IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MARCIA SLACK	§	
	§	
Plaintiff,	§	
	§	
V.	§	**CIVIL ACTION NO. 6:14-CV-576**
	§	
	§	
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA	§	
	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion for Judgment on the Pleadings (Doc. No. 29). Plaintiff filed a Response (Doc. No. 45); Defendant filed a Reply (Doc. No. 48); and Plaintiff filed a Surreply (Doc. No. 53). Having fully considered the parties' arguments and for the reasons set forth herein, Defendant's Motion for Judgment on the Pleadings is **DENIED**.

BACKGROUND

On May 27, 2014, Plaintiff Marcia Slack filed a complaint against Defendant, The Prudential Insurance Company of America, in the District Court of Smith County, Texas alleging (1) violations of the Deceptive Trade Practices Act (DTPA), (2) violations of the Texas Insurance Code, (3) negligence, (4) negligent misrepresentation, (5) gross negligence, and (6) fraud. *See* Doc. No. 1-1. On June 23, 2014, Defendant filed a Notice of Removal, removing the case to the United States District Court for the Eastern District of Texas, Tyler Division. Doc. No. 1. Defendant filed an answer generally denying Plaintiff's allegations and asserting affirmative defenses to Plaintiff's causes of action. Doc. No. 5. Plaintiff subsequently filed her

First Amended Original Complaint on December 19, 2014. Doc. No. 15. Defendant filed an answer to Plaintiff's amended complaint on February 18, 2015. Doc. No. 23. Plaintiff then filed a Motion for Leave to File Second Amended Original Complaint on July 27, 2015, which the Court granted on September 15, 2015. Doc. Nos. 104 & 141. On March 5, 2015, Defendant filed Motion for Judgment on the Pleadings, arguing that Plaintiff does not have standing to bring her claims. Doc. No. 29. In light of the Court's granting of Plaintiff's Second Amended Original Complaint, that document will serve as the live complaint upon which the Court will decide Defendant's Motion for Judgment on the Pleadings.

Plaintiff's husband, Tom Slack, purchased a life insurance policy (the Policy) from Defendant in 2001. Doc. Nos. 29 at 2 & 105 at 2. Mr. Slack named Plaintiff as the beneficiary of the Policy. Doc. No. 105 at 2. After Mr. Slack died on December 2, 2012, Plaintiff filed a claim for death benefits under the Policy, and Defendant paid Plaintiff $274,391.56. Doc. Nos. 5 at 5, 29 at 1, & 105 at 9–10 (Plaintiff's Second Amended Original Complaint).

Plaintiff contends that after purchase of the Policy, Defendant represented to Plaintiff and Mr. Slack (the Slacks) that Ronnie William Shaffer was the "representative with whom they should and could communicate regarding the Policy, including any questions concerning payment of premiums." Doc. Nos. 105 at 4 & 105-1. Plaintiff contends that the Slacks used community funds to pay the annual premium payment of $10,580.00 plus an additional payment of $6,720.00 from 2001 to 2010 because Defendant represented to them that if they made the additional payment, the premium due under the Policy would vanish after ten years. Doc. No. 105 at 2–3.

Plaintiff states that in 2011, Mr. Slack received a notice from Defendant stating that his annual premium was due, which was contrary to Defendant's original representation of vanishing premiums. *Id.* at 3. Plaintiff asserts, however, that the notice also stated that Mr. Slack's policy had a "cash value of the Additional Paid-up Insurance [of] $108,984.93 and that the Policy had a total cash value of $164,134.93." *Id.*at 4. Plaintiff states that Mr. Slack then contacted Shaffer to request the premium be paid from a portion of the Policy, and Shaffer called Defendant to approve the payment method; Defendant approved the payment and told Mr. Slack he could set the payment to be automatically paid from the Policy values 45 days after the premium due date if Mr. Slack did not make the premium payments within 31 days of the due dates. *Id.*at 6. Plaintiff states that Mr. Slack completed the necessary paperwork on July 18, 2011. *Id.* at 5. Plaintiff also contends that the Slacks relied on Defendant's representations that the payments could be taken directly from the Policy values instead of paid out of pocket on an annual basis. *Id.* at 6. Defendant, in its answer, stated that Shaffer did contact Defendant and spoke with "Justin," but denies that Defendant stated that the 2012 premium would be automatically paid from the Policy values. Doc. No. 5 at 3.

According to Plaintiff's Second Amended Original Complaint, following an initial refusal to pay the 2011 premium from the cash value of the additional paid up insurance, Defendant sent Mr. Slack written notice of the approval of the payment. Doc. No. 105 at 5. Plaintiff asserts that in June of 2012, Mr. Slack requested an accounting of the Policy values to determine if they were sufficient to satisfy the 2012 premium, and the document he received showed that he had a "cash value of paid up additional insurance" of $100,304.07 and a "total net cash surrender value" of $163,370.77 *Id.* at 7 & Doc. No. 105-3. Plaintiff states that Mr.

Slack then received a notice of payment due dated July 19, 2012, stating that he was to pay $17,300.00 for his 2012 annual premium, but that the Slacks took no action because Defendant previously represented that the premium would automatically be paid 45 days after the payment was due if the Slacks did not make the payment within 31 days after the due date. Doc. No. 105 at 6.

Further, Plaintiff claims that Mr. Slack contacted Defendant on September 2, 2012, to ensure that the 2012 premium would be paid in the same way as the 2011 premium; Plaintiff states that during that conversation, Defendant represented that the 2012 premium would, in fact, be automatically paid from the Policy values. *Id.* at 8. However, Defendant sent Mr. Slack a letter dated September 20, 2012, stating that his policy lapsed due to nonpayment. *Id.* Plaintiff asserts that Mr. Slack then contacted Shaffer, who in turn contacted Defendant and determined that the Policy lapse was a mistake and that the Policy would be reinstated. *Id.* at 9. Plaintiff then asserts that Mr. Slack received a letter from Defendant on November 8, 2012, stating that if he wished to reinstate the Policy, he was required to pay $17,300. *Id.* & Doc. No. 105-5.

When Mr. Slack died and Plaintiff filed a claim for death benefits under the Policy, Defendant paid Plaintiff $274,391.56. Doc. No. 105 at 9–10. Plaintiff asserts that Defendant researched the reasoning for the issuance of less than $500,000 for over a year and then "advised Plaintiff that Defendant, without any authorization from the Slacks and over the objections of Defendant's designated agent, Shaffer, had unilaterally used the over $160,000.00 in cash value of this Policy account and almost $200,000 in premiums paid by the Slacks since 2001 to purchase what Defendant characterized as 'Reduced Paid-up Insurance' with a death benefit of $270,000.00." *Id.* at 12.

LEGAL STANDARD

A party may file a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) "after the pleadings are closed but within such time as not to delay the trial." *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312–313 (5th Cir. 2002). A Rule 12(c) motion is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." *Id.* (quoting *Hebert Abstract Co. v. Touchstone Props., Ltd.*, 914 F.2d 74, 76 (5th Cir.1990)).

To evaluate a judgment on the pleadings, the Court uses the same standard as a Rule 12(b)(6) motion to dismiss. *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010). The Court may not look beyond the pleadings to decide the motion. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). Further, the complaint is construed liberally in favor of the plaintiff, and all well pleaded facts are taken as true. *Kocurek v. Cuna Mut. Ins. Soc.*, 459 F. App'x. 371, 373 (5th Cir. 2012); *Baker*, 75 F.3d at 196. The Court should grant a judgment on the pleadings if "in the light most favorable to the plaintiff and with every doubt resolved on his behalf, the complaint states a valid claim for relief." *Kocurek*, 459 F. App'x. at 373. A "judgment on the pleadings is appropriate only if there are no disputed issues of material fact and only questions of law remain." *Brittan Communications Intern. Corp. v. Southwestern Bell Telephone Co.*, 313 F.3d 899, 904 (5th Cir. 2002).

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