

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

BRIGHTON TRUSTEES, LLC,
AS TRUSTEE, *et al.*,
Plaintiffs,

v.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant.

Civil No. 3:20cv240 (DJN)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 5

 A. The COI Increase 5

 B. The Litigation..... 5

 C. Settlement Negotiations 6

 D. The Settlement Agreement 7

 1. Settlement Class..... 7

 2. Consideration 7

 3. Release 8

 4. Costs and Fees..... 9

 5. Notice 9

 6. Distribution Plan 10

III. ARGUMENT 11

 A. The Proposed Settlement Warrants Preliminary Approval under Rule 23(e)..... 11

 1. Legal Standard Governing Preliminary Approval 11

 2. The Settlement is Procedurally Fair..... 12

 a. The Posture of the Proceedings..... 12

 b. The Extent of Discovery 13

 c. The Circumstances Surrounding the Settlement Negotiations 14

 d. The Experience of Class Counsel 14

 3. The Settlement is Substantively Fair, Reasonable, and Adequate..... 14

 a. Relative Strength of Plaintiffs’ Case and Strong Defenses 15

 b. Duration and Expense of Further Litigation 16

 c. Solvency and Recovery on Judgment 16

- d. The Amount of Settlement is Reasonable.....17
- 4. The Rule 23(e)(2) Factors that Do Not Overlap with the Fourth Circuit’s Adequacy Factors Support Preliminary Approval of the Settlement17
 - a. Rule 23(e)(2)(A) - Class Representatives and Class Counsel Have Adequately Represented the Settlement Class.17
 - b. Rule 23(e)(2)(C)(ii) and 23(e)(2)(C)(iii) - The Relief to be Provided to the Class is Adequate, Taking into Account the Effectiveness of Distributing Relief to the Settlement Class.....18
 - c. Rule 23(e)(2)(C)(iii) - The Relief to be Provided to the Class is Adequate, Taking into Account Any Proposed Award of Attorneys’ Fees19
 - d. Rule 23(e)(2)(D) - The Proposal Treats Class Members Equitably Relative to Each Other.19
- B. Certification of the Settlement Class is Appropriate.20
 - 1. The Settlement Class Satisfies the Requirements of Rule 23(a).....21
 - a. Settlement Class Members Are Too Numerous to be Joined.21
 - b. There Are Common Questions of Law and Fact.21
 - c. Plaintiffs’ Claims Are Typical of the Settlement Class.22
 - d. Plaintiffs Will Fairly and Adequately Protect the Interests of the Settlement Class.....23
 - 2. The Settlement Class Meets the Requirements of Rule 23(b)(3).25
 - a. Common Legal and Factual Questions Predominate.....25
 - b. A Class Action Is Superior to Other Methods of Adjudication.26
- C. Notice to the Settlement Class Should Be Approved.27
- D. Proposed Schedule29
- IV. CONCLUSION.....29

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Cases | |
| <i>1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.</i> , 28 F.4th 513 (4th Cir. 2022) | <i>passim</i> |
| <i>Advance Trust & Life Escrow Servs. v. Security Life of Denver Ins. Co.</i> , Case No. 18-cv-01897-DDD-NYW, ECF No. 148 | 31 |
| <i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997)..... | 26, 27 |
| <i>Branch v. Gov’t Emps. Ins. Co.</i> , 323 F.R.D. 539 (E.D. Va. 2018)..... | 24 |
| <i>Brown v. Transurban USA, Inc.</i> , 318 F.R.D. 560 (E.D. Va. 2016)..... | <i>passim</i> |
| <i>Delter v. Microsoft Corp.</i> , 436 F.3d 461 (4th Cir. 2006) | 25 |
| <i>Dickman v. Banner Life Ins. Co.</i> , 2020 WL 13094954 (D. Md. May 20, 2020)..... | 2, 21 |
| <i>DiFelice v. U.S. Airways, Inc.</i> , 235 F.R.D. 70 (E.D. Va. 2006)..... | 25 |
| <i>Feller v. Transamerica Life Ins. Co.</i> , 2017 WL 6496803 (C.D. Cal. Dec. 11, 2017)..... | 24 |
| <i>Fleisher v. Phoenix Life Ins. Co.</i> , 2013 WL 12224042 (S.D.N.Y. July 12, 2013)..... | 25, 26, 28 |
| <i>Gould v. Alleco, Inc.</i> , 883 F.2d 281 (4th Cir. 1989) | 12 |
| <i>Gunnells v. Healthplan Servs., Inc.</i> , 348 F.3d 417 (4th Cir. 2003) | 23, 26, 28 |
| <i>Hanks v. Lincoln Life & Annuity Co. of N.Y.</i> , 330 F.R.D. 374 (S.D.N.Y. 2019) | 24, 27, 31 |
| <i>In re Global Crossing Sec. & ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004) | 26 |

In re Jiffy Lube Sec. Litig.,
927 F.2d 155 (4th Cir. 1991)12, 14, 17

In re MicroStrategy, Inc. Sec. Litig.,
148 F. Supp. 2d 654 (E.D. Va. 2001)12, 15, 16

In re The Mills Corp. Sec. Litig.,
265 F.R.D. 246 (E.D. Va. 2009)15, 18, 25

In re NeuStar Inc. Sec. Litig.,
2015 WL 5674798 (E.D. Va. Sept. 23, 2015).....15, 16

In re Vitamins Antitrust Litig.,
No. 99-cv-197, 2000 WL 1737867 (D.D.C. Mar. 31, 2000)20

Jones v. Fidelity Res., Inc.,
2020 WL 2112141 (D. Md. May 4, 2020).....31

Leonard v. John Hancock Life Ins. Co.,
Case No. 1:18-cv-4994-AKH, ECF No. 20331

McAdams v. Robinson,
26 F.4th 149 (4th Cir. 2022)31

Robinson v. Carolina First Bank NA,
2019 WL 719031 (D.S.C. Feb. 14, 2019).....8, 12

Sharp Farms v. Speaks,
917 F.3d 276 (4th Cir. 2019)12

Singleton v. Domino’s Pizza, LLC,
976 F. Supp. 2d 665 (D. Md. 2013)21

Soutter v. Equifax Info. Servs., LLC,
307 F.R.D. 183 (E.D. Va. 2015)25, 28

Stillmock v. Weis Markets, Inc.,
385 F. App’x 267 (4th Cir. 2010)29

Talbott v. GC Servs. Ltd. P’ship,
191 F.R.D. 99 (W.D. Va. 2000).....29

Thomas v. FTS USA, LLC,
312 F.R.D. 407 (E.D. Va. 2016)29

TVPX ARS Inc. v. Genworth Life & Annuity Insurance Co.,
Case No. 3:18-cv-636-JAG.....9

Vogt v. State Farm Life Ins. Co.,
963 F.3d 753 (8th Cir. 2020)26

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011).....20

Ward v. Dixie Nat’l Life Ins. Co.,
595 F.3d 164 (4th Cir. 2010)26

West v. Cont’l Auto., Inc.,
2018 WL 1146642 (W.D.N.C. Feb. 5, 2018)12

Williams v. Big Picture Loans, LLC,
2021 WL 3072462 (E.D. Va. 2021).....27

Statutes

Class Action Fairness Act, 28 U.S.C. § 171511

Rules

Fed. R. Civ. P. 23 *passim*

Other Authorities

William B. Rubenstein, 1 *Newberg on Class Actions*, § 3:1224, 30

Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust; Bank of Utah, solely as securities intermediary for Diamond LS Trust; and Ronald L. Daubenmier (together, “Plaintiffs”), individually and on behalf of a class of policy owners proposed to be certified for purposes of settlement (the “Settlement Class” or “Class”), have entered into a settlement agreement (the “Settlement” or “Settlement Agreement”) with Defendant Genworth Life and Annuity Insurance Company (“GLAIC”).¹ Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs respectfully move this Court for an order:

1. Certifying the Settlement Class, appointing Plaintiffs as Class representatives, and Susman Godfrey L.L.P. as Class Counsel.
2. Preliminarily approving the proposed Settlement, plan of allocation, and the form and manner of notice to the Settlement Class.
3. Directing notice to the Class under Rule 23(e)(1).

The Settlement, if approved, will conclude this class litigation in its entirety.

I. INTRODUCTION

After more than two years of vigorous litigation and months of arm’s-length negotiations with an experienced mediator, Plaintiffs and GLAIC agreed to settle this complex insurance class action. The settlement provides the following monetary and non-monetary benefits to the class:

- **CASH**: A \$25 million cash payment, reduced *pro rata* for any post-settlement opt outs. This is not a claims-made settlement; checks will be mailed directly to Class members who do not opt-out without requiring them to submit proofs of claim, using GLAIC’s records. Settlement funds do not revert to GLAIC.

¹ Unless otherwise noted, all capitalized terms mean the same as in the Settlement Agreement, which is attached as Exhibit 2 to the Declaration of Steven Sklaver.

- **CLASS COI RATE SCHEDULE INCREASE FREEZE.** A total and complete freeze on any cost of insurance (“COI”) increase for Class Policies for seven years. Thus, even if GLAIC has a future change in enumerated factors that would otherwise permit a COI rate increase under the terms of the Class Policies—including any cost factors that may have increased due to any surge in mortality due to the COVID-19 pandemic—GLAIC will not increase COI rates for seven years. Policyholders now have the ability to predict, with certainty, what their COI obligations will be for a substantial period of time.
- **VALIDITY STIPULATION & STOLI WAIVER.** As part of the Settlement, GLAIC has agreed not to challenge the validity and enforceability of any eligible policies owned by participating Class members on the grounds of lack of an insurable interest or misrepresentations in the application for such policies.

The cash portion of the Settlement Fund by itself represents a substantial recovery in relation to the total past overcharges at issue in this case, whether measured as the incremental COI charges using the methodology calculated in Plaintiff’s damages expert report in support of Class Certification (ECF No. 49-5 at p. 16) (the “Incremental COI Deductions”) or calculated using Defendants’ measure.² Moreover, the non-cash portion of the Settlement adds meaningful additional value, which further enhances the value of the Settlement to the Class. *See* Declaration of Steven Sklaver (“Sklaver Decl.”) ¶ 15. Overall, the Settlement is, at the very least, in line with other settlements in COI increase class actions to which courts have granted preliminary and final approval. *See, e.g., Dickman v. Banner Life Ins. Co.*, 2020 WL 13094954, at *4 (D. Md. May 20,

² Defendant has asserted that, even if Plaintiffs prevailed on liability, the Class is entitled to only a portion of the Incremental COI Deductions as damages. *See* ECF No. 67 at 26-28.

2020), *aff'd sub nom. 1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513 (4th Cir. 2022) (“*Banner COI*”) (approving COI settlement with \$19,862,566 cash fund and nonmonetary relief).

Indeed, earlier this year the Fourth Circuit affirmed the certification and final approval of a settlement in another COI case, stating:

As the district court summarized at the preliminary approval hearing, “[t]he settlement was reached after an extensive motions practice, extensive discovery and investigation of Banner and William Penn policies by Plaintiffs’ counsel and multiple settlement discussions and negotiations.” At the final approval hearing, after considering the arguments of the [objector], the district court reiterated: “the settlement resulted from noncollusive arm’s-length negotiations conducted in good faith by counsel. Collectively, co-lead counsel have over 55 years of experience in complex litigation and class actions.” Paying particularly close attention to the protracted litigation preceding the settlement, the court noted that the “plaintiffs here litigated the claims against defendants, [through] motions practice, discovery, dispositive motions, and protracted mediation which was not successful.” And “discovery, not even counting the discovery since February when I delayed my final approval of this settlement, has included some 7,500 documents consisting of countless pages.”

The district court's analysis is functionally identical to previous cases in which we have upheld a class settlement approval as fair.

Banner COI, 28 F.4th at 525.

Class Counsel recommends this Settlement to the Court after substantial research and discovery into the merits of Plaintiffs’ claims. Class Counsel discovered this alleged breach of contract on their own, without any governmental investigation, and filed the first suit alleging that GLAIC unlawfully increased cost of insurance rates. In discovery in this case, Class Counsel:

- Obtained and reviewed the production of more than 114,000 documents and data sets;
- Issued third-party subpoenas to 13 reinsurers, 3 actuarial consultants, and 1 auditor;
- Deposed 10 highly technical witnesses, including 6 current or former Genworth employees, two third-party actuarial consultants, Genworth’s actuarial expert, and Genworth’s corporate representative;

- Defended 4 depositions of Class Representatives and Plaintiffs’ experts;
- Produced 8 expert reports, including nearly 500 pages of actuarial and damages analysis, and more than 2000 pages of exhibits;
- Served 23 interrogatories, 20 requests for production of documents, and 69 requests for admission;
- Responded to 36 interrogatories and 42 requests for production of documents; and
- Moved for class certification and successfully defended against two motions to exclude Plaintiffs’ experts.

Sklaver Decl. ¶ 6.

The support of the Settlement’s terms by Plaintiffs, Class Counsel, and the mediator is further testimony to the fairness of the Settlement. The parties engaged mediator Rodney Max for an in-person mediation while the parties were still briefing Plaintiffs’ motion for class certification. *Id.* ¶ 13. Mr. Max is a distinguished fellow and past president of the American College of Civil Trial Mediators, and a highly qualified mediator. *See* Declaration of Rodney Max (“Max Decl.”) ¶¶ 2-9. Although the Parties’ initial session with Mr. Max did not result in settlement, the Parties worked with Mr. Max for several remote sessions, and reached a Settlement in March 2022 that provides a remarkable recovery for the Settlement Class, which Mr. Max has described as an “excellent result.” *Id.* ¶ 21.

At the final approval hearing, the Court will have before it more extensive submissions in support of the Settlement and will be asked to determine whether the Settlement is fair, reasonable, and adequate in light of all of the relevant factors. At this time, Plaintiffs request only that the Court grant preliminary approval of the Settlement so that Class members can receive notice of the Settlement and the final approval hearing. This Settlement easily warrants preliminary approval because the Court will “likely be able” to approve the Settlement. Fed. R. Civ. P. 23(e)(1)(B).

II. **BACKGROUND**

A. **The COI Increase**

The Class consists of owners of over 14,900 universal life policies (“Class Policies”) issued by First Colony Life Insurance Company, now GLAIC, between 1999 and 2007. Each Class Policy contains a section titled “Changes in Rates, Charges, and Fees,” with limitations on when and how monthly risk rates used to calculate the monthly COI charges can be adjusted. Plaintiffs’ policies, which are representative of the language included in all Class Policies, state in relevant part:

The Company will base any change on its expectations as to future investment earnings, mortality, persistency, expenses and taxes. The Company will not make any change in order to recoup prior losses. Any change in the monthly risk rates will apply to all insured with the same combination of the following: attained age; number of years of insurance in force; net amount at risk; and premium class.

See Sklaver Decl., Ex. 3 at 14. In 2019 and 2020, GLAIC adjusted COI rates on the Class Policies.

B. **The Litigation**

In April 2020, Plaintiffs filed a putative class action lawsuit, asserting a breach of contract claim against GLAIC. ECF No. 1. The parties engaged in fact discovery and then expert discovery. *See id.* ¶¶ 6-11. Plaintiffs designated two expert witnesses: actuarial expert Howard Zail and damages expert Robert Mills. *See id.* GLAIC also designated two experts: Lisa Kuklinski and Professor Craig Merrill, both for actuarial issues. *See id.* The parties collectively produced 11 expert reports and took and defended three expert depositions. *See id.*

In August 2021, Plaintiffs moved for class certification. ECF No. 49. Plaintiffs’ certification motion included three declarations from Class Representatives, two expert reports, and more than thirty exhibits. Sklaver Decl. ¶ 8. GLAIC opposed certification, and Plaintiffs filed a reply. ECF No. 68, 100. At the same time, GLAIC moved to exclude Plaintiffs’ experts in support of class certification, and the parties fully briefed those motions as well. Sklaver Decl. ¶ 9.

The Court subsequently denied GLAIC's motions to exclude. ECF No. 109. It also convened a conference call with the parties on February 14, 2022 to discuss class certification. *See* Sklaver Decl., Ex. 5. On the call, the Court indicated it had reviewed the extensive briefing and was inclined to certify the class, "unless something completely unusual happens" at the forthcoming certification hearing. *Id.* at 4:17-22. Without prohibiting the parties from filing dispositive motions or pre-judging the issues, the Court further opined that summary judgment would be "a waste of time in this case," given the genuine disputes of material fact made plain in the expert declarations related to class certification. *Id.* at 4:23-25. The parties were able to reach a settlement favorable to the Class only after Plaintiffs prevailed on the *Daubert* motions, and the Court indicated Plaintiffs were likely to prevail on class certification and summary judgment.

C. Settlement Negotiations

The Settlement is the result of extensive, arms-length negotiations between the parties with the assistance of an experienced mediator, Rodney Max. *See* Sklaver Decl. ¶¶ 13-14; Max Decl. ¶¶ 12-21. Through the life of the case, the parties exchanged numerous settlement offers and counter-offers and have engaged in several separate unsuccessful mediations. Following the February 14, 2022 telephone conference with the Court, the parties reopened the settlement dialogue and scheduled additional mediations with Mr. Max, which took place on March 12, 2022, and March 25, 2022 by Zoom. The parties reached an agreement in principle after the last remote session. The parties informed the Court about the development, and the Court convened a telephone conference to discuss the schedule for preliminary approval. *See* ECF No. 126.

After the parties agreed to a settlement in principle, GLAIC produced updated COI data and actuarial modeling from its administrative systems. Plaintiffs reviewed the updated data and

complex modeling with their experts and confirmed their intent to proceed with the Settlement. A long-form settlement agreement was heavily negotiated and agreed to on May 6, 2022.

Throughout the process, the Settlement negotiations were conducted by highly qualified and experienced counsel on both sides. Sklaver Decl. ¶¶ 13-14; Max Decl. ¶¶ 12-21. The mediator, Mr. Max, declares that the proposed Settlement is fair and reasonable, and is “an excellent result” for members of the proposed Class. *See* Max. Decl. ¶ 21. Class Counsel analyzed all the contested legal and factual issues to thoroughly evaluate GLAIC’s contentions, advocated in the settlement negotiation process for a fair and reasonable settlement that serves the best interests of the Class, and made fair and reasonable settlement demands of GLAIC. *Id.*

D. The Settlement Agreement

1. Settlement Class

The Settlement defines the Settlement Class as:

All owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. Specifically excluded from the class are Class Counsel and their employees, GLAIC, its officers and directors and their immediate family members; the Court, the Court’s staff, and their immediate family members; and the heirs, successors or assigns of any of the foregoing. Also excluded from the Class are owners of Gold and Gold II policies that have terminated as a result of the death of the insured on or before March 31, 2022, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured. For purposes of clarification only, the Class also does not include any policies issued by or insured by Genworth Life Insurance Company or its predecessors or successors.

2. Consideration

The Settlement awards both cash relief and non-cash relief to the Settlement Class. With respect to the cash relief, a \$25 million Settlement Fund will be funded for the benefit of the Settlement Class. *See* Sklaver Decl., Ex. 2 ¶ 2. This amount will be reduced, on a *pro-rata* basis, by an amount that is calculated by multiplying the amount of the Settlement Fund (*i.e.*,

\$25,000,000) by a fraction where (i) the numerator is the combined Specified Amount, as of March 31, 2022 (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of March 31, 2022, of all Policies owned by members of the Class. *Id.* ¶ 2. By way of example, if 1% of the total Specified Amount of all Policies owned by members of the Class are attributable to Opt-Outs, the Settlement Fund will be reduced by 1%. *Id.* No portion of the Final Settlement Fund (*i.e.*, the post-reduction amount) will revert to GLAIC. *Id.* ¶ 66. Checks will be sent automatically to Class members using GLAIC’s database of their addresses without requiring Class members to submit claim forms. The Settlement Administrator will also conduct individual address searches, using their own databases and other sources, to confirm the address for owners of terminated policies. Declaration of Gina Intrepido-Bowden (“Intrepido-Bowden Decl.”) ¶ 29.

The Settlement Agreement also provides two forms of significant non-cash relief. *First*, for a period of seven years after the date on which the Court approves the Settlement, “GLAIC agrees that COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 Adjustment.” *See* Sklaver Decl, Ex. 2 ¶ 7. *Second*, “GLAIC agrees to not take any legal action (including asserting as an affirmative defense or counterclaim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in apply for the policy.” *Id.* ¶ 9.

3. Release

Once the settlement becomes final, the Settlement Class and certain related parties (referred to as the “Releasing Parties” in the Settlement Agreement) will release GLAIC and certain related parties (referred to as the “Released Parties” in the Settlement Agreement) from “all Claims

asserted in the Action or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged or could have been alleged in the Action related to the 2019 COI Rate Adjustment.” Sklaver Decl., Ex. 2, ¶ 80. The Settlement Class will not release “(i) new claims that could not have been asserted in the Action because they are based upon a future COI Rate Scale increase that occurs after March 25, 2022 (“New COI Increase Claims”), (ii) claims relating to the COI Rate Scale increases imposed by Genworth Life Insurance Company,³ on Gold and Gold II policies issued, insured, and/or assumed by it, and (iii) claims at issue” in *TVPX ARS Inc. v. Genworth Life & Annuity Insurance Co.*, Case No. 3:18-cv-636-JAG (E.D.V.A.) and Case No. 00-CV-217 (CDL) (M.D. Ga.), appeal filed, 22-11185-A (11th Cir.) (collectively, the “TVPX Action”). *Id.* ¶¶ 28, 62.

4. Costs and Fees

The Settlement provides an incentive award of up to \$25,000 for each Class Representative for their services on behalf of the Settlement Class. *See* Sklaver Decl., Ex. 2 ¶ 16. The Settlement Agreement also provides for attorneys’ fees in an amount not to exceed 33 1/3% of the Final Settlement Fund, as well as reimbursement for all expenses incurred or to be incurred. *Id.* ¶ 17. These amounts, if approved, would be paid out of the Final Settlement Fund. *Id.* ¶¶ 16-17.

Class Counsel will file a motion seeking reimbursement of their costs, fees, and incentive awards, which will be proposed to be scheduled to be heard at the same time as the final approval hearing. Class members will be given an opportunity to object to that application prior to the final approval hearing. No such costs, fees, or awards will be distributed without Court order.

5. Notice

Plaintiff requests the appointment of JND as the Settlement Administrator. The proposed

³ Genworth Life Insurance Company (GLIC) is a different corporation than the defendant here, Genworth Life and Annuity Insurance Company (GLAIC).

notice plan is described in paragraphs 21-25 of the Sklaver Declaration and paragraphs 27-35 of the Declaration of Gina Intrepido-Bowden. The declarations confirm that GLAIC provided owner-address information to JND on April 26, 2022. Sklaver Decl. ¶ 22. Within 14 days after the motion for preliminary approval is granted (the “Notice Date”), JND will mail the short-form notice attached as Exhibit B to the Intrepido-Bowden Declaration to all addresses on the list from GLAIC.⁴ See Intrepido-Bowden Decl. ¶ 27. JND will also post a copy of the long-form notice attached as Exhibit C to the Intrepido-Bowden Declaration to a class action website. See Intrepido-Bowden Decl. ¶¶ 30-31. Class Members who wish to be excluded from the Settlement Class must send a letter to JND requesting exclusion that is postmarked no later than 45 days after the Notice Date. Sklaver Decl., Ex. 2 ¶ 74.

Within 10 days after the filing of this motion, GLAIC shall serve notices of the proposed Settlement upon the appropriate officials in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715. See Sklaver Decl., Ex. 2 ¶ 15.

6. Distribution Plan

The proposed plan of allocation, as set forth in Exhibit 6 to the Sklaver Declaration, distributes proceeds directly to Class Members on a *pro-rata* basis after a minimum settlement payment is made to all Class Members, without the need for a claim form.

Each Class Member’s *pro-rata* share is calculated by multiplying (a) the percentage of Incremental COI Deductions attributable to that Class Member’s policy as of March 31, 2022,⁵ by

⁴ JND will re-mail any short-form notices returned by the U.S. Postal Service with a forwarding address. See Intrepido-Bowden Decl. ¶ 28.

⁵ The methodology for calculating Incremental COI Deductions is described in the Expert Report of Robert Mills. ECF No. 49-5. In that report, Mr. Mills determines the COI overcharges for a Policy as the difference between the COI charges actually assessed on the Policy since December 1, 2019 and the COI charges that would have been deducted from the Policy but-for the 2019 COI Increase. Mr. Mills will update these calculations through March 31, 2022, using the recently produced data.

(b) the Net Settlement Fund after deducting all minimum relief payments. *See* Sklaver Decl., Ex. 6. All in-force policies will also benefit from the guarantee of policy validity and the seven-year COI freeze.

Class members will not need to fill out claim forms. Money will be sent to them automatically in the mail, using the addresses that GLAIC maintains on file. Within one year plus 30 days after the date the Settlement Administrator mails the proceeds, to the extent feasible and practical in light of the costs of administering such subsequent payments, any funds remaining in the Settlement Fund shall be re-distributed on a *pro-rata* basis to Class Members who previously cashed their checks, unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair. Sklaver Decl., Ex. 6 ¶ 5.

III. ARGUMENT

A. The Proposed Settlement Warrants Preliminary Approval under Rule 23(e)

1. Legal Standard Governing Preliminary Approval

Federal Rule of Civil Procedure 23(e) requires court approval for a class action settlement. *See* Fed. R. Civ. P. 23(e)(2). “[T]he district court has a fiduciary responsibility to ensure that the settlement is fair and not a product of collusion, and that the class members’ interests were represented adequately.” *Banner COI*, 28 F.4th at 521 (quoting *Sharp Farms v. Speaks*, 917 F.3d 276, 293-94 (4th Cir. 2019)). In the Fourth Circuit, “[t]here is a strong judicial policy in favor of settlement to conserve scarce resources that would otherwise be devoted to a protracted litigation.” *Robinson v. Carolina First Bank NA*, No. 7:18-cv-02927-JDA, 2019 WL 719031, at *8 (D.S.C. Feb. 14, 2019) (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991) and *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001)). Settlement is particularly favored “in the class action context.” *West v. Cont’l Auto., Inc.*, No. 3:16-cv-00502-

FDW-DSC, 2018 WL 1146642, at *3 (W.D.N.C. Feb. 5, 2018).

At the preliminary approval stage, the “parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class” and the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(2).

In the Fourth Circuit, district judges use four factors for determining a class settlement’s “fairness,” which are: “(1) the posture of the class at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of the class action litigation.” *Banner COI*, 28 F.4th at 525. The Fourth Circuit uses five factors to determine a class settlement’s “adequacy”: “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Id.* at 526.

2. The Settlement is Procedurally Fair

The Fourth Circuit’s fairness analysis is intended to confirm that a settlement was fair and “reached as a result of good-faith bargaining at arm’s length, without collusion.” *Jiffy Lube*, 927 F.2d at 158-59. This is consistent with the Rule 23(e)(2)(A)-(B) considerations of the adequacy of the representation of the class and whether the settlement was negotiated at arm’s length. Each of the fairness factors weighs in favor of a preliminary finding that the Settlement is fair.

a. The Posture of the Proceedings

“Considering the posture of the case at the time of settlement allows the Court to determine

whether the case has progressed far enough to dispel any wariness of possible collusion among the settling parties.” *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 571 (E.D. Va. 2016) (citation and internal quotation marks omitted).

This Action has undoubtedly progressed far enough to dispel any notion of collusion among the parties. Fact discovery in this case concluded on December 17, 2021, and Plaintiffs filed a motion for class certification that GLAIC vigorously contested, including by filing motions to exclude Plaintiffs’ expert reports and testimony. *See* ECF Nos. 46-52, 57, 64, 67-68, 79-82, 95-96, 100-101. At the time the parties reached a settlement, GLAIC had also filed a motion for summary judgment that challenged Plaintiffs’ interpretation of Class policies. ECF No. 118. Because the parties had already discussed substantially all their arguments as to class certification and the merits of the case, and completed all fact discovery, the posture of this Action at the time of Settlement weighs strongly in favor of preliminary approval.

b. The Extent of Discovery

This factor “enables the Court to ensure that the case is well-enough developed for Class Counsel and . . . Plaintiffs alike to appreciate the full landscape of their case when agreeing to enter into th[e] Settlement.” *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009). “[S]ignificant discovery, . . . [that] clarifie[s] plaintiffs’ previous understanding of the strength and weakness of their claims and afford[s] the ability to confirm the fairness, reasonableness, and adequacy of the proposed . . . settlement” will suffice. *MicroStrategy*, 148 F. Supp. 2d at 664 (footnote omitted).

Here, fact discovery closed on December 17, 2021. Class Counsel conducted a thorough investigation of the merits of their claims, including by deposing GLAIC’s 30(b)(6) representative, six current and former GLAIC employees, and two third-party consultants, and taking and defending expert depositions. *See* Sklaver Decl., ¶¶ 6-7. Class Counsel also sought third-party

discovery from GLAIC's reinsurers and consultants. *Id.* Given the extent of discovery, this factor weighs in favor of preliminary approval.

c. The Circumstances Surrounding the Settlement Negotiations

This factor assesses whether the Settlement is the product of adversarial, arm's-length negotiations. *See Microstrategy*, 148 F. Supp. 2d at 665. Use of a professional mediator evidences an arm's-length negotiation and weighs in favor of preliminary approval. *See, e.g., Brown*, 318 F.R.D. at 571-72; *NeuStar*, 2015 WL 5674798, at *11. Engaging in "numerous meetings and extensive and intensive discussions" also supports a finding that a settlement was negotiated at arm's length. *Microstrategy*, 148 F. Supp. 2d at 665. Both occurred here.

The parties engaged Mr. Max in July 2021 for an in-person mediation session in Miami on November 18, 2021. *See* Max Decl. ¶¶ 10-11. The parties filed mediation statements, along with exhibits, and participated in several discussions in the months after the mediation. Two additional mediation sessions took place after the completion of discovery. All this makes the circumstances surrounding the Settlement negotiations weigh in favor of preliminary approval.

d. The Experience of Class Counsel

This factor looks to the experience of Class Counsel to determine whether they have the experience and ability to effectively represent the Class's interests. *Microstrategy*, 148 F. Supp. 2d at 665. Susman Godfrey LLP has significant experience in prosecuting cost of insurance class actions, which makes the firm particularly well-suited to serve as Class Counsel. Sklaver Decl. ¶ 2; Ex. 1. The Court already found that Susman Godfrey was adequate to act on behalf of the putative class until the Court determined whether to certify the action as a class action. ECF No. 21 at 3. Accordingly, the experience of Class Counsel weighs in favor of preliminary approval.

3. The Settlement is Substantively Fair, Reasonable, and Adequate

Each of the adequacy factors weighs in favor of a finding that the Settlement is fair,

reasonable, and adequate.⁶

a. Relative Strength of Plaintiffs' Case and Strong Defenses

“The first and second factors addressing the adequacy of a settlement require the Court to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case.” *Brown*, 318 F.R.D. at 573 (internal quotation marks omitted). Although Plaintiffs believe they have a strong case on the merits, Defendants have challenged the merits of Plaintiffs' claims. For example, in GLAIC's motion for summary judgment, GLAIC disputed that it had increased COI rates “in order to” recoup prior losses and argued that Plaintiffs' theories of breach “rely on alleged actuarial meanings or attempts to enforce constraints that are not in the subject policies.” ECF No. 119.

GLAIC has also mounted challenges to Plaintiffs' damages model, arguing that, even if Plaintiffs prevail on liability, only a portion of the Incremental COI Deductions are properly awardable on damages. *See* ECF No. 67 at 26-28. Indeed, GLAIC even moved to strike Plaintiffs' expert reports in support of class certification on the grounds that Plaintiffs had not quantified the portion of the overcharges that were directly attributable to each alleged breach. *See* ECF No. 58 at 8-10. Although the Court denied those motions to strike, it concluded that GLAIC had raised this challenge “prematurely” and opined that “whether any decrease should offset the damages constitutes a merits question for the Court to address at a later stage.” ECF No. 109 at 7.

Although Plaintiffs prevailed thus far in the face of challenges to class certification and motions to exclude, the Court has not yet evaluated the merits of Plaintiffs' case. The challenges

⁶ One of the adequacy factors, “the degree of opposition to the settlement,” 927 F.2d at 159, is premature at this stage because the Settlement Class has not yet received Notice of the Settlement. As Notice will be provided to Settlement Class members, with instructions for the communication of any objections to the Settlement after the Court grants preliminary approval, this factor will be a consideration at the Final Approval Hearing.

that Plaintiffs expect to face at summary judgment, trial, and in further appeals creates uncertainty and risks that weigh in favor of preliminary approval.

b. Duration and Expense of Further Litigation

The third adequacy factor asks the Court to “weigh the settlement in consideration of the substantial time and expense litigation of this sort would entail if a settlement was not reached.” *Mills*, 265 F.R.D. at 256. This factor is based on a sound policy of conserving the resources of the Court and the certainty that unnecessary and unwarranted expenditure of resources and time benefit[s] all parties.” *Id.* The complexity of this Action to date suggests that further litigation would be lengthy and costly. *See id.* at 256-57; *Brown*, 318 F.R.D. at 573.

This Action has been complex, as attested by the long history of the litigation, data reviewed, actuarial science and economics employed, and the sheer size of and methodology used in plaintiffs’ motion for class certification and supporting documentation. The Settlement ends future litigation and uncertainty. The parties agreed to the Settlement before the Court certified the class and only weeks before Plaintiffs were scheduled to file an opposition to Defendants’ motion for summary judgment. Even if Plaintiffs had successfully certified the Class and opposed summary judgment, the Class could still have faced a motion to decertify, various *Daubert* motions, trial, and post-verdict and appellate litigation. Even assuming the Class would clear all these hurdles, it could easily be several years or more before the Class saw a dollar of relief. This factor therefore weighs in favor of preliminary approval.

c. Solvency and Recovery on Judgment

GLAIC’s solvency is not at issue here. However, because GLAIC’s financial position could change in the future (e.g., its parent’s stock price is currently trading at about \$4 per share) and Settlement puts an end to this risk, this factor favors preliminary approval, or at least is neutral.

d. The Amount of Settlement is Reasonable

Although the Fourth Circuit does not have “enumerated factors for assessing a settlement’s reasonableness, we have suggested that assessing whether a class settlement is ‘reasonable’ involves examining the amount of the settlement.” *Banner COI*, 28 F.4th at 527. “To the extent reasonableness does any work not already performed by one of the other Rule 23(e)(2) requirements, we think it at least ensures that the amount on offer is commensurate with the scale of the litigation and the plaintiffs’ chances of success at trial.” *Id.* The size of the Settlement Fund here is substantial in relation to the total past overcharges at issue in this case, whether measured as the incremental COI charges calculated in Plaintiff’s damages expert report in support of Class Certification, *see* ECF No. 49-5 at 16 (calculating damages through December 2020), or using Defendants’ measure, *see* ECF No. 67 at 26-28. The Settlement Agreement also includes significant non-cash relief. *See* Sklaver Decl., Ex. 2 ¶ 7. The size of the Settlement Fund is appropriate for the scale of this complex litigation, which has been hard-fought for years.

4. The Rule 23(e)(2) Factors that Do Not Overlap with the Fourth Circuit’s Adequacy Factors Support Preliminary Approval of the Settlement⁷

a. Rule 23(e)(2)(A) - Class Representatives and Class Counsel Have Adequately Represented the Settlement Class.

Plaintiffs each share the same interest as the Settlement Class in prosecuting this Action to ensure the greatest possible recovery from Defendants. Plaintiffs are part of the Settlement Class and suffered the same injuries as other Settlement Class Members: monetary losses associated with

⁷ The Rule 23(e)(2)(B) factor (“the proposal was negotiated at arm’s length”) is addressed above in the discussion of the fairness factors. The Rule 23(e)(2)(C)(i) factor (“the costs, risks, and delay of trial and appeal”) is addressed above in the discussion of the adequacy factors. The Settlement Agreement identifies all agreements made in connection with the proposed settlement in compliance with Rule 23(e)(2)(C)(iv).

COI overcharges. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348-49 (2011) (the “class representative must be part of the class and possess the same interest and suffer the same injury as the class members) (citation and internal quotation marks omitted). Further, Class Counsel have demonstrated that they are qualified, experienced, and able to conduct the litigation and supervise the Settlement. The Rule 23(e)(2)(A) factor supports preliminary approval of the Settlement.

b. Rule 23(e)(2)(C)(ii) and 23(e)(2)(C)(iii) - The Relief to be Provided to the Class is Adequate, Taking into Account the Effectiveness of Distributing Relief to the Settlement Class

As part of the adequacy analysis, Rule 23(e)(2)(C)(ii) requires the Court to look to “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). The proposed “claims processing method should deter or defeat unjustified claims,” but should not be “unduly demanding” on potential claimants. 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(2).

A proposed plan of allocation, such as here, where funds are automatically distributed to class members on a *pro-rata* basis without a claims process, has frequently been determined to be fair, adequate, and reasonable. *See, e.g., In re Vitamins Antitrust Litig.*, No. 99-cv-197, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000). Funds will be mailed to Class Members using GLAIC’s database of Class member addresses. Sklaver Decl., Ex. 6. Because GLAIC maintains information about each Settlement Class Member, including historical COI charges, and each insured’s contact information, Settlement Class Members need not submit claims or provide supporting documentation to receive a cash award. *See Sklaver Decl.* ¶ 22. The Settlement Administrator will investigate the addresses for any notice that is returned or undeliverable. No funds will revert to GLAIC. Sklaver Decl. ¶ 20. Class Counsel, having consulted with the Settlement Administrator, JND Legal Administration, respectfully submits that the proposed plan of distribution is the most fair, reasonable, and adequate method of equitably allocating the Settlement Fund to the Settlement

Class.

c. Rule 23(e)(2)(C)(iii) - The Relief to be Provided to the Class is Adequate, Taking into Account Any Proposed Award of Attorneys' Fees

Rule 23(e)(2)(C)(iii) requires that the Court, as part of its overall analysis of the adequacy of the Settlement, consider the “terms of any proposed award of attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii). Under the terms of the Settlement Agreement and as described in the proposed Notice to be provided to Settlement Class Members, Class Counsel will apply for an award of attorneys’ fees not to exceed 33 1/3 percent of the Settlement Fund, in addition to reimbursement for all expenses incurred or to be incurred. The percentage of the settlement fund is within the range of reasonable awards established by the Court. *See, e.g., Dickman v. Banner Life Ins. Co.*, Case No. 1:16-cv-00192-RDB, 2020 WL 13094954, at *5 (D. Md. May 20, 2020) (approving fee award equal to 39.5% of the common settlement fund after reduction of opt outs and 20.6% of the total value of the relief obtained for the class), *aff’d Banner COI*, 28 F.4th 513 (4th Cir. 2022); *Singleton v. Domino’s Pizza, LLC*, 976 F. Supp. 2d 665, 685 (D. Md. 2013) (describing a range of awards between 15 and 40 percent of the settlement fund that have been deemed fair and reasonable by courts within the Fourth Circuit). As provided in the Settlement Agreement, the amount of attorneys’ fees awarded may be paid upon entry of an order approving such fees. *See Sklaver Decl.*, Ex. 2 ¶ 17.

d. Rule 23(e)(2)(D) - The Proposal Treats Class Members Equitably Relative to Each Other.

The Rule 23(e)(2)(D) factor addresses whether “the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2). The proposed distribution of the Settlement Fund treats Settlement Class members equitably because each Class member will receive a *pro-rata* share of the Settlement Fund depending on the amount that the Class Member

was overcharged, with a minimum floor payment assured. Sklaver Decl., Ex. 6 ¶ 2. Similarly, the Releases treat all Settlement Class Members equitably relative to one another because, subject to Court approval, all Settlement Class Members will be giving GLAIC identical releases tied to the theory of liability asserted in this Action and no individual who does not receive a cash award will be providing any release of individual claims.

B. Certification of the Settlement Class is Appropriate.

Rule 23(e) requires that the Parties demonstrate that this Court “will likely be able to . . . certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B)(ii). The standard for class certification for settlement purposes is less stringent than for litigation purposes. *See* 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(1). As the Fourth Circuit recently observed in another COI case:

Because a district court possesses greater familiarity and expertise than a court of appeals in managing the practical problems of a class action, its certification decision is entitled to substantial deference, especially when the court makes well-supported factual findings supporting its decision. This case, chock-full of the most esoteric principles of life insurance accounting imaginable, could be the poster child for that rule.

Banner COI, 28 F.4th at 524 (internal citations omitted). There, the Fourth Circuit affirmed the settlement class certification of a COI breach of contract class, where the district court explained that the class included “policyholders whose standardized form policy included a uniform contractual provision that was allegedly breached by Defendants’ common course of conduct in increasing these COI rates.” *Id.* at 522.

Certification of a settlement class requires that the proposed class satisfy the requirements of Federal Rule of Civil Procedure 23. *Id.* at 521. “First, the class must comply with the four prerequisites established in Rule 23(a): (1) numerosity of parties; (2) commonality of factual and legal issues; (2) typicality of claims and defenses of class representatives; and (4) adequacy of

representation.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003) (citing Fed. R. Civ. P. 23(a)). “Second, the class action must fall within one of the three categories enumerated in Rule 23(b).” *Id.* (citing Fed. R. Civ. P. 23(b)). Here, Plaintiffs assert that the requirements of Rules 23(a) and 23(b) are met, and GLAIC does not oppose certification (for settlement purposes only) of the Settlement Class under Rule 23(a) and Rule 23(b)(3), “which requires that common issues predominate over individual ones and that a class action be superior to other available methods of adjudication.” *Id.*

1. The Settlement Class Satisfies the Requirements of Rule 23(a).

a. Settlement Class Members Are Too Numerous to be Joined.

Rule 23(a)(1) is satisfied where “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “No specified number is needed to maintain a class action.” *Branch v. Gov’t Employees Ins. Co.*, 323 F.R.D. 539, 546 (E.D. Va. 2018) (finding a class of 400 to be sufficiently numerous); William B. Rubenstein, 1 *Newberg on Class Actions*, § 3:12 (generally a class of more than 40 satisfies the numerosity requirement) (5th ed. 2018). Here, according to the insured data provided by GLAIC, there are 14,900 Settlement Class Members geographically dispersed throughout the country. *See Intrepido-Bowden Decl.* ¶ 38. Joinder is therefore impracticable and Rule 23(a)(1) is satisfied.

b. There Are Common Questions of Law and Fact.

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “In a Rule 23(b)(3) class action like this one, the ‘commonality’ requirement of Rule 23(a)(2) is subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class predominate over other questions.” *Banner COI*, 28 F.4th at 522 (internal citations omitted).

This Action presents numerous common questions of both law and fact that can be resolved on a classwide basis. As in other certified COI class actions, application of these form contracts—e.g., whether the increase “recoup[ed] prior losses,” and was properly based on “expectations as to future investment earnings, mortality, persistency, expenses and taxes”—will resolve common questions central to resolution of the case. *See Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 382 (S.D.N.Y. 2019) (“*Voya COI*”) (commonality satisfied where “claims of the proposed class turn on common contentions of what factors VOYA”); *Feller v. Transamerica Life Ins. Co.*, 2017 WL 6496803, at *6 (C.D. Cal. Dec. 11, 2017) (“Given that courts have recognized that the law relating to the elements of a claim for breach of contract do not vary greatly from state to state, the issue of breach . . . is also common to all prospective class members.”); *Fleisher v. Phoenix Life Ins. Co.*, Case No. 11-civ-8405, 2013 WL 12224042, at *3 (S.D.N.Y. 2013) (common questions included whether “the basis for the [COI] increase was unsupported by an enumerated factor in the contract” and whether “the increase was applied discriminatorily rather than, as the contract requires, to all insureds in the same class”).

c. Plaintiffs’ Claims Are Typical of the Settlement Class.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “As to typicality, the commonality and typicality requirements of Rule 23(a) tend to merge[.]” *Banner COI*, 28 F.4th at 523 (internal citations omitted). Typicality requires that “a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Delter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006); *see also Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 208 (E.D. Va. 2015) (typicality focuses “on the general similarity of the named representative’s legal and remedial theories to those of the proposed class.”). It is not necessary to show that the movant be identically situated to other Class members to meet the typicality standard.

Mills., 257 F.R.D. at 105. “To the extent members of the class, including the class representative, have interests . . . that are slightly divergent with each other, . . . the slight divergence is greatly outweighed by shared interests in establishing [defendant’s] liability.” *DiFelice v. U.S. Airways, Inc.*, 235 F.R.D. 70, 79 (E.D. Va. 2006).

Plaintiffs are members of the Settlement Class and possess the same interests and suffered the same alleged injury as each Settlement Class Member through GLAIC’s uniform course of conduct. Plaintiffs, like all Settlement Class Members, were subjected to the increase in violation of their policies’ terms and share a common interest in holding GLAIC liable for these overcharges. *See Vogt v. State Farm Life Ins. Co.* (“*State Farm COI*”), 963 F.3d 753, 767 (8th Cir. 2020) (rejecting typicality challenge in COI litigation and opining that courts have “rejected challenges to the class representatives’ adequacy that were based . . . on different class members desiring different methods of calculating damages.” (citations omitted)); *Phoenix COI*, 2013 WL 12224042, at *11 (“[T]he claim of the named plaintiff (Fleisher) is also typical, in that all members of the class were allegedly subjected to a COI increase in violation of the terms of their policies.”). Thus, typicality is satisfied.

d. Plaintiffs Will Fairly and Adequately Protect the Interests of the Settlement Class.

Rule 23(a)(4) requires that the “representative parties will fairly and adequately protect the interests of the class,” and Rule 23(g)(4) requires that “class counsel [will] fairly and adequately represent the interests of the class.” “The adequacy inquiry under Rule 23(a)(4) serves in part to uncover conflicts of interest between named parties and the class they seek to represent.” *Banner COI*, 28 F.4th at 523-24 (quoting in part *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)). As to Class Counsel, the adequacy inquiry assesses whether class counsel is conflicted and whether class counsel has conflicts. *Id.* at 524. A conflict of interest “will not defeat the

adequacy requirement if it is ‘merely speculative or hypothetical.’” *Ward v. Dixie Nat’l Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010) (quoting *Gunnells*, 348 F.3d at 430).

Here, Plaintiffs and the Settlement Class share the same legal claims under the same set of core facts. Plaintiffs’ interests are directly aligned with Settlement Class Members—to maximize the amount recovered from GLAIC for its alleged breach of contract. Proceeds will be distributed equitably on a pro rata basis with a minimum floor payment assured, and all Settlement Class Members share an overriding interest in obtaining the largest monetary recovery possible from GLAIC. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 453 (S.D.N.Y. 2004) (certifying settlement class and finding that “[t]here is no conflict between the class representatives and the other class members. All share the common goal of maximizing recovery.”). Moreover, since filing this action, Plaintiffs have taken their role and obligations to the Class seriously, actively participating and monitoring the litigation, including by submitting to depositions. For these reasons, Plaintiffs have claims that are typical and adequate for the Settlement Class, and should be appointed as representatives of the Settlement Class.

Susman Godfrey LLP has vigorously prosecuted this Action on behalf of the Class for over two years. Moreover, the lawyers at Susman Godfrey are experienced attorneys with qualifications and resources to administer this settlement, and they have been found adequate class counsel in *Reliastar COI*, *North American COI*, *Voya COI*, *AXA COI*, *Phoenix COI*, *SLD COI*, and numerous other cases.⁸ The Court already found that Susman Godfrey was adequate to prosecute Plaintiffs’ claims in appointing it as interim class counsel. ECF No. 21. Thus, the Court should find that Susman Godfrey satisfies Rule 23(g).

⁸ Sklaver Decl., Ex. 1 (Susman Godfrey Firm Resume).

2. The Settlement Class Meets the Requirements of Rule 23(b)(3).

Certification of a class for settlement purposes requires a showing that “questions of law or fact predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). Manageability is not at issue for a settlement class. *Amchem Prods.*, 521 U.S. at 615.

a. Common Legal and Factual Questions Predominate.

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Id.* at 623. “The predominance inquiry is fundamentally qualitative.” *Williams v. Big Picture Loans, LLC*, No. 3:17-cv-461, 2021 WL 3072462, at *9 (E.D. Va. 2021) (citing *Gunnells v. Healthplan Servs.*, 348 F.3d 417, 429 (4th Cir. 2003)). “In other words, Rule 23(b)(3) compares the quality of the common questions to those of the noncommon questions.” *Soutter*, 307 F.R.D. at 214. “If the qualitatively overarching issue in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues.” *Id.*

In COI litigation, courts routinely find that common issues predominate when an insurer, like GLAIC, uses a common method to raise rates on Class members in breach of the same form contract provisions. The Fourth Circuit recently affirmed the district court’s ruling on settlement class certification in *Banner COI*, quoting the district court’s observation that “common questions predominate over any questions affecting individual members,” given that “the central question to be decided here is whether Banner and William Penn’s implementation of the COI rate increases breach the standardized policy language.” 28 F.4th at 522. Here, any possible individualized issues are dwarfed by the common questions concerning whether GLAIC breached the terms of the uniform, standardized contracts at issue. *See Phoenix COI*, 2013 WL 12224042, at *13 (stating

that because the “class alleges [a] breach of contract case arising out of standardized insurance policy forms, the common questions of law and fact predominate over any individual questions.”).

b. A Class Action Is Superior to Other Methods of Adjudication.

The Rule 23(b)(3) superiority test requires that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “In determining whether the class action mechanism is truly superior the court should consider the class members’ interest in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and the likely difficulties in managing the class action.” *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 425 (E.D. Va. 2016) (internal quotation marks omitted) (quoting Fed. R. Civ. P. 23(b)(e)(A)-(D)).

Applying Rule 23(b)(3) superiority factors to this Action makes clear that the class action mechanism is the superior method of adjudication. No individual actions have been filed against GLAIC concerning the COI increase. And to the extent any Settlement Class Member wishes to pursue their own individual action, they can do so by opting out of the Settlement. *See Thomas*, 312 F.R.D. at 426. Any interests of Settlement Class Members in individually controlling the prosecution of separate claims are outweighed by the efficiency of the class mechanism. *See Stillmock v. Weis Markets, Inc.*, 385 F. App’x 267, 274 (4th Cir. 2010).

Concentrating Settlement Class Members in this forum is desirable because there are over 14,900 Settlement Class Members who are dispersed throughout the United States. *See id.* There is no practical alternative way to resolve this matter other than through national class adjudication. Potentially thousands of individual suits would unquestionably be costly, unwieldy, and pose a risk of inconsistent rulings. A single nationwide class settlement resolving the Settlement Class’s

claims is far more sensible. In addition, many of the Settlement Class Members are individuals who lack the means or incentive to bring an individual suit claiming potentially small individual damages, particularly where, as here, pursuing that suit involves complex questions of actuarial science, accounting, and economic damage. *See Talbott v. GC Servs. Ltd. P'ship*, 191 F.R.D. 99, 106 (W.D. Va. 2000). Thus, superiority is satisfied, and the Court should preliminarily certify the Settlement Class for settlement purposes.

C. Notice to the Settlement Class Should Be Approved.

Under Rule 23(e)(1), the Court “must direct notice in a reasonable manner to all class members who would be bound by the propos[ed settlement].” Fed. R. Civ. P. 23(e)(1)(B). Where, as here, notice is to be provided to a settlement class certified under Rule 23(b)(3), the Court is required to “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The “best notice that is practicable” standard applies to both the form and manner of notice. *See* William R. Rubenstein, 3 *Newberg on Class Actions* § 8:5 (5th ed.). Here, the proposed form and manner for Notice satisfy these requirements and otherwise conform to the standards of Rule 23(b)(2)(B).

The form of notice here satisfies due process because it informs Settlement Class Members of the terms of the settlement and the options open to them in plain language. *See Newberg* § 11.53 (the form of notice is “adequate if it may be understood by the average class member”). The notice papers, which are attached as Exhibits B and C to the Intrepido-Bowden Declaration, communicate in plain language the essential elements of the Settlement and the options available to Class Members in connection with the Settlement and final approval. *Id.*

The manner of sending notice, which relies on direct mailing to individual Class members

using GLAIC's address database, is the best notice practicable here. Intrepido-Bowden Decl. ¶¶ 27-30. Direct notice will be sent by mail to all Class members using their last known address. *See id.* This is a particularly effective method because in-force policyholders are expected to maintain their current addresses with GLAIC. In cases where the policy is no-longer in force, the last known address is already on file and the administrator will use its own extensive database of addresses to confirm that address on file, to assist in having notices go directly to Class members. A website and toll-free phone number will also be maintained so that anyone can read about the settlement and easily find all documents pertinent to the Settlement. The Settlement Administrator will also research and attempt re-delivery of any Notices returned as undeliverable. *Id.* ¶ 29.

Courts routinely recognize that direct mailings to class members, using known addresses maintained by a defendant or other sources, is the best notice practicable under the circumstances. *See McAdams v. Robinson*, 26 F.4th 149, 157-48 (4th Cir. 2022) (approving a notice method where the administrator "mailed notice to class members for whom it had a physical address" and where the mail notice directed class members to a website and telephone number where class members could access a longform notice). This form and manner of notice has also been approved in other cost of insurance class actions. *See, e.g., Advance Trust & Life Escrow Servs. v. Security Life of Denver Ins. Co.*, Case No. 18-cv-01897-DDD-NYW, ECF No. 148; *Voya COI*, Case No. 16-cv-6399, ECF No. 285; *Leonard v. John Hancock Life Ins. Co.*, Case No. 1:18-cv-4994-AKH, ECF No. 203. The notice plan gives Class members 45 days to opt-out, which is particularly appropriate given that notice will be sent directly to Class members using known addresses. Courts regularly approve opt-out periods of similar or even shorter length. *See, e.g., Jones v. Fidelity Resources, Inc.*, 2020 WL 2112141, at *5 (D. Md. May 4, 2020) (affording class members thirty days from the date of notice to opt out if desired).

D. Proposed Schedule

Plaintiffs propose the following dates for deadlines for the notice plan and for the final fairness hearing, subject to the approval of the Court:

| Event | Days from Preliminary Approval | Proposed Date/Deadline (if Preliminary Approval Granted May 26, 2022) |
|---|---------------------------------------|--|
| Send notice to Class members | 14 days | June 9, 2022 |
| Deadline to file motion for award of attorneys' fees, expenses, and service awards | 35 days | June 30, 2022 |
| Opt-Out and Objection Deadline | 60 days | July 25, 2022 |
| Deadline to file motion for final approval and reply briefs in support of attorneys' fees, expenses, and service awards | 75 days | August 9, 2022 |
| Final approval hearing | 120 days | September 23, 2022, subject to the Court's availability |

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (i) preliminarily approve the proposed Settlement as within the range of fairness, reasonableness, and adequacy; (ii) certify the Settlement Class, appoint Plaintiffs as Class representatives and Susman Godfrey L.L.P. as Class Counsel for Settlement purposes; (iii) approve the proposed form and manner of notice to the Settlement Class; and (iv) schedule a date and time for a hearing to consider final approval of the Settlement and related matters.

Dated: May 9, 2022

Respectfully submitted,

/s/ Kathleen J.L. Holmes

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CERTIFICATE OF SERVICE

I certify that on this 9th day of May 2022, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

/s/ Kathleen J.L. Holmes

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

BRIGHTON TRUSTEES, LLC,
AS TRUSTEE, *et al.*,
Plaintiffs,

v.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant.

Civil No. 3:20cv240 (DJN)

**DECLARATION OF GINA INTREPIDO-BOWDEN REGARDING PROPOSED
SETTLEMENT NOTICE PROGRAM**

I, Gina Intrepido-Bowden, hereby declare as follows:

INTRODUCTION

1. I am a Vice President at JND Legal Administration LLC (“JND”). This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees and Counsel for the Plaintiffs and Defendant (“Counsel”), and if called upon to do so, I could and would testify competently thereto.

2. I am a judicially recognized legal notice expert with more than 20 years of legal experience designing and implementing class action legal notice programs. I have been involved in many of the largest and most complex class action notice programs, including all aspects of notice dissemination. A comprehensive description of my experience is attached as Exhibit A.

3. I submit this Declaration at the request of Counsel in the above-referenced action to describe the proposed program for providing notice to Class Members (the “Notice Program”) and address why it is consistent with other best practicable court-approved notice programs and the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), the Due Process Clause of the U.S. Constitution, and the Federal Judicial Center (“FJC”) guidelines for best practicable due

process notice.

RELEVANT EXPERIENCE

4. JND is a leading legal administration services provider with offices throughout the United States and its headquarters in Seattle, Washington. JND's class action division provides all services necessary for the effective implementation of class actions including: (1) all facets of legal notice, such as outbound mailing, email notification, and the design and implementation of media programs; (2) website design and deployment, including on-line claim filing capabilities; (3) call center and other contact support; (4) secure class member data management; (5) paper and electronic claims processing; (6) calculation design and programming; (7) payment disbursements through check, wire, PayPal, merchandise credits, and other means; (8) qualified settlement fund tax reporting; (9) banking services and reporting; and (10) all other functions related to the secure and accurate administration of class actions.

5. JND is an approved vendor for the U.S. Securities and Exchange Commission ("SEC") as well as by the Federal Trade Commission ("FTC"), and we have worked with a number of other government agencies including: the U.S. Equal Employment Opportunity Commission ("EEOC"), the Office of the Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Communications Commission ("FCC"), the Department of Justice ("DOJ"), and the Department of Labor ("DOL"). We also have Master Services Agreements with various corporations, banks, and other government agencies, which were only awarded after JND underwent rigorous reviews of our systems, privacy policies, and procedures. JND has also been

certified as SOC 2 compliant by noted accounting firm Moss Adams.¹ Finally, JND has been recognized by various publications, including the *National Law Journal*, the *Legal Times*, and, most recently, the *New York Law Journal*, for excellence in class action administration.

6. The principals of JND collectively have over 80 years of experience in class action legal and administrative fields and have overseen claims processes for some of the largest legal claims administration matters in the country's history and regularly prepare and implement court approved notice and administration campaigns throughout the United States. Their large matters include the \$20 billion Gulf Coast Claims Facility; the \$10+ billion BP Deepwater Horizon Settlement; the \$6.15 billion WorldCom Securities Settlement; and the \$3.4 billion Indian Trust Settlement (the largest U.S. Government class action ever); among others.

7. In addition, JND was been appointed as the notice and claims administrator in the \$2.67 billion Blue Cross Blue Shield antitrust settlement, and has handled the settlement administration of the \$1.3 billion Equifax Data Breach Settlement, the largest class action ever in terms of the number of claims received; a voluntary remediation program in Canada on behalf of over 30 million people; the \$1.5 billion Mercedes-Benz Emissions class action settlements, the \$120 million GM Ignition class action economic settlement, where we sent notice to nearly 30 million class members, and the \$215 million USC Student Health Center Settlement on behalf of women who were sexually abused by a doctor at USC, as well as hundreds of other matters. Our notice campaigns are regularly approved by courts throughout the United States.

8. As a member of JND's Legal Notice Team, I research, design, develop, and implement a wide array of legal notice programs to meet the requirements of Rule 23 and

¹ As a SOC 2 Compliant organization, JND has passed an audit under AICPA criteria for providing data security.

relevant state court rules. During my career, I have submitted declarations to courts throughout the country attesting to the creation and launch of various notice programs.

NOTICE PLAN OVERVIEW

9. We have been asked by Counsel to prepare a Notice Plan to reach potential class members and inform them about the action, as well as their rights and options.

10. The objective of the proposed Notice Plan is to provide the best notice practicable, consistent with the methods and tools employed in other court-approved notice programs. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers a Notice Plan with a high reach (above 70%) effective.

11. The proposed Settlement Class consists of owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment, excluding the Excluded Policies ("Settlement Class Members").

12. The proposed Notice Plan consists of a direct mailed notice effort to Settlement Class Members as identified by Defendants.

13. JND will also establish, maintain, and update a settlement website, where information about the Settlement, as well as copies of relevant case documentation, including but not limited to the Settlement Agreement, the Preliminary Approval Motion, the Class Notice, any potential Preliminary Approval Order, any proposed Final Approval Order and Judgment, and related documents will be accessible to Settlement Class Members; a toll-free telephone line with an interactive voice response (IVR) that Settlement Class Members may call to obtain more information; and a post office box to which Settlement Class Members may send their exclusion requests.

14. It is my understanding that the direct notice effort will provide notice to the vast majority of Settlement Class Members.

15. Based on my experience in developing and implementing class notice programs, I believe the proposed Notice Plan will provide the best notice practicable under the circumstances.

DATA PRIVACY AND SECURITY

16. JND is well versed in the handling and management of sensitive information and has in place the technical, administrative, and physical controls necessary to ensure the ongoing confidentiality, integrity, and availability of data.

17. JND's security and privacy controls have been vetted and approved for use by a number of large banks, federal agencies including the FTC and SEC.

18. JND has adopted a NIST-based information security program, risk management framework, and SP 800 series of controls to ensure all safeguards are appropriately selected, implemented, and reviewed. Specific individuals have been assigned the responsibility for information security and data privacy throughout our organization. JND submits itself and its systems no less than annually to several independent assessments, such as, the AICPA's SOC II certification and External Penetration Testing performed by a reputable cybersecurity consulting firm. JND also maintains Business Continuity and Incident Response programs and performs no less than monthly vulnerability scanning and system patching.

19. JND performs background checks on all personnel at onboarding and requires each individual to enter into a non-disclosure and confidentiality agreement. Additionally, everyone must successfully complete cybersecurity, privacy, and HIPAA training during the onboarding process, which educates all staff on the proper use of sensitive data. Refresher

training is required of all employees each year and JND periodically disseminates security and privacy awareness messages to all staff.

20. To help ensure the proper use of data, JND's systems have been designed with privacy in mind and utilize a role-based access control methodology to ensure access is granted in accordance with principle of least privilege. Access to the data is provided via a separate dedicated application for each class action ensuring data that has been collected for different purposes can be processed separately. Additionally, JND only collects the minimum amount of data necessary to administer the class action at hand, stores data for each class action in a dedicated database to prevent comingling of data, utilizes that data only for purposes specified in the class action, and only retains data for the minimum amount of time required.

21. Industry standard logical access controls are in place to prevent unauthorized access to JND's network and systems. Access is only provided after proper approval is acquired, tracked in the ticketing system and information system audit logs, and all access and access levels are reviewed no less than quarterly. JND provides unique identifiers to each employee and requires complex, 14 character, passwords which expire every 90 days, and also requires multifactor authentication for all remote access. All sessions occur via encrypted channels to ensure the confidentiality and integrity of the data being transmitted.

22. JND's defense-in-depth approach to security includes a myriad of tools and solutions to ensure its environment remains protected. Next Generation Firewalls are deployed at all perimeter points and provide intrusion detection and prevention protection (IDS/IPS) to proactively block suspicious and malicious traffic without the need for human intervention. Similarly, Web Application Firewalls (WAF) are in positioned in front of public facing web applications which are designed in adherence to standard 3-Tier (Web/App/Data) architecture. Security event and audit log

data is transmitted to JND's Security Information and Event Management (SIEM) solution which aggregates data from across the enterprise to deliver analytics and threat intelligence. This is coupled with Microsoft's Defender Advanced Threat Protection (ATP) endpoint protection which is deployed on all endpoints to perform real-time and scheduled scanning along with behavioral analysis to ensure all systems are free from malicious software and activity. Encryption is also in use throughout JND's systems and services. Access to JND's information processing system is provided via a Microsoft IIS web application configured to be only accessible via Transport Layer Security (TLS) web traffic. Transmission of data outside on JND's environment also occurs via TLS encrypted web traffic, via SFTP, or similarly protected secure and encrypted protocols. Data is stored in Microsoft SQL databases and protected with full database SQL TDE encryption and field/column level encryption to ensure the utmost security of data. Furthermore, the physical disks of all servers and workstations are protected with encryption, as well.

23. JND's Disaster Recovery solution performs backups of production systems by securely transmitting data at scheduled intervals to both a local and geographically separate offsite storage system. Not only is backup data encrypted in transit but also on the offsite storage itself. JND's backup system is highly configurable, scalable, and robust enough to accommodate any requirements.

24. JND facilities used to process or store data have in place adequate physical controls to prevent unauthorized access to, or dissemination of, sensitive information. Access to, and within, facilities is controlled by key cards assigned only to authorized personnel and only at the level required to perform job duties. Access to highly sensitive areas, such as datacenters, server rooms, mailrooms, etc., while also controlled by key cards, are controlled by restricted levels of access. Access to JND's facilities is reviewed periodically, as well. Facilities are also

protected by alarm systems and employ CCTV monitoring and recording systems. JND educates staff on maintaining a clean desk and securely storing and disposing of sensitive documentation, and also prohibits by default access to removeable media devices. Disposal of media, whether physical or electronic, is done so securely and in accordance with NIST 800-88 guidelines to ensure the data cannot be reconstituted.

25. All data provided to JND in connection with this case will be handled according to JND's security protocols and applicable law.

DIRECT NOTICE

26. For this Settlement, JND will send a Postcard Class Notice by first-class mail to the addresses in the Class List that was provided by Defendants on April 26, 2022.

27. JND will promptly load the Class List into a secure case-specific database for this action. JND employs appropriate administrative, technical, and physical controls designed to ensure the confidentiality and protection of Settlement Class Member data, as well as to reduce the risk of loss, misuse, or unauthorized access, disclosure, or modification of Settlement Class Member data.

28. Prior to mailing the Class Notice, JND will run the mailing addresses through the United States Postal Service ("USPS") National Change of Address ("NCOA") database to update the addresses.² JND will track all notices returned undeliverable by the USPS and will promptly re-mail notices that are returned with a forwarding address. In addition, JND will also take reasonable efforts to locate a mailing address for any Settlement Class Member for whom a notice is returned without a forwarding address.

29. A copy of the proposed Postcard Class Notice is attached hereto as Exhibit B.

CLASS NOTICE

30. JND will develop, maintain, and update a settlement website that will allow Settlement Class Members to obtain more information about the Settlement. The website will have an easy-to-navigate design and will be formatted to emphasize important information regarding Settlement Class Members' rights, as well as the exclusion and objection deadlines. It will provide a link to download the Long Form Class Notice, attached as Exhibit C, Settlement Agreement, Preliminary Approval Order, and other important court documents.

31. The Class Website will be optimized for mobile visitors so that information loads quickly on mobile devices and will also be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the site's metadata to maximize search engine rankings.

TOLL-FREE NUMBER AND POST OFFICE BOX

32. JND will establish and maintain a dedicated toll-free telephone line for Settlement Class Members to call for information related to the action. The telephone line will be available 24 hours day, seven (7) days a week.

33. JND will also maintain a dedicated post office box where Settlement Class Members may send their exclusion requests.

NOTICE DESIGN AND CONTENT

34. JND designed the proposed notice documents so that they are written in plain language and comply with Rule 23's guidelines for class notice and the Due Process Clause of the United States Constitution, as well as the FJC's *Class Action Notice and Plain Language Guide*.

REACH

35. The direct mailed notice effort is expected to reach the vast majority of Settlement

Class Members. As a result, the anticipated reach meets that of other court approved programs, and exceeds the 70% or above reach standard set forth by the FJC.

CONCLUSION

36. In my opinion, the proposed Notice Program as described herein provides the best notice practicable under the circumstances; is consistent with the requirements of Rule 23; and is consistent with other similar court-approved notice programs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 9, 2022, at Philadelphia, PA.



Gina M. Intrepido-Bowden

- EXHIBIT A -

GINA INTREPIDO-BOWDEN

VICE PRESIDENT



I.

INTRODUCTION

Gina Intrepido-Bowden is a Vice President at JND Legal Administration (“JND”). She is a court recognized legal notice expert who has been involved in the design and implementation of hundreds of legal notice programs reaching class members/claimants throughout the U.S., Canada, and the world, with notice in over 35 languages. Some notable cases in which Gina has been involved include:

- *Flaum v Doctor’s Assoc., Inc.*, a \$30 million FACTA settlement
- *FTC v. Reckitt Benckiser Grp. PLC*, the \$50 million Suboxone branded drug antitrust settlement
- *In re Blue Cross Blue Shield Antitrust Litig.*, a \$2.67 billion antitrust settlement
- *In re General Motors LLC Ignition Switch Litig.*, the \$120 million GM Ignition Switch economic settlement
- *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, a security breach impacting over 40 million consumers who made credit/debit card purchases in a Home Depot store
- *In re Monitronics Int’l, Inc.*, a \$28 million TCPA settlement
- *In re Residential Schools Litig.*, a complex Canadian class action incorporating a groundbreaking notice program to remote aboriginal persons qualified to receive benefits in the multi-billion-dollar settlement

- *In re Royal Ahold Sec. and "ERISA"*, a \$1.1 billion securities settlement involving a comprehensive international notice effort
- *In re Skelaxin (Metaxalone) Antitrust Litig.*, a prescription antitrust involving notice to both third party payor and consumer purchasers
- *In re TJX Cos., Inc. Retail Sec. Breach Litig.*, this \$200 million settlement impacted 45 million credit/debit cards in the U.S. and Canada making it the then-largest theft of consumer data
- *In re Trans Union Corp. Privacy Litig.*, a \$75 million data breach settlement involving persons with a credit history
- *Thompson v Metropolitan Life Ins. Co.*, a large race-based pricing settlement involving 25 million policyholders
- *USC Student Health Ctr. Settlement*, a \$215 million settlement providing compensation to women who were sexually assaulted, harassed and otherwise abused by Dr. George M. Tyndall
- *Williams v. Weyerhaeuser Co.*, a consumer fraud litigation involving exterior hardboard siding on homes and other structures

With more than 25 years of advertising research, planning and buying experience, Gina began her career working for one of New York's largest advertising agency media departments (BBDO), where she designed multi-million-dollar media campaigns for clients such as Gillette, GE, Dupont, and HBO. Since 2000, she has applied her media skills to the legal notification industry, working for several large legal notification firms. Gina is an accomplished author and speaker on class notice issues including effective reach, notice dissemination as well as noticing trends and innovations. She earned a Bachelor of Arts in Advertising from Penn State University, graduating *summa cum laude*.



JUDICIAL RECOGNITION

Courts have favorably recognized Ms. Intrepido-Bowden's work as outlined by the sampling of Judicial comments below:

1. Judge William M. Conley

Bruzek v. Husky Oil Operations Ltd., (January 31, 2022)

No. 18-cv-00697 (W.D. Wis.):

The claims administrator estimates that at least 70% of the class received notice... the court concludes that the parties' settlement is fair, reasonable and adequate under Rule 23(e).

2. Judge Timothy J. Corrigan

Levy v. Dolgencorp, LLC, (December 2, 2021)

No. 20-cv-01037-TJC-MCR (M.D. Fla.):

No Settlement Class Member has objected to the Settlement and only one Settlement Class Member requested exclusion from the Settlement through the opt-out process approved by this Court...The Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice. The Notice Program fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

3. Honorable Nelson S. Roman

Swetz v. GSK Consumer Health, Inc., (November 22, 2021)

No. 20-cv-04731 (S.D.N.Y.):

The Notice Plan provided for notice through a nationwide press release; direct notice through electronic mail, or in the alternative, mailed, first-class postage prepaid for identified Settlement Class Members; notice through electronic

media—such as Google Display Network and Facebook—using a digital advertising campaign with links to the dedicated Settlement Website; and a toll-free telephone number that provides Settlement Class Members detailed information and directs them to the Settlement Website. The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order.

4. Honorable James V. Selna

Herrera v. Wells Fargo Bank, N.A., (November 16, 2021)

No. 18-cv-00332-JVS-MRW (C.D. Cal.):

On June 8, 2021, the Court appointed JND Legal Administration (“JND”) as the Claims Administrator... JND mailed notice to approximately 2,678,266 potential Non-Statutory Subclass Members and 119,680 Statutory Subclass Members. *Id.* ¶ 5. 90% of mailings to Non-Statutory Subclass Members were deemed delivered, and 81% of mailings to Statutory Subclass Members were deemed delivered. *Id.* ¶ 9. Follow-up email notices were sent to 1,977,514 potential Non-Statutory Subclass Members and 170,333 Statutory Subclass Members, of which 91% and 89% were deemed delivered, respectively. *Id.* ¶ 12. A digital advertising campaign generated an additional 5,195,027 views. *Id.* ¶ 13...Accordingly, the Court finds that the notice to the Settlement Class was fair, adequate, and reasonable.

5. Judge Morrison C. England, Jr.

Martinelli v. Johnson & Johnson, (September 27, 2021)

No. 15-cv-01733-MCE-DB (E.D. Cal.):

The Court appoints JND, a well-qualified and experienced claims and notice administrator, as the Settlement Administrator.

6. Honorable Nathanael M. Cousins

Malone v. Western Digital Corp., (July 21, 2021)

No. 20-cv-03584-NC (N.D. Cal.):

The Court hereby appoints JND Legal Administration as Settlement Administrator... The Court finds that the proposed notice program meets the requirements of Due Process under the U.S. Constitution and Rule 23; and that such notice program—which includes individual direct notice to known Settlement Class Members via email, mail, and a second reminder email, a media and Internet notice program, and the establishment of a Settlement Website and Toll-Free Number—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Court further finds that the proposed form and content of the forms of the notice are adequate and will give the Settlement Class Members sufficient information to enable them to make informed decisions as to the Settlement Class, the right to object or opt-out, and the proposed Settlement and its terms.

7. Judge Vernon S. Broderick, Jr.

In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig., (June 7, 2021)

No. 14-md-02542 (S.D.N.Y.):

The Notice Plan provided for notice through a nationwide press release, print notice in the national edition of People magazine, and electronic media—Google Display Network, Facebook, and LinkedIn—using a digital advertising campaign with links to a settlement website. Proof that Plaintiffs have complied with the Notice Plan has been filed with the Court. The Notice Plan met the requirements of due process and Federal Rule of Civil Procedure 23; constituted the most effective and best notice of the Agreement and fairness hearing practicable under the circumstances; and constituted due and sufficient notice for all other purposes to all other persons and entities entitled to receive notice.

8. Honorable Louis L. Stanton

Rick Nelson Co. v. Sony Music Ent., (May 25, 2021)

No. 18-cv-08791 (S.D.N.Y.):

Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

9. Honorable Daniel D. Domenico

Advance Trust & Life Escrow Serv., LTA v. Sec. Life of Denver Ins. Co., (January 29, 2021)

No. 18-cv-01897-DDD-NYW (D. Colo.):

The proposed form and content of the Notices meet the requirements of Federal Rule of Civil Procedure 23(c)(2)(B)...The court approves the retention of JND Legal Administration LLC as the Notice Administrator.

10. Honorable Virginia A. Phillips

Sonner v. Schwabe North America, Inc., (January 25, 2021)

No. 15-cv-01358 VAP (SPx) (C.D. Cal.):

Following preliminary approval of the settlement by the Court, the settlement administrator provided notice to the Settlement Class through a digital media campaign. (Dkt. 203-5). The Notice explains in plain language what the case is about, what the recipient is entitled to, and the options available to the recipient in connection with this case, as well as the consequences of each option. (Id., Ex. E). During the allotted response period, the settlement administrator received no requests for exclusion and just one objection, which was later withdrawn. (Dkt. 203-1, at 11).

Given the low number of objections and the absence of any requests for exclusion, the Class response is favorable overall. Accordingly, this factor also weighs in favor of approval.

11. Honorable R. Gary Klausner

A.B. v. Regents of the Univ. of California, (January 8, 2021)

No. 20-cv-09555-RGK-E (C.D. Cal.):

The parties intend to notify class members through mail using UCLA's patient records. And they intend to supplement the mail notices using Google banners and Facebook ads, publications in the LA times and People magazine, and a national press release. Accordingly, the Court finds that the proposed notice and method of delivery sufficient and approves the notice.

12. Judge Jesse M. Furman

In re General Motors LLC Ignition Switch Litig., economic settlement, (December 18, 2020)

No. 2543 (MDL) (S.D.N.Y.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rules of Civil Procedure 23(c)(2)(b) and 23(e), and fully comply with all laws, including the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.

13. Judge Vernon S. Broderick, Jr.

In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig., (December 16, 2020)

No. 14-md-02542 (S.D.N.Y.):

I further appoint JND as Claims Administrator. JND's principals have more than 75 years-worth of combined class action legal administration experience, and JND has handled some of the largest recent settlement administration issues, including the Equifax Data Breach Settlement. (Doc. 1115 ¶ 5.) JND also has extensive experience in handling claims administration in the antitrust context. (Id. ¶ 6.) Accordingly, I appoint JND as Claims Administrator.

14. Judge R. David Proctor

In re Blue Cross Blue Shield Antitrust Litig., (November 30, 2020)

Master File No. 13-CV-20000-RDP (N.D. Ala.):

After a competitive bidding process, Settlement Class Counsel retained JND Legal Administration LLC (“JND”) to serve as Notice and Claims Administrator for the settlement. JND has a proven track record and extensive experience in large, complex matters... JND has prepared a customized Notice Plan in this case. The Notice Plan was designed to provide the best notice practicable, consistent with the latest methods and tools employed in the industry and approved by other courts...The court finds that the proposed Notice Plan is appropriate in both form and content and is due to be approved.

15. Honorable Laurel Beeler

Sidibe v. Sutter Health, (November 5, 2020)

No. 12-cv-4854-LB (N.D. Cal.):

Class Counsel has retained JND Legal Administration (“JND”), an experienced class notice administration firm, to administer notice to the Class. The Court appoints JND as the Class Notice Administrator.

16. Judge Carolyn B. Kuhl

Sandoval v. Merlex Stucco Inc., (October 30, 2020)

No. BC619322 (Cal. Super. Ct.):

Additional Class Member class members, and because their names and addresses have not yet been confirmed, will be notified of the pendency of this settlement via the digital media campaign... the Court approves the Parties selection of JND Legal as the third-party Claims Administrator.

17. Honorable Louis L. Stanton

Rick Nelson Co. v. Sony Music Ent., (September 16, 2020)

No. 18-cv-08791 (S.D.N.Y.):

The parties have designated JND Legal Administration (“JND”) as the Settlement Administrator. Having found it qualified, the Court appoints JND as the Settlement Administrator and it shall perform all the duties of the Settlement Administrator as set forth in the Stipulation...The form and content of the Notice, Publication Notice and Email Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

18. Honorable Jesse M. Furman

In re General Motors LLC Ignition Switch Litig., economic settlement, (April 27, 2020)

No. 2543 (MDL) (S.D.N.Y.):

The Court further finds that the Class Notice informs Class Members of the Settlement in a reasonable manner under Federal Rule of Civil Procedure 23(e)(1)(B) because it fairly apprises the prospective Class Members of the terms of the proposed Settlement and of the options that are open to them in connection with the proceedings.

The Court therefore approves the proposed Class Notice plan, and hereby directs that such notice be disseminated to Class Members in the manner set forth in the Settlement Agreement and described in the Declaration of the Class Action Settlement Administrator...

19. Honorable Virginia A. Phillips

Sonner v. Schwabe North America, Inc., (April 7, 2020)

No. 15-cv-01358 VAP (SPx) (C.D. Cal.):

The Court orders the appointment of JND Legal Administration to implement and administrate the dissemination of class notice and administer opt-out requests pursuant to the proposed notice dissemination plan attached as Exhibit D to the Stipulation.

20. Judge Fernando M. Olguin

Ahmed v. HSBC Bank USA, NA, (December 30, 2019)

No. 15-cv-2057-FMO-SPx (N.D. Ill.):

On June 21, 2019, the court granted preliminary approval of the settlement, appointed JND Legal Administration (“JND”) as settlement administrator... the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members’ right to exclude themselves from the action, and their right to object to the proposed settlement...the reaction of the class has been very positive.

21. Judge Cormac J. Carney

In re ConAgra Foods Inc., (October 8, 2019)

No. 11-cv-05379-CJC-AGR (C.D. Cal.):

Following the Court’s preliminary approval, JND used a multi-pronged notice campaign to reach people who purchased Wesson Oils...As of September 19, 2019, only one class member requested to opt out of the settlement class, with another class member objecting to the settlement. The reaction of the class has thus been overwhelmingly positive, and this factor favors final approval.

22. Honorable Stephen V. Wilson

USC Student Health Ctr. Settlement, (June 12, 2019)

No. 18-cv-04258-SVW (C.D. Cal.):

The Court hereby designates JND Legal Administration (“JND”) as Claims Administrator. The Court finds that giving Class Members notice of the Settlement is justified under Rule 23(e)(1) because, as described above, the Court will likely be able to: approve the Settlement under Rule 23(e)(2); and certify the Settlement Class for purposes of judgment. The Court finds that the proposed Notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23 and provides the best notice practicable under the circumstances.

23. Judge J. Walton McLeod

Boskie v. Backgroundchecks.com, (May 17, 2019)

No. 2019CP3200824 (S.C. C.P.):

The Court appoints JND Legal Administration as Settlement Administrator...The Court approves the notice plans for the HomeAdvisor Class and the Injunctive Relief Class as set forth in the declaration of JND Legal Administration. The Court finds the class notice fully satisfies the requirements of due process, the South Carolina Rules of Civil Procedure. The notice plan for the HomeAdvisor Class and Injunctive Relief Class constitutes the best notice practicable under the circumstances of each Class.

24. Judge Cormac J. Carney

In re ConAgra Foods Inc., (April 4, 2019)

No. 11-cv-05379-CJC-AGR (C.D. Cal.):

The bids were submitted to Judge McCormick, who ultimately chose JND Legal Administration to propose to the Court to serve as the settlement administrator. (Id. ¶ 65.) In addition to being selected by a neutral third party, JND Legal Administration appears to be well qualified to administer the claims in this case...The Court appoints JND Legal Administration as Settlement Administrator... JND Legal Administration will reach class members through a consumer media campaign, including a national print effort in People magazine, a digital effort targeting consumers in the relevant states through Google Display Network and Facebook, newspaper notice placements in the Los Angeles Daily News, and an internet search effort on Google. (Keough Decl. ¶ 14.) JND Legal Administration will also distribute press releases to media outlets nationwide and establish a settlement website and toll-free phone number. (Id.) The print and digital media effort is designed to reach 70% of the potential class members. (Id.) The newspaper notice placements, internet search effort, and press release distribution are intended to enhance the notice's reach beyond the estimated 70%. (Id.)

25. Judge Kathleen M. Daily

Podawiltz v. Swisher Int'l, Inc., (February 7, 2019)

No. 16CV27621 (Or. Cir. Ct.):

The Court appoints JND Legal Administration as settlement administrator...The Court finds that the notice plan is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, ORCP 32, and any other applicable laws.

26. Honorable Kenneth J. Medel

Huntzinger v. Suunto Oy, (December 14, 2018)

No. 37-2018-27159 (CU) (BT) (CTL) (Cal. Super. Ct.):

The Court finds that the Class Notice and the Notice Program implemented pursuant to the Settlement Agreement and Preliminary Approval Order constituted the best notice practicable under the circumstances to all persons within the definition of the Class and fully complied with the due process requirement under all applicable statutes and laws and with the California Rules of Court.

27. Honorable Thomas M. Durkin

In re Broiler Chicken Antitrust Litig., (November 16, 2018)

No. 16-cv-8637 (N.D. Ill.):

The notice given to the Class, including individual notice to all members of the Class who could be identified through reasonable efforts, was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

28. Honorable Kenneth J. Medel

Huntzinger v. Suunto Oy, (August 10, 2018)

No. 37-2018-27159 (CU) (BT) (CTL) (Cal. Super. Ct.):

The Court finds that the notice to the Class Members regarding settlement of this Action, including the content of the notices and method of dissemination to the Class Members in accordance with the terms of Settlement Agreement, constitute the best notice practicable under the circumstances and constitute valid, due and sufficient notice to all Class Members, complying fully with the requirements of California Code of Civil Procedure § 382, California Civil Code § 1781, California Rules of Court Rules 3.766 and 3.769(f), the California and United States Constitutions, and any other applicable law.

29. Honorable Thomas M. Durkin

In re Broiler Chicken Antitrust Litig., (June 22, 2018)

No. 16-cv-8637 (N.D. Ill.):

The proposed notice plan set forth in the Motion and the supporting declarations comply with Rule 23(c)(2)(B) and due process as it constitutes the best notice that is practicable under the circumstances, including individual notice via mail and email to all members who can be identified through reasonable effort. The direct mail and email notice will be supported by reasonable publication notice to reach class members who could not be individually identified.

30. Judge John Bailey

In re Monitronics Int'l, Inc. TCPA Litig., (September 28, 2017)

No. 11-cv-00090 (N.D. W.Va.):

The Court carefully considered the Notice Plan set forth in the Settlement Agreement and plaintiffs' motion for preliminary approval. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances, and satisfies fully the requirements of Rule 23, the requirements of due process and any other applicable law, such that the terms of the Settlement Agreement, the releases provided therein, and this Court's final judgment will be binding on all Settlement Class Members.

31. Honorable Ann I. Jones

Eck v. City of Los Angeles, (September 15, 2017)

No. BC577028 (Cal. Super. Cal.):

The form, manner, and content of the Class Notice, attached to the Settlement Agreement as Exhibits B, E, F and G, will provide the best notice practicable to the Class under the circumstances, constitutes valid, due, and sufficient notice to all Class Members, and fully complies with California Code of Civil Procedure section 382, California Code of Civil Procedure section 1781, the Constitution of the State of California, the Constitution of the United States, and other applicable law.

32. Honorable James Ashford

Nishimura v. Gentry Homes, LTD., (September 14, 2017)

No. 11-11-1-1522-07-RAN (Haw. Cir. Ct.):

The Court finds that the Notice Plan and Class Notices will fully and accurately inform the potential Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Class Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement meets the requirements of the laws of the State of Hawai'i (including Hawai'i Rule of Civil Procedure 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all potential Class Members.

33. Judge Cecilia M. Altonaga

Flaum v. Doctor's Assoc., Inc., (March 22, 2017)

No. 16-cv-61198 (S.D. Fla.):

...the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of due process and FED. R. CIV. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.

The Court approves the notice program in all respects (including the proposed forms of notice, Summary Notice, Full Notice for the Settlement Website, Publication Notice, Press Release and Settlement Claim Forms, and orders that notice be given in substantial conformity therewith.

34. Judge Manish S. Shah

Johnson v. Yahoo! Inc., (December 12, 2016)

No. 14-cv-02028 (N.D. Ill.):

The Court approves the notice plan set forth in Plaintiff's Amended Motion to Approve Class Notice (Doc. 252) (the "Notice Plan"). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances.

35. Judge Joan A. Leonard

Barba v. Shire U.S., Inc., (December 2, 2016)

No. 13-cv-21158 (S.D. Fla.):

The notice of settlement (in the form presented to this Court as Exhibits E, F, and G, attached to the Settlement Agreement [D.E. 423-1] (collectively, "the Notice") directed to the Settlement Class members, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice was given to potential Settlement Class members who were identified through reasonable efforts, published using several publication dates in *Better Homes and Gardens*, *National Geographic*, and *People* magazines; placed on targeted website and portal banner advertisements on general Run of Network sites; included in e-newsletter placements with *ADDitude*, a magazine dedicated to helping children and adults with attention deficit disorder and learning disabilities lead successful lives, and posted on the Settlement Website which included additional access to Settlement information and a toll-free number. Pursuant to, and in accordance with, Federal Rule of Civil Procedure 23, the Court hereby finds that the Notice provided Settlement Class members with due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of Settlement Class members to make a claim, object to the Settlement or exclude themselves from the Settlement.

36. Judge Marco A. Hernandez

Kearney v. Equilon Enter. LLC, (October 25, 2016)

No. 14-cv-00254 (D. Ore.):

The papers supporting the Final Approval Motion, including, but not limited to, the Declaration of Robert A. Curtis and the two Declarations filed by Gina Intrepido-Bowden, describe the Parties' provision of Notice of the Settlement. Notice was directed to all members of the Settlement Classes defined in paragraph 2, above. No objections to the method or contents of the Notice have been received. Based on the above-mentioned declarations, inter alia, the Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

37. Honorable Amy J. St. Eve

In re Rust-Oleum Restore Mktg, Sales Practices & Prod. Liab. Litig., (October 20, 2016)

No. 15-cv-01364 (N.D. Ill.):

The Notices of Class Action and Proposed Settlement (Exhibits A and B to the Settlement Agreement) and the method of providing such Notices to the proposed Settlement Class...comply with Fed. R. Civ. P. 23(e) and due process, constitute the best notice practicable under the circumstances, and provide due and sufficient notice to all persons entitled to notice of the settlement of this Action.

38. Honorable R. Gary Klausner

Russell v. Kohl's Dep't Stores, Inc., (October 20, 2016)

No. 15-cv-01143 (C.D. Cal.):

Notice of the settlement was provided to the Settlement Class in a reasonable manner, and was the best notice practicable under the circumstances, including through individual notice to all members who could be reasonably identified through reasonable effort.

39. Judge Fernando M. Olguin

Chambers v. Whirlpool Corp., (October 11, 2016)

No. 11-cv-01733 (C.D. Cal.):

Accordingly, based on its prior findings and the record before it, the court finds that the Class Notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, their right to exclude themselves from the action, and their right to object to the proposed settlement.

40. Honourable Justice Stack

Anderson v. Canada, (September 28, 2016)

No. 2007 01T4955CP (NL Sup. Ct.):

The Phase 2 Notice Plan satisfies the requirements of the Class Actions Act and shall constitute good and sufficient service upon class members of the notice of this Order, approval of the Settlement and discontinuance of these actions.

41. Judge Mary M. Rowland

In re Home Depot, Inc., Customer Data Sec. Breach Litig., (August 23, 2016)

No. 14-md-02583 (N.D. Ga.):

The Court finds that the Notice Program has been implemented by the Settlement Administrator and the parties in accordance with the requirements of the Settlement Agreement, and that such Notice Program, including the utilized forms of Notice, constitutes the best notice practicable under the circumstances and satisfies due process and the requirements of Rule 23 of the Federal Rules of Civil Procedure.

42. Honorable Manish S. Shah

Campos v. Calumet Transload R.R., LLC, (August 3, 2016)

No. 13-cv-08376 (N.D. Ill.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate, reasonable, and constitute the best notice practicable under the

circumstances. The notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth therein, and these proceedings to all Persons entitled to such notice. The notice satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) and due process.

43. Honorable Lynn Adelman

Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co., Ltd., (Indirect Purchaser), (July 7, 2016)
No. 09-cv-00852 (E.D. Wis.):

The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

44. Judge Marco A. Hernandez

Kearney v. Equilon Enter. LLC, (June 6, 2016)
No. 14-cv-00254 (Ore. Dist. Ct.):

The Court finds that the Parties’ plan for providing Notice to the Settlement Classes as described in paragraphs 35-42 of the Settlement Agreement and as detailed in the Settlement Notice Plan attached to the Declaration of Gina Intrepido-Bowden: (a) constitutes the best notice practicable under the circumstances of this Action; (b) constitutes due and sufficient notice to the Settlement Classes of the pendency of the Action, certification of the Settlement Classes, the terms of the Settlement Agreement, and the Final Approval Hearing; and (c) complies fully with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. The Court further finds that the Parties’ plan for providing Notice to the Settlement Classes, as described in paragraphs 35-42 of the Settlement Agreement and as detailed in the Settlement Notice Plan attached to the Declaration of Gina Intrepido-Bowden, will adequately inform members of the Settlement Classes of their right to exclude themselves from the Settlement Classes so as not to be bound by the Settlement Agreement.

45. Judge Joan A. Leonard

Barba v. Shire U.S., Inc., (April 11, 2016)

No. 13-cv-21158 (S.D. Fla.):

The Court finds that the proposed methods for giving notice of the Settlement to members of the Settlement Class, as set forth in this Order and in the Settlement Agreement, meet the requirements of Federal Rule of Civil Procedure Rule 23 and requirements of state and federal due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

46. Honorable Manish S. Shah

Campos v. Calumet Transload R.R., LLC, (March 10, 2016 and April 18, 2016)

No. 13-cv-08376 (N.D. Ill.):

The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23, applicable law, and due process.

47. Judge Thomas W. Thrash Jr.

In re Home Depot, Inc., Customer Data Sec. Breach Litig., (March 8, 2016)

No. 14-md-02583 (N.D. Ga.):

The Court finds that the form, content and method of giving notice to the Class as described in Paragraph 7 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement, including but not limited to their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled

to receive notice; and (d) meet all applicable requirements of law, including Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

48. Judge Mary M. Rowland

In re Sears, Roebuck and Co. Front-Loader Washer Prod. Liab. Litig., (February 29, 2016)
No. 06-cv-07023 (N.D. Ill.):

The Court concludes that, under the circumstances of this case, the Settlement Administrator's notice program was the "best notice that is practicable," Fed. R. Civ. P. 23(c)(2)(B), and was "reasonably calculated to reach interested parties," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318 (1950).

49. Honorable Lynn Adelman

Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Ins. Co., (Indirect Purchaser–Tong Yang & Gordon Settlements), (January 14, 2016)
No. 09-CV-00852 (E.D. Wis.):

The form, content, and methods of dissemination of Notice of the Settlements to the Settlement Class were reasonable, adequate, and constitute the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth in the Settlements, and these proceedings to all persons and entities entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process requirements.

50. Judge Curtis L. Collier

In re Skelaxin (Metaxalone) Antitrust Litig., (December 22, 2015)
No. 12-md-2343 (E.D. Tenn.):

The Class Notice met statutory requirements of notice under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirement process.

51. Honorable Mitchell D. Dembin

Lerma v. Schiff Nutrition Int'l, Inc., (November 3, 2015)

No. 11-CV-01056 (S.D. Cal.):

According to Ms. Intrepido-Bowden, between June 29, 2015, and August 2, 2015, consumer publications are estimated to have reached 53.9% of likely Class Members and internet publications are estimated to have reached 58.9% of likely Class Members...The Court finds this notice (i) constituted the best notice practicable under the circumstances, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the putative Class Members of the pendency of the action, and of their right to object and to appear at the Final Approval Hearing or to exclude themselves from the Settlement, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) fully complied with due process principles and Federal Rule of Civil Procedure 23.

52. Honorable Lynn Adelman

Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Ins. Co.,

(Indirect Purchaser–Gordon Settlement), (August 4, 2015)

No. 09-CV-00852 (E.D. Wis.):

The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

53. Honorable Sara I. Ellis

Thomas v. Lennox Indus. Inc., (July 9, 2015)

No. 13-CV-07747 (N.D. Ill.):

The Court approves the form and content of the Long-Form Notice, Summary Notice, Postcard Notice, Dealer Notice, and Internet Banners (the “Notices”) attached as

Exhibits A-1, A-2, A-3, A-4 and A-5 respectively to the Settlement Agreement. The Court finds that the Notice Plan, included in the Settlement Agreement and the Declaration of Gina M. Intrepido-Bowden on Settlement Notice Plan and Notice Documents, constitutes the best practicable notice under the circumstances as well as valid, due and sufficient notice to all persons entitled thereto, and that the Notice Plan complies fully with the requirements of Federal Rule of Civil Procedure 23 and provides Settlement Class Members due process under the United States Constitution.

54. Honorable Lynn Adelman

Fond du Lac Bumper Exch., Inc. v. Jui Li Enter.Co., Ltd.

(Indirect Purchaser–Tong Yang Settlement), (May 29, 2015)

No. 09-CV-00852 (E.D. Wis.):

The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

55. Honorable Mitchell D. Dembin

Lerma v. Schiff Nutrition Int'l, Inc., (May 25, 2015)

No. 11-CV-01056 (S.D. Cal.):

The parties are to notify the Settlement Class in accordance with the Notice Program outlined in the Second Supplemental Declaration of Gina M. Intrepido-Bowden on Settlement Notice Program.

56. Honorable Lynn Adelman

Fond du Lac Bumper Exch., Inc. v. Jui Li Enter. Co., Ltd.
(Direct Purchaser–Gordon Settlement), (May 5, 2015)
No. 09-CV-00852 (E.D. Wis.):

The Notice Program set forth herein is substantially similar to the one set forth in the Court’s April 24, 2015 Order regarding notice of the Tong Yang Settlement (ECF. No. 619) and combines the Notice for the Tong Yang Settlement with that of the Gordon Settlement into a comprehensive Notice Program. To the extent differences exist between the two, the Notice Program set forth and approved herein shall prevail over that found in the April 24, 2015 Order.

57. Honorable José L. Linares

Demmick v. Cellco P’ship, (May 1, 2015)
No. 06-CV-2163 (D.N.J.):

The Notice Plan, which this Court has already approved, was timely and properly executed and that it provided the best notice practicable, as required by Federal Rule of Civil Procedure 23, and met the “desire to actually inform” due process communications standard of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) The Court thus affirms its finding and conclusion in the November 19, 2014 Preliminary Approval Order that the notice in this case meets the requirements of the Federal Rules of Civil Procedure and the Due Process Clause of the United States and/or any other applicable law. All objections submitted which make mention of notice have been considered and, in light of the above, overruled.

58. Honorable David O. Carter

Cobb v. BSH Home Appliances Corp., (December 29, 2014)
No. 10-CV-0711 (C.D. Cal.):

The Notice Program complies with Rule 23(c)(2)(B) because it constitutes the best notice practicable under the circumstances, provides individual notice to all Class Members who can be identified through reasonable effort, and is reasonably calculated

under the circumstances to apprise the Class Members of the nature of the action, the claims it asserts, the Class definition, the Settlement terms, the right to appear through an attorney, the right to opt out of the Class or to comment on or object to the Settlement (and how to do so), and the binding effect of a final judgment upon Class Members who do not opt out.

59. Honorable José L. Linares

Demmick v. Cellco P'ship, (November 19, 2014)

No. 06-CV-2163 (D.N.J.):

The Court finds that the Parties' plan for providing Notice to the Settlement Classes as described in Article V of the Settlement Agreement and as detailed in the Settlement Notice Plan attached to the Declaration of Gina M. Intrepido-Bowden: (a) constitutes the best notice practicable under the circumstances of this Action; (b) constitutes due and sufficient notice to the Settlement Classes of the pendency of the Action, certification of the Settlement Classes, the terms of the Settlement Agreement, and the Final Approval Hearing; and (c) complies fully with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

The Court further finds that the Parties' plan for providing Notice to the Settlement Classes as described in Article V of the Settlement Agreement and as detailed in the Settlement Notice Plan attached to the Declaration of Gina M. Intrepido-Bowden, will adequately inform members of the Settlement Classes of their right to exclude themselves from the Settlement Classes so as to not be bound by the Settlement Agreement.

60. Honorable Christina A. Snyder

Roberts v. Electrolux Home Prod., Inc., (September 11, 2014)

No. 12-CV-01644 (C.D. Cal.):

Accordingly, the Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and California laws and due process. The Court finally approves the Notice Plan in all respects...Any objections to the notice provided to the Class are hereby overruled.

61. Judge Gregory A. Presnell

Poertner v. Gillette Co., (August 21, 2014)

No. 12-CV-00803 (M.D. Fla.):

This Court has again reviewed the Notice and the accompanying documents and finds that the “best practicable” notice was given to the Class and that the Notice was “reasonably calculated” to (a) describe the Action and the Plaintiff’s and Class Members’ rights in it; and (b) apprise interested parties of the pendency of the Action and of their right to have their objections to the Settlement heard. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 810 (1985). This Court further finds that Class Members were given a reasonable opportunity to opt out of the Action and that they were adequately represented by Plaintiff Joshua D. Poertner. See Id. The Court thus reaffirms its findings that the Notice given to the Class satisfies the requirements of due process and holds that it has personal jurisdiction over all Class Members.

62. Honorable Christina A. Snyder

Roberts v. Electrolux Home Prod., Inc., (May 5, 2014)

No. 12-CV-01644 (C.D. Cal.):

The Court finds that the Notice Plan set forth in the Settlement Agreement (§ V. of that Agreement) is the best notice practicable under the circumstances and constitutes sufficient notice to all persons entitled to notice. The Court further preliminarily finds that the Notice itself IS appropriate, and complies with Rules 23(b)(3), 23(c)(2)(B), and 23(e) because it describes in plain language (1) the nature of the action, (2) the definition of the Settlement Class and Subclasses, (3) the class claims, issues or defenses, (4) that a class member may enter an appearance through an attorney if the member so desires, (5) that the Court will exclude from the class any member who requests exclusion, (6) the time and manner for requesting exclusion, and (7) the binding effect of a judgment on Settlement Class Members under Rule 23(c)(3) and the terms of the releases. Accordingly, the Court approves the Notice Plan in all respects...

63. Honorable William E. Smith

Cappalli v. BJ's Wholesale Club, Inc., (December 12, 2013)

No. 10-CV-00407 (D.R.I.):

The Court finds that the form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of these proceedings of the proposed Settlement, and of the terms set forth in the Stipulation and first Joint Addendum, and the notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, Constitutional due process, and all other applicable laws.

64. Judge Gregory A. Presnell

Poertner v. Gillette Co., (November 5, 2013)

No. 12-CV-00803 (M.D. Fla.):

The Court finds that compliance with the Notice Plan is the best practicable notice under the circumstances and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Rule 23, applicable law, and due process.

65. Judge Marilyn L. Huff

Beck-Ellman v. Kaz USA, Inc., (June 11, 2013)

No. 10-cv-02134 (S.D. Cal.):

The Notice Plan has now been implemented in accordance with the Court's Preliminary Approval Order...The Notice Plan was specially developed to cause class members to see the Publication Notice or see an advertisement that directed them to the Settlement Website...The Court concludes that the Class Notice fully satisfied the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure and all due process requirements.

66. Judge Tom A. Lucas

Stroud v. eMachines, Inc., (March 27, 2013)

No. CJ-2003-968 L (W.D. Okla.):

The Notices met the requirements of Okla. Stat. tit. 12 section 2023(C), due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto. All objections are stricken. Alternatively, considered on their merits, all objections are overruled.

67. Judge Marilyn L. Huff

Beck-Ellman v. Kaz USA, Inc., (January 7, 2013)

No. 10-cv-02134 (S.D. Cal.):

The proposed Class Notice, Publication Notice, and Settlement Website are reasonably calculated to inform potential Class members of the Settlement, and are the best practicable methods under the circumstances... Notice is written in easy and clear language, and provides all needed information, including: (1) basic information about the lawsuit; (2) a description of the benefits provided by the settlement; (3) an explanation of how Class members can obtain Settlement benefits; (4) an explanation of how Class members can exercise their rights to opt-out or object; (5) an explanation that any claims against Kaz that could have been litigated in this action will be released if the Class member does not opt out; (6) the names of Class Counsel and information regarding attorneys' fees; (7) the fairness hearing date and procedure for appearing; and (8) the Settlement Website and a toll free number where additional information, including Spanish translations of all forms, can be obtained. After review of the proposed notice and Settlement Agreement, the Court concludes that the Publication Notice and Settlement Website are adequate and sufficient to inform the class members of their rights. Accordingly, the Court approves the form and manner of giving notice of the proposed settlement.

68. Judge Tom A. Lucas

Stroud v. eMachines, Inc., (December 21, 2012)

No. CJ-2003-968 L (W.D. Okla.):

The Plan of Notice in the Settlement Agreement as well as the content of the Claim Form, Class Notice, Post-Card Notice, and Summary Notice of Settlement is hereby approved in all respects. The Court finds that the Plan of Notice and the contents of the Class Notice, Post-Card Notice and Summary Notice of Settlement and the manner of their dissemination described in the Settlement Agreement is the best practicable notice under the circumstances and is reasonably calculated, under the circumstances, to apprise Putative Class Members of the pendency of this action, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Certified Settlement Class and, therefore, the Plan of Notice, the Class Notice, Post-Card Notice and Summary Notice of Settlement are approved in all respects. The Court further finds that the Class Notice, Post-Card Notice and Summary Notice of Settlement are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process.

69. Honorable Michael M. Anello

Shames v. Hertz Corp., (November 5, 2012)

No. 07-cv-02174 (S.D. Cal.):

...the Court is satisfied that the parties and the class administrator made reasonable efforts to reach class members. Class members who did not receive individualized notice still had opportunity for notice by publication, email, or both...The Court is satisfied that the redundancies in the parties' class notice procedure—mailing, e-mailing, and publication—reasonably ensured the widest possible dissemination of the notice...The Court OVERRULES all objections to the class settlement...

70. Judge Ann D. Montgomery

In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig., (July 9, 2012)
No. 11-MD-2247 (D. Minn.):

The objections filed by class members are overruled; The notice provided to the class was reasonably calculated under the circumstances to apprise class members of the pendency of this action, the terms of the Settlement Agreement, and their right to object, opt out, and appear at the final fairness hearing;...

71. Judge Ann D. Montgomery

In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig., (June 29, 2012)
No. 11-MD-2247 (D. Minn.):

After the preliminary approval of the Settlement, the parties carried out the notice program, hiring an experienced consulting firm to design and implement the plan. The plan consisted of direct mail notices to known owners and warranty claimants of the RTI F1807 system, direct mail notices to potential holders of subrogation interests through insurance company mailings, notice publications in leading consumer magazines which target home and property owners, and earned media efforts through national press releases and the Settlement website. The plan was intended to, and did in fact, reach a minimum of 70% of potential class members, on average more than two notices each...The California Objectors also take umbrage with the notice provided the class. Specifically, they argue that the class notice fails to advise class members of the true nature of the aforementioned release. This argument does not float, given that the release is clearly set forth in the Settlement and the published notices satisfy the requirements of Rule 23(c)(2)(B) by providing information regarding: (1) the nature of the action class membership; (2) class claims, issues, and defenses; (3) the ability to enter an appearance through an attorney; (4) the procedure and ability to opt-out or object; (5) the process and instructions to make a claim; (6) the binding effect of the class judgment; and (7) the specifics of the final fairness hearing.

72. Honorable Michael M. Anello

Shames v. Hertz Corp., (May 22, 2012)

No. 07-cv-02174 (S.D. Cal.):

The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action, substantially in the forms of Exhibits A-1 through A-6, as appropriate, (individually or collectively, the “Notice”), and finds that the e-mailing or mailing and distribution of the Notice and publishing of the Notice substantially in the manner and form set forth in ¶ 7 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

73. Judge Ann D. Montgomery

In re Uponsor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig., (January 18, 2012)

No. 11-MD-2247 (D. Minn.):

The Notice Plan detailed in the Affidavit of Gina M. Intrepido-Bowden provides the best notice practicable under the circumstances and constitutes due and sufficient notice of the Settlement Agreement and the Final Fairness Hearing to the Classes and all persons entitled to receive such notice as potential members of the Class... The Notice Plan’s multi-faceted approach to providing notice to Class Members whose identity is not known to the Settling Parties constitutes ‘the best notice that is practicable under the circumstances’ consistent with Rule 23(c)(2)(B)... Notice to Class members must clearly and concisely state the nature of the lawsuit and its claims and defenses, the Class certified, the Class member’s right to appear through an attorney or opt out of the Class, the time and manner for opting out, and the binding effect of a class judgment on members of the Class. Fed. R. Civ. P. 23(c)(2)(B). Compliance with Rule 23’s notice requirements also complies with Due Process requirements. ‘The combination of reasonable notice, the opportunity to be heard, and the opportunity to withdraw from the class satisfy due process requirements of the Fifth Amendment.’ Prudential, 148 F.3d at 306. The proposed notices in the present case meet those requirements.

74. Judge Jeffrey Goering

Molina v. Intrust Bank, N.A., (January 17, 2012)

No. 10-CV-3686 (Ks. 18th J.D. Ct.):

The Court approved the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Kansas law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

75. Judge Charles E. Atwell

Allen v. UMB Bank, N.A., (October 31, 2011)

No. 1016-CV34791 (Mo. Cir. Ct.):

The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure and due process.

76. Judge Charles E. Atwell

Allen v. UMB Bank, N.A., (June 27, 2011)

No. 1016-CV34791 (Mo. Cir. Ct.):

The Court approves the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Missouri law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

77. Judge Jeremy Fogel

Ko v. Natura Pet Prod., Inc., (June 24, 2011)

No. 09cv2619 (N.D. Cal.):

The Court approves, as to form and content, the Long Form Notice of Pendency and Settlement of Class Action (“Long Form Notice”), and the Summary Notice attached as Exhibits to the Settlement Agreement, and finds that the e-mailing of the Summary Notice, and posting on the dedicated internet website of the Long Form Notice, mailing of the Summary Notice post-card, and newspaper and magazine publication of the Summary Notice substantially in the manner as set forth in this Order meets the requirements of Rule 23 of the Federal Rules of Civil Procedure, and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled to notice.

78. Judge M. Joseph Tiemann

Billieson v. City of New Orleans, (May 27, 2011)

No. 94-19231 (La. Civ. Dist. Ct.):

The plan to disseminate notice for the Insurance Settlements (the “Insurance Settlements Notice Plan”) which was designed at the request of Class Counsel by experienced Notice Professionals Gina Intrepido-Bowden... IT IS ORDERED as follows:

- 1. The Insurance Settlements Notice Plan is hereby approved and shall be executed by the Notice Administrator;*
- 2. The Insurance Settlements Notice Documents, substantially in the form included in the Insurance Settlements Notice Plan, are hereby approved.*

79. Judge James Robertson

In re Dep’t of Veterans Affairs (VA) Data Theft Litig., (February 11, 2009)

MDL No. 1796 (D.D.C.):

The Court approves the proposed method of dissemination of notice set forth in the Notice Plan, Exhibit 1 to the Settlement Agreement. The Notice Plan meets the requirements of due process and is the best notice practicable under the circumstances. This method of Class Action Settlement notice dissemination is hereby approved by the Court.

80. Judge Louis J. Farina

Soders v. Gen. Motors Corp., (December 19, 2008)

No. CI-00-04255 (C.P. Pa.):

The Court has considered the proposed forms of Notice to Class members of the settlement and the plan for disseminating Notice, and finds that the form and manner of notice proposed by the parties and approved herein meet the requirements of due process, are the best notice practicable under the circumstances, and constitute sufficient notice to all persons entitled to notice.

81. Judge Robert W. Gettleman

In re Trans Union Corp., (September 17, 2008)

MDL No. 1350 (N.D. Ill.):

The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law...Accordingly, all objections are hereby OVERRULED.

82. Judge William G. Young

In re TJX Cos. Retail Security Breach Litig., (September 2, 2008)

MDL No. 1838 (D. Mass.):

...as attested in the Affidavit of Gina M. Intrepido...The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

83. Judge David De Alba

Ford Explorer Cases, (May 29, 2008)

JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved -- submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.

III.

SPEAKING ENGAGEMENTS

1. **'Marching to Their Own Drumbeat.' What Lawyers Don't Understand About Notice and Claims Administration**, AMERICAN BAR ASSOCIATION, American Bar Association's (ABA) 23rd Annual National Institute on Class Actions, panelist (October 2019).
2. **Rule 23 Amendments and Digital Notice Ethics, accredited CLE Program**, presenter at Terrell Marshall Law Group PLLC, Seattle, WA (June 2019); Severson & Werson, San Francisco, CA and broadcast to office in Irvine (June 2019); Greenberg Traurig, LLP, Los Angeles, CA (May 2019); Chicago Bar Association, Chicago, IL (January 2019); Sidley Austin LLP, Century City, CA and broadcast to offices in Los Angeles, San Francisco, New York, Chicago, Washington D.C. (January 2019); Burns Charest LLP, Dallas, TX (November 2018); Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN (October 2018); Zimmerman Reed LLP, Minneapolis, MN (October 2018); Gustafson Gluek PLLC, Minneapolis, MN (October 2018).
3. **Ethics in Legal Notification, accredited CLE Program**, presenter at Kessler Topaz Meltzer & Check LLP, Radnor, PA (September 2015); The St. Regis Resort, Deer Valley, UT (March 2014); and Morgan Lewis & Bockius, New York, NY (December 2012).
4. **Pitfalls of Class Action Notice and Settlement Administration, accredited CLE Program**, PRACTISING LAW INSTITUTE (PLI), Class Action Litigation 2013, presenter/panelist (July 2013).
5. **The Fundamentals of Settlement Administration, accredited CLE Program**, presenter at Skadden, Arps, Slate, Meagher & Flom LLP, Chicago, IL (January 2013); Wexler Wallace LLP, Chicago, IL (January 2013); Hinshaw & Culbertson LLP, Chicago, IL (October 2012); and Spector Roseman Kodroff & Willis, P.C., Philadelphia, PA (December 2011).
6. **Class Action Settlement Administration Tips & Pitfalls on the Path to Approval, accredited CLE Program**, presenter at Jenner & Block, Chicago, IL and broadcast to offices in Washington DC, New York and California (October 2012).
7. **Reaching Class Members & Driving Take Rates**, CONSUMER ATTORNEYS OF SAN DIEGO, 4th Annual Class Action Symposium, presenter/panelist (October 2011).

8. **Legal Notice Ethics, accredited CLE Program**, presenter at Heins Mills & Olson, P.L.C., Minneapolis, MN (January 2011); Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN (January 2011); Chestnut Cambronne, Minneapolis, MN (January 2011); Berger & Montague, P.C., Anapol Schwartz, Philadelphia, PA (October 2010); Lundy Law, Philadelphia, PA (October 2010); Dechert LLP, Philadelphia, PA and broadcast to offices in California, New Jersey, New York, North Carolina, Texas, Washington D.C., and London and sent via video to their office in China (October 2010); Miller Law LLC, Chicago, IL (May 2010); Cohen Milstein Sellers & Toll PLLC, New York, NY (May 2010); and Milberg LLP, New York, NY (May 2010).
9. **Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice, accredited CLE Program**, presenter, Kansas Bar Association (March 2009).

IV.

ARTICLES

1. Gina M. Intrepido-Bowden, *Time to Allow More Streamlined Class Action Notice Formats - Adapting Short Form Notice Requirements to Accommodate Today's Fast Paced Society*, LAW360 (2021).
2. Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The "Desire-to-Inform" Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006); reprinted in course materials for: CENTER FOR LEGAL EDUCATION INTERNATIONAL, *Class Actions: Prosecuting and Defending Complex Litigation* (2007); AMERICAN BAR ASSOCIATION, *10th Annual National Institute on Class Actions* (2006); NATIONAL BUSINESS INSTITUTE, *Class Action Update: Today's Trends & Strategies for Success* (2006).
3. Gina M. Intrepido, *Notice Experts May Help Resolve CAFA Removal Issues, Notification to Officials*, 6 CLASS ACTION LITIG. REP. 759 (2005).
4. Todd B. Hilsee, Shannon R. Wheatman, & Gina M. Intrepido, *Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform*, 18 GEORGETOWN JOURNAL LEGAL ETHICS 1359 (2005).



CASE EXPERIENCE

Ms. Intrepido-Bowden has been involved in the design and implementation of hundreds of notice programs throughout her career. A partial listing of her case work is provided below.

| CASE NAME | CASE NUMBER | LOCATION |
|---|--------------------------|--------------------|
| <i>A.B. v. Regents of the Univ. of California</i> | 20-cv-09555-RGK-E | C.D. Cal. |
| <i>Abante Rooter & Plumbing, Inc. v. New York Life Ins. Co.</i> | 16-cv-03588 | S.D.N.Y. |
| <i>Advance Trust & Life Escrow Serv., LTA v. Sec. Life of Denver Ins. Co.</i> | 18-cv-01897-DDD-NYW | D. Colo. |
| <i>Ahmed v. HSBC Bank USA, NA</i> | 15-cv-2057-FMO-SPx | N.D. Ill. |
| <i>Allen v. UMB Bank, N.A.</i> | 1016-CV34791 | Mo. Cir. Ct. |
| <i>Anderson v. Canada (Phase I)</i> | 2008NLTD166 | NL Sup. Ct. |
| <i>Anderson v. Canada (Phase II)</i> | 2007 01T4955CP | NL Sup. Ct. |
| <i>Angel v. U.S. Tire Recovery</i> | 06-C-855 | W. Va. Cir. Ct. |
| <i>Baiz v. Mountain View Cemetery</i> | 809869-2 | Cal. Super. Ct. |
| <i>Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc.</i> | 00-L-9664 | Ill. Cir. Ct. |
| <i>Barba v. Shire U.S., Inc.</i> | 13-cv-21158 | S.D. Fla. |
| <i>Beck-Ellman v. Kaz USA Inc.</i> | 10-cv-2134 | S.D. Cal. |
| <i>Beringer v. Certegy Check Serv., Inc.</i> | 07-cv-1657-T-23TGW | M.D. Fla. |
| <i>Bibb v. Monsanto Co. (Nitro)</i> | 041465 | W. Va. Cir. Ct. |
| <i>Billieson v. City of New Orleans</i> | 94-19231 | La. Civ. Dist. Ct. |
| <i>Bland v. Premier Nutrition Corp.</i> | RG19-002714 | Cal. Super. Ct. |
| <i>Boskie v. Backgroundchecks.com</i> | 2019CP3200824 | S.C. C.P. |
| <i>Brookshire Bros. v. Chiquita</i> | 05-CIV-21962 | S.D. Fla. |
| <i>Brown v. Am. Tobacco</i> | J.C.C.P. 4042 No. 711400 | Cal. Super. Ct. |
| <i>Bruzek v. Husky Oil Operations Ltd.</i> | 18-cv-00697 | W.D. Wis. |
| <i>Campos v. Calumet Transload R.R., LLC</i> | 13-cv-08376 | N.D. Ill. |
| <i>Cappalli v. BJ's Wholesale Club, Inc.</i> | 10-cv-00407 | D.R.I. |
| <i>Carter v. Monsanto Co. (Nitro)</i> | 00-C-300 | W. Va. Cir. Ct. |

| CASE NAME | CASE NUMBER | LOCATION |
|---|-----------------------|-------------------------------------|
| <i>Chambers v. Whirlpool Corp.</i> | 11-cv-01733 | C.D. Cal. |
| <i>Cobb v. BSH Home Appliances Corp.</i> | 10-cv-00711 | C.D. Cal. |
| <i>Davis v. Am. Home Prods. Corp.</i> | 94-11684 | La. Civ. Dist. Ct., Div. K |
| <i>Defrates v. Hollywood Ent. Corp.</i> | 02L707 | Ill. Cir. Ct. |
| <i>de Lacour v. Colgate-Palmolive Co.</i> | 16-cv-8364-KW | S.D.N.Y. |
| <i>Demereckis v. BSH Home Appliances Corp.</i> | 8:10-cv-00711 | C.D. Cal. |
| <i>Demmick v. Cellco P'ship</i> | 06-cv-2163 | D.N.J. |
| <i>Desportes v. Am. Gen. Assurance Co.</i> | SU-04-CV-3637 | Ga. Super. Ct. |
| <i>Dolen v. ABN AMRO Bank N.V.</i> | 01-L-454 & 01-L-493 | Ill. Cir. Ct. |
| <i>Donnelly v. United Tech. Corp.</i> | 06-CV-320045CP | Ont. S.C.J. |
| <i>Eck v. City of Los Angeles</i> | BC577028 | Cal. Super. Ct. |
| <i>Engquist v. City of Los Angeles</i> | BC591331 | Cal. Super. Ct. |
| <i>Ervin v. Movie Gallery Inc.</i> | CV-13007 | Tenn. Ch. Fayette Co. |
| <i>First State Orthopaedics v. Concentra, Inc.</i> | 05-CV-04951-AB | E.D. Pa. |
| <i>Fisher v. Virginia Electric & Power Co.</i> | 02-CV-431 | E.D. Va. |
| <i>Flaum v. Doctor's Assoc., Inc. (d/b/a Subway)</i> | 16-cv-61198 | S.D. Fla. |
| <i>Fond du Lac Bumper Exch. Inc. v. Jui Li Enter. Co. Ltd. (Direct & Indirect Purchasers Classes)</i> | 09-cv-00852 | E.D. Wis. |
| <i>Ford Explorer Cases</i> | JCCP Nos. 4226 & 4270 | Cal. Super. Ct. |
| <i>Friedman v. Microsoft Corp.</i> | 2000-000722 | Ariz. Super. Ct. |
| <i>FTC v. Reckitt Benckiser Grp. PLC</i> | 19CV00028 | W.D. Va. |
| <i>Gardner v. Stimson Lumber Co.</i> | 00-2-17633-3SEA | Wash. Super. Ct. |
| <i>Gordon v. Microsoft Corp.</i> | 00-5994 | D. Minn. |
| <i>Grays Harbor v. Carrier Corp.</i> | 05-05437-RBL | W.D. Wash. |
| <i>Griffin v. Dell Canada Inc.</i> | 07-CV-325223D2 | Ont. Super. Ct. |
| <i>Gunderson v. F.A. Richard & Assoc., Inc. (AIG)</i> | 2004-2417-D | La. 14 th Jud. Dist. Ct. |
| <i>Gunderson v. F.A. Richard & Assoc., Inc. (FARA)</i> | 2004-2417-D | La. 14 th Jud. Dist. Ct. |
| <i>Gunderson v. F.A. Richard & Assoc., Inc. (Focus)</i> | 2004-2417-D | La. 14 th Jud. Dist. Ct. |
| <i>Gunderson v. F.A. Richard & Assoc., Inc. (Wal-Mart)</i> | 2004-2417-D | La. 14 th Jud. Dist. Ct. |
| <i>Gunderson v. F.A. Richard & Assoc., Inc. (Amerisafe)</i> | 2004-002417 | La. 14 th Jud. Dist. Ct. |
| <i>Herrera v. Wells Fargo Bank, N.A.</i> | 18-cv-00332-JVS-MRW | C.D. Cal. |

| CASE NAME | CASE NUMBER | LOCATION |
|---|----------------------------|-----------------|
| <i>Huntzinger v. Suunto Oy</i> | 37-2018-00027159-CU-BT-CTL | Cal. Super. Ct. |
| <i>In re Anthem, Inc. Data Breach Litig.</i> | 15-md-02617 | N.D. Cal. |
| <i>In re Babcock & Wilcox Co.</i> | 00-10992 | E.D. La. |
| <i>In re Blue Cross Blue Shield Antitrust Litig.</i> | 13-CV-20000-RDP | N.D. Ala. |
| <i>In re Broiler Chicken Antitrust Litig.</i> | 16-cv-08637 | N.D. Ill. |
| <i>In re ConAgra Foods Inc.</i> | 11-cv-05379-CJC-AGR | C.D. Cal. |
| <i>In re Countrywide Fin. Corp. Customer Data Sec. Breach</i> | MDL 08-md-1998 | W.D. Ky. |
| <i>In re General Motors LLC Ignition Switch Litig. (economic settlement)</i> | 2543 (MDL) | S.D.N.Y. |
| <i>In re High Sulfur Content Gasoline Prod. Liab.</i> | MDL No. 1632 | E.D. La. |
| <i>In re Home Depot, Inc., Customer Data Sec. Breach Litig.</i> | 14-md-02583 | N.D. Ga. |
| <i>In re Hypodermic Prod. Antitrust Litig.</i> | 05-cv-01602 | D.N.J. |
| <i>In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig. (Indirect-Purchasers)</i> | 14-md-02542 | S.D.N.Y. |
| <i>In re Lidoderm Antitrust Litig.</i> | 14-md-02521 | N.D. Cal. |
| <i>In re Lupron Mktg. & Sales Practices</i> | MDL No.1430 | D. Mass. |
| <i>In re Mercedes-Benz Emissions Litig.</i> | 16-cv-881 (KM) (ESK) | D.N.J. |
| <i>In re Monitronics Int'l, Inc., TCPA Litig.</i> | 11-cv-00090 | N.D. W.Va. |
| <i>In re Parmalat Sec.</i> | 04-md-01653 (LAK) | S.D.N.Y. |
| <i>In re Residential Schools Litig.</i> | 00-CV-192059 CPA | Ont. Super. Ct. |
| <i>In re Resistors Antitrust Litig.</i> | 15-cv-03820-JD | N.D. Cal. |
| <i>In re Royal Ahold Sec. & "ERISA"</i> | 03-md-01539 | D. Md. |
| <i>In re Rust-Oleum Restore Mktg. Sales Practices & Prod. Liab. Litig.</i> | 15-cv01364 | N.D. Ill. |
| <i>In re Sears, Roebuck & Co. Front-Loading Washer Prod. Liab. Litig.</i> | 06-cv-07023 | N.D. Ill. |
| <i>In re Serzone Prod. Liab.</i> | 02-md-1477 | S.D. W. Va. |
| <i>In re Skelaxin (Metaxalone) Antitrust Litig.</i> | 12-cv-194 | E.D. Ten. |
| <i>In re Solodyn (Minocycline Hydrochloride) Antitrust Litig. (Direct Purchaser Class)</i> | 14-md-2503 | D. Mass. |
| <i>In re TJX Cos. Retail Sec. Breach Litig.</i> | MDL No. 1838 | D. Mass. |

| CASE NAME | CASE NUMBER | LOCATION |
|---|----------------------|-------------------------------------|
| <i>In re Trans Union Corp. Privacy Litig.</i> | MDL No. 1350 | N.D. Ill. |
| <i>In re Uponor, Inc., F1807 Prod. Liab. Litig.</i> | 2247 | D. Minn. |
| <i>In re U.S. Dep't of Veterans Affairs Data Theft Litig.</i> | MDL 1796 | D.D.C. |
| <i>In re Zurn Pex Plumbing Prod. Liab. Litig.</i> | MDL 08-1958 | D. Minn. |
| <i>Johnson v. Yahoo! Inc.</i> | 14-cv02028 | N.D. Ill. |
| <i>Kearney v. Equilon Enter. LLC</i> | 14-cv-00254 | D. Ore. |
| <i>Ko v. Natura Pet Prod., Inc.</i> | 09cv02619 | N.D. Cal. |
| <i>Langan v. Johnson & Johnson Consumer Co.</i> | 13-cv-01471 | D. Conn. |
| <i>Lavinsky v. City of Los Angeles</i> | BC542245 | Cal. Super. Ct. |
| <i>Lee v. Stonebridge Life Ins. Co.</i> | 11-cv-00043 | N.D. Cal. |
| <i>Lerma v. Schiff Nutrition Int'l, Inc.</i> | 11-cv-01056 | S.D. Cal. |
| <i>Levy v. Dolgencorp, LLC</i> | 20-cv-01037-TJC-MCR | M.D. Fla. |
| <i>Lockwood v. Certegy Check Serv., Inc.</i> | 07-CV-587-FtM-29-DNF | M.D. Fla. |
| <i>Luster v. Wells Fargo Dealer Serv., Inc.</i> | 15-cv-01058 | N.D. Ga. |
| <i>Malone v. Western Digital Corp.</i> | 20-cv-03584-NC | N.D. Cal. |
| <i>Martinelli v. Johnson & Johnson</i> | 15-cv-01733-MCE-DB | E.D. Cal. |
| <i>McCrary v. Elations Co., LLC</i> | 13-cv-00242 | C.D. Cal. |
| <i>Microsoft I-V Cases</i> | J.C.C.P. No. 4106 | Cal. Super. Ct. |
| <i>Molina v. Intrust Bank, N.A.</i> | 10-cv-3686 | Ks. 18 th Jud. Dist. Ct. |
| <i>Morrow v. Conoco Inc.</i> | 2002-3860 | La. Dist. Ct. |
| <i>Mullins v. Direct Digital LLC.</i> | 13-cv-01829 | N.D. Ill. |
| <i>Myers v. Rite Aid of PA, Inc.</i> | 01-2771 | Pa. C.P. |
| <i>Naef v. Masonite Corp.</i> | CV-94-4033 | Ala. Cir. Ct. |
| <i>Nature Guard Cement Roofing Shingles Cases</i> | J.C.C.P. No. 4215 | Cal. Super. Ct. |
| <i>Nichols v. SmithKline Beecham Corp.</i> | 00-6222 | E.D. Pa. |
| <i>Nishimura v Gentry Homes, LTD.</i> | 11-11-1-1522-07-RAN | Haw. Cir. Ct. |
| <i>Novoa v. The GEO Grp., Inc.</i> | 17-cv-02514-JGB-SHK | C.D. Cal. |
| <i>Nwauzor v. GEO Grp., Inc.</i> | 17-cv-05769 | W.D. Wash. |
| <i>Palace v. DaimlerChrysler</i> | 01-CH-13168 | Ill. Cir. Ct. |
| <i>Peek v. Microsoft Corp.</i> | CV-2006-2612 | Ark. Cir. Ct. |
| <i>Plubell v. Merck & Co., Inc.</i> | 04CV235817-01 | Mo. Cir. Ct. |

| CASE NAME | CASE NUMBER | LOCATION |
|--|-----------------------|-------------------------------------|
| <i>Podawiltz v. Swisher Int'l, Inc.</i> | 16CV27621 | Or. Cir. Ct. |
| <i>Poertner v. Gillette Co.</i> | 12-cv-00803 | M.D. Fla. |
| <i>Prather v. Wells Fargo Bank, N.A.</i> | 15-cv-04231 | N.D. Ga. |
| <i>Q+ Food, LLC v. Mitsubishi Fuso Truck of Am., Inc.</i> | 14-cv-06046 | D.N.J. |
| <i>Richison v. Am. Cemwood Corp.</i> | 005532 | Cal. Super. Ct. |
| <i>Rick Nelson Co. v. Sony Music Ent.</i> | 18-cv-08791 | S.D.N.Y. |
| <i>Roberts v. Electrolux Home Prod., Inc.</i> | 12-cv-01644 | C.D. Cal. |
| <i>Russell v. Kohl's Dep't Stores, Inc.</i> | 15-cv-01143 | C.D. Cal. |
| <i>Sandoval v. Merlex Stucco Inc.</i> | BC619322 | Cal. Super. Ct. |
| <i>Scott v. Blockbuster, Inc.</i> | D 162-535 | 136 th Tex. Jud. Dist. |
| <i>Senne v Office of the Comm'r of Baseball</i> | 14-cv-00608-JCS | N.D. Cal. |
| <i>Shames v. Hertz Corp.</i> | 07cv2174-MMA | S.D. Cal. |
| <i>Sidibe v. Sutter Health</i> | 12-cv-4854-LB | N.D. Cal. |
| <i>Staats v. City of Palo Alto</i> | 2015-1-CV-284956 | Cal. Super. Ct. |
| <i>Soders v. Gen. Motors Corp.</i> | CI-00-04255 | Pa. C.P. |
| <i>Sonner v. Schwabe North America, Inc.</i> | 15-cv-01358 VAP (SPx) | C.D. Cal. |
| <i>Stroud v. eMachines, Inc.</i> | CJ-2003-968-L | W.D. Okla. |
| <i>Swetz v. GSK Consumer Health, Inc.</i> | 20-cv-04731 | S.D.N.Y. |
| <i>Talalai v. Cooper Tire & Rubber Co.</i> | MID-L-8839-00 MT | N.J. Super. Ct. |
| <i>Tech. Training Assoc. v. Buccaneers Ltd. P'ship</i> | 16-cv-01622 | M.D. Fla. |
| <i>Thibodeaux v. Conoco Philips Co.</i> | 2003-481 | La. 4 th Jud. Dist. Ct. |
| <i>Thomas v. Lennox Indus. Inc.</i> | 13-cv-07747 | N.D. Ill. |
| <i>Thompson v. Metropolitan Life Ins. Co.</i> | 00-CIV-5071 HB | S.D. N.Y. |
| <i>Turner v. Murphy Oil USA, Inc.</i> | 05-CV-04206-EEF-JCW | E.D. La. |
| <i>USC Student Health Ctr. Settlement</i> | 18-cv-04258-SVW | C.D. Cal. |
| <i>Walker v. Rite Aid of PA, Inc.</i> | 99-6210 | Pa. C.P. |
| <i>Wells v. Abbott Lab., Inc. (AdvantEdge/ Myoplex nutrition bars)</i> | BC389753 | Cal. Super. Ct. |
| <i>Wener v. United Tech. Corp.</i> | 500-06-000425-088 | QC. Super. Ct. |
| <i>West v. G&H Seed Co.</i> | 99-C-4984-A | La. 27 th Jud. Dist. Ct. |
| <i>Williams v. Weyerhaeuser Co.</i> | CV-995787 | Cal. Super. Ct. |

| CASE NAME | CASE NUMBER | LOCATION |
|---|----------------|---------------|
| <i>Yamagata v. Reckitt Benckiser, LLC</i> | 17-cv-03529-CV | N.D.Cal. |
| <i>Zarebski v. Hartford Ins. Co. of the Midwest</i> | CV-2006-409-3 | Ark. Cir. Ct. |



- EXHIBIT B -

LEGAL NOTICE

If you own or owned a Gold or Gold II Universal Life Policy insured by Genworth Life & Annuity Insurance Company, your rights and options may be affected by a class action settlement

A proposed settlement has been reached in a class action lawsuit called *Brighton Trustees LLC, as trustee v. Genworth Life & Annuity Insurance Co.*, Case No. 3:20-cv-240-DJN (E.D. Va.) (the “Settlement”). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at [\[www.xxxxxxxx.com\]](http://www.xxxxxxxx.com).

Genworth COI Life Insurance Settlement Administrator
c/o JND Legal Administration
P.O. Box xxxxx
Seattle, WA 98111

«Barcode»

Postal Service: Please do not mark barcode

«Full_Name»

«CF_CARE_OF_NAME»

«CF_ADDRESS_1»

«CF_ADDRESS_2»

«CF_CITY», «CF_STATE» «CF_ZIP»

«CF_COUNTRY»

What is this about? The lawsuit alleges that Defendant Genworth Life & Annuity Insurance Company (“GLAIC”) breached its contracts with certain policy owners. Starting in September 2019, certain policyholders were issued letters announcing that their insurance policies would be subject to cost of insurance (“COI”) rate increases. Plaintiffs assert these increases violated the terms of the policyholders’ contracts, and resulted in damages for Plaintiffs and members of the Class. GLAIC denies Plaintiffs’ claims and asserts multiple defenses, including that GLAIC’s challenged actions are lawful, justified, and have not harmed Plaintiffs or caused any damages. The Court has not decided who is right or wrong. Instead, both sides have agreed to a Settlement to avoid the risks, costs, and delays of further litigation.

Who is affected? The Settlement Class consists of all owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. Excluded from the Settlement Class are Class Counsel and their employees; GLAIC, its officers and directors and their immediate family members; the Court, the Court’s staff, and their immediate family members; the heirs, successors, or assigns of any of the foregoing; all Owners that submit a timely and valid exclusion request; and owners of Gold and Gold II policies that have terminated as a result of the death of the insured on or before March 31, 2022, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured. For purposes of clarification only, the Settlement Class also does not include any policies issued or insured by Genworth Life Insurance Company or its predecessors or successors.

What does the Settlement provide? A Settlement Fund of \$25 million will be established, but reduced proportionally if any Owners submit a timely and valid exclusion request (“Final Settlement Fund”). After payments for settlement administration, attorneys’ fees (not to exceed 33 1/3% of the Final Settlement Fund) and litigation expenses, and Plaintiffs’ Incentive Awards (up to \$25,000 for each of the three Plaintiffs); the remaining amount will be distributed to Settlement Class Members in proportion to their share of the overall COI overcharges collected from the Settlement Class through March 2022. No portion of the Settlement Fund will be returned to GLAIC. In addition, for the seven years following Final Approval of the Settlement, GLAIC agrees that COI rates on the Class Policies will not be increased above the current rate schedules implemented on December 1, 2019. GLAIC also agrees that it will not take certain legal action or assert certain legal defenses challenging death claims for any Settlement Class Member as outlined in the Settlement Agreement available at [\[www.xxxxxxxx.com\]](http://www.xxxxxxxx.com).

What are my options? You can (1) do nothing, (2) exclude yourself, or (3) object to the Settlement.

Do nothing. You will be part of the Settlement Class and receive certain benefits from the Settlement. You will automatically receive a payment in the mail if you are entitled to one. You will be bound by the Settlement, and you will give up your right to sue or continue to sue GLAIC for the claims in this case.

Exclude yourself. You will remove yourself from the Settlement Class. You will not receive a payment or any benefits from the Settlement. You will keep your right to sue or continue to sue GLAIC at your own expense and with your own attorney for the claims in this case. Your exclusion request must include the case name (*Brighton Trustees LLC v. Genworth Life and Annuity Insurance Co.*), a statement saying that you want to be excluded from the Settlement Class, your full name, address, telephone number, email address (if any), the policy number(s) to be excluded, and your signature. If you own multiple policies that are included in the Settlement Class, you may request to exclude some policies from the Settlement Class while participating in the Settlement Class with respect to other policies. Exclusion requests must be **postmarked by [MONTH, DAY], 2022.**

Object. If you do not exclude yourself from the Settlement Class, you may object or tell the Court what you do not like about the Settlement. Objections must be **filed and served by [MONTH, DAY], 2022.**

For more details about your rights and options and how to exclude yourself or object, go to [www.xxxxxxx.com].

What happens next? The Court will hold a Fairness Hearing on [MONTH, DAY] 2022 at [TIME] at the [COURT HOUSE ADDRESS], to consider whether the Settlement is fair, reasonable, and adequate; and how much to pay and reimburse Class Counsel and the three named Plaintiffs. The Court has appointed Susman Godfrey L.L.P. as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to.

How can I get more information? Go to [www.xxxxxxx.com], call toll-free 1-xxx-xxx-xxxx, or write to xxxxxx, c/o JND Legal Administration, P.O. Box xxxxx, Seattle, WA 98111.

Please do not contact the Court.

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____

| |
|------------------------|
| PLACE STAMP HERE |
|------------------------|

Address Change Form

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

JND Legal Administration
Attn: Genworth COI Life Insurance Settlement
P.O. Box xxxxx
Seattle, WA 98111

- EXHIBIT C -

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

If you own or owned a Gold or Gold II Universal Life Policy insured by Genworth Life & Annuity Insurance Company that was subject to a COI rate change announced in 2019, your rights and options may be affected by a class action settlement

A court authorized this notice. This is not a solicitation from a lawyer.

- A proposed settlement has been reached in a class action lawsuit called *Brighton Trustees LLC, as Trustee v. Genworth Life & Annuity Insurance Co.*, Case No. 3:20-cv-240-DJN (E.D. Va.) (the “Settlement”).
- Plaintiffs allege that Defendant Genworth Life & Annuity Insurance Company (“GLAIC”) breached its contracts with certain policy owners. Starting in September 2019, certain policyholders were issued letters announcing that their insurance policies would be subject to cost of insurance (“COI”) rate increases. Plaintiffs assert those COI rate increases violated the terms of the policyholders’ contracts, and that Plaintiffs and members of the Class have been damaged as a result. GLAIC denies Plaintiffs’ claims and asserts multiple defenses, including that GLAIC’s challenged actions are lawful, justified, and have not harmed Plaintiffs or caused any damages.
- If the Court approves the Settlement, Settlement Class Members will be eligible to receive payment from a cash Settlement Fund of up to \$25 million, as further detailed in Question 10.
- In addition, for the seven years following Final Approval of the Settlement, GLAIC agrees that COI rates on the Class Policies will not be increased above the current rate schedules implemented on December 1, 2019. GLAIC also agrees that it will not take certain legal action or assert certain legal defenses challenging death claims for any Settlement Class Member as outlined in the Settlement Agreement available at [www.xxxxlitigation.com].
- You are entitled to be a Settlement Class Member if you own a Gold or Gold II universal life insurance policy issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. Your legal rights are affected whether or not you act. ***Please read this Notice carefully.***

| YOUR LEGAL RIGHTS AND OPTIONS | | |
|---------------------------------------|--|--|
| Do Nothing | <ul style="list-style-type: none"> • Get certain benefits from the Settlement — Automatically receive a payment in the mail if you are entitled to one • Be bound by the Settlement • Give up your right to sue or continue to sue GLAIC for the claims in this case | |
| Ask to be Excluded (“Opt Out”) | <ul style="list-style-type: none"> • Remove yourself from the Settlement Class • Get no benefits from the Settlement • Keep your right to sue or continue to sue GLAIC, at your own expense, for the claims in this case | Postmarked by [Month Date], 2022 |
| Object | <ul style="list-style-type: none"> • Tell the Court what you do not like about the Settlement. The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Class are not bound by the Settlement. | Filed and served by [Month Date], 2022 |

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, cancelled, or otherwise modified, so please check [www.xxxxlitigation.com] regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....PAGE 4

- 1. Why was this Notice issued?
- 2. What is this lawsuit about?
- 3. Which life insurance policies are affected by the lawsuit?
- 4. What is a class action and who is involved?
- 5. Why is this lawsuit a class action?
- 6. Why is there a Settlement?

THE SETTLEMENT CLASS.....PAGE 5

- 7. Am I part of the Settlement Class?
- 8. Are there exceptions to being included?
- 9. What if I am still not sure if I am included?

WHAT SETTLEMENT CLASS MEMBERS GETPAGE 6

- 10. What does the Settlement provide?
- 11. What am I giving up by staying in the Settlement?

HOW TO GET A PAYMENTPAGE 7

- 12. How can I get a payment?
- 13. When will I get my payment?

EXCLUDING YOURSELF FROM THE SETTLEMENTPAGE 7

- 14. How do I ask to be excluded?
- 15. If I don't exclude myself, can I sue GLAIC for the same thing later?
- 16. If I exclude myself, can I still get a Settlement payment?

THE LAWYERS REPRESENTING YOUPAGE 8

- 17. Do I have a lawyer in this case?
- 18. How will the lawyers be paid?
- 19. Should I get my own lawyer?

OBJECTING TO THE SETTLEMENTPAGE 9

- 20. How can I tell the Court if I do not like the Settlement?
- 21. What is the difference between objecting and excluding?

THE COURT'S FAIRNESS HEARINGPAGE 11

- 22. When and where will the Court decide whether to approve the Settlement?
- 23. Do I have to come to the hearing?
- 24. May I speak at the hearing?

IF YOU DO NOTHINGPAGE 11

- 25. What happens if I do nothing at all?

GETTING MORE INFORMATION.....PAGE 12

- 26. How can I get more information?

BASIC INFORMATION

1. Why was this Notice issued?

You have a right to know about a proposed settlement and your rights and options before the Court decides whether to approve the Settlement.

Judge David J. Novak of the United States District Court for the Eastern District of Virginia (the “Court”) is in charge of this case. The case is called *Brighton Trustees LLC, as Trustee et al. v. Genworth Life & Annuity Insurance Co.*, Case No. 3:20-cv-240-DJN (E.D. Va.). The individuals who sued are Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust; Bank of Utah, solely as securities intermediary for Diamond LS Trust; and Ronald L. Daubenmier. The company they sued, GLAIC, is called the Defendant.

2. What is this lawsuit about?

The class action lawsuit alleges that GLAIC breached its contracts with certain policy owners. Starting September 2019, policyholders were issued letters announcing that their insurance policies would be subject to COI rate increases. Plaintiffs assert those COI rate increases violated the terms of the policyholders’ contracts, and that Plaintiffs and members of the Class have been damaged as a result. GLAIC denies Plaintiffs’ claims; however, both sides have agreed to the Settlement to avoid the risks, costs, and delays of further litigation, including an appeal, so that people affected will get a chance to receive compensation.

3. Which life insurance policies are affected by the lawsuit?

The Settlement Class consists of all owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. Excluded from the Settlement Class are (i) Class Counsel and their employees; GLAIC, its officers and directors and their immediate family members; the Court, the Court’s staff, and their immediate family members; and the heirs, successors, or assigns of any of the foregoing; and (ii) all Owners that submit a timely and valid written request to be excluded from the Settlement Class. Also excluded from the Class are owners of Gold and Gold II policies that have terminated as a result of the death of the insured on or before March 31, 2022, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured. For purposes of clarification only, the Settlement Class also does not include any policies issued or insured by Genworth Life Insurance Company or its predecessors or successors.

4. What is a class action and who is involved?

In a class action, a person(s) or entity(ies) called a “Class Representative(s)” sues on behalf of all individuals who have a similar claim. Here, Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust; Bank of Utah, solely as securities intermediary for Diamond LS Trust; and Ronald L. Daubenmier represent other eligible Gold and Gold II policy owners and together they are called the “Class” or “Class Members.” Bringing a case, such as this one, as a class action allows resolution of many similar claims of persons and entities that

might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who validly exclude themselves from the class.

5. Why is this lawsuit a class action?

In [Court order], the Court decided that the settlement of the breach of contract claim against GLAIC in this lawsuit can proceed as a class action because, at that point of the lawsuit, it met the requirements of Rule 23 of the Federal Rules of Civil Procedure, which governs class actions in federal court. The Court found that:

- There are numerous Class Members whose interests will be affected by this lawsuit;
- There are legal questions and facts that are common to each of them;
- The Class Representatives' claims are typical of the claims of the rest of the Class;
- The Class Representatives and the lawyers representing the Class will fairly and adequately represent the interests of the Class;
- A class action would be a fair, efficient and superior way to resolve this lawsuit;
- The common legal questions and facts predominate over questions that affect only individual Class Members; and
- The Class is ascertainable because it is defined by identifiable objective criteria.

In certifying the Settlement Class, the Court appointed Susman Godfrey LLP as Class Counsel. For more information, visit the Important Documents page at www.xxxlitigation.com.

6. Why is there a Settlement?

GLAIC denies any and all liability or wrongdoing of any sort with regard to the 2019 COI Rate Adjustment. Instead, the parties with the assistance of an experienced mediator, Rodney Max, Esq. of Upchurch Watson White & Max, have agreed to the Settlement. The parties want to avoid the risks, costs, and delays of further litigation. The Court has not decided in favor of the Plaintiffs or the Defendant. Plaintiffs and Class Counsel think the Settlement is in the best interests of the Settlement Class and is fair, reasonable, and adequate.

THE SETTLEMENT CLASS

7. Am I part of the Settlement Class?

The Settlement Class consists of all owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. See Questions 3 and 8 for more information.

8. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are (i) Class Counsel and their employees; GLAIC, its officers and directors and their immediate family members; the Court, the Court's staff, and their immediate family members; and the heirs, successors, or assigns of any of the foregoing; and (ii) all Owners that submit a timely and valid written request to be excluded from the Settlement

Class. Also excluded from the Class are owners of Gold and Gold II policies that have terminated as a result of the death of the insured on or before March 31, 2022, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured. For purposes of clarification only, the Settlement Class also does not include any policies issued or insured by Genworth Life Insurance Company or its predecessors or successors.

In addition, policyowners have an opportunity to request exclusion from the Settlement, as described below. Policyowners that timely and validly request exclusion will not be part of the Settlement Class and will not be entitled to any of its benefits.

If an individual or entity is the Owner of both a Class Opt-Out and a policy in the Settlement Class, the Owner is included in the Settlement Class with respect to the policy in the Settlement Class but not with respect to any Class Opt-Outs. If an Owner (such as a securities intermediary or trustee) owns multiple policies on behalf of different principals, that Owner may stay in or opt-out of the Settlement Class separately for each policy.

9. What if I am still not sure if I am included?

If you are still not sure whether you are a Settlement Class Member, please visit www.xxxlitigation.com, call the Settlement Administrator toll-free at 1-xxx-xxx-xxxx, or write to: **Genworth COI Increase Life Insurance** Notice Administrator, c/o JND Legal Administration, P.O. Box xxxxx, Seattle, WA 98111.

WHAT SETTLEMENT CLASS MEMBERS GET

10. What does the Settlement provide?

A Settlement Fund of \$25 million will be established for Settlement Class Members. The Settlement Fund will be reduced proportionally if there are any opt outs from the Settlement Class. After payment of the cost to administer the Settlement Fund as well as attorneys' fees and expenses and the payments to the Class Representatives (*see* Question 18 below), the Settlement Administrator will distribute the remaining amounts to Settlement Class Members in proportion to their share of the overall COI overcharges collected from the Settlement Class through March 2022. No portion of the Settlement Fund will be returned to GLAIC.

GLAIC has also agreed not to:

- Raise COI rates on policies covered by the Settlement for a period of seven years.
- Cancel, void, rescind, or deny a death claim submitted under the Settlement Class Members' policies or contest the validity of a policy based on:
 - An alleged lack of valid insurable interest under any applicable law or equitable principles; or
 - Any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy.

More details are in a document called the Settlement Agreement, which is available at [www.xxxxlitigation.com].

11. What am I giving up by staying in the Settlement?

If you are a Settlement Class Member, unless you exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against GLAIC about the facts that arise from the same factual predicate of the claims released in this Settlement. It also means that all the decisions by the Court will bind you. The Released Claims and Released Parties are defined in the Settlement Agreement. They describe the legal claims that you give up if you stay in the Settlement. The Settlement Agreement is available at [www.xxxxlitigation.com]

HOW TO GET A PAYMENT

12. How can I get a payment?

You will automatically receive a payment in the mail if you are entitled to one. No claims need to be filed.

13. When will I get my payment?

Payments will be mailed to Settlement Class Members after the Court grants “final approval” of the Settlement and after all appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from the Settlement or you want to keep the right to sue or continue to sue GLAIC on your own about the claims released in the Settlement, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

14. How do I ask to be excluded?

To exclude yourself (or “opt-out”) of the Settlement, you must complete and mail the Settlement Administrator a written request for exclusion. The exclusion request must include the following:

- Your full name, address, telephone number, and email address (if any);
- A statement says that you want to be excluded from the Settlement Class;
- The case name (Brighton Trustees LLC v. Genworth Life and Annuity Insurance Co.)
- The policy number(s) to be excluded; and
- Your signature.

You must mail your exclusion request **postmarked by [MONTH DATE], 2022** to:

Genworth COI Increase Life Insurance Notice Administrator
c/o JND Legal Administration
P.O. Box **xxxxxx**
Seattle, WA 98111

Questions? Call 1-**xxx-xxx-xxxx** or visit www.xxxxlitigation.com

If you own multiple policies that are included in the Settlement Class, you may request to exclude some policies from the Settlement Class while participating in the Settlement Class with respect to other policies.

IF YOU DO NOT EXCLUDE YOURSELF BY [MONTH DATE], 2022, YOU WILL REMAIN PART OF THE SETTLEMENT CLASS AND BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT.

15. If I don't exclude myself, can I sue GLAIC for the same thing later?

No. Unless you exclude yourself, you give up any right to sue GLAIC for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you will not be bound by any orders or judgments entered in the Action relating to the Settlement.

16. If I exclude myself, can I still get a Settlement payment?

No. You will not get any money from the Settlement if you exclude yourself.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court has appointed the following lawyers as "Class Counsel."

Steven G. Sklaver
Lora J. Krsulich
SUSMAN GODFREY LLP
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
ssklaver@susmangodfrey.com
lkrsulich@susmangodfrey.com
Telephone: 310-789-3100

Seth Ard
Ryan Kirkpatrick
SUSMAN GODFREY LLP
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019-6023
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
Telephone: 212-336-8330

Jonathan J. Ross
SUSMAN GODFREY LLP
1000 Louisiana Street, Suite 5100
Houston, TX 77002
jross@susmangodfrey.com
Telephone: 713-653-7813

18. How will the lawyers be paid?

The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will file a motion seeking an award for attorneys' fees not to exceed 33 1/3% of the Final Settlement Fund, which equals the amount of the Settlement Fund after any reduction in the amount of the Settlement Fund due to any opt-outs from the Settlement Class. For example, if no one opts out from the Settlement Class, then the Final Settlement Fund will equal the entire \$25 million, and Class Counsel will file a motion seeking an award from attorneys' fees that will not exceed \$8,333,333, which is 33 1/3% of the Final Settlement Fund in this example. If there are opt-outs from the Settlement Class, then the Final Settlement Fund will be reduced on a pro-rata basis, and Class Counsel will seek an award of attorneys' fees from that reduced amount that will also not exceed 33 1/3% of the Final Settlement Fund. For example, if the Final Settlement Fund is reduced to \$21 million as a result of opt-outs, Class Counsel will seek an award for attorneys' fees not to exceed \$7,000,000, which is 33 1/3% of the Final Settlement Fund in this example. In addition to seeking an award for attorneys' fees, Class Counsel will seek reimbursement for expenses incurred or to be incurred in connection with the Settlement, as well as an Incentive Award up to \$25,000 for each of the three Plaintiffs for their service as the representatives on behalf of the Settlement Class, to be paid from the Final Settlement Fund. You will not be responsible for direct payment of any of these fees, expenses, or awards.

19. Should I get my own lawyer?

If you stay in the Settlement Class, you do not need to hire your own lawyer to pursue the claims against GLAIC because Class Counsel is working on behalf of the Settlement Class. However, if you want to be represented by your own lawyer, you may hire one at your own expense and cost.

OBJECTING TO THE SETTLEMENT

20. How can I tell the Court if I do not like the Settlement?

Any Settlement Class Member who does not timely and properly opt out of the Settlement may object to the fairness, reasonableness, or adequacy of the proposed Settlement. Settlement Class Members who wish to object to any term of the Settlement must do so, in writing, by filing a written objection with the Court, and serving copies on Class Counsel and Counsel for Defendant. The written objection must include:

- Your full name, address, telephone number, and email address (if any);
- The policy number(s);
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A statement of whether you intend to appear at the Fairness Hearing; and
- Your or your counsel's signature.

If you intend to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Your objection, along with any supporting material you wish to submit, must be filed with the Office of the Court, with a copy served on Class Counsel and Counsel for Defendant by **[MONTH DATE], 2022** at the following addresses:

| Clerk of the Court | Counsel for Defendant |
|---|--|
| <p>Spottswood W. Robinson III and Robert R. Merhige Jr. Federal Courts Office of the Clerk 701 East Broad Street Richmond, VA 23219</p> | <p>Patrick J. Gennardo ALSTON & BIRD LLP 90 Park Avenue, 15th Floor New York, NY 10016-1387</p> <p>William H. Higgins ALSTON & BIRD LLP Bank of America Plaza, Suite 4000 101 South Tryon Street Charlotte, NC 28280-4000</p> |
| Class Counsel | |
| <p>Steven G. Sklaver Lora J. Krsulich SUSMAN GODFREY LLP 1900 Avenue of the Stars, Suite 1400 Los Angeles, CA 90067-6029</p> <p>Seth Ard Ryan Kirkpatrick SUSMAN GODFREY LLP 1301 Avenue of the Americas, 32nd Floor New York, NY 10019-6023</p> <p>Jonathan J. Ross SUSMAN GODFREY LLP 1000 Louisiana Street, Suite 5100 Houston, TX 77002</p> | <p>Andy Tuck One Atlantic Center 1201 West Peachtree Street, Suite 4900 Atlanta, GA 30309-3424</p> <p>Thomas A. Evans ALSTON & BIRD LLP 560 Mission St., Suite 2100 San Francisco, CA 94105</p> <p>Kathy J. Huang (<i>pro hac vice</i>) ALSTON & BIRD LLP 335 S. Hope Street, Suite 1600 Los Angeles, CA 90071</p> <p>Brian E. Pumphrey (VSB No. 47312) Liz Tyler (VSB No. 91138) McGuireWoods LLP Gateway Plaza 800 East Canal Street Richmond, VA 23219-3916</p> |

21. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Class are not bound by the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT’S FAIRNESS HEARING

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on [MONTH DATE], 2022 at the [COURTROOM LOCATION]. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay and reimburse Class Counsel and any Incentive Award payment to Plaintiffs. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

23. Do I have to come to the hearing?

No. But you or your own lawyer may attend at your expense. If you submit an objection, you do not have to come to Court to talk about it. As long as you filed and served your written objection on time to the proper addresses, the Court will consider it.

24. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intent to Appear.” Your request must state your name, address, and telephone number, as well as the name, address, and telephone number of the person that will appear on your behalf. Your request must be filed with the Clerk of the Court and served on Class Counsel and Defendant’s Counsel no later than [MONTH DATE], 2022.

IF YOU DO NOTHING

25. What happens if I do nothing at all?

Those who are eligible to receive a payment from the Settlement do not need to do anything to receive payment; you will automatically receive a payment from the Settlement. Unless you exclude yourself, you won’t be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against GLAIC about the legal issues that arise from the same factual predicate of this case, ever again.

GETTING MORE INFORMATION

26. How can I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, available at www.xxxxlitigation.com. You can also call the Settlement Administrator toll-free at 1-xxx-xxx-xxxx, or write to:

Genworth COI Increase Life Insurance Notice Administrator
c/o JND Legal Administration
P.O. Box xxxxx
Seattle, WA 98111

PLEASE DO NOT CONTACT THE COURT

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxlitigation.com

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

BRIGHTON TRUSTEES, LLC,
AS TRUSTEE, *et al.*,
Plaintiffs,

v.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant.

Civil No. 3:20cv240 (DJN)

**DECLARATION OF RODNEY A. MAX IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT**

I, Rodney A. Max, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Rodney A. Max. I am over the age of 18 and I am competent to give testimony. Although the mediation process is confidential, the parties have authorized me to inform the Court of the procedural and substantive matters set forth herein in support of Plaintiffs' motion for preliminary approval of the proposed class action settlement between Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant Genworth Life and Annuity Insurance Company ("GLAIC"). The statements contained in this declaration are based upon my own personal knowledge and are true and correct.

I. BACKGROUND AND EXPERIENCE

2. I graduated in 1975 *cum laude* from the Cumberland School of Law. Upon graduation, I became licensed to practice law in the state of Alabama (1975) and the state of Florida (1976). I am currently a member of Upchurch, Watson, White & Max Mediation Group, Inc.

3. Since 1992, my practice has focused exclusively on alternative dispute resolution, with an emphasis on mediation.

4. I have national mediation experience and have mediated in 40 states including the District of Columbia and Puerto Rico. I have been selected to conduct mediations by leading plaintiffs' attorneys, defense counsel and in-house counsel for national and international manufacturers, distributors, transporters, insurers and service provider companies and have been appointed by federal and state judges from coast to coast.

5. I have mediated numerous national and statewide class actions as well as numerous mass tort, contract and statutory warranty cases. I have mediated cases involving consumer fraud, wrongful death and personal injury, breach of contract, bad faith, securities (NASD), antitrust, patent and trademark, Lanham Act, construction, property, environmental, fraud and suppression, banking, estate and trusts, stockholder disputes, partnership disputes and derivative claims. I have convened parties for mediation before suits have been filed, as well as mediated cases on appeal.

6. Over the course of my career, I have conducted well over 6,000 mediations involving over 12,000 cases.

7. I am a past President of the American College of Civil Trial Mediators. Additionally, I am a member of the Alabama Center of Dispute Resolution, the Florida Academy of Professional Mediators and the Dispute Resolution Section of the American Bar Association.

8. I have played a major role in establishing rules, standards and ethics for mediators. I initiated the Mediation Process and Practice Program at Cumberland School of Law as an adjunct professor from 1997-2002. Additionally, I have lectured at CLE seminars for attorneys or those who have sought training on mediation at the following courses:

- American College of Attorney Mediators - Multi Party Mediation, The Business of Mediation;
- American Bar Association Dispute Resolution Section – Multi Party Mediation, Ethics of Mediation, The Business of Mediation;

- New Jersey Bar Association - The Practice of Mediation;
- Alabama Bar Association - Multi Party Mediation; Mediation Dissected;
- Florida Academy of Civil Trial Mediators- Opening Statements;
- University of Florida - Designing The Mediation; and
- The International Academy of Mediators- Ethics of Mediation.
- University of Miami School of Law Class Action Forum
- Webinar – Bringing Class Actions & Mass Claims to Resolutions

9. I have also published a number of articles. The following abridged list is a sampling: *Mediation Comes of Age*, published in *The American Journal of Trial Advocacy*, Volume 23, Issue 3 (Spring 2000); *Multiparty Mediation*, published in *The American Journal of Trial Advocacy*, Volume 23, Issue 2 (Fall 1999); *Designing The Mediation*, presented at professional seminars; *The Ethical Civil Trial Mediator, The Letter, The Spirit and The Practice*, presented at professional seminars; and *Mediation: The Humanization of the Justice System, and Mediation in Public Policy* published in *Cumberland Law Review Volume. 47:2 (2016-2017)*.

II. FAMILIARITY WITH THE PRESENT LITIGATION

10. I was retained by counsel for the parties in this matter in July 2021, for the specific purpose of mediating the case and to assist in reaching a global resolution, if possible. In my capacity as mediator, I consider myself to be a neutral, representing neither plaintiff nor defendant.

11. In preparing for this mediation, I asked that the parties provide me with a variety of information about the lawsuit. Additionally, I had pre-mediation discussions with all parties to learn more about the facts giving rise to the dispute, the procedural background of the lawsuit, and the positions of the parties. The purpose of these initial conferences was to organize the parties'

efforts to fully resolve this matter. Thereafter, I scheduled the first mediation session for November 18, 2021. I reviewed selected court filings from the case before the first session, and through this review and my conversations with counsel, I became intimately familiar with the nature of the claims and defenses asserted in this case.

III. THE MEDIATED SETTLEMENT NEGOTIATIONS

12. The proposed Settlement is the product of lengthy and particularly hard-fought negotiations which took place on an ongoing basis between November 2021 and April 2022. The caliber of the representation of both sides was extraordinary in my experience. The mediation consisted of multiple mediation sessions among myself and counsel for the plaintiffs and defendants.

13. In addition, I facilitated negotiations between the parties before, during, and in the time that passed between each session, and defendants also provided plaintiffs' counsel with documents and data critical to plaintiffs' claims and the settlement negotiations.

14. The first mediation took place on November 18, 2021 at my offices in Miami, Florida. In advance of that first mediation session, the parties submitted mediation statements and case materials, including filings and documents produced in discovery. The various documents addressed key factual issues and the important legal issues related to both liability and damages. I found these mediation statements and follow-up discussions to be extremely valuable in helping me understand the relative merits of each party's positions, and to identify the issues that were likely to serve as the primary drivers and obstacles to achieving a settlement. Because the parties to the mediation submitted their mediation statements and arguments in the context of a confidential mediation process pursuant to Federal Rule of Civil Procedure 408, I cannot reveal their content. However, I can say that the arguments and positions asserted by the parties were the

product of hard work that was highly adversarial and complex. The parties did not settle the case during the mediation but agreed to continue to meet and confer.

15. In the ensuing weeks, and with my assistance, the parties engaged in vigorous, arm's-length negotiations, and ultimately engaged me for two additional mediation sessions. The parties ultimately arrived at a final settlement amount of a non-reversionary fund of up to \$25 million, a COI-increase freeze for seven years, and an agreement not to void, rescind, cancel, or deny coverage due to an alleged lack of an insurance interest or misrepresentation.

16. Over the three mediation sessions and negotiations before, during, and after, I personally spent a substantial number of hours coordinating, preparing, pre-mediating and mediating the resolution of this case.

17. These lengthy negotiations were exhausting, and at times frustrating, for the parties and their counsel. The live session involved discussions with all counsel and representatives of those parties who were present. The discussions allowed the parties to express their respective views of the strengths and weaknesses of the respective positions in the case. I never witnessed or sensed any collusiveness between the parties. To the contrary, at each point during these negotiations, the settlement process was conducted at arm's length and, while professionally conducted, was quite adversarial. An agreement in principle was ultimately achieved at the end of the third mediation session.

18. The relief for class members was the focus of the vast majority of the mediation sessions. The provisions of the settlement providing for payment of attorneys' fees and incentive payments to the Named Plaintiffs were negotiated only after the parties had agreed on the substantive relief to class members. There were no discussions of attorneys' fees, costs, or incentive awards until the substantive terms of the settlement were negotiated and resolved.

19. Throughout this process, I met with each side individually to candidly discuss their positions. At all times I found counsel to be engaged, motivated, and knowledgeable about the case. Counsel zealously and professionally advocated for their clients' positions while at the same time recognizing the strengths and weaknesses of their litigation positions, including the risks associated with proceeding to trial, and the benefits of settlement.

20. Without waiving the mediation privilege, and as discussed in more detail below, I believe, based on my extensive discussions with the parties and the information made available to me both before, during, and after the mediation that this settlement is fair, reasonable, and an adequate resolution given the risks involved. I believe the settlement agreement now before the Court is in the best interest of all parties and the Class. The settlement obtained is particularly fair, adequate, and reasonable under the circumstances of this case because it provides a very substantial recovery for the Class, especially when measured against the obstacles standing in the way of achieving a successful resolution of the claims. The settlement ensures that the Class will receive certain money and relief without being exposed to the risks of dispositive motions, trial, and appeal that could have also caused this case to drag on for years.

21. In sum, the settlement was achieved through arms-length negotiations by highly experienced and capable counsel who were fully prepared and demonstrated a thorough understanding of the strengths and weaknesses of their respective claims and defenses. All counsel were professional and cooperative, but they zealously advanced their respective positions in the best interests of their clients. Based on the facts and circumstances presented by the parties and my experience in mediation of complex cases, I believe they achieved an excellent result.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 7th day of May, 2022.



Rodney A. Max

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

BRIGHTON TRUSTEES, LLC,
AS TRUSTEE, *et al.*,
Plaintiffs,

v.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant.

Civil No. 3:20cv240 (DJN)

**DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Steven G. Sklaver, hereby declare as follows:

1. I submit this declaration in support of Plaintiffs' motion for preliminary approval of the proposed class action settlement between (i) Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust ("Brighton Trustees"); Bank of Utah, solely as securities intermediary for Diamond LS Trust ("Bank of Utah"); and Ronald L. Daubenmier (collectively, "Plaintiffs"), individually and on behalf of the Class; and (ii) Defendant Genworth Life and Annuity Insurance Company ("GLAIC").

2. I am a member in good standing of the State Bars of California, Colorado, and Illinois, and admitted *pro hac vice* in the United States District Court for the Eastern District of Virginia. I am a partner in the law firm of Susman Godfrey L.L.P. and counsel of record for Plaintiffs in the above-captioned action. I have personal knowledge of the facts set forth herein and, if called to testify as a witness, could and would testify competently thereto. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance

actions and settlements thereof. A copy of the firm's class action profile and my profile is attached hereto as **Exhibit 1**.

3. I was among the principal negotiators of the proposed class action settlement. Following extensive negotiations, the parties entered into an agreement in principle on March 25, 2022, and the final settlement agreement was executed on May 6, 2022. Attached hereto as **Exhibit 2** is a true and correct copy of the Settlement Agreement. It is the opinion of Class Counsel that the settlement is fair, adequate, and reasonable.

THE LITIGATION

4. Plaintiffs Brighton Trustees and Bank of Utah filed this case on April 6, 2020. The complaint included a claim for breach of contract against GLAIC in relation to the 2019 adjustment of cost-of-insurance ("COI") rates for Gold and Gold II universal life insurance policies issued by First Colony Life Insurance Company, now GLAIC, between 1999 and 2007. Attached as **Exhibit 3** is a true and correct copy of Plaintiffs Brighton Trustees, LLC, and Bank of Utah's life insurance policy. ECF No. 49-35.

5. Plaintiff Ronald Daubenmier filed a different case against GLAIC on May 13, 2020. Attached as **Exhibit 4** is a true and correct copy of Mr. Daubenmier's insurance policy. ECF No. 49-34. On June 26, 2020, Mr. Daubenmier filed a consent motion to consolidate his claims with the complaint already filed by Brighton Trustees and Bank of Utah. Plaintiffs filed a Consolidated Complaint on July 17, 2020.

6. The substantial completion fact discovery deadline for this case was March 15, 2021. Fact discovery formally closed on December 17, 2021, with supplemental discovery obligations under Federal Rule of Civil Procedure 26(e) continuing thereafter. ECF No. 41 at 4. During discovery, Class Counsel:

- Obtained the production of more than 114,000 documents and data sets;
- Issued third-party subpoenas to 13 reinsurers, 3 actuarial consultants, and 1 auditor;
- Deposed 10 highly technical witnesses, including 6 current or former Genworth employees, 2 third-party actuarial consultants, Genworth's actuarial expert, and Genworth's corporate representative;
- Defended 4 depositions of Class Representatives and Plaintiffs' experts;
- Produced 8 expert reports, including nearly 500 pages of actuarial and damages analysis, and more than 2000 pages of exhibits;
- Served 23 interrogatories, 20 requests for production of documents, and 69 requests for admission;
- Responded to 36 interrogatories and 42 requests for production of documents; and
- Moved for class certification and successfully defended against two motions to exclude Plaintiffs' experts.

7. On August 16, 2021, Plaintiffs produced reports in support of class certification from actuarial expert Howard Zail and damages expert Robert Mills. On November 1, 2021, GLAIC produced an expert report from actuarial expert Lisa Kuklinski. On December 6, 2021, Plaintiffs produced rebuttal reports from both their experts. All three experts were subsequently deposed.

8. The parties briefed class certification on the same schedule as the class certification expert reports. ECF No. 46-52, 67-68, 100-101. Collectively, Plaintiffs' certification motion included three declarations from Class Representatives, two expert reports, and more than thirty exhibits.

9. At the same time, GLAIC filed motions to exclude Plaintiffs' experts. ECF Nos. 57, 64. Plaintiff filed oppositions to those motions on December 6, 2021. ECF Nos. 79-82. GLAIC filed replies on December 20, 2021. ECF Nos. 95-96.

10. The parties next exchanged expert reports on the merits. Plaintiffs identified Mr. Zail and Mr. Mills as testifying experts on January 24, 2022 and produced their opening expert reports on the same date. GLAIC produced expert reports from Ms. Kuklinski and Professor Craig Merrill on February 24, 2022. Plaintiffs produced rebuttal reports on March 8, 2022.

11. On February 9, 2022, the Court denied Defendants' motions to exclude Mr. Zail and Mr. Mills. Dkt. 109. On February 14, 2022, the Court convened a conference call with the Parties where it stated:

So it seems to me, unless something completely unusual happens on the 25th, I'm going to certify the class, and I'm going to certify it under the one class designation, not the three subsets that the plaintiff offered as an alternative. So then the question is where do we go from here.

Now, I gave you a little bit less time on the summary judgment motions, but it's also clear to me that summary judgment is a waste of time in this case. There's going to be a genuine dispute as to material fact. Just your experts alone is going to create that. Look, you can obviously file the motions. You have the right to do it, but if I were you, I would expect a one-paragraph order that says I find a genuine dispute over material facts, it's denied.

Attached as **Exhibit 5** is a true and correct copy of the transcript from the April 14, 2022 status conference.

12. Defendants filed a motion for summary judgment on March 16, 2022. ECF No. 118.

MEDIATION AND SETTLEMENT

13. As stated above, I was one of the principal negotiators of the proposed class action settlement. Following extensive, arms-length, adversarial negotiations over multiple months between experienced and knowledgeable counsel on all sides, the Parties entered into the

Settlement Agreement (**Exhibit 2**) on May 6, 2022. It is the opinion of Class Counsel that this settlement is fair, adequate, and reasonable. The parties have mediated and exchanged numerous offers and counter-offers throughout the life of the case. The parties first mediated at the order of the Court in the middle of class certification briefing on November 18, 2021 in Miami with Rodney Max, Esq. This mediation did not result in any settlement. With the encouragement of the Court, the parties again mediated with Mr. Max on March 12 and 25, 2022.

14. The parties were able to reach an agreement in principle at the remote mediation session on March 25, 2022. At that session, GLAIC agreed to produce additional confirmatory data that would assist the parties in verifying the total value of the COI rate changes. GLAIC produced some of that additional data on April 14, 2022, with subsequent productions later in April, and Plaintiffs reviewed it and confirmed the total value of COI changes available from that internal data. The Parties ultimately signed the final Settlement Agreement (Exhibit 2) on May 6, 2022. By the time the settlement was reached, Class Counsel were well informed of material facts, and the negotiations were hard-fought and non-collusive.

15. The specific terms and conditions of the settlement are set forth in the Settlement Agreement. The Settlement Agreement includes significant cash and non-cash relief. Pursuant to the Settlement Agreement, the Class will receive the benefit of a Settlement Fund of up to \$25 million. Ex. 2, ¶ 1. GLAIC also agreed that “[f]or a period of seven (7) years following the Final Approval Date,” “COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 COI Rate Adjustment.” *Id.* ¶ 7. GLAIC also agreed “to not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest

under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy.” *Id.* ¶ 9. In *Fleisher v. Phoenix Life Insurance Co.*, at final approval, after the parties had an opportunity to submit an expert submission on the matter, Judge McMahon valued similar non-monetary benefits at \$94.3 million (\$61 million for a 5-year COI rate freeze and \$33.3 million for the policy validity guarantee). 2015 WL 10847814, at *10 (S.D.N.Y. Sept. 9, 2015). Plaintiffs here likewise intend in advance of final approval to submit an expert opinion quantifying the value of these non-monetary benefits. The Settlement Agreement provides that Class Counsel may move for an award of attorneys’ fees in an amount not to exceed 33 1/3% of the Final Settlement Fund, in addition to reimbursement for all expenses incurred or to be incurred. Ex. 2, ¶ 17. If approved, this amount will be deducted from the \$25 million in the Settlement Fund after any reduction for Class members who opt out. If there are opt outs and the \$25 million payment is reduced (say, for example to \$20 million), Class Counsel will only seek attorneys’ fees in an amount not to exceed 33 1/3% of the Final Settlement Fund (in this example, 33 1/3% of \$20 million which is \$6,666,666.66). In addition, Class Counsel will seek reimbursement for expenses incurred or to be incurred, as well as an incentive award up to \$25,000 for each Plaintiff for their service as the representatives on behalf of the Settlement Class, to be paid from the Final Settlement Fund. *Id.* ¶¶ 16, 17, 66.

16. In exchange, the Settlement Class and certain related parties will release GLAIC from claims “arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged or could have been alleged in the Action related to the 2019 COI Rate Adjustment.” *Id.* ¶ 80.

17. The Settlement Class, however, will not release “(i) new claims that could not have been asserted in the Action because they are based upon a future COI Rate Scale increase that occurs after March 25, 2022 (“New COI Increase Claims”), (ii) claims relating to the COI Rate Scale increases imposed by Genworth Life Insurance Company, on Gold and Gold II policies issued, insured, and/or assumed by it, and (iii) claims at issue in the TVPX Action. New COI Increase claims are limited to claims and damages that could not have been included in this Action because a future COI Rate Scale increase has not yet taken place, but do not include any claims challenging the COI Rates and/or COI Rate Scales adopted under the 2019 COI Rate Adjustment. To the extent that a Settlement Class Member is an owner of both a GLAIC Policy and a Genworth Life Insurance Company policy (or any other policy that is not a Policy), this release will only be applicable for the GLAIC Policy and not any other policy.” *Id.* ¶ 62.

18. The Settlement Agreement gives Class Members an opportunity to opt-out pursuant to Federal Rule of Civil Procedure 23(e)(4). The \$25 million Settlement Fund will be reduced on “a pro rata basis by an amount that is calculated by multiplying the amount of the Settlement Fund (*i.e.*, \$25,000,000) by a fraction where (i) the numerator is the combined Specified Amount, as of March 31, 2022 (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of March 31, 2022, of all Policies owned by members of the Class.” *Id.* ¶ 2.

19. Class Counsel has actively litigated this case for more than two years—through fact and expert discovery, and class certification—and is well versed in all the factual and legal issues posted by this litigation. Before and after mediation, Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Settlement Class. During mediation and in the settlement discussions

that followed, Class Counsel aggressively advocated for the class, while taking into account the strengths and weaknesses of the claims asserted, the risks of continued litigation and trial, and the likelihood of recovery.

20. It is the opinion of Class Counsel that the \$25 million Settlement Fund by itself represents an excellent monetary recovery for the class. The non-monetary relief adds substantial additional value for the Class. This Settlement represents an especially great result because no part of the Final Settlement Fund (the amount after the pro-rata reductions for any opt-outs during the Federal Rule of Civil Procedure 23(e)(4) opt-out period) will be returned to GLAIC. *Id.* ¶ 66.

PROPOSED NOTICE PLAN

21. Pursuant to the Settlement Agreement, GLAIC will not oppose Plaintiffs' proposed form and manner of notice. *See* Ex. 2, ¶ 10.

22. GLAIC provided Plaintiffs' Settlement Administrator with address information for all potential Class members on April 26, 2022.

23. Within 14 days of the Court's order preliminarily approving the Settlement, JND will mail all Class members the short-form notice attached as Exhibit B to the Intrepido-Bowden Declaration.

24. Also within 14 days of the Court's order preliminarily approving the Settlement, JND will publish a website with the information contained in the Long-Form Notice attached as Exhibit C to the Intrepido-Bowden Declaration.

25. The proposed Plan of Allocation is attached as **Exhibit 6**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of May, 2022 in Los Angeles, CA.

/s/ Steven G. Sklaver _____
Steven G. Sklaver
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel: (310) 789-3100
Fax: (310) 789-3150
ssklaver@susmangodfrey.com

CERTIFICATE OF SERVICE

I certify that on this 9th day of May 2022, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

/s/ Kathleen J.L. Holmes

HOLMES COSTIN & MARCUS PLLC

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Alexandria, VA 22314

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EXHIBIT #1

The Susman Godfrey Difference

For forty years, Susman Godfrey has focused its nationally recognized practice on just one thing: high-stakes commercial litigation. We are one of the nation's leading litigation boutique law firms, with offices in Houston, Seattle, Los Angeles and New York. We have a unique perspective, the will to win, and an uncommon structure, which taken together provide the way to win.

The Will to Win

At Susman Godfrey, we want to win because we are stand-up trial attorneys, not discovery litigators. We approach each case as if it is headed for trial. Everything that we do is designed to prepare our attorneys to persuade a jury. When you are represented by Susman Godfrey, the opposing party will know that you are willing to take the case all the way to a verdict if necessary; this fact alone can make a good settlement possible.

Susman Godfrey has a longstanding reputation as one of the premier firms of trial lawyers in the United States. We are often brought in on the eve of trial to "rescue" troubled cases or to take the reins when the case requires trial lawyers with a proven record of courtroom success.

We also want to win because we share the risk with our clients. We prefer to work on a contingency-fee basis so that our time and efforts pay off only when we win. Our interests are aligned with our clients—we want to achieve the best-possible outcome at the lowest possible cost.

Finally, we want to win because each of our attorneys shares a commitment to your success. Each attorney at the firm—associate as well as partner—examines every proposed contingent fee case and has an equal vote on whether or not to accept it. The resulting profit or loss affects the compensation of every attorney at the firm. This model has been a tremendous success for both our attorneys and our clients. In recent years, we have achieved the highest profit-per-partner results in the nation. Our associates have enjoyed performance bonuses equal to their annual salaries. When you win, our attorneys win.

Unique Perspective

Susman Godfrey represents both plaintiffs and defendants. Ours is not a cookie-cutter practice turning out the same case from the same side of the bar time after time. We thrive on variety, flexibility, and creativity. Clients appreciate the insights that our broad experience brings. "I think that's how they keep their tools sharp," says one.

Many companies who have had to defend cases brought by Susman Godfrey on behalf of plaintiffs are so impressed with our work in the courtroom that they hire us themselves next time around—companies like El Paso Corporation, Georgia-Pacific Corporation, Mead Paper, and Nokia Corporation.

We know from experience what motivates both plaintiffs and defendants. This dual perspective informs not just our trial tactics, but also our approach to settlement negotiations and mediation presentations. We are successful in court because we understand our opponent's case as well as our own.

An Uncommon Structure

At Susman Godfrey, our clients hire us to achieve the best possible result in the courtroom at the least possible cost. Because we learned to run our practice on a contingency-fee model where preparation of a case is at our expense, we have developed a very efficient approach to commercial litigation. We proved that big cases do not require big hours. And, because we staff and run all cases using the same model, clients who prefer to hire us by the hour also benefit from our approach.

There is no costly pyramid structure at Susman Godfrey. As a business, we are lean, mean and un-leveraged—with a two-to-one ratio between partners and associates. To counter the structural bloat of our opponents, who often have three associates for each partner, we rely on creativity and efficiency.

Susman Godfrey's experience has taught what is important at trial and what can be safely ignored. We limit document discovery and depositions to the essential. For most depositions and other case-related events we send one attorney and one attorney alone to handle the matter. After three decades of trials, we know what we need—and what is just a waste of time and money.

Unparalleled Talent

Susman Godfrey prides itself on a talent pool as deep as any firm in the country. Clerking for a judge in the federal court system is considered to be the best training for a young trial attorney, 100% of our Associates and over 90% of our Partners served in these highly sought-after clerkships after law school. Ten of our trial lawyers have clerked at the highest level—for Justices of the United States Supreme Court.

Our associates are not document-churning drones. Each associate at Susman Godfrey is expected to second-chair cases in the courtroom from the start. Because we are so confident in their abilities, we consider associates for partnership after seven years with the firm, unless they joined us following a federal judicial clerkship. In that case, we give credit for the clerkship, and the partnership track is generally six years. We pay them top salaries and bonuses, make them privy to the firm's financials, and let them vote—on an equal standing with partners—on virtually all firm decisions.

Each trial attorney at Susman Godfrey is invested in our unique model and stands ready to handle your big-stakes commercial litigation.

A Record of Winning

One of Susman Godfrey's early cases, the Corrugated Container antitrust trial, led to one of the highest antitrust jury verdicts ever obtained. Since that extraordinary start, the firm has remained devoted to helping businesses and individuals achieve similarly extraordinary results.

Recent high-profile victories include:

- Secured a \$600 million settlement for residents of Flint, Michigan in the nationally followed Flint Water Crisis litigation.
- Won a \$706.2 million unanimous jury verdict for client HouseCanary, in a breach of contract and misappropriation of trade secrets case against Quicken Loans affiliate, Title Source, Inc. The judgement appears at number four on *The National Law Journal's* "Top 100 Verdicts of the Year" list.
- Won a \$25.25 million jury verdict for client, Steven Lamar, in a contract and intellectual property dispute with Dr. Dre and Jimmy Iovine over the iconic Beats headphones — this verdict was also included on *The National Law Journal's* "Top 100 Verdicts of the Year" list.
- Secured a favorable settlement for Uber in its epic battle against Google's Waymo over self-driving car technology.
- Won a jury verdict valued at \$128 million for client General Electric, in its legal battle against the Nebraska Investment Finance Authority.
- Secured a settlement valued at \$100 million for a certified class of plaintiffs in a copyright infringement class action against well-known music streaming service, Spotify.
- Recovered \$40 million for a class of derivatives investors in a securities class action against Valeant Pharmaceuticals International, Inc. The deal is believed to be the largest recovery ever obtained on behalf of derivative investors in history.
- Won a \$50.3 million federal jury verdict for client, Green Mountain Glass, in a patent infringement lawsuit against Ardagh Glass, Inc. This verdict was #34 on *The National Law Journal's* "Top 100 Verdicts of 2017" list.
- Secured a \$91.25 million settlement for insurance policy owners in *37 Besen Parkway, LLC v. John Hancock Life Insurance Company*
- Secured nearly \$600 million with various international investment banks on behalf of our plaintiff clients in the ongoing LIBOR antitrust class action. The agreement with these banks represents the resolution of claims by investors that transacted directly with the international banks on the panel to determine US Dollar LIBOR. Just recently the class that Susman Godfrey represents became the first and only class certified by the SDNY.
- Won a \$70 million judgement for Wellstat Therapeutics against BTG International, Inc. in a pharmaceutical contract dispute in the Delaware Court of Chancery.

- Secured a settlement valued at \$73 million while representing Flo & Eddie (the founding members of 60's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. Susman Godfrey attorneys on this matter were named "California Lawyer Attorneys of the Year" by *The Daily Journal* for their legal work on this case.
- Won an over \$43.2 million federal court jury award in favor of Apache Deepwater LLC and against W&T Offshore in an oil and gas related breach of contract case having to do with deepwater wells in the Gulf of Mexico. This verdict was named by *The National Law Journal* as one of "The Top 100 Verdicts of 2016" and appeared on Texas Lawyer's "Hall of Fame Verdicts" in 2019.
- Secured over \$1.2 billion with several international automobile parts suppliers in the In Re Automotive Parts (Auto Parts) price-fixing class action. The multidistrict litigation, pending in the United States District Court for the Eastern District of Michigan, alleges long-running global collusion by auto parts companies to fix prices of automotive component parts.
- Secured as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. The case settled with plaintiffs receiving a \$48.5 million cash fund, COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value.
- Secured one of the largest settlement awards ever to a single whistleblower in a False Claims Act case—over \$450 million from Novartis Pharmaceuticals, who was accused of defrauding Medicare and Medicaid by illegally paying kickbacks to pharmacies so they would recommend Novartis's medications to doctors and patients.
- Secured a \$244 million settlement in a federal monopolization and antitrust class action against News Corporation (News Corp) on behalf of a certified class of more than 500 consumer packaged goods companies. The media giant also agreed to change its business practices regarding in-store advertising.

Pro Bono

At Susman Godfrey, we take seriously our obligation as lawyers to use our skills and position in society to make our communities better places to live. Our attorneys are committed to improving both the laws and the legal system by representing or counseling those who cannot afford to pay for legal services. We encourage our attorneys to participate in pro bono opportunities and make firm resources available to ensure our pro bono efforts are meaningful and effective.

We have partnered with various human rights organizations to drive forward significant and timely pro bono litigation. These organizations include, among many, the American Civil Liberties Union (ACLU), the Civil Rights Corps, the Texas Fair Defense Project, the Next

Generation Action Network Legal Advocacy, and the International Rescue Committee. Susman Godfrey has been included on *The National Law Journal's* "Pro Bono Hot List".

The cases below illustrate the variety and importance of the matters we litigate pro bono.

Constitutional Challenges

- ***O'Donnell v. Harris County***. For decades, the Harris County Jail held tens of thousands of people who were arrested for misdemeanors but financially unable to post bail. Though arrested for the same minor offense, a person with money could avoid jail entirely while an indigent person would spend days or weeks in jail before determination of merits. Along with Civil Rights Corps and the Texas Fair Defense Project, Susman Godfrey represents on a pro bono basis a class of indigent arrestees who challenged the constitutionality of Harris County's money bail practices. After an 8-day evidentiary hearing, the US District Court found Harris County's system unconstitutional and ordered broad injunctive relief. After the bail reforms went into effect, the US Court of Appeals for the 5th Circuit affirmed the district court's rulings that the system was unconstitutional. In the first year in which the injunctive relief was in effect, more than 12,000 people were released from jail.

Human Rights/Anti-Discrimination

- ***Faculty, Alumni and Students Opposed to Racial Preferences v. New York University Law Review***. Defended New York University Law Review against allegations that its diversity and inclusiveness initiatives violate federal bias law by favoring female and minority applicants and authors. The Hon. Edgardo Ramos of the Southern District of New York granted the motion filed by Susman Godfrey to dismiss the case.
- ***Texas v. United States of America and the International Rescue Committee***. Represented the International Rescue Committee (IRC) pro bono when the State of Texas sued to block the federal government and the IRC from resettling any Syrian refugees in Texas. Working with the ACLU and the Southern Poverty Law Center, the team defeated the State's multiple requests for injunctive relief. The federal district court later dismissed all of the State's claims.
- ***Jared Woodfill et al. v. Annise Parker et al.*** Served as lead trial counsel for the City of Houston and won a jury verdict and a final judgment in a closely-watched trial over a challenge to Houston's Equal Rights Ordinance, a law that prohibits discrimination based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, or pregnancy in city employment and city services, city contracts, public accommodations, private employment (excluding religious organizations), and housing. The City asked Susman Godfrey to represent it pro bono and defend the ordinance. After a two-week trial, the jury issued its verdict resoundingly in the City's favor. After two months of post-verdict briefing, the court issued a final judgment in favor of the City.

- ***International Franchise Ass’n, Inc. et al. v. City of Seattle, et al.*** The City of Seattle retained Susman Godfrey on a partial pro bono basis to defend its landmark \$15 per hour minimum wage ordinance. Several Seattle franchise businesses challenged the ordinance on a number of legal grounds, including violation of the Equal Protection Clause and Dormant Commerce Clause of the US Constitution. The district court denied the plaintiff franchise group’s motion for a preliminary injunction and found that the plaintiffs had failed to demonstrate a likelihood of succeeding on the merits of any of their claims.

Death Penalty Appeals/Prisoners’ Rights

- ***David Daniels et al. v. Dallas County Sheriff Marian Brown.*** Partnered with the American Civil Liberties Union, ACLU of Texas, Civil Rights Corps, and the Next Generation Action Network Legal Advocacy Fund to bring a federal class-action lawsuit for emergency relief to remedy the Dallas County Jail’s ongoing failure to manage the extraordinary risks COVID-19 poses to its detainees, staff, and the larger community.
- ***In re: Alfred DeWayne Brown.*** Represented a wrongfully convicted man, Alfred Dewayne Brown, in his now successful quest to obtain an “actual innocence” finding from the Harris County D.A.’s office after nearly a decade on death row for a murder he didn’t commit.
- ***Harris v. Fischer.*** Secured an important pro bono appellate victory on behalf of a former Bedford Hills Correctional Facility inmate who alleged her Fourth and Eighth Amendment rights were violated during a body cavity search while she was incarcerated. In its ruling, the US Court of Appeals for the Second Circuit vacated the district court’s decision dismissing the case and remanded for further consideration.
- **Death Penalty Appeals.** Has handled several death penalty appeals focusing on the requirement for the State of Texas to release information about the chemicals used to put prisoners to death in order for counsel to protect the rights of their clients not to be subject to cruel and unusual punishment. In one case, the Susman Godfrey team obtained an injunction against execution due to this issue.

Other Significant Pro Bono Work

- ***Alley Theater v. Hanover Insurance Co.*** The Tony Award-winning Alley Theatre, the oldest professional theatre company in Texas and the third-oldest resident theatre in the country, suffered devastating destruction during Hurricane Harvey, incurring millions in losses from property damage, lost income and expenses. Susman Godfrey represented the Theatre pro bono in insurance litigation related to hurricane-caused business interruption. Susman Godfrey first secured a partial summary judgment ruling on behalf of Alley in a coverage lawsuit against Hanover over claims the theatre was not properly reimbursed for hurricane-related business interruption losses. The firm later scored a second victory for the theater when they settled the final piece of the litigation.

- ***First Presbyterian Church of Houston v. Presbytery of the New Covenant, Inc.*** Represented First Presbyterian Church of Houston (FPC), one of the oldest congregations in Houston, in a property dispute against the Presbyterian Church (PCUSA), which claimed for close to 30 years that it has a trust interest in FPC's property in Houston, Texas. The Court ruled in FPC's favor on summary judgment, entering final judgment and a permanent injunction against the Presbytery of the New Covenant and finding that the PCUSA has no interest in FPC's property. After appellate arguments, the parties settled, with the denomination releasing any claim to any interest in FPC's property.
- **Law Center to Prevent Gun Violence.** For years, Susman Godfrey has provided pro bono legal research, consultation, and strategy advice to the Law Center to Prevent Gun Violence regarding measures to regulate the sale and use of firearms.

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SUSMAN GODFREY L.L.P.



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Overview

Named one of [Lawdragon's 500 Leading Lawyers](#) in 2020, a recipient of the [California Lawyer Attorneys of the Year](#) award in 2017 and selected as "Top Plaintiff Lawyers in all of California" in [2016](#) and [2017](#) by *The Daily Journal*; Steven Sklaver has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Sklaver was lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." You can read the Court's statement in full [here](#). You can also read more about the case in The Deal's profile on the litigation [here](#). Sklaver was also lead trial and appellate counsel for investors against an insurance company that resulted in a complete victory and full pay-out of a \$20 million life insurance policy. A copy of the appellate court decision is available [here](#). To listen to Sklaver's appellate oral argument, click [here](#). That matter was the feature cover story of the [April 2012 California Lawyer](#).

Sklaver also represents the former members of the legendary rock group The Turtles in *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.* (C.D. Cal.) in a certified class action lawsuit against Sirius XM that settled less than 48 hours before the jury trial was scheduled to begin. Sirius XM agreed to pay at least \$25.5 million (over \$16 million after fees and expenses) and royalties under a 10-year license that is valued up to \$62 million (over \$41 million after fees and expenses) as compensation for publicly performing without a license Pre-1972 sound recordings. The settlement was [approved by the Court](#), and has received widespread media coverage from publications such as [The New York Times](#), [Billboard](#), [The Hollywood Reporter](#), [Law360](#), [Rolling Stone](#), [Variety](#), [Reuters](#) and [Managing IP](#).

Within six months after the Sirius XM class action settled, so did Sklaver's [copyright class action](#) brought on behalf of artists owed mechanical royalties for compositions made available by Spotify, the leader in digital music streaming. [Spotify agreed to a class action settlement valued at over \\$112 million](#) (over \$95 million after fees and expenses), a settlement for which the district court granted final approval and remains subject to a pending appeal. You can read more about this matter in [Billboard](#).

Sklaver's many significant and widely covered class action results in 2016 helped secure Susman Godfrey's recognition as *Law360's* "Class Action Group of the Year" in early 2017. You can read that article announcing the award [here](#).

For defendants, Sklaver has handled numerous employment class actions across the country. He served, along with the Managing Partner of Susman Godfrey, as trial counsel for Wal-Mart, the world's largest retailer, trying a large employment class action in California. He also successfully defended and defeated class certification in numerous, substantial wage and hour matters for Alta-Dena Certified Dairy, LLC, dairy producers for Dean Foods, one of the leading food and beverage companies in the United States. Copies

of the pro-employer decisions are available [here](#), [here](#), and [here](#).

Sklaver has tried complex commercial and class action disputes — including jury trials and bench trials in federal and state court, as well as arbitrations. Sklaver graduated cum laude from Dartmouth College, magna cum laude and Order of the Coif from Northwestern University School of Law, and clerked for Judge David Ebel on the United States Court of Appeals for the Tenth Circuit. Sklaver also won the National Debate Tournament for Dartmouth College, and is just one of four individuals in debate history to win three national championships at the high school and collegiate level. From 2010-2021, Sklaver has been recognized every year as a “Super Lawyer” in Southern California, awarded to no more than the top 5% of the lawyers in the state of California (*Law & Politics Magazine*, Thomson Reuters).

Sklaver currently serves on the Board of Directors for the Western Center on Law & Poverty, the Los Angeles Metropolitan Debate League, and the Association of Business Trial Lawyers. Sklaver was also selected as the 2016-2017 Ninth Circuit Judicial Conference Lawyer Representative.

Education

- Dartmouth College (B.A., *cum laude*)
- Northwestern University School of Law (J.D., *magna cum laude* and Order of the Coif)

Clerkship

Law Clerk to the Honorable David M. Ebel, United States Court of Appeal for the Tenth Circuit

Honors and Distinctions

- [Litigation Star](#), Benchmark Litigation (2022, Euromoney)
- Recommended Lawyer - Litigation - Labor and Employment, Best Lawyers in American (2020 - 2022, Woodward White, Inc.)
- [500 Leading Lawyers in America](#) by *Lawdragon* ([2020](#), [2021](#))
- 500 Leading Plaintiff Financial Lawyers in America by *Lawdragon* ([2019](#), [2020](#), [2021](#))
- [Outstanding Antitrust Litigation Achievement in Private Law Practice](#) by the [American Antitrust Institute](#) (2019) for work on *In re: Automotive Parts Antitrust Litigation*.
- [California's Lawyer Attorneys of the Year](#) in 2017 by *The Daily Journal*. Click [here](#) for a photo of Sklaver, along with co-counsel, receiving the award.
- [Top 30 Plaintiff Lawyers in all of California in 2016](#) by *The Daily Journal*
- Southern California “Super Lawyers” awarded to no more than the top 5% of the lawyers in the state of California (2010 - 2021, *Law & Politics Magazine*, Thomson Reuters)
- Northwestern Law Review member and editor
- National Debate Tournament (NDT) collegiate championship winner

Articles and Speeches

“Federal Power to Commandeer State Courts: Implications for the Theory of Judicial Federalism,” 32 *Ind. L. Rev.* 71 (1998) (with Martin H. Redish, Professor, Northwestern University School of Law).

Speaking Engagements

- “Compliance Track: Cost of Insurance Litigation Overview” – The 24th Annual Fall Life Settlement and Compliance Conference (Orlando, Florida)
- “Cost of Insurance” – The Life Settlements Conference 2018 (New York City, NY)
- “Cost of Insurance: What Has Been Filed and Decided and What Will Happen Next?” Anticipating Tomorrow – A Symposium on Emerging Legal Issues in Life Insurance. (Philadelphia, PA)
- “Current COI Increases – What’s it All About? The Legal Perspective.” ReFocus2017 Conference (Las Vegas, NV)
- “Litigation Update: Will the Arthur Kramer Insurable-Interest Decision Lift the Cloud Over Much of the Litigation in the Market?” The 2011 International Life Settlements Conference (London, England)
- “Seeking Interlocutory Appellate Review of Class-Certification Rulings: Tactics, Strategies, and Selected Issues.” Bridgeport 10th Annual Class Action Litigation Conference (Los Angeles, CA)
- PwC 2010 Securities Litigation Study Luncheon. (Los Angeles, CA)
- Life Settlement Litigation Update. 2010 Life Settlement Compliance Conference and Legal Round Table (Atlanta, GA)
- “Litigation: What are the Legal Trends Affecting the Market?” The Life Settlements Conference 2010 (Las Vegas, NV)

Professional Associations and Memberships

- United States Supreme Court
- United States Court of Appeals for the Ninth and Tenth Circuits
- United States District Courts for the Central, Southern, Northern, and Eastern Districts of California and District of Colorado
- Admitted to state bars of Illinois, Colorado, and California
- Board of Directors, Los Angeles Metropolitan Debate League
- Board of Directors, Western Center on Law & Poverty

Notable Representations

Class Actions

- **Copyright Infringement:** Sklaver serves as co-lead counsel with the Gradstein & Marzano firm representing Flo & Eddie (the founding members of 70’s music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. The day before trial was to commence before a California jury in federal court in late 2016, Flo & Eddie reached a landmark settlement with Sirius XM on behalf of the class in a deal potentially worth \$99 million. The Court granted [final approval of the settlement](#) in May 2017. Click [here](#) for more. Sklaver with his co-leads were recently named “[California Lawyer Attorneys of the Year](#)” by *The Daily Journal* for their outstanding legal work on this case.
- In May 2017, Sklaver, as co-lead counsel with Gradstein Marzano, secured a deal valued at \$112 million to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners. The suit alleged that Spotify made music available online without securing mechanical rights from the tracks’ composers. Under the terms of the deal, Spotify will pay songwriters \$43.45 million for past royalties, as well as commit to pay ongoing royalties that are valued at \$63 million. Read more about the

case [here](#) and see Billboards coverage of it [here](#).

- **Insurance:** In a seminal insurance class action filed in the Southern District of New York, resolved in September 2015, Mr. Sklaver served as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference — less than two months before trial. Settlement terms included: \$48.5 million cash fund (\$34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded, **"I want to say publicly that I think this is an excellent settlement. I think this is a superb - this may be the best settlement pound for pound for the class that I've ever seen."** You can read the statement in full on page 3 [here](#). You can also read more about the case in *The Deal's* feature on the matter [here](#).
- **Antitrust:** *In re Automotive Parts Antitrust Litigation*. In the largest price-fixing cartel ever brought to light, Mr. Sklaver and a team of Susman Godfrey lawyers run a massive MDL litigation in which the firm serves as co-lead counsel for a class of consumer plaintiffs in multidistrict price-fixing cases pending in a Detroit, Michigan federal court. The actions, alleging anti-competitive conduct, were brought by indirect purchasers of component parts included in over 20 million automobiles, and involve parts such as wire harnesses, instrument panel clusters, fuel senders, heater control panels and alternators. The Department of Justice has imposed fines exceeding \$2.6 billion pursuant to guilty plea agreements with some of the defendants, and its investigation is still ongoing. The Susman Godfrey team together with its co-lead counsel has defeated multiple motions to dismiss. Settlements have been reached with a certain defendants for a combined \$620 million thus far. Final settlement (after fees and expenses) has not yet been determined. The case remains ongoing against the remaining defendants.

LIFE SETTLEMENTS

- Represented Jonathan Berck, as Trustee of the Rosamond Janis Insurance Trust in a \$5 million rescission claim brought by the Lincoln Life and Annuity Company of New York for alleged violations of New York's insurable interest laws and other "STOLI" (stranger originated life insurance) related claims. RESULT: Summary judgment granted in favor of my client. A copy of the summary judgment order is available [here](#).
- Won reversal in a \$20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York. Lincoln's lawsuit was based on allegations that the insurance policies lacked an insurable interest because they were procured by third-parties for investment purposes and because there were net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust. The appellate court also affirmed our trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The case is *Lincoln Life & Annuity Co. of New York v. Jonathan Berck, as Trustee of the Jack Teren Insurance Trust*, Court of Appeal Case No. D056373 (Cal. Ct. App. May 17, 2011). A copy of the appellate court decision is available [here](#). To listen to Mr. Sklaver's appellate oral argument, [click here](#). The *Teren* case was the feature, cover story of the [April 2012 California Lawyer](#).
- Represents investors, trusts, trustees, brokers, and insureds in life settlement and STOLI litigation across the country against insurance companies seeking to rescind policies with face values worth more than \$125 million. Mr. Sklaver is also a frequent speaker and commentator on life settlement and STOLI litigation, in both [trade publications](#) and [conferences](#).

FINANCIAL FRAUD

- Represented Royal Standard Minerals, which was the plaintiff in a federal securities lawsuit against a "group" of more than ten dissident shareholders for failing to file Schedule 13-D disclosures. RESULT:

Preliminary injunction granted and final judgment entered that, among other things, required for three years the votes of all shares owned by any of the defendants to be voted as directed by the Board of Directors of my client.

- Represented plaintiff who held millions of WorldCom shares as an opt-out to the class in *In re WorldCom Securities Litig.* RESULT: Settled on confidential terms.
- Represented plaintiff Accredited Home Lenders in a TRO and breach of contract action over a wrongful default declared by Wachovia in a credit re-purchase agreement. RESULT: The case was resolved favorably, following the entry of a TRO.
- Represented Walter Hewlett in his challenge to the Hewlett-Packard/Compaq merger. In preparation for that trial, Mr. Sklaver deposed Compaq's former CEO Michael Capellas about his famous handwritten journal note which, describing the merger, stated "at our course and speed we will fail." Mr. Capellas was right.

EMPLOYMENT

- Represented one of the world's largest retailers in the defense of a four month long jury trial, wage and hour class action pending in California. One of the world's largest retailers appointed Susman Godfrey L.L.P. to be its national trial counsel for wage and hour litigation.

ANTITRUST

- Lead day-to-day lawyer for the class in *White, et al. v. NCAA*, a certified, antitrust class action alleging that the NCAA violated the federal antitrust laws by restricting amounts of athletic based financial aid. ESPN Magazine coverage of the lawsuit may be found [here](#). RESULT: The NCAA settled and paid an additional \$218 million for use by current student-athletes to cover the costs of attending college, paid \$10 million to cover educational and professional development expenses for former student-athletes, and enacted new legislation to permit Division I institutions to provide year-round comprehensive health insurance to student-athletes.

ENTERTAINMENT

- Represented NAACP image award winner Morris Taylor "Buddy" Sheffield in his breach of contract lawsuit against ABC Cable Networks Group regarding the creation of *Hannah Montana*. RESULT: Defendant settled less than four weeks before trial.

PRO BONO

- Appointed to represent Carl Petersen, who was charged by the United States Attorney's Office with being a felon in possession of a firearm — a charge that carries a five-year prison sentence and an 89% conviction rate. RESULT: Acquittal. Jury deliberation lasted less than four hours. Appointed by the United States Court of Appeals for the Tenth Circuit as appellate counsel in five cases, including: [United States v. Petersen](#); [United States v. Blaze](#) (specifically noting Mr. Sklaver's "good workmanship"); and [Sorrentino v. IRS](#) (appointed as amicus curiae by and for the Court)

SUSMAN GODFREY L.L.P.



Seth Ard Partner

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Overview

Seth Ard, a partner in Susman Godfrey's New York office and a member of the firm's Executive Committee, has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Ard was co-lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." For defendants, Ard has obtained take-nothing judgments for NASDAQ and Dorfman Pacific in contract and intellectual property actions seeking tens of millions of dollars. In both [2019](#), [2020](#) and [2021](#), Mr. Ard was named one of the country's Leading Plaintiff Financial Lawyers by *Lawdragon*.

Before joining the firm, Mr. Ard clerked for the Honorable Shira A. Scheindlin of the United States District Court for the Southern District of New York, and for the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit. Mr. Ard graduated magna cum laude from Harvard Law School and completed his undergraduate work first in his class with a perfect GPA from Michigan State University, with dual degrees in philosophy and French literature. For the past three years, Ard has been recognized as a "Rising Star" in New York by Super Lawyers magazine.

Education

- Michigan State University, first in class, highest honors (B.A., Philosophy & French Literature, 1997)
- Northwestern University (M.A., A.B.D., Philosophy, 2003)
- Harvard Law School, magna cum laude (J.D. 2007)

Clerkship

Law Clerk to the Honorable Shira A. Scheindlin, United States District Court for the Southern District of New York, 2008-2009

Law Clerk to the Honorable Rosemary S. Pooler, United States Court of Appeals for the Second Circuit, 2007-2008

Honors and Distinctions

- Recognized on Lawdragon 500's 2019 list of the country's Leading Plaintiff Financial Lawyers ([2019](#), [2020](#), [2021](#))

- 2013-2015 listings of Super Lawyers “Rising Stars” in New York (Law & Politics Magazine, Thomson Reuters)
- Teaching and Research Assistant for Professor Arthur Miller (Harvard Law School)
- Teaching Assistant for Professor Jon Hanson (Harvard Law School)
- Editorial Board, Harvard Civil Rights/Civil Liberties Law Review

Professional Associations and Memberships

State of New York

Notable Representations

In re LIBOR-Based Financial Instruments Litigation (SDNY)

Ongoing. Along with Bill Carmody, Marc Seltzer, and Arun Subramanian, Ard serves as co-lead counsel for the class of over-the-counter purchasers of LIBOR-based instruments, directly representing Yale University and the Mayor and City Council of Baltimore as named plaintiffs. We reached a \$120 million settlement with Barclays, and pursue claims against the rest of the 16 LIBOR panel banks.

In re Municipal Derivatives Litigation (SDNY)

Ongoing. Along with Bill Carmody and Marc Seltzer, Ard serves as co-lead counsel to a class of municipalities suing 10 large banks and broker for rigging municipal auctions. On behalf of the class and class counsel, Ard argued final approval and fee application motions approving cash settlements in excess of \$100 million, as well as several key discovery motions against defendants and the DOJ that paved the way for those settlements.

Fleisher et al. v. Phoenix Life Insurance Company (SDNY)

September 2015. Along with Steven Sklaver and Frances Lewis, Ard served as class counsel in a seminal action challenging 2 cost of insurance increases by Pheonix. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference in a settlement valued by the Court at over \$140 million. Judge Colleen McMahon praised Susman Godfrey’s settlement of the case as “an excellent, excellent result for the class,” which “may be the best settlement pound for pound for the class that I’ve ever seen.”

Globus Medical v. Bonutti Skeletal (EDPA)

March 2015. Along with Jacob Buchdahl and Arun Subramanian, Ard represents defendant Bonutti Skeletal in patent litigation brought by Globus Medical. Ard successfully argued a partial motion to dismiss the patent complaint, defeating claims of indirect infringement, vicarious liability and punitive damages.

Sentius v. Microsoft (NDCA)

February 2015. Along with Max Tribble and Vineet Bhatia, Ard represented plaintiff Sentius in a patent infringement suit against Microsoft. A few weeks before trial, Ard successfully argued a Daubert motion that sought to exclude plaintiff’s survey expert. The case settled on highly favorable terms within 24 hours of that motion being denied. Previously, Ard had successfully argued an early summary judgment motion and supplemental claim construction, both of which would have gutted plaintiff’s claims.

Jefferies v. NASDAQ Arbitration (New York)

January 2013. Jefferies & Co. v. NASDAQ. – Along with Steve Susman and Steve Morrissey, Ard represented NASDAQ and its affiliate IDCG in an arbitration in New York. The plaintiff, Jefferies & Co., sought tens of millions of dollars in damages based on a claim that it was fraudulently induced to clear interest rate swaps through the IDCG clearinghouse. After a one week arbitration trial in the fall of 2012, at which Ard put on NASDAQ’s expert and crossed Jefferies’ expert, the Panel issued a decision in January 2013 denying all of Jefferies’ claims and awarding no damages. The arbitrators were former Judge Layn Phillips, Judge

Vaughn R. Walker, and Judge Abraham D. Sofaer.

GMA v. Dorfman Pacific (SDNY)

November 2012. Along with Bill Carmody and Jacob Buchdahl, Ard obtained a complete defense victory on summary judgment in a trademark infringement dispute before Judge Forrest in SDNY. We were hired after the close of discovery and after our client had suffered significant discovery sanctions that threatened to undermine its defense. We were able to overturn those sanctions, reopen discovery and obtain key admissions during a deposition of Plaintiff's CEO, and win on summary judgment (without argument and based on briefing done by Ard).

Washington Mutual Bankruptcy (Bkrtcy. Del.)

February 2012. Along with Parker Folse, Edgar Sargent, and Justin Nelson, Ard represented the Official Committee of Equity Holders in Washington Mutual, Inc. at two trials contesting \$7 billion reorganization plans that would have wiped out shareholders stemming from the largest bank failure in American financial history. Both plans were supported by the debtor and all major creditors. After the first trial, at which Ard put on the Equity Committee's expert and crossed the debtor's expert, the Judge denied the plan of reorganization. The debtors and creditors negotiated a new reorganization plan that again would have wiped out shareholders. After the second trial, at which Ard put on the Equity Committee's expert, crossed the debtor's expert, and conducted a full-day cross examination of hedge fund Appaloosa Management that held over \$1 billion in creditor claims and that was accused of insider trading, the Court again denied the plan of reorganization, finding that the Equity Committee stated a viable claim of insider trading against the hedge funds. The Equity Committee then negotiated with the debtor and certain key creditors a resolution that provided shareholders with 95 percent of the post-bankruptcy WaMu plus other assets in a package worth hundreds of millions of dollars – an outstanding result especially given that when we were appointed counsel, the debtor tried to disband the equity committee on the ground that equity was “hopelessly out of the money” without any chance of recovery.

Lincoln Life v. LPC Holdings (Supreme Court Onandaga, New York)

2011. Along with Steven Sklaver and Arun Subramanian, Ard represented an insurance trust in STOLI litigation against an insurance company seeking to rescind a life insurance policy with a face value of \$20 million. After Ard argued and won a hotly contested motion to compel in which the Court threatened to revoke the pro hoc license of opposing counsel, Lincoln settled the case on very favorable terms.

SUSMAN GODFREY L.L.P.



Ryan Kirkpatrick

Partner

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Overview

Ryan Kirkpatrick rejoins Susman Godfrey after spending four years as General Counsel and Senior Managing Director of McCourt Global, an alternative asset management firm. In that role, Ryan served as head of the New York office where he oversaw all legal affairs of the firm and its business verticals, including a \$1 billion commercial real estate development joint venture, MG Sports & Media (which owns the LA Marathon and co-owns Global Champions Tour and Global Champions League), and MG Capital (owner of a private direct lender and registered investment adviser).

Ryan's experience at McCourt equipped him with a deep understanding of how to successfully manage and direct a wide variety of multi-national legal matters. Ryan obtained or negotiated billions of dollars in judgments, settlements, and transactions while at McCourt. Working on both the plaintiff and defense sides, Ryan also developed a deep understanding of and how to successfully leverage litigation (and the threat of it) to accomplish financial and business objectives while at the same time managing and mitigating the financial and operational costs of litigation to a business. For example, while serving as director of Global Champions League, Ryan initiated an EU competition law action against Fédération Equestre Internationale, the international governing body for equestrian sports. After obtaining a landmark preliminary injunction that was upheld by the Brussels Court of Appeals—and has implications for all international sports federations—Ryan helped negotiate a highly favorable settlement with the FEI. As of 2017, Global Champions League has now sold/licensed 18 team franchises and holds 15 events around the world. This use of EU competition law to effect worldwide relief for a client was reminiscent of one of Ryan's first cases at Susman Godfrey, where he and Steve Susman guided start-up mainframe manufacturer Platform Solutions, Inc. to a \$200 million buy-out by IBM following years of contentious of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.

Ryan was first elected to the Susman Godfrey partnership in 2011. At the time, he was representing Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a \$550 million joint venture with affiliates of Guggenheim Partners. Ryan has been interviewed and quoted by numerous media outlets regarding the case, including the Wall Street Journal, Bloomberg News, the Los Angeles Time, ESPN, the National Law Journal, the Associated Press, KABC, and KTLA. Shortly following the sale, Mr. McCourt asked Ryan to help lead McCourt Global.

Prior to his time at Susman Godfrey, Kirkpatrick clerked for the Hon. Ruggero J. Aldisert of the US Court of Appeals for the Third Circuit.

Education

- Yale University (B.A., Political Science, 2001)
- University of California, Los Angeles (J.D., Order of the Coif, 2005)

Clerkship

- Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit (2005-2006)

Notable Representations

During his previous tenure at Susman Godfrey, Kirkpatrick led numerous successful litigation matters in a variety of legal areas including intellectual property, insurance, securities, antitrust and class actions. For example,

- Successfully represented various hedge funds investing in “stranger-owned life insurance,” including obtaining complete defense victory for a hedge fund in a case in which an insurer sued to rescind a \$20 million life insurance policy for alleged fraud and lack of an insurable interest, and initiating a class action against an insurer relating to cost of insurance increases that resulted in a settlement valued at \$134 million.
- Obtained a \$45 million damages judgment on behalf of Masimo Corporation in an antitrust case against Tyco Healthcare involving pulse oximetry products, which judgment was upheld by the Ninth Circuit on appeal, with the client receiving a net recovery of approximately \$27 million.
- Defeated class certification of a putative wage and hour class action brought against a subsidiary of Dean Foods.
- Obtained a \$16.5 million settlement for a group of investors in Seattle-based Dendreon Corporation in a case alleging securities fraud and insider trading, with the class receiving approximately \$12 million.
- Guided start-up mainframe manufacturer Platform Solutions, Inc. to a \$200 million buy-out by IBM following years of contentious of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.
- Represented Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt’s highly-publicized divorce and the team’s bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a \$550 million joint venture with affiliates of Guggenheim Partners.

Articles

“Rat Race: Insider Advice on Landing Judicial Clerkships,” 110 *Penn. St. L. Rev.* 835 (2006) (co-authored with the Honorable Ruggero J. Aldisert and James R. Stevens, III)

Professional Associations and Memberships

- State Bar of New York
- State Bar of California
- District of Columbia Bar
- United States District Court for the Central District of California
- United States District Court for the Northern District of California
- United States Court of Appeals for the Seventh Circuit
- United States District Court for the Eastern District of Texas

SUSMAN GODFREY L.L.P.



Jonathan J. Ross

Partner

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Overview

I joined Susman Godfrey in 1994, becoming a partner in 1998. Along with my colleagues at the firm, I specialize in winning trials: both the preparation involved in positioning a case for trial, and the ability to convince the fact finder, be it jury, judge, or arbitration panel, of the merit of my client's case. I am equally adept at representing plaintiffs and defendants, and believe that an active practice for both plaintiffs and defendants makes me a more effective lawyer than one who concentrates solely on the plaintiff's or defendant's side.

In today's world of complex business litigation, clients have become risk-adverse, and more cases settle after extensive pre-trial maneuvers than used to. Why then the need for business litigation trial lawyers? There are two reasons. First, better than expected settlements only happen when the attorney handling the case prepares the case for trial, regardless of any settlement expectations. Only when the case is managed to be tried from the first day forward will these settlements happen. I believe in answering the following question in the first weeks of any engagement: what do I need to prove to obtain the verdict my client desires? How the case is managed from that point on flows from that question. I do not waste time trying to "win" discovery disputes. The only "win" that interests me is having the fact finder find for my client.

My experience is as varied as one would expect from an attorney who focuses on litigating cases, and refuses to specialize in anything but trial advocacy. Below is a representative sampling of cases I am currently involved in, as well as past results (weighted to the recent past).

Education

- The Hotchkiss School (1983)
- Georgetown University (B.A. in History & Government, *magna cum laude*, 1987)
- Yale Law School (J.D., 1992)

Clerkship

Law Clerk to The Honorable Lynn N. Hughes, United States District Court for the Southern District of Texas, 1992-94

Notable Representations

Current

Represents Brighton Trustees and the interim class in a putative class action against Genworth Financial. The complaint alleges that the defendant increased its Cost of Insurance calculations for certain Universal Life policies by over 100% for illegitimate reasons in violation of its own form contracts with its policyholders.

Represents relator Douglass Strauser in his qui tam case against Walgreens and subsidiary pharmacies seeking to recover overpayments made by Medicare to these pharmacies in inflated reimbursements for drugs. Relator alleges the defendants reported inflated Usual and Customary charges to the government rather than the actual, lower, prices they charged to their cash paying customers.

Represents The Alley Theater pro bono in its insurance claims against the Hanover Insurance Company for losses incurred during Hurricane Harvey. Obtained favorable settlements several times the amount originally paid by the defendant.

Help manage a docket of over 30 parking lot collision cases for Walmart Inc. as national coordination counsel for the docket, with particular focus on expert work. I have settled many cases on terms favorable to the client, achieved dismissal of others, and tried cases when appropriate.

2019

Represented a putative class of dentists and dental laboratories against the major dental supply distributors in litigation in the E.D.N.Y.. The Consolidated Class Action Complaint alleges a nationwide conspiracy among the defendants to fix the prices for dental supplies through margin agreements and apportionment of customers. The Court approved an \$80 million settlement on behalf of the class.

Represented Mission Measurement in a trade secret misappropriation case against Blackbaud, Inc., Microedge LLC, and Vista Equity Partners in a case pending in the United States District Court for the Northern District of Illinois, Eastern Division. Mission Measurement alleged that the defendants extracted key ideas, data and designs of its Outcomes Taxonomy in the guise of jointly developing a product based on that taxonomy. Rather than developing the joint product, Mission Measurement alleged that Microedge used the information to sell itself to Blackbaud at a significantly greater price based on the trade secrets it obtained from Mission Measurement. The case settled.

Represented the plaintiff in *United States of America ex rel. Jesse Polansky v. Executive Health Resources, Inc. (HER)* in the United States District Court for the Eastern District of Pennsylvania. The plaintiff alleged that HER worked with its clients to defraud the government by claiming reimbursement from Medicare and Medicaid at in-patient levels for procedures that were out patient and should have been reimbursed as such. The Court granted the Government's motion to dismiss due to burden on government resources.

2018

Represented the Victory Healthcare entities in litigation filed in the S.D. Tex. against the Blue Cross/Blue Shield divisions of Healthcare Services Corporation for failure to pay out-of-network claims for according to the reimbursement terms of the plans governing the procedures. The case settled for a confidential amount.

Represented various General Electric entities in ongoing litigation regarding the underwriting of mortgages included in residential mortgage-backed securities, including supervising bench trial of *TMI Trust Co. v. WMC Mortgage Corp.* in the United States District Court, District of Connecticut.

Tried to a complete defense verdict a parking lot incident case for Walmart Inc. in Nueces County, Texas County Court of Law where the victim was killed by a vehicle in a Walmart parking lot. *Gilmore v. Wal-Mart Stores, Inc.*

2017

Represented Humble Surgical Hospital in litigation brought by Cigna over Humble's business practices as an out-of-network provider of hospital services. Humble counter-sued for Cigna's failure to pay reasonable and customary rates for the surgeries performed at Humble. We tried the case to the Court in January 2016. The Court's judgment required Cigna to pay 100% of the damages my client requested, imposed ERISA penalties of over \$2 million, and entered a final judgment of \$19 million. It dismissed all of Cigna's claims. The Fifth Circuit reversed the trial court.

Represented Chevron in a dispute with Occidental Petroleum regarding contractual issues surrounding a gas plant at the Headlee field. The dispute went to arbitration, and was favorably settled before trial.

2016

Represented a class of consumer-packaged goods companies in their class action case against News America Marketing and its parent, News Corp., regarding News' charging supra-competitive prices and illegally maintaining a monopoly of the in-store promotions market. We brought the case to a jury trial, and on the first day of that trial the defendants settled for \$244 million. Accounting for court-awarded attorneys' fees and expenses, class members recovered a total of \$187.5 million.

2015

Represented the Liquidating Trustee of the Circuit City Estate in opt-out antitrust actions against various defendants who conspired to fix the price of cathode-ray tubes ("CRTs") and liquid display panels ("LCDs"), causing Circuit City to pay more for products containing CRTs (televisions and computer monitors) and LCDs than it otherwise would have had to pay. Achieved cumulative settlements in the hundreds of millions of dollars.

Represented GE Mortgage Holding, L.L.C. in a lawsuit brought by The Bank of New York Mellon solely as Trustee for the GE-WMC Mortgage Securities Trust 2006-1, a litigation involving alleged contractual obligations to repurchase certain securitized mortgages that the plaintiff claimed had been made outside of reasonable underwriting standards. The case settled on very favorable terms for the client. Represented a class of plaintiffs against various defendants who engaged in a conspiracy to fix the auctions of municipal derivatives. Achieved settlements with those defendants collectively over \$100 million.

2014

Represented CompleteRx in a contract dispute with a former client concerning the winding up of their relationship. The former client sued for an accounting regarding certain drug charges and claimed over \$1 million in damages. The case settled well below cost of defense.

2013

Represented W.R. Berkley Insurance Company or its insureds in several cases. The cases ranged from representing Berkley's interests in litigation involving its insureds to representing insureds accused of tortious conduct. All cases were resolved to the satisfaction of the respective clients.

Represented the Official Committee of Unsecured Creditors of M. Fabrikant & Sons and Fabrikant-Leer International ("Fabrikant") in its action against eight financial institutions arising out of the bankruptcy of Fabrikant, formerly one of the leading companies in the diamond and jewelry wholesale market. The Second Circuit upheld the bankruptcy court's dismissal based on its negative view of the cause of action relied upon by Fabrikant.

2012

Represented SearchMedia in an international arbitration regarding hidden liabilities in the purchase of a mainland China advertising company. Obtained a favorable settlement from numerous defendants shortly before the arbitration panel was set to hear the case.

2011

Represented Huntleigh USA Corporation in various actions arising out of the 9/11 attacks. Huntleigh provided checkpoint security at Boston's Logan Airport in regard to United Flight 175, one of the planes the Al-Queda terrorists crashed into the World Trade Center towers.

Represented a class of Dynegy Inc. shareholders regarding the merger activity of that company. The shareholders allege that its board of directors breached their fiduciary duties with regard to Dynegy's recent merger attempts with affiliates of Blackstone and Icahn Enterprises. The shareholders allege both substantive violations (i.e., the merger price is not for fair value) as well as disclosure violations (Dynegy has failed to adequately disclose material aspects of the merger negotiations and valuations). After we obtained additional disclosures to the shareholders which cast doubt on the merits of the financial analysis done by the company's advisors, the shareholders voted down the merger.

2010

Represented Sim-Tex L.P. in a dispute with Coutinho & Ferrostaal, Inc. involving whether or not a contract was formed for the purchase of OCTG products. The dispute also involved issues of custom and practice in the OCTG industry and course of dealing regarding cancellation of purchase orders. The case settled the weekend before trial for a confidential amount.

2009

Represented MasTec North America, Inc. in its action against Con Edison Company of New York for Con Ed's activities related to MasTec's construction of a fiber optic network in Con Ed's rights of way in New York City. MasTec alleges that Con Ed tortiously interfered with its contract with the Telergy Corporation to provide construction services by favoring its own telecommunications subsidiary over Telergy. Specifically, MasTec alleged that Con Ed prevented Telergy and MasTec from completing the fiber optic network in various ways, including withholding necessary services in its rights of way, in order to prevent Telergy from effectively competing against Con Ed's subsidiary and to prevent Telergy from being able to pay MasTec for the construction services provided. The case settled for a confidential amount.

2008

Represented a leading insurance company with regard to its insured's defense of allegations of product liability in a home fire that included three fatalities and a surviving child with second and third degree burns over 33% of her body.

Represented general partner of a Houston pharmacy group in partnership dispute with certain limited partners. Focusing on the business goals of the various parties rather than generating legal fees, was able to structure a multi-million dollar buy-out of the limited partners which allowed the client to regain effective control of the business and the business to survive.

2007

Represented Enron in its litigation against the financial institutions who aided and abetted various insiders at Enron in the historic collapse of the company. Enron brought claims against 10 financial institutions. I was responsible for the prosecution of the case against Merrill Lynch and Deutsche Bank, both of which settled for substantial recoveries for Enron's creditors.

Represented New York Network Management (NYNM) in a case against HIP New York. NYNM, an IPA that provided various providers to HIP for its members medical care, alleged that HIP erroneously denied claims far in excess of industry norms, significantly underpaid on other claims, and systematically moved those providers to other IPAs or directly to HIP itself in order to undermine NYNM's business. The case settled for a confidential amount.

2006

Managed the firm's representation of over 2,000 clients in the Fen-Phen diet drug litigation against Wyeth Pharmaceuticals. These cases settled for over 1,100 clients who had "opted-out" (that is, filed lawsuits) resulting in millions of dollars in payments to the clients. The remaining clients who opted-in to a previous settlement favorably resolved their claims.

2005

Obtained a \$38 million jury verdict on behalf of Florida Health Plan Management against HIP New York. Plaintiff alleged that the defendant both understated its liabilities and overstated its assets in the sale of HIP Florida to the plaintiff. In addition to the compensatory damages noted above, the jury found that punitive damages were warranted. In the midst of the parties' presentation of evidence as to the amount of punitive damages to award, the case was settled for a confidential amount.

Represented accounting firm Mann Frankfort in defense of various cases arising out of the collapse of Premiere Holdings. Achieved numerous dismissals of federal cases at the motion to dismiss stage. Remaining cases were settled.

Filed a declaratory judgment action for Brazilian client Mineracao Curimbaba, a manufacturer of proppants, against competitor Carbo Ceramics, which asserted that Curimbaba's intermediate strength proppant violated various Carbo patents. Achieved settlement which will allow Curimbaba to sell its product in the United States with no royalty paid to Carbo.

2004

Defended Intergraph against patent infringement claims brought by American Imaging. Achieved dismissal of the case on summary judgment grounds after a week-long Markman hearing. While the Federal Circuit upheld most of the district court's decision, one small aspect of the case was remanded. Obtained final dismissal of the case on summary judgment after the remand.

2003

Represented the Texas Democratic Congressional Delegation at redistricting trial, focusing on the unconstitutionality of redistricting solely for partisan advantage and mid-decade redistricting. The three-judge panel split 2-1 in favor of the state's redistricting plan. In June 2006 the Supreme Court, on a 5-4 vote, rejected the claims of political gerrymandering and mid-decade redistricting, but did find Latino voter dilution in District 23 and order the redrawing of that district to comply with the Voting Rights Act.

2002

Represented the trustee of the WRT Creditors' Liquidation Trust in bringing actions against accounting firm KPMG and financial advisor CIBC Oppenheimer Corp. for their involvement in the collapse of energy company WRT. Recovered settlements from both defendants for the benefit of the Trust.

2001

Represented the trustee of the DeGeorge companies estate in a jury trial against GMAC subsidiary Residential Funding Corporation for putting DeGeorge out of business. The jury found for the defendant. On appeal, raised legal issues that led to the Second Circuit issuing an opinion remanding the case to district court for determination of factual issues that could require a new trial. The case settled before the district court made its determination.

Represented Bobby Sue Smith Cohn in connection with various probate and estate issues arising out of the R.E. Smith estate. Successfully mediated dispute between the client and the trustees of various estate entities resulting in the client obtaining greater control of inheritance.

2000

Defended Unocal against a \$15 billion lawsuit brought by Argentine oil and gas company Bridas in connection

with the right to build a pipeline across Central Asia. As part of the litigation conducted negotiations with the Turkmenistan Oil & Gas minister and other government representatives. The Court dismissed the lawsuit in Unocal's favor.

Represented Apache Corporation against PetroChina, obtaining the first TRO ever granted by a U.S. Court against quasi-governmental entities of the People's Republic of China. The case settled favorably for the client 10 days after we obtained the TRO.

1999

Tried case on behalf of Century Resources Inc. against New York real estate mogul Sheldon Solow in NY state court. I represented the geologists who made an oil and gas find, only to have their financial partner Mr. Solow freeze them out of the business. The case settled during trial for a confidential amount. Represented Citrus Trading Corporation in a dispute with Pan National Gas Company over Pan National's failure to deliver agreed upon quantities of LNG (liquefied natural gas). Pan National claimed force majeure due to the failure of the Algerian National Oil and Gas Company, Sonatrach, to deliver the LNG. We argued on behalf of our client that Pan National used normal upkeep of Sonatrach's facilities as an excuse to fail to make deliveries under a contract price favorable to our client. In an innovative approach that we suggested, the case settled after both parties' legal teams made a two-day presentation to a panel consisting of three executives from each party.

1998

Defended Brazilian proppant manufacturer Minercao Curimbaba against allegations by its United States distributor, PropTech, that it had breached an agreement to extend the distributorship. The case settled on the eve of trial for a confidential amount.

1996

Represented the employees of Burlington Industries against Burlington, Morgan Stanley, and NationsBank. This ERISA lawsuit alleged that the defendants looted the assets of the employees ESOP (Employee Stock Ownership Plan) pursuant to a scheme by which they arranged for Burlington stock to be sold to the ESOP at a highly inflated price. I was responsible for the depositions and the class action briefing, which was successful. The defendants settled for \$22 million.

Represented Degussa Corporation in claims against it in the Gulf War Syndrome cases filed in Galveston, Texas. Demonstrated to the plaintiffs their lack of a case against the client as well as strategic reasons why Degussa should not be in the case and achieved complete dismissal of the client in the early stages of discovery.

1995

Represented Lloyds of London in an insurance dispute with Exxon arising out of the Exxon Valdez oil spill in Alaska. I played a supporting role in all aspects of this very significant litigation.

Honors and Distinctions

- Named "Super Lawyer" from 2017 – 2019 (*Law & Politics Magazine*, Thomson Reuters)
- Named "Texas Rising Star" in 2005 (*Law and Politics Magazine*, Thomson Reuters)
- Morris Historical Medal for Best Senior Thesis in History, Georgetown Phi Beta Kappa, Georgetown
- Senior Editor, Yale Law Journal (1991-92)
- Managing Editor and Student Writing Editor, Yale Journal of International Law (1990-91)

Professional Memberships and Associations

- State Bar of New York (admitted 1993)
- State Bar of Texas (1994)
- United States Court of Appeals for the Fifth Circuit (1995)
- United States Court of Appeals for the Federal Circuit (1999)
- United States Court of Appeals for the Second Circuit (2002)
- United States Supreme Court (2003)
- Eastern District of Texas (2006)
- Northern District of Texas (2003)
- Southern District of Texas (1995)
- Eastern and Western Districts of Arkansas (2004)
- Northern District of Georgia (2004)
- Eastern District of New York (2007)
- Southern District of New York (2007)
- American Bar Association
- Houston Bar Association
- Houston Trial Lawyers Association

SUSMAN GODFREY L.L.P.



Lora Krsulich Associate

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Overview

Lora Krsulich represents plaintiffs and defendants in complex commercial litigation across the United States. She has won courtroom battles and helped secure multi-million-dollar settlements for her clients, who range from large corporations to small businesses and individuals.

Equally as diverse as her client roster is the legal areas in which Lora is experienced. She has handled cases related to intellectual property, False Claims Act, fraud, insurance, and shareholders & securities. No matter the subject, Lora instills trust in her team and clients by confidently tackling complex subject matter and translating it into compelling arguments to her audience.

Results

Lora and a team from Susman Godfrey previously represented relators in their California False Claims Act suit against a large construction contractor in California State Court. Taking the lead on depositions of the contractor's project managers, business managers, and experts and drafting a successful motion for summary adjudication, Lora was instrumental in securing a favorable settlement for the relators.

Lora served as counsel to antenna technology company and repeat Susman Godfrey client, Fractus SA, in a patent infringement case against ZTE Corp. Traversing the globe, Lora handled key depositions, both in the United States and abroad, and then briefed and won a motion to compel ZTE's sales data and an opposition to a motion to strike. Fractus later agreed to settle its claims for a multi-million-dollar settlement.

Background

Lora joined Susman Godfrey after working as a law clerk to Judge Kim McLane Wardlaw on the U.S. Court of Appeals for the Ninth Circuit and to Judge Philip S. Gutierrez on the U.S. District Court for the Central District of California.

She graduated from UC Berkeley School of Law in 2016, where she served as editor-in-chief of the *California Law Review* and co-chair of Berkeley Law's First-Generation Professionals group.

Before law school, Lora worked as a senior policy advisor for the Office of Prisoner Reentry in Newark, New Jersey, where she won and managed more than \$7 million in federal and private grants.

When not working, Lora enjoys spending time at the beach with her husband and two-year-old son, William.

Education

- University of California, Berkeley, School of Law (J.D., Order of the Coif)
- New York University, Robert F. Wagner Graduate School of Public Service (Master of Public

Administration)

- Boston College (B.A., Political Science, magna cum laude)

Clerkship

- Law Clerk to Judge Kim McLane Wardlaw, U.S. Court of Appeals for the Ninth Circuit
- Law Clerk to Judge Philip S. Gutierrez, U.S. District Court for the Central District of California
- Extern to Judge Charles R. Breyer, U.S. District Court for the Northern District of California

Notable Representations

- ***Moskowitz Family LLC v. Globus Medical (E.D. Penn.)*** Defending Globus Medical, Inc. in a patent infringement case brought by Moskowitz Family LLC. Playing a key role in the matter, Lora has taken a lead on deposition efforts and argued a key discovery motion. The matter is ongoing.
- ***Brighton Trustees, LLC as Trustee et al. v. Genworth Life & Annuity Ins. Co. (E.D. Va.)*** Representing policyholders in a putative class action against an insurance company that raised cost of insurance rates in violation of the terms of a contract with policyholders. Lora has taken and defended key fact witness and expert depositions in the case.
- ***Advance Trust & Life Escrow Servs. LTA v. Security Life of Denver Ins. Co. (D. Colo.)*** Representing a certified class of insurance policy owners against an insurance company that raised cost of insurance rates in violations of the terms of a contract with policyholders. Lora filed and won the motion for class certification and filed and defeated a motion for summary judgment.
- ***Granina v. Tarzana Emergency Medical Associates et al. (LA Superior Court)*** Representing consumers in a case against a Southern California hospital and medical group concerning the practice of surprise balance billing. The case, which is still in early stages, aims to recover overcharges consumers paid as a result of the defendants' balance billing practices.
- ***In re Pattern Energy Group Inc. Securities Litigation (D. Del.)*** Representing shareholders challenging a \$6.1 billion go-private, all-cash sale of Pattern Energy Group, Inc. to Canada Pension Plan Investment Board.
- ***The Rawlings Group (Kentucky State Court)*** Defending Rawlings in various employment litigation matters pending in Kentucky State Court.

Honors and Distinctions

- Order of the Coif
- Thelen Marrin Law Award Recipient
- Finalist, McBaine Honors Moot Court Competition
- Prosser Prizes in Legislation & Statutory Interpretation, and Public Law & Policy
- Best Brief Award in Written & Oral Advocacy
- Commendation from the City of Newark, New Jersey City Council for Contributions to Newark's Prisoner Reentry Program
- NYU President's Service Award for outstanding leadership of a student group (Students for Criminal Justice Reform)

Publications

- Note, *Polluted Politics*, 105 Calif. L. Rev. 501 (2017)
- Comment, *Diminishing State Power in Nuclear Energy Regulation*, 41 Ecology L.Q. 629 (2014)

Professional Associations and Memberships

- State Bar of California
- Association of Business Trial Lawyers
- Women Lawyers Association Los Angeles

EXHIBIT #2

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

BRIGHTON TRUSTEES, LLC, AS TRUSTEE, at
al.,

Plaintiffs,

vs.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,

Defendant.

Case No. 3:20-cv-00240 (DJN)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, subject to the Court’s approval and pursuant to Rule 23 of the Federal Rules of Civil Procedure, by and between: (i) Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust; Bank of Utah, solely as securities intermediary for Diamond LS Trust, and Ronald L. Daubenmier (collectively “Plaintiffs”), individually and on behalf of the Class; and (ii) Defendant Genworth Life and Annuity Insurance Company (“GLAIC”), that the causes of action and matters raised by and related to this lawsuit, as captioned above, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement.

This Agreement is made and entered into by and between Plaintiffs and GLAIC and is intended to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (both as described below) upon and subject to the terms and conditions hereof.

Capitalized terms in this Agreement shall have the meaning set forth at Section VII below.

I. SETTLEMENT RELIEF

A. Cash Consideration to the Settlement Class

1. GLAIC agrees to fund the Settlement Fund in the amount of \$25,000,000. GLAIC shall deposit the Settlement Fund into the Settlement Fund Account no later than seven (7) business days after the date that the Court grants preliminary approval of this Settlement. The Settlement Fund shall be reduced due to Opt-Outs as provided in Paragraph 2 below.

2. For all Owners who submit timely and valid requests for exclusion from the Settlement Class, the Settlement Fund shall be reduced on a pro rata basis by an amount that is calculated by multiplying the amount of the Settlement Fund (*i.e.*, \$25,000,000) by a fraction where (i) the numerator is the combined Specified Amount, as of March 31, 2022, (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of March 31, 2022, of all Policies owned by members of the Class. By way of example, if 1% of the total Specified Amount of all Policies owned by members of the Class are attributable to Opt-Outs, the Settlement Fund will be reduced by 1%.

3. Any disputes regarding the reduction of the Settlement Fund as provided in Paragraph 2 above shall first be presented to the Mediator for potential resolution, and, absent voluntary resolution, to the Court for a determination. The Owners of Policies that do not timely and validly opt out during the Opt-Out Period constitute the Settlement Class. For the avoidance of doubt, if an Owner (such as a securities intermediary or trustee) owns multiple policies on behalf of different principals, that Owner may stay in the Settlement Class as to some Policies and opt out of the Settlement Class for other Policies. The Parties agree that the opt-out reduction methodology set forth in Paragraph 2 above is proposed solely for settlement purposes and may not be used as an admission or evidence of the validity of any damages model regarding any alleged wrongdoing by GLAIC.

4. Simultaneously herewith, Plaintiffs and GLAIC are executing a “Supplemental Agreement” setting forth certain conditions under which this Agreement may be withdrawn or terminated at GLAIC’s sole discretion if Owners who meet certain criteria exclude themselves from the Settlement Class. The Supplemental Agreement shall not be filed with the Court, except that the Supplemental Agreement and/or its contents may be brought to the attention of the Court, *in camera*, if so requested by the Court or as otherwise ordered by the Court. The Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose them. Should the Court require that the Supplemental Agreement be filed with the Court, Plaintiffs and GLAIC shall jointly request that it be filed under seal.

5. The Net Settlement Fund shall be distributed to the Settlement Class pursuant to a distribution formula or other process to be developed by Class Counsel and approved by the Court. GLAIC will not oppose any such proposed plan of allocation.

6. Under no circumstances shall GLAIC be liable or obligated to pay any fees, expenses, costs, or disbursements to any person in connection with the Action, this Agreement, or the Settlement other than the Final Settlement Fund amount, which represents GLAIC’s total and maximum contribution to this Settlement, inclusive of all relief to the Settlement Class, Class Counsel’s Fees and Expenses, Incentive Awards, and Settlement Administration Fees.

B. Non-Cash Consideration to the Settlement Class

7. For a period of seven (7) years following the Final Approval Date, GLAIC agrees that COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 COI Rate Adjustment. Subject to and without waiving the provision provided for in the preceding sentence, nothing in this Agreement shall otherwise restrict GLAIC from making

adjustments or recommending adjustments to the COI Rates that comply with the terms of any Class Policy.

8. Plaintiffs and the Settlement Class agree that GLAIC may continue to implement the 2019 COI Rate Adjustment and further agree not to take any legal action or cause to take any legal action challenging (i) any COI Rates and/or COI Rate Scales adopted under the 2019 COI Rate Adjustment or (ii) GLAIC's continued implementation of the 2019 COI Rate Adjustment. The covenant set forth in this paragraph shall not be interpreted to limit the scope of the Released Claims.

9. GLAIC agrees to not take any legal action (including asserting as an affirmative defense or counterclaim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy. The covenant set forth in this paragraph is solely prospective and does not apply to any actions taken by GLAIC in the past. With the exception of the foregoing, nothing contained in this Agreement shall otherwise restrict GLAIC from: (i) following its normal procedures and any applicable legal requirements regarding claims processing, including but not limited to confirming the death of the insured; determining the proper beneficiary to whom payment should be made in accordance with applicable laws, the terms of the policy, and policy-specific documents filed with GLAIC; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age or gender of the insured; (iii) complying with any court order, law or regulatory requirements or requests, including but not limited to, compliance with regulations relating to the

Office of Foreign Asset Control, Financial Industry Regulatory Authority, and Financial Crimes Enforcement Network; (iv) taking action with respect to any alleged misrepresentations made in connection with an application to reinstate a Class Policy that was made after the date this Agreement is executed; or (v) refusing to pay a death claim on a policy that is determined to be invalid or void through no action by GLAIC.

II. PRELIMINARY APPROVAL AND CLASS NOTICE

10. The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of the Settlement in compliance with the Court-ordered deadline, which shall include a request to notify the Class of the Settlement and provide a period during which Owners can request exclusion from the Class. Plaintiffs will share a draft of the motion seeking approval of the Settlement (and all other settlement related filings, including proposed Class Notice forms, but excluding Class Counsel's Motion for Plaintiffs' Incentive Awards and Class Counsel's Fees and Expenses) with GLAIC no less than three (3) business days before it is filed (except for the papers in support of Preliminary Approval, which shall be shared no less than one (1) business day before it is filed). GLAIC will not oppose the motion or any proposed Class Notice plan. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Parties will negotiate in good faith to modify the Settlement directly or with the assistance of the Mediator and endeavor to resolve the issue(s) to the satisfaction of the Court.

11. Plaintiffs' form of Class Notice will include direct mailing on a short-form postcard sent to Owners using address information that is available from GLAIC's files as well as publication of a long-form notice on a settlement website.

12. The Class Notice shall advise Owners of their right to opt out of the Settlement Class and the last date of the Opt-Out Period. A request to opt out must be in writing and served on the Settlement Administrator, postmarked no later than the last date of the Opt-Out Period.

13. A request to opt out must (i) clearly state the Owner's desire to opt out from the Settlement Class; (ii) identify the Policy or Policies to be excluded by policy number; and (iii) be signed by the Owner or by a person providing a valid power of attorney to act on behalf of the Owner.

14. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) no later than forty-five (45) calendar days after the Notice Date, or as otherwise determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member; (2) the Policy number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (4) copies of any papers, briefs, or other documents upon which the objection is based; (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (6) the signature of the Settlement Class Member or his/her counsel. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing the objecting Settlement Class Member who will appear at the Fairness Hearing. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections as provided in this paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. The Class Notice shall advise Settlement Class Members of their right to object and the manner required to do so.

15. Within ten (10) calendar days following the filing of this Agreement with the Court, GLAIC shall serve notices of the proposed Settlement upon appropriate officials in compliance with the requirements of the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715.

III. INCENTIVE AWARD AND FEES AND EXPENSES

16. Plaintiffs may move for the payment of Incentive Awards from the Final Settlement Fund in an amount up to but not more than \$25,000 for each plaintiff. GLAIC will not oppose Plaintiffs’ motion. The Incentive Awards shall be made to Plaintiffs in addition to, and shall not diminish or prejudice in any way, any settlement relief which they may be eligible to receive.

17. Class Counsel may move for an award of attorneys’ fees not to exceed 33 1/3% of the Final Settlement Fund, in addition to reimbursement for all expenses incurred by them or to be incurred by them, payable only from the Final Settlement Fund. Class Counsel’s Fees and Expenses, as awarded by the Court, shall be paid from the Final Settlement Fund, and may be paid, at Class Counsel’s option, immediately upon entry of an order approving such fees and expenses, or at a later date if required by the Court. GLAIC agrees not to oppose Class Counsel’s motion for Class Counsel’s Fees and Expenses to the extent Plaintiffs’ request does not exceed the amounts set forth above.

18. Neither Plaintiffs nor GLAIC shall be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, this Agreement, or the Settlement, other than those expressly provided in this Agreement.

19. The Parties agree that the Settlement is not conditioned on the Court’s approval of the Incentive Award or Class Counsel’s Fees and Expenses.

IV. TAX REPORTING AND NO PREVAILING PARTY

20. Any person or entity receiving any payment or consideration pursuant to this Agreement shall alone be responsible for the reporting and payment of any federal, state, and/or

local income or other form of tax on any payment or consideration made pursuant to this Agreement, and GLAIC shall not have obligations to report or pay any federal, state, and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement.

21. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely out of the Final Settlement Fund.

22. No Party shall be deemed the prevailing party of this Action for any purpose.

V. RELEASES AND WAIVERS

23. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims. The Released Claims do not include any Excluded Claims.

24. The Releasing Parties hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Parties asserting Released Claims.

25. With respect to any Released Claims under this Agreement, the Parties stipulate and agree that, upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Releasing Parties shall upon the Final Settlement Date be deemed to have, and by operation of the Order and Judgment shall have, waived any and all provisions, rights, or benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties upon the Final Settlement Date, shall be deemed to have, and by operation of the Order and Judgment shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct relating to the Released Claims that is negligent, intentional, with or without malice, or any breach of any duty, law, or rule without regard to subsequent discovery or existence of such different or additional facts.

26. Nothing in this Release shall preclude any action to enforce the terms of this Agreement.

27. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

28. Notwithstanding the foregoing, for purposes of clarification only, this Agreement shall not release GLAIC from paying any future death benefits that may be owed and is not a release of any kind to any class or individual claims at issue in *TVPX ARS Inc, v. Genworth Life*

and Annuity Insurance Company, Case No. 3:18-cv-637-JAG (E.D.V.A.) and Case No. 00-CV-217 (CDL) (M.D. Ga.), appeal filed, 22-11185-A (11th Cir.) (collectively, the “TVPX Action”).

VI. OTHER PROVISIONS

29. The Parties: (i) acknowledge that it is their intent to consummate this Agreement, (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in good faith, and at arm’s length by the Parties, with the assistance of the Mediator, following numerous mediation sessions including before the Mediator on March 25, 2022, and additional follow-on communications, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

30. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, GLAIC’s counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

31. GLAIC specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the Claims in the Action and makes no concessions or admissions of liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or communications related thereto, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (ii) is or may be deemed to be or may be used as an admission of, or evidence

of, any fault or omission of the Released Parties, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal. Nothing in this paragraph shall prevent GLAIC and/or any of the Released Parties from using this Agreement and Settlement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

32. GLAIC agrees promptly to provide, or cause to be provided, all data reasonably necessary for Class Counsel to effectuate the distribution of the Class Notice, to determine the payment allocations to Settlement Class Members, and to send payments to Settlement Class Members.

33. The Parties agree that if this Agreement or the Settlement fails to be approved, fails to become effective, otherwise fails to be consummated, is declared void, or if there is no Final Settlement Date, then the Parties will be returned to *status quo ante*, as if this Agreement had never been negotiated or executed, except that no incurred Settlement Administration Expenses shall be recouped. Each Party will be restored to the place it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense that was available to it at that time.

34. Except as expressly provided herein, nothing in this Agreement shall change the terms of any Policy. Nothing in this Agreement shall preclude any action to enforce the terms of this Agreement.

35. The Parties agree, to the extent permitted by law, that all agreements made and orders entered during the course of the Action relating to confidentiality of information shall

survive this Agreement. To the extent Class Counsel or the Settlement Administrator requires Confidential Information to effectuate the terms of this Agreement, the terms of the Stipulated Confidentiality Agreement and Protective Order and Addendum entered in the Action on October 5, 2020 (Dkt. 38) shall apply to any information necessary to effectuate the terms of this Agreement.

36. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiffs and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on the website as described in Paragraph 11.

37. Each person executing the Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

38. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, electronically signed PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as the original. A complete set of executed counterparts shall be filed with the Court.

39. The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties hereto. This Agreement is not designed to and does not create any third-party beneficiaries either express or implied, except for the Settlement Class Members.

40. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of this Agreement are contractual and are the product of arms-length negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement shall not be construed against any Party.

41. Other than necessary disclosures made to the Court or the Settlement Administrator, this Agreement and all related information and communication shall be held strictly confidential by Plaintiffs, Class Counsel, and their agents until such time as the Parties file this Agreement with the Court.

42. The Parties and their counsel further agree that their discussions and the information exchanged in the course of negotiating this Settlement are confidential under the terms of the mediation agreement signed by the Parties in connection with the mediation sessions with the Mediator and any follow-up negotiations between the Parties' counsel. Such exchanged information was made available on the condition that neither the Parties nor their counsel may disclose it to third parties (other than experts or consultants retained by the Parties in connection with the Action and subject to confidentiality restrictions), that it not be the subject of public comment, and that it not be publicly disclosed or used by the Parties or their counsel in any way in the Action should it not settle, or in any other proceeding; provided however, that nothing

contained herein shall prohibit the Parties from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of the Action.

43. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without reference to its choice-of-law or conflict-of-laws rules.

44. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement and any discovery sought from or concerning objectors to this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

45. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and Sunday) express delivery service as follows:

(a) If to GLAIC, then to:

Brian E. Pumphrey
Elizabeth F. Tyler
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Phone: 804-775-1000
Fax: 804-775-1061
bpumphrey@mcguirewoods.com
etyler@mcguirewoods.com

Patrick J. Gennardo
ALSTON & BIRD LLP
90 Park Avenue, 15th Floor
New York, NY 10016-1387
Phone: 212-210-9400
Fax: 212-210-9444
patrick.gennardo@alston.com

(b) If to Plaintiffs or the Class, then to:

Seth Ard
Ryan C. Kirkpatrick
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
Fax: 212-336-8340

Steven G. Sklaver
Lora Krsulich
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150

sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

ssklaver@susmangodfrey.com
lkrsulich@susmangodfrey.com

46. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

47. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Each other day of the period to be computed shall be included, including the last day thereof, unless such last day is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court on a day in which the court is closed during regular business hours. In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the court is closed. When a time period is less than seven (7) business days, intermediate Saturdays, Sundays, legal holidays, and days on which the court is closed shall be excluded from the computation. As used in this paragraph, legal holidays include New Year's Day, Dr. Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by Federal law or Virginia Law.

VII. DEFINITIONS AND CONSTRUCTION

48. "Action" means the lawsuit, captioned *Brighton Trustees, LLC, As Trustee, et al. v. Genworth Life and Annuity Insurance Company*, Case No. 3:20-cv-00240 (DJN), currently pending in the United States District Court for the Eastern District of Virginia.

49. "Agreement" means this Joint Stipulation and Settlement Agreement.

50. “Claims” means all suits, claims, cross-claims, counter-claims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), including Unknown Claims, of any nature, character, or description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, present or contingent, for any injury, damage, obligation, or loss whatsoever, including but not limited to compensatory damages, statutory damages, liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys’ fees.

51. “Class” means all Owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. Specifically excluded from the Class are Class Counsel and their employees, GLAIC, its officers and directors and their immediate family members; the Court, the Court’s staff, and their immediate family members; and the heirs, successors or assigns of any of the foregoing. Also excluded from the Class are owners of Gold and Gold II policies that have terminated as a result of the death of the insured on or before March 31, 2022, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured. For purposes of clarification only, the Class also does not include any policies issued by or insured by Genworth Life Insurance Company or its predecessors or successors.

52. “Class Counsel” means Susman Godfrey L.L.P., the attorneys appointed as interim class counsel by the Court.

53. “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Final Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses.

54. “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Class.

55. “Class Policy” means any Policy for which an Owner is a Settlement Class Member. “Class Policies” means all of the Policies for which the Owners are Settlement Class Members.

56. “COI” means cost of insurance.

57. “COI Deduction” means the amount deducted from a Policy’s value each month for COI.

58. “COI Rate(s)” means the rates used to calculate the COI Deduction. For the purpose of this Agreement, “COI Rates” include Monthly Risk Rates, as that term is defined in the Policies.

59. “COI Rate Scale(s)” means the schedule of COI Rates applicable to each Policy for all years that the Policy is in force.

60. “2019 COI Rate Adjustment” means the change in COI Rate Scales applicable to the Policies, announced in 2019 and effective beginning December 1, 2019, in which new COI Rate tables were adopted for the Policies.

61. “Court” means The United States District Court for the Eastern District of Virginia, Hon. David J. Novak.

62. “Excluded Claims” means (i) new claims that could not have been asserted in the Action because they are based upon a future COI Rate Scale increase that occurs after March 25, 2022 (“New COI Increase Claims”), (ii) claims relating to the COI Rate Scale increases imposed

by Genworth Life Insurance Company, on Gold and Gold II policies issued, insured, and/or assumed by it, and (iii) claims at issue in the TVPX Action. New COI Increase Claims are limited to claims and damages that could not have been included in the Action because a future COI Rate Scale increase has not yet taken place, but do not include any claims challenging the COI Rates and/or COI Rate Scales adopted under the 2019 COI Rate Adjustment. To the extent that a Settlement Class Member is an owner of both a GLAIC Policy and a Genworth Life Insurance Company policy (or any other policy that is not a Policy), this release will only be applicable for the GLAIC Policy and not any other policy.

63. “Fairness Hearing” means the hearing at which the Court considers final approval of the Settlement.

64. “Final Approval Date” means the date on which the Court enters its Order and Judgment approving the Settlement.

65. “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment.

66. “Final Settlement Fund” means the cash fund after any reductions in the amount of the Settlement Fund pursuant to Paragraph 2 of this Agreement. The Final Settlement Fund will be a single qualified settlement fund pursuant to 26 U.S.C. § 468B that will be used to pay: (i) Settlement Administration Expenses; (ii) any Incentive Awards; (iii) any of Class Counsel’s Fees and Expenses awarded by the Court; (iv) all payments to the Settlement Class; and (v) any other payments provided for under this Agreement or the Order and Judgment. There will be no

reversion of any portion of the Final Settlement Fund to GLAIC. All funds held in the Final Settlement Fund and all earnings thereon, shall be deemed to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall have been disbursed pursuant to the terms of this Agreement or further order of the Court.

67. “GLAIC” means Genworth Life and Annuity Insurance Company and its predecessor and successor entities.

68. “Incentive Awards” means the aggregate amount of any awards approved by the Court to be paid to Plaintiffs from the Final Settlement Fund, in addition to any settlement relief they may be eligible to receive, to compensate Plaintiffs for their efforts undertaken on behalf of the Settlement Class.

69. “Incremental COI Deduction” means the difference between the COI Deduction from a Policy as determined under the COI Rate Scale applied to a Policy under the 2019 COI Rate Adjustment and the COI Deduction that would have existed under the COI Rate Scale that applied to the Policy before the 2019 COI Rate Adjustment, where the COI Deduction under the 2019 COI Rate Adjustment is higher than the COI Deduction that would have applied under the previous COI Rate Scale.

70. “Mediator” means Rodney A. Max, Esq.

71. “Net Settlement Fund” means the Final Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Awards; (iii) any Class Counsel’s Fees and Expenses awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

72. “Notice Date” means the earliest date on which any form of the Class Notice is first mailed, published, or appears online.

73. “Opt-Outs” means the Owners of Policies who timely elect to opt out of the Settlement Class during the Opt-Out Period.

74. “Opt-Out Period” means a period that begins on the Notice Date and ends forty-five (45) days after the Notice Date, or as otherwise determined by the Court. The deadline for the Opt-Out Period will be specified in the Class Notice.

75. “Order and Judgment” means the Court’s order approving the Settlement and entering final judgment. The judgment will include a provision for the retention of the Court’s jurisdiction over the Parties and Releasing Parties to enforce the terms of the judgment and for a bar order (consistent with the provisions of Paragraphs 23-28 above) prohibiting claims by the Releasing Parties against Released Parties for the Released Claims.

76. “Owner” or “Owners” means each Policy’s owner or owners of record in GLAIC’s files, whether a person or entity and whether in an individual or representative capacity.

77. “Parties” means, collectively, Plaintiffs and GLAIC. The singular term “Party” means any of Plaintiffs or GLAIC, as appropriate.

78. “Plaintiffs” means Brighton Trustees, LLC, Bank of Utah, and Ronald L. Daubenmier, individually and as representatives of the Class, and their assigns, successors-in-interest, and representatives.

79. “Policy” or “Policies” means any Gold and Gold II universal life insurance policy issued, insured, or assumed by GLAIC, or its predecessors or successors, for which the applicable COI Rate Scales were changed by the 2019 COI Rate Adjustment. For clarity, this does not include any policies issued, insured, and/or assumed by Genworth Life Insurance Company.

80. “Released Claims” means all Claims asserted in the Action or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act

that were alleged or could have been alleged in the Action related to the 2019 COI Rate Adjustment. Released Claims do not include Excluded Claims.

81. “Released Parties” means GLAIC and its past, present, and future parent companies, direct and indirect subsidiaries, affiliates, predecessors, joint ventures, successors and assigns, together with each of their respective past, present, and future officers, directors, shareholders, employees, representatives, insurers, attorneys, and agents, and including any person or entity acting on behalf or at the direction of any of them.

82. “Releasing Parties” means Plaintiffs and each Settlement Class Member, on behalf of themselves and their respective agents, heirs, relatives, attorneys, successors, predecessors, payors, trustees, grantors, securities intermediaries, beneficiaries, principals, subrogees, executors, and assignees, and all other persons or entities acting by, through, under, or in concert with any of them.

83. “Settlement” means the settlement set forth in this Agreement.

84. “Settlement Administration Expenses” means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including the fees charged by the Settlement Administrator, as well as the fees, costs, and expenses incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Final Settlement Fund.

85. “Settlement Administrator” means the third-party settlement administrator of the Settlement who is selected and approved by the Parties. Plaintiffs shall be responsible for selecting the Settlement Administrator and consent from GLAIC will not be unreasonably withheld. The Settlement Administrator’s fees, as well as the costs, fees, and expenses incurred by the Settlement Administrator, shall be paid from the Final Settlement Fund.

86. “Settlement Class” means the Class, excluding any Opt-Outs.

87. “Settlement Class Member(s)” means all persons and entities that are included in the Settlement Class.

88. “Settlement Fund” means a cash fund consisting of the consideration paid for the benefit of the Settlement Class.

89. “Settlement Fund Account” means the escrow account from which all payments out of the Settlement Fund will be made. The Settlement Fund Account shall be established under terms acceptable to the Parties at a depository institution and such funds shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Parties and their respective counsel shall have no responsibility for or liability whatsoever with respect to investment decisions made for the Settlement Fund Account. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Class.

90. “Unknown Claims” means any claims asserted, that might have been asserted, or that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action with respect to the Released Claims that the Releasing Parties do not know or suspect to exist in his or her favor at the Final Approval Date, and which if known by him or her might have affected his or her decision to opt out of the Class or to object to the Settlement.

91. The terms "he or she" and "his or her" include "it" or "its," where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

92. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: Ardun Plevis

Title: Managing Member

Date: 5/6/2022

Bank of Utah

By: [Signature]

Kade Baird
Assistant Vice President

Title: _____

Date: 5/6/2022

Ronald L. Daubenmier

Date: _____

Defendant

Genworth Life and Annuity Insurance Company

By: _____

Title: _____

Date: _____

91. The terms “he or she” and “his or her” include “it” or “its,” where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

92. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: _____

Title: _____

Date: _____

Bank of Utah

By: _____

Title: _____

Date: _____

Ronald L. Daubenmier

Date: _____

Defendant

Genworth Life and Annuity Insurance Company

By: 

Title: President

Date: 05/06/2022

91. The terms “he or she” and “his or her” include “it” or “its,” where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

92. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: _____

Title: _____

Date: _____

Bank of Utah

By: _____

Title: _____

Date: _____


Ronald L. Daubenmier

Date: 5-6-2022

Defendant

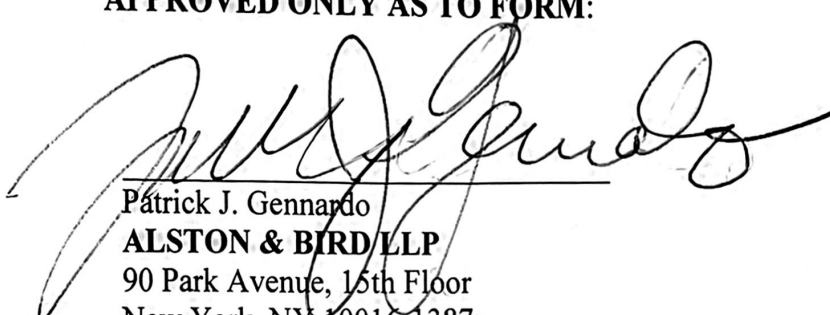
Genworth Life and Annuity Insurance Company

By: _____

Title: _____

Date: _____

APPROVED ONLY AS TO FORM:



Patrick J. Gennardo
ALSTON & BIRD/LLP
90 Park Avenue, 15th Floor
New York, NY 10016-1387
Phone: 212-210-9400
Fax: 212-210-9444
patrick.gennardo@alston.com

Counsel for Defendant Genworth Life and Annuity Insurance Company



Steven G. Sklaver
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150
ssklaver@susmangodfrey.com

Class Counsel and Attorneys for Plaintiffs

EXHIBIT #3

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**FIRST COLONY LIFE INSURANCE COMPANY
LYNCHBURG, VIRGINIA**

AMENDMENT ATTACHED TO AND MADE PART OF POLICY NUMBER 2957767 ON THE LIFE
OF LESLIE S PINSOFF

IN ACCORDANCE WITH THE POLICY CHANGE FORM DATED NOVEMBER 1, 1999,
THIS POLICY IS HEREBY ISSUED FOR A \$2,000,000 FIRSTCHOICE GOLD(R) OPTION
ONE PREFERRED NO NICOTINE USE CONTRACT BY CONVERTING POLICY NUMBER
2364687.

DATED: NOVEMBER 15, 1999

David H. McNamee

SECRETARY

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SECRET

Handwritten text, possibly a signature or initials, appearing as "L. J. H. ...".

FIRST COLONY LIFE INSURANCE COMPANY
 Service Center: P. O. Box 1280, Lynchburg, Virginia 24505-1280
 Telephone: (888) 325-5433, Extension 2240

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STATEMENT OF POLICY COST AND BENEFIT INFORMATION AS OF 11/15/99
 FOR FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE

POLICY INFORMATION

POLICY NO. 2,957,767
 Insured - LESLIE S PINSOF
 Age 59 MALE
 Class - PREFERRED
 NO NICOTINE USE

For more information about
 the Policy please contact

WILLIAM VANPELT III
 SUITE 150
 2000 BERING DR
 HOUSTON TX 77057

Initial Specified Amount - \$2,000,000
 Option - 1

INTEREST RATES

Current interest rates are subject to change at any time; however, the Company will not credit an interest rate lower than, or charge an interest rate higher than, the applicable Guaranteed rate.

| | GUARANTEED | NONGUARANTEED |
|--|------------|---------------|
| Unloaned Policy Value (credited) | 4.00 % | 6.250 % |
| Loaned Policy Value (credited) | 4.00 % | 4.00% |
| Preferred Loaned Policy Value (charged) | 4.00 % | 4.00% |
| Nonpreferred Loaned Policy Value (charged) | 6.00 % | 6.00% |

ASSUMPTIONS FOR VALUES AND BENEFITS

The guaranteed and current values and benefits shown assume: (1) the premiums shown are paid, (2) premium payments are made in the frequency specified by the Owner and received on their due dates, (3) the Designated Monthly Premium Guarantee is not applicable, (4) no changes are made in the plan as issued, and (5) no policy loans or partial withdrawals are made. Nonguaranteed values and benefits also assume that nonguaranteed risk rates and interest rates remain unchanged. We may change the monthly risk rates and the credited interest rates at any time subject to the guarantees stated in your policy. We will base any change on our expectations as to future investment earnings, mortality, persistency, expenses, and taxes. Nonguaranteed values and benefits are illustrative only and are not guaranteed.

5% INTEREST ADJUSTED INDICES

The life insurance buyer's guide explains the intended use of these indices.

| | Guaranteed | NonGuaranteed |
|---------------------|------------|---------------|
| 10 Year Net Payment | 17.00 | 17.00 |
| 10 Year Surrender | 17.00 | 8.15 |
| 20 Year Net Payment | 17.00 | 17.00 |
| 20 Year Surrender | 17.00 | 6.91 |

TABLE OF END OF YEAR VALUES

| YEAR | GUARANTEED | | | NONGUARANTEED | | |
|------|------------|----------------------|---------------|---------------|----------------------|---------------|
| | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT |
| 1 | 34,000 | 0 | 2,000,000 | 34,000 | 0 | 2,000,000 |
| 2 | 34,000 | 0 | 2,000,000 | 34,000 | 0 | 2,000,000 |
| 3 | 34,000 | 0 | 2,000,000 | 34,000 | 0 | 2,000,000 |
| 4 | 34,000 | 0 | 2,000,000 | 34,000 | 18,668 | 2,000,000 |
| 5 | 34,000 | 0 | 2,000,000 | 34,000 | 52,757 | 2,000,000 |
| 6 | 34,000 | 0 | 2,000,000 | 34,000 | 87,625 | 2,000,000 |
| 7 | 34,000 | 0 | 2,000,000 | 34,000 | 123,143 | 2,000,000 |
| 8 | 34,000 | 0 | 2,000,000 | 34,000 | 158,964 | 2,000,000 |
| 9 | 34,000 | 0 | 2,000,000 | 34,000 | 195,642 | 2,000,000 |
| 10 | 34,000 | 0 | 2,000,000 | 34,000 | 233,707 | 2,000,000 |
| 11 | 34,000 | 0 | 2,000,000 | 34,000 | 271,676 | 2,000,000 |
| 12 | 34,000 | 0 | 2,000,000 | 34,000 | 310,669 | 2,000,000 |
| 13 | 34,000 | 0 | 2,000,000 | 34,000 | 350,218 | 2,000,000 |
| 14 | 34,000 | 0 | 2,000,000 | 34,000 | 390,310 | 2,000,000 |
| 15 | 34,000 | 0 | 2,000,000 | 34,000 | 432,673 | 2,000,000 |
| 16 | 34,000 | 0 | 2,000,000 | 34,000 | 478,259 | 2,000,000 |
| 17 | 34,000 | 0 | 2,000,000 | 34,000 | 527,455 | 2,000,000 |
| 18 | 34,000 | 0 | 2,000,000 | 34,000 | 580,586 | 2,000,000 |
| 19 | 34,000 | 0 | 2,000,000 | 34,000 | 638,137 | 2,000,000 |
| 20 | 34,000 | 0 | 2,000,000 | 34,000 | 700,614 | 2,000,000 |
| 21 | 34,000 | ** | ** | 34,000 | 755,633 | 2,000,000 |
| 22 | 0 | | | 34,000 | 812,571 | 2,000,000 |
| 23 | 0 | | | 34,000 | 871,401 | 2,000,000 |
| 24 | 0 | | | 34,000 | 932,041 | 2,000,000 |
| 25 | 0 | | | 34,000 | 995,143 | 2,000,000 |
| 26 | 0 | | | 34,000 | 1,061,658 | 2,000,000 |
| 27 | 0 | | | 34,000 | 1,132,022 | 2,000,000 |
| 28 | 0 | | | 34,000 | 1,207,104 | 2,000,000 |
| 29 | 0 | | | 34,000 | 1,287,589 | 2,000,000 |
| 30 | 0 | | | 34,000 | 1,374,505 | 2,000,000 |
| 31 | 0 | | | 34,000 | 1,468,901 | 2,000,000 |
| 32 | 0 | | | 34,000 | 1,572,199 | 2,000,000 |
| 33 | 0 | | | 34,000 | 1,685,973 | 2,000,000 |
| 34 | 0 | | | 34,000 | 1,812,202 | 2,000,000 |
| 35 | 0 | | | 9,215 | 1,924,364 | 2,092,212 |
| 36 | 0 | | | 0 | 2,034,551 | 2,187,189 |
| 37 | 0 | | | 0 | 2,152,050 | 2,285,135 |
| 38 | 0 | | | 0 | 2,277,730 | 2,387,036 |
| 39 | 0 | | | 0 | 2,412,476 | 2,496,019 |
| 40 | 0 | | | 0 | 2,556,837 | 2,622,414 |

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TABLE OF END OF YEAR VALUES

| YEAR | PREMIUMS | GUARANTEED | | NONGUARANTEED | | |
|------|----------|----------------------|---------------|---------------|----------------------|---------------|
| | | CASH SURRENDER VALUE | DEATH BENEFIT | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT |
| 41 | 0 | | | 0 | 2,713,255 | 2,713,255 |

SUMMARY OF END OF YEAR VALUES

| YEAR | PREMIUMS | GUARANTEED | | NONGUARANTEED | | |
|--------|----------|----------------------|---------------|---------------|----------------------|---------------|
| | | CASH SURRENDER VALUE | DEATH BENEFIT | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT |
| 5 | 170,000 | 0 | 2,000,000 | 170,000 | 52,757 | 2,000,000 |
| 10 | 340,000 | 0 | 2,000,000 | 340,000 | 233,707 | 2,000,000 |
| 15 | 510,000 | 0 | 2,000,000 | 510,000 | 432,673 | 2,000,000 |
| 20 | 680,000 | 0 | 2,000,000 | 680,000 | 700,614 | 2,000,000 |
| AGE 65 | 204,000 | 0 | 2,000,000 | 204,000 | 87,625 | 2,000,000 |

*This Policy will lapse at this time unless a higher premium is paid.

This Policy will continue as long as premiums paid plus credited interest are sufficient to keep the policy in force and it has not terminated in accordance with any other policy provision.

Page 4 Of 4

There is a monthly administrative fee of \$4.65 per month.

A premium expense charge of 7% is deducted from each premium received.

The administrative fee for partial withdrawal is \$25.00.

A surrender charge is deducted from the policy value in determining the cash surrender value. The surrender charges applicable on the Policy Date are shown below:

| Policy Year | Surrender Charge |
|-------------|------------------|
| 1 | \$ 110,180.00 |
| 2 | 105,940.00 |
| 3 | 101,600.00 |
| 4 | 97,160.00 |
| 5 | 92,640.00 |
| 6 | 88,020.00 |
| 7 | 83,300.00 |
| 8 | 78,480.00 |
| 9 | 73,520.00 |
| 10 | 68,420.00 |
| 11 | 63,140.00 |
| 12 | 57,660.00 |
| 13 | 51,980.00 |
| 14 | 46,040.00 |
| 15 | 39,760.00 |
| 16 | 33,120.00 |
| 17 | 25,960.00 |
| 18 | 18,200.00 |
| 19 | 9,620.00 |
| 20 & Later | 0.00 |

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FIRST COLONY LIFE INSURANCE COMPANY

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Our Commitment to You *A Customer Guide to Ethics in Insurance*

As a member of GE Financial Assurance's family of financial service companies, we welcome this opportunity to share with you our commitment to meeting the needs of customers through quality products, dependable service and ethical business standards.

We are dedicated to promoting fair business practices.

We select qualified professionals to sell our policies, and we provide or make available to them education about our products, sales ethics, laws, regulations, and developments in the insurance industry.

We think that all customers should be treated with respect and dignity. We expect representatives of the company to safeguard your privacy and hold all financial and personal information in the strictest confidence.

We are committed to providing you with choices of insurance policies and annuity contracts from which you can select the ones that are appropriate for your insurable needs or financial objectives.

To assist representatives in the sales process we make available tools to help them in determining various customer needs and financial goals. We are also committed to providing you with illustrations and where applicable sales materials that are designed to explain the features of our products in clear and straightforward terms.

We strive to help you understand the consequences of replacing one policy with another.

When thinking about replacing one policy with another or using funds from one policy to pay for another, you should have the opportunity to examine the following questions:

1. What are the advantages and disadvantages of both the new and the original policies?
2. Are there costs associated with terminating or altering the original policy?

In addition, you are provided with statements disclosing the features of both the original and the replacement policies, when required.

We value your input and are committed to addressing your needs.

We are aware that you may, from time to time, have questions about your purchase or the service you have received. In order to live up to our commitment, we encourage you to contact us with questions.

We expect representatives to reply promptly and professionally to all your inquiries. However, if you have any remaining questions, you may call (888) 325-5433.

We will address your concerns in a timely and thorough manner.

We support ethical standards in the insurance industry.

In accordance with our own **Code of Ethical Conduct**, we along with GE Financial Assurance, promote industry-wide standards and ethical business practices that protect consumers.

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First Colony Life Insurance Company

LYNCHBURG, VIRGINIA

CONSUMER NOTICE

Should you have any questions, please address your inquiry to:

First Colony Life Insurance Company and/or
Policy Services Department
P. O. Box 1280
Lynchburg, Virginia 24505-1280
Telephone: (888) 325-5433

State of Illinois
Department of Insurance
320 West Washington Street
Springfield, Illinois 62767
ATTENTION: Consumer Services Section

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**ILLINOIS LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION LAW**

Residents of Illinois who purchase health insurance, life insurance, and annuities should know that the insurance companies licensed in Illinois to write these types of insurance are members of the Illinois Life and Health Insurance Guaranty Association. The purpose of this Guaranty Association is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its policy obligations. If this should happen, the Guaranty Association will assess its other member insurance companies for the money to pay the covered claims of policyholders that live in Illinois (and their payees, beneficiaries, and assignees) and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the Guaranty Association is not unlimited, however, as noted below.

**ILLINOIS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
DISCLAIMER**

The Illinois Life and Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent. **COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY.** Even if coverage is provided, there are substantial limitations and exclusions. Coverage is generally conditioned on continued residence in Illinois. Other conditions may also preclude coverage.

You should not rely on availability of coverage under the Life and Health Insurance Guaranty Association Law when selecting an insurer. Your insurer and agent are prohibited by law from using the existence of the Association or its coverage to sell you an insurance policy.

The Illinois Life and Health Insurance Guaranty Association or the Illinois Department of Insurance will respond to any questions you may have which are not answered by this document. Policyholders with additional questions may contact:

| | | |
|--|----|---|
| Illinois Life and Health Insurance Guaranty Association 8420 West Bryn Mawr Avenue Chicago, Illinois 60631 (312) 714-8050 | or | Illinois Department of Insurance 320 West Washington Street – 4th Floor Springfield, Illinois 62767 (217) 782-4515 |
|--|----|---|

**SUMMARY OF GENERAL PURPOSES AND
CURRENT LIMITATIONS OF COVERAGE**

The Illinois law that provides for this safety-net coverage is called the Illinois Life and Health Insurance Guaranty Association Law ("Law") [215 ILCS 5/531.01, et seq.]. On the back of this page is a brief summary of the Law's coverages, exclusions, and limits. This summary does not cover all provisions, nor does it in any way change anyone's rights or obligations under the Law or the rights and obligations of the Guaranty Association. If you have obtained this document from an agent in connection with the purchase of a policy, you should be aware that its delivery to you does not guarantee that your policy is covered by the Guaranty Association.

A. COVERAGE:

The Illinois Life and Health Insurance Guaranty Association provides coverage to policyholders that reside in Illinois for insurance issued by members of the Guaranty Association, including :

- 1) life insurance, health insurance, and annuity contracts;
- 2) life, health or annuity certificates under direct group policies or contracts;
- 3) unallocated annuity contracts; and
- 4) contracts to furnish health care services and subscription certificates for medical or health care services issued by certain licensed entities. The beneficiaries, payees, or assignees of such persons are also protected, even if they live in another state.

B. EXCLUSIONS FROM COVERAGE:

- 1) The Guaranty Association does not provide coverage for:
 - a) any policy or portion of a policy for which the individual has assumed the risk;
 - b) any policy of reinsurance (unless an assumption certificate was issued);
 - c) interest rate guarantees which exceed certain statutory limitations;
 - d) certain unallocated annuity contracts issued to an employee benefit plan protected under the Pension Benefit Guaranty Corporation and any portion of a contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery;
 - e) any portion of a variable life insurance or variable annuity contract not guaranteed by an insurer; or
 - f) any stop loss insurance.
- 2) In addition, persons are not protected by the Guaranty Association if:
 - a) the Illinois Director of Insurance determines that, in the case of an insurer which is not domiciled in Illinois, the insurer's home state provides substantially similar protection to Illinois residents which will be provided in a timely manner; or
 - b) their policy was issued by an organization which is not a member insurer of the Association.

C. LIMITS ON AMOUNT OF COVERAGE:

- 1) The Law also limits the amount the Illinois Life and Health Insurance Guaranty Association is obligated to pay. The Guaranty Association's liability is limited to the lesser of either:
 - a) the contractual obligations for which the insurer is liable or for which the insurer would have been liable if it were not an impaired or insolvent insurer; or
 - b) with respect to any one life, regardless of the number of policies, contracts, or certificates:
 - i) in the case of life insurance, \$300,000 in death benefits but not more than \$100,000 in net cash surrender or withdrawal values;
 - ii) in the case of health insurance, \$300,000 in health insurance benefits, including net cash surrender or withdrawal values; and
 - iii) with respect to annuities, \$100,000 in the present value of annuity benefits, including net cash surrender or withdrawal values, and \$100,000 in the present value of annuity benefits for individuals participating in certain government retirement plans covered by an unallocated annuity contract. The limit for coverage of unallocated annuity contracts other than those issued to certain governmental retirement plans is \$5,000,000 in benefits per contract holder, regardless of the number of contracts.
- 2) However, in no event is the Guaranty Association liable for more than \$300,000 with respect to any one individual.

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ILLINOIS LIFE INSURANCE BUYER'S GUIDE

This guide can show you how to save money when you shop for life insurance. It helps you to:

- Decide how much life insurance you should buy.
- Decide what kind of life insurance policy you need, and,
- Compare the relative cost of similar life insurance policies.

This guide has been prepared by the Illinois Department of Insurance, in part using materials developed by the National Association of Insurance Commissioners

Reprinted by

First Colony Life Insurance Company

Lynchburg, Virginia 24505
February, 1993

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.

THIS GUIDE DOES NOT ENDORSE ANY COMPANY OR POLICY.

Buying Life Insurance

When you buy life insurance, you want a policy which fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes which are described in this guide. A good life insurance agent or company will be able and willing to help you with each of these shopping steps.

If you are going to make a good choice when you buy life insurance, you need to understand which kinds are available. If one kind does not seem to fit your needs, ask about the other kinds which are described in this guide. If you feel that you need more information than is given here, you may want to check with a life insurance agent or company or books on life insurance in your public library.

Life Insurance can be bought either on an individual basis or on a group basis. Group insurance may be inexpensive when compared to individual insurance. It is important to remember that insurance purchased on this basis is usually term insurance, and hence will not develop cash values, and is dependent on your continued membership in the group or employment. Also, the amount of insurance that is available for purchase is usually limited.

Choosing the Amount

One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. Life insurance can provide cash for last expenses, and income for your family's future living expenses. Your insurance should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need at some time in the future when needs change.

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Choosing the Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance.

1. Term insurance
2. Whole life insurance
3. Endowment insurance

The kind of life insurance you purchase is dependent on the need you are trying to satisfy. Some needs are temporary, i.e. do not exist throughout your life, while other needs are permanent. As an example, the need to finance your children's education is a temporary need. The need to meet mortgage payments is also a temporary need since it exists only while the mortgage exists. On the other hand, the financial needs of your family after your death is a permanent need.

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the agent or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

Term Insurance

Term insurance is death protection for a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible." This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits." This refers to benefits you do not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money which you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

Endowment Insurance

An endowment insurance policy pays a sum or income to you - the policyholder - if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than for the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

Finding a Low Cost Policy

After you have decided which kind of life insurance fits your needs, look for a good buy. **YOUR CHANCES OF FINDING A GOOD BUY ARE BETTER IF YOU USE TWO TYPES OF INDEX NUMBERS THAT HAVE BEEN DEVELOPED TO AID IN SHOPPING FOR LIFE INSURANCE.** One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them **ONLY** for comparing the relative costs of similar policies. **LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.**

TRADE SECRET

What is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "nonparticipating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums
2. Cash values
3. Dividends

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and to subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply and divide many numbers yourself, you just compare the index numbers which you can get from life insurance agents and companies.

1. LIFE INSURANCE SURRENDER COST INDEX

This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, you were to surrender the policy and take its cash value.

2. LIFE INSURANCE NET PAYMENT COST INDEX

This index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point in time, such as 10 or 20 years, if you continue paying premiums on your policy and do not take its cash value.

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a nonparticipating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the nonparticipating policy will not change.

How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

(1) Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.

(2) Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "Shopper's Guide" tells you that one company's policy is a good buy for a particular age and amount, you should not assume that all of that company's policies are equally good buys.

(3) Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its agent. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.

(4) In any event, you will need other information on which to base your purchase decision. **BE SURE YOU CAN AFFORD THE PREMIUMS, AND THAT YOU UNDERSTAND ITS CASH VALUES, DIVIDENDS AND DEATH BENEFITS.** You should also make a judgement on how well the life insurance company or agent will provide service in the future, to you as a policyholder.

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(5) These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for awhile, in favor of a new one. If such a replacement is suggested, you should ask for information from the company which issued the old policy before you take action.

(6) An important fact to note is the difference in premium payments paid during one year's time based on an annual premium versus the annualized periodic premium. For example, if you choose to pay premiums on a monthly basis, the annualized periodic premium would be twelve (12) times the monthly premium. There may be a significant difference between the annualized periodic premium and the annual premium and it should be considered when deciding on a payment schedule.

Important Things to Remember - A Summary

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums most closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. **REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS.** A good life insurance agent can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you can make cost comparisons of similar policies.

DON'T BUY LIFE INSURANCE UNLESS YOU INTEND TO STICK WITH IT. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the agent or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities.

TRADE SECRET

FIRST COLONY LIFE INSURANCE COMPANY
 Service Center: P. O. Box 1280, Lynchburg, Virginia 24505-1280
 Telephone: (888) 326-6433, Extension 2240

**STATEMENT OF POLICY COST AND BENEFIT INFORMATION AS OF 11/15/99
 FOR FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE**

POLICY INFORMATION

POLICY NO. 2,957,767
Insured - LESLIE S PINSOF
Age 59 MALE
Class - PREFERRED
 NO NICOTINE USE

For more information about
 the Policy please contact

WILLIAM VANPELT III
 SUITE 150
 2000 BERING DR
 HOUSTON TX 77057

Initial Specified Amount - \$2,000,000
Option - 1

INTEREST RATES

Current interest rates are subject to change at any time; however, the Company will not credit an interest rate lower than, or charge an interest rate higher than, the applicable Guaranteed rate.

| | GUARANTEED | NONGUARANTEED |
|---|-------------------|----------------------|
| Unloaned Policy Value (credited) | 4.00 % | 6.250 % |
| Loaned Policy Value (credited) | 4.00 % | 4.00% |
| Preferred Loaned Policy Value (charged) | 4.00 % | 4.00% |
| Nonpreferred Loaned Policy Value (charged) | 6.00 % | 6.00% |

ASSUMPTIONS FOR VALUES AND BENEFITS

The guaranteed and current values and benefits shown assume: (1) the premiums shown are paid, (2) premium payments are made in the frequency specified by the Owner and received on their due dates, (3) the Designated Monthly Premium Guarantee is not applicable, (4) no changes are made in the plan as issued, and (5) no policy loans or partial withdrawals are made. Nonguaranteed values and benefits also assume that nonguaranteed risk rates and interest rates remain unchanged. We may change the monthly risk rates and the credited interest rates at any time subject to the guarantees stated in your policy. We will base any change on our expectations as to future investment earnings, mortality, persistency, expenses, and taxes. Nonguaranteed values and benefits are illustrative only and are not guaranteed.

5% INTEREST ADJUSTED INDICES

The life insurance buyer's guide explains the intended use of these indices.

| | Guaranteed | NonGuaranteed |
|----------------------------|-------------------|----------------------|
| 10 Year Net Payment | 17.00 | 17.00 |
| 10 Year Surrender | 17.00 | 8.15 |
| 20 Year Net Payment | 17.00 | 17.00 |
| 20 Year Surrender | 17.00 | 6.91 |

TABLE OF END OF YEAR VALUES

| YEAR | GUARANTEED | | | NONGUARANTEED | | |
|------|------------|----------------------------|------------------|---------------|----------------------------|------------------|
| | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT |
| 1 | 34,000 | 0 | 2,000,000 | 34,000 | 0 | 2,000,000 |
| 2 | 34,000 | 0 | 2,000,000 | 34,000 | 0 | 2,000,000 |
| 3 | 34,000 | 0 | 2,000,000 | 34,000 | 0 | 2,000,000 |
| 4 | 34,000 | 0 | 2,000,000 | 34,000 | 18,668 | 2,000,000 |
| 5 | 34,000 | 0 | 2,000,000 | 34,000 | 52,757 | 2,000,000 |
| 6 | 34,000 | 0 | 2,000,000 | 34,000 | 87,625 | 2,000,000 |
| 7 | 34,000 | 0 | 2,000,000 | 34,000 | 123,143 | 2,000,000 |
| 8 | 34,000 | 0 | 2,000,000 | 34,000 | 158,964 | 2,000,000 |
| 9 | 34,000 | 0 | 2,000,000 | 34,000 | 195,642 | 2,000,000 |
| 10 | 34,000 | 0 | 2,000,000 | 34,000 | 233,707 | 2,000,000 |
| 11 | 34,000 | 0 | 2,000,000 | 34,000 | 271,676 | 2,000,000 |
| 12 | 34,000 | 0 | 2,000,000 | 34,000 | 310,669 | 2,000,000 |
| 13 | 34,000 | 0 | 2,000,000 | 34,000 | 350,218 | 2,000,000 |
| 14 | 34,000 | 0 | 2,000,000 | 34,000 | 390,310 | 2,000,000 |
| 15 | 34,000 | 0 | 2,000,000 | 34,000 | 432,673 | 2,000,000 |
| 16 | 34,000 | 0 | 2,000,000 | 34,000 | 478,259 | 2,000,000 |
| 17 | 34,000 | 0 | 2,000,000 | 34,000 | 527,455 | 2,000,000 |
| 18 | 34,000 | 0 | 2,000,000 | 34,000 | 580,586 | 2,000,000 |
| 19 | 34,000 | 0 | 2,000,000 | 34,000 | 638,137 | 2,000,000 |
| 20 | 34,000 | 0 | 2,000,000 | 34,000 | 700,614 | 2,000,000 |
| 21 | 34,000 | ** | ** | 34,000 | 755,633 | 2,000,000 |
| 22 | 0 | | | 34,000 | 812,571 | 2,000,000 |
| 23 | 0 | | | 34,000 | 871,401 | 2,000,000 |
| 24 | 0 | | | 34,000 | 932,041 | 2,000,000 |
| 25 | 0 | | | 34,000 | 995,143 | 2,000,000 |
| 26 | 0 | | | 34,000 | 1,061,658 | 2,000,000 |
| 27 | 0 | | | 34,000 | 1,132,022 | 2,000,000 |
| 28 | 0 | | | 34,000 | 1,207,104 | 2,000,000 |
| 29 | 0 | | | 34,000 | 1,287,589 | 2,000,000 |
| 30 | 0 | | | 34,000 | 1,374,505 | 2,000,000 |
| 31 | 0 | | | 34,000 | 1,468,901 | 2,000,000 |
| 32 | 0 | | | 34,000 | 1,572,199 | 2,000,000 |
| 33 | 0 | | | 34,000 | 1,685,973 | 2,000,000 |
| 34 | 0 | | | 34,000 | 1,812,202 | 2,000,000 |
| 35 | 0 | | | 9,215 | 1,924,364 | 2,092,212 |
| 36 | 0 | | | 0 | 2,034,551 | 2,187,189 |
| 37 | 0 | | | 0 | 2,152,050 | 2,285,135 |
| 38 | 0 | | | 0 | 2,277,730 | 2,387,036 |
| 39 | 0 | | | 0 | 2,412,476 | 2,496,019 |
| 40 | 0 | | | 0 | 2,556,837 | 2,622,414 |

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TABLE OF END OF YEAR VALUES

| YEAR | PREMIUMS | GUARANTEED | | NONGUARANTEED | | |
|------|----------|----------------------|---------------|---------------|----------------------|---------------|
| | | CASH SURRENDER VALUE | DEATH BENEFIT | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT |
| 41 | 0 | | | 0 | 2,713,255 | 2,713,255 |

SUMMARY OF END OF YEAR VALUES

| YEAR | PREMIUMS | GUARANTEED | | NONGUARANTEED | | |
|--------|----------|----------------------|---------------|---------------|----------------------|---------------|
| | | CASH SURRENDER VALUE | DEATH BENEFIT | PREMIUMS | CASH SURRENDER VALUE | DEATH BENEFIT |
| 5 | 170,000 | 0 | 2,000,000 | 170,000 | 52,757 | 2,000,000 |
| 10 | 340,000 | 0 | 2,000,000 | 340,000 | 233,707 | 2,000,000 |
| 15 | 510,000 | 0 | 2,000,000 | 510,000 | 432,673 | 2,000,000 |
| 20 | 680,000 | 0 | 2,000,000 | 680,000 | 700,614 | 2,000,000 |
| AGE 65 | 204,000 | 0 | 2,000,000 | 204,000 | 87,625 | 2,000,000 |

**This Policy will lapse at this time unless a higher premium is paid.

This Policy will continue as long as premiums paid plus credited interest are sufficient to keep the policy in force and it has not terminated in accordance with any other policy provision.

Page 4 Of 4

There is a monthly administrative fee of \$4.65 per month.

A premium expense charge of 7% is deducted from each premium received.

The administrative fee for partial withdrawal is \$25.00.

A surrender charge is deducted from the policy value in determining the cash surrender value. The surrender charges applicable on the Policy Date are shown below:

| Policy Year | Surrender Charge |
|-------------|------------------|
| 1 | \$ 110,180.00 |
| 2 | 105,940.00 |
| 3 | 101,600.00 |
| 4 | 97,160.00 |
| 5 | 92,640.00 |
| 6 | 88,020.00 |
| 7 | 83,300.00 |
| 8 | 78,480.00 |
| 9 | 73,520.00 |
| 10 | 68,420.00 |
| 11 | 63,140.00 |
| 12 | 57,660.00 |
| 13 | 51,980.00 |
| 14 | 46,040.00 |
| 15 | 39,760.00 |
| 16 | 33,120.00 |
| 17 | 25,960.00 |
| 18 | 18,200.00 |
| 19 | 9,620.00 |
| 20 & Later | 0.00 |

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First Colony Life Insurance Company

A GE Financial Assurance Company
Home Office: 700 Main Street - Lynchburg, VA 24504
Service Center: P. O. Box 1280 - Lynchburg, VA 24505-1280
A Stock Company

The Company will pay the beneficiary the death proceeds as defined in this Policy. Payment will not be made until all of the following have been received at the Service Center:

- this Policy;
- due proof that the Insured died while this Policy was in force;
- a written claim for the death proceeds completed on a form supplied by the Company; and
- an authorization, on a form supplied by the Company, from a person authorized to allow the Company to obtain and disclose information concerning the Insured.

Any payment is subject to the provisions on this page and on the following pages.

The consideration for this Policy is the application and payment of the Initial Premium on or before policy delivery.

RIGHT TO EXAMINE POLICY. The Owner may return this Policy within 20 days after its delivery by taking it or mailing it to the Company or to any life insurance agent appointed by the Company. Immediately upon delivery or mailing, this Policy will be deemed void from the beginning. Any premium paid will be returned.

This Policy was signed on the Date of Issue.

Acting President

Secretary

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable During Insured's Lifetime
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating - No Dividends

| | | | |
|--------------------------|-----------------|---------------|-------------------|
| Insured | LESLIE S PINSOF | Policy Number | 2,957,767 |
| Initial Specified Amount | \$2,000,000 | Policy Date | OCTOBER 22, 1999 |
| Initial Premium | \$34,000.00 | Date of Issue | NOVEMBER 15, 1999 |

This Policy is a legal contract between the Owner and the Company.

READ YOUR POLICY CAREFULLY.

TABLE OF CONTENTS

| | Page | | Page |
|---|-------|--|-------|
| SCHEDULE | 3,4 | NONFORFEITURE PROVISIONS | |
| GENERAL DEFINITIONS | 5 | Policy Value | 12,13 |
| GENERAL PROVISIONS | | Monthly Deduction | 13 |
| The Contract | 5 | Cost of Insurance | 13 |
| Policy Date | 6 | Monthly Risk Rates | 14 |
| Owner and Beneficiary | 6 | Interest Rate | 14 |
| Change of Owner and Beneficiary | 6 | Changes in Rates, Charges and Fees | 14 |
| Assignment | 7 | Continuation of Insurance | 14 |
| Misstatement | 7 | Cash Surrender Value | 14 |
| Suicide | 7 | Surrender Charge | 14 |
| Incontestability | 7 | Surrender and Net Cash Surrender | |
| Payment of Proceeds | 7 | Value | 14 |
| Annual Report | 8 | Partial Withdrawal | 15 |
| Projection of Benefits and Values | 8 | Paid-Up Insurance | 15 |
| Nonparticipating | 8 | Basis of Computations | 16 |
| PREMIUM PROVISIONS | | POLICY LOANS | |
| Premium Payments | 8 | Cash Loan | 16 |
| Grace Period | 8 | Deferral | 16 |
| Minimum Monthly Premium Guarantee | 9 | Loan Interest and Repayment | 17 |
| Designated Monthly Premium | | SETTLEMENT OPTIONS | |
| Guarantee | 9 | General Provisions | 18 |
| Minimum Monthly Premiums and | | Death of Payee | 18 |
| Designated Monthly Premiums | 9 | First Installment | 18 |
| Refund of Premium | 9 | Interest | 18 |
| Reinstatement | 9,10 | Option 1 – Fixed Period | 18 |
| INSURANCE PROVISIONS | | Option 2 – Life Income with | |
| Death Benefit | 10 | Installments Certain | 18 |
| Changes in Death Benefit Option | 11 | Option 3 – Interest | 18 |
| Amount of the Death Proceeds | 11,12 | Option 4 – Fixed Installments | 18 |
| Changes in Specified Amount | 12 | Option 5 – Single Premium Annuity | 18 |
| | | Other Settlement Options | 18 |
| | | Option 1 Table | 19 |
| | | Option 2 Table | 19 |

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SCHEDULE

Flexible Premium Adjustable Life Insurance

Accelerated Death Benefit Rider

INITIAL PREMIUM - \$34,000.00
 SCHEDULED MODAL PREMIUM - \$34,000.00 ANNUALLY

Even if premiums are paid, this Policy may terminate if the premiums paid plus credited interest are insufficient to continue it in force.

MINIMUM MONTHLY PREMIUM - \$1,665.00
 MINIMUM MONTHLY PREMIUM PERIOD - First 20 policy years
 DESIGNATED MONTHLY PREMIUM - \$3,105.00
 PREMIUM EXPENSE CHARGE - 7% of each premium received
 MONTHLY ADMINISTRATIVE FEE - \$4.65 per month
 ADMINISTRATIVE FEE FOR PARTIAL WITHDRAWAL - \$25.00

GUARANTEED CREDITED INTEREST RATE - an annual effective rate of 4%. For purposes of the Cost of Insurance section, the monthly decimal equivalent of this rate is .0032737.

GUARANTEED POLICY LOAN INTEREST RATE(S) CHARGED - On the portion of the policy value equal to the preferred loan balance, the rate charged will be 4% a year. On the portion of the policy value equal to the nonpreferred loan balance, the rate charged will be a rate not greater than 6% a year.

MORTALITY TABLE - 1980 CSO NONSMOKER Mortality Table, Sex Distinct, Age Nearest Birthday

Insured: LESLIE S PINSOFF

Death Benefit Option: OPTION 1

Premium Class: PREFERRED NO NICOTINE USE

Initial Specified Amount: \$2,000,000

Age/Sex: 59 MALE

Beneficiary: TRUSTEE OF THE LESLIE S PINSOFF INSURANCE TRUST DATED JANUARY 4, 1995

Policy Date: OCTOBER 22, 1999

Date of Issue: NOVEMBER 15, 1999

Owner: TRUSTEE OF THE LESLIE S PINSOFF INSURANCE TRUST DATED JANUARY 4, 1995

Policy Number: 2,957,767

Pol No 2,957,767

SCHEDULE *CONTINUED*

Surrender Charge

| Policy Year | Surrender Charge |
|-------------|------------------|
| 1 | \$ 110,180.00 |
| 2 | 105,940.00 |
| 3 | 101,600.00 |
| 4 | 97,160.00 |
| 5 | 92,640.00 |
| 6 | 88,020.00 |
| 7 | 83,300.00 |
| 8 | 78,480.00 |
| 9 | 73,520.00 |
| 10 | 68,420.00 |
| 11 | 63,140.00 |
| 12 | 57,660.00 |
| 13 | 51,980.00 |
| 14 | 46,040.00 |
| 15 | 39,760.00 |
| 16 | 33,120.00 |
| 17 | 25,960.00 |
| 18 | 18,200.00 |
| 19 | 9,620.00 |
| 20 & later | 0.00 |

The surrender charge is deducted from the policy value in determining the cash surrender value.

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Pol No 2,957,767

SCHEDULE *CONTINUED*

Table of Guaranteed
Maximum Monthly Risk Rates

This Table shows the guaranteed maximum monthly risk rates for this Policy. The rates shown are for the Insured's attained age and sex and the Premium Class shown on page 3. If this Policy includes an extra risk rating, then the risk rates have been adjusted to include an additional amount for that rating.

| Attained Age | Monthly Rate Per \$1,000 Of Net Amount At Risk | Attained Age | Monthly Rate Per \$1,000 Of Net Amount At Risk |
|--------------|--|--------------|--|
| 59 | 0.960 | 80 | 8.160 |
| 60 | 1.060 | 81 | 8.970 |
| 61 | 1.170 | 82 | 9.900 |
| 62 | 1.290 | 83 | 10.950 |
| 63 | 1.440 | 84 | 12.120 |
| 64 | 1.600 | 85 | 13.370 |
| 65 | 1.780 | 86 | 14.700 |
| 66 | 1.970 | 87 | 16.080 |
| 67 | 2.180 | 88 | 17.500 |
| 68 | 2.410 | 89 | 18.970 |
| 69 | 2.650 | 90 | 20.510 |
| 70 | 2.930 | 91 | 22.170 |
| 71 | 3.300 | 92 | 23.990 |
| 72 | 3.620 | 93 | 26.070 |
| 73 | 4.040 | 94 | 28.780 |
| 74 | 4.520 | 95 | 32.820 |
| 75 | 5.040 | 96 | 39.640 |
| 76 | 5.590 | 97 | 53.070 |
| 77 | 6.180 | 98 | 83.330 |
| 78 | 6.790 | 99 & up | 83.330 |
| 79 | 7.440 | | |

Pol No 2,957,767

SCHEDULE *CONTINUED*

Table of End-of-Policy-Year Death Benefit Factors
for the Initial Specified Amount

This Table shows the death benefit factor applicable to this Policy during the last policy month of each policy year. The figures shown are based on the Insured's attained age and sex and the Premium Class shown on page 3.

| End of Policy Year | Death Benefit Factor | End of Policy Year | Death Benefit Factor |
|--------------------------|----------------------------|--------------------------|----------------------------|
| 1 | 1.9456803 | 22 | 1.2459308 |
| 2 | 1.8927868 | 23 | 1.2289176 |
| 3 | 1.8422248 | 24 | 1.2129740 |
| 4 | 1.7938774 | 25 | 1.1981492 |
| 5 | 1.7479443 | 26 | 1.1844677 |
| 6 | 1.7042390 | 27 | 1.1718306 |
| 7 | 1.6627162 | 28 | 1.1601376 |
| 8 | 1.6231751 | 29 | 1.1492128 |
| 9 | 1.5855384 | 30 | 1.1388472 |
| 10 | 1.5497088 | 31 | 1.1288241 |
| 11 | 1.5154742 | 32 | 1.1189122 |
| 12 | 1.4829036 | 33 | 1.1088824 |
| 13 | 1.4524340 | 34 | 1.0984381 |
| 14 | 1.4233001 | 35 | 1.0872223 |
| 15 | 1.3959140 | 36 | 1.0750228 |
| 16 | 1.3703141 | 37 | 1.0618409 |
| 17 | 1.3463815 | 38 | 1.0479892 |
| 18 | 1.3239348 | 39 | 1.0346294 |
| 19 | 1.3028472 | 40 | 1.0256477 |
| 20 | 1.2828902 | 41 & later | 1.0000000 |
| 21 | 1.2639274 | | |

For an explanation of these factors, refer to the Death Benefit section on page 10.

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GENERAL DEFINITIONS

Other specific definitions are included throughout this Policy.

Attained Age - The Age shown in the Schedule plus the number of whole years elapsed from the Policy Date.

Company - First Colony Life Insurance Company

Evidence - Evidence of the insurability of the Insured acceptable to the Company.

Date of Issue - The Date of Issue is shown in the Schedule. It is the date on which this Policy is considered to have been produced.

Initial Premium - The Initial Premium is shown in the Schedule. It is the premium received as part of the consideration for this Policy.

Notice - A written notice received at the Service Center in a form acceptable to the Company. It must include the Owner's signature, the date the notice was signed, and the policy number of this Policy.

Request - A written request received at the Service Center in a form acceptable to the Company. It must include the Owner's signature, the date the request was signed, and the policy number of this Policy. A Request is subject to Company approval.

Service Center - The office of the Company designated for the servicing of this Policy. All correspondence regarding this Policy should be sent to the Service Center.

Specified Amount - The Specified Amount equals:

- the Initial Specified Amount of this Policy; plus
- the sum of all subsequent increases in Specified Amount; less
- the sum of all subsequent decreases in Specified Amount.

GENERAL PROVISIONS

THE CONTRACT

The entire contract consists of the following:

- this Policy, including any applicable endorsements, riders and amendments;
- the application;
- any supplemental application for a policy change; and
- any application for reinstatement.

The application is evidenced by the copy that was attached to this Policy at issue or delivery. Any supplemental application or application for reinstatement will be evidenced by the copy sent to the Owner for attachment to this Policy following Company approval. For purposes of this section, any applications sent to the Owner will be considered to have been attached to this Policy at issue or delivery.

An application includes all sections and forms the Company has specifically designated as parts of that application. All statements made in an application are, in the absence of fraud, deemed representations and not warranties. No statement will void this Policy or be used in defense of a claim unless it is contained in an application attached to, or considered to have been attached to, this Policy when issued or delivered.

The Owner may amend this Policy during the Insured's lifetime with the Company's consent. Only an authorized officer of the Company can consent to change or waive policy provisions. Any change or waiver must be made in writing.

POLICY DATE

The Policy Date is the date from which:

- premiums for this Policy are payable; and
- policy anniversaries, policy years, policy months, and the Minimum Monthly Premium Period are measured.

The first policy year begins on the Policy Date. Subsequent policy years begin on the same date each year thereafter. A policy anniversary occurs at the beginning of each policy year after the first policy year. The first policy month begins on the Policy Date. Each subsequent policy month begins on the same day of the month as the Policy Date unless the month does not contain that day. In that case, the policy month will begin on the last day of the respective month.

Policy Dating When the Initial Premium is Received Before the Date of Issue - When the Initial Premium is received before the Date of Issue, the Policy Date of this Policy will be as shown in the Schedule.

Policy Dating When the Initial Premium is Received On Or After the Date of Issue - When the Initial Premium is received on or after the Date of Issue, coverage under this Policy will begin on the date of delivery. The Policy Date will be the same as the date of delivery unless on the date of delivery the Insured's age for insurance purposes would be different from the Age shown in the Schedule. In that case, the Policy Date will be the last day that the Age shown in the Schedule is applicable.

The date of delivery is the date on which this Policy is delivered to the Owner and the first modal premium is paid while all persons proposed for insurance are living and insurable as described in the application.

OWNER AND BENEFICIARY

The designations of Owner, Contingent Owner, Primary Beneficiary and Contingent Beneficiary are as shown in the application or as subsequently elected by the Owner in a Notice. If the Insured becomes the Owner, any designation of Contingent Owner is automatically revoked.

The Owner has all rights stated in this Policy. If the Owner is other than the Insured and the Owner dies or ceases to exist during the Insured's lifetime, all rights of the Owner vest in the surviving Contingent Owner and the Contingent Owner becomes the Owner. If there is no surviving Contingent Owner, all ownership rights vest in the Owner's estate (if the Owner is an individual) or the Owner's successor in interest (if the Owner is a non-natural person).

The interest of a beneficiary terminates if that beneficiary dies or ceases to exist before the Insured dies. Upon the Insured's death, the Company will pay the proceeds to any surviving Primary Beneficiaries. If there are no surviving Primary Beneficiaries, the Company will pay the proceeds to any surviving Contingent Beneficiaries. If there are no surviving beneficiaries, the Company will pay the surviving Owner. If there is no surviving Owner, the Company will pay the Owner's estate (if the Owner is an individual) or the Owner's successor in interest (if the Owner is a non-natural person).

CHANGE OF OWNER AND BENEFICIARY

The Owner may change the designations of Owner, Contingent Owner, and Primary and Contingent Beneficiary during the Insured's lifetime; Notice is required. The new designation will take effect as of the date the Owner signed the Notice. Such a change does not affect any payment made or other action taken by the Company before the Notice is received. If the designation of Owner is changed, any existing revocable beneficiary designations and any Contingent Owner designation are automatically revoked. The terms of an irrevocable beneficiary designation cannot be changed or revoked without the consent of that beneficiary.

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ASSIGNMENT

Only the Owner has the right to assign this Policy. No assignment will bind the Company until it has been recorded at the Service Center. The Company is not responsible for the validity or effect of any assignment of this Policy by the Owner.

MISSTATEMENT

If the Insured's age or sex is misstated, the Company will adjust the death benefit to the amount that the most recent cost of insurance will purchase based on the correct information.

SUICIDE

If the Insured, while sane or insane, dies by suicide within two years beginning with the Date of Issue, the death proceeds will be an amount equal to:

- the premiums paid; less
- the loan balance on the date of death; less
- any reductions in policy value for partial withdrawals from this Policy.

If the Insured, while sane or insane, dies by suicide within two years beginning with the effective date of an increase in Specified Amount but more than two years after the Date of Issue, the death proceeds will be an amount equal to:

- the Assumed Death Benefit; less
- the loan balance on the date of death.

The Assumed Death Benefit is equal to:

- the death benefit as defined in the **Death Benefit** section assuming the increase had not occurred; plus
- the difference between the monthly deductions that were deducted from the policy value and the monthly deductions that would have been deducted had the increase not occurred, accumulated at the interest rates credited to the policy value.

These proceeds may be further adjusted as explained in the second paragraph of the **Proceeds Payable at the Death of the Insured** section. Any premiums paid after the date of the Insured's death will be paid in addition to these proceeds.

INCONTESTABILITY

With respect to statements made in the application, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the Date of Issue. With respect to statements made in a supplemental application, the applicable policy change is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with its effective date. With respect to statements made in an application for reinstatement, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the date of reinstatement.

This provision does not apply to any rider providing additional benefits.

PAYMENT OF PROCEEDS

Proceeds means the amount that becomes payable upon the Insured's death or upon surrender of this Policy. The proceeds will be paid from the Service Center. This Policy must be returned to the Company. Unless paid in accordance with a settlement option, the proceeds will be paid in one sum.

ANNUAL REPORT

An annual report will be sent to the Owner. It will show the following for the period covered by the report:

- the actual policy values;
- all policy activity, including all credits and deductions; and
- any other information required by state law and regulation.

By comparing the actual policy values to the projection of values received when this Policy was purchased, the Owner can determine if this Policy is performing as planned. If asked, the Company will provide a new projection of values.

PROJECTION OF BENEFITS AND VALUES

The Owner may ask for a projection of illustrative future death benefits and policy values. A fee of up to \$25.00 may be charged for each projection after the first projection requested in a policy year.

NONPARTICIPATING

This Policy does not share in any distribution of surplus. No dividends are payable.

PREMIUM PROVISIONS

PREMIUM PAYMENTS

Each premium after the first is payable in advance at the Service Center or at the address designated by the Company for receipt of premium payments. Payment may be made to a Company life insurance agent but only in exchange for a receipt signed by an authorized officer of the Company and countersigned by the agent.

Premiums may be paid by any mutually agreeable method during the Insured's lifetime while this Policy is in force. The Owner may change the mode of premium payment to any mutually agreeable mode, including annual, semiannual, quarterly, and monthly bank draft.

When item (b) of either death benefit option applies, premium payments may substantially increase the death benefit; therefore, when item (b) applies, the Company may limit premium payments to the amount required to keep this Policy in force. The Company will not otherwise impose limits on the amount or timing of premium payments. Item (b) is defined in the **Death Benefit** section.

GRACE PERIOD

After the first policy month, a grace period of 62 days is provided under this Policy for payment of the amount required to keep this Policy from terminating. This Policy and all riders will stay in force during a grace period. Except as stated in the **Minimum Monthly Premium Guarantee** and **Designated Monthly Premium Guarantee** sections, this Policy will enter a grace period at the beginning of a policy month if the net cash surrender value is less than the monthly deduction for that month.

If this Policy enters a grace period, the Company will mail premium information to the Owner and any assignee of record at their last known addresses. If an amount sufficient to remove this Policy from the grace period is not paid, this Policy and all riders will terminate without value as of the later of the following:

- the 31st day after the Company mails the initial premium due notice for the grace period; and
- the 62nd day of the grace period.

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MINIMUM MONTHLY PREMIUM GUARANTEE

This guarantee applies during the Minimum Monthly Premium Period shown in the Schedule only if the loan balance has never exceeded the cash surrender value.

When this guarantee applies, this Policy will not enter a grace period provided the Minimum Monthly Premium Requirement is met. The Minimum Monthly Premium Requirement is met if the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals, equals or exceeds the sum of the minimum monthly premiums due from the Policy Date to the end of the current policy month.

DESIGNATED MONTHLY PREMIUM GUARANTEE

This guarantee applies only if:

- Option 1 was the death benefit option elected in the application;
- the death benefit option has never been changed;
- the Specified Amount has never been increased in accordance with the *Increases in Specified Amount* section; and
- the loan balance has never exceeded the cash surrender value.

When this guarantee applies, this Policy will not enter a grace period provided the Designated Monthly Premium Requirement is met. The Designated Monthly Premium Requirement is met if the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals, equals or exceeds the sum of the designated monthly premiums due from the Policy Date to the end of the current policy month.

MINIMUM MONTHLY PREMIUMS AND DESIGNATED MONTHLY PREMIUMS

The premiums in effect on the Policy Date are shown in the Schedule.

The minimum monthly and designated monthly premiums will change when any of the following occurs:

- a decrease in the Specified Amount of this Policy unless the change is due to a partial withdrawal;
- a change in any extra risk rating applicable to this Policy;
- a change in premium class;
- a change in the scheduled cost of any rider attached to this Policy; or
- the addition, deletion, or termination of any rider.

In addition, the minimum monthly premiums will change when either of the following occurs:

- an increase in the Specified Amount of this Policy; or
- a change in death benefit option.

The new monthly premiums will be effective from the date of any of the above changes. The Owner will be notified of the new premiums.

REFUND OF PREMIUM

No premium refunds will be made except as specifically stated in this Policy.

REINSTATEMENT

If this Policy has terminated according to the *Grace Period* section, the Owner may request reinstatement of this Policy. The following must be received at the Service Center within five years beginning with the date of termination:

- Evidence;
- payment or reinstatement of the loan balance; and
- payment of the Premium for Reinstatement. The amount of this Premium depends on the date of reinstatement.

After the Company has approved the application for reinstatement, this Policy, including any applicable surrender charges, minimum monthly premiums, and designated monthly premiums will be reinstated on the day the above conditions are satisfied, which is the date of reinstatement.

(Continued)

If the date of reinstatement occurs during the Minimum Monthly Premium Period, the Premium for Reinstatement will equal the lesser of the following amounts:

- the Reinstatement Minimum Premium; and
- the Reinstatement Net Cash Surrender Value.

If the date of reinstatement occurs at some other time and the Designated Monthly Premium Guarantee is in effect, the Premium for Reinstatement will equal the lesser of the following amounts:

- the Reinstatement Designated Premium; and
- the Reinstatement Net Cash Surrender Value.

If the date of reinstatement occurs at some other time and the Designated Monthly Premium Guarantee is not in effect, the Premium for Reinstatement will equal the Reinstatement Net Cash Surrender Value.

The Reinstatement Minimum Premium is an amount equal to:

- the sum of the minimum monthly premiums due from the Policy Date to the end of the period that contains the date that is two policy months after the date of reinstatement; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

The Reinstatement Designated Premium is an amount equal to:

- the sum of the designated monthly premiums due from the Policy Date to the end of the period that contains the date that is two policy months after the date of reinstatement; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

The Reinstatement Net Cash Surrender Value is an amount equal to:

- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of reinstatement; plus
- two monthly deductions.

INSURANCE PROVISIONS

DEATH BENEFIT

The death benefit depends on the option in effect on the date of the Insured's death. The Schedule shows the option in effect on the Policy Date.

OPTION 1

The death benefit under this option is the greater of the following amounts.

- (a) The Specified Amount as of the date of death.
- (b) The sum of the Factored Policy Values for all coverage layers.

OPTION 2

The death benefit under this option is the greater of the following amounts.

- (a) An amount equal to:
 - the policy value as of the date of death; plus
 - the Specified Amount as of the date of death.
- (b) The sum of the Factored Policy Values for all coverage layers.

The Factored Policy Value for a coverage layer is equal to:

- the policy value that has been allocated to that coverage layer as of the date of death; times
- the death benefit factor for that layer for the policy month of death.

Coverage layer is explained in the **Cost of Insurance** section.

The Schedule contains a Table of End-of-Policy-Year Death Benefit Factors for the Initial Specified Amount; monthly factors not shown are available upon request. A new set of death benefit factors may apply to an increase in Specified Amount; the Company will notify the Owner of these factors.

TRADE SECRET

TRADE
SECRET**CHANGES IN DEATH BENEFIT OPTION**

The Owner may file a Request for a change in the death benefit option. To change to Option 2, Evidence is also required. The Company will change the option effective at the beginning of the policy month following Company approval only if the death benefit on that date is the amount provided by item (a) of the option. The Company will notify the Owner regarding the change.

If the change is to Option 1, the Specified Amount after the change will not be less than the Specified Amount before the change plus the policy value on the effective date of the change. If the change is to Option 2, the Specified Amount after the change will equal the Specified Amount before the change less the policy value on the effective date of the change. These automatic adjustments to the Specified Amount are not considered to be changes made in accordance with the **Changes in Specified Amount** section. The first change to Option 2 will cancel the Designated Premium Guarantee if it is in effect on the effective date of the change.

AMOUNT OF THE DEATH PROCEEDS**Proceeds Payable at the Death of the Insured**

The death proceeds payable will be an amount equal to:

- the death benefit as defined in the **Death Benefit** section; less
- the loan balance as of the date of death.

Any premiums received at the Service Center after the date of death will be paid in addition to the death proceeds.

The amount of the death proceeds will be adjusted due to any of the following:

- misstatement as explained in the **Misstatement** section;
- a successful contest of this Policy in accordance with the **Incontestability** section; and
- death during the grace period as explained in the **Death During the Grace Period** section.

If the Insured dies by suicide, the amount of the death proceeds may be determined in accordance with the **Suicide** section.

Death During the Grace Period

If the Insured dies while this Policy is in a grace period, the premium required to remove this Policy from the grace period as of the date of death will be deducted from the death proceeds. The amount of this premium will depend on the date this Policy entered the grace period. If this Policy entered a grace period during the Minimum Monthly Premium Period, this premium will equal the lesser of the following:

- the Minimum Monthly Premium Balance; and
- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

If this Policy entered a grace period at some other time and the Designated Monthly Premium Guarantee was in effect, this premium will equal the lesser of the following:

- the Designated Monthly Premium Balance; and
- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

If this Policy entered a grace period at some other time and the Designated Premium Guarantee was not in effect, this premium will equal the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

The Minimum Monthly Premium Balance is an amount equal to:

- the sum of the minimum monthly premiums due from the Policy Date to the end of the policy month of death; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

(Continued)

The Designated Monthly Premium Balance is an amount equal to:

- the sum of the designated monthly premiums due from the Policy Date to the end of the policy month of death; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

CHANGES IN SPECIFIED AMOUNT

Increases in Specified Amount To increase the Specified Amount, the Owner must provide the following:

- a Request;
- a supplemental application; and
- Evidence.

The effective date of an increase in Specified Amount will be the beginning of the policy month on or immediately following Company approval of the increase. A new set of death benefit factors may apply to the increase. The first increase made in accordance with this section will cancel the Designated Monthly Premium Guarantee if it is in effect on the effective date of the increase.

Decreases in Specified Amount The Owner may decrease the Specified Amount by filing Notice. A decrease in Specified Amount will be effective at the beginning of the policy month on or immediately following the date Notice is received. Other than for a partial withdrawal, a decrease is applied:

- first, to reduce the amount provided by the most recent increase;
- next, to reduce the next most recent increases successively;
- finally, to reduce the Initial Specified Amount.

After the decrease, the death benefit cannot be less than \$25,000.

A charge will be taken for the decrease. In addition, the Company will adjust the surrender charges and death benefit factors. The policy value will be reduced by the amount of this charge; however, the policy value will not be reduced below zero. The Company will notify the Owner of the amount of the charge taken and of any adjustments to the surrender charge and death benefit factors. The Company will reduce the policy value and make the new charges and factors effective as of the effective date of the decrease.

NONFORFEITURE PROVISIONS

POLICY VALUE

The policy value on the Policy Date is equal to:

- any net premium credited on the Policy Date; less
- the monthly deduction for the first policy month.

The net premium is the premium paid less the Premium Expense Charge shown in the Schedule.

The policy value at the beginning of a policy month other than the first policy month equals:

- the policy value at the beginning of the preceding policy month accumulated with interest to the beginning of the current month; plus
- the net premiums credited to this Policy since the beginning of the preceding policy month; plus
- interest on each net premium from the day it was credited to this Policy to the beginning of the current month; less
- the reduction in policy value for each partial withdrawal made since the beginning of the preceding policy month; less
- interest on each reduction in policy value from the date of partial withdrawal to the beginning of the current month; less
- any charge taken for a decrease in Specified Amount which is effective at the beginning of the policy month; less
- the monthly deduction for the current month.

TRADE SECRET

The policy value on any other day equals:

- the policy value at the beginning of the policy month accumulated with interest to the day on which the policy value is being determined; plus
- the net premiums credited to this Policy after the beginning of the policy month; plus
- interest on each net premium from the day it was credited to this Policy to the day on which the policy value is being determined; less
- the reduction in policy value for each partial withdrawal made since the beginning of the policy month; less
- interest on each reduction in policy value from the date of partial withdrawal to the day on which the policy value is being determined.

MONTHLY DEDUCTION

The monthly deduction for a policy month includes:

- the cost of insurance for the policy month;
- the cost of riders for the policy month; and
- the Monthly Administrative Fee shown in the Schedule.

COST OF INSURANCE

The death benefit is divided into coverage layers for purposes of calculating the cost of insurance. Each coverage layer has its own cost of insurance rate and net amount at risk. On the Policy Date, there is only one coverage layer, the initial coverage layer. A new coverage layer is created when an increase in Specified Amount is made in accordance with the **Changes in Specified Amount** section or the death benefit becomes the amount provided by item (b) of either death benefit option. A decrease in Specified Amount, other than a decrease due to a death benefit option change, may eliminate all or a portion of a layer. The cost of insurance for a policy month is the sum of the costs of insurance for all coverage layers for that month.

The cost of insurance for a coverage layer for a policy month equals:

- the monthly cost of insurance rate per thousand for that layer, times
- the number of thousands of net amount at risk for that month for that layer.

The monthly cost of insurance rate per thousand equals:

- the monthly risk rate per thousand for the coverage layer; divided by,
- one (1) plus the monthly decimal equivalent of the interest rate used to calculate this cost of insurance rate.

The net amount at risk for a coverage layer for a policy month equals:

- the death benefit allocated to that layer; less
- the portion of the projected policy value at the end of the month allocated to that layer for the month.

The projected policy value at the end of a policy month is the policy value at the beginning of the month accumulated with interest to the end of the month at the rate(s) assumed to be credited for that month.

The Company will first allocate the projected policy value to the initial coverage layer. Any portion of the projected policy value that exceeds this initial layer will then be allocated to any additional coverage layers in the order in which they were created. For purposes of allocating the projected policy value, the coverage layer created when the death benefit becomes the amount provided by item (b) of either death benefit option is considered the most recently created coverage layer.

MONTHLY RISK RATES

The monthly risk rates for each coverage layer are based on the Insured's attained age and sex and the premium class for that coverage layer.

INTEREST RATE

The credited interest rate used to calculate the policy value will never be less than the Guaranteed Credited Interest Rate shown in the Schedule.

CHANGES IN RATES, CHARGES AND FEES

At its sole discretion, the Company may change the monthly risk rates and the credited interest rates. The monthly risk rates will not exceed the Guaranteed Maximum Monthly Risk rates and the credited interest rates will not be less than the Guaranteed Credited Interest Rate. The Guaranteed Maximum Monthly Risk rates and the Guaranteed Credited Interest Rate are shown in the Schedule.

The Company will base any change on its expectations as to future investment earnings, mortality, persistency, expenses and taxes. The Company will not make any change in order to recoup prior losses. Any change in the monthly risk rates will apply to all insureds with the same combination of the following: attained age; number of years of insurance in force; net amount of risk; and premium class.

CONTINUATION OF INSURANCE

This Policy will continue in force until the earlier of the following:

- it terminates in accordance with the **Grace Period** section;
- it terminates in accordance with the **Loan Interest and Repayment** section;
- it terminates upon the death of the Insured; and
- it terminates upon surrender in accordance with the **Surrender and Net Cash Surrender Value** section.

If premium payments are discontinued, this Policy will continue in force until it terminates as provided in the Grace Period section.

CASH SURRENDER VALUE

The cash surrender value on any day is equal to the policy value on that day less the surrender charge.

SURRENDER CHARGE

A surrender charge will be taken upon surrender of this Policy.

SURRENDER AND NET CASH SURRENDER VALUE

The Owner may surrender this Policy by filing Notice. Surrender occurs on the date of surrender provided the Insured is living on the date the Notice is signed. This Policy will terminate as of the date of surrender. A grace period does not apply to termination due to surrender.

The date of surrender will be one of the following:

- the date the Notice was signed if the Notice is received at the Service Center within 30 days after the date it was signed; or
- the date the Company receives the Notice if the Notice is received at the Service Center more than 30 days after the date it was signed.

The net cash surrender value is the amount payable on surrender. It equals:

- the cash surrender value on the date of surrender; less
- the loan balance on the date of surrender.

The Company may defer payment up to six months after Notice is received.

If the date of surrender is within 30 days after a policy anniversary, the net cash surrender value will not be less than:

- the net cash surrender value on the anniversary; less
- each policy loan made since the anniversary and the accrued interest on each loan; less
- the reduction in policy value for each partial withdrawal made since the anniversary and the interest on each reduction.

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PARTIAL WITHDRAWAL

The Owner may make a partial withdrawal by filing Notice. A partial withdrawal will be made on the date of partial withdrawal provided the Insured is then living and this Policy is not then being continued as paid-up insurance in accordance with the **Paid-Up Insurance** section. The date of partial withdrawal will be one of the following:

- the date the Notice was signed if the Notice is received at the Service Center within 30 days after the date it was signed; or
- the date the Company receives the Notice if the Notice is received at the Service Center more than 30 days after the date it was signed.

The maximum amount that may be paid to the Owner as a partial withdrawal is equal to the lesser of (1) and (2) below.

- (1) An amount equal to:
 - the net cash surrender value on the date of partial withdrawal less \$275.00; less
 - loan interest to the end of the policy year.
- (2) An amount such that the death benefit after the partial withdrawal is \$25,000.

Payment to the Owner may be deferred up to six months after Notice is received; however, a partial withdrawal to pay premiums to the Company will not be deferred.

The policy value is reduced on the date of partial withdrawal by an amount referred to as the reduction in policy value. The amount of this reduction is equal to:

- the amount paid to the Owner; plus
- the Administrative Fee for Partial Withdrawal shown in the Schedule.

The Specified Amount will be decreased on the date of partial withdrawal by an amount equal to the greater of (1) and (2) below.

- (1) The amount of the reduction in policy value less the greater of:
 - zero; and
 - the policy value immediately prior to the partial withdrawal less the result obtained by dividing the Specified Amount on the date of partial withdrawal by the death benefit factor applicable to the most recently created coverage layer on the date of partial withdrawal.
- (2) Zero.

A decrease in Specified Amount due to a partial withdrawal is applied:

- first, to reduce the Initial Specified Amount;
- next, to reduce all increases, starting with the first, in the order of such increases;
- finally, to reduce the amount provided by the most recent increase.

PAID-UP INSURANCE

If this Policy has a positive net cash surrender value, the Owner may elect to continue this Policy as a level amount of paid-up insurance; Notice is required. The effective date of the paid-up insurance will be the beginning of the policy month on or immediately following receipt of the Notice provided the Insured is then living.

The amount of this paid-up insurance will be that which the cash surrender value on the effective date of the paid-up insurance will provide when applied as a net single premium.

This paid-up insurance may be surrendered at any time. The amount payable on surrender is the net cash surrender value. The net cash surrender value is the cash surrender value less the loan balance. The cash surrender value is the net single premium for the benefits remaining under the paid-up insurance.

If the date of surrender is within 30 days after a policy anniversary, the net cash surrender value will not be less than:

- the net cash surrender value on the anniversary; less
- each policy loan made since the anniversary and the accrued interest on each loan.

BASIS OF COMPUTATIONS

The mortality tables and rates of interest used in calculating minimum policy values and net single premiums are shown in the Schedule. Values are at least equal to those required by statute in the state in which this Policy was delivered. A detailed statement of the method of computing these values has been filed with the insurance department of that state.

POLICY LOANS

CASH LOAN

The Company will make a loan upon the sole security and assignment of this Policy. The Owner may obtain the loan while this Policy is in force; Notice is required. The amount advanced as a policy loan will not exceed:

- the loan value; less
- the loan balance on the date the loan is to be made; less
- loan interest to the end of the policy year.

The loan value is equal to:

- the cash surrender value on the date the loan value is being determined; less
- the monthly deductions for the remainder of the current policy year. For purposes of determining the loan value, these monthly deductions are considered to be equal.

The loan balance at any time is equal to:

- the sum of all policy loans made; less
- the sum of all loan repayments; plus
- accrued loan interest.

The loan balance is segregated into preferred and nonpreferred loan balances. The Company will allocate a policy loan to the appropriate loan balance(s) at the time a loan is made. Only the first loan requested in a policy year is eligible for allocation to the preferred loan balance. The maximum amount of this first loan that the Company will allocate to the preferred loan balance is equal to:

- the policy value at the time the loan is made; less
- the loan balance immediately prior to the loan; less
- the sum of the premiums paid.

This amount will not be less than zero.

On a policy anniversary, the Company will reallocate the loan balance among the preferred and nonpreferred loan balances. The preferred loan balance after reallocation will not exceed an amount equal to:

- the policy value at the time of reallocation; less
- the sum of the premiums paid.

If this Policy is continued as paid-up insurance in accordance with the **Paid-Up Insurance** section, any preferred loan balance will be allocated to the nonpreferred loan balance on the date this Policy is continued as paid-up insurance. No further allocations will be made to the preferred loan balance as long as this Policy continues as paid-up insurance.

A loan repayment will be applied first to reduce the nonpreferred loan balance; any excess will then be applied to reduce the preferred loan balance.

DEFERRAL

The Company may defer making a policy loan up to six months after it receives Notice; however, a loan for payment of premiums to the Company will not be deferred.

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LOAN INTEREST AND REPAYMENT

The interest rate that will be charged on the preferred loan balance is 4% a year. The interest rate that may be charged on the nonpreferred loan balance will not exceed 6% a year.

Loan interest is due annually at the end of each policy year and on the earliest of these dates:

- the date of surrender of this Policy;
- the date of a loan repayment;
- the date of termination of this Policy; and
- the date of the Insured's death.

Interest accrues daily from the date a loan is made and is compounded annually. Loan interest for fractional years will be calculated using simple interest. Interest not paid when due is added to the loan and bears interest at the same rate.

All or any part of a policy loan may be repaid during the Insured's lifetime while this Policy is in force; however, a loan that is in existence when this Policy terminates in accordance with the **Grace Period** section may not be repaid unless this Policy is reinstated. Any amount paid to the Company that is not clearly marked as a loan repayment will be considered a premium payment.

When the loan balance exceeds the cash surrender value, this Policy will terminate. The Owner and any assignee of record will be notified of termination at their last known addresses. Termination will be effective 31 days after the notification is mailed.

SETTLEMENT OPTIONS

GENERAL PROVISIONS

Policy proceeds may be paid in a single sum or left with the Company for payment under one or more of the following settlement options. The amount applied under an option must be at least \$2,000. The amount of each payment under an option must be at least \$50.

The Owner may elect or revoke a settlement option at any time before the proceeds are payable. If no settlement option election is in effect at the time proceeds are payable, the payee may make an election. Notice must be filed at the Service Center. Election or revocation will take effect as of the date the Owner or payee signed the Notice. An election does not affect any payment made or other action taken by the Company before the Notice is received. A payee that is not a natural person may elect a settlement option only with the Company's consent. An assignee cannot elect any settlement option. Change of owner or beneficiary automatically revokes any election in effect.

DEATH OF PAYEE

Unless otherwise specified, at the death of the last payee a final payment will be made to the payee's estate. For Options 1 and 2, the final payment will be the commuted value of the remaining unpaid installments certain. Such value will be computed based on the rate of interest used in the calculation of the payments. For Options 3 and 4, the final payment will be the unpaid proceeds with any unpaid interest to the date of death of the payee.

FIRST INSTALLMENT

The first installment under Options 1, 2, and 4 is payable on the effective date of the option. The effective date is:

- the date of surrender of this Policy; or
- the date of the Insured's death; or
- any later date agreeable with the Company.

INTEREST

The guaranteed interest rate for Options 1, 2, 3, and 4 is 2 ½ % a year, compounded annually. Excess interest may be declared annually by the Company.

OPTION 1 - FIXED PERIOD

Proceeds will be paid for a fixed period. The amount of the payments is determined from the Option 1 Table - Fixed Period Installments.

OPTION 2 - LIFE INCOME WITH INSTALLMENTS CERTAIN

Proceeds will be paid in equal installments throughout the certain period. After the certain period, payments will continue to be made throughout the payee's lifetime. The amount and certain period of the payments are determined from the Option 2 Table - Life Income with Installments Certain. At some ages the same amount is payable for different periods certain. In such a case the Company will assume that the longest period was chosen. Satisfactory proof of the payee's age is required. The Company may require evidence that the payee is living on the due date of each payment.

OPTION 3 - INTEREST

Interest on the proceeds will be paid in the manner agreed upon when the option is elected.

OPTION 4 - FIXED INSTALLMENTS

Proceeds will be paid in fixed installments at regular intervals until proceeds, together with interest on the unpaid balance, are exhausted.

OPTION 5 - SINGLE PREMIUM ANNUITY

Proceeds will be used to purchase any single premium annuity the Company offers for this purpose at the time proceeds are applied. The annuity payments will be 102% of the payments otherwise purchased by the single premium.

OTHER SETTLEMENT OPTIONS

Proceeds may be applied in any other mutually agreeable manner.

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SETTLEMENT OPTIONS (Continued)

OPTION 1 TABLE – Fixed Period Installments

Installments for fixed number of years for each \$1,000 of proceeds

| Terms of Installment Payments | Annual | Semi-Annual | Quarterly | Monthly | Terms of Installment Payments | Annual | Semi-Annual | Quarterly | Monthly |
|-------------------------------|----------|-------------|-----------|---------|-------------------------------|----------|-------------|-----------|---------|
| Years | | | | | Years | | | | |
| 5 | \$210.00 | \$105.65 | \$52.89 | \$17.70 | 10 | \$111.48 | \$56.09 | \$28.13 | \$9.40 |
| 6 | 177.13 | 89.11 | 44.70 | 14.93 | 15 | 78.80 | 39.85 | 19.89 | 6.85 |
| 7 | 153.68 | 77.31 | 38.77 | 12.95 | 20 | 62.59 | 31.49 | 15.80 | 5.28 |
| 8 | 136.07 | 68.48 | 34.34 | 11.47 | 25 | 52.86 | 26.64 | 13.37 | 4.47 |
| 9 | 122.40 | 61.58 | 30.89 | 10.32 | 30 | 46.62 | 23.46 | 11.77 | 3.93 |

OPTION 2 TABLE – Life Income with Installments Certain

Monthly installments are shown for each \$1,000 of proceeds.
Age is age nearest birthday when the first installment is payable.

| Male | | | | | Female | | | | | Male | | | | | Female | | | | |
|------|-----------------------|--------|--------|--------|--------|-----------------------|--------|--------|--------|------|-----------------------|--------|--------|--------|--------|-----------------------|-----|-----|-----|
| Age | No. of Months Certain | | | | Age | No. of Months Certain | | | | Age | No. of Months Certain | | | | Age | No. of Months Certain | | | |
| | 60 | 120 | 180 | 240 | | 60 | 120 | 180 | 240 | | 60 | 120 | 180 | 240 | | 60 | 120 | 180 | 240 |
| 10* | \$2.52 | \$2.52 | \$2.52 | \$2.52 | 36 | \$3.09 | \$3.09 | \$3.08 | \$3.07 | 62 | \$4.93 | \$4.84 | \$4.67 | \$4.44 | | | | | |
| 11 | 2.53 | 2.53 | 2.53 | 2.53 | 37 | 3.13 | 3.12 | 3.12 | 3.10 | 63 | 5.06 | 4.98 | 4.77 | 4.50 | | | | | |
| 12 | 2.55 | 2.55 | 2.55 | 2.54 | 38 | 3.17 | 3.16 | 3.15 | 3.14 | 64 | 5.21 | 5.09 | 4.87 | 4.57 | | | | | |
| 13 | 2.56 | 2.56 | 2.56 | 2.56 | 39 | 3.21 | 3.20 | 3.19 | 3.17 | 65 | 5.36 | 5.22 | 4.97 | 4.63 | | | | | |
| 14 | 2.58 | 2.58 | 2.57 | 2.57 | 40 | 3.25 | 3.24 | 3.23 | 3.21 | 66 | 5.53 | 5.36 | 5.07 | 4.70 | | | | | |
| 15 | 2.59 | 2.59 | 2.59 | 2.59 | 41 | 3.29 | 3.28 | 3.27 | 3.25 | 67 | 5.70 | 5.50 | 5.18 | 4.78 | | | | | |
| 16 | 2.61 | 2.61 | 2.61 | 2.60 | 42 | 3.34 | 3.33 | 3.32 | 3.29 | 68 | 5.88 | 5.65 | 5.28 | 4.82 | | | | | |
| 17 | 2.62 | 2.62 | 2.62 | 2.62 | 43 | 3.39 | 3.38 | 3.36 | 3.33 | 69 | 6.08 | 5.81 | 5.38 | 4.87 | | | | | |
| 18 | 2.64 | 2.64 | 2.64 | 2.64 | 44 | 3.44 | 3.43 | 3.41 | 3.38 | 70 | 6.28 | 5.97 | 5.49 | 4.92 | | | | | |
| 19 | 2.66 | 2.66 | 2.66 | 2.65 | 45 | 3.49 | 3.48 | 3.46 | 3.42 | 71 | 6.50 | 6.14 | 5.59 | 4.97 | | | | | |
| 20 | 2.68 | 2.68 | 2.67 | 2.67 | 46 | 3.54 | 3.53 | 3.51 | 3.47 | 72 | 6.73 | 6.30 | 5.69 | 5.02 | | | | | |
| 21 | 2.70 | 2.69 | 2.69 | 2.69 | 47 | 3.60 | 3.58 | 3.56 | 3.52 | 73 | 6.97 | 6.48 | 5.78 | 5.06 | | | | | |
| 22 | 2.72 | 2.71 | 2.71 | 2.71 | 48 | 3.66 | 3.65 | 3.62 | 3.57 | 74 | 7.23 | 6.65 | 5.87 | 5.09 | | | | | |
| 23 | 2.74 | 2.73 | 2.73 | 2.73 | 49 | 3.72 | 3.71 | 3.67 | 3.62 | 75 | 7.49 | 6.83 | 5.96 | 5.12 | | | | | |
| 24 | 2.76 | 2.76 | 2.75 | 2.75 | 50 | 3.79 | 3.77 | 3.73 | 3.68 | 76 | 7.78 | 7.01 | 6.04 | 5.15 | | | | | |
| 25 | 2.78 | 2.78 | 2.77 | 2.77 | 51 | 3.86 | 3.84 | 3.80 | 3.73 | 77 | 8.07 | 7.19 | 6.12 | 5.18 | | | | | |
| 26 | 2.80 | 2.80 | 2.80 | 2.79 | 52 | 3.93 | 3.91 | 3.86 | 3.79 | 78 | 8.38 | 7.36 | 6.19 | 5.20 | | | | | |
| 27 | 2.82 | 2.82 | 2.82 | 2.82 | 53 | 4.01 | 3.98 | 3.93 | 3.85 | 79 | 8.71 | 7.54 | 6.26 | 5.21 | | | | | |
| 28 | 2.85 | 2.85 | 2.84 | 2.84 | 54 | 4.09 | 4.06 | 4.00 | 3.91 | 80 | 9.04 | 7.71 | 6.32 | 5.23 | | | | | |
| 29 | 2.88 | 2.87 | 2.87 | 2.86 | 55 | 4.17 | 4.14 | 4.07 | 3.97 | 81 | 9.39 | 7.87 | 6.37 | 5.24 | | | | | |
| 30 | 2.90 | 2.90 | 2.90 | 2.89 | 56 | 4.26 | 4.22 | 4.15 | 4.04 | 82 | 9.78 | 8.03 | 6.42 | 5.25 | | | | | |
| 31 | 2.93 | 2.93 | 2.92 | 2.92 | 57 | 4.36 | 4.31 | 4.23 | 4.10 | 83 | 10.13 | 8.19 | 6.46 | 5.26 | | | | | |
| 32 | 2.96 | 2.96 | 2.95 | 2.94 | 58 | 4.46 | 4.41 | 4.31 | 4.17 | 84 | 10.51 | 8.33 | 6.50 | 5.27 | | | | | |
| 33 | 2.99 | 2.99 | 2.98 | 2.97 | 59 | 4.57 | 4.51 | 4.40 | 4.23 | 85 | 10.90 | 8.46 | 6.53 | 5.27 | | | | | |
| 34 | 3.02 | 3.02 | 3.01 | 3.00 | 60 | 4.68 | 4.61 | 4.49 | 4.30 | | | | | | | | | | |
| 35 | 3.05 | 3.05 | 3.05 | 3.04 | 61 | 4.80 | 4.72 | 4.58 | 4.37 | | | | | | | | | | |
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* Applies to younger ages

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable During Insured's Lifetime
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating - No Dividends

**TRADE
SECRET**

TRADE SECRET

First Colony Life Insurance Company

LYNCHBURG, VIRGINIA

ACCELERATED DEATH BENEFIT RIDER

This Rider provides for an accelerated payment of life insurance proceeds. It is not intended or designed to provide health, nursing home, or long-term care insurance. Receipt of an accelerated death benefit payment will reduce the death proceeds of the Policy and limit the availability of any surrender or loan values provided by the Policy.

Disclosure: Receipt of an accelerated death benefit payment may be taxable. The Owner of the Policy should seek assistance from a tax advisor before electing to receive a payment.

BENEFIT

The Company will make an accelerated death benefit payment to the Owner of the Policy subject to the provisions of this Rider. The requirements for payment are:

- the Owner's written request for an accelerated death benefit payment;
- proof acceptable to the Company that the Owner is eligible for a payment according to the terms of this Rider;
- written approval of payment from any irrevocable beneficiary; and
- full release of any collateral assignment of the Policy except a collateral assignment to the Company.

Payment will be made in a single sum. The Company will make only one accelerated death benefit payment under this Rider.

The Company will not make an accelerated death benefit payment if:

- it does not receive all of the requirements for payment as stated above at its home office;
- the Policy is being continued as extended term insurance on the date payment is to be made;
- there is less than one year remaining until any expiry or maturity date for the Policy on the date payment is to be made; or
- the Policy is being contested or has been voided as the result of a successful contest.

BENEFIT LIMITATIONS

The Owner requests the amount of accelerated death benefit subject to the maximums stated below.

The maximum accelerated death benefit available for request is equal to the difference between (1) and (2) below.

1. An amount equal to the lesser of (a) and (b) below:
 - (a) The sum of the following:
 - 75% of the difference between the primary death benefit on the date the Company approves payment of an accelerated death benefit and the loan value on that date; and
 - the loan value on the date the Company approves payment of an accelerated death benefit.
 - (b) \$500,000.
2. The amount of any policy loan, including interest, against the Policy.

The primary death benefit is the death benefit provided by the Policy and does not include any accidental death benefits, the amount of the death benefit of any riders, or any benefits payable because of the death of any person other than the Insured. If the Policy provides for policy loans, loan value is defined in the Policy; otherwise, loan value is defined to be zero.

The maximum aggregate amount of accelerated death benefit payments the Company will make under all policies issued by the Company on the Insured's life is \$500,000.

ELIGIBILITY

To be eligible to receive an accelerated death benefit payment, the Owner must provide the following to the Company:

- evidence acceptable to the Company that the Insured is living and that the Insured's life expectancy does not exceed six months; this evidence must include, but is not limited to, certification by a physician approved by the Company who is licensed to practice medicine in the United States or Canada and is acting within the scope of that license;
- evidence that election of this benefit is voluntary and without coercion on the part of any third party, including any creditor or government agency; and
- evidence that only one of the Insureds is living if the Policy is a last survivor policy.

GENERAL PROVISIONS

Wherever used in this Rider, the term "Policy" means the Policy to which this Rider is attached. This Rider is a part of the Policy. Policy provisions apply to this Rider except where modified by this Rider.

If the Policy is in a grace period at the time an accelerated death benefit payment is made, the premium required to remove the Policy from the grace period will be deducted from the payment.

The Owner will remain liable for any required premium payments under the Policy after the Company makes an accelerated death benefit payment. After an accelerated death benefit payment has been made, the amount of any premium required to keep the Policy in force that is not paid or waived through the Owner's exercise of a waiver benefit will be added to the lien.

There is no premium or cost of insurance charge for this Rider; however, an administrative fee that will not exceed \$250 will be deducted from the accelerated death benefit prior to payment to the Owner.

EFFECT OF AN ACCELERATED DEATH BENEFIT PAYMENT

The accelerated death benefit will be treated as a lien against the primary death benefit. This lien will limit the availability of any surrender benefit and of any future policy loans or partial withdrawals (surrenders) under the Policy; they will be available only to the extent that values under the Policy exceed the sum of the lien amount and any outstanding policy loan. This lien will not affect the death benefit of any rider attached to the Policy however.

The lien amount at any time will equal:

- the amount of the accelerated death benefit payment made to the Owner; plus
- the administrative fee; plus
- the amount of any premium required to remove the Policy from the grace period; plus
- any unpaid premiums added to the lien; plus
- accrued lien interest; less
- any lien repayments.

Interest at the policy loan interest rate(s) stated in the Policy will be charged on the portion of the lien amount equal to the difference between the loan value and any outstanding policy loan. Interest will be charged on the portion of the lien amount that exceeds this difference at a rate no greater than the greater of:

- the current yield on a 90-day treasury bill on the date of payment; and
- the current maximum adjustable policy loan interest rate allowed by law on the date of payment in the state in which the Policy was delivered.

After payment of the accelerated death benefit, the proceeds payable under the Policy at the death of the Insured will equal:

- the death proceeds as defined in the Policy; less
- the lien amount as of the date of death.

TERMINATION

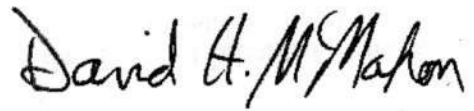
This Rider will terminate on the earliest of the following dates:

- the date of maturity or termination of the Policy; and
- the date the Owner's written request for termination of this Rider is signed; the request must be received at the home office.

If at any time the lien amount equals or exceeds the death proceeds as defined in the Policy, the Policy will terminate. Termination will occur 31 days after the Company has mailed notice of termination to the last known address of the Owner, unless all or part of the lien amount is repaid within 31 days after the date the notice is mailed. The Company will accept a partial repayment only if the death proceeds of the Policy would exceed the lien amount after application of the partial repayment.



Acting President



Secretary



First Colony Life Insurance Company

TRADE SECRET

A GE Financial Assurance Company
Home Office: 700 Main Street • Lynchburg, VA 24504
Service Center P. O. Box 1380 • Lynchburg, VA 24505-1280
A Stock Company

ENDORSEMENT

Insured Leslie S Pinsof

2957767 Policy Number

Incontestability Date October 22, 1999

The section of this Policy entitled "INCONTESTABILITY" under the heading "GENERAL PROVISIONS" is hereby amended to read in its entirety as follows:

"With respect to statements made in the application, this Policy is not contestable beginning with the Incontestability Date specified above provided this Policy is in force during the lifetime of the Insured on the specified date. With respect to statements made in a supplemental application, the applicable policy change is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with its effective date. With respect to statements made in an application for reinstatement, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the date of reinstatement.

This provision does not apply to any rider providing additional benefits."

The section of this Policy entitled "SUICIDE" under the heading "GENERAL PROVISIONS" is hereby amended to read in its entirety as follows:

"If the Insured, while sane or insane, dies by suicide while this Policy is in force and prior to, but not including, the Incontestability Date specified above, the death proceeds under this Policy will be an amount equal to:

- the premiums paid; less
- the loan balance on the date of death; less
- any reductions in policy value for partial withdrawals from this Policy.

If the Insured, while sane or insane, dies by suicide within two years beginning with the effective date of an increase in Specified Amount but on or after the Incontestability Date specified above, the death proceeds will be an amount equal to:

- the Assumed Death Benefit; less
- the loan balance on the date of death.

The Assumed Death Benefit is equal to:

- the death benefit as defined in the **Death Benefit** section assuming the increase had not occurred; plus
- the difference between the monthly deductions that were deducted from the policy value and the monthly deductions that would have been deducted had the increase not occurred, accumulated at the interest rates credited to the policy value.

These proceeds may be further adjusted as explained in the second paragraph of the **Proceeds Payable at the Death of the Insured** section. Any premiums paid after the date of the Insured's death will be paid in addition to these proceeds."

The first paragraph of the section of this Policy entitled "DEATH BENEFIT" under the heading "INSURANCE PROVISIONS" is hereby amended to read in its entirety as follows:

"The death benefit depends on the option in effect on the date of the Insured's death. The Schedule shows the option elected on the Policy Date."

David H. McMahon

Secretary

**TRADE
SECRET**

EXHIBIT #4

Here are your insurance documents from

First Colony Life Insurance Company

A GE Financial Assurance Company

policy# [REDACTED] 694



We bring good things to life.



First Colony Life Insurance Company
A GE Financial Assurance Company

Home Office
700 Main Street
Lynchburg, VA 24504

The Company will pay the beneficiary the death proceeds as defined in this Policy. Payment will not be made until all of the following have been received at the Service Center:

- this Policy;
- due proof that the Insured died while this Policy was in force;
- a written claim for the death proceeds completed on a form supplied by the Company; and
- an authorization, on a form supplied by the Company, from a person authorized to allow the Company to obtain and disclose information concerning the Insured.

Any payment is subject to the provisions on this page and on the following pages.

The consideration for this Policy is the application and payment of the Initial Premium on or before policy delivery.

RIGHT TO EXAMINE POLICY. The Owner may return this Policy within 20 days after its delivery by taking it or mailing it to the Company or to any life insurance agent appointed by the Company. Immediately upon delivery or mailing, this Policy will be deemed void from the beginning. Any premium paid will be returned.

This Policy was signed on the Date of Issue.

President

Secretary

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable During Insured's Lifetime
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating – No Dividends

| | | | |
|--------------------------|---------------------|---------------|----------------|
| Insured | RONALD L DAUBENMIER | Policy Number | ██████████ 694 |
| Initial Specified Amount | \$ 100,000 | Policy Date | JUNE 22, 2002 |
| Initial Premium | \$ 162.74 | Date of Issue | JULY 1, 2002 |

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This Policy is a legal contract between the Owner and the Company.

READ YOUR POLICY CAREFULLY.

TABLE OF CONTENTS

| | Page | | Page |
|---|-------|---|-------|
| SCHEDULE | 3,4 | NONFORFEITURE PROVISIONS | |
| GENERAL DEFINITIONS | 5 | Policy Value | 12,13 |
| GENERAL PROVISIONS | | Monthly Deduction | 13 |
| The Contract | 5 | Cost of Insurance | 13 |
| Policy Date | 6 | Monthly Risk Rates | 14 |
| Owner and Beneficiary | 6 | Interest Rate | 14 |
| Change of Owner and Beneficiary | 6 | Changes in Rates, Charges and Fees | 14 |
| Assignment | 7 | Cash Surrender Value | 14 |
| Misstatement | 7 | Surrender Charge | 14 |
| Suicide | 7 | Surrender and Net Cash Surrender Value | 14 |
| Incontestability | 7 | Partial Withdrawal | 15 |
| Payment of Proceeds | 7 | Paid-Up Insurance | 15 |
| Annual Report | 8 | Basis of Computations | 16 |
| Projection of Benefits and Values | 8 | POLICY LOANS | |
| Continuation of Insurance | 8 | Cash Loan | 16 |
| Nonparticipating | 8 | Deferral | 16 |
| PREMIUM PROVISIONS | | Loan Interest and Repayment | 17 |
| Premium Payments | 8 | SETTLEMENT OPTIONS | |
| Grace Period | 8 | General Provisions | 18 |
| Minimum Monthly Premium Guarantee | 9 | Death of Payee | 18 |
| Designated Monthly Premium Guarantee | 9 | First Installment | 18 |
| Minimum Monthly Premiums and Designated Monthly Premiums | 9 | Interest | 18 |
| Refund of Premium | 9 | Option 1 – Fixed Period | 18 |
| Reinstatement | 9,10 | Option 2 – Life Income with Installments Certain | 18 |
| INSURANCE PROVISIONS | | Option 3 – Interest | 18 |
| Death Benefit | 10 | Option 4 – Fixed Installments | 18 |
| Changes in Death Benefit Option | 11 | Option 5 – Single Premium Annuity | 18 |
| Amount of the Death Proceeds | 11,12 | Other Settlement Options | 18 |
| Changes in Specified Amount | 12 | Option 1 Table | 19 |
| | | Option 2 Table | 19 |

SCHEDULE
Flexible Premium Adjustable Life Insurance
Accelerated Death Benefit Rider

INITIAL PREMIUM - \$162.74
SCHEDULED MODAL PREMIUM - \$162.74 MONTHLY

Even if premiums are paid, this Policy may terminate if the premiums paid plus credited interest are insufficient to continue it in force.

MINIMUM MONTHLY PREMIUM - \$107.00

MINIMUM MONTHLY PREMIUM PERIOD - First 20 policy years

DESIGNATED MONTHLY PREMIUM - \$184.00 through attained age 100; \$0 thereafter

PREMIUM EXPENSE CHARGE - 7% of each premium received

MONTHLY ADMINISTRATIVE FEE - \$4.65 per month

ADMINISTRATIVE FEE FOR PARTIAL WITHDRAWAL - \$25.00

GUARANTEED CREDITED INTEREST RATE - an annual effective rate of 4%. For purposes of the Cost of Insurance section, the monthly decimal equivalent of this rate is .0032737.

GUARANTEED POLICY LOAN INTEREST RATE(S) CHARGED - On the portion of the policy value equal to the preferred loan balance, the rate charged will be 4% a year. On the portion of the policy value equal to the nonpreferred loan balance, the rate charged will be a rate not greater than 6% a year.

MORTALITY TABLE - 1980 CSO NONSMOKER Mortality Table, Sex Distinct, Age Nearest Birthday

Insured: RONALD L DAUBENMIER Death Benefit Option: OPTION 1

Premium: SELECT Initial Specified Amount: \$100,000
Class: NO NICOTINE USE

Age/Sex: 60 MALE

Beneficiary: Policy Date: JUNE 22, 2002

Date of Issue: JULY 1, 2002

Owner: RONALD L DAUBENMIER Policy Number: [REDACTED] 694

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Pol No [REDACTED] 694

SCHEDULE *CONTINUED*

Surrender Charge

| Policy Year | Surrender Charge |
|-------------|------------------|
| 1 | \$ 2,148.00 |
| 2 | 4,296.00 |
| 3 | 5,315.00 |
| 4 | 5,082.00 |
| 5 | 4,845.00 |
| 6 | 4,603.00 |
| 7 | 4,357.00 |
| 8 | 4,105.00 |
| 9 | 3,846.00 |
| 10 | 3,580.00 |
| 11 | 3,305.00 |
| 12 | 3,022.00 |
| 13 | 2,727.00 |
| 14 | 2,418.00 |
| 15 | 2,093.00 |
| 16 | 1,747.00 |
| 17 | 1,374.00 |
| 18 | 966.00 |
| 19 | 512.00 |
| 20 & later | 0.00 |

The surrender charge is deducted from the policy value in determining the cash surrender value.

S C H E D U L E *CONTINUED*

Table of Guaranteed
Maximum Monthly Risk Rates

This Table shows the guaranteed maximum monthly risk rates for this Policy. The rates shown are for the Insured's attained age and sex and the Premium Class shown on page 3. If this Policy includes an extra risk rating, then the risk rates have been adjusted to include an additional amount for that rating.

| Attained Age | Monthly Rate Per \$1,000 Of Net Amount At Risk | Attained Age | Monthly Rate Per \$1,000 Of Net Amount At Risk |
|--------------|---|--------------|---|
| 60 | 1.060 | 80 | 8.160 |
| 61 | 1.170 | 81 | 8.970 |
| 62 | 1.290 | 82 | 9.900 |
| 63 | 1.440 | 83 | 10.950 |
| 64 | 1.600 | 84 | 12.120 |
| 65 | 1.780 | 85 | 13.370 |
| 66 | 1.970 | 86 | 14.700 |
| 67 | 2.180 | 87 | 16.080 |
| 68 | 2.410 | 88 | 17.500 |
| 69 | 2.650 | 89 | 18.970 |
| 70 | 2.930 | 90 | 20.510 |
| 71 | 3.300 | 91 | 22.170 |
| 72 | 3.620 | 92 | 23.990 |
| 73 | 4.040 | 93 | 26.070 |
| 74 | 4.520 | 94 | 28.780 |
| 75 | 5.040 | 95 | 32.820 |
| 76 | 5.590 | 96 | 39.640 |
| 77 | 6.180 | 97 | 53.070 |
| 78 | 6.790 | 98 | 83.330 |
| 79 | 7.440 | 99 & up | 83.330 |

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S C H E D U L E *CONTINUED*

Table of End-of-Policy-Year Death Benefit Factors
for the Initial Specified Amount

This Table shows the death benefit factor applicable to this Policy during the last policy month of each policy year. The figures shown are based on the Insured's attained age and sex and the Premium Class shown on page 3.

| End of Policy Year | Death Benefit Factor | End of Policy Year | Death Benefit Factor |
|--------------------------|----------------------------|--------------------------|----------------------------|
| 1 | 1.8927868 | 21 | 1.2459308 |
| 2 | 1.8422248 | 22 | 1.2289176 |
| 3 | 1.7938774 | 23 | 1.2129740 |
| 4 | 1.7479443 | 24 | 1.1981492 |
| 5 | 1.7042390 | 25 | 1.1844677 |
| 6 | 1.6627162 | 26 | 1.1718306 |
| 7 | 1.6231751 | 27 | 1.1601376 |
| 8 | 1.5855384 | 28 | 1.1492128 |
| 9 | 1.5497088 | 29 | 1.1388472 |
| 10 | 1.5154742 | 30 | 1.1288241 |
| 11 | 1.4829036 | 31 | 1.1189122 |
| 12 | 1.4524340 | 32 | 1.1088824 |
| 13 | 1.4233001 | 33 | 1.0984381 |
| 14 | 1.3959140 | 34 | 1.0872223 |
| 15 | 1.3703141 | 35 | 1.0750228 |
| 16 | 1.3463815 | 36 | 1.0618409 |
| 17 | 1.3239348 | 37 | 1.0479892 |
| 18 | 1.3028472 | 38 | 1.0346294 |
| 19 | 1.2828902 | 39 | 1.0256477 |
| 20 | 1.2639274 | 40 & later | 1.0000000 |

For an explanation of these factors, refer to the Death Benefit section on page 10.

GENERAL DEFINITIONS

Other specific definitions are included throughout this Policy.

Attained Age - The Age shown in the Schedule plus the number of whole years elapsed from the Policy Date.

Company - First Colony Life Insurance Company

Evidence - Evidence of the insurability of the Insured acceptable to the Company.

Date of Issue – The Date of Issue is shown in the Schedule. It is the date on which this Policy is considered to have been produced.

Initial Premium – The Initial Premium is shown in the Schedule. It is the premium received as part of the consideration for this Policy.

Notice - A written notice received at the Service Center in a form acceptable to the Company. It must include the Owner's signature, the date the notice was signed, and the policy number of this Policy.

Request - A written request received at the Service Center in a form acceptable to the Company. It must include the Owner's signature, the date the request was signed, and the policy number of this Policy. A Request is subject to Company approval.

Service Center - The office of the Company designated for the servicing of this Policy. All correspondence regarding this Policy should be sent to the Service Center.

Specified Amount - The Specified Amount equals:

- the Initial Specified Amount of this Policy; plus
- the sum of all subsequent increases in Specified Amount; less
- the sum of all subsequent decreases in Specified Amount.

GENERAL PROVISIONS

THE CONTRACT

The entire contract consists of the following:

- this Policy, including any applicable endorsements, riders and amendments;
- the application;
- any supplemental application for a policy change; and
- any application for reinstatement.

The application is evidenced by the copy that was attached to this Policy at issue or delivery. Any supplemental application or application for reinstatement will be evidenced by the copy sent to the Owner for attachment to this Policy following Company approval. For purposes of this section, any applications sent to the Owner will be considered to have been attached to this Policy at issue or delivery.

An application includes all sections and forms the Company has specifically designated as parts of that application. All statements made in an application are, in the absence of fraud, deemed representations and not warranties. No statement will void this Policy or be used in defense of a claim unless it is contained in an application attached to, or considered to have been attached to, this Policy when issued or delivered.

The Owner may amend this Policy during the Insured's lifetime with the Company's consent. Only an authorized officer of the Company can consent to change or waive policy provisions. Any change or waiver must be made in writing.

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POLICY DATE

The Policy Date is the date from which:

- premiums for this Policy are payable; and
- policy anniversaries, policy years, policy months, and the Minimum Monthly Premium Period are measured.

The first policy year begins on the Policy Date. Subsequent policy years begin on the same date each year thereafter. A policy anniversary occurs at the beginning of each policy year after the first policy year. The first policy month begins on the Policy Date. Each subsequent policy month begins on the same day of the month as the Policy Date unless the month does not contain that day. In that case, the policy month will begin on the last day of the respective month.

Policy Dating When the Initial Premium is Received Before the Date of Issue - When the Initial Premium is received before the Date of Issue, the Policy Date of this Policy will be as shown in the Schedule.

Policy Dating When the Initial Premium is Received On Or After the Date of Issue - When the Initial Premium is received on or after the Date of Issue, coverage under this Policy will begin on the date of delivery. The Policy Date will be the same as the date of delivery unless on the date of delivery the Insured's age for insurance purposes would be different from the Age shown in the Schedule. In that case, the Policy Date will be the last day that the Age shown in the Schedule is applicable.

The date of delivery is the date on which this Policy is delivered to the Owner and the first modal premium is paid while all persons proposed for insurance are living and insurable as described in the application.

OWNER AND BENEFICIARY

The designations of Owner, Contingent Owner, Primary Beneficiary and Contingent Beneficiary are as shown in the application or as subsequently elected by the Owner in a Notice. If the Insured becomes the Owner, any designation of Contingent Owner is automatically revoked.

The Owner has all rights stated in this Policy. If the Owner is other than the Insured and the Owner dies or ceases to exist during the Insured's lifetime, all rights of the Owner vest in the surviving Contingent Owner and the Contingent Owner becomes the Owner. If there is no surviving Contingent Owner, all ownership rights vest in the Owner's estate (if the Owner is an individual) or the Owner's successor in interest (if the Owner is a non-natural person).

The interest of a beneficiary terminates if that beneficiary dies or ceases to exist before the Insured dies. Upon the Insured's death, the Company will pay the proceeds to any surviving Primary Beneficiaries. If there are no surviving Primary Beneficiaries, the Company will pay the proceeds to any surviving Contingent Beneficiaries. If there are no surviving beneficiaries, the Company will pay the surviving Owner. If there is no surviving Owner, the Company will pay the Owner's estate (if the Owner is an individual) or the Owner's successor in interest (if the Owner is a non-natural person).

CHANGE OF OWNER AND BENEFICIARY

The Owner may change the designations of Owner, Contingent Owner, and Primary and Contingent Beneficiary during the Insured's lifetime; Notice is required. The new designation will take effect as of the date the Owner signed the Notice. Such a change does not affect any payment made or other action taken by the Company before the Notice is received. If the designation of Owner is changed, any existing revocable beneficiary designations and any Contingent Owner designation are automatically revoked. The terms of an irrevocable beneficiary designation cannot be changed or revoked without the consent of that beneficiary.

ASSIGNMENT

Only the Owner has the right to assign this Policy. No assignment will bind the Company until it has been recorded at the Service Center. The Company is not responsible for the validity or effect of any assignment of this Policy by the Owner.

MISSTATEMENT

If the Insured's age or sex is misstated, the Company will adjust the death benefit to the amount that the most recent cost of insurance will purchase based on the correct information.

SUICIDE

If the Insured, while sane or insane, dies by suicide within two years beginning with the Date of Issue, the death proceeds will be an amount equal to:

- the premiums paid; less
- the loan balance on the date of death; less
- any reductions in policy value for partial withdrawals from this Policy.

If the Insured, while sane or insane, dies by suicide within two years beginning with the effective date of an increase in Specified Amount but more than two years after the Date of Issue, the death proceeds will be an amount equal to:

- the Assumed Death Benefit; less
- the loan balance on the date of death.

The Assumed Death Benefit is equal to:

- the death benefit as defined in the **Death Benefit** section assuming the increase had not occurred; plus
- the difference between the monthly deductions that were deducted from the policy value and the monthly deductions that would have been deducted had the increase not occurred, accumulated at the interest rates credited to the policy value.

These proceeds may be further adjusted as explained in the second paragraph of the **Proceeds Payable at the Death of the Insured** section. Any premiums paid after the date of the Insured's death will be paid in addition to these proceeds.

INCONTESTABILITY

With respect to statements made in the application, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the Date of Issue. With respect to statements made in a supplemental application, the applicable policy change is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with its effective date. With respect to statements made in an application for reinstatement, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the date of reinstatement.

This provision does not apply to any rider providing additional benefits.

PAYMENT OF PROCEEDS

Proceeds means the amount that becomes payable upon the Insured's death or upon surrender of this Policy. The proceeds will be paid from the Service Center. This Policy must be returned to the Company. Unless paid in accordance with a settlement option, the proceeds will be paid in one sum.

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ANNUAL REPORT

An annual report will be sent to the Owner. It will show the following for the period covered by the report:

- the actual policy values;
- all policy activity, including all credits and deductions; and
- any other information required by state law and regulation.

By comparing the actual policy values to the projection of values received when this Policy was purchased, the Owner can determine if this Policy is performing as planned. If asked, the Company will provide a new projection of values.

PROJECTION OF BENEFITS AND VALUES

The Owner may ask for a projection of illustrative future death benefits and policy values. A fee of up to \$25.00 may be charged for each projection after the first projection requested in a policy year.

CONTINUATION OF INSURANCE

This Policy will continue in force until the earlier of the following:

- it terminates in accordance with the **Grace Period** section;
- it terminates in accordance with the **Loan Interest and Repayment** section;
- it terminates upon the death of the Insured; and
- it terminates upon surrender in accordance with the **Surrender and Net Cash Surrender Value** section.

NONPARTICIPATING

This Policy does not share in any distribution of surplus. No dividends are payable.

PREMIUM PROVISIONS

PREMIUM PAYMENTS

Each premium after the first is payable in advance at the Service Center or at the address designated by the Company for receipt of premium payments. Payment may be made to a Company life insurance agent but only in exchange for a receipt signed by an authorized officer of the Company and countersigned by the agent.

Premiums may be paid by any mutually agreeable method during the Insured's lifetime while this Policy is in force. The Owner may change the mode of premium payment to any mutually agreeable mode, including annual, semiannual, quarterly, and monthly bank draft.

When item (b) of either death benefit option applies, premium payments may substantially increase the death benefit; therefore, when item (b) applies, the Company may limit premium payments to the amount required to keep this Policy in force. The Company will not otherwise impose limits on the amount or timing of premium payments. Item (b) is defined in the **Death Benefit** section.

GRACE PERIOD

After the first policy month, a grace period of 62 days is provided under this Policy for payment of the amount required to keep this Policy from terminating. This Policy and all riders will stay in force during a grace period. Except as stated in the **Minimum Monthly Premium Guarantee** and **Designated Monthly Premium Guarantee** sections, this Policy will enter a grace period at the beginning of a policy month if the net cash surrender value is less than the monthly deduction for that month.

If this Policy enters a grace period, the Company will mail premium information to the Owner and any assignee of record at their last known addresses. If an amount sufficient to remove this Policy from the grace period is not paid, this Policy and all riders will terminate without value as of the later of the following:

- the 31st day after the Company mails the initial premium due notice for the grace period; and
- the 62nd day of the grace period.

MINIMUM MONTHLY PREMIUM GUARANTEE

This guarantee applies during the Minimum Monthly Premium Period shown in the Schedule only if the loan balance has never exceeded the cash surrender value.

When this guarantee applies, this Policy will not enter a grace period provided the Minimum Monthly Premium Requirement is met. The Minimum Monthly Premium Requirement is met if the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals, equals or exceeds the sum of the minimum monthly premiums due from the Policy Date to the end of the current policy month.

DESIGNATED MONTHLY PREMIUM GUARANTEE

This guarantee applies only if:

- Option 1 was the death benefit option elected in the application;
- the death benefit option has never been changed;
- the Specified Amount has never been increased in accordance with the ***Increases in Specified Amount*** section; and
- the loan balance has never exceeded the cash surrender value.

When this guarantee applies, this Policy will not enter a grace period provided the Designated Monthly Premium Requirement is met. The Designated Monthly Premium Requirement is met if the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals, equals or exceeds the sum of the designated monthly premiums due from the Policy Date to the end of the current policy month.

MINIMUM MONTHLY PREMIUMS AND DESIGNATED MONTHLY PREMIUMS

The premiums in effect on the Policy Date are shown in the Schedule.

The minimum monthly and designated monthly premiums will change when any of the following occurs:

- a decrease in the Specified Amount of this Policy unless the change is due to a partial withdrawal;
- a change in any extra risk rating applicable to this Policy;
- a change in premium class;
- a change in the scheduled cost of any rider attached to this Policy; or
- the addition, deletion, or termination of any rider.

In addition, the minimum monthly premiums will change when either of the following occurs:

- an increase in the Specified Amount of this Policy; or
- a change in death benefit option.

The new monthly premiums will be effective from the date of any of the above changes. The Owner will be notified of the new premiums.

REFUND OF PREMIUM

No premium refunds will be made except as specifically stated in this Policy.

REINSTATEMENT

If this Policy has terminated according to the ***Grace Period*** section, the Owner may request reinstatement of this Policy. The following must be received at the Service Center within five years beginning with the date of termination:

- Evidence;
- payment or reinstatement of the loan balance; and
- payment of the Premium for Reinstatement. The amount of this Premium depends on the date of reinstatement.

After the Company has approved the application for reinstatement, this Policy, including any applicable surrender charges, minimum monthly premiums, and designated monthly premiums will be reinstated on the day the above conditions are satisfied, which is the date of reinstatement.

(Continued)



If the date of reinstatement occurs during the Minimum Monthly Premium Period, the Premium for Reinstatement will equal the lesser of the following amounts:

- the Reinstatement Minimum Premium; and
- the Reinstatement Net Cash Surrender Value.

If the date of reinstatement occurs at some other time and the Designated Monthly Premium Guarantee is in effect, the Premium for Reinstatement will equal the lesser of the following amounts:

- the Reinstatement Designated Premium; and
- the Reinstatement Net Cash Surrender Value.

If the date of reinstatement occurs at some other time and the Designated Monthly Premium Guarantee is not in effect, the Premium for Reinstatement will equal the Reinstatement Net Cash Surrender Value.

The Reinstatement Minimum Premium is an amount equal to:

- the sum of the minimum monthly premiums due from the Policy Date to the end of the period that contains the date that is two policy months after the date of reinstatement; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

The Reinstatement Designated Premium is an amount equal to:

- the sum of the designated monthly premiums due from the Policy Date to the end of the period that contains the date that is two policy months after the date of reinstatement; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

The Reinstatement Net Cash Surrender Value is an amount equal to:

- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of reinstatement; plus
- two monthly deductions.

INSURANCE PROVISIONS

DEATH BENEFIT

The death benefit depends on the option in effect on the date of the Insured's death. The Schedule shows the option in effect on the Policy Date.

OPTION 1

The death benefit under this option is the greater of the following amounts.

- (a) The Specified Amount as of the date of death.
- (b) The sum of the Factored Policy Values for all coverage layers.

OPTION 2

The death benefit under this option is the greater of the following amounts.

- (a) An amount equal to:
 - the policy value as of the date of death; plus
 - the Specified Amount as of the date of death.
- (b) The sum of the Factored Policy Values for all coverage layers.

The Factored Policy Value for a coverage layer is equal to:

- the policy value that has been allocated to that coverage layer as of the date of death; times
- the death benefit factor for that layer for the policy month of death.

Coverage layer is explained in the **Cost of Insurance** section.

The Schedule contains a Table of End-of-Policy-Year Death Benefit Factors for the Initial Specified Amount; monthly factors not shown are available upon request. A new set of death benefit factors may apply to an increase in Specified Amount; the Company will notify the Owner of these factors.

CHANGES IN DEATH BENEFIT OPTION

The Owner may file a Request for a change in the death benefit option. To change to Option 2, Evidence is also required. The Company will change the option effective at the beginning of the policy month following Company approval only if the death benefit on that date is the amount provided by item (a) of the option. The Company will notify the Owner regarding the change.

If the change is to Option 1, the Specified Amount after the change will not be less than the Specified Amount before the change plus the policy value on the effective date of the change. If the change is to Option 2, the Specified Amount after the change will equal the Specified Amount before the change less the policy value on the effective date of the change. These automatic adjustments to the Specified Amount are not considered to be changes made in accordance with the **Changes in Specified Amount** section. The first change to Option 2 will cancel the Designated Premium Guarantee if it is in effect on the effective date of the change.

AMOUNT OF THE DEATH PROCEEDS

Proceeds Payable at the Death of the Insured

The death proceeds payable will be an amount equal to:

- the death benefit as defined in the **Death Benefit** section; less
- the loan balance as of the date of death.

Any premiums received at the Service Center after the date of death will be paid in addition to the death proceeds.

The amount of the death proceeds will be adjusted due to any of the following:

- misstatement as explained in the **Misstatement** section;
- a successful contest of this Policy in accordance with the **Incontestability** section; and
- death during the grace period as explained in the **Death During the Grace Period** section.

If the Insured dies by suicide, the amount of the death proceeds may be determined in accordance with the **Suicide** section.

Death During the Grace Period

If the Insured dies while this Policy is in a grace period, the premium required to remove this Policy from the grace period as of the date of death will be deducted from the death proceeds. The amount of this premium will depend on the date this Policy entered the grace period. If this Policy entered a grace period during the Minimum Monthly Premium Period, this premium will equal the lesser of the following:

- the Minimum Monthly Premium Balance; and
- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

If this Policy entered a grace period at some other time and the Designated Monthly Premium Guarantee was in effect, this premium will equal the lesser of the following:

- the Designated Monthly Premium Balance; and
- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

If this Policy entered a grace period at some other time and the Designated Premium Guarantee was not in effect, this premium will equal the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

The Minimum Monthly Premium Balance is an amount equal to:

- the sum of the minimum monthly premiums due from the Policy Date to the end of the policy month of death; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

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The Designated Monthly Premium Balance is an amount equal to:

- the sum of the designated monthly premiums due from the Policy Date to the end of the policy month of death; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

CHANGES IN SPECIFIED AMOUNT

Increases in Specified Amount To increase the Specified Amount, the Owner must provide the following:

- a Request;
- a supplemental application; and
- Evidence.

The effective date of an increase in Specified Amount will be the beginning of the policy month on or immediately following Company approval of the increase. A new set of death benefit factors may apply to the increase. The first increase made in accordance with this section will cancel the Designated Monthly Premium Guarantee if it is in effect on the effective date of the increase.

Decreases in Specified Amount The Owner may decrease the Specified Amount by filing Notice. A decrease in Specified Amount will be effective at the beginning of the policy month on or immediately following the date Notice is received. Other than for a partial withdrawal, a decrease is applied:

- first, to reduce the amount provided by the most recent increase;
- next, to reduce the next most recent increases successively;
- finally, to reduce the Initial Specified Amount.

After the decrease, the death benefit cannot be less than \$25,000.

A charge will be taken for the decrease. In addition, the Company will adjust the surrender charges and death benefit factors. The policy value will be reduced by the amount of this charge; however, the policy value will not be reduced below zero. The Company will notify the Owner of the amount of the charge taken and of any adjustments to the surrender charge and death benefit factors. The Company will reduce the policy value and make the new charges and factors effective as of the effective date of the decrease.

NONFORFEITURE PROVISIONS

POLICY VALUE

The policy value on the Policy Date is equal to:

- any net premium credited on the Policy Date; less
- the monthly deduction for the first policy month.

The net premium is the premium paid less the Premium Expense Charge shown in the Schedule.

The policy value at the beginning of a policy month other than the first policy month equals:

- the policy value at the beginning of the preceding policy month accumulated with interest to the beginning of the current month; plus
- the net premiums credited to this Policy since the beginning of the preceding policy month; plus
- interest on each net premium from the day it was credited to this Policy to the beginning of the current month; less
- the reduction in policy value for each partial withdrawal made since the beginning of the preceding policy month; less
- interest on each reduction in policy value from the date of partial withdrawal to the beginning of the current month; less
- any charge taken for a decrease in Specified Amount which is effective at the beginning of the policy month; less
- the monthly deduction for the current month.

The policy value on any other day equals:

- the policy value at the beginning of the policy month accumulated with interest to the day on which the policy value is being determined; plus
- the net premiums credited to this Policy after the beginning of the policy month; plus
- interest on each net premium from the day it was credited to this Policy to the day on which the policy value is being determined; less
- the reduction in policy value for each partial withdrawal made since the beginning of the policy month; less
- interest on each reduction in policy value from the date of partial withdrawal to the day on which the policy value is being determined.

MONTHLY DEDUCTION

The monthly deduction for a policy month includes:

- the cost of insurance for the policy month;
- the cost of riders for the policy month; and
- the Monthly Administrative Fee shown in the Schedule.

COST OF INSURANCE

The death benefit is divided into coverage layers for purposes of calculating the cost of insurance. Each coverage layer has its own cost of insurance rate and net amount at risk. On the Policy Date, there is only one coverage layer, the initial coverage layer. A new coverage layer is created when an increase in Specified Amount is made in accordance with the **Changes in Specified Amount** section or the death benefit becomes the amount provided by item (b) of either death benefit option. A decrease in Specified Amount, other than a decrease due to a death benefit option change, may eliminate all or a portion of a layer. The cost of insurance for a policy month is the sum of the costs of insurance for all coverage layers for that month.

The cost of insurance for a coverage layer for a policy month equals:

- the monthly cost of insurance rate per thousand for that layer; times
- the number of thousands of net amount at risk for that month for that layer.

The monthly cost of insurance rate per thousand equals:

- the monthly risk rate per thousand for the coverage layer; divided by
- one (1) plus the monthly decimal equivalent of the interest rate used to calculate this cost of insurance rate.

The net amount at risk for a coverage layer for a policy month equals:

- the death benefit allocated to that layer; less
- the portion of the projected policy value at the end of the month allocated to that layer for the month.

The projected policy value at the end of a policy month is the policy value at the beginning of the month accumulated with interest to the end of the month at the rate(s) assumed to be credited for that month.

The Company will first allocate the projected policy value to the initial coverage layer. Any portion of the projected policy value that exceeds this initial layer will then be allocated to any additional coverage layers in the order in which they were created. For purposes of allocating the projected policy value, the coverage layer created when the death benefit becomes the amount provided by item (b) of either death benefit option is considered the most recently created coverage layer.



MONTHLY RISK RATES

The monthly risk rates for each coverage layer are based on the Insured's attained age and sex and the premium class for that coverage layer.

INTEREST RATE

The credited interest rate used to calculate the policy value will never be less than the Guaranteed Credited Interest Rate shown in the Schedule.

CHANGES IN RATES, CHARGES AND FEES

At its sole discretion, the Company may change the monthly risk rates and the credited interest rates. The monthly risk rates will not exceed the Guaranteed Maximum Monthly Risk rates and the credited interest rates will not be less than the Guaranteed Credited Interest Rate. The Guaranteed Maximum Monthly Risk rates and the Guaranteed Credited Interest Rate are shown in the Schedule.

The Company will base any change on its expectations as to future investment earnings, mortality, persistency, expenses and taxes. The Company will not make any change in order to recoup prior losses. Any change in the monthly risk rates will apply to all insureds with the same combination of the following: attained age; number of years of insurance in force; net amount of risk; and premium class.

CASH SURRENDER VALUE

The cash surrender value on any day is equal to the policy value on that day less the surrender charge.

SURRENDER CHARGE

A surrender charge will be taken upon surrender of this Policy.

SURRENDER AND NET CASH SURRENDER VALUE

The Owner may surrender this Policy by filing Notice. Surrender occurs on the date of surrender provided the Insured is living on the date the Notice is signed. This Policy will terminate as of the date of surrender. A grace period does not apply to termination due to surrender.

The date of surrender will be one of the following:

- the date the Notice was signed if the Notice is received at the Service Center within 30 days after the date it was signed; or
- the date the Company receives the Notice if the Notice is received at the Service Center more than 30 days after the date it was signed.

The net cash surrender value is the amount payable on surrender. It equals:

- the cash surrender value on the date of surrender; less
- the loan balance on the date of surrender.

The Company may defer payment up to six months after Notice is received.

If the date of surrender is within 30 days after a policy anniversary, the net cash surrender value will not be less than:

- the net cash surrender value on the anniversary; less
- each policy loan made since the anniversary and the accrued interest on each loan; less
- the reduction in policy value for each partial withdrawal made since the anniversary and the interest on each reduction.

PARTIAL WITHDRAWAL

The Owner may make a partial withdrawal by filing Notice. A partial withdrawal will be made on the date of partial withdrawal provided the Insured is then living and this Policy is not then being continued as paid-up insurance in accordance with the **Paid-Up Insurance** section. The date of partial withdrawal will be one of the following:

- the date the Notice was signed if the Notice is received at the Service Center within 30 days after the date it was signed; or
- the date the Company receives the Notice if the Notice is received at the Service Center more than 30 days after the date it was signed.

The maximum amount that may be paid to the Owner as a partial withdrawal is equal to the lesser of (1) and (2) below.

- (1) An amount equal to:
 - the net cash surrender value on the date of partial withdrawal less \$275.00; less
 - loan interest to the end of the policy year.
- (2) An amount such that the death benefit after the partial withdrawal is \$25,000.

Payment to the Owner may be deferred up to six months after Notice is received; however, a partial withdrawal to pay premiums to the Company will not be deferred.

The policy value is reduced on the date of partial withdrawal by an amount referred to as the reduction in policy value. The amount of this reduction is equal to:

- the amount paid to the Owner; plus
- the Administrative Fee for Partial Withdrawal shown in the Schedule.

The Specified Amount will be decreased on the date of partial withdrawal by an amount equal to the greater of (1) and (2) below.

- (1) The amount of the reduction in policy value less the greater of:
 - zero; and
 - the policy value immediately prior to the partial withdrawal less the result obtained by dividing the Specified Amount on the date of partial withdrawal by the death benefit factor applicable to the most recently created coverage layer on the date of partial withdrawal.
- (2) Zero.

A decrease in Specified Amount due to a partial withdrawal is applied:

- first, to reduce the Initial Specified Amount;
- next, to reduce all increases, starting with the first, in the order of such increases;
- finally, to reduce the amount provided by the most recent increase.

PAID-UP INSURANCE

If this Policy has a positive net cash surrender value, the Owner may elect to continue this Policy as a level amount of paid-up insurance; Notice is required. The effective date of the paid-up insurance will be the beginning of the policy month on or immediately following receipt of the Notice provided the Insured is then living.

The amount of this paid-up insurance will be that which the cash surrender value on the effective date of the paid-up insurance will provide when applied as a net single premium.

This paid-up insurance may be surrendered at any time. The amount payable on surrender is the net cash surrender value. The net cash surrender value is the cash surrender value less the loan balance. The cash surrender value is the net single premium for the benefits remaining under the paid-up insurance.

If the date of surrender is within 30 days after a policy anniversary, the net cash surrender value will not be less than:

- the net cash surrender value on the anniversary; less
- each policy loan made since the anniversary and the accrued interest on each loan.

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BASIS OF COMPUTATIONS

The mortality tables and rates of interest used in calculating minimum policy values and net single premiums are shown in the Schedule. Values are at least equal to those required by statute in the state in which this Policy was delivered. A detailed statement of the method of computing these values has been filed with the insurance department of that state.

POLICY LOANS

CASH LOAN

The Company will make a loan upon the sole security and assignment of this Policy. The Owner may obtain the loan while this Policy is in force; Notice is required. The amount advanced as a policy loan will not exceed:

- the loan value; less
- the loan balance on the date the loan is to be made; less
- loan interest to the end of the policy year.

The loan value is equal to:

- the cash surrender value on the date the loan value is being determined; less
- the monthly deductions for the remainder of the current policy year. For purposes of determining the loan value, these monthly deductions are considered to be equal.

The loan balance at any time is equal to:

- the sum of all policy loans made; less
- the sum of all loan repayments; plus
- accrued loan interest.

The loan balance is segregated into preferred and nonpreferred loan balances. The Company will allocate a policy loan to the appropriate loan balance(s) at the time a loan is made. Only the first loan requested in a policy year is eligible for allocation to the preferred loan balance. The maximum amount of this first loan that the Company will allocate to the preferred loan balance is equal to:

- the policy value at the time the loan is made; less
- the loan balance immediately prior to the loan; less
- the sum of the premiums paid.

This amount will not be less than zero.

On a policy anniversary, the Company will reallocate the loan balance among the preferred and nonpreferred loan balances. The preferred loan balance after reallocation will not exceed an amount equal to:

- the policy value at the time of reallocation; less
- the sum of the premiums paid.

If this Policy is continued as paid-up insurance in accordance with the **Paid-Up Insurance** section, any preferred loan balance will be allocated to the nonpreferred loan balance on the date this Policy is continued as paid-up insurance. No further allocations will be made to the preferred loan balance as long as this Policy continues as paid-up insurance.

A loan repayment will be applied first to reduce the nonpreferred loan balance; any excess will then be applied to reduce the preferred loan balance.

DEFERRAL

The Company may defer making a policy loan up to six months after it receives Notice; however, a loan for payment of premiums to the Company will not be deferred.

LOAN INTEREST AND REPAYMENT

The Schedule shows the Guaranteed Policy Loan Interest Rate(s) Charged.

Loan interest is due annually at the end of each policy year and on the earliest of these dates:

- the date of surrender of this Policy;
- the date of a loan repayment;
- the date of termination of this Policy; and
- the date of the Insured's death.

Interest accrues daily from the date a loan is made and is compounded annually. Loan interest for fractional years will be calculated using simple interest. Interest not paid when due is added to the loan and bears interest at the same rate.

All or any part of a policy loan may be repaid during the Insured's lifetime while this Policy is in force; however, a loan that is in existence when this Policy terminates in accordance with the **Grace Period** section may not be repaid unless this Policy is reinstated. Any amount paid to the Company that is not clearly marked as a loan repayment will be considered a premium payment.

When the loan balance exceeds the cash surrender value, this Policy will terminate. The Owner and any assignee of record will be notified of termination at their last known addresses. Termination will be effective 31 days after the notification is mailed.

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SETTLEMENT OPTIONS

GENERAL PROVISIONS

Policy proceeds may be paid in a single sum or left with the Company for payment under one or more of the following settlement options. The amount applied under an option must be at least \$2,000. The amount of each payment under an option must be at least \$50.

The Owner may elect or revoke a settlement option at any time before the proceeds are payable. If no settlement option election is in effect at the time proceeds are payable, the payee may make an election. Notice must be filed at the Service Center. Election or revocation will take effect as of the date the Owner or payee signed the Notice. An election does not affect any payment made or other action taken by the Company before the Notice is received. A payee that is not a natural person may elect a settlement option only with the Company's consent. An assignee cannot elect any settlement option. Change of owner or beneficiary automatically revokes any election in effect.

DEATH OF PAYEE

Unless otherwise specified, at the death of the last payee a final payment will be made to the payee's estate. For Options 1 and 2, the final payment will be the commuted value of the remaining unpaid installments certain. Such value will be computed based on the rate of interest used in the calculation of the payments. For Options 3 and 4, the final payment will be the unpaid proceeds with any unpaid interest to the date of death of the payee.

FIRST INSTALLMENT

The first installment under Options 1, 2, and 4 is payable on the effective date of the option. The effective date is:

- the date of surrender of this Policy; or
- the date of the Insured's death; or
- any later date agreeable with the Company.

INTEREST

The guaranteed interest rate for Options 1, 2, 3, and 4 is 2 ½ % a year, compounded annually. Excess interest may be declared annually by the Company.

OPTION 1 - FIXED PERIOD

Proceeds will be paid for a fixed period. The amount of the payments is determined from the Option 1 Table – Fixed Period Installments.

OPTION 2 - LIFE INCOME WITH INSTALLMENTS CERTAIN

Proceeds will be paid in equal installments throughout the certain period. After the certain period, payments will continue to be made throughout the payee's lifetime. The amount and certain period of the payments are determined from the Option 2 Table – Life Income with Installments Certain. At some ages the same amount is payable for different periods certain. In such a case the Company will assume that the longest period was chosen. Satisfactory proof of the payee's age is required. The Company may require evidence that the payee is living on the due date of each payment.

OPTION 3 - INTEREST

Interest on the proceeds will be paid in the manner agreed upon when the option is elected.

OPTION 4 - FIXED INSTALLMENTS

Proceeds will be paid in fixed installments at regular intervals until proceeds, together with interest on the unpaid balance, are exhausted.

OPTION 5 - SINGLE PREMIUM ANNUITY

Proceeds will be used to purchase any single premium annuity the Company offers for this purpose at the time proceeds are applied. The annuity payments will be 102% of the payments otherwise purchased by the single premium.

OTHER SETTLEMENT OPTIONS

Proceeds may be applied in any other mutually agreeable manner.



First Colony Life Insurance Company
A GE Financial Assurance Company

Home Office
700 Main Street
Lynchburg, VA 24504

ACCELERATED DEATH BENEFIT RIDER

This Rider provides for an accelerated payment of life insurance proceeds. It is not intended or designed to provide health, nursing home, or long-term care insurance. Receipt of an accelerated death benefit payment will reduce the death proceeds of the Policy and limit the availability of any surrender or loan values provided by the Policy.

Disclosure: Receipt of an accelerated death benefit payment may be taxable. The Owner of the Policy should seek assistance from a tax advisor before electing to receive a payment.

BENEFIT

The Company will make an accelerated death benefit payment to the Owner of the Policy subject to the provisions of this Rider. The requirements for payment are:

- the Owner's written request for an accelerated death benefit payment;
- proof acceptable to the Company that the Owner is eligible for a payment according to the terms of this Rider;
- written approval of payment from any irrevocable beneficiary; and
- full release of any collateral assignment of the Policy except a collateral assignment to the Company.

Payment will be made in a single sum. The Company will make only one accelerated death benefit payment under this Rider.

The Company will not make an accelerated death benefit payment if:

- it does not receive all of the requirements for payment as stated above at its home office;
- the Policy is being continued as extended term insurance on the date payment is to be made;
- there is less than one year remaining until any expiry or maturity date for the Policy on the date payment is to be made; or
- the Policy is being contested or has been voided as the result of a successful contest.

BENEFIT LIMITATIONS

The Owner requests the amount of accelerated death benefit subject to the maximums stated below.

The maximum accelerated death benefit available for request is equal to the difference between (1) and (2) below.

1. An amount equal to the lesser of (a) and (b) below:
 - (a) The sum of the following:
 - 75% of the difference between the primary death benefit on the date the Company approves payment of an accelerated death benefit and the loan value on that date; and
 - the loan value on the date the Company approves payment of an accelerated death benefit.
 - (b) \$500,000.
2. The amount of any policy loan, including interest, against the Policy.

The primary death benefit is the death benefit provided by the Policy and does not include any accidental death benefits, the amount of the death benefit of any riders, or any benefits payable because of the death of any person other than the Insured. If the Policy provides for policy loans, loan value is defined in the Policy; otherwise, loan value is defined to be zero.

The maximum aggregate amount of accelerated death benefit payments the Company will make under all policies issued by the Company on the Insured's life is \$500,000.

ELIGIBILITY

To be eligible to receive an accelerated death benefit payment, the Owner must provide the following to the Company:

- evidence acceptable to the Company that the Insured is living and has a life expectancy of six months or less; this evidence must include, but is not limited to, certification by a physician approved by the Company who is licensed to practice medicine in the United States or Canada and is acting within the scope of that license;
- evidence that election of this benefit is voluntary and without coercion on the part of any third party, including any creditor or government agency; and
- evidence that only one of the Insureds is living if the Policy is a last survivor policy.

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GENERAL PROVISIONS

Wherever used in this Rider, the term "Policy" means the Policy to which this Rider is attached. This Rider is a part of the Policy. Policy provisions apply to this Rider except where modified by this Rider.

If the Policy is in a grace period at the time an accelerated death benefit payment is made, the premium required to remove the Policy from the grace period will be deducted from the payment.

The Owner will remain liable for any required premium payments under the Policy after the Company makes an accelerated death benefit payment. After an accelerated death benefit payment has been made, the amount of any premium required to keep the Policy in force that is not paid or waived through the Owner's exercise of a waiver benefit will be added to the lien.

There is no premium or cost of insurance charge for this Rider; however, an administrative fee that will not exceed \$250 will be deducted from the accelerated death benefit prior to payment to the Owner.

EFFECT OF AN ACCELERATED DEATH BENEFIT PAYMENT

The accelerated death benefit will be treated as a lien against the primary death benefit. This lien will limit the availability of any surrender benefit and of any future policy loans or partial withdrawals (surrenders) under the Policy; they will be available only to the extent that values under the Policy exceed the sum of the lien amount and any outstanding policy loan. This lien will not affect the death benefit of any rider attached to the Policy however.

The lien amount at any time will equal:

- the amount of the accelerated death benefit payment made to the Owner; plus
- the administrative fee; plus
- the amount of any premium required to remove the Policy from the grace period; plus
- any unpaid premiums added to the lien; plus
- accrued lien interest; less
- any lien repayments.

Interest at the policy loan interest rate(s) stated in the Policy will be charged on the portion of the lien amount equal to the difference between the loan value and any outstanding policy loan. Interest will be charged on the portion of the lien amount that exceeds this difference at a rate no greater than the greater of:

- the current yield on a 90-day treasury bill on the date of payment; and
- the current maximum adjustable policy loan interest rate allowed by law on the date of payment in the state in which the Policy was delivered.

After payment of the accelerated death benefit, the proceeds payable under the Policy at the death of the Insured will equal:

- the death proceeds as defined in the Policy; less
- the lien amount as of the date of death.

TERMINATION

This Rider will terminate on the earliest of the following dates:

- the date of maturity or termination of the Policy; and
- the date the Owner's written request for termination of this Rider is signed; the request must be received at the home office.

If at any time the lien amount equals or exceeds the death proceeds as defined in the Policy, the Policy will terminate. Termination will occur 31 days after the Company has mailed notice of termination to the last known address of the Owner, unless all or part of the lien amount is repaid within 31 days after the date the notice is mailed. The Company will accept a partial repayment only if the death proceeds of the Policy would exceed the lien amount after application of the partial repayment.


President


Secretary

A GE Financial Assurance Company
Home Office: 700 Main Street • Lynchburg, VA 24504
Service Center: P. O. Box 1280 • Lynchburg, VA 24505-1280
A Stock Company

ENDORSEMENT

Insured Ronald L Daubenmier

Policy Number [REDACTED] 694

Incontestability
Date 6/22/02

The section of this Policy entitled "**INCONTESTABILITY**" under the heading "**GENERAL PROVISIONS**" is hereby amended to read in its entirety as follows:

"With respect to statements made in the application, this Policy is not contestable beginning with the Incontestability Date specified above provided this Policy is in force during the lifetime of the Insured on the specified date. With respect to statements made in a supplemental application, the applicable policy change is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with its effective date. With respect to statements made in an application for reinstatement, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the date of reinstatement.

This provision does not apply to any rider providing additional benefits."

The section of this Policy entitled "**SUICIDE**" under the heading "**GENERAL PROVISIONS**" is hereby amended to read in its entirety as follows:

"If the Insured, while sane or insane, dies by suicide while this Policy is in force and prior to, but not including, the Incontestability Date specified above, the death proceeds under this Policy will be an amount equal to:

- the premiums paid; less
- the loan balance on the date of death; less
- any reductions in policy value for partial withdrawals from this Policy.

If the Insured, while sane or insane, dies by suicide within two years beginning with the effective date of an increase in Specified Amount but on or after the Incontestability Date specified above, the death proceeds will be an amount equal to:

- the Assumed Death Benefit; less
- the loan balance on the date of death.

The Assumed Death Benefit is equal to:

- the death benefit as defined in the **Death Benefit** section assuming the increase had not occurred; plus
- the difference between the monthly deductions that were deducted from the policy value and the monthly deductions that would have been deducted had the increase not occurred, accumulated at the interest rates credited to the policy value.

These proceeds may be further adjusted as explained in the second paragraph of the **Proceeds Payable at the Death of the Insured** section. Any premiums paid after the date of the Insured's death will be paid in addition to these proceeds."

The first paragraph of the section of this Policy entitled "**DEATH BENEFIT**" under the heading "**INSURANCE PROVISIONS**" is hereby amended to read in its entirety as follows:

"The death benefit depends on the option in effect on the date of the Insured's death. The Schedule shows the option elected on the Policy Date."



Secretary

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable During Insured's Lifetime
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating – No Dividends

EXHIBIT #5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

BRIGHTON TRUSTEES, LLC, et al.)
v.)
GENWORTH LIFE AND ANNUITY)
INSURANCE COMPANY)
_____)

Civil Action No.:
3:20 CV 00240

February 14, 2022

COMPLETE TRANSCRIPT OF CONFERENCE CALL
BEFORE THE HONORABLE DAVID J. NOVAK
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

Steven G. Sklaver, Esquire (via phone)
Lora Krsulich, Esquire (via phone)
Seth Ard, Esquire (via phone)
SUSMAN GODFREY LLP
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Los Angeles, CA 90067

Kathleen J.L. Holmes, Esquire (via phone)
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Alexandria, VA 22314

Counsel on behalf of the Plaintiffs

TRACY J. STROH, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 APPEARANCES (CONTINUED):

2 Patrick Gennardo, Esquire (via phone)
3 Thomas A. Evans, Esquire (via phone)
4 William H. Higgins, Esquire (via phone)
5 Andrew Tuck, Esquire (via phone)
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7 90 Park Ave
8 New York, NY 10016

9 Elizabeth F. Tyler, Esquire (via phone)
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11 800 East Canal Street
12 Richmond, Virginia 23219

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Counsel on behalf of the Defendant

1 (The conference call commenced at 11:30 a.m.)

2 THE COURT: All right. We're going to go on the
3 record here. This is *Brighton Trustees v. Genworth*, Civil
4 Case Number 3:20 CV 240.

5 I understand, Mr. Sklaver, you're speaking for
6 the plaintiffs; is that right?

7 MR. SKLAVER: That's right.

8 THE COURT: Do you want to identify yourself for
9 the record and identify who else for the plaintiffs is on
10 the call?

11 MR. SKLAVER: Good morning, Your Honor. This is
12 Steven Sklaver of Susman Godfrey. And with me on the call
13 is Seth Ard, also of Susman Godfrey, and Lora Krsulich,
14 also Susman Godfrey, and Kathleen Holmes of Holmes Costin
15 & Marcus.

16 THE COURT: All right. It dawned on me you're
17 in Los Angeles. It's 8:30 in the morning and you're
18 probably hung over from that Rams victory last night. Am
19 I right about that?

20 MR. SKLAVER: I am a Dallas Cowboys fan due to
21 my place of origin. So --

22 THE COURT: Right. That's even worse. We'll
23 deal with that another day.

24 All right. The defense, I think you have
25 Mr. Gennardo; is that right?

1 MR. GENNARDO: That's correct, Your Honor.

2 THE COURT: Do you want to identify yourself for
3 the record and who else is on the call for your side?

4 MR. GENNARDO: Yes, sir. My name is Patrick
5 Gennardo from the Alston & Bird firm in New York. I have
6 with me my partners Tom Evans, Andy Tuck, and Bill
7 Higgins, as well as Liz Tyler from the McGuireWoods firm.

8 THE COURT: All right. So the reason I wanted
9 to do this call is the following: You saw already that I
10 denied the motion to exclude the declarations of the
11 plaintiffs' expert.

12 So I did a deep dive on this case last week
13 before deciding those motions, including the class
14 certification, and I thought I would kind of give you my
15 readout of where we stand on this and I thought I would
16 give you some guidance.

17 So it seems to me, unless something completely
18 unusual happens on the 25th, I'm going to certify the
19 class, and I'm going to certify it under the one class
20 designation, not the three subsets that the plaintiff
21 offered as an alternative. So then the question is where
22 do we go from here.

23 Now, I gave you a little bit less time on the
24 summary judgment motions, but it's also clear to me that
25 summary judgment is a waste of time in this case. There's

1 going to be a genuine dispute as to material fact. Just
2 your experts alone is going to create that. Look, you can
3 obviously file the motions. You have the right to do it,
4 but if I were you, I would expect a one-paragraph order
5 that says I find a genuine dispute over material facts,
6 it's denied. I don't -- when I deny summary judgment, I
7 don't write the epic opinion denying it. I know that it
8 drives lawyers crazy, but we just don't have the time to
9 do that. So to me, your summary judgment motions are a
10 waste of time. If you want to spend money on it, that's
11 up to you, but it's a waste of time.

12 So the question is where do we go from here?
13 And you all had engaged in private mediation last year,
14 and I understand it wasn't fruitful. I think this is a
15 case that needs to settle. I think you would be much
16 better served by putting a lot of time and money now into
17 trying to settle the case before we go any further.

18 And I will say, plaintiffs, just because I
19 intend to certify the class and I denied the motion to
20 exclude, that doesn't mean I think your case is a winner.
21 I think this is a case that's triable from both sides.
22 It's mainly going to be a battle of these experts. And I
23 will tell you, on one hand, for the plaintiffs, nobody is
24 going to have a clue on the jury as to what's going on in
25 this case. It took me double readings, with large degrees

1 of caffeine, to figure this out, and I have a feeling the
2 jury is going to be glazed over. On the other side,
3 defense, nobody likes insurance companies. I can tell you
4 that right now. And Genworth doesn't have the greatest
5 reputation, at least in my world, for the way they treat
6 their employees, and there's going to be enough people
7 that have been laid off by Genworth in this area that
8 aren't going to be loving them. So to me, this is a case
9 that needs to settle, and I'd like to see if you can get
10 something done over the next couple weeks.

11 So my first question to you is do you want to go
12 to a magistrate judge or do you want to go back to a
13 private mediator? But I expect you to try to get this
14 done. We're not doing this -- this is not playtime.
15 Like, I want you to really make all effort you can to get
16 it done.

17 So, Mr. Sklaver, what do you want to do here?
18 Do you want to give it the college effort to get this
19 thing settled?

20 MR. SKLAVER: This is Steven Sklaver. I do,
21 Your Honor. Happy to make another serious run at
22 settlement.

23 THE COURT: Do you want a private mediator again
24 or do you want to do a magistrate judge? Our magistrate
25 judges are really booked up right now. I think it would

1 be better for all of us if you spend some money on the
2 private mediator, but I'll give you your choice. What do
3 you want to do?

4 MR. SKLAVER: Well, this is a situation where we
5 are -- since we are asking the defendant for their money,
6 it's really -- I prefer for them to be comfortable with
7 who the mediator is that we are working with.

8 THE COURT: They're going to get a chance to be
9 heard too. I'm just asking do you have a preference, or
10 do you guys want to talk after you get off the phone?

11 MR. SKLAVER: We can talk after the phone. My
12 instinct is to continue with the current mediator we had,
13 but obviously, it failed so there may be some wisdom in
14 choosing somebody else. But we were able to work
15 professionally together to find a mutually agreeable
16 mediator, and I'm inclined to go that route, subject to
17 the Court's guidance. But, you know, we are all systems a
18 go to try and resolve this case. We agree with the
19 approach.

20 THE COURT: All right. Mr. Gennardo, what do
21 you think?

22 MR. GENNARDO: You know, Your Honor, I think it
23 probably makes sense to stick with the mediator that we
24 have. He understands the issues. It wasn't a
25 one-time-and-done thing. We actually -- I think the

1 mediation just finally broke down in the last couple of
2 days, in the afternoon. So I think we --

3 THE COURT: Yeah, but it's different now because
4 you -- look, class certification plays a big role in this
5 case, right? And so -- you know, this is not my first
6 rodeo. It seems to me now that I'm telling you what the
7 lay of the land is. It gives you, you know, more reason
8 to get in there and get it done.

9 So here's what -- my real question, then, is
10 this. To me, the class certification, which is set for
11 February 25th, is a pretty big day. I would rather have
12 you spend that day trying to settle the case and maybe
13 bump that hearing back a little bit since to me, the
14 summary judgment deadline is just a total waste of time.
15 So do you want to move that back a couple weeks and use
16 that day to settle this case? Plaintiff.

17 MR. SKLAVER: Yes, Your Honor. This is Steven
18 Sklaver for the plaintiff.

19 THE COURT: Defense.

20 MR. GENNARDO: It makes sense to me too,
21 Your Honor.

22 THE COURT: All right. So here's what I'm
23 thinking. What if we move this back -- the latest I can
24 go on this is March 24th for the class certification. I
25 won't move -- so if you don't settle the case, we're going

1 forward on the 24th. Does that work for the plaintiffs?

2 MR. SKLAVER: Steven Sklaver for the plaintiff.

3 It does work.

4 THE COURT: All right. Defense.

5 MR. GENNARDO: We'll make it work, Your Honor.

6 We have a big enough team.

7 THE COURT: Okay. 10 a.m. on the 24th. We'll
8 do an order today.

9 Again, I'm just encouraging you, don't waste
10 your time on summary judgment if you don't settle the
11 case. I'd much rather have you preparing to try the case
12 if you don't get it settled, but I really want you to put
13 every effort that you can into settling this case. That's
14 why we're moving this back. This case needs to settle.
15 It's triable from both sides, not a slam dunk for either
16 side. Let's try to get it done.

17 All right. Anything else from the plaintiff?

18 MR. SKLAVER: No, Your Honor.

19 THE COURT: Anything else from the defense?

20 MR. GENNARDO: No, sir. Thank you.

21 THE COURT: All right. I'm going to expect some
22 good news on that Friday, the 25th. So just e-mail my law
23 clerk when you get it settled. Okay?

24 So -- all right. Have a good day. Take care.

25 (The conference call concluded at 11:38 a.m.)

EXHIBIT #6

PLAN OF ALLOCATION¹

1. Each Settlement Class Member who is the current or most recent owner of a policy according to Defendant's records ("Recipient") shall be issued a check for that policy equal to the minimum settlement relief payment plus that Recipient's *pro-rata* share of the Net Settlement Fund. No claim form or claims process will be used.
2. The minimum settlement relief payment for each policy shall be one hundred dollars (\$100.00).
3. Each Recipient's *pro-rata* share of the Net Settlement Fund after deducting all minimum relief payments shall be computed as follows:
 - a. First, each Recipient's alleged damages shall be the sum of the Recipient's alleged COI Overcharge as a result of the 2019 COI Increase.
 - i. Each Recipient's alleged COI Overcharge shall be determined in accordance with the methodology set forth in pages 6-16 of the August 16, 2021 Declaration of Robert Mills in Support of Motion for Class Certification, which generally determines the COI Overcharge for a Policy as the difference between the COI charges GLAIC actually assessed on the Policy since December 1, 2019 and the COI charges that would have been deducted from the policy accounts but-for the 2019 COI Increase. Mr. Mills will update these calculations through March 31, 2022, using the most recently produced data.
 - b. Second, divide each Recipient's alleged damages by the total alleged damages for all Recipients, and
 - c. Third, multiply the resultant percentage for each Recipient by the Net Settlement Fund that remains after deducting all minimum settlement relief payments.
4. If a Settlement Class Member would receive multiple checks pursuant to paragraphs 1-3 above, such checks may be consolidated into a single check.
5. Within one year plus 30 days after the date the Settlement Administrator mails the first Settlement Fund Payments, any funds remaining in the Settlement Fund shall be redistributed on a *pro rata* basis to Settlement Class Members who previously cashed the checks they received, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair. All costs associated with the disposition of residual funds — whether through additional distributions to Settlement

¹ Unless otherwise noted, all Capitalized Terms mean the same as in the Settlement Agreement, which is attached as Exhibit 2 to the Declaration of Steven Sklaver.

Class Members and/or through an alternative plan approved by the Court — shall be borne solely by the Settlement Fund.

6. The plan of allocation may be modified upon further order of the Court. Any updates to the plan of allocation will be published on the settlement administration website.