UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	MISC. DOCKET NO. 96-179
METROPOLITAN LIFE INSURANCE	)	MDL NO. 1091
SALES PRACTICES LITIGATION	)	
Plaintiffs,	)	
	)	
v.	)	Judge Donetta Ambrose
	)	Magistrate Judge Benson
This Document relates to:	)	
ALL CASES FILED BY BEHREND &	)	
ERNSBERGER, PC	)	

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF OBJECTIONS TO THE MAGISTRATE JUDGE'S RECOMMENDATION THAT DEFENDANT'S MOTION FOR A PRELIMINARY INJUNCTION BE GRANTED

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Introduction

MetLife's response to the Opt-Out Litigants' objections has two main themes: (1) the Opt-Out Litigants are effectively seeking to "force" MetLife to "relitigate the claims of those who settled"; and (2) entry of the requested injunction would not, in fact, deprive the Opt-Out Litigants of their opportunity to pursue their individuals claims against MetLife. Taking these points together, MetLife concludes that this Court has the authority and obligation to "protect the integrity of the class settlement" by enjoining the Opt-Out Litigants from discovering and introducing in their individual cases against MetLife any evidence relating to the patterns and practices at issue in the nationwide class settlement.

As we now explain, MetLife is wrong both as a matter of fact and as a matter of law. Not only would the requested injunction deprive the Opt-Out Litigants of their ability to obtain any relief against MetLife, but it would violate the class notice, Rule 23, the Anti-Injunction Act, and the U.S.

Constitution.[1]

ARGUMENT

I. MetLife Is Wrong On The Facts.

To begin with, MetLife is wrong when it claims that the Opt-Out Litigants are attempting to "pursue other people's claims . . . that were raised, litigated, settled and dismissed with prejudice in the federal class action." Response at 2. *See also id*. at 3 ("the Behrend Firm intends to relitigate the entire MDL class action at the state-court level, more than two hundred times over."). These arguments are irresponsible. As MetLife knows, the Opt-Out Litigants are attempting to pursue their *own* claims, which MetLife does not dispute were excluded from the nationwide class action and *therefore are not subject to the terms of the class release*. The fact that the Opt-Out Litigants are seeking to introduce evidence relating to some of the broad "scheme" claims at issue in the class settlement does not mean that they are seeking to "relitigate the claims of those who settled" (MetLife Response at 2); it simply means that the "scheme" evidence is *also* relevant to claims alleged in the Opt-Out Litigants' individual cases.[2] MetLife naturally would like to put this

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[1] As a threshold matter, MetLife has challenged the authority of Trial Lawyers for Public Justice ("TLPJ") to appear for the limited purpose of objecting to the requested injunction, stating that we "cite no rule that would authorize this." MetLife Response at 8 n.2. To be clear, TLPJ has joined the Behrend Firm as co-counsel on behalf of the Opt-Out Litigants. We merely sought to advise the Court that, in our capacity as co-counsel, our role will be limited to assisting with the objections to the proposed injunction. There is no need to cite any rule to authorize this form of assistance in our capacity as co-counsel.

[2] As explained in our initial filing, six state courts presiding over the Opt-Out Litigants' cases have held that evidence relating to the nationwide practices of MetLife is relevant to plaintiffs' individual claims. Declaration of Kenneth R. Behrend dated February 7, 2002 ("First Behrend Declaration") ¶ 13. For example, Judge Loughran, who is presiding over the cases filed in Westmoreland County, held that "[a]ll of the allegations set forth in Plaintiffs' 'global' allegations go to the proof of Plaintiffs' causes of action against Metropolitan Life . . . If proven, [MetLife] cannot claim that the actions of its agents in this matter [were] isolated events and that

evidence behind it, but the settlement of the class action cannot accomplish this result *with respect to individuals who opted out of the class.* As long as this evidence is relevant to their claims, the Opt-Out Litigants are entitled to discover and use it in their individual cases. MetLife's repeated suggestions that this constitutes "relitigation" of the settled claims are disingenuous, at best.[3]

MetLife seems to believe that the nationwide settlement somehow "released" the pattern and practice claims of individuals who excluded themselves from the class. Under our system of justice, however, if a company's wrongful policies or practices injure a thousand people, *each person* has the right to prove the full extent of the wrongdoing, show how that wrongdoing caused his or her injuries, and seek compensatory and punitive damages for what the defendant did to him or her. If one person settles his or her case, that cannot affect the right or ability of the others to proceed.

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it was not its habit or routine practice to encourage unfair, deceptive sales practices, or not to enforce its own rules on sales protocol. Accordingly, . . . Defendants' objections must be denied." *See* Decision of Charles H. Loughran Jr. dated April 18, 2001. (A copy of this decision was inadvertently omitted from the First Behrend Affidavit, and has been included as an exhibit to the Amended Affidavit of Kenneth R. Behrend dated February 22, 2002, submitted herewith ("Amended Behrend Affidavit")).

[3] MetLife is therefore wrong in asserting that the Opt-Out Litigants "do not dispute that they are using [their] lawsuits as a vehicle to wage a concerted and deliberate campaign to relitigate the MDL class action and interfere with the MDL settlement." MetLife Response at 8. In reality, the Opt-Out Litigants have disputed this claim from the moment MetLife filed its motion for a preliminary injunction. MetLife is also wrong in claiming that all of the individual complaints filed by the Opt-Out Litigants are "cut and paste" versions of the class action complaint. In reality, as explained in the Declaration of Kenneth R. Behrend in Support of Plaintiffs' Reply Brief filed dated February 22, 2002, submitted herewith ("Second Behrend Declaration"), all of the individual complaints that were filed prior to the nationwide settlement already contained allegations regarding the nationwide sales practices of MetLife. When the Opt-Out Litigants later sought to amend those complaints to include some of the nationwide allegations set forth in the class action complaint, MetLife objected on the grounds that the nationwide practices were already encompassed in the original complaints. *See id.* ¶ 3-5. The state court judge agreed, and those complaints were never amended to include any of the allegations from the class action complaint. *Id.* ¶ 6.

And if 999 settle their cases – either individually or as part of a class action – that cannot affect the right or ability of the remaining one to proceed. Thus, MetLife's assertion that the settlement of millions of individual claims through the nationwide class action can somehow limit the rights of the 392 Opt-Out Litigants to prove the full extent of their injuries and recover the full extent of their damages is simply wrong.

MetLife is equally wrong in claiming that the Opt-Out Litigants' claims would not be adversely affected by the requested injunction. *See* MetLife Response at 1 ("[t]he injunction . . . would not 'extinguish' the [Opt-Out Litigants'] right to pursue any opt-out claim or to take discovery with respect to any individual opt-out claim. In fact, [the Opt-Out Litigants'] individual claims are explicitly left intact and unfettered by the relief Magistrate Judge Benson has recommended."). The record before this Court proves otherwise. As explained in the First Behrend Declaration, given the breadth of evidence encompassed in the "Released Transactions," the requested injunction "would effectively render [the Opt-Out Litigants] unable to prove their claims." *Id*. at ¶ 26. *See also id*. at 36 ("if the Recommendation becomes an order, then all of the claims of every Opt-Out Litigant will effectively have been terminated).[4]

In the face of these assertions, MetLife has not even attempted to explain – let alone to prove – how the Opt-Out Litigants' claims could possibly survive entry of the requested injunction. MetLife's silence on this point is not surprising, and it speaks volumes; if the requested injunction is issued, MetLife will undoubtedly be eager to capitalize on the evidentiary restrictions imposed by this Court by seeking dismissal of the Opt-Out Litigants' individual claims against it. In any

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[4] Exclusion of the pattern-and-practice allegations would also negatively affect the Opt-Out Litigants' ability to rebut MetLife's defenses. First Behrend Declaration at ¶¶ 31, 34.

event, MetLife's failure to rebut the assertions of the First Behrend Declaration mandates a finding that the injunction will, in fact, be devastating to the Opt-Out Litigants' ability to obtain relief from MetLife.[5]

II. MetLife is Wrong on the Law.

A. MetLife's Reliance on *Prudential* is Misplaced.

MetLife's legal arguments in support of the requested injunction are equally unconvincing. First, MetLife mischaracterizes *Prudential* as broadly holding that "class-action settlements must be protected from relitigation by opt-out plaintiffs in the guise of 'pattern and practice' evidence." MetLife Response at 9-10. In reality, the Third Circuit's decision makes clear that its *actual* holding is limited to class members who opt some, *but not all,* of their claims out of a class action settlement. The Court began its analysis by stating that:

> ***[w]e must examine the text of the Class Notice and, more particularly, the Class Release to determine the propriety of this injunction.*** We must determine whether settlement of claims the Lowes had under the Class Policies precludes them from pursuing claims in Florida purportedly arising from the Excluded Policies.

261 F.3d at 366 (emphasis added). Having framed the issue in this way, the Court went on to examine at length the scope of the Release in the class action settlement, and ultimately concluded that it barred the Lowes' claims *because they were still class members and therefore subject to its terms*:

> [t]he Class Policies constitute Released Transactions and the Lowes do not argue to

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[5] At the same time, MetLife dramatically overstates the extent of the burden imposed by the Opt-Out Litigants' individual cases, claiming that it will be forced to undergo repetitious discovery and "relitigate" the class action 200 times over. *See* MetLife Response at 3, 15. In fact, the Opt-Out Litigants are seeking to streamline the state-court discovery to the maximum extent possible, and have no intention of conducting repeated depositions on the same issues. *See* Second Behrend Declaration at ¶ 11-14.

> the contrary. Accordingly, the Lowes clearly released Prudential from any claims 'based on,' 'connected with,' 'arising out of,' 'or related to, in whole or in part,' their two Class Policies. Inasmuch as the Class Release was expressly incorporated into the Final Order and Judgment, . . . it has both claim preclusive and issue preclusive effect, *and class members were specifically advised of this.* The Class Release also precludes class members from relying upon the common nucleus of operative facts underlying claims on the Class Policies to fashion a separate remedy against Prudential outside the confines of the Released Claims. Consequently, the Lowes, *as class members on two Class Policies*, are precluded from using the sales practices and factual predicates pertaining to the Class Policies in their state court action on the Excluded Policies.

Id. at 367 (emphases added). Thus, the "precise holding" of *Prudential* is that class members who have *failed* to exclude all of their individual claims out of a class action settlement are subject to the terms of the class release in their individual cases. Even MetLife must concede that this is not the situation here.

MetLife nonetheless contends that the logic of *Prudential* must necessarily extend to this case because, otherwise, there would be "two classes of opt-out plaintiffs": (1) those who excluded all of their claims from the settlement and thus are free to pursue their individual lawsuits without regard to the class release; and (2) those who remained class members with respect to some policies, and thus could be restricted in the manner permitted by *Prudential* (and requested by MetLife here). MetLife Response at 11. This is true, but what of it? The whole point of *Prudential* is that individuals who remain class members with respect to some of their policies – and accept the settlement's benefits with respect thereto – are *on notice of* and therefore *properly subject to* the terms of the class release. *See* 261 F.3d at 367. That being so, there is nothing unfair about restricting their ability to introduce class-related evidence in their individual cases; that was their choice when they decided to remain in the class and accept the benefits provided by the settlement. But those class members who fully exclude themselves from a settlement and take nothing from it

cannot properly be made subject to the class release; that would be like saying that a party is bound by a contract he or she affirmatively rejected and declined to sign. *Prudential* necessarily means that such individuals *must* be permitted to proceed in an unfettered fashion, without regard to the class release. To the extent this gives the Opt-Out Litigants a "preference" in their individual cases, so be it. That is the result they obtained by rejecting the settlement's benefits and excluding all of their claims from the class settlement.[6]

B. The Requested Injunction Violates the Class Notice.

MetLife also errs in claiming that the injunction would not violate the terms of the class notice. As explained in our opening brief (at 5-8), the notice specifically advised class members that,

> **[i]f you request exclusion from the Class:**
>
> *** you will not be eligible for any of the settlement benefits; and**
>
> *** you will not be allowed to object to the terms of the settlement; and**
>
> *** you will not be bound by any subsequent rulings entered in this case.**

Notice at 20 (emphasis in original). It is hard to imagine a more sweeping and less equivocal statement than this one – or one more at odds with MetLife's attempt to obtain an injunction from this Court.

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[6] MetLife also contends that this result would be "anomalous" because it would permit individuals who opt all their claims out of a settlement to pursue punitive damages in their individual cases, whereas individuals who elect to remain class members with respect to some of the policies would be restricted in this regard. *See* MetLife Response at 11-12. Once again, this is simply the logical outcome of a decision to remain part of a class settlement with respect to certain claims, and there is nothing "anomalous" about it.

MetLife attempts to avoid the plain meaning of this statement by focusing on language elsewhere in the notice stating that "You will not be bound, *for the purposes of the Policy or Annuity you opt out of the proposed settlement,* by any Orders or judgments entered in this case if the proposed settlement is approved." MetLife Response at 18 (emphasis in original). But that language actually underscores the defect in MetLife's position. The Opt-Out Litigants chose to opt *all* of their policies and annuities out of the settlement, and the above-quoted language promises that, by doing so, they would not be bound by "*any* Orders or judgments entered in this case." MetLife argues, however, that this statement (and others like it) put policyholders on notice that they "only had the ability to exclude from the settlement individual claims on the specific policies or annuities that he or she opted out, " and that any "additional claims" relating to the class-wide allegations would remain subject to the class release. *Id*. at 18-19. This interpretation is so unfounded as to almost defy commentary. The fact that policyholders were told that, if they opted out, they would not be bound "for the purposes of the Policy" at issue hardly constitutes clear notice that they would be barred from introducing any evidence regarding MetLife's nationwide practices in their individual cases. For that reason alone, the requested injunction must be denied. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably calculated to convey the required information . . .") (citations omitted).

C. The Requested Injunction Violates Rule 23, Due Process, and Basic Principles of Res Judicata.

MetLife's arguments regarding the infringement on the right to opt-out posed by the

requested injunction – and concomitant violations of Rule 23, due process, and principles of res judicata – are equally meritless. Here, MetLife resorts to tautology: "All of the Behrend plaintiffs were given an opportunity to opt out from the MDL class, and all of the Behrend Plaintiffs *did* opt-out from the MDL class. Thus, the Behrend Plaintiffs were afforded all of their rights under Rule 23." MetLife Response at 19.

This argument, such as it is, ignores the fact that the requested injunction substantially restricts – and extinguishes – the Opt-Out Litigants' ability to pursue their individual claims against MetLife. As explained above, MetLife's nationwide practices gave rise to and form the underpinnings of the individual claims at issue in the Opt-Out Litigants' cases. Without this evidence, the Opt-Out Litigants will not be able to prove their cases against MetLife, rendering the supposed opt-out right afforded by the settlement practically meaningless. Against this backdrop, MetLife's claim that Rule 23 and due process can tolerate this right because the Opt-Out Litigants "*did* opt-out from the MDL class" is unconvincing, to say the least.

Even if the requested injunction would not have such a drastic impact on the Opt-Out Litigants' cases, it would still be illegal. MetLife's argument boils down to a claim that a partial restriction on the rights of opt-out litigants is permissible, so long as they are permitted to proceed in some fashion. This argument, however, has no basis in the text of Rule 23, which mandates that class members be given a right to "exclude [themselves] from the class . . ." Fed. R. Civ. P. 23(c)(2). MetLife would have this Court imply an unstated limitation on this opt-out right that does not exist in the text of the Rule and has never been recognized by any court of law.

Nor could due process tolerate this sort of *sub silentio* restriction of the rights of opting-out class members to proceed in their individual cases. In *Ortiz v. Fibreboard Corp.*, 527 U.S. 815

(1999), the U.S. Supreme Court held that a mandatory class action settlement that would have extinguished class members' claims for punitive damages and prejudgment interest while allowing them to pursue other individual claims was impermissible, based on applicable Rule 23 and constitutional provisions. The mandatory settlement in *Ortiz* would have permitted individual claimants to go to court on their claims against the defendants' settlement trust, but "with punitive damages and prejudgment interest barred" and surviving claims subject to a monetary cap. *Id*. at 827.[7] The Supreme Court held that this mandatory settlement could not be approved because the settling parties had failed to establish the "limited fund" requirements of Rule 23(b)(1)(B) for a mandatory, no-opt-out class – in particular, that the "fund" is limited by something other than the agreement of the parties. *Id*. at 842, 864. *Ortiz's* application of Rule 23 was based in large part on the Court's recognition of the "serious constitutional concerns raised by the mandatory class resolution of individual legal claims," *id*. at 842, such as the compromise of the absent class members' Seventh Amendment right to a jury trial and due process right to opt out and preserve their damages claims. *Id*. at 846, 848.

This case is even worse than *Ortiz* insofar as MetLife is attempting to impose mandatory restrictions on the rights of opt-out litigants within the context of a Rule 23(b)(3) class action. In effect, MetLife is arguing that the class settlement bars *any* future claims against it based on the nationwide practices encompassed in the release. In so doing, it is not even attempting to

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[7] The settlement agreement at issue in *Ortiz* specifically provided that, "in exchange for full releases from class members, [the defendants] would establish a trust to process and pay class members' asbestos personal injury and death claims. Claimants seeking compensation would be required to try and settle with the trust. If initial settlement attempts failed, claimants would have to proceed to mediation, arbitration, and a mandatory settlement conference. Only after exhausting that process could claimants go to court against the trust, subject to a limit of $500,000 per claim, with punitive damages and prejudgment interest barred." 527 U.S. at 827.

demonstrate that a mandatory settlement would be permissible with respect to such claims – an argument that would surely fail in light of *Ortiz*. *See* 527 U.S. at 864. Instead, it is attempting to impose this restriction in the context of a Rule 23(b)(3) class action – a vehicle that requires, as a matter of law, a full and unfettered right to opt out. This backdoor attempt to evade the restrictions of *Ortiz* should be rejected out of hand.

Aside from *Ortiz*, MetLife does not address any of the other cases cited in our opening brief regarding the right to opt out of class action settlements. It does not have a word to say about *Becherer, et al., v. Merrill Lynch*, 193 F.3d 415 (6th Cir. 1999) (*en banc),* which squarely held that "it would defeat the clear purposes of Rule 23 to bar a group of plaintiffs, who were putative members of a class but either opted out or retained their right to opt out, from litigating separately." *Id*. at 426. Nor does it attempt to distinguish the myriad of cases holding that, under principles of collateral estoppel and res judicata, class members who opted out of a class action settlement cannot be precluded from litigating their individual claims based on the judgment entered in the class action. *See* Opening Brief at 21-23. MetLife's failure to address this authority only underscores the weakness of its position here.

D. The Anti-Injunction Act Bars the Requested Injunction.

MetLife's arguments regarding the Anti-Injunction Act are equally unconvincing. To begin with, MetLife argues that this case falls within the "relitigation" exception to the Anti-Injunction Act because, absent an injunction, "the Behrend Plaintiffs . . . intend to use each of their cases to relitigate the claims that were settled in the class action." MetLife Response at 15. This is simply wrong as a matter of fact. As explained above, the Opt-Out Litigants merely seek to litigate their *own* claims that were *not* settled as part of the class action. MetLife's claim that this constitutes

"relitigation" of settled claims is a red herring designed to obscure the fact that the Opt-Out Litigants *opted out of the class.* That being so, it cannot be said that the Opt-Out Litigants are attempting to relitigate *anything* that was decided in the nationwide settlement.

Notably, MetLife does not even attempt to address our central arguments regarding the inapplicability of the relitigation exception to this case. As explained in our opening brief (at 30), this exception "is essentially a res judicata concept designed to prevent issues that have already been tried in federal court from being relitigated in state court." *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993); *see also In re General Motors Corp. Prods. Liab. Litig.*, 134 F.3d 133, 146 (3d Cir. 1998) (relitigation exception involves an inquiry into whether the "judgment" at issue would have res judicata or collateral estoppel effect). The inquiry in any case is whether the claims at issue would be barred by the applicable state doctrines of res judicata and collateral estoppel. There is no way that any such bar would apply to the Opt-Out Litigants because they are neither "parties" nor "privies" to the class action settlement. *See* Plaintiffs' Opening Brief at 30. If there were any doubt on this point, moreover, it would be laid to rest by the fact that *six different state court judges have already ruled that the allegations at issue in the nationwide settlement are relevant to the Opt-Out Litigant's individual claims*. *See id*; First Behrend Declaration ¶ 12. In the face of these rulings, it is impossible to conclude that any res judicata claim would prevail in a Pennsylvania state court. Once again, MetLife says nothing about any of these arguments. It does not even mention that the relitigation exception is subject to a res judicata inquiry, much less attempt to demonstrate why that test is met here. It simply remains silent, perhaps hoping that this Court will not notice the fatal flaws in its argument. Given that "any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts

to proceed in an orderly fashion . . .," *Prudential*, 261 F.3d at 364 (quoting *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 297 (1970), the relitigation exception cannot be relied on as a basis for the requested injunction.

MetLife also contends (for the first time) that the "necessary in aid of jurisdiction" exception to the Anti-Injunction Act applies to this case. *See* MetLife Response at 17. This claim is equally without merit. The Third Circuit has repeatedly made clear that this exception only applies in cases where "a parallel state court action threatens to *frustrate* proceedings and *disrupt* the orderly resolution of the federal litigation." *Prudential*, 261 F.3d at 365 (quoting *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1997)) (emphasis added). This exception is not applicable here, given that the nationwide settlement has already been finalized and would not be disrupted in any respect by permitting the Opt-Out Litigants to proceed in an unimpeded fashion.

MetLife nonetheless cites a number of cases for the proposition that an injunction is warranted to protect this Court's jurisdiction over the settlement. *See* MetLife Response at 16. The majority of these cases, however, involve situations where the state lawsuit threatens to disrupt on-going settlement proceedings before a federal district court.[8] None of these cases applies here, given that the nationwide settlement has been finalized and there is no possibility that the Opt-Out

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[8] *See Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 203 (3d Cir. 1993) (injunction of competing state court class action filed by class members was proper where "the prospect of settlement [of the federal case] was indeed imminent . . . and the stated purpose of the [state] suit is to challenge the propriety of the federal class action . . ."); *In re Baldwin-United Corp. Single Premium Deferred Annuities Ins. Litig.*, 770 F.2d 328, 336–38 (2d Cir. 1985) (injunction proper where state court proceedings "could only serve to frustrate the district court's efforts to craft a settlement in the litigation before it"); *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1332, 1335 (5th Cir. 1985) (injunction proper where state court proceeding filed by individuals who were also plaintiffs in pending federal class action "would clearly interfere with the multidistrict court's ability to dispose of the broader action pending before it.").

Litigants' cases will interfere with this Court's control over the class action. The two other cases cited by MetLife that involve finalized settlements are equally inapplicable, given that one involved the entry of an injunction to prevent *class members* from relitigating their released claims in a state proceeding (*In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425 (2d Cir. 1993)), and the other involved an injunction to bar a parallel state court class action that "would [have] destroy[ed] the settlement worked out over seven years, nullif[ied] this Court's work in refining its Final Judgment over the last ten years, add[ed] substantial confusion in the minds of a large segment of the state's population and subject[ed] the parties to added expense and conflicting orders." *Battle v. Liberty National Life Ins. Co.,* 877 F.2d 877, 882 (11th Cir. 1989).[9]

MetLife does not even attempt to argue that the Opt-Out Litigants' cases will interfere with the administration of the nationwide settlement (which has been effectively concluded). Instead, MetLife spills a good deal of ink discussing this Court's purported *in rem* jurisdiction over the settlement (*see* MetLife Response at 17), but that argument is besides the point. Even assuming that this Court possesses *in rem* jurisdiction here, the requested injunction is manifestly *un*necessary to protect that jurisdiction because the Opt-Out Litigants are not threatening to disrupt the class

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[9] MetLife also cites *Winkler v. Eli Lilly Co.*, 101 F.3d 1196 (7th Cir. 1997), which actually supports the Opt-Out Litigants' position here. First, in *Winkler*, the Court actually *reversed* the district court's entry of an injunction governing state court discovery proceedings. *Winkler*, moreover, held that the injunction was overly broad insofar as it included plaintiffs whose cases had been consolidated in the multi-district litigation, but later were remanded to state court – a situation similar to the position of the Opt-Out Litigants here. *Id*. at 1203. With respect to these plaintiffs, the Court held that it lacked authority to enter any orders in their individuals cases, explaining that although "courts have the authority to enjoin non-parties who 'are in a position to frustrate the implementation of a court order,' [it may only do so] 'under appropriate circumstances.'" *Id*. at 1203 n.7 (quoting *United States v. New York Telephone*, 434 U.S. 159, 174 (1977)). Those circumstances did not exist in *Winkler*, given that the state court litigants had never attempted to undermine or evade the authority of the federal court. The same conclusion is warranted here with respect to the Opt-Out Litigants.

settlement *at all*. The settlement is done, and the fact that the Opt-Out Litigants seek to rely on evidence that was also relevant to the class settlement does not threaten to "disrupt the orderly resolution of the federal litigation" in the least. *Prudential*, 261 F.3d at 365. This being so, the narrowly-construed "necessary in aid of jurisdiction" exception to the Anti-Injunction Act cannot be said to apply here.

CONCLUSION

For the foregoing reasons, we respectfully request that MetLife's request for an injunction be denied.

Respectfully submitted,

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