COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT
2384CV01704-BLS2

ROBERT SHEINKOPF (INDIVIDUALLY), SYBIL SHEINKOPF (INDIVIDUALLY), AND MARILYN SHEINKOPF NEWMAN AND LAURE SHEINKOPF AS TRUSTEES OF THE ROBERT SHEINKOPF FAMILY IRREVOCABLE TRUST

v.

PACIFIC LIFE INSURANCE COMPANY

DECISION AND ORDER ALLOWING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Robert and Sybil Sheinkopf, together with their daughters as Trustees of the Robert Sheinkopf Family Irrevocable Trust, claim that Pacific Life Insurance Company improperly terminated a variable universal life insurance policy that it had issued to the Trust. Alternatively, they claim that Pacific Life improperly refused to reinstate the Policy. The Policy was a "last survivor" or "second-to-die" policy, meaning that the benefit would be paid to the Trust after both Robert and Sybil had died. The Sheinkopfs arranged and paid for this Policy, but the Trustee was the owner and beneficiary.

Pacific Life is entitled to summary judgment in its favor on all claims against it because "no material facts are in dispute and the moving party is entitled to judgment as a matter of law."[1] *Tody's Service, Inc.* v. *Libert Mut. Ins. Co.*, 496 Mass. 197, 199 (2025). "The purpose of summary judgment is to decide cases

[1] In their original complaint, Plaintiffs also asserted claims against their financial advisor Sean Flynn and his firm Commonwealth Equity Services, LLC. In April 2024 the Court allowed the motion by Flynn and CES to compel arbitration of the claims against them, and therefore dismissed those claims without prejudice. When Plaintiffs filed their amended complaint, they dropped the claims against Flynn and CES, consistent with the Court's prior ruling.

As a result, the final judgment need not address the prior claims against Flynn and CES. See *National Constr. Co., Inc.* v. *National Grange Mut. Ins. Co.*, 10 Mass. App. Ct. 38, 40 (1980) (where amended complaint sets forth all of plaintiffs' allegations, "any matters which are not restated in the amended complaint are deemed waived or abandoned"); *Connectu LLC* v. *Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008) ("An amended complaint, once filed, normally supersedes the antecedent complaint. Thereafter, the earlier complaint is a dead letter and no longer performs any function in the case.").

where there are no issues of material fact," like this one, and to do so "without the needless expense and delay of a trial followed by a directed verdict." *Correllas* v. *Viveiros*, 410 Mass. 314, 316 (1991).

1. **Factual Background**. The following facts are not in dispute. Pacific Life issued a variable universal life insurance policy to the Trust in 2006. The Policy insured, or covered the lives of, Robert and Sybil Sheinkopf, who were each 70 years old at that time. The Policy had a $7.5 million death benefit and a Planned Annual Premium of $102,365.

The Trust was the owner and beneficiary of the Policy. The purpose of the Trust was to hold insurance on the lives of Robert and Sybil for the benefit of their children and any grandchildren.

Before issuing the Policy, Pacific Life provided Plaintiffs with an Illustration explaining how the Policy would work. The Illustration explained that the Policy would allow the Trust "to make flexible premium payments," "premiums may be paid at any time," and the policyholder would "determine the frequency and amount of premium payments." Under the Policy, Pacific Life would place the premium payments in investment accounts selected by the Sheinkopfs and deduct monthly expense charges from the Policy's accumulated value.

The Policy provided that if the accumulated value was not sufficient to pay the monthly expense deduction, then the Trust would have a 61-day grace period to pay a sufficient premium to keep the Policy in force. It also provided that, if sufficient premium is not paid by the end of the grace period, then the Policy would lapse and terminate with no value. The Policy required Pacific Life to give the Trust written notice, "at the last known address," of the premium payment that would be required to keep the Policy in force. Pacific Life was required to provide this notice twice—first at the start of the 61-day grace period, and then a second time 31 days before a lapse.

The Illustration showed that if the Sheinkopfs paid the Planned Annual Premium of $102,365 each year, then based on stated assumptions about the future performance of the investment options the Policy was likely to remain in effect for 25 years or more. However, the Illustration also cautioned that "any reduction in scheduled planned premium payments … can affect the accumulated value and will increase the likelihood that the policy could lapse at some time in the future."

The Sheinkopfs and their financial advisor Sean Flynn opted to limit the premium payments to Pacific Life to avoid building up a large accumulated value. This was a deliberate strategy. During his deposition, Flynn testified that this made good sense because the Trust would receive the same $7.5 million death benefit from Pacific Life whether the accumulated value when the second of the Sheinkopfs passed away was $100,000 or $1 million.

The Sheinkopfs made premium payments to Pacific Life that totaled $586,825 over eleven and a half years. They paid the $102,365 Planned Annual Premium in June 2006 when the Policy was first issued, and again in April 2007 and April 2008. They did not make another premium payment until almost four years later, in January 2012, when they paid $75,000 to Pacific Life. Sheinkopfs made further payments of $102,365 in May 2013 and again in January 2018. They did not make any other payments.

Pacific Life sent quarterly and annual account statements to the Trust. In April 2019 the Policy had an accumulated value of $134,562.43. That value dropped to $71,940.26 as of the April 2020 annual statement. One year later, the April 2021 annual statement showed that the Policy's accumulated value had dropped to $38,578.16. The July 2021 quarterly statement showed that the accumulated value had dropped further to $19,279.50.

On September 7, 2021, Pacific Life mailed the Trust a "Notice of Payment Required," stating that the Policy would lapse unless Pacific Life received an additional premium payment of at least $23,67124 by November 7, 2021 (61 days later). On October 7, 2021, Pacific Life mailed the Trust a second "Notice of Payment Required" stating the same thing, together with a quarterly statement showing that as of that date the Policy had a negative accumulated value of -$1,151.68.

Both of these "notices of required payment" were sent by first class mail to the Trust's mailing address in Boca Raton, Florida. Plaintiffs verified in their interrogatory answers that the address to which these notices were sent was and is the correct mailing address for the Trust. Since April 2006 the Sheinkopfs have spent the summer months at their home in Mashpee, Massachusetts, and winter months at their Boca Raton home, which is their primary residence.

The Sheinkopfs did not pay any additional premium in response to these notices that the Policy was about to lapse. As a result, the Policy lapsed by its terms. Pacific Life never cancelled the policy. Instead, it automatically lapsed

because the accumulated value was depleted and the Sheinkopfs failed to replenish the account by paying additional premium.

On November 7, 2021, Pacific Life mailed the Trust a "Notice of Lapse," stating that all coverage under the Policy "has ceased" as of that date because there was "insufficient value to cover the Monthly Deductions due."

The September 2021 and October 2021 "notices of payment required," as well as the November 2021 notice of lapse, were all in Robert Sheinkopf's possession and produced by him during discovery in this case. During his deposition testimony, Robert first believed that he had seen these notices in 2021, but ultimately was not at all sure when he received them. Sybil Sheinkopf and the two Trustees all testified under oath that they had no documents and maintained no files regarding the Policy.

2. **The Contract and Declaratory Judgment Claims**. Let's turn to the two claims for breach of contract and the related claim for declaratory judgment.

2.1. **The Sheinkopfs Lack Standing**. Robert and Sybil Sheinkopf lack standing to sue for breach of contract, or to seek declaratory judgment about the status of the Policy, because they were neither parties to nor intended third-party beneficiaries of the Policy that Pacific Life issued to the Trust.

Plaintiffs expressly allege in their amended complaint that the Trust was the owner and beneficiary of the Policy.

All of the plaintiffs are bound by the allegation in their pleading that the Trust, and not Robert or Sybil, is the sole owner and beneficiary of the Policy.[2] See G.L. c. 231, § 87; *Adiletto* v. *Brockton Cut Sole Corp.*, 322 Mass. 110, 112 (1947). Though Plaintiffs tried to contest this point in their summary judgment papers, they conceded it during oral argument.

Since they are neither the owners nor the beneficiaries of the Police, Robert and Sybil cannot bring suit to enforce the Trust's rights under the Policy. See *Massachusetts Coalition for the Homeless* v. *City of Fall River*, 486 Mass. 437, 447 (2020) ("litigants only have standing to assert their own rights and not the rights of others").

[2] The version of the Policy in the summary judgment record says that Sybil is an owner, but it is undisputed that Pacific Life had to create a duplicate copy of the Policy and included a scrivener's error that incorrectly listed Sybil as one of the Policy owners.

As a general matter, a person or entity that is not a party to a contract has no standing to enforce the contract. See *Sullivan* v. *Kondaur Capital Corp.*, 85 Mass. App. 202, 205 (2014).

While there is an exception for intended third-party beneficiaries, the Policy does not confer such status because there is no "clear and definite" indication that the contracting parties intended not only that the Sheinkopfs would benefit from the Policy but also that they "could enforce it." See *Landry* v. *Transworld Systems, Inc.*, 485 Mass. 334, 342 (2020); accord *Lakew* v. *Mass. Bay Transp. Auth.*, 65 Mass. App. Ct. 794, 799 n.10 (2006) ("contracting parties may well intend that a third party receive a benefit as a result of their contract but not intend to confer on the third party a right to enforce the contract."). Nothing in Policy suggests that it was intended to give the Sheinkopfs the right to bring suit to enforce the Policy.[3]

But, even if Robert and Sybil had standing, their claims for breach of contract would fail for the reasons discussed below.

2.2. **The Trust's Claim for Breach of Contract**. The summary judgment record establishes that the Trust cannot prove its claims for breach of contract, and that Pacific Life is therefore entitled to summary judgment in its favor on those claims.

2.2.1. **Policy Lapse**. The Trust claims in part that Pacific Life breached the Policy by "cancelling" the Policy without providing the required notices that the accumulated value was not sufficient to cover the monthly premium, and that an additional payment would be required. In fact, the Policy lapsed by its terms due to non-payment of required premiums; Pacific Life did not "cancel" the Policy. See *Kukuruza* v. *John Hancock Mut. Life Ins. Co.*, 276 Mass. 146, 149 (1931) (where life insurance policy lapses due to nonpayment of premiums, "no affirmative action" by insurer is "necessary to terminate the corresponding rights of the insured"); *Kavanagh* v. *New York Life Ins. Co.*, 170 F.3d 253, 257 (1st Cir. 1999) (where insurance policy "lapsed for nonpayment of premiums, all coverage terminated by the very terms of the policy," and insurer's subsequent decision not to reinstate the policy was not a "cancellation" of the policy).

As discussed above, the summary judgment record establishes that Pacific Life sent both of the required notices that the Policy would soon lapse if the

[3] In a prior decision in this case, the Court said that "the Sheinkopfs appear to be intended third-party beneficiaries with a right to enforce the Policy." That is incorrect for the reasons just discussed.

Sheinkopfs did not make an additional premium payment by first class mail to the Trust's mailing address in Boca Raton, Florida. Nothing more was required to comply with the policy terms.

The Trust's argument that the notice was not effective unless Pacific Life can prove that it was received has no merit. See G.L. c. 175, § 110B (non-cancellable life, health, or accident insurance policy shall terminate or lapse for nonpayment of premium on date premium as due, so long as insurer "shall have mailed" notice of premium owed and due date "postage prepaid, duly addressed to the insured at [their] last address shown by the company records").

The Policy required that Pacific Life send the notice to the Trust's last known address. That provision requires only that Pacific Life mail the notice, not that it establish that the Sheinkopfs or the Trustees actually received it. See *In re Siegel*, 309 Mass. 553 (1941) (where notice may be provided by mail, it is "deemed to have been given when mailed"); *Checkoway* v. *Cashman Bros. Co.*, 305 Mass. 470, 471 (1940) (where notice may be provided by mail, It "is complete and effective immediately upon being deposited in the post office"); *McTernan* v. *LeTendre*, 4 Mass. App. Ct. 502, 504 (1976) (in determining whether parties entered into a contract, "acceptance by mail is effective upon posting if the offer does not require otherwise").

Though Plaintiffs argue that Robert was recovering after being hospitalized for COVID-19 at the time that Pacific Life mailed the two "notices of required payment," Pacific Life would not have had any heightened duty to provide notice in some other way even if it had known of Robert's illness (and Plaintiffs do not contend and present no evidence that it did). Compare *Kukuruza*, 276 Mass. at 149 (notice of lapse of life insurance policy, not required by policy terms, would not have been necessary even if insurer had known that insured was hospitalized).

In any case, the fact that Robert had both of Pacific Life's "notices of payment required" in his files is sufficient, in the absence of any evidence to the contrary, to establish that he in fact received them from Pacific Life. The only permissible inference from the summary judgment record is that Robert had these notices in his file because he in fact received them through the mail from Pacific Life.

The rule that courts must draw all reasonable inferences in favor of the non-moving party when deciding a motion for summary judgment does not help the Trust here. "On summary judgment, any inference that could be drawn in

favor of the nonmoving party 'must be based on probabilities rather than possibilities and cannot be the result of mere speculation and conjecture.'" *Cesso* v. *Todd*, 92 Mass. App. Ct. 131, 139 (2017), quoting *McEvoy Travel Bureau, Inc.* v. *Norton Co.*, 408 Mass. 704, 706 n.3 (1990); accord *Brooks* v. *Peabody & Arnold, LLP*, 71 Mass. App. Ct. 46, 56 (2008). On this record, there is no basis other than speculation or conjecture for inferring that Robert received the notices other than because Pacific Life mailed them to his Boca Raton residence.

Since the record establishes that Pacific Life complied with its contractual obligation to mail the two required notices that the Policy was about to lapse to the Trust's last address as shown in Pacific Life's files, the other factual issues that the Trust raises with respect to this aspect of its claim for breach of contract are irrelevant. "If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law." *Kourouvacilis* v. *General Motors Corp.*, 410 Mass. 706, 715 (1991), quoting *Celotex Corp.* v. *Catret*, 477 U.S. 317, 328 (1986) (White, J., concurring). Thus, "[a] nonmoving party's failure to establish an essential element of her claim 'renders all other facts immaterial' and mandates summary judgment in favor of the moving party." *Roman* v. *Trustees of Tufts College*, 461 Mass. 707, 711 (2012), quoting *Kourouvacilis, supra*, at 711.

2.2.2. **No Reinstatement**. The Trust's further argument that pursuant to G.L. c. 175, § 110B, the Policy did not lapse until three months after the premium due date, and that the Trust therefore was entitled to seek reinstatement of the Policy before February 7, 2022, without having to prove that the Sheinkopfs were still insurable, is unavailing.

Since Pacific Life sent its second "notice of payment required" to the Trust 31 days before the due date, and the summary judgment record establishes that it sent the notice by first class mail, "postage prepaid, duly addressed to the insured at [its] last address shown by the company's records," the Policy lapsed by its terms on November 7, 2021, and not three months later as the Trust contends. See G.L. c. 175, § 110B.

The Policy provides that after the Policy lapsed it "may be reinstated not more than five years after the end of the grace period to long as the Trust provided a written application, "evidence of insurability satisfactory to us for each insured who was alive on the date of lapse," and sufficient premium to cover all monthly deductions that were due and unpaid as well as the next three months of monthly deductions.

The summary judgment record establishes that Pacific Life did not reinstate the Policy because it determined, after reviewing the Sheinkopf's medical records, that the Sheinkopfs (now in their mid-80s) were uninsurable. That was expressly allowed under the Policy. Therefore the Trust cannot prove its claim that Pacific Life breached the Policy by declining to reinstate it.

2.3. **The Trust's Implied Covenant Claim**. Pacific Life is also entitled to summary judgment on the Trust's claim under the implied covenant of good faith and fair dealing.

Every contract includes an implied covenant of good faith and fair dealing, which provides "that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Weiler* v. *PortfolioScope, Inc.*, 469 Mass. 75, 82 (2014), quoting *Druker* v. *Roland Wm. Jutras Assocs., Inc*., 370 Mass. 383, 385 (1976).

"The scope of the covenant is only as broad as the contract that governs the particular relationship." *Wortis* v. *Trustees of Tufts College*, 493 Mass. 648, 671 (2024), quoting *Ayash* v. *Dana-Farber Cancer Inst*., 443 Mass. 367, 385 (2005). This implied covenant "does not create rights or duties beyond those the parties agreed to when they entered into the contract." *Boston Med. Ctr. Corp.* v. *Secretary of Executive Office of Health & Human Servs*., 463 Mass. 447, 460 (2012), quoting *Curtis* v. *Herb Chambers I-95, Inc.*, 458 Mass. 674, 680 (2011). Instead, it governs only "the manner in which existing contractual duties are performed." *Eigerman* v. *Putnam Investments, Inc.*, 450 Mass. 281, 289 (2007).

The Trust contends that it reasonably expected that Pacific Life would keep sending notices that premium payments were due to the Sheinkopf's financial advisor, and that if the policy were to lapse the Trust "would be given the opportunity to reinstate their Policy without a new underwriting process."

But the Policy imposed no duty to send notices to Mr. Flynn or to permit the Trust to bypass the express reinstatement provisions in the Policy. Since the Policy contained to such requirements, Pacific Life did not violate the implied covenant by not doing these things. See *Boston Med. Ctr. Corp.*, 463 Mass. at 460.

The Trust has mustered no evidence that Pacific Life "breached the implied covenant of good faith by exercising its discretion in an unreasonable manner," as it contends. Since the Policy permitted notice that additional premiums were due by regular mail to the Trust's last known address, complying with that provision could not have and did not violate the implied covenant.

Though the Trust argues that the implied covenant imposed new duties because the lapse occurred during the COVID-19 pandemic, it cites no authority in support of that argument.

2.4. **The Declaratory Judgment Claim**. With respect to the claim for declaratory relief, it follows from the discussion above that Pacific Life is entitled to a declaration in its favor stating that the Policy lapsed and that Pacific Life has no obligation to reinstate it. Cf. *Kitras* v. *Zoning Adm'r of Aquinnah*, 453 Mass. 245, 247 & 258 (2009) (where plaintiff has sought a declaratory judgment, and defendant are entitled to summary judgment on other claims, final judgment should also declare the rights of the parties); 146 Dundas Corp. v. Chem. Bank, 400 Mass. 588, 589 n.4 (1987) ("under G.L. c. 231A, the judge should declare the rights of the parties, even on motions for summary judgment").

3. **The Negligence Claim**. The Plaintiffs new claim that Pacific Life is liable for negligently performing its contractual duties under the Policy is barred by the so-called "economic loss rule" or "economic loss doctrine."[4]

The economic loss rule generally provides that "purely economic losses are unrecoverable in tort and strict liability actions in the absence of personal injury or property damage." *Aldrich* v. *ADD Inc.*, 437 Mass. 213, 222 (2002), quoting *FMR Corp*. v. *Boston Edison Co*., 415 Mass. 393, 395 (1993). This rule "was developed in part to prevent the progression of tort concepts from undermining contract expectations," on the theory that contracting parties are free to allocate the risk of economic loss as they see fit. *Wyman* v. *Ayer Properties, LLC*, 469 Mass. 64, 70 (2014).

The economic loss rule applies to tort claims for negligent performance of contractual duties. See *695 Atlantic Ave. Co., LLC* v. *Commercial Const. Consulting, Inc.*, No. 04-P-1129, 64 Mass. App. Ct. 1109, 2005 WL 2291192, at *3 (2005) (non-binding Rule 1:28 decision); see also *Herbert A. Sullivan, Inc.* v. *Utica Mut. Ins. Co.*, 439 Mass. 387, 413 (2003) (suggesting that economic loss doctrine would have barred claim for negligent performance of contractual duty if defendant had not waived issue by failing to raise it).

[4] When the Plaintiffs sought leave to amend their complaint, in part to add this negligence claim, Pacific Life argued that the amendment would be futile but did not assert that the economic loss rule barred this claim. The Court found that the claim would not be futile, without sua sponte deciding whether it would be barred by the economic loss doctrine.

This rule applies here because Plaintiffs have mustered no evidence that they suffered personal injury or property damage because of Pacific Life's alleged negligence.

Plaintiffs point to a Federal district court decision holding that that, under Massachusetts law, the economic loss rule does not apply to claims for negligent performance of contractual duties. See *Fishman* v. *John Hancock Life Ins. Co. (USA)*, no. 13-12166-LTS, 2014 WL 1326989, at *2 (March 27, 2014) (Sorokin, M.J. The Court is not persuaded.

Fishman incorrectly presumes, and relies upon a prior federal decision that incorrectly presumes, that *Abrams* carves out an exception to the economic loss rule for claims of negligent performance of contractual duties. See *Id*., citing *Arthur D. Little Int'l, Inc.* v. *Dooyang Corp.*, 928 F.Supp. 1189, 1203 (D.Mass. 1996) (Saris, J.).

But in fact *Abrams* does not address the economic loss rule at all. *Abrams* was decided in 1937. The Supreme Judicial Court did not adopt the economic loss rule for another fifty years, in *Bay State-Spray & Provincetown S.S., Inc.* v. *Caterpillar Tractor Co.*, 404 Mass. 103, 107 (1989). It appears that the Appeals Court first did so a few years earlier, in *Marcil* v. *John Deere Indus. Equip. Co.*, 9 Mass. App. Ct. 625, 629–630 (1980). The decision in *Abrams* could hardly have created an exception to a rule that Massachusetts appellate courts did not adopt until decades later.

Though *Abrams* may have involved a claim for economic loss, it did not decide and thus is not precedent holding that the economic loss rule then in effect in other states—but not yet adopted in Massachusetts—does not apply to claims for negligent performance of contractual duties. "The most that can be said is that the point was in the case[] if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *McEvoy Travel Bureau, Inc.* v. *Norton Co.*, 408 Mass. 704, 719 n.12 (1990), quoting *Webster* v. *Fall*, 266 U.S. 507, 511 (1925).

The Court made these points about the economic loss doctrine, and the federal precedent discussed above, in a decision issued six years ago. See *JFF Cecilia LLC* v. *Weiner Ventures, LLC*, Suffolk Super. Ct. no. 1984CV03317-BLS2, 2020 WL 4464584, *15–*16, 2020 Mass. Super. LEXIS 105 (Mass. Super. July 30, 2020) (Salinger, J.). Since then, at least one Federal judge has agreed with this reasoning, held that under Massachusetts law the economic loss rule applies to

claims for negligent performance of contractual duties, and disavowed prior Federal decisions to the contrary. See *Maxfield* v. *UKG, Inc.*, no. 22-cv-10947-ADB, 2025 WL 1581308, *3 (D.Mass. June 4, 2025) (Burroughs, J.).

In sum, the negligence claim against Pacific Life fails as a matter of law because it is barred by the economic loss rule.

4. **Robert and Sybil's Unjust Enrichment Claim**. Finally, Pacific Life is also entitled to summary judgment in its favor on the claim by Robert and Sybil that Pacific Life has been unjustly enriched because it has unfairly kept their premium payments without permitting them to reinstate the Policy.

To prove their claim for unjust enrichment, Robert and Sybil must establish that Pacific Life obtained a valuable benefit from them that was not covered by a contractual agreement, and that Pacific Life accepted or retained the benefit under circumstances where it would be unfair for them to do so without paying its value to Paul. See *National Shawmut Bank of Boston* v. *Fidelity Mut. Life Ins. Co.*, 318 Mass. 142, 145-146 (1945); *Santagate* v. *Tower*, 64 Mass. App. Ct. 324, 329 (2005).

This claim fails for two, independent reasons.[5]

First, the parties' rights and obligations are defined by valid contracts. See *Metropolitan Life Ins. Co.* v. *Cotter*, 464 Mass. 623, 641 (2013); *Boston Med. Ctr. Corp.* v. *Secretary of Executive Office of Health & Human Servs.*, 463 Mass. 447, 467 (2012). "A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment."

[5] The Court recognizes that Pacific Life did not argue either of these points in support of its motion for summary judgment.

If the Sheinkopfs believe that Pacific Life is not entitled to summary judgment on the unjust enrichment claim on either of these grounds, and wish to be heard, they should serve and file a motion for reconsideration and the Court will consider it on the merits. The Court will stay the entry of final judgment for 45 days to give Plaintiffs time to do so if they wish.

A judge has discretion to grant summary judgment on different grounds than those raised by the moving party, so long as the non-moving party receives notice and an opportunity to be heard before judgment enters. See *Matter of Estate of Jasiul*, 106 Mass. App. Ct. 688, 671 (2026). This decision provides the Sheinkopfs with notice that the Court intends to enter summary judgment on the unjust enrichment claim on grounds not raised by Pacific Life, the delay in entering final judgment gives the Sheinkopfs the opportunity to be heard if they wish.

Boston Med. Ctr. Corp., *supra*, quoting Restatement (Third) of Restitution and Unjust Enrichment § 2 (2011). Since Pacific Life's rights with respect to premiums paid are governed by the terms of the Policy, the Sheinkopfs may not seek to recoup their prior premium payments under an unjust enrichment theory. See *Zarum* v. *Brass Mill Materials Corp.*, 334 Mass. 81, 85 (1956) (plaintiff may not seek recovery on principles of unjust enrichment where valid contract covers subject matter of dispute).

Second, the summary judgment record establishes that Pacific Life was not unjustly enriched, because under the Policy it was entitled to retain prior premium payments if the Sheinkopfs let the Policy lapse.

"Unjust enrichment, as a basis for restitution, requires more than benefit. The benefit must be *unjust*, a quality that turns on the reasonable expectations of the parties." *Global Investors Agent Corp.* v. *National Fire Ins. Co. of Hartford*, 76 Mass. App. Ct. 812, 826 (2010), quoting *Community Builders, Inc.* v. *Indian Motorcycle Assocs., Inc.*, 44 Mass. App. Ct. 537, 560 (1998) (emphasis in original).

The summary judgment record establishes that Robert and Sybil cannot establish that it was unfair for Pacific Life to accept and retain the premium payments under the circumstances of this case. As discussed above, the Policy expressly contemplates and the Sheinkopfs were put on notice that the Policy could lapse at any time, even after they had paid substantial premiums over a period of many years, if they allowed the accumulated value to dwindle to the point where it could no longer cover monthly expense deductions and they failed to pay additional premiums required to keep the Policy solvent.

There is nothing unjust about Pacific Life retaining the prior premium payments after the Sheinkopfs let the Trust's Policy lapse, as that was permitted and contemplated under the Policy. See *Pierce* v. *Christmas Tree Shops, Inc.*, 429 Mass. 91, 94 n.5 (1999) (health insurer was not unjustly enriched by recouping portion of settlement paid to insured as permitted by contractual subrogation clause); *Harris* v. *Harvard Pilgrim Health Care, Inc.*, 208 F.3d 274, 279 (1st Cir. 2000) (same). "Enrichment is not 'unjust' where it is allowed by the express terms" of an ERISA plan or insurance policy. *Harris*, *supra*, quoting *Ryan* v. *Federal Express Corp.*, 78 F.3d 123, 127 (3d Cir. 1996); accord *Administrative Committee of Wal-Mart Stores, Inc. Associates' Health & Welfare Plan* v. *Varco*, 338 F.3d 680, 692 (7th Cir. 2003).

ORDER

Defendant's motion for summary judgment (docket no. 61) is **allowed**. Final judgment shall enter providing that Plaintiffs shall take nothing on their claims and declaring that Pacific Life Insurance Company policy number VP65635400 lapsed according to its terms due to non-payment of premium and is no longer in effect, and that Pacific Life has no obligation to reinstate this policy.

However, final judgment shall not enter until after July 27, 2026, to give Plaintiffs time to seek reconsideration in order to be heard regarding the grounds for granting summary judgment on the unjust enrichment claim.

Kenneth W. Salinger
Justice of the Superior Court

11 June 2026