

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

BRYNN THOMPSON, individually and)
on behalf of similarly situated)
individuals,)

Plaintiff,)

v.)

THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA, a New)
Jersey corporation, and PRUCO LIFE)
INSURANCE COMPANY, an Arizona)
corporation,)

Defendants.)

2023LA33

No.

Hon.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Brynn Thompson (“Plaintiff”), individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Defendants The Prudential Insurance Company of America and Pruco Life Insurance Company (collectively “Prudential” or “Defendants”) for their violations of the Illinois Genetic Information Privacy Act, 410 ILCS 513/1, *et seq.* (“GIPA”), and to obtain redress for persons injured by their 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, Defendants require their 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, Defendants have 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

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

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).

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, Defendants continue to request that their 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 Defendants’ 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 Defendants 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 Pruco Life Insurance Company is a corporation organized under the laws of the state of Arizona 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. Defendant The Prudential Insurance Company of America is a corporation organized under the laws of the state of New Jersey that conducts substantial business throughout Illinois, including in Effingham County, and is registered with the Illinois Department of Insurance to transact business in Illinois. Defendant The Prudential Insurance Company of America owns

Defendant Pruco Life Insurance Company and, on information and belief, manages and controls the operations of Defendant Pruco Life Insurance Company. Defendant The Prudential Insurance Company of America shares an office address with Defendant Pruco Life Insurance Company at 751 Broad Street, Newark, NJ 07102.

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

JURISDICTION AND VENUE

14. This Court may assert personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States because Defendants are doing business within this state, and because Plaintiff's claims arise out of Defendants' unlawful in-state actions, as Defendants have used the genetic information of their customer applicants in Illinois.

15. Venue is proper in Effingham County because Defendants are doing business in Effingham County and thus reside there under 735 ILCS § 5/2-102(a).

COMMON FACTUAL ALLEGATIONS

16. 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.

17. 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

18. 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.

19. 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.

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

21. 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

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.

(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).

22. 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.

23. Defendants are subject to the jurisdiction of the Director of Insurance, and thus are each an “insurer” as defined by GIPA.

24. Defendants issue and administer various life insurance products and are licensed to sell life insurance in Illinois. They form one of the largest life insurance companies in the nation known as Prudential.

25. As part of their underwriting practices, Defendants require their prospective customers to undergo a physical examination.

26. Defendants’ physical examination includes the collection of information regarding the manifestation of diseases in family members of the prospective customer. Defendants then use this genetic information to assess their eligibility for insurance coverage.

27. Defendants thus violated GIPA by using Plaintiff’s and the Class’s genetic information for underwriting purposes as defined by GIPA.

FACTS SPECIFIC TO PLAINTIFF

28. In or around May of 2023, Plaintiff Brynn Thompson applied for life insurance coverage offered by Defendants in Effingham, Illinois.

29. As part of their underwriting process, and as a precondition of insurance coverage, Defendants required Plaintiff to undergo a physical examination.

30. During the examination, Defendants required Plaintiff to answer questions concerning her family medical history, *i.e.* the manifestation of diseases or disorders in her 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.

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

32. Defendants then used this genetic information to assess Plaintiff's eligibility for life insurance coverage, and denied Plaintiff her life insurance coverage.

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

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on behalf of herself 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 Defendants in Illinois and from whom Defendants, or an agent acting on behalf of Defendants, have requested and/or obtained family medical history or other genetic information according to Defendants' records within the applicable limitations period.

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

36. 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 Defendants' records.

37. 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 Defendants' liability to Plaintiff and the other members of the Class are the same, and because Defendants' conduct has resulted in similar violations to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all been aggrieved by Defendants' GIPA violations.

38. 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 Defendants' conduct is subject to GIPA;
- b. Whether Defendants used Plaintiff's and the other Class members' genetic information for underwriting purposes in violation of 410 ILCS 513/20(b);
- c. Whether Defendants' violations of GIPA were negligent;
- d. Whether Defendants' violations of GIPA were reckless or intentional; and
- e. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

39. 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.

40. 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.

41. Defendants have 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)**

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

43. Defendants are registered with the Illinois Department of Insurance, are subject to the jurisdiction of the Director of Insurance, and therefore are each an "insurer" under GIPA. 410 ILCS 513/10.

44. 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.

45. 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).

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

47. Defendants 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.

48. Thus, Defendants used Plaintiff's and the Class members' genetic information in violation of the GIPA.

49. 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 Defendants as part of their life insurance applications and during the physical exams they underwent.

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

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

52. 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).

53. Defendants' 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, Defendants negligently failed to comply with GIPA.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brynn 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 Defendants' 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 Defendants 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,

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

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

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Prudential Illegally Requests Prospective Policyholders' Family Medical Histories](#)
