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September 14, 2012

Idaho State Bar  
Family Law Section  
Joanne Margaret Kibodeaux, Chair  
c/o Law Office of Joanne M. Kibodeaux  
PO Box 140076  
Boise, ID 83714

**Re: *Pascavage v. Office of Personnel Management***  
**United States District Court for the District of Delaware**  
**C.A. No. 09-276 LPS-MPT**

Dear Ms. Kibodeaux:

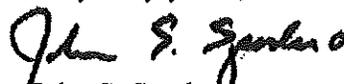
In this class action lawsuit, now pending in the U.S. District Court for the District of Delaware, I serve as Class Counsel for members of a plaintiffs' class that has been preliminarily certified under Federal Rule of Civil Procedure 23. I am providing you with the enclosed notice of class action settlement because the settlement's terms may be of interest to members of the Idaho State Bar Family Law Section.

Under this settlement, *existing or former clients of family law practitioners may be entitled to benefits* through the Federal Employees Group Life Insurance (or "FEGLI") program.

By order of United States Magistrate Judge Mary Pat Thyng, you are requested to promptly disseminate the enclosed class settlement notice to members of the Idaho State Bar Family Law Section. At your earliest convenience, please confirm by letter or e-mail that you will disseminate the notice as requested by Judge Thyng. Please also let me know the means (e.g., e-mail listserv) by which you plan to disseminate the notice.

Thank you for your courtesy and cooperation.

Very truly yours,

  
John S. Spadaro

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE**

CLAIRE V. PASCAVAGE, )  
on behalf of herself and all others )  
similarly situated, )

Plaintiff, )

v. )

OFFICE OF PERSONNEL )  
MANAGEMENT, )

Defendant. )

C.A. No.: 09-276 LPS

**TO MEMBERS OF THE IDAHO STATE BAR FAMILY LAW SECTION:**

**YOUR PRESENT OR FORMER CLIENTS MAYBE ENTITLED TO FEGLI  
BENEFITS UNDER A CLASS ACTION SETTLEMENT**

*A Federal court authorized this notice. It is not a solicitation from a lawyer.  
It includes an important request from the U.S. District Court for the District of  
Delaware.*

**BASIC INFORMATION**

**1. *What is this about?***

Federal Employees' Group Life Insurance ("FEGLI") is the group life insurance program for employees and retirees of the United States Government. The United States Office of Personnel Management ("OPM") has overall responsibility for administration of the FEGLI program. Pursuant to 5 U.S.C. 8709, OPM purchased a policy of insurance from Metropolitan Life Insurance

Company ("MetLife") to provide life insurance under the Federal Employees' Group Life Insurance Act. 5 U.S.C. § 8701 et seq. The Office of Federal Employees' Group Life Insurance ("OFEGLI") is the administrative unit of MetLife responsible for processing and paying claims.

A Federal statute, 5 U.S.C. §8705, determines the order of precedence by which FEGLI benefits must be paid. First in the order of precedence are the Federal employee's designated beneficiaries. If the insured did not designate a beneficiary in accordance with 5 U.S.C. §8705, benefits are payable in the following order: 1. the insured's surviving spouse; 2. the insured's child(ren); 3. the insured's parent(s); 5. the insured's estate; 6. the insured's next of kin.

Some Federal employees or retirees divorce or separate from their spouses. These Federal employees and retirees are sometimes required by a divorce decree, separation agreement or similar document (a "Court Order") to name their former spouses (or in the case of separations, the spouse from whom they separated) or child(ren) as beneficiaries of their FEGLI benefits. A problem arose because some Federal employees who were subject to such Court Orders failed to name their former spouses, etc., as FEGLI beneficiaries. Because the FEGLI program cannot compel a Federal employee to change a beneficiary designation, former spouses, etc., were sometimes deprived of benefits to which they were entitled under a Court Order.

To remedy this problem, Congress passed Public Law 105-205. This Public Law created an exception to the order of precedence. Under Public Law 105-205, FEGLI benefits can be paid to people who are expressly entitled to the benefits under a Court Order, so long as they submitted the Court Order to the appropriate Federal agency before the insured Federal employee's death. 5 U.S.C. § 8705(e).

Public Law 105-205 was enacted on July 22, 1998. OPM interpreted this Public Law to mean that only those Court Orders submitted to the appropriate Federal agency on or after July 22, 1998 would be valid for payment to a person who otherwise was not entitled to payment in accordance with 5 U.S.C. §8705. This interpretation was captured by OPM in the publication of section 870.801(d)(2), title 5, Code of Federal Regulations. The plaintiff in this lawsuit, Claire V. Pascavage, challenged OPM's interpretation of Public Law 105-205 by filing a class action lawsuit. Claire V. Pascavage is the plaintiff, and the United States Office of Personnel Management ("OPM") is the defendant.

In the course of the lawsuit, the U.S. District Court for the District of Delaware ruled that Court Orders submitted to the appropriate Federal agency before July 22, 1998 are effective for providing FEGLI benefits, so long as the Court Order was submitted to the appropriate agency before the insured Federal employee's death. This means that some of your present or former clients who

were married to Federal employees or retirees who died after July 22, 1998 may be entitled to FEGLI benefits.

**2. *What is a class action?***

In a class action, one or more people, called Class Representatives (in this case Claire V. Pascavage), sue on behalf of people who have similar claims. All these people are a Class or Class Members. U.S. Magistrate Judge Mary Pat Thyng is in charge of this class action lawsuit.

**3. *Why have I received this notice?***

The subject matter of this class action lawsuit, and the District Court's ruling regarding Public Law 105-205, are hard for lay people to understand. People with formal legal training will have a better understanding of the situation. Family law practitioners are in the best position to identify Class Members -- the people who are or may be entitled to FEGLI benefits because of the Court's ruling. Also, when people receive notices like this one, they often treat it as junk mail.

For these reasons, this notice has been provided to the Family Law section of each state's bar association. By sending this notice to Family Law sections, the Court is requesting that section members alert their present or former clients who qualify or may qualify as Class Members that they may be entitled to unpaid FEGLI benefits, and provide them with this notice.

**4. *What has happened in this lawsuit?***

The parties to this lawsuit, Claire V. Pascavage and the U.S. Office of Personnel Management, have agreed to settle this lawsuit.

**5. *Why is there a settlement of the lawsuit?***

By settling, both sides avoid the risk of trial, and the continued costs of litigation. The Class gets FEGLI benefits that may have been previously denied. The Class also avoids the delay of continued litigation, and the risk that continued litigation ultimately would leave them with no right to receive FEGLI benefits. The Class Representative and Class Counsel believe that the proposed settlement is fair, adequate and reasonable, and in the best interests of the Class.

**6. *Who are the Class Members?***

Essentially, Class Members are people who have not already received FEGLI benefits and who were 1) divorced or separated from a Federal employee, compensationner, or annuitant prior to July 22, 1998, or were children of such Federal employee<sup>1</sup>, 2) are entitled to FEGLI benefits under the terms of any decree of divorce, annulment, or legal separation, where the Federal employee, upon whose Federal service FEGLI benefits are based, died after July 22, 1998, and 3) submitted the decree of divorce, annulment, or legal separation to the appropriate

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<sup>1</sup> Relevant court orders incident to divorce may require FEGLI benefits be paid to former spouses and/or children of the Federal employee, compensationner, or annuitant.

Federal agency before July 22, 1998. The formal definition of the Class is as follows:

All persons who have submitted to the U.S. Office of Personnel Management ("OPM") or to an employing Federal agency, or had someone submit on their behalf, as appropriate according to the terms of 5 U.S.C. §8705(e)(2), any court decree of divorce, annulment, or legal separation, or any court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation ("Court Order") where the following apply:

1. Where such Court Order expressly provides that such person(s) receive Federal Employees' Group Life Insurance ("FEGLI") benefits, or be named beneficiary with respect to FEGLI based on the criteria set forth in 5 U.S.C. §8705(e)(1)-(4) and 5 CFR 870.801(d), excepting section 870.801(d)(2);
2. Where such Court Order was received by OPM or the appropriate employing Federal agency only before enactment (on July 22, 1998) of Public Law 105-205;
3. Where OPM has denied or, in the absence of the developments in this Action, would deny such person(s) FEGLI benefits on the basis that the Court Order was received by OPM only prior to July 22, 1998;
4. Where such person(s) submitted a claim for payment within the time frames enumerated under 5 U.S.C. §8705(b)-(c);
5. Where the insured Federal employee, compensation or annuitant whose Federal service is the basis of the FEGLI benefit died after July 22, 1998;
6. Where such Court Order was received by OPM or the appropriate employing Federal agency prior to that

insured Federal employee, compensation or annuitant's date of death; and

7. Where written evidence exists of the date the Court Order was received by OPM or by the appropriate employing Federal agency as proven by:

i. An OPM-generated search of the deceased Federal employee, compensation, or annuitant's records held by OPM.

ii. If no such records are in the possession of OPM, then the burden is on the class member(s) seeking the FEGLI benefits to provide written documentary evidence of the date on which the Court Order was received by OPM or by the appropriate employing agency.

Specifically excluded from the proposed class are those persons who have already secured recovery against OPM or Metropolitan Group Life Insurance Company ("MetLife") for the FEGLI benefits claimed, including those persons whose claims were the subject of an interpleader action or who otherwise recovered benefits, or a portion therefor from another claimant.

***7. How can people be sure that they are Class Members?***

Anyone unsure of their status as a Class Member can contact Class Counsel by mail, e-mail or telephone to get free help. Class Counsel's name, address and contact information is listed below, under the heading "The Lawyer Representing Class Members."

## **THE SETTLEMENT BENEFITS -- WHAT CLASS MEMBERS GET**

### ***8. What can class members get from the settlement?***

Eligible Class Members may be entitled to FEGLI benefits. The amount of each life insurance benefit is governed by statutory formulas found in sections 8704, 8714a, 8714b, and 8714c, title 5, United States Code, as amended. Under the Federal Employee's Group Life Insurance Policy, issued by MetLife to OPM's predecessor, as MetLife Group Policy No. 17000-interest on FEGLI benefits is payable for a period of up to two years which starts on the insured's date of death and ends on the date that the benefit is paid. The claim of each Eligible Class Member under this Settlement is subject to the FEGLI Policy's two year limitation on the payment of interest. Interest on each claim paid under the Settlement will be calculated at the interest rate in effect for claims under the FEGLI Policy on the date that payment is made.

## **HOW CLASS MEMBERS CAN GET THEIR BENEFITS**

### ***9. How can Class Members get a payment?***

In order to get their FEGLI benefits, Class Members must send OPM a claim for payment, on a Form FE-6<sup>2</sup>, and must reference this class action suit. A claim

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<sup>2</sup>The easiest way to obtain the FE-6 "Claim for Death Benefits" form is by downloading it locally from OPM's website at <http://www.opm.gov/insure/life/fegli/fe-6.asp>. If you cannot obtain a claim form this way, you can call OPM toll-free at 1-888-767-6738 (202-606-0500 in the DC area) or email OPM's Retirement Operations Center at [retire@opm.gov](mailto:retire@opm.gov), giving the name and number of the form that you need and your mailing address where it can be sent. Please note response times via phone and email can be lengthy at times. You may also request a copy from a local Federal Human Resources Office.

for payment under this class-action suit should include, at minimum, the following:

1) A reference to this class action lawsuit, *Pascavage v OPM*; 2) The full legal names of the claimant(s) and the deceased insured Federal employee, compensationner, or annuitant; 3) The social security number of the insured Federal employee, compensationner, or annuitant whose Federal service is the basis of the FEGLI benefit or the deceased insured's retirement claim number; 4) A copy of a court decree of divorce, annulment, or legal separation that expressly provides for the payment of FEGLI benefits to the claimant(s). To expedite the processing of a claim, the Class Member should also provide written documentary evidence of the date on which the court order was received by OPM or by the appropriate employing agency.

On receiving a claim for payment of FEGLI benefits, OPM will review the information submitted by the Class Member to determine if FEGLI benefits are owed to the Class Member. If the documentation submitted by the claimant is insufficient, OPM will then conduct a good-faith search to determine whether FEGLI benefits are owed to the Class Member. If OPM's search does not identify any conclusive records on that point, then OPM will request additional evidence from the Class Member claimant.

If further requested by OPM, the Class Member must provide to OPM written evidence that shows that their claim is based on a 1) divorce or separation

from a Federal employee, compensationner, or annuitant that occurred prior to July 22, 1998<sup>3</sup>, 2) are entitled to FEGLI benefits under the terms of any decree of divorce, annulment, or legal separation, where the Federal employee, upon whose Federal service FEGLI benefits are based, died after July 22, 1998, and 3) submitted the decree of divorce, annulment, or legal separation to the appropriate Federal agency before July 22, 1998, and 4) any additional information that OPM may require to show the claimant meets the Class Member definitions.

If requested by OPM, evidence for the third requirement must prove the date on which the Court Order was first received by OPM, or by the appropriate employing Federal agency. This may be accomplished by providing written documentary evidence of the date on which the court order was received by OPM or by the appropriate employing agency, such as copies of communications from OPM or the insured's employing agency referencing receipt of the court order, Affidavits of submission date alone are not sufficient to prove that the court order was submitted and/or the date of such submission.

All claims for payment under this class action suit and all written evidence must be sent to:

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<sup>3</sup>Relevant court orders incident to divorce may require FEGLI benefits be paid to former spouses and/or children of the Federal employee, compensationner, or annuitant.

Attn: Pascavage Settlement  
U.S. Office of Personnel Management  
Retirement Operations Center, Attn: Janet Bass  
P.O. Box 45  
Boyers, PA 16017

**10. *How soon should Class Members act?***

In order to get a payment under this settlement, Class Members must submit a claim for payment in the form of an FE-6 along with any written evidence to OPM by *Friday, December 19, 2014*. For this reason, Class Members should submit their written evidence to OPM as soon as possible.

**11. *What are Class Members giving up in order to get a payment or stay in the class?***

Class Members who *either* 1) submit written claims for payment to OPM by Friday, December 19, 2014, *or* 2) stay in the Class but fail to submit a written claim for payment by Friday, December 19, 2014 will lose their right to sue OPM, MetLife, or any other unit, department or agency of United States government, for the FEGLI benefits affected by this settlement.

## HOW CLASS MEMBERS CAN EXCLUDE THEMSELVES FROM THE SETTLEMENT

If a Class Member doesn't want a payment from this settlement, but wants to keep the right to sue for the FEGLI benefits affected by this settlement, then that Class Member must take steps to get out of the Class. Getting out of the Class is sometimes referred to as being "excluded" from the Class. Sometimes it is referred to as "opting out" of the settlement Class.

### ***12. How can a class member get out of the settlement?***

To exclude himself or herself from this settlement, the Class Member must send a letter by mail saying that he or she wants to be excluded from *Pascavage v. OPM*. The Class Member must be sure to include his or her name, address, telephone number and signature. The class member must mail the exclusion request, postmarked no later than ***Monday, November 19, 2012***, to:

Pascavage v. OPM Exclusions  
John S. Spadaro  
John Sheehan Spadaro, LLC  
724 Yorklyn Road, Suite 375  
Hockessin, DE 19707

A Class Member cannot exclude himself or herself on the phone or by e-mail. If a Class Member asks to be excluded, that Class Member will not get any settlement payment, and will not be permitted to object to this settlement. The excluded Class Member(s) will not be legally bound by anything that happens in this lawsuit. He or she may be able to sue (or continue to sue) OPM in the future.

**13. *If a Class Member does not exclude himself or herself, can he or she still sue OPM for the same thing later?***

No. Unless a Class Member excludes himself or herself, he or she gives up the right to sue OPM, MetLife, or any other unit, department or agency of United States government, for the FEGLI benefits affected by this settlement. Remember, the exclusion deadline is *Monday, November 19, 2012*.

**14. *If a Class Member excludes himself or herself, can they get money from the settlement?***

No. If a class member excludes himself or herself, they should not submit a claim to ask for any money. But they may sue, continue to sue, or be part of a different lawsuit against OPM.

#### **THE LAWYER REPRESENTING CLASS MEMBERS**

**15. *Do Class Members have a lawyer in this case?***

Yes. The Court has appointed attorney John S. Spadaro of the law firm of John Sheehan Spadaro, LLC to represent the Class Members. This attorney is called Class Counsel. Class Members will not be charged for this lawyer. If a Class Member wants to be represented by his or her own lawyer, they may hire one at their own expense.

**16. *How will the lawyer be paid?***

Class Counsel will ask the Court for attorneys' fees and expenses up to \$142,500, and a payment of \$7,500 to the Class Representative, Claire V. Pascavage. The Court may award less than these amounts. OPM will pay the fees and expenses awarded by the Court separately. These amounts will not come out of the FEGLI benefits affected by this settlement. OPM has agreed not to oppose the fees and expenses.

**OBJECTING TO THE SETTLEMENT**

Class Members can tell the Court that they don't agree with the settlement or some part of it.

**17. *How do Class Members tell the Court that they don't like the settlement?***

A Class Member can object to the settlement if he or she doesn't like any part of it. The Class Member can give reasons why he or she thinks the Court should not approve it. The Court will consider the Class Member's views. To object, the Class Member must send a letter saying that he or she objects to *Pascavage v. OPM*. The Class Member must be sure to include his or her name, address, telephone number, signature, and the reasons why he or she objects to the settlement. Objections must be mailed to these three different places, and postmarked no later than ***Monday, November 19, 2012***:

**The Court**

Peter T. Dalleo, Clerk of Court  
J. Caleb Boggs Federal Building  
844 N. King Street  
Unit 26  
Room 6124  
Wilmington, DE 19801-3556

**Class Counsel**

John S. Spadaro  
John Sheehan Spadaro, LLC  
724 Yorklyn Road  
Suite 375  
Hockessin, DE 19707

**OPM's Counsel**

Patricia C. Hannigan  
U.S. Attorney's Office  
1007 N. Orange Street  
Suite 700  
P.O. Box 2046  
Wilmington, DE 19899-2046

**18. *What's the difference between objecting and excluding?***

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

**19. *When and where will the Court decide whether to approve the settlement?***

The Court will hold a Fairness Hearing at **9:30 a.m. on Wednesday, December 19, 2012, at the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, DE 19801-3556, in Courtroom 2B (located on the courthouse's second floor)**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Magistrate Judge Thyng will listen to people who have asked to speak at the hearing. The Court

may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**20. *Do Class Members have to come to the hearing?***

No. Class Counsel will answer any questions Magistrate Judge Thyng may have. But Class Members are welcome to come at their own expense. If a Class Member sends an objection, he or she will not have to come to Court to talk about it. As long as the Class Member mailed the written objection on time, the Court will consider it. A Class Member may also pay his or her own lawyer to attend, but it's not necessary.

**21. *May Class Members speak at the hearing?***

Class Members may ask the Court for permission to speak at the Fairness Hearing. To do so, the Class Member must send a letter saying that it is his or her "Notice of Intention to Appear in *Pascavage v. OPM*." The Class Member should be sure to include his or her name, address, telephone number, and signature. The Class Member's Notice of Intention to Appear must be postmarked no later than ***Monday, November 19, 2012***, and be sent to the Clerk of the Court, Class Counsel, and OPM's Counsel, at the three addresses shown on page 14, in question 17. A Class Member cannot speak at the hearing if he or she excluded themselves.

## **IF CLASS MEMBERS DO NOTHING**

### ***22. What happens if a Class Member does nothing at all?***

If a Class Member does nothing, he or she will get no money from the settlement. But unless a Class Member excludes himself or herself, he or she won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against OPM about the legal issues in this case, ever again.

## **GETTING MORE INFORMATION**

### ***23. Are there more details about the settlement?***

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. Class Members can get a copy of the Settlement Agreement by writing to John S. Spadaro, John Sheehan Spadaro, LLC, 724 Yorklyn Rd., Suite 375, Hockessin, DE 19707.

### ***24. How can Class Members get more information?***

Class Members can call Class Counsel at (302) 235-7745, or they can write to Class Counsel at John S. Spadaro, John Sheehan Spadaro, LLC, 724 Yorklyn Rd., Suite 375, Hockessin, DE 19707.