

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RECEIVED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

07 JUN 27 AM 9:59

FILED

RICHARD ARMATROUT, AS THE
EXECUTOR OF THE ESTATE OF
KAREN ARMATROUT,

PLAINTIFF,

vs.

WAL-MART STORES, INC. AND WAL-
MART STORES, INC. CORPORATION
GRANTOR TRUST

DEFENDANTS.

CLASS ACTION COMPLAINT
(Jury Demanded)

8:07CV1113-130EAJ

CLASS ACTION COMPLAINT

Richard Armatrout, as the Executor of the Estate of Karen Armatrout (the "Estate") seeks to recover life insurance benefits Wal-Mart wrongfully received upon the death of Karen Armatrout ("Karen"). The Estate asks the Court to maintain this suit as a class action.

JURISDICTION

1. The Court has jurisdiction over these claims under 28 U.S.C. § 1332 because the plaintiff and defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Venue is appropriate in this district because Wal-Mart is subject to personal jurisdiction in the Middle District of Florida. 28 U.S.C. § 1391 (a).

~~170~~ 42068
\$350

THE PARTIES

2. Richard Armatrout is a Florida citizen who resides in Tampa, Florida. He sues on behalf of the Estate of Karen Armatrout, deceased. Karen worked as an hourly-wage, rank-and-file employee at a Wal-Mart store in Tampa, Florida. She died in 1997 while residing in Tampa, Florida. Richard Armatrout is Karen's surviving spouse and the Executor of her estate.

3. Wal-Mart Stores, Inc. ("Wal-Mart") is a Delaware corporation headquartered in Bentonville, Arkansas. Wal-Mart may be served through its registered agent for service, CT Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

4. Wal-Mart Stores, Inc. Corporation Grantor Trust ("Trust") was established by Wal-Mart and may be served through its trustee, Wachovia Bank of Georgia, N.A. through L. M. Baker, Jr., its Chairman, President and Chief Executive Officer, 2034 Buena Vista Road, Winston Salem, North Carolina 27104.

WAL-MART IMPROPERLY INSURED THE LIVES OF ITS EMPLOYEES AND NAMED ITSELF POLICY BENEFICIARY

5. On December 28, 1993, Wal-Mart began insuring the lives of what would eventually total 350,000 Wal-Mart employees. The amount of insurance Wal-Mart purchased on each employee bore no relationship to aggregated projected liabilities to employees, as calculated in accordance with generally accepted actuarial principles.

6. Wal-Mart bought the policies from AIG Life Insurance Company and Hartford Life Insurance Company and designated the Trust as policy beneficiary.

Wal-Mart exclusively controlled the Trust and the Trust is Wal-Mart's *alter ego*. The Trust was established in Georgia purely as a sham to avoid unfavorable insurance regulations of other states.

7. Wal-Mart insured each of its employees who, in December 1993, were: (1) older than eighteen, (2) younger than seventy, (3) full time employees and (4) participants in the medical benefits plan.

8. In December 1993, Karen was: (1) older than eighteen, (2) younger than seventy, (3) a full time employee and (4) participated in the medical benefits plan.

9. The Estate believes, and therefore alleges, that Karen was insured by Wal-Mart under its COLI policies. The Estate believes, and therefore alleges, that Wal-Mart received policy benefits as a result of Karen's death.

WAL-MART HAD NO INSURABLE INTEREST IN KAREN'S LIFE AND HOLDS THE POLICY BENEFITS IN TRUST FOR THE ESTATE

10. The existence of an insurable interest is a fundamental requirement of any policy of insurance, regardless of subject matter. Life insurance is no different. Florida public policy has always required a beneficiary of a policy insuring the life of another to have an insurable interest in the insured person's life.

11. Wal-Mart never had an insurable interest in Karen's life or the lives of its other Florida rank-and-file employees.

12. When a life insurance policy erroneously names a beneficiary that does not possess an insurable interest in the life of the person insured, the designation is void. By operation of law, the designated beneficiary holds the policy

benefits in trust for the insured person's estate when the designated beneficiary has no insurable interest in the insured person's life.

13. Under the authority of 28 U.S.C. § 2201, the Estate and members of the putative class it seeks to represent are entitled to a declaration that neither Wal-Mart nor the Trust had an insurable interest in the lives of Wal-Mart's Florida rank-and-file employees.

14. Upon the rendition of the declaration described above, the Estate and members of the putative class it seeks to represent are entitled to the imposition of a constructive trust over the policy benefits paid to Wal-Mart and the Trust as a result of the deaths of Wal-Mart's Florida rank-and-file employees.

WAL-MART'S UNAUTHORIZED PUBLICATION OF KAREN'S PRIVATE INFORMATION

15. Wal-Mart required Karen to provide it with her name, Social Security number, date of birth, sex, state of residence and other information as a condition of employment. Karen and every other Wal-Mart employee, as compelled by law, disclosed that personal information to Wal-Mart for the sole purpose of employment. Wal-Mart regards this information as confidential.

16. Wal-Mart gave its employees' personal information to the Trust.

17. Wal-Mart and the Trust then published, printed and displayed the employees' personal information to Hartford Life Insurance Company and AIG Life Insurance Company and several insurance brokerage firms for the commercial and trade purpose of obtaining the policies insuring the employees' lives and collecting the policy benefits when the employees died.

18. Neither Karen nor any of Wal-Mart's other Florida rank-and-file employees ever gave Wal-Mart or the Trust express written or oral consent to use their personal information to purchase the insurance policies on their lives or profit from their deaths through the receipt of the policy benefits.

19. Wal-Mart and the Trust received a financial benefit, through the policy proceeds they received, from the unauthorized publication of the employees' private information. The Estate and members of the putative class it seeks to represent are entitled to restitution to disgorge the policy benefits Wal-Mart and the Trust improperly received through the unauthorized publication of Karen's private information and the private information of the class of those similarly situated and any damages permitted by law, including punitive or exemplary damages.

20. Wal-Mart's and the Trust's misuse of the employees' identities was intentional and malicious and done in bad faith and without justification. Wal-Mart's and the Trust's misuse of the employees' personal information was of a gross and flagrant character and an entire want of care that demonstrates a conscious indifference to the consequences and a reckless indifference to the rights of others such that the jury should be entitled to give damages for the sake of example and by way of punishing Wal-Mart and the Trust.

**WAL-MART AND THE TRUST WERE UNJUSTLY ENRICHED BY THEIR RECEIPT OF THE
POLICY BENEFITS**

21. A person's right to use and control her identity is akin to an intangible personal property right which may be transferred to a third person through a license. Karen owned all the value associated with her name, likeness, and other aspects of

her identity. She was entitled, through license or otherwise, to control who profited from the use of her identity.

22. Wal-Mart and the Trust obtained a benefit from Karen and Wal-Mart's other Florida rank-and-file employees when it took their identities and personal information, without consent, to obtain the insurance policies on the employees' lives to benefit Wal-Mart and the Trust. Wal-Mart and the Trust appreciated that benefit and used it for their own unlawful advantage. Wal-Mart and the Trust accepted and retained the benefit under circumstances that make it inequitable for them to retain it without paying the value thereof.

23. Wal-Mart was unjustly enriched by the policy benefits it received from employee deaths, including any benefits it received from Karen's death. The Trust was likewise unjustly enriched by its receipt of the policy benefits. The Estate and all others similarly situated are entitled to all benefits Wal-Mart and the Trust received from the policies to disgorge their unjust enrichment.

MISAPPROPRIATION

24. Karen and every other Wal-Mart employee disclosed personal information (specifically, name, date of birth and social security number) to Wal-Mart for the sole purpose of employment. Wal-Mart regards this information as confidential.

25. Wal-Mart gave its employees' personal information to the Trust. Wal-Mart and the Trust gave the personal information to Hartford Life Insurance

Company and AIG Life Insurance Company to purchase and collect upon the COLI policies insuring the employees' lives.

26. Wal-Mart and the Trust received a financial benefit, from the COLI policy proceeds they received, by misappropriating the employees' private information. The Estate is entitled to restitution to disgorge the COLI policy benefits Wal-Mart and the Trust improperly received by misappropriating Karen's private information and the private information of other Wal-Mart employees.

27. Wal-Mart and the Trust's misappropriation of the employees' identities was intentional and malicious and done in bad faith and without justification. Wal-Mart and the Trust's misappropriation of the employees' personal information was of a gross and flagrant character and an entire want of care that demonstrates a conscious indifference to the consequences and a reckless indifference to the rights of others such that the jury should be entitled to give damages for the sake of example and by way of punishing Wal-Mart and the Trust.

FRAUDULENT CONCEALMENT AND DISCOVERY RULE

28. Wal-Mart, acting in the capacity as a fiduciary, never informed its employees that Wal-Mart would itself receive policy benefits when the covered employees died. To the contrary, any disclosures Wal-Mart made about the insurance policies affirmatively stated that Wal-Mart would not keep any of the policy benefits. Any disclosures Wal-Mart may allege that it made to employees concerning the insurance on employees' lives was superficial, bare of any data or concrete information, vague and a mere suggestion that the employees' lives would be insured for Wal-Mart's benefit. Wal-Mart did not explain the financial arrangements of its insurance policies in writing or in plain English. Because of Wal-Mart's acts and omissions, no person of ordinary prudence, including Karen, could have discovered that Wal-Mart and the Trust had misused employees' private information to illegally receive policy benefits as a result of employees' deaths. No person of ordinary prudence could have anticipated that Wal-Mart and the Trust would violate applicable law by secretly buying illegal insurance policies on employees' lives. Because of Wal-Mart's intentional efforts to keep the policy benefits secret, no person of ordinary prudence could have discovered that Wal-Mart or the Trust was holding the illegal policy benefits.

**WAL-MART'S LITIGATION POSITIONS ARE RESTRICTED BY THE DOCTRINES OF
COLLATERAL ESTOPPEL AND ISSUE PRECLUSION**

29. Wal-Mart has been involved in extensive litigation involving its COLI policies. Several matters have already been decided against it. As described below, the doctrines of collateral estoppel and issue preclusion bar Wal-Mart from re-litigating issues that have previously been decided adversely to Wal-Mart.

30. The Court in Cause Number H01-2139; *Scott Mayo, et al., v. Hartford Life Insurance Company, et al.*; In the United States District Court for the Southern District of Texas, Houston Division previously decided that Wal-Mart:

contrived the connection to Georgia, which otherwise had no relationship to Defendants, by situating the Trust there and performing certain acts there on the thousands of COLI policies covering employees nationwide.

The stated issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

31. The Court in Cause Number H01-2139; *Scott Mayo, et al., v. Hartford Life Insurance Company, et al.*; In the United States District Court for the Southern District of Texas, Houston Division, previously decided that Wal-Mart's contacts with the State of Georgia regarding its COLI policies were artificial, self-serving, and contrived and could not serve as the basis for the application of Georgia law. The issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the

prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

32. The Court in Cause Number H01-2139; *Scott Mayo, et al., v. Hartford Life Insurance Company, et al.*; In the United States District Court for the Southern District of Texas, Houston Division previously decided that Wal-Mart's alleged disclosures of its COLI policies were superficial, bare of any data or concrete information, vague and a mere suggestion that the employees' lives would be insured for Wal-Mart's benefit. The issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

33. The Court in Cause Number H01-2139; *Scott Mayo, et al., v. Hartford Life Insurance Company, et al.*; In the United States District Court for the Southern District of Texas, Houston Division previously decided that Wal-Mart did not explain the financial arrangements of its COLI policies to the covered employees in writing or in plain English. The issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

34. The Court in Cause Number H01-2139; *Scott Mayo, et al., v. Hartford Life Insurance Company, et al.*; In the United States District Court for the Southern District of Texas, Houston Division previously decided that Wal-Mart's alleged

disclosures of its COLI policies were not sufficient to place the covered employees on notice of the policies insuring their lives. The issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

35. The Court in Cause Number 02-21059; *Scott Mayo, et al. v. Hartford Life Insurance Company, et al.*, In the United States Court of Appeals for the Fifth Circuit decided that Wal-Mart bought the COLI policies on its employees' lives without the employees' knowledge or consent. The issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

36. The Court in Cause Number 02-21059; *Scott Mayo, et al. v. Hartford Life Insurance Company, et al.*, In the United States Court of Appeals for the Fifth Circuit decided that Wal-Mart's employees whose lives were insured by Wal-Mart's COLI policies did not consent to those policies in writing or otherwise. The issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

37. The Court in C.A. No. 19875, *Wal-Mart Stores, Inc., et al. v. AIG Life Insurance Company, et al.*; in the Court of Chancery of New Castle County, Delaware previously decided:

There was also an obvious and known risk that Wal-Mart would be found to lack an insurable interest in the lives of its rank-and-file employees. Wal-Mart used a Georgia trust to purchase the policies specifically to take advantage of Georgia law that allowed it to have an insurable interest in its employees. To make such a decision, Wal-Mart must have been aware that other states (such as Texas) do not allow employers to have an insurable interest in their employees. Given that knowledge, the risk of a court in such a state applying its own law and finding that Wal-Mart did not have an insurable interest in its employees was eminently foreseeable.

Wal-Mart's awareness of, and concern about, these risks is reflected in the very application it filed for the AIG policies. Wal-Mart and AIG executed a Letter of Understanding as part of that application process that specifically addresses Wal-Mart's concerns with "the tax consequences of loans and/or withdrawals from the Policies and the deductibility thereof." An exhibit to this letter deals with the possibility that Wal-Mart might be found to lack an "insurable interest" in the lives of its employees.

The stated issue was previously decided and is identical to one presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

38. The Court in the case *Frank O. Lewis, et al v. Wal-Mart Stores, Inc. and Wal-Mart Stores, Inc. Corporation Grantor Trust*; Cause No. 02-CV-944-EA(M); In the United States District Court for the Northern District of Oklahoma decided that Wal-Mart did not establish that it had a substantial interest in Alene Jacobson's life or that she was of 'special importance' to the company. Hence, Wal-Mart had no

insurable interest in her life "and Plaintiffs are entitled to partial summary judgment that Wal-Mart had no insurable interest in the lives of its rank-and-file employees in Oklahoma." These issues were previously decided and are identical to issues presented in this action. The prior action has been fully adjudicated on the merits. Wal-Mart was a party to the prior adjudication and Wal-Mart had a full and fair opportunity to litigate the issue in the prior action.

CLASS ACTION ALLEGATIONS

39. The Estate requests class certification. The proposed class will be comprised of the estates of Wal-Mart's Florida employees whose deaths resulted in the payment of COLI policy benefits to Wal-Mart or the Trust. The requested plaintiff class meets the prerequisites of a class action under FED. R. CIV. P. 23(a) and is maintainable under FED. R. CIV. P. 23 (b)(3).

40. The Estate asks for certification of a class defined as:

The estates of Wal-Mart associates whose lives were insured under Corporate Owned Life Insurance policies purchased by Wal-Mart or the Trust while the employees resided in or died in Florida and whose deaths resulted in the payment of insurance policy benefits to Wal-Mart or the Trust.

41. The putative class defined above is so numerous that joinder of all class members is impracticable. While the precise number of class members is unknown, it is believed that there are far more than fifty estates of Wal-Mart's Florida associates whose lives were insured under Corporate Owned Life Insurance policies purchased by Wal-Mart or the Trust and whose deaths resulted in the payment of policy benefits to Wal-Mart or the Trust.

42. The Estate is an adequate representative of the putative class. It has exactly the same interest as all putative class members: seeking the maximum recovery of the policy benefits paid to Wal-Mart from life insurance policies on Wal-Mart's deceased rank-and-file Florida employees. The Estate does not have an insufficient stake in the outcome or interest antagonistic to the unnamed members. Moreover, the Estate will take an active role in this litigation on behalf of the putative class members.

43. The Estate is also an adequate class representative because it has selected experienced counsel who will adequately represent the class.

44. All questions of law and fact that are material to this litigation are common to all putative class members. Each of the deceased persons who meet the class definition were insured by one of Wal-Mart's illegal insurance policies. Wal-Mart lacked an insurable in each of their lives and improperly received insurance benefits upon their deaths. Each policy on the deceased persons' lives violated Florida law because Wal-Mart did not have the required insurable interest and the deceased former associates never consented to the policies in writing or applied for the insurance on their lives.

45. The questions of law and fact common to all putative class members predominate over questions, if any, that affect only individual members. The decedents whose estates the class members represent had insurance policies taken out on their lives by Wal-Mart, without consent, and the benefits of those policies were paid upon their deaths to Wal-Mart. The pivotal issues common to all

putative class members in this case are: (1) whether an employer has an insurable interest in its rank-and-file employees under Florida law; (2) whether Wal-Mart and the Trust misappropriated the employees' identities; and (3) whether Wal-Mart and the Trust were unjustly enriched by the receipt of policy benefits. These questions can be answered in a single adjudication, thus achieving an economy of scale where a uniform decision affects the rights of all similarly situated persons. The putative class is sufficiently cohesive to warrant adjudication by representation. Each member has suffered the same injury as a result of the business practice of Wal-Mart. Each member's loss flows from that business practice. The disparities between Class members, if any, are minute.

46. A class action is a superior to other methods for the fair and efficient adjudication of this controversy. The legal and factual issues surrounding the Estate's case are identical to those that each putative class member would bring in an individual suit. Filing many individual lawsuits on the same issue would constitute an egregious waste of judicial resources. Each putative class member's interest in maintaining separate actions is minimal. Individual actions against Wal-Mart for the proceeds of life insurance benefits would be quite expensive, assuming that individual estates would discover their rights to recover and sue on them. Counsel for the Plaintiff knows of no other action of this type in Florida brought on behalf of a deceased employee by the decedent's estate.

47. Compared to most class actions, the management of this case as a class action would be remarkably simple. Wal-Mart, its insurers, brokers and the

Trust kept detailed records of transaction relating to the policies at issue. These records show, among other things: (1) the identities of Wal-Mart's employees whose lives were insured, (2) the claims made for policy benefits, (3) the amounts and dates of benefit payments and (4) the account balances maintained on the policies. Thus, virtually every material issue in this case can be resolved simply by referencing documents possessed by Wal-Mart and those acting on its behalf.

PRAYER

48. As soon as practicable, the Estate asks the Court to certify this case as a class action. See FED. R. CIV. P. 23(c).

49. The Estate and members of the plaintiff class ask for the following:
- (a) a final judgment declaring that neither Wal-Mart nor the Trust had the necessary insurable interest in the life of Karen Aramatrout or Wal-Mart's Florida employees whose deaths resulted in the payment of COLI policy benefits to Wal-Mart or the Trust;
 - (b) a final judgment awarding the Estate all benefits Wal-Mart or the Trust received from the policies on Wal-Mart's Florida employees;
 - (c) a final judgment disgorging the money unjustly had and received by Wal-Mart and the Trust through the life insurance policies at issue;
 - (d) a final judgment sufficient to disgorge the money Wal-Mart and the Trust improperly received from the unauthorized publication of Wal-Mart employees' personal information and all damages permitted by law, including punitive or exemplary damages; and

- (f) pre-judgment and post-judgment interest in an amount allowed by law.

The Estate requests costs and attorneys' fees, and any other relief, in law or equity, to which it is entitled.

Respectfully submitted,



Craig P. Kalil
Florida Bar No. 607282
Aballi Milne Kalil & Escagedo, P.A.
2250 SunTrust International Center
One Southeast Third Avenue
Miami, Florida 33131
Tel: (305) 373-6600
Fax: (305) 373-7929
ckalil@aballi.com

Scott M. Clearman
Texas Bar No. 04350090
Michael D. Myers
Texas Bar No. 00791331
Robert H. Espey II
Texas Bar No. 24007163
MCCLANAHAN & CLEARMAN, L.L.P.
Trial Counsel
(Specially Appearing)
4100 Bank of America Center
700 Louisiana
Houston, Texas 77002
Telephone: (713) 223-2005
Facsimile: (713) 223-3664
scott@mcllp.com
mike@mcllp.com
bob@mcllp.com