

fiduciaries dealing with plan assets in their own interest or for their own account. Plaintiff brings this action pursuant to ERISA §502(a)(3), 29 U.S.C. §1132(a)(3), to enjoin the practice and to obtain other appropriate equitable relief to redress Cigna's violations of ERISA §§404 and 406, 29 U.S.C. §§1104 and 1106.

II. PARTIES – JURISDICTION

3. Plaintiff Brenda J. Otte is the duly appointed Administratrix of the Estate of Gladys Reynolds (Jackson Circuit Court, Jackson County, Indiana, No. 36C01-0805-EU-67).

4. Life Insurance Company of North America ("LINA") is an underwriting subsidiary of Cigna Corporation. LINA is a life insurance company that conducts business, through its employees and agents, in Pennsylvania, Massachusetts and throughout the United States. LINA's principal place of business is located at Two Liberty Place, 1601 Chestnut Street, Philadelphia, Pennsylvania 19192. With respect to the allegations contained *infra*, LINA is a fiduciary within the meaning of 29 U.S.C. § 1002 (21)(A), and may be sued pursuant to 29 U.S.C. § 1132(a)(3). It is subject to the jurisdiction of this Court by virtue of 28 U.S.C. § 1331 and 29 U.S.C. §1132(e)(1).

5. Connecticut General Life Insurance Company ("Connecticut General") is an indirect subsidiary of Cigna Corporation. Connecticut General is a life insurance company that conducts business, through its employees and agents, in Pennsylvania, Massachusetts and throughout the United States. Its principal place of business is located at Two Liberty Place, 1601 Chestnut Street, Philadelphia, Pennsylvania 19192. With respect to the allegations contained *infra*, Connecticut General is a fiduciary within the meaning of 29 U.S.C. § 1002 (21)(A), and may be sued pursuant to 29 U.S.C. § 1132(a)(3). It is subject to the jurisdiction of this Court by virtue of 28 U.S.C. § 1331 and 29 U.S.C. §1132(e)(1).

6. Does 1 through 100, inclusive, are indirect or direct subsidiaries of CIGNA Corporation. Plaintiff is unaware of the true names or identities of the persons or entitles sued herein as Does 1-100, inclusive. Plaintiff alleges that each such fictitiously named defendant engaged in the conduct alleged in this complaint and/or in some manner contributed to the ERISA violations

complained of herein. Plaintiff will amend the complaint to allege the true names and identities of the fictitiously named defendants once they are discovered. With respect to the allegations contained *infra*, Does 1 through 100, inclusive, are fiduciaries within the meaning of 29 U.S.C. § 1002 (21)(A), and may be sued pursuant to 29 U.S.C. § 1132(a)(3). Does 1 through 100, inclusive, are subject to the jurisdiction of this Court by virtue of 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

7. Venue is proper under 28 U.S.C. § 1391 and 29 U.S.C. § 1132(e)(2) because (a) LINA may be found in this District, (b) Connecticut General may be found in this District, (c) the breaches of fiduciary duty complained of herein took place, in whole or in part, in this District, (d) account statements for the CIGNAssurance Program emanate from an entity (known as Insurance Services # 911, P.O. Box 570, Rockland, Massachusetts 02370-0570) located in this District, and/or (e) beneficiaries' "checks" are presented to State Street Bank, located in this District, for payment.

8. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202 and 29 U.S.C. § 1132(a)(3).

III. THE CIGNAssurance PROGRAM SCHEME

9. At all times relevant to this action, LINA and other underwriting subsidiaries of Cigna issued group life insurance policies to fund ERISA-governed employee welfare benefit plans ("plans"), including, but not limited to, plans sponsored by Cummins, Inc., Columbus, Indiana (the "Cummins Plan").

10. The policies issued by LINA and other underwriting subsidiaries of Cigna to fund ERISA plans and the benefits payable under those plans are ERISA plan assets. Plaintiff and the Plaintiff Class were beneficiaries of such policies and plans.

11. With respect to death benefits of \$5,000 or more due under the plans, instead of paying the benefits to the beneficiary by tendering a check for the amount due or otherwise transferring the funds to the beneficiary, Cigna informs the beneficiary that "we've deposited your insurance proceeds into a CIGNAssurance account in your name. The account is free and earns an attractive rate of interest[.]"

12. Although Cigna's communications suggest that beneficiaries' benefits have been deposited into a CIGNAssurance account, Cigna does not actually deposit any funds into the account. Instead, Cigna retains and invests the proceeds for its own account. Only when a beneficiary's check is presented for payment from a CIGNAssurance account does Cigna deposit a corresponding amount of his or her death benefits into the CIGNAssurance account.

13. Until a beneficiary draws a check on his or her CIGNAssurance account and the check is paid, Cigna retains and uses the funds for its own benefit and not for the exclusive purpose of providing benefits to its beneficiaries.

14. Cigna earns more managing and investing the death benefits owed to the beneficiaries of the ERISA plans that it insures than it pays in interest in connection with the beneficiaries' CIGNAssurance accounts.

15. Cigna acts in a fiduciary capacity when it retains and invests death benefits due to beneficiaries of ERISA plans because such conduct involves the exercise of discretionary authority, responsibility and control in the administration and management of such plans, and the exercise of authority and control respecting the management and disposition of plan assets. 29 U.S.C. § 1002(21)(A).

16. The profits that Cigna earns investing the death benefits of the beneficiaries of the ERISA plans that Cigna insures belong to the beneficiaries and not to Cigna.

IV. PLAINTIFF'S TRANSACTIONS

17. Jack Reynolds was a participant in the Cummins Plan insured by LINA and his mother, Gladys Reynolds, was the beneficiary of the life insurance benefit provided under the Cummins Plan.

18. Jack Reynolds died on December 10, 2006.

19. Sometime after December 10, 2006 and before May 22, 2007, Gladys Reynolds submitted a death benefit claim to LINA or Cigna in accordance with the terms of the plan and policy.

20. No copy of the death benefit claim form submitted by Gladys Reynolds has been located, despite the best efforts of the Plaintiff Brenda J. Otte. On information and belief, Gladys Reynolds submitted a death benefit claim substantially in the form attached hereto as Exhibit "A" (available on the internet - <http://docs.google.com/gview?a=v&q=cache:HTGqyYgPMe8J:www.clermontcountyohio.gov/CI GNA-LifeIns-AccidentClaimForm.pdf+CIGNAssurance&hl=en&gl=us> - visited August 24, 2009) that provides in pertinent part:

If your insurance benefit is \$5,000 or more, CIGNA will automatically [footnote omitted] open a free, interest-bearing account in your name. This account, called the CIGNAssurance Program is a safe, secure place to keep your proceeds while you decide how to best use them. A personal checkbook will be mailed to you, once your claim has been approved. You can take all or part of the money out of the account simply by writing a check for \$250.00 or more. Any amount that remains in the account will continue to earn interest at competitive rates. Both your principal and any interest you earn are completely guaranteed by Connecticut General Life Insurance Company, A CIGNA Company. The establishment of a CIGNAssurance account substitutes this guarantee for the obligation from the insurance company providing the life insurance or accidental death coverage. Checks are cleared through a draft account at State Street Bank. This account is not insured by the Federal Deposit Insurance Corporation or any federal agency. Account balances are the liability of the insurance company and the insurance company reserves the right to reduce account balances for any payment made in error. If your life insurance benefit is less than \$5,000, CIGNA will send you a check for the total benefit amount.

21. Gladys Reynolds received a two page letter dated May 22, 2007, from Cigna Group Insurance (copy attached hereto as Exhibit "B") that states in pertinent part: "Ms. Reynolds, we know that you have a lot on your mind and may wish to wait for a while before making any major financial decisions. That's why we've deposited your insurance proceeds into a CIGNAssurance account in your name. The account is free and earns an attractive rate of interest comparable to a money market checking account. You may keep your money in this account for as long as you like." The letter goes on to state:

Within five to ten business days, you will receive [an] envelope [that] will contain your CIGNAssurance Program welcome kit, and will

include:

* Your certificate of confirmation which shows the claim payment amount deposited into your account and the current interest being credited. Your balance and earned interest are fully guaranteed by the insurance company. Your CIGNAssurance account is not a bank account and is not insured by the Federal Deposit Insurance Corporation or any federal agency.

* A supply of personalized drafts to give you access to your money, immediately. You may write an unlimited number of drafts, in any amount, at any time.

* *Looking ahead*, a booklet that you might find useful as you address estate settlement issue that may be unfamiliar to you.

* *Where to go from here*, a brochure that explains some services available at no charge to you that might help you through this difficult time, including bereavement counseling, financial assistance services, and legal assistance services.

22. Gladys Reynolds died on March 29, 2008.

23. Plaintiff Brenda J. Otte is the duly appointed Administratrix of the Estate of Gladys Reynolds.

24. Cigna did not transfer any funds to the CIGNAssurance Account. Although Cigna's records indicate a debit signifying the issuance of a check for \$5,075.21 on June 23, 2009, that check has not been presented for payment. Hence, Cigna has held, and continues to hold, Plaintiff's money in its general account.

25. Cigna invested the death benefits owed to Plaintiff for its own account and not for the exclusive purpose of providing benefits to Plaintiff and earned more through such investments than the interest that it paid (at rates ranging from 0.39% to 0.74%) to Plaintiff in connection with her Account.

26. The profits that Cigna earned while investing Plaintiff's death benefits in a fiduciary capacity belong to Plaintiff and the Plaintiff Class and not to Cigna.

V. CIGNA'S DUTIES IN CONNECTION WITH THE PLAN

27. Cigna was obligated to discharge its duties with respect to the plans "solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to

participants and their beneficiaries,” 29 U.S.C. § 1104(a)(1)(A)(i), and was prohibited from engaging in transactions prohibited by 29 U.S.C. § 1106, including “deal[ing] with the assets of the plan in [its] own interest or for [its] own account.”

28. To the extent that any language in an ERISA-governed plan or a group life insurance policy insuring such plan purports to authorize Cigna to retain and invest benefits payable under the policy or plan for Cigna's own account, Cigna would be prohibited from doing so because ERISA requires plan fiduciaries to discharge their duties in accordance with a plan’s terms only to the extent that its terms are consistent with ERISA, and because the investment of such benefits for Cigna's account violates ERISA’s fiduciary standards and prohibited transaction rules.

VI. PRACTICES COMPLAINED OF

29. Cigna breached its fiduciary duties and engaged in prohibited transactions by using and investing the death benefits due to Plaintiff and the Plaintiff Class for its own account and not for the exclusive purpose of providing benefits to Plaintiff and the Plaintiff Class without fully accounting to Plaintiffs and the Plaintiff Class for the monies it earned through such investments.

30. Cigna has been unjustly enriched in the amount of the profits it has earned through the above-described practices. Cigna holds the profits it has earned through such practices in constructive trust for the benefit of Plaintiff and the Plaintiff Class and should be ordered to account for and disgorge such profits to Plaintiff and the Plaintiff Class.

VII. CLASS ALLEGATIONS

31. Plaintiff brings this action on behalf of a class pursuant to the provisions of Federal Rules of Civil Procedure 23 (a), (b)(1), (b)(2) and/or (b)(3).

32. The class consists of all persons who satisfy each of the following criteria:

- a. At any time after September 14, 2003 and continuing to the present;
- b. They were beneficiaries under ERISA-governed employee welfare benefit plans that were insured by group life insurance policies issued by LINA or any other underwriting subsidiary of Cigna Corporation; and

u c. Under which Cigna “paid” death benefits through the creation of a CIGNAssurance Account.

33. Excluded from the class are Cigna Corporation, its directors, officers, employees, parents, affiliates and subsidiaries, their successors, agents, legal representatives, heirs and assigns, and any persons controlled by any excluded person.

34. The class is so numerous that joinder of all members is impractical. The class is composed of more than 10,000 class members.

35. The named Plaintiffs' claims are typical of the claims of the Plaintiff Class. All of the claims are based on the same factual and legal theories.

36. Plaintiffs will fairly and adequately protect the interests of the class. They are committed to litigating this matter vigorously. Plaintiffs have retained counsel experienced in handling class claims involving unlawful insurance and business practices and ERISA violations. Neither Plaintiffs nor Plaintiffs' counsel has any interest that might cause them not to pursue this action vigorously.

37. Class certification under Fed. R. Civ. P. 23(b)(1) is appropriate in this action because prosecuting separate actions by or against individual class members would create a risk of either:

- a. inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class;
- or
- b. adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

38. Class certification under Fed. R. Civ. P. 23(b)(2) is appropriate in this action in that Cigna has acted on grounds that are generally applicable to the entire class, thereby making final injunctive relief and other corresponding declaratory and equitable relief appropriate with respect

to the class as a whole.

39. Class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in this action because there are numerous questions of law and fact which are common to the class and which predominate over any questions affecting individual members of the Class, including, without limitation, the following:

- a. Whether Cigna engaged in the practices complained of;
- b. Whether Cigna was acting in a fiduciary capacity when it engaged in the practices complained of;
- c. Whether the practices complained of violate 29 U.S.C. § 1104;
- d. Whether the practices complained of violate 29 U.S.C. § 1106;
- e. The amount by which Cigna was unjustly enriched through the practices complained of;
- f. The equitable relief appropriate to redress Cigna's violations of ERISA, including whether Cigna should be ordered to cease the practice and disgorge the profits it has earned through the practice.

40. Indeed, the only individual question would appear to be the amount of disgorged profits attributable to each class member, a matter which can be determined through use of Defendants' computers and records.

41. As well, class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in this action because a class action is superior to other available methods for the fair and efficient adjudication of this controversy, in that:

- a. the effect of defendant's illegal practices on most individual class members is small, while establishing the illegality of the practices complained of -- violations of the exclusive benefit rule found in ERISA §404 and the prohibited transaction rules found in ERISA §406 -- is complex, so that prosecution of individual actions is impractical or not economically feasible;

- b. by contrast, the illegal profits obtained by Defendant as a result of its unlawful practices are enormous;
- c. in the absence of the class action device, Plaintiffs and class members would be left without a remedy for the wrongful acts alleged, and Defendant would be unjustly enriched;
- d. the prosecution of separate lawsuits by individual members of the class would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for Defendant, making concentration of the litigation concerning this matter in this Court desirable;
- e. no unusual difficulties are likely to be encountered in the management of this action as a class action.

**VIII. AS AND FOR A FIRST CAUSE OF ACTION
SOUNDING IN VIOLATIONS OF ERISA**

42. Plaintiff incorporates the above allegations into this cause of action.

43. By its actions as described herein, Cigna violated its fiduciary duty under 29 U.S.C. § 1104(a) to act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries.

44. By its actions as described herein, Cigna engaged in transactions prohibited under 29 U.S.C. § 1106(b)(1) by dealing in ERISA plan assets in its own interest and for its own account.

WHEREFORE, Plaintiff requests that the Court grant the following relief in her favor and in favor of the Plaintiff Class and against Cigna:

a) That the Court enter an order certifying the claims of the named Plaintiff and all other persons similarly situated as a class action, and further appointing Plaintiff as the class representative and Plaintiff's counsel as counsel for the Class;

b) That the Court declare that (i) Cigna has violated ERISA; (ii) Cigna has been unjustly enriched as a result of its violations of ERISA; (iii) Cigna is holding in constructive trust all of the monies that it earned through its violations of ERISA; and (iv) Plaintiff and the Plaintiff Class are

entitled to an order directing Cigna to disgorge all of the monies that it earned through its unlawful practices;

c) That the Court order Cigna to disgorge all of the illicit monies that it has earned from its illegal acts and thereafter distribute those monies equitably;

d) That the Court issue appropriate injunctive relief enjoining Cigna's violations of ERISA;

e) That the Court award attorney's fees, expenses, and costs as allowed by law; and

f) That Plaintiff and the Plaintiff Class have any and all such further relief that this Court may deem just and proper.

Dated: January ___, 2010

Respectfully submitted,

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Exhibit Summary and Notes

- Exhibit A Death benefit claim form (available on the internet - <http://docs.google.com/gview?a=v&q=cache:HTGqyYgPMe8J:www.clermontcountyohio.gov/CIGNA-LifeIns-AccidentClaimForm.pdf+CIGNAssurance&hl=en&gl=us> - visited August 24, 2009)
- Exhibit B Two page letter dated May 22, 2007, from Cigna Group Insurance to Gladys Reynolds

For Exhibits A and B, see the Original Complaint filed on September 15, 2009.