

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ROBERT THOMPSON, individually and on)	
behalf of similarly situated individuals,)	
)	
Plaintiff,)	Case No. 3:24-cv-01096
)	
vs.)	
)	
BANNER LIFE INSURANCE COMPANY, a)	
Maryland corporation,)	

BANNER LIFE INSURANCE COMPANY’S NOTICE OF REMOVAL

Defendant Banner Life Insurance Company (“Banner”) hereby removes the above-captioned action from the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois to the United States District Court for the Southern District of Illinois pursuant to 28 U.S.C. §§ 1332(d), 1441(a), 1446, and 1453.

As discussed further herein, this Court has federal jurisdiction over this matter pursuant to the Class Action Fairness Act (“CAFA”) because: (1) the proposed class is comprised of “thousands” of putative class members thereby satisfying the 100-member requirement; (2) the proposed class asserts an aggregate amount in controversy of more than \$5,000,000, exclusive of interest and costs; and (3) minimal diversity exists. *See* 28 U.S.C. § 1332(d). Furthermore, no CAFA exceptions apply.

Banner hereby provides this “short and plain statement of the grounds for removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014) (quoting 28 U.S.C. § 1446(a)). As the Supreme Court has explained, the short and plain statement of removal need not contain evidentiary submissions. *Id.* Rather, the notice of removal requires only plausible allegations that the requirements for removal are met. *Id.* The following satisfies this standard.

Nature of the Removed Action and Procedural History

1. Plaintiff Robert Thompson (“Thompson” or “Plaintiff”) commenced this action by filing a putative Class Action Complaint (the “Complaint”) on or about October 30, 2023, in the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois, Case No. 2023LA32 (the “State Court Action”).

2. On March 22, 2024, Banner was provided a copy of the Complaint via email and waived service of a summons on April 2, 2024. A copy of the Waiver of Service of Summons and Acknowledgement of Receipt of Complaint as provided to Banner, and a copy as signed, is attached as Exhibit A.

3. Banner now timely removes this action to the United States District Court for the Southern District of Illinois as this Court has jurisdiction pursuant to CAFA.

4. Plaintiff filed the State Court Action on behalf of himself and a putative class of similarly situated individuals who applied for life insurance coverage with Banner within the applicable limitations period. *See* the Complaint, a copy of which is attached as Exhibit B, at ¶ 32.

5. More specifically, Plaintiff alleges that in or around May 2023 he applied for life insurance coverage offered by Banner and that, as a precondition of insurance coverage, Banner required him to undergo a physical examination. *See id.* at ¶¶ 26–27.

6. Plaintiff alleges that Banner required him to “answer questions concerning his family medical history, *i.e.* the manifestation of diseases or disorders in his family members. Such questions included whether Plaintiff’s family members had a history of high blood pressure, cancer, diabetes, heart disease, and other medical conditions.” *Id.* at ¶ 28.

7. Plaintiff alleges that in response, Plaintiff disclosed his “genetic information,” which Banner used to assess his eligibility for life insurance coverage and denied Plaintiff

coverage, allegedly in violation of the Illinois Genetic Information Privacy Act, 410 ILCS 513/1 *et seq.* (“GIPA”). *See id.* at ¶¶ 29–31.

8. Plaintiff also claims that Banner “has requested and/or obtained family medical history or other genetic information” from putative class members who applied for insurance coverage with Banner, also allegedly in violation of GIPA. *Id.* at ¶¶ 32.

9. Based on these allegations, Plaintiff seeks to recover, *inter alia*, alleged statutory damages of \$15,000 for each reckless or intentional violation of GIPA; alleged statutory damages of \$2,500 for each negligent violation of GIPA; alleged reasonable attorneys’ fees, costs and expenses; and alleged pre- and post-judgment interest, “as allowable by law.” *See id.* at Prayer for Relief.

Venue

10. Plaintiff filed this Action in the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois, located in the Southern District of Illinois.

11. Venue is, therefore, proper in the United States District Court for the Southern District of Illinois pursuant to 28 U.S.C. §§ 1391 and 1441(a).

Timeliness of Removal

12. Banner removes this action to the United States District Court for the Southern District of Illinois within thirty days of service of the Complaint, which occurred on March 22, 2024. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348, 119 S. Ct. 1322, 1325, 143 L. Ed. 2d 448 (1999) (“mere receipt of the complaint unattended by any formal service” does not suffice to trigger a defendant’s removal period); *Brown v. Lirios*, 391 Fed. Appx. 539, 541 (7th Cir. 2010) (a defendant has thirty days from the date of proper service to remove).

13. Accordingly, removal is timely here pursuant to 28 U.S.C. § 1446.

Bases for Removal

I. All CAFA Removal Requirements Are Satisfied.

14. CAFA provides that class actions filed in state court are removable to federal court if they meet certain prerequisites. Specifically, CAFA amended 28 U.S.C. § 1332 to grant original jurisdiction where the putative class contains at least 100 class members; any member of the putative class is a citizen of a State different from that of any defendant; and the amount in controversy exceeds \$5,000,000 in the aggregate for the entire class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

15. This case is removable pursuant to CAFA, 28 U.S.C. § 1332, 28 U.S.C. § 1441(a) and (b), and 28 U.S.C. § 1453, because: (1) it is putative class action with more than 100 proposed class members; (2) minimal diversity exists; and (3) the Complaint places more than \$5,000,000 in controversy.

A. The Lawsuit is a Proposed Class Action with More than 100 Members.

16. Pursuant to CAFA, the putative class must consist of at least 100 members. 28 U.S.C. § 1332(d)(5).

17. Here, where Plaintiff claims there are “thousands of members” in the proposed class, the 100-member requirement is met. Ex. B (Complaint) at ¶ 34.

B. Diversity of Citizenship Exists.

18. At least one putative class member must be a citizen of a different state than any one defendant. 28 U.S.C. § 1332(d)(2).

19. According to Plaintiff, at all relevant times he has been a resident of the State of Illinois. *See* Ex. B (Complaint) at ¶ 12.

20. Banner is a corporation organized under the laws of the state of Maryland with its principal place of business in Frederick, Maryland. *See id.* at ¶ 11; Declaration of Ambria

Mahomes, a copy of which is attached as Exhibit C, ¶ 2. Accordingly, Banner is a citizen of Maryland.

21. Because Plaintiff and Banner are citizens of different states, the minimal diversity requirement is met.

C. The Amount in Controversy Exceeds \$5,000,000.

22. CAFA requires that the amount in controversy exceed \$5,000,000 in the aggregate, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2).

23. It is well-settled that a defendant’s notice of removal pursuant to CAFA “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). “Evidence establishing the amount is required by §1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Id.*

24. Plaintiff’s allegations here satisfy the amount in controversy requirement where he alleges thousands of class members are entitled to \$2,500 or \$15,000 for each violation. Banner denies that class certification is proper, and that Plaintiff, or any putative class member, is entitled to recover. Nonetheless, based on the allegations as stated in the Complaint, Plaintiff places at minimum \$5,000,000 to \$15,000,000 in controversy ($\$2,500 \times 2,000^1$ individuals = \$5,000,000; $\$15,000 \times 2,000$ individuals = \$30,000,000).

25. With this removal, Banner does not in any way waive any claims or defenses, or concede that the allegations in the Complaint are accurate, that Plaintiff’s claims are cognizable, or that certification of the proposed class or recovery of any amounts sought (by the Plaintiff or the putative class) is appropriate.

¹ Because Plaintiff alleges “thousands” of class members, Banner uses the figure 2,000 as the lowest possible number of class members that satisfies Plaintiff’s plural “thousands” assertion.

Conclusion

26. Based on the foregoing, CAFA's prerequisites are met and this case is properly removable.

27. In accordance with 28 U.S.C. § 1446(a), requiring the filing of a copy of all process, pleadings, and orders served upon the defendant, Banner has attached as part of Ex. A the Waiver of Service of Summons and Acknowledgement of Receipt of Complaint as provided to Banner, and as Ex. B the Complaint filed in the State Court Action. *See* Mahomes Dec. ¶ 7. No other process, pleadings or orders were served upon Banner. *Id.*

28. A copy of the docket from the State Court Action is attached is Exhibit D.

29. In accordance with 28 U.S.C. § 1446(d), Banner will promptly provide written notice of the removal of the State Court Action to Plaintiff, and will promptly file a copy of this Notice of Removal with the Clerk of Court for the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois.

WHEREFORE, Banner Life Insurance Company removes this case from the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois, to the United States District Court for the Southern District of Illinois.

Dated: April 12, 2024

Respectfully submitted,

FAEGRE DRINKER BIDDLE & REATH LLP

s/ Ambria D. Mahomes

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CERTIFICATE OF SERVICE

This is to certify that I have this 12th day of April, 2024, served a copy of the foregoing
Notice of Removal upon the following counsel of record via U.S. Regular Mail:

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s/ Ambria D. Mahomes

Ambria D. Mahomes

EXHIBIT B

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS**

ROBERT THOMPSON, individually and)
on behalf of similarly situated)
individuals,)
)
 Plaintiff,)
)
 v.)
)
 BANNER LIFE INSURANCE)
COMPANY, a Maryland corporation,)
)
 Defendant.)

No. 2023LA32

Hon.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Robert Thompson (“Plaintiff”), individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Defendant Banner Life Insurance Company (“Banner Life” or “Defendant”) for its violations of the Illinois Genetic Information Privacy Act, 410 ILCS 513/1, *et seq.* (“GIPA”), and to obtain redress for persons injured by its conduct. Plaintiff alleges the following based on personal knowledge as to Plaintiff’s own experiences, and as to all other matters, upon information and belief, including an investigation conducted by Plaintiff’s attorneys.

INTRODUCTION

1. This case concerns the misuse of individuals’ genetic information in Illinois by one of the nation’s largest life insurance companies. To assess eligibility for life insurance coverage, Defendant requires its customers to undergo a physical exam during which genetic information in the form of their family medical history is requested.

2. Having recognized the uniquely private and sensitive nature of genetic information – and the potential for harmful discrimination that such information may encourage among insurers

– the Illinois General Assembly enacted GIPA in part to regulate an insurers’ use of such genetic information. In addition to its baseline protections of individuals’ genetic information, GIPA specifically provides that an insurer shall not use protected health information that is genetic information for underwriting purposes including the assessment of an individual’s eligibility. 410 ILCS 513/20(b).

3. GIPA defines “genetic information” as information pertaining to: (i) an individual’s genetic tests; (ii) the genetic tests of family members of the individual; (iii) the manifestation of a disease or disorder in family members of such individual; or (iv) any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.¹

4. Genetic information, including familial health history, is a uniquely private and sensitive form of personal information. The genetic information contained therein reveals a trove of intimate information about that person’s health, family, and innate characteristics.

5. In requiring prospective customers, such as Plaintiff, to disclose their family medical histories, Defendant has violated Plaintiff’s and the other putative Class members’ statutory right to genetic privacy.

6. In enacting GIPA, the Illinois Legislature recognized that “[d]espite existing laws, regulations, and professional standards which require or promote voluntary and confidential use of genetic testing information, many members of the public are deterred from seeking genetic testing because of fear that test results will be disclosed without consent in a manner not permitted by law or will be used in a discriminatory manner.” *See* 410 ILCS 513/5(2).

¹ 410 ILCS 513/10, by reference to 45 C.F.R. § 160.103.

7. GIPA bestows a right to privacy in one's genetic information and a right to prevent the use of or disclosure of genetic information.

8. Despite GIPA's prohibition against the use of family medical information concerning familial diseases and disorders, Defendant continues to request that its customers and prospective customers provide protected familial medical history to assess their eligibility for insurance coverage in violation of GIPA.

9. Plaintiff brings this action for statutory damages and other remedies as a result of Defendant's conduct in violating Plaintiff's Illinois genetic privacy rights.

10. On Plaintiff's own behalf, and on behalf of the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with GIPA, as well as an award of statutory damages under GIPA to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

11. Defendant Banner Life Insurance Company is a corporation organized under the laws of the state of Maryland that conducts substantial business throughout Illinois, including in Effingham County, and is registered with the Illinois Department of Insurance to transact business in Illinois.

12. At all relevant times, Plaintiff Robert Thompson has been a resident of the state of Illinois.

JURISDICTION AND VENUE

13. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States because Defendant is doing business within this state and because Plaintiff's claims arise out of

Defendant's unlawful in-state actions, as Defendant has used the genetic information of its customer applicants in Illinois.

14. Venue is proper in Effingham County because Defendant is doing business in Effingham County and thus resides there under 735 ILCS § 5/2-102(a).

COMMON FACTUAL ALLEGATIONS

15. The genomic revolution of recent decades has brought with it great advancements in biological sciences and medicine. Modern genomic technologies allow individuals to gather genealogical information about themselves and their relatives, to discover their genetic predisposition for diseases before any symptoms manifest, and in some cases to prevent and treat such diseases.

16. These and other benefits of genomic science have coincided with a rapid decline in the cost of genetic testing. Since the turn of the 21st century, the cost of collecting and analyzing a complete individual human genome has fallen from more than \$100,000,000 in 2001 to less than \$1,000 in 2022.² Despite the benefits to science and health care that could be gained from increased access to genetic testing, the Centers for Disease Control expressed counterbalancing concerns related to genetic privacy as early as 1996.³

17. As recognized by the CDC and the Illinois Legislature, progress in the field of genomics does not come without risk, and as the benefits and accessibility of genetic testing have grown so too has the potential for abuse and discrimination. To address these and other concerns related to misusing genetic information, Illinois and other states regulate the collection, use, and disclosure of such information.

² <https://www.genome.gov/about-genomics/fact-sheets/DNA-Sequencing-Costs-Data>

³ Board on Biology National Research Council. *Privacy Issues in Biomedical and Clinical Research: Proceedings of Forum on November 1, 1997* (Washington D.C., National Academy Press, 1997) 1.

18. In 1998, the Illinois General Assembly enacted the Genetic Information Privacy Act, 410 ILCS 513/1 *et seq.* out of recognition that people’s genetic information could be used for discriminatory purposes, one of the most harmful of which would occur in the context of insurance.

19. Accordingly, GIPA prohibits an insurer from using protected health information that is genetic information for underwriting purposes. 410 ILCS 513/20(b).

20. Specifically, an insurer may not use genetic information for underwriting purposes defined as:

- (1) rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);
- (2) the computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities, such as completing a health risk assessment or participating in a wellness program);
- (3) the application of any pre-existing condition exclusion under the plan, coverage, or policy; and
- (4) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

410 ILCS 513/20(b)(1)-(4).

21. GIPA defines an insurer, in relevant part, as “[] (i) an entity that is subject to the jurisdiction of the Director of Insurance and (ii) a managed care plan.” 410 ILCS 513/10.

22. Defendant is subject to the jurisdiction of the Director of Insurance, and thus is an “insurer” as defined by GIPA.

23. As part of its underwriting practices, Defendant requires its prospective customers to undergo a physical examination.

24. Defendant's physical examination includes the collection of information regarding the manifestation of diseases in family members of the prospective customer. Defendant then uses this genetic information to assess their eligibility for insurance coverage.

25. Defendant thus violated GIPA by using Plaintiff's and the Class's genetic information for underwriting purposes as defined by GIPA.

FACTS SPECIFIC TO PLAINTIFF

26. In or around May of 2023, Plaintiff Robert Thompson applied for life insurance coverage offered by Defendant in Effingham, Illinois.

27. As part of the underwriting process, and as a precondition of insurance coverage, Defendant required Plaintiff to undergo a physical examination.

28. During the examination, Defendant required Plaintiff to answer questions concerning his family medical history, *i.e.* the manifestation of diseases or disorders in his family members. Such questions included whether Plaintiff's family members had a history of high blood pressure, cancer, diabetes, heart disease, and other medical conditions.

29. In response, Plaintiff disclosed his genetic information, including diseases and disorders with which his family members have been diagnosed. Defendant documented Plaintiff's answers and collected the same.

30. Defendant then used this genetic information to assess Plaintiff's eligibility for life insurance coverage, and denied Plaintiff coverage.

31. Thus, Plaintiff's sensitive genetic information was used by Defendant for underwriting purposes, including the assessment of his eligibility for life insurance coverage, in violation of GIPA.

CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on behalf of himself and similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class defined as follows:

All individuals who applied for insurance coverage with Defendant in Illinois and from whom Defendant, or an agent acting on behalf of Defendant, has requested and/or obtained family medical history or other genetic information according to Defendant's records within the applicable limitations period.

33. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officers or directors.

34. Upon information and belief, there are thousands of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendant's records.

35. Plaintiff's claims are typical of the claims of the members of the Class Plaintiff seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the other members of the Class are the same, and because Defendant's conduct has resulted in similar violations to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all been aggrieved by Defendant's GIPA violations.

36. There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendant's conduct is subject to GIPA;
- b. Whether Defendant used Plaintiff's and the other Class members' genetic

information for underwriting purposes in violation of 410 ILCS 513/20(b);

- c. Whether Defendant's violations of GIPA were negligent;
- d. Whether Defendant's violations of GIPA were reckless or intentional; and
- e. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

37. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

38. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to those of the other members of the Class.

39. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I

Violation of the Illinois Genetic Information Privacy Act, 410 ILCS 513/1, *et seq.* (On behalf of Plaintiff and the Class)

40. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

41. Defendant is registered with the Illinois Department of Insurance, is subject to the jurisdiction of the Director of Insurance, and therefore is an “insurer” under GIPA. 410 ILCS 513/10.

42. GIPA defines “genetic information” by reference to HIPAA as specified in 45 C.F.R. § 160.103 to include the manifestation of a disease or disorder in family members of an individual.

43. Under GIPA, an insurer shall not use genetic information for underwriting purposes. 410 ILCS 513/20(b). “Underwriting purposes” as defined by GIPA includes the determination of or eligibility (including enrollment) for life insurance coverage. 410 ILCS 513/20(b)(1).

44. To assess their eligibility for life insurance coverage, Defendant required Plaintiff and the Class to undergo physical exams, wherein Defendant required them to answer questions regarding their family medical history, *i.e.* the manifestation of a disease or disorder in family members.

45. Defendant then used this protected health information for underwriting purposes by, *inter alia*, using it to assess Plaintiff and the Class members’ eligibility for life insurance coverage.

46. Thus, Defendant used Plaintiff’s and the Class members’ genetic information in violation of the GIPA.

47. Plaintiff and the Class also provided accompanying personal identifying information, including their full names, home addresses, date of birth, Social Security information and gender to Defendant as part of their life insurance applications and during the physical exams they underwent.

48. The information obtained from Plaintiff and the Class by Defendant is the type of information protected by GIPA. 410 ILCS 513/10.

49. Plaintiff and the other Class members have been aggrieved by Defendant's above violations of their statutorily protected rights to privacy in their genetic information as set forth in GIPA.

50. GIPA provides for statutory damages of \$15,000 for each reckless or intentional violation of GIPA and, alternatively, damages of \$2,500 for each negligent violation of GIPA. 410 ILCS 513/40(a)(3).

51. Defendant's violations of GIPA, a statute that has been in effect since 1998, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with GIPA.

52. Accordingly, Plaintiff, individually and on behalf of the proposed Class, prays for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Robert Thompson, individually and on behalf of the proposed Class, respectfully requests that this Court enter an Order:

- a. Certifying the Class as defined above, appointing Plaintiff as class representative, and appointing Plaintiff's counsel as class counsel;
- b. Declaring that Defendant's actions, as set forth herein, violates GIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with GIPA;
- d. Awarding statutory damages of \$15,000 for each reckless or intentional violation of GIPA pursuant to 410 ILCS 513/40(a)(3);

- e. Awarding statutory damages of \$2,500 for each negligent violation of GIPA pursuant to 410 ILCS 513/40(a)(3);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 410 ILCS 513/40(a)(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: October 30, 2023

Respectfully submitted,

ROBERT THOMPSON, individually and on behalf of similarly situated individuals,

By: /s/ Andrew T. Heldut
One of Plaintiff's Attorneys

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Attorneys for Plaintiff and the Putative Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Claims Banner Life Insurance Company Illegally Requests Genetic Info Via Family Medical Histories](#)
