition. *See In re MetLife Demutualization Litig.*, 229 F.R.D. at 372 (stating class definition in relevant part as all policyholders “whose rights as participating policyholders were exchanged

for shares of stock in MetLife Co., pursuant to defendants' plan of demutualization[.]

B. Policyholders Forced to take Cash

Some Policyholders were forced to receive policy credits for tax reasons. (Plan ¶ 7.3(c).) Others were forced to take cash. (Pls.' Mem. Opp. at 7.)

These Policyholders were also allocated MetLife Co. shares in the Plan.

If consideration is to be paid or credited to an Eligible Policyholder in cash or Policy Credits, as the case may be, pursuant to this Plan, the amount of such consideration shall be equal to the number of Allocable Common Shares [.]

Plan ¶ 7.3(f).

There is no indication that these Policyholders did not receive the ballot, the Letter from the Chairman, or the PIB. Thus, these Policyholders are subject to the analysis described in the above section and therefore, must be included in the Class.

C. Adequate Representation

Defendants claim that the Policyholders who received cash or policy credits would not be adequately represented by the named Plaintiffs because all such Plaintiffs received stock in MetLife, Inc. (Defs.' Mem. at 6.) Specifically, Defendants argue that (i) the Disputed Group may not be included in the Class under Rule 23(a)(4), which states that "the representative parties will fairly and adequately protect the interests of the class[.]" ; (ii) the Disputed Group may not be

included in the class under Rule 23(a)(2), which requires that “there are questions of law or fact common to the class”; and thus (iii) Plaintiffs’ counsel lacks standing to raise arguments on behalf of the Disputed Group.

Defendants’ argument fails on legal grounds. Adequate representation, under Rule 23(a)(4) only requires that “the class representatives do not have interests antagonistic to those of the other class members.” *In re MetLife Demutualization*, 229 F.R.D. at 376 (quoting *Fox v. Cheminova, Inc.*, 213 F.R.D. 113, 127 (E.D.N.Y. 2003) (Platt, J.)). While Defendants argue that class representatives do not have the same interests as members of the Disputed Group, they fail to contend that the interests are antagonistic.

In any event, the interests of the Disputed Group and the class representatives largely overlap. The crux of Plaintiffs’ Complaint, is that Defendants’ prospective omitted material facts concerning the demutualization. *In re MetLife*, 229 F.R.D. at 379; (Second Amended Complaint (“SAC”) ¶ 16.) One key fact that Plaintiffs allege Defendants omitted was MetLife’s billion dollar share buyback plan. (SAC ¶ 55.) The individuals who elected cash or policy credits were just as ignorant of the buyback plan as those who received stock. Had the terms of the buyback been included, Plaintiffs might have made their election of shares or cash differently.

The Policyholders who were forced to take cash or shares also assert issues of law and fact common to those who elected shares. Plaintiffs allege that Defendants *inter alia* omitted from the prospectus that the value of the shares MetLife allocated to voting rights per Policyholders was much greater than the

actual value of those rights. (SAC ¶ 55(d).) Had such information been included in the Plan, Policyholders forced to take cash or policy credits may have changed their votes on the demutualization.⁸ (*See* SAC ¶ 27 (noting that both participating and non-participating Policyholders had the right to vote to approve or disapprove the Demutualization Plan.) Thus, this group is also adequately represented by the lead Plaintiffs pursuant to Rule 23.

Defendants also argue that Plaintiffs may not adequately represent the Disputed Group because inclusion of these individuals was not contemplated in the Second Amended Complaint. This argument ignores the class definition proposed in the SAC, which we find includes the Disputed Group. (SAC ¶ 12.) Moreover, the allegations in the SAC regarding the number of class members and the amount of actuarial equity shares calculated (\$15.34 billion) indicate that the Class includes the Disputed Group. (*See* Tr. at 26; Pls.' Mem. Opp. at 1; SAC ¶¶ 55(g), 61, 65, 96, 104(b).)

As the named Plaintiffs adequately represent the Disputed Group, Plaintiffs' Counsel has standing to make arguments on behalf of this Group. We turn now to these arguments.

D. The Disputed Group's Claims under the Securities Laws

Defendants argue that the Disputed Group does not state a claim

⁸ Although this Court only references one common issue of fact here, there are many others. We also note in passing that even one common issue of law or fact satisfies the commonality requirement of Rule 23(a)(2). *See In re MetLife Demutualization Litig.*, 229 F.R.D. at 373 (citing *Fox v. Cheminova, Inc.*, 213 F.R.D. 113, 126 (E.D.N.Y. 2003) (Platt J.)).

under the federal securities law because they received cash and policy credits, not securities, and therefore made no “purchase or sale of securities” as necessitated by Section 10(b) and Rule 10b-5 of the Securities and Exchange Act (“SEA”). *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 731-32 (1975).

Defendants’ argument is incorrect. We have already held that Policyholders received an interest in MetLife Co. shares during the allocation. *See supra* pp. 7-11. This determination is supported by case law.

Under Second Circuit precedent, there is no requirement that an individual must be issued stock or actually receive a share certificate to state a claim under the federal securities laws.

Neither the Act nor Rule 10b-5 expresses any requirement that the stock actually have been issued, and we have declined to impose such a requirement. Thus, in *Yoder v. Orthomolecular Nutrition Institute, Inc.*, 751 F.2d 555, 558-59 (2d Cir. 1985) (“*Yoder*”), we held that a contract that called for the issuance to the plaintiff, in certain circumstances, of stock in the defendant corporation involved a purchase and sale of securities even though the securities were never issued. *See also Lawrence v. SEC*, 398 F.2d 276, 279-80 (1st Cir. 1968) (“Fraudulent representations as to securities not yet issued offer full[] ... reason for invoking the protection of the securities laws.”); *Stevens v. Vowell*, 343 F.2d 374, 379 (10th Cir. 1965) (agreement to form a corporation and distribute stock involves a “purchase” despite defendants’ refusal to issue stock).

Sulkow v. Crosstown Apparel Inc., 807 F.2d 33, 36 (2d Cir. 1986).

Thus, although the MetLife Co. stock was never issued, it may still constitute a security under the SEA. This conclusion is reinforced by the First Circuit’s decision in *Securities and Exchange Commission v. SG LTD et al.*, 265 F.3d 42 (1st Cir. 2001). In *SG LTD*, Defendants ran an investment game that sold

virtual shares in fictitious companies. The First Circuit held that the sale of these fake shares constituted a purchase and sale of securities under the Securities Act and SEA, and ruled that Congress intended the term “security” to “encompass a wide array of financial instruments, ranging from well-established investment vehicles (e.g., stocks and bonds) to much more arcane arrangements.” *Id.* at 46. Logic suggests that if a virtual share in a fake company is a security, an allocated share in a real company - which is given as valuable consideration - must also constitute a security.⁹

Defendants cite to two cases in support of their argument - *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 and *Person v. New York Post Corp.*, 427 F. Supp. 1297 (E.D.N.Y. 1977). The Courts in both these cases held that plaintiffs were not purchasers or sellers of securities. However, the facts of these cases are inapposite. In *Blue Chip Stamps*, 421 U.S. at 726-27, plaintiff was an offeree of a corporation’s stock, which he chose not to take. Unlike here, no calculations were made to determine how many shares should be allocated to the plaintiff. Moreover, the plaintiff in *Blue Chip Stamps* had not given up anything for his shares. *Id.* In contrast, the MetLife Co. shareholders received their allocation in exchange for their rights as Policyholders. In *Person*, Plaintiff alleged violations of federal securities laws because defendant refused to publish his securities offering in its newspaper. 427 F. Supp. at 1301. Obviously, the

⁹ Defendants correctly argue that (i) the First Circuit justified its opinion by holding that the fake securities were an investment contract (*see Securities and Exchange Commission v. SG LTD et al.*, 265 F.3d 42 (1st Cir. 2001)), and (ii) there is no basis to find that the shares in MetLife Co. constitute such a contract. However, the decision also expands the definition of security. This is the holding to which we cite.

plaintiff in *Person* had not received an interest in any shares of Defendant's corporation. Thus, Defendants offer no valid legal basis for their argument.

It is worth noting that Defendants also fail to show a requirement that money be exchanged for securities in order to constitute a "purchase of securities." Thus, we find that the Policyholders' membership interests may constitute consideration for the MetLife Co. shares. (*See Stamell Aff.*, Ex. 4. ("A total of 700 million shares of [MetLife Co.] Company Common Stock, representing 100% of the equity ownership of the Company prior to reorganization, will be allocated to Eligible Policyholders as consideration for the surrender of their Policyholders' Membership Interests[.]".))

Accordingly, this Court holds that the allocation of MetLife Co. shares constitutes a purchase or sale of securities under the securities laws.¹⁰

E. Plaintiffs' Purported Delay in Bringing this Motion

Defendants argue that Plaintiffs' Opposition was the first time they asserted that the individuals in the Disputed Group were members of the class, and therefore their argument is "untimely and meritless." (Def.'s Reply Mem. at 3.) As this Court has already held that the SAC contained allegations involving members of the Disputed Group, we reject Defendants' argument.¹¹ (*Supra* pp. 13.)

¹⁰ As this Court finds that the Disputed Group stated a claim, Plaintiffs' alternative argument that Policyholders' Membership interests in the demutualization were a security which was "sold" under the Securities Act need not be addressed. (*See* Pls.' Mem. Opp. at 13-15.)

¹¹ It should be noted that Plaintiffs also make a timeliness argument, claiming that this Court should construe Defendants' Motion as one to Reconsider the Opinion Granting Class Certification. Under such an interpretation, the Motion was brought long after the

CONCLUSION

For the foregoing reasons, Defendants’ Motion for a Determination Regarding the Membership of the Certified Class is hereby **DENIED**. Notice shall be distributed to all Class members in accordance with this Opinion.

SO ORDERED.

/S/ _____
Thomas C. Platt, U.S.D.J.

Dated: August 29, 2006
Central Islip, New York

Opinion was entered and is barred. However, it seems clear that both parties only recently considered whether to include the Disputed Group as part of the Class, presumably because Class Notice will be distributed soon. It would be inequitable to punish either party for failure to previously raise these arguments. Accordingly, while this Court denies Defendants’ Motion in this Opinion, we do not do so on the basis of timeliness.