

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

KEVIN and JOYCE LUCEY, JORGE
CASTRO, SUSANA FERRO, CARLOS and
MARIA GONZALEZ, KAREN MEREDITH,
and GEORGE D. PATRIN, individually and on
behalf of all others similarly situated

Plaintiffs,

v.

PRUDENTIAL INSURANCE COMPANY OF
AMERICA,

Defendant.

CLASS ACTION

Case No. 3:10-CV-30163-MAP

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Congress created group life insurance programs for military servicemembers, veterans, and their families to provide special protection for their beneficiaries in partial compensation for the extraordinary sacrifice these individuals make for our country. Since 1965, Prudential Insurance Company of America (“Prudential”) has been trusted to sell these policies, earn the premiums taken from servicemembers’ paychecks, and pay beneficiaries when tragedy strikes. It was recently revealed, however, that Prudential has been abusing that trust by failing to pay the benefits in a lump sum as required by federal law and the policies, and instead pretending to place the death benefits it owes in interest-bearing individual checking accounts for each beneficiary. In actuality, Prudential has simply kept the money in its own general account, used that money to enrich itself, and only paid beneficiaries as they wrote “checks”, along with whatever small interest rate Prudential unilaterally set. The amount Prudential has made

through this misconduct is believed to be half a billion dollars or more. This class action is brought on behalf of all SGLI and VGLI beneficiaries whose funds are, or have been, improperly retained by Prudential to seek restitution of those funds, disgorgement of Prudential's ill-gotten gains, damages and, most importantly, a cessation of Prudential's abuse of trust.

THE PARTIES

1. This action is brought by the following named plaintiffs on their own behalves and on behalf of the putative class of similar situated persons as described herein:

- a. KEVIN and JOYCE LUCEY ("the Luceys") reside in Belchertown, Massachusetts. Their son, Jeffrey Michael Lucey, was a Lance Corporal in the Marine Reserves and a veteran of Operation Iraqi Freedom. After deactivating from service but remaining in the reserves, Jeffrey died on June 22, 2004 at the age of 23 when he ended his own life as a result of combat-induced post traumatic stress disorder.
- b. JORGE CASTRO resides in Corona, California. His son, Army Corporal Jonathon Castro, was killed on December 21, 2004 at the age of 21 in Mosul, Iraq along with 13 other soldiers when a suicide bomber targeted their mess tent at lunch.
- c. SUSANA FERRO resides in Brookshire, Texas. Her son, Army Specialist Juan Manuel Torres, died of non-combat related injuries on July 12, 2004 in Bagram, Afghanistan.
- d. CARLOS and MARIA GONZALEZ reside in Chicago, Illinois. Their son, Marine Sergeant Jorge Omar Saucedo, died on the Fourth of July

2005, while stationed as a commander at the United States embassy in San Salvador, El Salvador.

- e. KAREN MEREDITH resides in Mountain View, California. Her son and only child, and a fourth generation soldier, Army 1st Lieutenant Kenneth Michael Ballard, died at the age of 26 in a firefight with insurgents in Najaf, Iraq on Memorial Day 2004.
- f. GEORGE D. PATRIN, M.D. resides in Derwood, Maryland. He is an Army Colonel and Board Certified pediatrician and health care administrator. His son, Andrew Patrin, who grew up as a military dependent, died on April 7, 2009 while a college sophomore.

2. PRUDENTIAL INSURANCE COMPANY OF AMERICA (“Prudential”) is a corporation organized under the laws of New Jersey and doing business throughout the United States including in this District. Prudential operates divisions entitled Office of Servicemember’s Group Life Insurance and Prudential Alliance Account Services. These are not actually separate legal entities, but are instead merely subdivisions of Prudential. Plaintiffs have therefore not separately named them as defendants. In the event discovery reveals that either is a separate legal entity, Plaintiffs will seek leave to amend to add them as defendants.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the claims arise under federal law as alleged herein.

4. The Court has personal jurisdiction over Prudential in this matter because it is subject to general jurisdiction in this District and, moreover, it is subject to specific jurisdiction

over the claims alleged herein by virtue of Prudential's specific conduct with regard to class members residing in this District including Kevin and Joyce Lucey.

5. Venue is appropriate in this District because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district and because Prudential resides in this District within the meaning of 28 U.S.C. § 1391(b) and (c).

FACTS APPLICABLE TO ALL CLAIMS

SGLI/VGLI And Related Insurance

6. Servicemembers' Group Life Insurance ("SGLI") is a program of group life insurance originally created by Congress in 1965 to provide term life insurance to members on active duty in the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and NOAA (National Oceanic and Atmospheric Administration)). Over the past four decades the SGLI program has been extended to reservists, members of the National Guard of the various states, persons in the Reserve Officers Training Corp, and cadets and midshipmen at the national service academies. Since September 1, 2005, the maximum amount of coverage provided by SGLI has been \$400,000.

7. Beginning in December 2005, the SGLI included Traumatic Injury Protection (TSGLI). TSGLI is automatic coverage for SGLI participants that provides for insurance payments to members who suffer a serious traumatic injury in service. The purpose of the program is to provide short-term financial assistance to traumatically injured servicemembers so that their families can travel to be with them during an often extensive recovery and rehabilitation process. TSGLI payments range from \$25,000 to a maximum of \$100,000, depending on the type and severity of injury.

8. Beginning in 1991, Congress authorized the Family SGLI (FSGLI) program, which provides up to \$100,000 in coverage for a spouse and up to \$10,000 for a child of a servicemember on active duty or in the Ready Reserve of a uniformed service as well as some members of the Individual Ready Reserve.

9. All active duty and Ready Reserve servicemembers are automatically granted \$100,000 in SGLI coverage, unless they decline the coverage, and can elect higher amounts up to the statutory maximum.

10. On June 17, 2008, President Bush signed the Heroes Earnings Assistance and Relief Tax Act (HEART Act, H.R. 6081). One of the major provisions of the HEART Act was to allow beneficiaries of SGLI death payments to contribute those funds to a Roth IRA or Coverdell Education Savings Account without regard to the ordinary income limits or contribution limits. The HEART Act allowed such limitless contributions on payments made with respect to a death from injury occurring on or after October 7, 2001 and before June 17, 2008 if the individual rolls over the contribution to the account no later than June 17, 2009. Beneficiaries have one year to rollover contributions related to deaths occurring after June 17, 2008. This rollover option has enormous economic value to the beneficiaries because interest and qualified withdrawals made on these accounts are tax free.

11. Veterans Group Life Insurance (“VGLI”) is a program of group life insurance created by Congress in 1974 to extend the SGLI program benefits to retiring veterans. VGLI now covers persons who retired from active duty, retired reservists, members of the Inactive Ready Reserve, and members of the Inactive National Guard. Upon release from active duty, servicemembers with SGLI are provided with the right to convert to VGLI. Like SGLI, VGLI provides a maximum of \$400,000 in coverage.

12. SGLI (including FSGLI and TSGLI) and VGLI are governed by 38 U.S.C. §§ 1965 *et seq.* and 38 C.F.R. §§ 9.1 *et seq.* Proper implementation and administration of the SGLI and VGLI programs for the benefit of servicemembers, their families, and their beneficiaries is a basic entitlement of all servicemembers and an important public policy of the United States.

Prudential's Role In The SGLI/VGLI Programs

13. Prudential has been given the privilege of being the sole issuer of SGLI insurance since 1965 (and VGLI since 1974). Prudential administers both programs through its Office of Servicemember's Group Life Insurance. Prudential is allowed to reinsure the SGLI and VGLI policies on a formula basis prescribed by the Secretary of Veterans Affairs with as many qualifying commercial companies as elect to participate. As of June 30, 2009, twenty five companies were participating in the program as reinsurers and converters, and an additional 13 were participating as converters only.

14. SGLI premiums for Active Duty service personnel, Ready Reservists, and Reservists with part-time coverage are deducted from their pay and remitted by each uniformed service to the Department of Veterans Affairs, which in turn remits them to Prudential. VGLI insureds must send their premiums directly to Prudential. Since July 1988, Prudential has been granted a special exemption from state taxes in connection with the premiums Prudential collects from SGLI and VGLI insureds. In the 2009 policy year, Prudential insured almost six million lives under SGLI/VGLI for over a trillion dollars in coverage. Prudential collected one billion dollars in SGLI/VGLI premiums in 2009 alone.

15. Prudential provides forms for servicemembers and their families to use in connection with SGLI/VGLI. Although those forms are provided on the U.S. Government's Department of Veteran's Affairs website, www.insurance.va.gov, they are created by Prudential, not the Veteran's Administration.

Prudential's Scheme To Enrich Itself By Retaining Death Benefits That It Was Required To Pay In A Lump Sum

16. Federal law and the relevant group insurance contracts between Prudential and the federal government provides for SGLI and VGLI benefits to be provided in one of two ways: (1) a lump sum or (2) 36 equal monthly payments. 38 U.S.C. § 1970(d) provides “The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six monthly installments.” 38 C.F.R. § 9.5 provides that payment must be made by one of these two methods.

17. Consistent with federal law, the forms created by Prudential and provided to servicemembers and their families to elect coverage levels, apply for SGLI or VGLI, identify or change beneficiaries, and to claim death benefits, all provide for two payment options: “Lump Sum” or “36 Equal Monthly Installments.” For example, the “Directions to Service Member” for form SGVL 8266 (“Servicemembers’ Group Life Insurance Election and Certificate”) states, in relevant part, “You may choose whether you want the beneficiary to receive payment in one lump sum or in 36 equal monthly payments....” None of the relevant forms or instructions for obtaining coverage, designating beneficiaries, or claiming benefits provides for any other means of payment (and, indeed, no other means is permitted by the contract or by law).

18. On information and belief, almost all policyholders and beneficiaries elect to receive a lump sum payment of SGLI or VGLI benefits, not the 36 equal monthly installments.

19. Prior to June 1999 Prudential paid lump sum benefits as promised by sending the amount owed to the beneficiary in one lump sum. At a point in time presently unknown to

plaintiffs, however, Prudential orchestrated and began implementing a scheme to hold onto the money it was required to pay for as long as it could, so that it could enrich itself through use of the funds without passing the interest or profits on the money to the beneficiaries.

20. At some point around 1998 or 1999, Prudential created Prudential Alliance Account Services. Prudential submitted the servicemark “Prudential’s Alliance Account®” to the United States Trademark and Patent Office on January 20, 1998. The mark was registered to Prudential on January 11, 2000.

21. In or around June 1999, Prudential began using the Alliance Account® scheme to keep control and use of money that was supposed to be paid to SGLI/VGLI beneficiaries. Instead of sending a check for the lump sum owed to the beneficiary as required by the contract and law, Prudential sent letters to beneficiaries informing them that their “lump sum” would be “paid” to them by placing it in an Alliance Account®. Prudential then sent a “checkbook” for the Alliance Account® to the beneficiary and described this Alliance Account® as if it were an interest bearing checking account into which the beneficiary’s money had been deposited:

How Your Benefit is Paid

As indicated in section IV of the Claim Form, there are two options:

(A) Lump Sum – We will deposit the full benefit into Prudential’s Alliance Account® in your name. The Alliance Account offers the following features:

A personal interest bearing account giving you full access to your money.

To use the account, simply write a check for the amount you would like to withdraw. The minimum withdrawal is \$250.

You may write out one check for the entire amount and close the account, or you may write checks, as you need the money. You will continue to earn interest on any balance you maintain in the account.

(b) 36 Monthly Installments – the benefit will be sent to you in 36 equal monthly installments with the first payment due as of the date of death.

22. Prudential's assertion that the Alliance Account® is an option listed in section IV of the Claim Form is false; there is no mention of an Alliance Account® on the SGLI or VGLI death benefit claim forms. Prudential also fraudulently informs beneficiaries that this Alliance Account® scheme constitutes a "lump sum" payment as required by the policy and law. In fact, initiation of this ruse does not constitute payment of anything to anyone. There is no money in any separate Alliance Account® for each beneficiary. The Alliance Account® is merely a bookkeeping device used by Prudential to hold on to beneficiaries' money.

23. In other words, Prudential is simply sending beneficiaries an "IOU" instead of actually paying them. Prudential does not transfer *any* money into any so-called Alliance Accounts® at the time they are created. Instead, Prudential keeps the funds that it was supposed to pay in a lump sum to the beneficiary in *Prudential's general account*. The "checks" provided in the "checkbook" are *not* checks, but instead *drafts* which cannot be honored upon receipt but only upon confirmation and transfer of funds from Prudential. When a beneficiary tries to write a "check" from the Alliance Account®, the draft must go to Prudential for approval. Only after Prudential approves the specific draft does Prudential transfer money from its general account into the account of the bank on which the draft is drawn, and then only enough to cover the draft.¹ The drafts cannot be used for amounts under \$250, and are not accepted as a means of payment by all retailers and other entities who would accept an actual check.

24. When the Alliance Account® "kit" arrives, it comes with another form letter where beneficiaries are again told "that the money has been transferred into Prudential's Alliance

¹ As the Third Circuit explained in Universal Premium Acceptance Corporation v. The York Bank & Trust Company, 69 F.3d 695 (3d Cir. 1995), "Casualty insurance companies frequently use drafts for the payment of claims. ... This procedure ... enables an insurance company to place funds with the bank only when needed to honor drafts, rather than having the money remain idle in a checking account." Id. at 702.

Account® in your name” and that the accompanying “Certificate of Account Confirmation” “shows the claim amount transferred into your account.”

25. Although Prudential credits beneficiaries with some trivial amount of interest on the funds it detains through its Alliance Account® scheme, it only credits as much interest as it decides in its self-serving discretion. On information and belief, that rate has ranged from .5% to 1.5%, while Prudential actually made 5-6% on its use of the money it withheld from beneficiaries pursuant to this Alliance Account® scheme.²

26. Prudential also acts to actively discourage insureds from actually claiming their funds (which would cause Prudential to lose the use of those funds). Some monthly “statements” Prudential provides with its Alliance Accounts® imply that it is in the beneficiary’s interest to keep the funds with Prudential.³ They purport to advise that “One of the benefits of the Alliance Account that customers like is the time that it allows them to consider their options” and warn that “Important financial decisions – even under the best of circumstances – should not be made quickly. Therefore, you can keep your money in the account for as long as you like.” Thus, Prudential pretends it is somehow acting in the interest of the beneficiary when it is actually doing the opposite. At no time does Prudential disclose that (1) the monies are not actually deposited in a separate account in the beneficiary’s name, but instead being used by Prudential as general funds, or (2) that the interest rates “paid” by Prudential are set by Prudential at its

² Plaintiffs are informed and believe that when Prudential first started using the Alliance Account® scheme in 1999 it advised the federal government that it would pay interest rates comparable to a six month Certificate of Deposit and that “at no time will the interest rate fall below the guaranteed minimum of 2%.”

³ The same statements falsely state that “The Alliance Account is a settlement option of the original life insurance policy.” As discussed above, neither the law nor the policy documents provide for the Alliance Account as a settlement option under SGLI or VGLI policies.

sufferance, and are a small fraction of the interest being made by Prudential through use of the beneficiaries' money. In addition, at no time does Prudential disclose to SGLI beneficiaries their rollover rights under the HEART Act, or that they lose their rollover rights after one year.

27. Indeed, although Prudential purports to offer the option of writing an Alliance Account® “check” for the full amount owed, in practice the ability to do so is severely hampered. Because the “checks” are really drafts requiring Prudential’s approval, actually cashing one is time consuming (during which time Prudential continues to profit by using money that does not belong to it). Indeed, in or about February 2005 when Plaintiff Kevin Lucey attempted to write a “check” to transfer his money to a financial institution of his choice, Prudential refused to honor the “check,” claiming that it could not verify his signature. It took the intervention of a third party and nearly one month for Mr. Lucey to actually receive his money from Prudential.

28. Prudential affirmatively acts to hide the true facts of its Alliance Account® program. Although it submits an Annual Report each year regarding operation of the SGLI and VGLI programs, that report makes no mention of this Alliance Account® scheme and fails to disclose how much of the purportedly paid benefits are actually paid, as opposed to being retained by Prudential in its general fund. Plaintiffs were unable before filing this action to find any public statement by Prudential concerning the amount of money it has retained through this ruse; indeed, press reports quote Prudential officials as claiming that such information is proprietary.

29. Prudential’s misconduct is all the more deplorable because it is directed at servicemembers and their families. Indeed, although Prudential also uses the Alliance Account® as an *option* for payment of death benefits in its civilian group life plans, forms relating to those

plans *clearly disclose* the Alliance Account® option to claimants, and also provide for an actual payment. (See, for example, Prudential's GL.2007.016 Ed 3/2010 form available on its website for civilian private policies). The SGLI/VGLI forms, however, make *no mention* of this scheme, and do not even provide an option for the actual lump sum payment required by law (much less comply with the law). It is astonishing that Prudential would abuse the position of trust and tax preference it has been given in this manner, providing the beneficiaries of SGLI/VGLI policies with less accurate information and fewer choices than the general civilian public.

Facts About the Class Representatives' Claims

KEVIN and JOYCE LUCEY

30. Kevin Lucey was the beneficiary of his son's VGLI policy. After his son's death, Mr. Lucey made a claim for the policy's benefits and elected a lump sum payment. Prudential subsequently sent the Luceys an Alliance Account® "checkbook" and represented in writing that the check book was the lump sum payment to which they were entitled under the policy. As the Luceys were grieving the loss of their son and had no reason to doubt Prudential's written representations, the Luceys left their money in the Prudential Alliance Account® for some time. In or around July 2010, the Luceys learned for the first time that Prudential never deposited the benefits which Prudential owed them in any separate account and instead retained the money in its own corporate account for its own use and benefit.

JORGE CASTRO

31. Jorge Castro was the beneficiary of his son's SGLI policy. After his son's death, Mr. Castro made a claim for the policy's benefits and elected a lump sum payment. Prudential subsequently sent Mr. Castro an Alliance Account® "checkbook" and represented in writing that the check book was the lump sum payment to which he was entitled under the policy. As Mr. Castro was grieving the loss of his son and had no reason to doubt Prudential's written

representations, Mr. Castro left his money in the Prudential Alliance Account® for some time. In or around July/August 2010, Mr. Castro learned for the first time that Prudential never deposited the benefits which Prudential owed him in any separate account and instead retained the money in its own corporate account for its own use and benefit.

SUSANA FERRO

32. Susana Ferro was the beneficiary of her son's SGLI policy. After her son's death, Ms. Ferro made a claim for the policy's benefits and elected a lump sum payment. Prudential subsequently sent Ms. Ferro an Alliance Account® "checkbook" and represented in writing that the check book was the lump sum payment to which she was entitled under the policy. As Ms. Ferro was grieving the loss of her son and had no reason to doubt Prudential's written representations, Ms. Ferro left her money in the Prudential Alliance Account® for some time. In or around July/August 2010, Ms. Ferro learned for the first time that Prudential never deposited the benefits which Prudential owed her in any separate account and instead retained the money in its own corporate account for its own use and benefit.

CARLOS and MARIA GONZALEZ

33. Carlos and Maria Gonzalez were the beneficiaries of their son's SGLI policy. After their son's death, Mr. and Mrs. Gonzalez made a claim for the policy's benefits and elected a lump sum payment. Prudential subsequently sent Mr. and Mrs. Gonzalez an Alliance Account® "checkbook" and represented in writing that the check book was the lump sum payment to which they were entitled under the policy. As Mr. and Mrs. Gonzalez were grieving the loss of their son and had no reason to doubt Prudential's written representations, Mr. and Mrs. Gonzalez left their money in the Prudential Alliance Account® for some time. In or around July/August 2010, Mr. and Mrs. Gonzalez learned for the first time that Prudential never

deposited the benefits which Prudential owed them in any separate account and instead retained the money in its own corporate account for its own use and benefit.

KAREN MEREDITH

34. Karen Meredith was the beneficiary of her son's SGLI policy. After her son's death, Ms. Meredith made a claim for the policy's benefits and elected a lump sum payment. Prudential subsequently sent Ms. Meredith an Alliance Account® "checkbook" and represented in writing that the check book was the lump sum payment to which she was entitled under the policy. As Ms. Meredith was grieving the loss of her son and had no reason to doubt Prudential's written representations, Ms. Meredith left her money in the Prudential Alliance Account® for some time. In or around July/August 2010, Ms. Meredith learned for the first time that Prudential never deposited the benefits which Prudential owed her in any separate account and instead retained the money in its own corporate account for its own use and benefit.

COLONEL GEORGE D. PATRIN, M.D.

35. Colonel Patrin was the beneficiary of his son's FSGLI policy. After his son's death, Colonel Patrin received a letter stating that Prudential was handling the transfer of monies and would hold them in an Alliance Account® "checkbook" until he withdrew the money with the checks. Prudential represented in writing that the check book was the lump sum payment to which he was entitled under the policy, being delivered in this manner rather than as a lump sum. This letter came as Colonel Patrin and his wife were grieving the loss of his son, and they had no reason to doubt Prudential's written representations. Therefore, Colonel Patrin left his money in the Prudential Alliance Account® for some time. In or around July/August 2010, more than a year after his son's death, Colonel Patrin learned for the first time that Prudential never deposited the benefits which Prudential owed him in any separate account and instead retained the money in its own corporate account for its own use and benefit.

Fraudulent Concealment and Discovery of Misrepresentations

36. As discussed above, Prudential affirmatively told (and tells) beneficiaries that its actions comply with the contract and law, and that its Alliance Account® IOU's are the "lump sum" payment required by law and the contract. Prudential also affirmatively told (and tells) beneficiaries that their money has been "deposited" in and "transferred" into an account in their name. These statements are all false, yet beneficiaries had no way of discovering that they were false. Beneficiaries do not have access to Prudential's internal records, and have no way themselves of discovering, despite reasonable diligence under the circumstances, that they were being defrauded or that Prudential was using their money as its own.

37. Moreover, while dealing with the grief and shock caused by the death of their loved one, almost always a child, spouse, or parent, the beneficiaries would simply have no reason to question the word of Prudential, which has been trusted with the SGLI program by the United States government since 1965. Prudential is, by virtue both of the insurance policies and as constructive trustee once the funds were due, a fiduciary of the beneficiaries and owed them duties of full disclosure, loyalty and candor. It breached those duties by hiding the true facts as alleged herein.

38. On July 28, 2010, Bloomberg News posted an investigative report revealing Prudential's misconduct, as well as the misconduct of other insurers. The story was widely picked up by other news organizations. This was the first public disclosure of the fact that Prudential was *not* paying beneficiaries, even if one were to construe creating and funding a separate account as "paying", but was instead simply keeping the money in its general account for its own use and issuing "IOU"s. Officials from the Veteran's Administration and Secretary of Defense Robert Gates, who sits on the Advisory Council on Servicemembers' Group Life Insurance, have publicly responded to these revelations with surprise that actual lump sums were

not paid. Prominent members of Congress and several State Attorneys General have called for an investigation of Prudential's actions. Given the undeniable fact that these high ranking government officials, many of whom are directly involved with the SGLI/VGLI programs, did not know about Prudential's misconduct, it is unsurprising that the SGLI/VGLI beneficiaries had no prior knowledge of the necessary facts to discover that Prudential was defrauding them.

39. Even in response to the recent revelations, Prudential continues to insist that it is complying with the contracts and relevant law. Prudential continues to refuse to disclose the scope of its retention of beneficiaries' money or the amounts it has made at the beneficiaries' expense. Prudential even went so far as to announce publicly that it was *considering* "offering" an actual lump sum payment "as an option." Prudential Financial Vice Chairman Mark Grier is reported as telling CNN that "Prudential may give families the option of accepting a lump-sum check." The law, the contract, and all relevant insurance forms clearly provide that a lump sum payment is *required* unless 36 equal monthly payments are selected. Prudential has no option of keeping the money and sending an IOU, yet it keeps telling beneficiaries and the public that it can do so.

40. Prudential's affirmative concealment of its wrongdoing, its fiduciary duty to the beneficiaries, and the beneficiaries' reasonable lack of knowledge of the true facts until at least July 28, 2010 result in a tolling of all applicable statute of limitations until July 28, 2010 pursuant to the federal common law rule of fraudulent concealment. Similarly, no statute of limitations subject to a discovery rule commenced until July 28, 2010.

Class Allegations

41. Plaintiffs bring their claims as a class action on behalf of themselves and a Class defined as follows: All persons who were or are beneficiaries of SGLI (including FSGLI and

TSGLI) and/or VGLI policies whose benefits were due in a lump sum at any time from the time Prudential began using the Alliance Account® scheme to the date of trial.

42. The present number of persons in the Class is unknown to plaintiffs but is believed based on public reports to be in excess of 60,000 people, and is thus clearly so numerous that joinder of all members is impracticable.

43. There are numerous questions of law and fact common to the Class, including but not limited to:

- a. The creation and use by Prudential of Alliance Accounts® for SGLI/VGLI benefits, which facts will be the same for all class members.
- b. Prudential's uniform statements to class members about its rights and actions as expressed in documents whose forms will be substantially the same for all class members.
- c. Prudential's uniform statements to class members about their rights and options as expressed in documents whose forms will be substantially the same for all class members.
- d. Prudential's use of class member money in its general account for its own purposes, which facts will be the same for all class members.
- e. The interest rates credited by Prudential to class members over time, which facts will be the same for all class members.
- f. Whether the relevant laws governing SGLI and VGLI permit Prudential to provide Alliance Account® IOU's instead of making actual lump sum payments.

- g. Whether the relevant insurance contracts permit Prudential to provide Alliance Account® IOU's instead of making actual lump sum payments.
- h. Whether use of the Alliance Account® scheme is a "lump sum payment."
- i. Whether Prudential's actions constitute a breach of the implied covenant of good faith and fair dealing in the SGLI and VGLI policies.
- j. Whether Prudential had the right to use the class members' money for its own purposes after the lump sum payments were due.
- k. Whether Prudential held the class members' money in a constructive trust for their benefit.
- l. Whether Prudential had a fiduciary duty to the class members.
- m. Whether Prudential breached its fiduciary duty to class members through its systematic misrepresentations and retention of the profits from class members' money.
- n. Whether Prudential is obligated to disgorge all profits it made through the use of class members' money.
- o. Whether Prudential is obligated to deliver all class members' money and profits thereon to the class members rather than retaining it in Prudential's general account.
- p. Whether the statutes of limitations relevant to the various claims in this actions were tolled and when they began to run.
- q. What damages are owed to the Class.
- r. What equitable relief is appropriate to remedy Prudential's misconduct.

44. The claims of the named plaintiffs herein are typical of the claims of the Class. Indeed, the facts relating to each plaintiff and class member will only differ with respect to accounting matters concerning what specific amounts were owed, when those amounts were owed, when they were actually paid (if they have been), and what profits Prudential made on those funds after they belonged to the class member but before paying them. All such matters can be determined through classwide proof and Prudential's records.

45. The named plaintiffs will fairly and adequately represent the Class. They have no conflicts of interest which would impede them from prosecuting the action on behalf of the Class and they have retained counsel experienced in prosecuting class actions and complex litigation.

46. Class certification is appropriate because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Prudential.

47. Class certification is also appropriate because Prudential has acted and refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

48. Class certification is also appropriate because common questions of fact and law predominate over any questions affecting only individual class members, and a class action will provide a superior method for the fair and efficient adjudication of the controversy for, inter alia, the following reasons:

- a. Neither the size of the Class nor the complexity of pertinent issues will render a class action difficult to manage, and a single class will be more

efficient for all parties and the judicial system than would cumbersome individual actions.

- b. Prudential is in possession of a complete list of members of the Class, the amounts received, when they received the same, and how much interest was paid to each; thus, the class is easily identifiable and easily accessible.
- c. The expense involved in presenting trial testimony and completing discovery on an individual basis threaten to make it impractical for all actions to be resolved on an individual basis.
- d. Resolution of litigation concerning this issue in a class action advances the national public policy promoting conformity in the treatment and handling of SGLI and VGLI insurance.

**FIRST CAUSE OF ACTION
VIOLATION OF 38 U.S.C. § 1970(d) AND 38 C.F.R. § 9.5**

49. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-48 as if though fully set forth herein.

50. Pursuant to 38 U.S.C. § 1970(d) and 38 C.F.R. § 9.5, Prudential had an affirmative duty upon the death of an SGLI or VGLI insured to pay the full amount of the death benefit to the beneficiaries who did not choose 36 equal monthly installments by actually delivering all of the funds in one lump sum to the beneficiaries.

51. Prudential failed to deliver all funds owed to the beneficiaries, including plaintiffs and the other class members, in one lump sum, and instead kept the money for its own purposes and only provided plaintiffs and the other class members with a means of later asking for some or all of their own money (i.e. the so-called Alliance Account®).

52. Prudential's conduct was a violation of 38 U.S.C. § 1970(d) and 38 C.F.R. § 9.5 and designed to enrich itself with money belonging to plaintiffs and the other class members.

53. As a result of Prudential's continuing misconduct, plaintiffs and the other class members have suffered monetary loss and have otherwise been damaged in an amount to be proven at trial.

54. As a result of Prudential's continuing misconduct, plaintiffs and the other class members are entitled to an order requiring disgorgement of all income or other amounts made or earned by Prudential through use of the class members' money.

55. As a result of Prudential's continuing misconduct, plaintiffs and the other class members are also entitled to an injunction requiring Prudential to deliver to the class members all funds belonging to the class members currently held by Prudential.

56. Wherefore, plaintiffs pray for relief as set forth below.

**SECOND CAUSE OF ACTION
BREACH OF CONTRACT**

57. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-56 as if though fully set forth herein.

58. This claim is brought under federal common law.

59. Plaintiffs and the other class members are intended third party beneficiaries of the SGLI and VGLI insurance contracts between Prudential and the United States.

60. Pursuant to the SGLI and VGLI insurance contracts, Prudential had an affirmative duty upon the death of an SGLI or VGLI insured to pay the full amount of the death benefit to the beneficiaries who did not choose 36 equal monthly installments by actually delivering all of the funds in one lump sum to the beneficiaries.

61. Prudential failed to deliver all funds owed to the beneficiaries, including plaintiffs and the other class members, in one lump sum, and instead kept the money for its own purposes and only provided plaintiffs and the other class members with a means of later asking for some or all of their own money (i.e. the so-called Alliance Account®).

62. Prudential's conduct was a violation of the SGLI and VGLI contracts and designed to enrich itself with money belonging to plaintiffs and the other class members.

63. As a result of Prudential's continuing breach of contract, plaintiffs and the other class members have been denied the benefit of the bargain to which they are intended beneficiaries, and damaged in an amount to be proven at trial.

64. Wherefore, plaintiffs pray for relief as set forth below.

**THIRD CAUSE OF ACTION
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

65. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-64 as if though fully set forth herein.

66. This claim is brought under federal common law.

67. Plaintiffs and the other class members are intended third party beneficiaries of the SGLI and VGLI insurance contracts between Prudential and the United States.

68. The SGLI and VGLI contracts entered into by Prudential for the benefit of the class members contain an implied covenant of good faith and fair dealing which requires Prudential to act in good faith and not to place its own interests ahead of those of the plaintiffs and the other class members.

69. By engaging in the conduct alleged herein, Prudential has breached its implied covenant of good faith and fair dealing.

70. As a result of Prudential's breach of the implied covenant of good faith and fair dealing, plaintiffs and the other class members have suffered monetary loss, incurred attorneys' fees and expenses, and have otherwise been damaged in an amount to be proven at trial.

71. As a result of Prudential's breach of the implied covenant of good faith and fair dealing, plaintiffs and the other class members are entitled to an order requiring disgorgement of all income or other amounts made or earned by Prudential through use of the class members' money.

72. As a result of Prudential's breach of the implied covenant of good faith and fair dealing, plaintiffs and the other class members are also entitled to an injunction requiring Prudential to deliver to the class members all funds belonging to the class members currently held by Prudential.

73. Plaintiffs do not presently know the names of the persons at Prudential who are responsible for these breaches, but are informed and believe, and on that basis allege, that Prudential's misconduct was authorized at the highest levels by Prudential and performed deliberately in consultation with numerous people at Prudential as part of Prudential's official Alliance Account® scheme.

74. Prudential's misconduct was performed with a deliberate and conscious disregard of the rights of the beneficiaries, and with the intention of benefiting Prudential through use of the beneficiaries' money to the detriment of the beneficiaries. Prudential's abuse of the trust of the families of this Country's servicemembers is abhorrent behavior not to be tolerated in a civilized society, and warrants the imposition of punitive and exemplary damages.

75. Wherefore, plaintiffs pray for relief as set forth below.

**FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT/MONEY HAD AND RECEIVED**

76. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-75 as if though fully set forth herein.

77. This claim is brought under federal common law.

78. As a result of Prudential's conduct as alleged herein, Prudential received money belonging to plaintiffs and the rest of the class members. Prudential has benefited from receipt of the money, and has used plaintiffs' and the other class members' money without permission, and thereby enriched itself. Prudential has retained the benefits of its misconduct, and has not provided the full profits, interest, and other income on the class members' money to the class members.

79. Class members, including plaintiffs, had a reasonable expectation that Prudential would not engage in this type of misconduct but would instead only use class members' money for the class members' benefit, not Prudential's benefit. Class members had a reasonable expectation that they would receive the full benefit of the monies owed to them, and that Prudential would pay such monies including any interest it obtained thereon during any period of delay or non-payment for whatever reason.

80. Under principles of equity and good conscience, Prudential should not be permitted to keep either the class members' money or the benefits it has gained therefrom. Society's reasonable expectations of persons and property would be defeated if Prudential were allowed to engage in this scheme and use money belonging to the class members, including plaintiffs, for its own profit. Society's reasonable expectations of persons and property require that Prudential not profit from its conduct but instead that Prudential provide all profits or other income made on the use of class member money to the class members.

81. Accordingly, Prudential has been unjustly enriched, and under the federal common law, plaintiffs and the other class members are entitled to full equitable relief from this Court including restitution of all funds belonging to them, disgorgement of any income, profit or other ill-gotten gain made by Prudential as a result of the conduct alleged herein, and injunctive relief to ensure such conduct does not continue.

82. Plaintiffs, on behalf of themselves and the Class, hereby demand that Prudential return all money in its possession that belongs to Plaintiffs or other class members, including all income, profit, or other gains made by Prudential's use of that money.

83. Wherefore, plaintiffs pray for relief as set forth below.

**FIFTH CAUSE OF ACTION
FRAUD (AFFIRMATIVE MISREPRESENTATION)**

84. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-83 as if though fully set forth herein.

85. This claim is brought under federal common law.

86. As discussed above, Prudential has consistently and systemically made false statements to plaintiffs and the other class members about both its right to engage in the Alliance Account® scheme and the details of that scheme. Specifically, Prudential's standard form documents sent to all class members, including plaintiffs, in connection with the Alliance Account® scheme make at least the following false statements to every class member:

- a. "As indicated in section IV of the Claim Form, there are two options: Lump Sum--We will deposit the full benefit into Prudential's Alliance Account® in your name." This statement is false for two reasons. First, deposit of the funds owed into Prudential's Alliance Account® is not an option listed in section IV of the Claim Form or on any other form used to

obtain SGLI or VGLI or to designate beneficiaries or payment options thereto. Second, deposit of funds owed into Prudential's Alliance Account® is not a payment of a "Lump Sum." As a matter of law, providing an IOU and keeping the class members' money does not constitute making a "lump sum payment."

- b. "We will deposit the full benefit into Prudential's Alliance Account® in your name." This statement is false. The full benefit is not deposited by Prudential into any account in the beneficiary's name. Instead, Prudential keeps the funds that belong to the beneficiary in its own general account and uses them as Prudential's money. Only when a beneficiary uses a draft from the Alliance Account® and that draft is approved by Prudential is money sufficient to cover the draft (but not the full benefit unless the draft is for the full benefit) transferred from the Prudential general account.
- c. "The Alliance Account offers the following features: A personal interest bearing account ..." This statement is false. There is no separate account created and funded, much less a personal account. The funds remain held in Prudential's general account. Moreover, there is no legal instrument creating any rate of interest or interest agreement; interest is credited at Prudential's discretion in whatever small amount Prudential chooses without explanation to "pay."
- d. "To use the account, simply write a check ..." This statement is false. The instruments provided by Prudential with the Alliance Account® are not

checks. They are drafts, and they are not negotiable without approval from Prudential and Prudential's separate release of funds.

- e. "The Alliance Account is a settlement option under the original life insurance policy." This statement is false. The SGLI and VGLI policies do not provide for Alliance Accounts® as a settlement option.
- f. "the money has been transferred into Prudential's Alliance Account® in your name." This statement is false. No money was transferred by Prudential into any account in the beneficiary's name. Instead, Prudential kept the funds that belong to the beneficiary in its own general account and uses them as Prudential's money. Only when a beneficiary uses a draft from the Alliance Account® and that draft is approved by Prudential is money sufficient to cover the draft (but not the full benefit unless the draft is for the full benefit) transferred from the Prudential general account.
- g. that the "Certificate of Account Confirmation" "shows the claim amount transferred into your account." This statement is false. No money was transferred by Prudential into any account in the beneficiary's name. Instead, Prudential kept the funds that belong to the beneficiary in its own general account and uses them as Prudential's money. Only when a beneficiary uses a draft from the Alliance Account® and that draft is approved by Prudential is money sufficient to cover the draft (but not the full benefit unless the draft is for the full benefit) transferred from the Prudential general account.

87. Prudential knew at the time it made these statements that they were false.

88. Prudential made and makes these statements with the intent that class members, including plaintiffs, rely on the statements by not challenging Prudential's failure to make an actual lump sum payment and by otherwise acquiescing in Prudential's misappropriation of the use of the class members' money.

89. Prudential's statements are material misrepresentations because they directly purport to justify and authorize Prudential's retention of the class members' money.

90. The class members, including plaintiffs, reasonably relied on Prudential's statements by leaving some or all of their settlement funds "in" the Alliance Account® for some period of time, during which time Prudential used the money as its own. The class members, including plaintiffs, had no reason to disbelieve Prudential's statements given Prudential's fiduciary obligations and the fact the United States government has trusted Prudential with these important insurance programs for servicemembers, veterans, and their families since 1965.

91. Each class member, including plaintiffs, was injured as a result of Prudential's false representations because his or her receipt of his or her funds was delayed and he or she lost interest that could have been earned in investments similar to those Prudential itself made with the money. All of these damages were foreseeable and proximately caused by Prudential's misrepresentations.

92. Plaintiffs do not presently know the names of the persons at Prudential who are responsible for authoring and sending the form documents containing the misrepresentations, but are informed and believe, and on that basis allege, that these misrepresentations are authorized at the highest levels by Prudential and created deliberately in consultation with numerous people at Prudential as part of Prudential's official Alliance Account scheme.

93. Prudential's misrepresentations were made with a deliberate and conscious disregard of the rights of the beneficiaries, and with the intention of benefiting Prudential through use of the beneficiaries' money to the detriment of the beneficiaries. Prudential's abuse of the trust of the families of this Country's servicemembers is abhorrent behavior not to be tolerated in a civilized society, and warrants the imposition of punitive and exemplary damages.

94. Wherefore, plaintiffs pray for relief as set forth below.

**SIXTH CAUSE OF ACTION
FRAUD (OMISSION)**

95. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-94 as if though fully set forth herein.

96. This claim is brought under federal common law.

97. In addition to its affirmative misrepresentations, Prudential omitted and withheld numerous material facts from the class members concerning the Alliance Account® scheme. Specifically, Prudential engaged in a concerted and uniform program of failing to disclose the following materials facts to class members:

- a. The fact that class members had the right to immediate payment of all monies owed.
- b. The fact that Prudential was not placing the class member's lump sum benefit in any separate or personal account, but was instead keeping the money in Prudential's general account.
- c. The fact that Prudential was using the class members' money to earn as much as five to ten times more than Prudential was paying the class members interest on the non-existent Alliance Account®.

- d. The fact that the instruments provided as “checks” were actually drafts and that no money was available to negotiate them without further approval from Prudential.
- e. The fact that delay in receiving the funds was not beneficial to the class members, but was instead harmful to the extent it deprived those class members of their rights under the HEART Act.

98. Prudential knew that the information it intentionally withheld from class members was important to them and material to their decision not to challenge the Alliance Account® scheme.

99. Prudential had a duty to disclose these facts to class members, including plaintiffs, because it was a fiduciary of the class members and was otherwise in a special relationship with them where disclosure would be required, because it made a partial disclosure of facts on this subject thus obligating itself to make a full disclosure, because the facts were within its sole possession and were material to the transaction, and because the statements it did make were misleading in the absence of this information (as well as being misleading generally), thus creating a duty to correct the information provided.

100. Prudential withheld this information with the intent that class members, including plaintiffs, not challenge Prudential’s failure to make an actual lump sum payment and otherwise acquiesce in Prudential’s misappropriation of the use of the class members’ money.

101. The class members, including plaintiffs, reasonably relied on the information they received from Prudential, and the absence of the omissions discussed above, by leaving some or all of their settlement funds in the Alliance Account® for some period of time, during which time Prudential used the money as its own. The class members, including plaintiffs, had no

reason to believe Prudential was concealing facts from them given Prudential's fiduciary obligations and the fact the United States government has trusted Prudential with these important insurance programs for servicemembers, veterans, and their families since 1965.

102. Each class member, including plaintiffs, was injured as a result of Prudential's false omissions because his or her receipt of his or her funds was delayed and he or she lost interest that could have been earned in investments similar to those Prudential itself made with the money and, in particular, some class members lost the extremely valuable right to exercise their rollover rights under the HEART Act. These damages were foreseeable and proximately caused by Prudential's misrepresentations.

103. Plaintiffs do not presently know the names of the persons at Prudential who are responsible for authoring and sending the form documents failing to make proper disclosure of all required facts, but are informed and believe, and on that basis allege, that Prudential's misconduct was authorized at the highest levels by Prudential and performed deliberately in consultation with numerous people at Prudential as part of Prudential's official Alliance Account® scheme.

104. Prudential's fraud misrepresentations through omission were made with a deliberate and conscious disregard of the rights of the beneficiaries, and with the intention of benefiting Prudential through use of the beneficiaries' money to the detriment of the beneficiaries. Prudential's abuse of the trust of the families of this Country's servicemembers is abhorrent behavior not to be tolerated in a civilized society, and warrants the imposition of punitive and exemplary damages.

105. Wherefore, plaintiffs pray for relief as set forth below.

**SEVENTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY/CONSTRUCTIVE TRUST**

106. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs 1-105 as if though fully set forth herein.

107. This claim is brought under federal common law.

108. When it failed to deliver the required lump sums to plaintiffs and the other class members, and instead kept their money for them, Prudential became a fiduciary of the class members, including plaintiffs, with respect to that money. As a fiduciary, Prudential owed plaintiffs and the other class members a duty of loyalty and was required to use the withheld money solely for the benefit of plaintiffs and the class members, and not for Prudential's benefit.

109. In addition, as a result of its deliberate actions, Prudential is in possession of money that belongs in good conscience to the class members, including plaintiffs, yet is being held within the possession and control of Prudential. By retaining monies belonging to the class members, including plaintiffs, at its own election instead of paying those monies, Prudential became obligated to use those assets for the benefit of the beneficiaries (i.e. the class members, including plaintiffs) and not for its own benefit.

110. Prudential breached its obligations by utilizing monies it was holding for the benefit of the class members, including plaintiffs, for its own benefit. Prudential made substantial amounts of money using these funds, and paid only a fraction of that income to plaintiffs and the class members, keeping the remainder for itself. This conduct breaches Prudential's duties and justifies the creation of a further constructive trust with respect to all income, rents or profits that can be traced back to Prudential's use of money belonging to the class members, including the plaintiffs.

111. Prudential also breached its fiduciary duty by failing to advise all class members whose money it was holding, including plaintiffs, about the HEART Act and the class members' rights *and deadlines* under that Act.

112. As a result of Prudential's continuing misconduct, plaintiffs and the other class members have suffered monetary loss and have otherwise been damaged in an amount to be proven at trial.

113. As a result of Prudential's continuing misconduct, plaintiffs and the other class members are entitled to an order establishing a constructive trust and/or receivership over all income or other amounts made or earned by Prudential through use of the class members' money until such time as those funds can be disgorged and returned to plaintiffs and the class members.

114. As a result of Prudential's continuing misconduct, plaintiffs and the other class members are entitled to an order requiring disgorgement of all income or other amounts made or earned by Prudential through use of the class members' money.

115. As a result of Prudential's continuing misconduct, plaintiffs and the other class members are also entitled to an injunction requiring Prudential to deliver to the class members all funds belonging to the class members currently held by Prudential.

116. Plaintiffs do not presently know the names of the persons at Prudential who are responsible for these breaches, but are informed and believe, and on that basis allege, that Prudential's misconduct was authorized at the highest levels by Prudential and performed deliberately in consultation with numerous people at Prudential as part of Prudential's official Alliance Account® scheme.

117. Prudential's misconduct was performed with a deliberate and conscious disregard of the rights of the beneficiaries, and with the intention of benefiting Prudential through use of

the beneficiaries' money to the detriment of the beneficiaries. Prudential's abuse of the trust of the families of this Country's servicemembers is abhorrent behavior not to be tolerated in a civilized society, and warrants the imposition of punitive and exemplary damages.

118. Wherefore, plaintiffs pray for relief as set forth below.

PRAYER

WHEREFORE, plaintiffs pray for relief as follows:

1. Certification of the Class;
2. An award of actual damages to the plaintiffs and the Class in an amount to be proven at trial;
3. An order requiring Prudential to disgorge to plaintiffs and the Class all earnings, profits, compensation and/or benefit obtained by Prudential as a result of its misconduct as alleged herein;
4. An order requiring Prudential to make restitution through actual payment in a lump sum of all funds held by Prudential that belong to plaintiffs and the Class, including all amounts earned by Prudential thereon;
5. An injunction prohibiting Prudential from retaining SGLI or VGLI benefits in an "Alliance Account" instead of paying them to beneficiaries in a lump sum as required by law;
6. Prejudgment and post-judgment interest at the maximum legal rate;
7. Reasonable attorneys' fees, costs, and expenses;
8. An award of exemplary and punitive damages; and
9. Such other legal and equitable relief as the Court deems just and proper and the circumstances.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL.

Dated: August 30, 2010

Respectfully submitted,
By Attorneys for Plaintiffs and the Class

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