



CIVIL PROCEDURE FORM NO. 8-A(2)

IN THE SIXTEENTH JUDICIAL CIRCUIT, JACKSON COUNTY, MISSOURI

| | | |
|--|--|---|
| Judge or Division: Judge John M. Torrence | Circuit Court Case Number: 1916-CV26645 | |
| Plaintiff/Petitioner: David B. Karr, individually and on behalf of others similarly situated | Appellate Number: | <input type="checkbox"/> Filing as an Indigent |
| | Date of Judgment/Decree/Order: (ATTACH A COPY) August 24, 2023 | Court Reporter: Jessica Musser, CCR#889 |
| vs. Defendant/Respondent: Kansas City Life Insurance Company | Date Post Trial Motion Filed: June 9, 2023 | <input type="checkbox"/> Sound Recording Equipment |
| | Date Ruled Upon: August 24, 2023 | The Record on Appeal will consist of: ___ Legal File only or __X_ Legal File and Transcript |

(Date File Stamp)

Notice of Appeal to Missouri Court of Appeals - Civil

District: X Western Eastern Southern

| | |
|---|---|
| Notice is given that Kansas City Life Insurance Company appeals from the judgment/decree/order entered in this action on August 24, 2023 . | |
| Appellant's Name Kansas City Life Insurance Company | Respondent's Name David Karr, individually and on behalf of others similarly situated |
| Address 3520 Broadway Kansas City, MO 64111 | Address 460 Nichols Road, Suite 200 Kansas City, MO 64112 |
| Appellant's Attorney/Bar Number (If multiple, list all or attach additional pages) [attached separately] | Respondent's Attorney/Bar Number (If multiple, list all or attach additional pages) [attached separately] |
| Address [attached separately] | Address [attached separately] |
| E-mail Address [attached separately] | E-mail Address [attached separately] |
| Telephone [attached separately] | Telephone [attached separately] |
| Brief Description of Case (May be completed on a separate page) Plaintiff claims Kansas City Life Insurance Company ("KCL") breached its insurance contract ("with him, and a class of similarly situated individuals, because KCL allegedly charged more than what the terms of its insurance policy permitted when KCL allegedly inflated the monthly cost of insurance ("COI") deductions by including so-called "non-mortality factors" into the calculation of the COI rate, which the insurance policy said would be based on age, sex, and risk class. The case was certified as a class action over KCL's opposition, and both parties moved for summary judgment. The court denied KCL's motion for summary judgment. Plaintiff was granted partial summary judgment on the issue of breach for the contract claims, but the issue of damages went to a jury trial. The jury awarded Plaintiff and the class a verdict of \$28,362,830.96. KCL filed post-trial motions for a new trial, for judgment notwithstanding the verdict, for decertification of the class, and for reconsideration of the summary judgment order. Each motion was denied. KCL appeals from the resulting final judgment, from the denials of its post-trial motions, from the initial judgment on the jury verdict, from the summary judgment granted to Plaintiff, and from all other orders and trial decisions in the case. | |

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)
Issues expected to be raised on appeal include, but are not limited to, the following: (1) whether the circuit court erred in granting summary judgment on the contract claims; (2) whether the circuit court erred in denying KCL's motion for summary judgment; (3) whether the circuit court erred in various evidentiary rulings at trial; (4) whether the circuit court erred in certifying the class; (5) whether the circuit court gave improper jury instructions; (6) whether the circuit court erred in proceeding to trial because the issues in the case must be referred to the Missouri Department of Insurance; (7) whether the jury rendered an inconsistent verdict; (8) whether the circuit court erred in denying KCL judgment as a matter of law and judgment notwithstanding the verdict based on the evidence admitted at trial; and (9) whether the circuit court erred in denying KCL a new trial.

Docket Fee Information

The docket fee in the amount of \$70.00 is being tendered with this notice of appeal.

No docket fee is being tendered because:

a docket fee is not required by law pursuant to _____ (cite specific statute or other authority).

a motion to prosecute the appeal in forma pauperis has been or will be filed.

a docket fee in the amount of \$70.00 cannot be tendered at this time but will be submitted at a later date or this appeal will be subject to dismissal pursuant to Rule 84.08(a).

Signature of Attorney or Appellant
/s Traci Martinez

Date
September 1, 2023

Certificate of Service on Persons other than Registered Users of the Missouri eFiling System

I certify that on _____ (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

Appellant or Attorney for Appellant

Directions to Clerk

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by regular mail registered mail certified mail facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, _____ District.

- Docket fee in the amount of \$70.00 was received by this clerk on _____ (date) which will be disbursed as required by statute.
- No docket fee was received.

Date

Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

Attorneys for Defendant/Appellant Kansas City Life Insurance:

Traci Lynn Martinez MO Bar No. 67628
SQUIRE PATTON BOGGS (US) LLP
41 South High Street
2000 Huntington Center, 20th Floor
Columbus, Ohio 43215
Telephone: +1 614 365 2807
Email: traci.martinez@squirepb.com

Adam Fox, admitted pro hac vice
Hannah J. Makinde, admitted pro hac vice
SQUIRE PATTON BOGGS (US) LLP
555 South Flower Street, 31st Floor
Los Angeles, California 90071
Telephone: +1 213 624 2500
Facsimile: +1 213 623 4581
Email: adam.fox@squirepb.com
hannah.makinde@squirepb.com

James Randolph Evans, admitted pro hac vice
Daniel Delnero, admitted pro hac vice
SQUIRE PATTON BOGGS (US) LLP
One Atlantic Center
1201 W. Peachtree Street, NW, Suite 3150
Atlanta, Georgia 30309
Telephone: +1 678 272 3215
Email: randy.evans@squirepb.com
daniel.delnero@squirepb.com

John W. Shaw, MO Bar No. 26205
Lauren Tallent, MO Bar No. 72304
BERKOWITZ OLIVER LLP
2600 Grand Blvd., Suite 1200
Kansas City, MO 65108
Telephone: 816-561-7007
Facsimile: 816-561-1888
Email: jshaw@berkowitzoliver.com
ltallent@berkowitzoliver.com

Attorneys for Plaintiff/Appellee David Karr:

Patrick J. Stueve MO Bar No. 37682
Ethan M. Lange MO Bar No. 67857
Lindsay T. Perkins MO Bar No. 60004
David A. Hickey MO Bar No. 62222
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Telephone: 816-714-7100
Email: stueve@stuevesiegel.com
lange@stuevesiegel.com
perkins@stuevesiegel.com
hickey@stuevesiegel.com

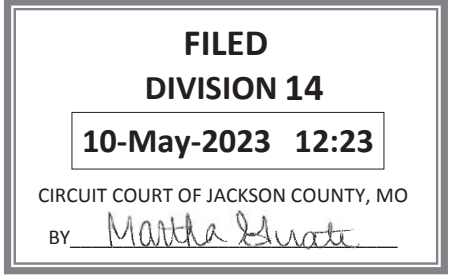
[continued on next page]

John J. Schirger MO Bar No. 60583
Matthew W. Lytle MO Bar No. 59145
Joseph M. Feierabend MO Bar No. 62563
Samuel N. Sherman MO Bar No. 71171
MILLER SCHIRGER, LLC
4520 Main Street, Suite 1570
Kansas City, Missouri 64111
Telephone: 816-561-6500
Email: jschirger@millerschirger.com
mlytle@millerschirger.com
jfeierabend@millerschirger.com
ssherman@millerschirger.com

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID B. KARR, individually and on behalf of)
others similarly situated,)
)
Plaintiff,)
)
vs.)
)
KANSAS CITY LIFE INSURANCE)
COMPANY)
)
Defendant.)

Case No. 1916-CV26645
Division 14



JUDGMENT ON JURY VERDICT

This action by Plaintiff David B. Karr on behalf of the certified Class, as defined below pursuant to Mo. Sup. Ct. R. 52.08(c)(3) (collectively, "Plaintiffs"), came before the Court for a trial by jury.

IT IS ORDERED AND ADJUDGED that pursuant to the jury verdict rendered on December 9, 2022, the jury found as follows:

On Plaintiffs' claim for breach of contract at Count I of the First Amended Petition against defendant Kansas City Life Insurance Company, the jury found in favor of Plaintiffs.

On Plaintiffs' claim for breach of contract at Count II of the First Amended Petition against defendant Kansas City Life Insurance Company, the jury found in favor of Plaintiffs.

On Plaintiffs' claim for breach of contract at Count III of the First Amended Petition against defendant Kansas City Life Insurance Company, the jury found in favor of Plaintiffs.

The jury found damages of Plaintiffs to be \$28,362,830.96.

The Class is defined as:

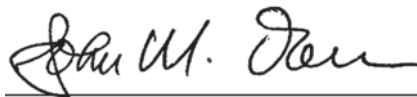
All Missouri citizens who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LowerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant in the State of Missouri, or its predecessors in interest, that was active on or after January 1, 2002.

Excluded from the Class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiff's counsels' firms, any Judge to whom this case is assigned, and his or her immediate family. The Class also excludes the owners of sixty-eight (68) policies who timely requested exclusion from the Class as identified on the attached exclusion list.

Regarding Plaintiff's motion seeking prejudgment interest, the Court finds and concludes that the damages awarded herein were not liquidated. The motion for prejudgment interest is therefore denied.

The Court will enter a final judgment following determination of all other post-verdict issues raised by the parties.

Date: May 10, 2023



John M. Torrence
Circuit Court Judge

Exclusion List

Excluded Policy Numbers

2213015
2214546
2245329
2249548
2263198
2279565
2284653
2302333
2305589
2309745
2315057
2323180
2350582
2350583
2350584
2352716
2358746
2358747
2359031
2363861
2379114
2401260
2405926
2418213
2427735
2431063
2431583
2433337
2441957
2443810
2444335
2451964
2452968
2453218
2477833
2479104
2492414
2495461
2498158
2498169
2500492
2506549

2515433
2518077
2518078
2519428
2534745
2534792
2539499
2544130
2544131
2556742
2584214
2594474
2637952
2637953
2662102
2665815
2670532
2209214
2210098
2249297
2357946
2425298
2456696
2498168
2550539
2631588

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

| | | |
|--|---|-----------------------|
| DAVID B. KARR, individually and on behalf of |) | |
| others similarly situated, |) | |
| |) | Case No. 1916-CV26645 |
| Plaintiff, |) | |
| |) | Division 14 |
| vs. |) | |
| |) | |
| KANSAS CITY LIFE INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Defendant. |) | |

**ORDER GRANTING MOTION FOR
ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARD**

Before the Court is Class Counsel’s Motion for Attorneys’ Fees, Expenses, and Service Award (the “Motion”). Having considered the Motion, related briefing and argument, and the record in this case, the Court finds that Class Counsel’s Motion should be, and hereby is, **GRANTED**, and approves as fair and reasonable Class Counsel’s request for: attorneys’ fees equal to one-third of the \$28,362,830.96 judgment plus post-judgment interest at the time of distribution (the “Common Fund”); reimbursement of expenses in the amount of \$351,231.84 less any amount taxed against Defendant; and a service award of \$100,000 for the Named Plaintiff and Class representative, David Karr, each to be paid from the Common Fund generated for the benefit of the Class.

LEGAL STANDARD

Given its familiarity with all of the issues in the case and with the character of the legal services rendered, a trial court is considered an expert on awarding fees. *Sebree v. Rosen*, 393 S.W.2d 590 (Mo. 1965). And, because it is acquainted with the legal issues involved, the Court may award attorneys’ fees without the aid of evidence. *Id.*; *Agnew v. Johnson*, 176 S.W.2d 489,

494 (Mo. 1943); *Flynn v. First Nat. Safe Deposit Co.*, 284 S.W.2d 593, 597 (Mo. 1955). An award of attorneys' fees will only be reversed for a clear abuse of discretion. *Square Up Builders, LLC v. Crystal Window & Door Systems, Ltd.*, 658 S.W. 3d 218, 220 (Mo. App. E.D. 2022).

ANALYSIS

In evaluating the reasonableness of attorneys' fees in class actions, Missouri courts can employ a percentage of the benefit method. *In re State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 388 (Mo. App. W.D. 1997). The "percentage of recovery" approach, or the "common fund doctrine," permits an award of attorneys' fees from a common fund "when a plaintiff, on behalf of a class, successfully maintains an action that benefits the class members in a manner that benefits himself." *Hale v. Wal-Mart Stores, Inc.*, No. 01-CV-218710, 2009 WL 2206963, at ¶ 5 (Mo. Cir. May 15, 2009) (citing *Lett v. City of St. Louis*, 24 S.W.3d 157, 163 (Mo. App. E.D. 2000)) (internal quotations omitted). "The common fund doctrine is applied when 'each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf.'" *Id.* (quoting *Boeing v. VanGemert*, 444 U.S. 472, 479 (1980)). "Missouri circuit courts recognize recovery of attorneys' fees as a percentage of the common fund." *Id.* at ¶ 6 (citing *In re State ex rel. Byrd*, 956 S.W.2d at 388); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (citing *Johnston v. Comerica Mortgage Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996)). This method supports the reasonableness of the requested award for Class Counsel in this case.

Class Counsel's request of one-third of the Common Fund is on par with the percentages that Missouri courts have recognized as typical and reasonable in cases involving common benefit contingency fees. *See Hale*, 2009 WL 2206963, at ¶¶ 30-31 (concluding that 38.3% of a \$90 million settlement was "customary and well in line with attorneys' fees awards in similar cases")

as well as “with attorneys’ fees awards by federal courts in class actions throughout the country, as well as other circuit courts in Jackson County”); *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. E.D. 2011) (affirming award of \$21 million, or one-third of settlement value, in attorneys’ fees and noting that “in cases involving complex litigation or in the class action context, a one-third contingent fee award is not unreasonable”). The requested attorneys’ fee is likewise consistent with percentages awarded in federal courts around the country, including the Eighth Circuit. *See, e.g.*, Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: an Empirical Study, 1 J. of Empirical Legal Studies 27, 35 (2004) (“Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases.”); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% common-fund fee award reasonable in class action settlement).

Notably, the requested fee is consistent with percentages awarded in nearly identical class action cases involving COI overcharges. *See Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170 NKL, 2021 WL 247958 (finding that a “one-third of the common fund is a reasonable fee for Class Counsel,” awarding one-third of judgment obtained in favor of class of Missouri policyholders); *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-CV-00203, Dkt. 66 (W.D. Mo. Apr. 18, 2023) (finding “that an award of attorney’s fees in the amount of one-third or 33 $\frac{1}{3}$ percent of the Settlement Amount is reasonable and fair”); *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, Dkt. 117 (W.D. Tex. Aug. 26, 2021) (approving attorneys’ fees of 30% of the \$90 million settlement fund as “a reasonable percentage” that “fits comfortably within the range of typical percentage of common funds awarded as reasonable fees” and “is comparable to awards in similar cases.”). Thus, viewed as a percentage-of-the-benefit, the requested fee is typical and reasonable as compared to cases involving awards in successful class action cases like this one.

Additionally, the Missouri Supreme Court has identified factors that bear on the reasonableness of attorneys' fees in class actions, including "the result achieved," "the nature and character of the services rendered," "the degree of professional ability required," "the nature and importance of the subject matter," and "the vigor of the opposition," among others. *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. 2013) (citations omitted).

Here, the requested award of attorneys' fees is fair and reasonable in light of the complex nature of this case, Class Counsel's experience, their efforts prosecuting this Action, and the benefits obtained for the Class after three-plus years of hard-fought litigation culminating in a trial. In making this award for attorneys' fees, the Court has also considered and found that: the amount of attorneys' fees requested is fair and reasonable and consistent with awards in similar cases; the Action raised numerous complex legal and factual issues requiring substantial professional ability; and Class Counsel displayed skill and expertise that resulted in an extraordinary recovery for the Class over vigorous opposition in an important case involving the rights of thousands of Missouri policyholders.

The Court also finds that the amount Class Counsel has requested for reimbursement of their litigation expenses totaling \$351,231.84 (less any amount taxed against Defendant) is reasonable and was incurred for expenses that would be typically billed to a non-contingent fee-paying client. *See Hale*, 2009 WL 2206963, at ¶¶ 39-40 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters... [such as] computer-assisted research, photocopying, telephone, facsimile charges, postal, messenger, express mail, deposition fees, transcripts, expert witnesses, travel and meals, and subpoena services are reasonably incurred in connection with the prosecution of a modem, complex litigation."). This amount is therefore properly reimbursable from the Common Fund.

Finally, the Court finds the requested service award of \$100,000 for the Named Plaintiff and Class representative, David Karr, is fair and reasonable in light of his contributions to the litigation of this Action, including his participation in the filing, litigating, and trial of this important class action, without which the benefits to the Class would not have been attained. A \$100,000 service award is warranted and consistent with service awards in other cases that required such significant efforts by the class representative, as cited in Class Counsel's motion.

CONCLUSION

Based on the foregoing, the Court finds that Class Counsel's requests for fees and expenses are reasonable and appropriate. Therefore, it is **ORDERED** that Class Counsel be awarded attorneys' fees equal to one-third of the Common Fund, reimbursement of expenses in the amount of \$351,231.84 less any amount taxed against Defendant; and a service award of \$100,000 for the Named Plaintiff and Class representative, David Karr, each to be paid from the Common Fund generated for the benefit of the Class.

Date: August 24, 2023



HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.



Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID B. KARR, individually)
and on behalf of others similarly situated,)

Plaintiff,)

vs.)

KANSAS CITY LIFE INSURANCE)
COMPANY,)

Defendant.)

Case No. 1916-cv26645

Division 14

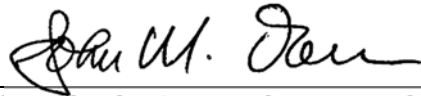
**ORDER DENYING DEFENDANT’S MOTION TO DISMISS, OR IN THE
ALTERNATIVE FOR DIRECTED VERDICT AND JUDGMENT, ON COUNT IV**

Before the Court is Defendant Kansas City Life Insurance Company’s (“KCL”) Motion to Dismiss, or in the Alternative for Directed Verdict and Judgment, on Count IV, which is Plaintiff’s claim for conversion. Plaintiff abandoned and withdrew his conversion claim at trial, which arose from the same conduct as was at issue on Plaintiff’s breach of contract claims for which Plaintiff obtained full compensatory damages on behalf of the class. Count IV is therefore dismissed.

IT IS SO ORDERED.

August 24, 2023

DATE



THE HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court’s eFiling system.



Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

| | | |
|--|---|-----------------------|
| DAVID B. KARR, individually and on behalf of |) | |
| others similarly situated, |) | |
| |) | Case No. 1916-CV26645 |
| Plaintiff, |) | |
| |) | Division 14 |
| vs. |) | |
| |) | |
| KANSAS CITY LIFE INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Defendant. |) | |

**ORDER DENYING DEFENDANT’S MOTION FOR
RECONSIDERATION OF SUMMARY JUDGMENT ORDER**

Before the Court is Defendant Kansas City Life Insurance Company’s Motion for Reconsideration of the Court’s February 22, 2022 Summary Judgment Order (the “Motion”). Even though Motions to Reconsider prior court rulings are not recognized under Missouri law, the Court will nevertheless consider the merits of Defendant’s Motion for Reconsideration of Summary Judgment Order.

After having considered the Motion, related briefing, the record in this case, and oral argument, the Court concludes that its interpretation of the Policies’ monthly cost of insurance rates and expense charge provisions and its determination that there was no genuine issue of material fact that Defendant breached those provisions as alleged in Counts I-III were correct, and thus, the Court **DENIES** Defendant’s Motion.

Date: August 24, 2023



 HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.

Martha Swate

Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

| | | |
|--|---|-----------------------|
| DAVID B. KARR, individually and on behalf of |) | |
| others similarly situated, |) | |
| |) | Case No. 1916-CV26645 |
| Plaintiff, |) | |
| |) | Division 14 |
| vs. |) | |
| |) | |
| KANSAS CITY LIFE INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Defendant. |) | |

ORDER DENYING DEFENDANT’S MOTION FOR NEW TRIAL

Before the Court is Defendant Kansas City Life Insurance Company’s Motion for New Trial (the “Motion”). After having considered the Motion, related briefing, the record in this case, and oral argument, the Court overrules Defendant’s claims of error, and thus, the Court **DENIES** Defendant’s Motion.

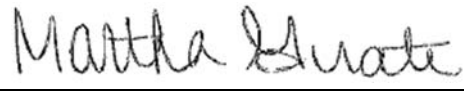
Date: August 24, 2023



 HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.



 Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

| | | |
|---|---|-----------------------|
| DAVID B. KARR, individually |) | |
| and on behalf of others similarly situated, |) | |
| |) | |
| Plaintiff, |) | Case No. 1916-cv26645 |
| |) | |
| vs. |) | Division 14 |
| |) | |
| KANSAS CITY LIFE INSURANCE |) | |
| COMPANY, |) | |
| |) | |
| Defendant. |) | |

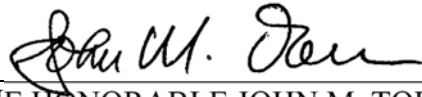
**ORDER DENYING DEFENDANT’S
MOTION FOR JUDGMENT ON COUNT V**

Before the Court is Defendant Kansas City Life Insurance Company’s (“KCL”) Motion for Judgment on Count V. Plaintiff has not pursued declaratory and injunctive remedies. The Court has interpreted the Policies and ruled KCL breached them as a matter of law, making declaratory relief redundant and unnecessary, and, because Plaintiff obtained full compensatory damages on behalf of the class for KCL’s breaches of the Policies, Plaintiff has an adequate remedy at law for KCL’s past breaches. Because future events could warrant such relief, Count V is dismissed without prejudice.

IT IS SO ORDERED.

August 24, 2023

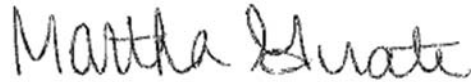
DATE



THE HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.



Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

| | | |
|--|---|-----------------------|
| DAVID B. KARR, individually and on behalf of |) | |
| others similarly situated, |) | |
| |) | Case No. 1916-CV26645 |
| Plaintiff, |) | |
| |) | Division 14 |
| vs. |) | |
| |) | |
| KANSAS CITY LIFE INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Defendant. |) | |

**ORDER DENYING DEFENDANT’S MOTION
FOR JUDGMENT NOTWITHSTANDING THE VERDICT**


Before the Court is Defendant Kansas City Life Insurance Company’s Motion for Judgment Notwithstanding the Verdict (the “Motion”). After having considered the Motion, related briefing, the record in this case, and oral argument, the Court finds Plaintiffs made a submissible case on the damages resulting from Defendant’s contract breaches alleged at Counts I-III of Plaintiffs’ First Amended Petition and that Defendant is not entitled to judgment notwithstanding the verdict, and thus, the Court **DENIES** Defendant’s Motion.

Date: August 24, 2023


HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.



Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

| | | |
|--|---|-----------------------|
| DAVID B. KARR, individually and on behalf of |) | |
| others similarly situated, |) | |
| |) | Case No. 1916-CV26645 |
| Plaintiff, |) | |
| |) | Division 14 |
| vs. |) | |
| |) | |
| KANSAS CITY LIFE INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Defendant. |) | |

**ORDER DENYING DEFENDANT’S
MOTION FOR CLASS DECERTIFICATION**

Before the Court is Defendant Kansas City Life Insurance Company’s Motion for Class Decertification (the “Motion”). After having considered the Motion, related briefing, the record in this case, and oral argument, the Court concludes the class remains properly certified, and thus, the Court **DENIES** Defendant’s Motion.

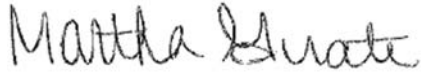
Date: August 24, 2023



 HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.



Law Clerk / Judicial Administrative Assistant, Division 14

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID B. KARR, individually and on behalf of)
others similarly situated,)

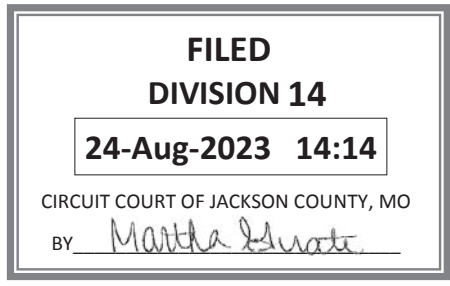
Plaintiff,)

vs.)

KANSAS CITY LIFE INSURANCE)
COMPANY)

Defendant.)

Case No. 1916-CV26645
Division 14



FINAL JUDGMENT

This action by Plaintiff David B. Karr on behalf of the certified Class, as defined below pursuant to Mo. Sup. Ct. R. 52.08(c)(3) (collectively, "Plaintiffs"), came before the Court for a trial by jury.

IT IS ORDERED AND ADJUDGED that pursuant to the jury verdict rendered on December 9, 2022, the jury found as follows:

On Plaintiffs' claim for breach of contract at Count I of the First Amended Petition against Defendant Kansas City Life Insurance Company, the jury found in favor of Plaintiffs.

On Plaintiffs' claim for breach of contract at Count II of the First Amended Petition against Defendant Kansas City Life Insurance Company, the jury found in favor of Plaintiffs.

On Plaintiffs' claim for breach of contract at Count III of the First Amended Petition against Defendant Kansas City Life Insurance Company, the jury found in favor of Plaintiffs.

The jury found damages of Plaintiffs to be \$28,362,830.96.

The Class is defined as:

All Missouri citizens who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant in the State of Missouri, or its predecessors in interest, that was active on or after January 1, 2002.

Excluded from the Class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiff's counsels' firms, any Judge to whom this case is assigned, and his or her immediate family. The Class also excludes the owners of sixty-eight (68) policies who timely requested exclusion from the Class as identified on the attached exclusion list.

IT IS FURTHER ORDERED AND ADJUDGED that the Class is entitled to post-judgment interest at the rate of nine percent per annum on the above damages award from this date of Final Judgment until satisfaction be made;

IT IS FURTHER ORDERED AND ADJUDGED that Class Counsel is awarded attorneys' fees equal to one-third of the \$28,362,830.96 judgment plus post-judgment interest at the time of distribution (the "Common Fund"), and reimbursement for expenses in the amount of \$351,231.84, less any amount taxed against Defendant, and that the Named Plaintiff and Class representative, David Karr, is awarded \$100,000 for his service on behalf of the Class, with each of these amounts to be paid from the Common Fund;

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff's proposed plan for allocating the damages and interest awards to the Class is hereby approved;

IT IS FURTHER ORDERED AND ADJUDGED that (1) the KCL Missouri UL COI Qualified Settlement Fund ("QSF") is established as a qualified settlement fund pursuant to Internal Revenue Code § 468B and Treasury Regulations § 1.468B-1 *et seq.* for the purpose of

collecting from KCL the Common Fund secured for the Class, and to distribute to each class member their share of the Common Fund, less a pro-rata reduction for the attorneys' fees and expenses awarded to Class Counsel and the service award to Mr. Karr, pursuant to the plan of allocation; and (2) that Analytics Consulting LLC is appointed as administrator of the QSF; and

IT IS FURTHER ORDERED AND ADJUDGED that all other claims, motions, or other prayers for relief are hereby dismissed, overruled, or denied, including KCL's Motion for Judgment Notwithstanding the Verdict, Motion for New Trial, Motion for Class Decertification, and Motion for Reconsideration of Summary Judgment Order.

Date: August 24, 2023



HONORABLE JOHN M. TORRENCE

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.



Law Clerk / Judicial Administrative Assistant, Division 14

Exclusion List

Excluded Policy Numbers

2213015
2214546
2245329
2249548
2263198
2279565
2284653
2302333
2305589
2309745
2315057
2323180
2350582
2350583
2350584
2352716
2358746
2358747
2359031
2363861
2379114
2401260
2405926
2418213
2427735
2431063
2431583
2433337
2441957
2443810
2444335
2451964
2452968
2453218
2477833
2479104
2492414
2495461
2498158
2498169
2500492
2506549
2515433
2518077
2518078

2519428
2534745
2534792
2539499
2544130
2544131
2556742
2584214
2594474
2637952
2637953
2662102
2665815
2670532
2209214
2210098
2249297
2357946
2425298
2456696
2498168
2550539
2631588