

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAULETTE T. GLOVER and JOHN T.
WAREHIME, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY and THE
LINCOLN NATIONAL LIFE INSURANCE
COMPANY,

Defendants.

CIVIL ACTION NO. 3:16-cv-00827-MPS

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
LEAVE TO AMEND COMPLAINT AND JOIN PARTIES**

Plaintiffs Paulette T. Glover and John T. Warehime respectfully move under Federal Rules of Civil Procedure 15(a)(2), 16(b)(4), 20(a), and 21, and this Court's Local Civil Rule 7(f), for leave to file an amended complaint to join additional parties to this case to cure the Rule 23(a)(3) typicality defect identified by the Second Circuit Court of Appeals, which was the sole basis for its reversal of this Court's entry of class-wide judgment on the \$147.5 million cash, no claims-made Settlement. *See* Dkt. 356 at 15. The Second Circuit otherwise identified no other issues with this Court's finding that the Settlement is a fair, reasonable, and adequate resolution of the claims of the 191,000-member Settlement Class pursuant to Rule 23(e)(2), nor with this Court's findings that every other procedural requirement of Rule 23(a) and (b)(3) is satisfied.

Specifically, the Second Circuit concluded that the breach of contract claims of Plaintiffs Glover and Warehime, with their policies issued by Defendants Connecticut General Life Insurance Company ("Connecticut General") and The Lincoln National Life Insurance Company ("Lincoln"), are not typical of the breach of contract claims of Settlement Class Members with

policies issued by Lincoln-affiliates First Penn-Pacific Life Insurance Company (“First Penn”) or Lincoln Life & Annuity Company of New York (“Lincoln New York”), because Plaintiffs’ evidence of privity of contract with Lincoln—the party that has been performing all relevant conduct that Plaintiffs allege breaches all the Class Policies in the same way—would not be the same as what those Settlement Class Members would present to prove their privity with Lincoln. *See id.* at 16-21.

Accordingly, to cure this procedural issue, Plaintiffs seek leave to join additional representative plaintiffs to the case: Kathleen A. Murphy, the owner of a life insurance policy meeting the Class definition that was issued by First Penn, and James E. Reid, the owner of a life insurance policy meeting the Class definition that was issued by Lincoln New York. In the absence of resolution by settlement, these proposed Plaintiffs would use the same evidence to establish their respective privity of contract with Lincoln as the Settlement Class Members with policies issued by First Penn and Lincoln New York, respectively. *See* Proposed Fourth Amended Complaint (“FAC”), ¶ 16. Plaintiffs further seek leave to join First Penn and Lincoln New York as defendants to put all Settlement Class Members on identical footing in having their issuing insurance company as a defendant in the case. Plaintiffs also seek leave to include factual allegations relevant to these additional parties.

The proposed amendment is a focused response to the Second Circuit’s opinion. From Plaintiff Glover’s initial filing of this case in 2016, the proposed class has always included owners of policies issued or administered by Lincoln, which includes owners of policies issued by First Penn and Lincoln New York because Lincoln administers those policies.

The amendment satisfies Rule 15’s amendment requirements and Rule 16’s good cause standard because adding these parties will resolve the discrete procedural typicality flaw identified by the Second Circuit and facilitate the resolution of this long-running dispute by

settlement. Good cause is further demonstrated because Plaintiffs have acted swiftly after the appellate ruling in seeking to cure the typicality defect. Defendants do not oppose this amendment. Permitting the proposed amendment will therefore resolve this dispute without duplicative litigation, inconsistent results, or unnecessary loss of the substantial work already invested in this case and allow the undisputedly fair, reasonable, and adequate settlement benefits to be distributed to the 191,000 Settlement Class Members, who, besides the Susman Godfrey Objectors, support the Settlement.

The amendment also satisfies the joinder requirements of Rules 20 and 21 because the claims of each Plaintiff and proposed Plaintiff, like each Settlement Class Member, arise from the same challenged cost-of-insurance practices, which present common questions of law and fact.

RELEVANT BACKGROUND

Plaintiff Glover filed this case in May 2016 alleging Connecticut General, as the original issuer of her universal life insurance policy, and Lincoln, as the administrator of her policy, were each liable for breaching her policy by determining her policy's cost of insurance ("COI") rates in a manner that did not comply with the policy's terms, resulting in excessive monthly COI deductions from her policy's cash value savings account. Dkt. 2. Glover sought to represent a class of owners of similar life insurance policies with materially the same COI language that were issued or administered by either Defendant. *Id.* ¶ 5. Thereafter, after substantial motions practice directed at the pleadings, and as part of the Court's consideration of the Settlement, the Court found good cause to add Plaintiff Warehime, the owner of a policy meeting the Class definition that was issued by Lincoln, as a Plaintiff because it would facilitate resolution of the case by Settlement which would "spare the parties time and expense." Dkt. 226; Dkt. 289 (Preliminary Approval Order) at 4.

Lincoln administers all the Class Policies, which include the ones Lincoln issued, as well as those issued by Connecticut General and Lincoln's affiliates First Penn and Lincoln New York. FAC ¶¶ 7-10, 16. Through its administration, Lincoln performs all relevant conduct that Plaintiffs allege breaches the Class Policies. *Id.* Plaintiffs allege that Lincoln is liable for breaching all the Class Policies by determining the COI rates in a manner that does not comply with the Class Policies. *Id.* ¶ 16. The proposed amended complaint continues the existing theory that Lincoln assumed the relevant contractual duties through its administration and conduct. It further alleges that the other issuing insurer Defendants are also liable for Lincoln's breaches of the Class Policies despite delegating their contractual duties, and therefore are liable for breaches committed by Lincoln in administering the Class Policies. *Id.* Alternatively, Plaintiffs allege that even if Lincoln did not assume the contractual obligations of the other Defendants, each Defendant is liable for contractual breaches of policies it issued. *Id.* ¶ 17.

The proposed Class remains defined by the same core policy features. *Id.* ¶¶ 5, 56. The amendment adds named plaintiffs and proposed class representatives with policies issued by First Penn and Lincoln New York and those issuing companies as Defendants, but it does not alter the case's central contention: that the COI rates and resulting deductions were determined using factors not authorized by materially identical policy language and were not adjusted consistently with improving mortality expectations.

After the amendment deadline and this Court's approval of the Settlement, the Second Circuit held that Plaintiffs Glover and Warehime did not satisfy Rule 23(a)(3)'s typicality requirement with respect to owners of policies issued by First Penn and Lincoln New York because Plaintiffs' claims did not require them to overcome the same issuer-specific contractual privity issue. Dkt. 356 at 16-21. The proposed plaintiffs Murphy and Reid are owners of the policies the appellate court found missing from the representative structure. FAC ¶ 13.

LEGAL STANDARD

Federal Rule of Procedure 21 governs proposed amendments that seek to add new parties. *See Stein v. Needle*, No. 3:19-CV-01634-VLB, 2020 WL 4043047, at *3 (D. Conn. July 17, 2020). Rule 21 provides that “the court may at any time, on just terms, add or drop a party.” “Rule 21 allows the court broad discretion to permit the addition of a party at any stage in the litigation.” *Sullivan v. West New York Residential, Inc.*, No. 01-CV-7847-ILG, 2003 WL 21056888, at *1 (E.D.N.Y. Mar. 5, 2003). Generally, “the same standard of liberality” that applies to amendments under Rule 15 applies to amendments pursuant to Rule 21. *Stein*, 2020 WL 4043047, at *3 (quoting *Duling v. Gristede’s Operating Corp.*, 265 F.R.D. 91, 96-97 (S.D.N.Y. 2010)). Accordingly, “joinder will be permitted absent futility, undue delay, bad faith, or prejudice.” *Cano v. DPNY, Inc.*, 287 F.R.D. 251, 256 (S.D.N.Y. 2012).

Rule 21 is read in light of Rule 20’s permissive joinder of parties requirements. *See Stein*, 2020 WL 4043047, at *3. Under Rule 20, “[p]ersons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P. 20(a)(1). Likewise, persons “may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2).

“Joinder of appropriate parties is encouraged so that common issues may be addressed in a single action.” *Stein*, 2020 WL 4043047, at *3 (quoting *Roe v. City of New York*, 151 F. Supp. 2d 495, 509 (S.D.N.Y. 2001) (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (“Under the Rules, the impulse is toward entertaining the broadest possible scope of action

consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged,” *id.* at 724))). Joinder is thus “strongly encouraged as long as it is consistent with fairness to the parties.” *In re Amla Litig.*, No. 16-CV-6593-JSR, 2017 WL 3896378, at *2 (S.D.N.Y. Aug. 22, 2017) (quotations omitted).

An amendment proposed after the scheduling order’s amendment deadline is subject to Rule 16(b)’s “‘good cause’ standard, rather than the more liberal standard of Rule 15(a).” *See* Dkt. 289 (Preliminary Approval Order) at 4. However, the Court has “discretion to apply the more liberal standard that applies to motions to amend under Fed. R. Civ. P. 15 rather than the more exacting standard that applies to extending a deadline set under Fed. R. Civ. P. 16.” *Shi Ming Chen v. Hunan Manor Enter., Inc.*, 437 F. Supp. 3d 361, 365 (S.D.N.Y. 2020). Generally, “[a] finding of ‘good cause’ depends on the diligence of the moving party.” *Stein*, 2020 WL 4043047, at *2 (quotations omitted). This Court has also recognized that an amendment that “will facilitate resolution of this action through class settlement and thereby spare the parties time and expense” satisfies the good cause standard. Dkt. 289 (Preliminary Approval Order) at 4.

ARGUMENT

I. GOOD CAUSE EXISTS TO MODIFY THE SCHEDULING ORDER UNDER RULE 16(b)(4).

This Court’s earlier treatment of the addition of Plaintiff Warehime confirms the practical good cause here. In granting leave to add Plaintiff Warehime after the amendment deadline of November 20, 2023 (Dkt. 221), the Court found good cause because the amendment would facilitate resolution through class settlement and spare the parties time and expense. Dkt. 289 (Preliminary Approval Order) at 4. The same considerations apply with the same force now: the proposed amendment responds to the appellate ruling and offers a path to preserve an approved classwide resolution rather than requiring overlapping litigation over the same challenged practices. The amendment is also tightly tailored to the Second Circuit’s analysis. The claims of

Murphy and Reid present the issuer relationships the Second Circuit deemed necessary to establish typicality for owners of First Penn- and Lincoln New York-issued policies. Joining First Penn and Lincoln New York as Defendants provides the same alternative liability path for all Class members.

The absence of unfair prejudice and the interests of judicial economy also support allowing the amendment. Owners of policies issued by First Penn and Lincoln New York were already included in the putative class and claims against First Penn and Lincoln New York were already included in the settlement release; Lincoln's administration of First Penn and Lincoln New York policies has always been part of the factual context; and the parties have already developed substantial evidence relevant to all Class Policies concerning the challenged COI practices. By contrast, denial would multiply proceedings, increase expense, and risk inconsistent adjudications concerning the same alleged practices.

II. RULE 15(a)(2)'s AMENDMENT REQUIREMENTS ARE SATISFIED.

Rule 15(a)(2) directs courts to "freely give leave when justice so requires." Amendments to join parties should "be permitted absent futility, undue delay, bad faith, or prejudice." *Cano*, 287 F.R.D. at 256. "Mere delay," without "bad faith or undue prejudice," is insufficient to deny leave to amend. *Pasternack v. Shrader*, 863 F.3d 162, 174 (2d Cir. 2017) (cleaned up). The claims of proposed Plaintiffs Murphy and Reid against Lincoln and their respective issuing companies are not futile; they state valid claims on the same basis as Plaintiffs Glover and Warehime. Adding the proposed parties also directly addresses and resolves the Second Circuit's conclusion that typicality requires class representatives with policies issued by First Penn and Lincoln New York. Plaintiffs seek amendment because of the intervening typicality ruling, do so in good faith to align the named plaintiffs with the appellate court's analysis, and have done so promptly upon remand.

Moreover, amendment advances rather than delays final resolution because it provides a means to address the appellate concern within this long-pending action to resolve this dispute by settlement. Plaintiffs request is therefore consistent with “the ‘strong judicial policy in favor of settlements, particularly in the class action context.’” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quoting *In re PaineWebber Ltd. P’ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)). There is also no prejudice to any party here. The proposed representatives assert the same cost-of-insurance breach theories already litigated here. The newly added Defendants are affiliates of Lincoln and their policies have long been within the class allegations and settlement structure. Defendants consent to the amendment to facilitate settlement.

III. THE NEW PARTIES SATISFY THE JOINDER REQUIREMENTS.

Rule 20(a) permits parties to be joined in an action if the right to relief is asserted jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and any common question of law or fact will arise in the action. Rule 21 provides that the Court may “at any time, on just terms, add or drop a party.” Here, proposed Plaintiffs Murphy and Reid challenge the same alleged course of conduct as Plaintiffs Glover and Warehime: Lincoln’s determination and deduction of COI charges under materially similar policies using considerations unauthorized by the policies, and failure to lower rates consistently with improving mortality expectations. The claims implicate Lincoln’s common administration of the affected policies and materially similar administration arrangements among the affiliated insurers, who each Plaintiff alleges is also liable for the improper deductions. The Court has already found that the class claims present common questions of law and fact (Dkt. 351 (Final Approval Order) at 11), which the Susman Godfrey Objectors did not challenge on appeal and which the Second Circuit did not disturb.

Courts have applied Rules 20 and 21 to permit additional named plaintiffs to be joined to a pending class action. *Lee v. HDR Glob. Trading Ltd.*, 347 F.R.D. 633, 638-39 (S.D.N.Y. 2024) (permitting additional named plaintiff to be joined in part to “ensure[] that the litigation may continue uninterrupted if further events or information undermine the lead plaintiff’s ability to represent the class,” *id.* at 639) (cleaned up); *Waite v. UMG Recordings, Inc.*, 477 F. Supp. 3d 265, 270 (S.D.N.Y. 2020) (permitting three additional named plaintiffs to be joined); *In re Amla Litig.*, 2017 WL 3896378, at *1-4 (permitting additional named plaintiff to be joined); *Cortigiano v. Oceanview Manor Home For Adults*, 227 F.R.D. 194, 202 (E.D.N.Y. 2005) (permitting additional named plaintiffs to be joined where their claims were “substantially similar, if not identical, to those of the named plaintiffs”) (citing cases permitting additional named plaintiffs to be joined); *Doe v. Karadzic*, 176 F.R.D. 458, 460-61 (S.D.N.Y. 1997) (permitting removal of a Jane Doe named plaintiff and permitting nine other named plaintiffs to be joined).

Joining the proposed Plaintiffs cures the representative concern identified on appeal. Joining First Penn and Lincoln New York as Defendants is likewise appropriate because they are the issuing insurers and would retain liability even if Lincoln’s administration does not independently make it liable for breach on every policy. Their joinder ensures that a settlement can resolve claims under the alternative theories pleaded and avoids forcing policy owners to pursue overlapping actions merely to determine which affiliated entity bears contractual responsibility. *See Sullivan ex rel. Pointer, Cleaners & Caulkers Welfare Pension & Annuity Funds v. W. New York Residential, Inc.*, No. 01-CV-7847-ILG, 2003 WL 21056888, at *2 (E.D.N.Y. Mar. 5, 2003) (“Parties may be added under Rule 21 ‘to structure a case for the efficient administration of justice.’”) (quoting Moore’s Federal Practice Civil § 21.02 (3d ed. 2002)); *Waite*, 477 F. Supp. 3d at 270 (permitting joinder of additional defendant in class action).

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court modify the scheduling order under Rule 16(b)(4), grant leave under Rules 15(a)(2) and 21, and permit joinder under Rule 20(a), to allow Plaintiffs to file the proposed Fourth Amended Class Action Complaint and for such further relief as the Court deems just and proper.

Dated: September 10, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2026, I filed the foregoing document via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ Norman E. Siegel
Attorney for Plaintiffs and the Settlement Class