



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) May 10, 2023 Judgment on Jury Verdict and order denying Plaintiff's motion for prejudgment interest, on which Final Judgment was entered August 24, 2023.	Court Reporter: Jessica Musser, CCR#889
vs. Defendant/Respondent: Kansas City Life Insurance Company	Date Post Trial Motion Filed: December 21, 2022	<input type="checkbox"/> Sound Recording Equipment
	Date Ruled Upon: May 10, 2023	The Record on Appeal will consist of: ___ Legal File only or <input checked="" type="checkbox"/> Legal File and Transcript

(Date File Stamp)

Notice of Appeal to Missouri Court of Appeals - Civil

District: Western Eastern Southern

Notice is given that **David B. Karr**, on behalf of the certified class, cross appeals from the judgment/decree/order entered in this action on **May 10, 2023**, the Court's Judgment on Jury Verdict, which included the Court's Order denying Plaintiff's motion for prejudgment interest, on which Final Judgment was entered **August 24, 2023**.

Appellant's Name (If multiple, list all or attach additional pages) David B. Karr, individually and on behalf of others similarly situated	Respondent's Name (If multiple, list all or attach additional pages) Kansas City Life Insurance Company
Address 460 Nichols Rd., Suite 200 Kansas City, MO 64112	Address 3520 Broadway Kansas City, MO 64111
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)

This is a class action arising from Defendant Kansas City Life Insurance Company's ("KCL") breach of universal life insurance policies by deducting amounts from policyholders' cash value accounts for the cost of insurance ("COI") in excess of the amounts authorized by the policies. The policies state that the monthly COI rate is based on certain insured characteristics bearing on the insured's mortality risk, such as sex, age, and risk class, and that the monthly COI "rates actually used will be determined by [KCL] based on [KCL]'s expectations as to future mortality experience." The policies also contain a separate expense charge provision identifying a fixed expense charge KCL is permitted to deduct each month. Plaintiff alleges KCL breached the policies' COI rates and expense charge provisions by determining the COI rates using

undisclosed, non-mortality factors, such as profits and expenses, including by failing to lower the COI rates when KCL's expectations as to future mortality experience improved, thereby deducting more for the COI and for expenses than the policies permitted. The circuit court certified a class of Missouri issued policyholders and granted the plaintiff's motion for partial summary judgment in favor of the class on KCL's liability for breaching the policies by including amounts for undisclosed, non-mortality factors in the COI rates and by failing to lower the COI rates when KCL's expectations as to future mortality experience improved. The circuit court also granted summary judgment in favor of the class on KCL's statute of limitations defense. The circuit court likewise denied KCL's motion for summary judgment.

On December 9, 2022, at the conclusion of a 4-day jury trial limited only to the issue of the damages suffered by the class from KCL's breaches of the policies, the jury rendered its verdict in favor of the class for \$28,362,830.96, the exact amount calculated by Plaintiff's expert as the loss in the policyholders' cash values resulting from KCL's inflated monthly COI deductions. On December 21, 2022, Plaintiff moved for prejudgment interest on the jury's damages award, which the trial court denied on May 10, 2023, in its Judgment on Jury Verdict.

On June 9, 2023, KCL filed motions for new trial, for judgment notwithstanding the verdict, for class decertification, and for reconsideration of the circuit court's summary judgment order, which the circuit court denied on August 24, 2023 and entered final judgment. KCL filed its notice of appeal on September 1, 2023. See WD86550. Plaintiff cross appeals thereto.

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)

Plaintiff, on behalf of himself and the certified class, cross appeals the denial of prejudgment interest.

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/ Patrick J. Stueve

Date
 September 11, 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.

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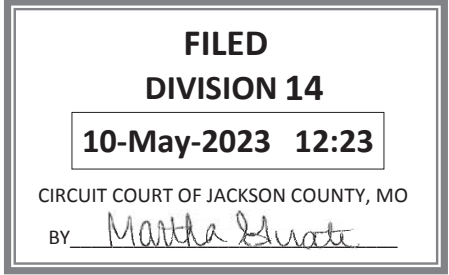
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ltallent@berkowitzoliver.com

**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:

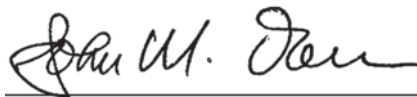
All Missouri citizens who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LowerMax, Ultra 20 (93), 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,)

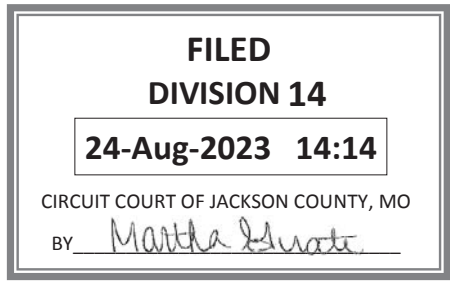
Plaintiff,)

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, 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.

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

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