

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

EVELYN MORSE, individually)	
and on behalf of all others similarly)	
situated,)	
)	
Plaintiff,)	
)	
v.)	99 C 193
BANKERS LIFE & CASUALTY)	Judge Gottschall
COMPANY and PCS, INC.,)	
)	
Defendant.)	

CLASS COMPLAINT

INTRODUCTION

1. This is a class action complaint brought by Plaintiff, Evelyn Morse, against Defendant, PCS, Inc. (“PCS”), for its wrongful classification of the generic drug tamoxifen as a brand name drug. Defendant, Bankers Life and Casualty Company (“Bankers Life”) working in concert with PCS, utilizes this improper classification to avoid its obligation to provide 100% coverage for Plaintiff’s prescription medication. This wrongful classification does not result from error. Rather, as Bankers Life has stated, it results from PCS’ policy to classify the drug as such. Accordingly, Plaintiff hereby seeks injunctive relief and compensatory relief for the damages she has suffered as a result of the Defendants’ behavior. Plaintiff brings the following counts: prayer for injunctive relief (Count I); breach of contract for failure to pay benefits under policy as to Bankers Life (Count II); breach of duty of good faith and fair dealing (Count III); violation of 815 ILCS 510/1 et seq., and 815 ILCS 505/1 et seq. (Count IV); Bankers Life and PCS -- civil conspiracy (Count V); Bankers Life and PCS -- violation of 18 U.S.C. 1962(c) et seq. (Count VI).

PARTIES

2. The Plaintiff, Evelyn Morse, resides at 850 Pleasant Street, Apt. # 905, New Bedford, MA 02740. Plaintiff is an 86 year old female who suffers from breast cancer. Because this condition required her to regularly consume prescription medications, she was particularly dependant upon the prescription drug benefits provided in her Medigap insurance policy.

3. Bankers Life is a corporation with its principal place of business located at 222 Merchandise Mart Plaza, Chicago, IL 60654-2001. Bankers Life is Plaintiff's Medigap insurance provider.

4. PCS, Inc., ("PCS") is a corporation with its principal place of business located at 9501 East Shea Boulevard, Scottsdale, AZ 85260. PCS is a pharmaceutical benefits management corporation that processes Bankers Life's insureds' prescription drug claims through its own systems, then informs Bankers Life of its financial obligation on the claim.

JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. § 1331 as there exists federal question jurisdiction over Plaintiff's claims. Plaintiff's claims arise from a violation of 18 U.S.C. § 1961 et seq. Defendants are actors within an enterprise that affects interstate commerce. Defendants are conducting the affairs of that enterprise through a pattern of racketeering activity.

6. Jurisdiction is also proper under 28 U.S.C. § 1332 as there exists complete diversity between Plaintiff and Defendants. Plaintiff resides in New Bedford, Massachusetts. Bankers Life is a corporation which maintains its principal place of business in Chicago, Illinois. PCS is a corporation which maintains its principal place of business in Scottsdale, Arizona.

7. Upon information and belief, the amount in controversy exceeds \$75,000.00 for Plaintiff, exclusive of interest and costs, by virtue of the following:

(1) The injunctive relief Plaintiff seeks is for the well-being of all consumers who are prescribed generic drugs, such as tamoxifen, who are subject to PCS' prescription claims

processing plan. This injunctive relief asks that PCS be required to cease classifying generic drugs, such as tamoxifen, as brand name drugs.

(2) Multiple damages in which Plaintiff has an undivided interest and which may be assessed against Defendants pursuant to 815 ILCS 510/1 et seq., and 815 ILCS 505/1 et seq.

8. Venue is properly laid as Bankers Life maintains its principal place of business within this District.

BACKGROUND

9. PCS has created an industry that has come to be known as pharmaceutical benefits management. In essence, this system of prescription management is a sub-industry within the larger managed health care industry. PCS is the self-proclaimed creator and leader in this industry. Its customers include employers, insurance companies, HMOs, and other organizations that pay for health care products and services.

10. PCS contracts with such payers to process their prescription claims. Upon purchasing a policy from an insurer or electing an insurer through her employer, the beneficiary receives notice from the employer or insurer that it has arranged for the beneficiary to participate in the PCS program. The beneficiary is told that participation in this program will ensure accurate and speedy processing of the beneficiary's prescription claims, and will eliminate the hassle of tedious paperwork.

11. The processing of claims under the PCS system works in the following manner: the patient presents the prescription and the PCS card to the pharmacist; before the pharmacist releases the prescription to the patient, the pharmacist first accesses PCS' computer system, through which all claims are processed, and enters the patient's identifying information and prescription information; PCS' database electronically transfers information regarding the patient's benefit eligibility and pricing information to the pharmacy's computer terminal; PCS' database states

whether a copayment is due; if a copayment is stated to be owed, the patient must make the copayment at the time of purchase to obtain the prescription; PCS concludes the transaction by recording it for processing and payment by the insurer or employer. *See* PCS Internet Website, <<<http://www.pcshs.com>>>, visited December 28, 1998. For the Court's convenience, this material is attached as Exhibit A.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

12. Medicare is a federal health insurance program that helps its beneficiaries pay for health services. Beneficiaries of this program include senior citizens and disabled individuals. Medicare benefits are provided under two parts. Part A, or hospital insurance, pays for inpatient hospital, skilled nursing facility, home health, and hospice services. Part A is financed primarily by a Social Security payroll tax paid by employees, employers, and the self-employed. Part B is a voluntary insurance plan covering physician services and a broad range of other ambulatory services, such as laboratory and x-ray services and medical equipment used in the home. Part B coverage requires the insured to pay 25 percent of the cost through monthly premiums, with the remaining 75 percent being funded through general federal revenues.

13. As Medicare Parts A and B do not cover every type of health service, including prescription medications, many Medicare beneficiaries purchase additional insurance policies that supplement their policies to help pay program deductibles and any coinsurance, and/or pay for some services not covered by Medicare. These supplemental policies have become commonly known as "Medigap" policies.

14. In Massachusetts, where Plaintiff purchased her Medigap policy, there are currently three standard plans that can be sold which range from approximately \$500 to \$3,000 per year, which are commonly referred to as follows:

- a. Medicare Supplement Core;

- b. Medicare Supplement 1: does not include outpatient prescription drug coverage; and
- c. Medicare Supplement 2: includes outpatient drug coverage as follows:
 - (1) \$35 deductible per calendar quarter;
 - (2) 100 percent covered for generic drugs and 80 percent covered for name brand drugs; and
 - (3) no maximum limit for drug benefit.

15. The various plans and range of cost described above demonstrate that the senior citizens and disabled individuals who purchase these policies carefully select and pay for the plan that most fulfills their individual needs.

16. Many Medicare/Medigap policyholders, such as Plaintiff, suffer from permanent conditions which require continuous use of one or more prescription medications. Through this supplemental coverage, policyholders are able to alleviate some or all of the financial burden imposed by the high cost of prescription medications. Since the majority of these individuals live on relatively small fixed incomes, they pay the cost of the plan they choose with the expectation that they will receive all of the coverage afforded to them by their policies. Accordingly, a lapse in coverage, no matter how trivial, has the potential to impose a substantial financial hardship on these individuals.

17. Plaintiff purchased a Medigap insurance policy from Bankers Life and Casualty Company (“Bankers Life”) on November 10, 1997. This policy included coverage for prescription drugs, which her Medicare policy did not cover.

18. The policy expressly provides for coverage of prescription drugs as follows:
- a. Bankers Life will provide 100 percent coverage for all *generic* prescription drugs obtained by the insured. (emphasis added)
 - b. Bankers Life will pay 80 percent of the cost for all *brand name* prescription drugs obtained by the insured, leaving the insured with a 20 percent copay for the remainder. (emphasis added)¹

¹ See Exhibit B attached hereto.

19. Plaintiff's policy, in its definitions section, distinguishes the two types of drugs as follows:

- a. Generic Drug: prescription drug sold under its non-proprietary name. It is the *chemical equivalent* of a brand name drug. (emphasis added)
- b. Brand Name Drug: prescription drug sold under a *manufacturer's registered trademark*. (emphasis added)²

20. As stated above, Plaintiff suffers from breast cancer. For approximately the last five years, her oncologist has been prescribing the drug tamoxifen as part of her treatment. Tamoxifen is a *generic* drug that interferes with the effects of the body's estrogen on breast cancer cell growth. As a treatment for breast cancer, the drug slows or stops the growth of cancer cells that are already present in the body. Tamoxifen has also been shown to help prevent the original breast cancer from returning, and also prevent the development of new cancers in the opposite breast.

21. While tamoxifen is a generic drug with a list price of approximately \$80 for a bottle containing 60 tablets, it is also marketed as a brand name drug called *Nolvadex* which has a list price of approximately \$90 for a bottle containing the same number of tablets. The two drugs are functionally equivalent and require the same dosage to be effective. An analogous situation would be choosing whether to purchase a generic ibuprofen drug or to purchase the brand name Advil when one has a headache. Although each has the same effect on the individual's physical well-being, the brand name drug carries a greater financial cost to the beneficiary. Here, however, the difference is not only the price differential between the two products, but more importantly, the impact it has on the Plaintiff's coverage.

22. Each month, Plaintiff obtains her prescriptions at a Walgreens Pharmacy near her residence.

23. This Walgreens is one of approximately 54,000 authorized "PCS" pharmacies located throughout the United States. This figure represents approximately 98 percent of the

² See Exhibit C attached hereto.

pharmacies currently operating in the United States. (See PCS' web site at WWW. PCSHS.com.)

24. Plaintiff's prescription lists the generic drug tamoxifen as the prescribed drug. Plaintiff's oncologist, who also holds a Ph.D. in Pharmacology and is a registered pharmacist, specifically prescribes tamoxifen because it is a generic drug. Accordingly, Bankers Life should be covering 100 percent of the cost of these prescriptions.

25. Each time Plaintiff obtains her prescription, however, she is required to pay a 20 percent copay up front to obtain her prescription.

26. The reason Plaintiff is required to pay 20 percent of the cost is because PCS wrongfully classifies tamoxifen as a brand name drug.

27. Since November of 1997, Plaintiff has been charged a 20 percent copay each time she filled her monthly prescription. This results in an additional monthly out of pocket expense for Plaintiff.

28. In an effort to avoid these copayments, Plaintiff recently requested that her oncologist prescribe the generic equivalent of the drug she had been taking. Her oncologist informed her that he had never prescribed a brand name drug to her, and that the prescription drugs she had been taking were generic.

29. Upon learning that PCS had been wrongfully requiring her to pay a 20 percent copayment, Plaintiff contacted her insurer Bankers Life.

30. Bankers Life's response to Plaintiff was that PCS' "system" showed tamoxifen as a brand name drug. Further, Bankers Life stated that PCS had no intention of changing its system in the near future, so Plaintiff would be required to continue paying the 20 percent copayment. (*See Letter from Bankers Life to Plaintiff Dated October 20, 1998*, attached as Exhibit D.)

31. Rather than promising to remedy the situation created by PCS' wrongful behavior, however, Bankers Life elected to resolve the issue by imposing a continued hardship on Plaintiff. Plaintiff lives on a fixed income consisting of social security benefits and a small widow's pension. Plaintiff is not in a position to be disbursing her limited funds each month for prescription drugs that

Bankers Life should rightfully pay in full when PCS first processes the claim. Unfortunately, Defendants have informed Plaintiff that she must continue to make the copayments out of her own pocket each month to obtain her prescription.

32. Bankers Life's failure to pay 100 percent of Plaintiff's prescription charges at the time the claim is submitted is a breach of contract. Moreover, Bankers Life's knowing failure to stop PCS from wrongfully classifying prescription drugs, wrongfully reducing Plaintiff's benefits, and requiring Plaintiff to continue making copayments to receive her prescription is a breach of Bankers Life's duty of good faith and fair dealing which is inherent in its contract with Plaintiff.

33. Based on information and belief, PCS wrongfully codes generic drugs, such as tamoxifen, as brand name drugs. These wrongful classifications are the result of PCS' "database system" and company policy. Moreover, these wrongful classifications result in a substantial savings for Bankers Life and compensation for PCS.

34. Based on information and belief, Bankers Life is aware of, and likely condones, this wrongful behavior by PCS. PCS' wrongful classification results in the beneficiary bearing 20 percent of the cost of the prescription, thereby reducing Bankers Life's liability from 100 percent to 80 percent. As a result of this behavior, Bankers Life is the recipient of substantial savings. When confronted by Plaintiff regarding PCS' behavior, Bankers Life did not respond in a manner that demonstrates an intention to correct PCS' behavior with respect to all policyholders. Rather, Bankers Life's response indicates an attempt to temporarily appease the individual policyholder who uncovered the wrongful behavior, continue breaching its contract with Plaintiff, and continue requiring the wrongful copayments for all other insureds who are similarly situated as the Plaintiff.

35. Based on information and belief, Bankers Life has not taken any remedial measures with respect to Plaintiff's complaint, such as notifying other affected policyholders of PCS' behavior and/or discontinuing its utilization of PCS' services until it corrects its behavior.

36. Tamoxifen is not a brand name drug. Bankers Life has stated that PCS has no intention of correcting its wrongful classification of tamoxifen. Bankers Life has also informed

Plaintiff that it has no intention of taking any steps to prevent PCS from continuing to charge her with a monthly out of pocket copayment. This reveals the substantial likelihood that this wrongful classification did not result from error, but rather an intentional course of conduct. *See* Exhibit D.

CLASS ACTION ALLEGATIONS

37. Plaintiff seeks to certify a Class of all patients who are part of PCS' network, who are using generic prescription drugs, such as tamoxifen, and who are being charged for such drugs as though they are brand name drugs (hereinafter referred to as the "Class"). The Class is so numerous as to make joinder impracticable. The exact number of Class Members is unknown, but can be determined from records maintained by PCS.³ A majority of these patients may be unaware that they have claims. Whether or not they are aware, however, their claims have damages in amounts that may be too small to justify the expense of a separate lawsuit. Aggregated, however, they make litigation financially feasible.

38. Plaintiffs' claims are typical of the claims she seeks to prosecute for the Class. Plaintiff will fairly and adequately represent the Members of the Class and patients of the Class who are victims of the same misconduct. Plaintiff has no interests that are antagonistic to putative Class Members. Plaintiff will vigorously pursue the claims that she asserts on behalf of the Class and the Class' patients.

39. Plaintiff has retained counsel who are competent and experienced in complex federal court litigation and class action litigation, and who have represented other clients in complex federal court and class action litigation. Counsel are prepared to vigorously pursue this action on behalf of

³ PCS has stated on its internet web page that it manages and monitors 300 million individual prescriptions each year representing \$10 billion in drug expenditures. See Exhibit A. PCS' customers include 4 million people under the Federal Employees Program (FEP), 11 million HMO/PPO members, 16 million employees of self-insured companies, 143 insurance carriers, and 50 Blue Cross Shield Plans. *Id.*

Plaintiff and the Class Members.

40. Common questions of law and fact affect the rights of each member of the Class and common relief, including injunctive relief and monetary damages, is sought for the Class.

41. Numerous and substantial questions of law and fact, common to all Members of the Class, will control in this litigation and will predominate over any so called individual issues.

42. Among the common questions of law and fact with respect to the Members of the Class are the following:

- (a) whether Defendant PCS wrongfully classifies generic drugs, such as tamoxifen, as brand name drugs;
- (b) whether Defendant Bankers Life has breached its contract with Plaintiff and other Class Members with respect to payment of claims;
- (c) whether Defendant Bankers Life breached its inherent duty of good faith and fair dealing;
- (d) whether Defendants' conduct is a violation of the RICO Act;
- (e) whether Defendants maintain a policy of concealing and/or failing to disclose to Plaintiff and other Class Members the very material fact that generic drugs, such as tamoxifen, are not brand name drugs;
- (f) whether the impact of Defendants' uniform conduct, which imposes an unjustified financial expenditure on Plaintiff and the other Class Members, warrants the issuance of a preliminary and permanent injunction requiring Defendant PCS to cease its practice of classifying generic drugs, such as tamoxifen, as brand name drugs; and
- (g) whether Defendants' uniform conduct warrants the imposition of punitive damages.

43. A class action provides a fair, efficient, and superior method, if not the only method, for adjudicating this controversy. The substantive claims are substantially the same and will require evidentiary proof of the same kind and application of the same to a limited number of categories of law. Moreover, the immediate injunctive relief Plaintiff seeks can only be accomplished by

utilization of the Class action mechanism.

COUNT I INJUNCTIVE RELIEF

Plaintiff realleges paragraphs 1 through 43 of the preceding pages as if fully set forth herein and further states:

44. A mandatory order of this Court is sought to require Defendants to cease classifying generic drugs, such as tamoxifen, as brand name drugs.

45. To correct the maladies as described in the preceding paragraphs, Plaintiff has no adequate remedy at law. Each time Plaintiff attempts to obtain her prescription, she is wrongfully charged a copayment of 20 percent. Monetary damages will not provide Plaintiff with an adequate remedy because Plaintiff and other senior citizens and disabled individuals who are similarly situated have limited incomes. Any diminution in their monthly income, no matter how slight, has a substantial impact on Plaintiff and the other Class Members' ability to cover other living expenses, such as food, housing, and medical care.

46. Based on Defendants' conduct, which is described above, there is a great likelihood that Plaintiff and the putative Class will prevail on the merits of this lawsuit. Moreover, an injunction would promote the public good by ensuring that individual insureds, particularly seniors and disabled individuals in a financial position similar to that of the Plaintiff, are not forced to pay for services and benefits for which they have already paid premiums to obtain, to the detriment of their ability to live.

COUNT II BREACH OF CONTRACT FOR FAILURE TO PAY BENEFITS UNDER THE POLICY AS TO BANKERS LIFE

Plaintiff realleges paragraphs 1 through 46 of the preceding pages as if fully set forth herein and further states:

47. Plaintiff's insurance policy with Bankers Life expressly states that Bankers Life shall pay 100 percent of the cost of all generic drugs prescribed to Plaintiff.

48. Since the inception of this policy in November of 1997, Plaintiff has been prescribed and has obtained monthly prescriptions for the generic drug tamoxifen.

49. Each month, Plaintiff has been charged a 20 percent copayment on generic drugs in breach of the express language contained in her policy.

50. As a result of Defendant's breach of contract, Plaintiff has suffered damages.

**COUNT III BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING
AS TO BANKERS LIFE**

Plaintiff realleges paragraphs 1 through 50 of the preceding pages as if fully set forth herein and further states:

51. Pursuant to its insurance contract with Plaintiff, Bankers Life owes Plaintiff a duty of good faith and fair dealing.

52. According to the terms of Plaintiff's insurance policy with Bankers Life, Plaintiff is entitled to 100% coverage of prescriptions for generic drugs. Hence, Plaintiff should not be required to pay any copayments for such drugs.

53. Plaintiff has been repeatedly charged a copayment for the generic drug, tamoxifen.

54. When Plaintiff informed Bankers Life of PCS' wrongful behavior, Bankers Life responded by informing Plaintiff that she would be required to continue paying copayments.

55. Accordingly, Bankers Life is acting in bad faith by allowing the acknowledged wrongful acts of PCS to impose a continued financial hardship on Plaintiff.

56. As a result of Bankers Life's breach of its duty to act fairly and in good faith, Plaintiff has been denied the full benefit of her contract with Defendant, and has suffered damages which continue to multiply with each passing month.

**COUNT IV VIOLATION OF 815 ILCS 510/1 et seq., ILLINOIS UNIFORM DECEPTIVE
TRADE PRACTICES ACT; and 815 ILCS 505/1 et seq.,
ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

Plaintiff realleges paragraphs 1 through 56 of the preceding pages as if fully set forth herein and further states:

57. Defendants are both engaged in wrongful acts which have occurred in the course of conduct involving commerce.

58. Defendants have engaged in unfair and deceptive acts and practices by misrepresenting the generic nature of Plaintiff's and other Class Members' prescription drugs, and, by concealing the very material fact that Plaintiff's prescription required the purchase of a generic drug.

59. When confronted with the fact Defendants were misclassifying drugs, Defendants stated that this wrongful policy would continue, and Plaintiff would be required to pay a 20 percent copayment each month when she obtained her prescription.

60. Defendants unfair and deceptive acts and practices were carried out willfully, wantonly, and with reckless disregard for Plaintiff and other Class Members.

61. The unlawful, unfair, and deceptive acts and practices of Defendants have caused direct and foreseeable monetary damages to Plaintiff and Class Members. Said violations warrant the imposition of punitive damages under 815 ILCS 505/1 et seq. and 815 ILCS 510/1 et seq.

62. In addition, these unlawful, unfair, and deceptive trade acts and practices have caused consequential damages to Plaintiff and other members of the class.

COUNT V CIVIL CONSPIRACY

Plaintiff realleges paragraphs 1 through 62 of the preceding pages as if fully set forth herein and further states:

63. Defendants have engaged, and continue to engage, in a conspiracy to fraudulently

deprive Plaintiff and other Class Members of the full benefit of their insurance policies.

64. Defendant Bankers Life knowingly entered into a contract with PCS whereby PCS agreed to process Bankers Life prescription claims.

65. Defendant PCS, in processing said claims, wrongfully classifies generic drugs such as tamoxifen as brand name drugs. In doing so, PCS conceals the generic nature of the prescription from the pharmacist, who then charges the beneficiary as though the prescription was for a brand name drug.

66. PCS' wrongful behavior causes Plaintiff and other Class Members to be deprived of prescription benefits for which they have specifically contracted with Bankers Life.

67. Bankers Life is aware of, and derives a substantial savings from, PCS' wrongful behavior. On information and belief, a direct correlation exists between PCS' compensation and the savings Bankers Life realizes as a result of these wrongful classifications.

68. Only when confronted by Plaintiff, did Bankers Life acknowledge awareness of this wrongful behavior. Even in making this acknowledgment, however, Bankers Life notified Plaintiff that it has no intention of taking any measures to correct it. In doing so, Bankers Life has essentially stated that although PCS is acting wrongfully, Bankers Life will continue permitting PCS to process its prescription claims, and, as a result, Bankers Life will incur substantial savings.

69. PCS' behavior coupled with Bankers Life's acknowledgment of it and decision to continue using PCS' services demonstrates that the two Defendants are engaged in a concerted effort to defraud Bankers Life beneficiaries.

70. As a result of Defendants' concerted behavior, Plaintiff and the other Class Members have suffered monetary damages, as well as other damages.

**COUNT VI VIOLATION OF 18 U.S.C. § 1962(c) et seq.,
THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT**

Plaintiff realleges paragraphs 1 through 70 of the preceding pages as if fully set forth herein and further states:

71. At all times relevant to this Complaint, the “Prescription Processing Network” (hereinafter referred to as the “Prescription Network”) was and is an “association in fact” enterprise as defined by 18 U.S.C. § 1961(4) that involves activities which affect interstate commerce. This enterprise is comprised of an association between three separate entities which operates to provide speedy and accurate processing of prescription claims. For this association to function properly, the cooperation of each of the following three entities is required: (1) the insurer or employer (i.e. Bankers Life), (2) the pharmaceutical benefits management company (i.e. PCS), and (3) the pharmacy (i.e. Walgreens). While each entity is separate and distinct, the Prescription Network cannot function without the cooperation of all three.

72. Bankers Life and PCS knowingly and wilfully associated with the Prescription Network, and conducted and participated in the affairs of the Prescription Network both directly and indirectly. By coordinating their efforts to wrongfully deprive Bankers Life’s beneficiaries of valuable benefits to which they were entitled, PCS and Bankers Life have conducted the affairs of the Prescription Network through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

73. In order to succeed in their scheme to defraud Bankers Life beneficiaries, PCS and Bankers Life have knowingly conducted the affairs of the Prescription Network through a pattern of racketeering activity. The pattern of racketeering activity with respect to Plaintiff dates back to November of 1997. The scheme includes the following:

1. Bankers Life induces its beneficiaries to participate in the Prescription Network by issuing a letter to new policyholders extolling the benefits of the Prescription Network. Bankers Life explains that it has already arranged for the beneficiary to participate in the Prescription Network.

It also compares the relative ease with which a Prescription Network prescription can be processed as opposed to a non-Prescription Network prescription. *See Letter to Plaintiff Explaining Benefits of Prescription Program*, attached as Exhibit E.

- b. The beneficiary is issued a network identification card which is to be presented to Prescription Network pharmacists at the time of purchase.
- c. When the beneficiary takes the prescription to a Prescription Network pharmacy to obtain a prescription for a generic drug, such as tamoxifen, PCS wrongfully classifies the drug as a brand name drug. This misrepresentation creates a material detriment to the beneficiary's benefits. Based on this wrongful classification, PCS transmits, through its database system, a message telling the pharmacist to charge the beneficiary a 20 percent copay.
- d. As a result of PCS' role in the enterprise, Bankers Life's liability is reduced from 100 percent to 80 percent. Accordingly, as a result of its relationship with PCS, Bankers Life derives a substantial savings. In return, PCS receives increased compensation from Bankers Life for increasing Bankers Life's "savings".

74. The pattern of racketeering engaged in by Defendants involves fraudulent acts in support of the above scheme constituting wire fraud, 18 U.S.C. § 1343, which is "racketeering activity" as defined by 18 U.S.C. § 1961(1)(B). Each time Plaintiff has obtained her prescription

for tamoxifen, PCS has electronically transmitted fraudulent information with respect to the generic nature of the drug and Plaintiff's benefits.

75. The pattern of activity engaged in by Defendants also involves fraudulent acts in support of the above scheme constituting mail fraud, 18 U.S.C. § 1341, which is "racketeering activity" as defined by 18 U.S.C. § 1961(1)(B). In defense of the Defendants' wrongful behavior, Defendant Bankers Life has issued several fraudulent letters to Plaintiff.

76. Beginning in November of 1997, Defendants have committed numerous predicate acts of wire fraud relating to Plaintiff. Additionally, Defendant Bankers Life's admission that PCS has no intention of changing its "policy" with respect to tamoxifen indicates that predicate acts will continue to accrue until PCS is forced to change its "policy".

77. As a result of Defendants' scheme, Plaintiff has suffered damages to her property.

78. The predicate acts committed by PCS and Bankers Life include, but are not limited to, the following:

- a. In a letter, which was delivered via United States mail, Bankers Life induced Plaintiff to participate in the Prescription Network by intentionally creating the false expectation that she would save both time and money.
- b. In a letter dated October 20, 1998, which was delivered via United States mail, Bankers Life stated that PCS would continue its policy of classifying the generic drug tamoxifen as a brand name drug. Thus, Defendants expressed their intent to continue this fraudulent practice into the future.
- c. In an electronic transmission dated November 24, 1997, PCS wrongfully stated that Plaintiff owed \$43.80 for the generic prescription drug tamoxifen.
- d. In an electronic transmission dated December 21, 1997, PCS wrongfully

stated that Plaintiff owed \$16.12 for the generic prescription drug tamoxifen.

- e. In an electronic transmission dated January 20, 1998, PCS wrongfully stated that Plaintiff owed \$16.12 for the generic prescription drug tamoxifen.
- f. In an electronic transmission dated February 22, 1998, PCS wrongfully stated that Plaintiff owed \$16.12 for the generic prescription drug tamoxifen.
- g. In an electronic transmission dated March 23, 1998, PCS wrongfully stated that Plaintiff owed \$16.12 for the generic prescription drug tamoxifen.
- h. In an electronic transmission dated April 27, 1998, PCS wrongfully stated that Plaintiff owed \$17.28 for the generic prescription drug tamoxifen.
- i. In an electronic transmission dated May 26, 1998, PCS wrongfully stated that Plaintiff owed \$17.28 for the generic prescription drug tamoxifen.
- j. In an electronic transmission dated June 28, 1998, PCS wrongfully stated that Plaintiff owed \$18.10 for the generic prescription drug tamoxifen.
- k. In an electronic transmission dated July 29, 1998, PCS wrongfully stated that Plaintiff owed \$18.10 for the generic prescription drug tamoxifen.
- l. In an electronic transmission dated August 30, 1998, PCS wrongfully stated that Plaintiff owed \$18.10 for the generic prescription drug tamoxifen.
- m. In an electronic transmission dated September 27, 1998, PCS wrongfully stated that Plaintiff owed \$18.10 for the generic prescription drug tamoxifen.
- n. In an electronic transmission dated November 1, 1998, PCS wrongfully stated that Plaintiff owed \$18.10 for the generic prescription drug tamoxifen.
- o. In an electronic transmission dated November 29, 1998, PCS wrongfully stated that Plaintiff owed \$18.10 for the generic prescription drug

tamoxifen.

79. Plaintiff relied upon the misrepresentations directed at her by Defendants as a part of their pattern of racketeering activity, and as a result has suffered damage to her property.

WHEREFORE, Plaintiff demands the following relief on behalf of herself and all others similarly situated:

- a. An Order certifying this action as a class action and appointing Plaintiff and Plaintiff's counsel representatives thereof;
- b. A preliminary and permanent injunction requiring that Defendants cease classifying generic prescription drugs, such as tamoxifen, as brand name drugs;
- c. An award of punitive damages in an amount to be proven at trial;
- d. An award of compensatory damages in an amount to be proven at trial;
- e. Awarding plaintiff reasonable attorneys' fees, costs and expenses incurred in connection with this suit;
- f. Pre-and post-judgment interest;
- g. Such other and further relief as the Court may deem necessary or appropriate.

Respectfully submitted

By one of their attorneys

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