**IN THE UNITED STATES DISTRICT COURT**

**FOR THE WESTERN DISTRICT OF OKLAHOMA**

**JOHN DOE, )**

 **Plaintiff, )**

**v. ) Case No.**

 **)**

 **) COMPLAINT**

**PRUCO )**

**LIFE INSURANCE COMPANY )**

 **Defendants. ) JURY DEMANDED**

**COMPLAINT**

**PARTIES**

1. Plaintiff, John doe, was at all times material to this action a citizen of Cleveland County, Oklahoma.
2. Defendants were at all times material to this action incorporated in New Jersey, with their principal place of business in New Jersey. Defendants are licensed to write life insurance policies in Oklahoma.

**JURISDICTION****AND VENUE**

1. The Court has jurisdiction under 28 U.S.C. § 1332 as the parties are of diverse citizenship and the amount in controversy exceeds $75,000.
2. Venue is proper in that Plaintiff is a resident of Cleveland County, Oklahoma, within this judicial district.

**STATEMENT OF CLAIM**

1. Plaintiff’s decedent, Jane doe, was insured under Defendants’ life insurance policy number xxxxxx in the amount of $100,000. The policy was issued in Oklahoma and so this action is governed by Oklahoma law.
2. Plaintiff is the beneficiary under the policy.
3. Ms. Doe died while the policy was in force, but within two years of policy inception.
4. Plaintiff made claim upon the policy proceeds as beneficiary.
5. Defendants denied the claim and attempted to rescind the policy for misrepresentation in the application process.
6. Such misrepresentation defense is governed by 36 O.S. § 3609, under which statements in insurance policy applications are deemed representations rather than warranties. Accordingly, “[m]isrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy unless” they are both material to the acceptance of the risk and made with the subjective intent to defraud the insurance company. Intent to defraud is subject to a clear and convincing evidentiary standard.
7. Here there was neither a “misrepresentation, omission, concealment of fact, [or] incorrect statement,” nor fraudulent intent.
8. Defendants claim misrepresentation in answer to question 8(c) in the policy application which asks if the applicant has in the past 7 years “been diagnosed, treated, tested positive for, or been given medical advice by a member of the medical profession for . . . brain tumor, malignant tumor, or any form of cancer (except basal cell or squamous cell carcinoma of the skin)?”
9. At the time of the application Ms. Doe was undergoing testing for flank pain. Within just a few days she had been told she had appendicitis, then told no, she had an abscess, and then told no, she had a mass that *might* be cancerous. Rightly concerned, she decided to get life insurance and submitted an application with Defendants. Sometime after the application was submitted, Ms. Ms. Doe was diagnosed with cancer.
10. Thus, prior to her submitting the application, her doctors had discovered a mass that was *suspicious* for *possible* cancer. If her doctors had positively diagnosed cancer prior to the application, they had not shared that diagnosis with Ms. Ms. Doe, but had told her only that additional testing was required to determine if the mass was benign or cancerous. Ms. Doe was not, accordingly, aware of a “diagnosis of cancer,” nor of a “positive test.” Likewise, her doctors had not “treated her for” cancer, nor given “medical advice” for cancer, but had told her instead that further testing was required for a diagnosis and to determine if any treatment or advice was appropriate.
11. The answer to question 8(c) thus not being incorrect, and there being no intent to defraud, the denial was in breach of the life insurance contract.

**RELIEF**

**WHEREFORE,** Plaintiff John doe, prays judgment against Defendant on the contract in the amount of $250,000, on the tort claim in an amount in excess of $75,000, and, pursuant to 36 O.S. § 3629, interest at 15%, costs, and attorney’s fee, along with all other appropriate relief.

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**ATTORNEY LIEN CLAIMED**