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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated,

Plaintiff,

v.

AMERICAN NATIONAL INSURANCE COMPANY,

Defendant.

Case No. 3:20-cv-09222-EMC

MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: August 10, 2023
Time: 1:30 PM
Location: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 10, 2023, at 1:30 PM, in Courtroom 5 of the United States District Court for the Northern District of California, Phillip Burton Federal Building and United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Edward M. Chen presiding, Plaintiff Joe S. Yearby will and hereby does move for an order: (1) preliminarily approving the proposed Settlement, plan of allocation, and the form and manner of notice, and certifying the proposed Class for settlement; (2) directing notice to the Class under Rule 23(e)(1); and (3) scheduling a final approval hearing at which the Court will consider final approval of the Settlement, final approval of the plan of allocation, and Class Counsel's motion for fees, costs, and service awards.

This motion is based upon this Notice of Motion and Motion, the supporting Memorandum set forth below, the attached declarations and exhibits, the pleadings and records on file in this action, and other such matters and arguments as the Court may consider at the hearing of this motion.

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Plaintiff Joe S. Yearby, individually and on behalf of the proposed Class,[1] has entered into a settlement agreement (the "Settlement" or "Settlement Agreement") with Defendant American National Insurance Company ("ANICO"). Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff respectfully moves the Court for an order:

- Preliminarily approving the proposed Settlement, plan of allocation, and the form and manner of notice, and certifying the proposed Class for settlement.
- Directing notice to the Class under Rule 23(e)(1).
- Scheduling a final approval hearing at which the Court will consider final approval of the Settlement, final approval of the plan of allocation, and Class Counsel's motion for fees, costs, and service awards.

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

INTRODUCTION

After over two years of hard-fought litigation and months of arm's-length negotiations with the assistance of an experienced mediator, the Honorable Vaughn Walker (Ret.), Plaintiff and ANICO agreed to settle this complex insurance class action for the outstanding amount of a cash payment equal to 88% of the alleged COI overcharges at issue in the litigation, and additional non-cash relief. The settlement provides the following monetary and non-monetary benefits to the owners of the 3,090 policies in the Class:

- **CASH.** A $5 million cash payment, reduced for post-settlement opt-outs. This is not a claims-made settlement; checks will be mailed directly to Class members without requiring them to submit proof of their claim, using ANICO's records, and settlement funds do not revert to ANICO.
- **CLASS COI RATE SCHEDULE INCREASE FREEZE.** A freeze on any cost of insurance ("COI") rate scale increase for five additional years. Thus, even if ANICO has a future change in cost factors that it contends would otherwise permit a COI rate increase under the terms of the policies—including any surge in mortality

[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.

ANICO might claim due to the COVID-19 pandemic—ANICO will not increase COI rate scales for 5 years following Final Approval. 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, ANICO 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, stranger originated life insurance ("STOLI"), or misrepresentations in the application for such policies.

The cash portion of the settlement fund, by itself, represents the recovery of an astounding 88% of alleged historical damages as of February 28, 2023. On a percentage basis, this exceeds even the result obtained on the eve of trial in the *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, (S.D.N.Y. Sept. 9, 2015) COI class action, which Judge McMahon in the Southern District of New York declared "one of the most remunerative settlements this court has ever been asked to approve." *Id.* at *10-11 (granting final approval to a COI class action settlement with a cash award amount equal to 68.5% of past damages); *see also* Transcript at 3:8-11, *Fleisher*, No. 11 Civ. 8405 (S.D.N.Y. Sep. 24, 2015), Dkt. 319 (hearing transcript in which Judge McMahon praised the result as "superb" and "the best settlement pound for pound for the class that I've ever seen"). It also provides a better recovery for the class than another COI settlement that a court recently described as "quite extraordinary." *See 37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) ("*Hancock COI*") (approving COI class settlement with cash fund equal to 42% of overcharges and no quantified non-monetary benefits). The non-cash component of the Settlement adds even more value to the Class, including non-monetary value that the class could not have obtained even with a trial victory. *See* Declaration of Steven Sklaver ("Sklaver Decl.") ¶¶ 11–12.

Particularly given the costs, delays, and inherent uncertainty of litigation, this result is excellent. The Class will get extensive cash and other benefits, obviating the substantial risks that Plaintiff faces at trial—the risk of zero recovery or recovery of far less than what Plaintiff seeks.

See, e.g., Sklaver Decl., ¶ 3 & Exs. 5–6 (judgment in recent COI class action trial, *Meek v. Kansas City Life Ins. Co.*, 19-cv-472, Dkt. 311, 329-30 (W.D. Mo. May 25 & June 20, 2023), where the Class sought $18 million but recovered less than $1 million (*i.e.*, less than 6%), and partial decertification granted post-trial). Class Counsel recommends this Settlement to the Court after investing significant effort in this litigation, obtaining and analyzing over 18,000 pages of documents in discovery (including historical charge data and mortality expectations for all 3,090 policies in the Class), working extensively with liability and damages experts, and briefing case-dispositive motions. The arm's-length settlement negotiations were also extensive: the parties attended two separate mediation sessions each conducted by Judge Walker. The support of the Settlement's terms by Plaintiff, Class Counsel and the Mediator is further testimony to the fairness of the Settlement.

At the preliminary approval stage, the Court considers whether it "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)(1)(B). For the reasons provided herein, the proposed Settlement meets both criteria.

I. BACKGROUND

A. The COI Charges

The Class consists of owners of over 3,000 universal life insurance policies ("Class Policies"), issued by ANICO in California.[2] Each Class Policy contains a section titled "Cost of Insurance Rate" with requirements governing how COI rates will be determined by ANICO based on its expectations as to future mortality experience. Plaintiff's policy, which is representative of the language included in all Class Policies, states in relevant part:

[2] Specifically, the Class is "[a]ll owners of universal life (including variable universal life) insurance Policies issued in California by American National Insurance Company, or its predecessors in interest, that provide that cost of insurance rates are determined based on expectations as to future mortality experience, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010," with the exclusion of "Class Counsel and their employees; American National; officers and directors of American National, and members of their immediate families; the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families." *See* Settlement Agreement § 5.

> The monthly Cost of Insurance rate is based on the sex, attained age, and rating class of the person insured. Attained age means the Insured's age last birthday on the previous Policy anniversary. Monthly Cost of Insurance Rates will be determined by the Company from time to time based on the Company's expectations as to future mortality experience.

See Sklaver Decl., Ex. 3 (Yearby Policy) at 12.

B. The Litigation

In December 2020, Plaintiff filed a class action lawsuit, asserting a claim of breach of contract against ANICO. Dkt. 1. ANICO moved to transfer venue to the Southern District of Texas and to dismiss based on lack of personal jurisdiction, res judicata, and failure to state a claim. Dkt. 25-28. Pursuant to Federal Rule of Civil Procedure 15(a)(1), Plaintiff filed a First Amended Complaint ("FAC") on April 23, 2021. Dkt 31. ANICO moved to dismiss the FAC on similar grounds as the original complaint, and also filed its renewed motion to transfer the action. Dkts. 43-44. Plaintiff opposed the motions, Dkts. 46-47, and conducted jurisdictional discovery. Sklaver Decl. ¶ 5. After hearing oral argument, the Court denied the motion to transfer and granted in part and denied in part the motion to dismiss, allowing Plaintiff to amend his tolling allegation. Dkt. 57. Plaintiff did so by filing a Second Amended Complaint ("SAC"). Dkt. 61. ANICO did not move to dismiss the SAC, and instead served its Answer. Dkt. 69.

After an unsuccessful first mediation on February 16, 2022, which was conducted at the suggestion of the Court, *see* Dkt. 41 at 2 (setting ADR deadline and limiting discovery until after the completion of ADR), the parties engaged in fact discovery, which included the service of 41 Requests for Production of documents, extensive negotiation over the scope of production and ESI protocol, and production and review of over 18,000 pages of documents and data sets, including documents produced pursuant to third-party subpoenas served on ANICO's independent auditors, Deloitte & Touche LLP and KPMG LLP, following numerous meet and confer efforts with both the auditors and ANICO. *See* Sklaver Decl. ¶¶ 4–6. Plaintiff also served a Rule 30(b)(6) deposition notice on ANICO and, following ANICO's objections to the notice, engaged in meet and confer efforts over the scope of the topics shortly before the parties reached an agreement on settlement. Sklaver Decl. ¶ 6.

C. Settlement Negotiations

The Settlement is the result of extensive, arms-length negotiations between the parties with the assistance of an experienced mediator, Vaughn R. Walker, a retired United States District Judge. *See* Sklaver Decl. ¶ 7; Declaration of Vaughn R. Walker ("Walker Decl.") ¶¶ 5–9. Through the life of the case, the parties have exchanged numerous settlement offers and counter-offers and engaged in an unsuccessful mediation on February 16, 2022, in person in San Francisco. *See* Sklaver Decl. ¶ 8. Following extensive document and third-party discovery, the parties renewed mediation discussions in September 2022 and on November 22, 2022, the parties attended another mediation which resulted in agreement for a final settlement. Walker Decl. ¶ 6–7. The parties then informed the Court of the development. Dkt. 76. A long-form settlement agreement was heavily negotiated and agreed to thereafter. *See* Sklaver Decl. ¶ 8, Ex. 2 (Settlement Agreement).

Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. *See* Sklaver Decl. ¶ 9; Walker Decl. ¶ 8. Class Counsel was well informed of material facts and the negotiations were hard-fought and non-collusive. *See id.* ¶¶ 7–9. Class Counsel analyzed all of the contested legal and factual issues to thoroughly evaluate ANICO's contentions, advocated in the settlement negotiation process for a fair and reasonable settlement that serves the best interests of the Class, and each side demonstrated a willingness to continue to litigate rather than accept a settlement that was not in the best interest of their clients. *See id.*

D. The Settlement Agreement

1. The Settlement Class

The Settlement Agreement provides for a Settlement Class of "[a]ll owners of universal life (including variable universal life) insurance Policies issued in California by American National Insurance Company, or its predecessors in interest, that provide that cost of insurance rates are determined based on expectations as to future mortality experience, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010," with the exclusion of the policies that timely and validly opt out during the Rule 23(e)(4) opt-out period (referred to as the "Opt-

Outs" in the Settlement Agreement). *See* Settlement Agreement §§ 5, 29.[3] The awards and releases in the Settlement Agreement apply only to the Settlement Class.

2. Consideration

The Settlement awards both cash relief and non-cash relief to the Settlement Class. With respect to the cash relief, a $5 million Settlement Fund will be funded for the benefit of the Settlement Class. *See* Settlement Agreement §§ 38, 43. This amount will be reduced, on a *pro-rata* basis measured by the face amount for each policy that timely and validly opts out during the Rule 23(e)(4) opt-out period. *See id.* § 44.[4] No portion of the Final Settlement Fund (*i.e.* the post-reduction amount) will revert back to ANICO. *See id.* §§ 39, 44.

The Settlement Agreement also provides two forms of significant non-cash relief. *First*, for a period of five years after the date on which the Court approves the settlement, "American National agrees that Current COI Rate Scales for the Class Policies will not be increased." *See* Settlement Agreement § 48. *Second*, "American National agrees 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 the application for, or otherwise made in applying for the policy" *Id.* § 49. As set forth in the accompanying Declaration of Keith McNally, an expert with extensive experience in the life insurance industry and with longevity-based products, the value of the nonmonetary relief made available to potential Class Members is $362,289. *See* Declaration of Keith McNally ("McNally Declaration") ¶ 11.

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 ANICO, certain related

[3] In addition, the Settlement Class will exclude Class Counsel and their employees; ANICO; officers and directors of ANICO, and members of their immediate families; the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families. *See id.* § 5.

[4] For example, "if 1% of the total face amount of the in-scope policies owned by members of the Class is attributable to Opt-Outs, the Settlement Fund will be reduced by 1% (i.e., to $4,950,000)." *See id.*

parties (referred to as the "Released Parties" in the Settlement Agreement) from "all Claims, from whatever jurisdiction, arising out of or related to any Policy, or Policies, that were alleged or could have been alleged in the Action arising out of the same Factual Predicate as that alleged in the Action and/or as clarified herein." Settlement Agreement §§ 30–32, 66. Expressly excluded from this release are claims arising from (i) future COI rate scale increases (after the 5 year COI rate freeze expires), (ii) other future increases to policy charges or credits that could not have been asserted in this action, or (iii) any failure to pay any death benefits that may be owed. *Id.* §§ 15, 72.

4. Awards, Costs, and Fees

The Settlement provides, subject to Court approval, for a service award of up to $25,000 for Plaintiff Joe Yearby for his services on behalf of the Settlement Class. *See* Settlement Agreement §§ 21, 59. The Settlement Agreement also provides notice that Class Counsel will move the Court for approval for attorneys' fees in an amount not to exceed 33 1/3% of the gross benefits provided to the Settlement Class and reimbursement for all expenses incurred or to be incurred. *See id.* §§ 60–61. The amounts as approved by the Court will be paid out of the Final Settlement Fund. *See id.* §§ 19, 21, 47, 60–61.

Class Counsel will file a motion seeking reimbursement of their costs, fees, and service awards, which will be proposed 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.

E. Notice

Plaintiff requests that the Court approve the proposed notice plan described in paragraphs 16–21 of the Sklaver Declaration and paragraphs 10–25 of the Declaration of Gina Intrepido-Bowden ("Bowden Decl."), which provides that within 14 days of the Court's order granting the motion for preliminary approval, ANICO will provide JND with a list of owner-address information that is available from their files. *See* Sklaver Decl. ¶ 16–21. Within 30 days after the motion for preliminary approval is granted, JND will mail the short-form notice attached as Exhibit A to the Bowden Declaration to all addresses on the list from ANICO. *See* Sklaver Decl. ¶ 18; Bowden

Decl. ¶¶ 17–19.[5] JND will also post a copy of the long-form notice attached as Exhibit B to the Bowden Declaration to a website that will be established for the settlement and will establish and maintain an automated toll-free number that Class Members may call to obtain information about the litigation. *See* Bowden Decl. ¶¶ 20–23. 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. *See* Sklaver Decl. ¶ 20; Bowden Decl., Exs. A–B.[6]

Within 10 days following the filing of this motion, ANICO 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* Settlement Agreement § 57.

F. Distribution Plan

The proposed plan of allocation, as set forth in the notice papers and which is described in Exhibit 4 to the Sklaver Declaration, distributes proceeds directly to Class Members on a *pro rata* basis without the need for a claim form. This ensures that proceeds will be distributed equitably and that as many claimants as possible will receive a distribution. Each Class Member's *pro rata* share shall be that Class Member's share of the total damages, with each Class Member receiving a minimum distribution of $100. *See* Sklaver Decl., Ex. 4. Those damages will be determined in accordance with the Declaration of Robert Mills, which determines the COI Overcharge for a Policy as the difference between the COI charges actually assessed on the Policy from January 1, 2010 to February 28, 2023, and the COI charges that would have been deducted from the policy accounts under Plaintiff's theory of liability. *See* Sklaver Decl., Ex. 4; Mills Declaration ¶¶ 9–10. All in-force policies will also benefit from the guarantee of policy validity and the five-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 ANICO maintains on file. Proceeds will be

[5] Prior to mailing, JND will update the addresses using the National Change of Address database. *See* Bowden Decl. ¶ 18. JND will re-mail any short-form notices returned by the United States Postal Service with a forwarding address. *See id.*

[6] The complete instructions for requesting exclusion are included in the long-form notice. *See* Bowden Decl., Ex. B.

mailed within 30 days after the Final Settlement Date. *See* Sklaver Decl., Ex. 4.[7] 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. *See* Sklaver Decl., Ex. 4.

II. ARGUMENT

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

1. Legal Standard

Rule 23(e) requires court approval for a class action settlement. There is a "two-step process for the approval of class action settlements: 'the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted.'" *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016). "Preliminary approval of a class settlement is warranted when it is sufficiently likely that a court will be able to grant final approval of the settlement" because the court determines that the settlement is "fair, reasonable, and adequate" after considering the factors outlined in Rule 23(e)(2). *In re YayYo, Inc.*, 2022 WL 423390, at *1 (C.D. Cal. Jan. 13, 2022). These factors include whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

[7] The Settlement Agreement defines the Final Settlement Date as "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." *See* Settlement Agreement § 18.

Courts may also consider additional factors: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

In this Circuit, "[t]here is a strong judicial preference for pre-trial settlement of complex class actions as settlement of class actions is favored as a matter of 'strong judicial policy.'" *Evans v. Wal-Mart Store, Inc.*, 2020 WL 886932, at *1 (D. Nev. Feb. 24, 2020). In approving a settlement, a court "need not reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (cleaned up). "Preliminary approval is thus appropriate where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Chen v. Chase Bank USA, N.A.*, No. 19-CV-01082-JSC, 2020 WL 264332, at *6 (N.D. Cal. Jan. 16, 2020) (internal quotation removed).

Class settlements reached prior to formal class certification require a "heightened fairness inquiry." *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019). "This more exacting review is warranted to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent." *Id.* "Courts may preliminarily approve a settlement and notice plan to the class if the proposed settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) does not grant improper preferential treatment to class representatives or other segments of the class; (3) falls within the range of possible approval; and (4) has no obvious deficiencies." *Kastler v. Oh My Green, Inc.*, No. 19-CV-02411-HSG, 2021 WL 3604714, at *7 (N.D. Cal. Aug. 13, 2021).

2. The Proposed Settlement Satisfies Rule 23(e)(2) and the Ninth Circuit's Factors

a) *Plaintiff and Class Counsel Have Adequately Represented the Class*

To determine adequacy of representation, "courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (cleaned up).

Plaintiff shares the same interest as the Settlement Class in prosecuting this action to ensure the greatest possible recovery from ANICO. Plaintiff is part of the Settlement Class and suffered the same injuries as other Settlement Class Members: monetary losses associated with 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 result of Plaintiff's and Class Counsel's efforts is a recovery of 88% of the total alleged damages as of February 28, 2023, *plus* additional non-monetary relief valued at $362,289 that could not have been obtained at trial. The cash will be distributed equally on a *pro rata* basis, with each Class Member receiving a minimum distribution of $100. All Class Members share an overriding interest in obtaining the largest monetary recovery possible. *See* 1 Newberg on Class Actions § 3:58 (6th ed. 2022) (adequacy "as the phrase 'absence of conflict' suggests—is such sufficient similarity of interest that there is no affirmative antagonism between the representative and the class").

Plaintiff's interests continue to be aligned with other Class Members, and Plaintiff and Class Counsel have continued to vigorously and competently litigate this case past motions to dismiss and transfer venue, through fact discovery, and mediation. *See* Sklaver Decl. ¶¶ 5–9. Rule 23(e)(2)(A) therefore supports approval.

b) *The Parties Negotiated the Settlement Agreement at Arms' Length*

In the Ninth Circuit, a strong presumption of fairness attaches to a class action settlement

reached through "arms-length, non-collusive" negotiations with experienced and well-informed counsel. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *see also Taylor v. Shippers Transp. Express, Inc.*, 2015 WL 12658458, at *10 (C.D. Cal. May 14, 2015) ("A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." (citation omitted)).

Here, the settlement is the result of repeated and hard-fought arms'-length negotiations among competent, experienced counsel and a mediator with extensive experience in complex litigation, class actions, and insurance issues. *See* Sklaver Decl. ¶¶ 7–9; Walker Decl. ¶¶ 5–9. Rule 23(e)(2)(B) therefore supports approval. If the Court is satisfied that the Settlement was negotiated at arm's length, it will "afford the parties the presumption that the settlement is fair and reasonable." *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 324 (C.D. Cal. 2016); *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) ("A presumption of correctness is said to attach to a class settlement reached in arm's length negotiations between experienced capable counsel after meaningful discovery." (cleaned up).

Moreover, none of the signs that courts consider when evaluating pre-certification settlements for collusion are present here. The Ninth Circuit has articulated that the relevant signs are "(1) when counsel receive a disproportionate distribution of the settlement; (2) when the parties negotiate a clear sailing arrangement (i.e., an arrangement where defendant will not object to a certain fee request by class counsel); and (3) when the parties create a reverter that returns unclaimed [funds] to the defendant." *Roes*, 944 F.3d at 1049 (cleaned up). Class Counsel will not receive a disproportionate distribution of the settlement, as attorneys' fees will be limited to 33 1/3 % of the gross benefits provided to the Settlement Class, which is in line with other approved fee awards. *See, e.g.*, *Stuart v. Radioshack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645, at *6 (N.D. Cal. Aug. 9, 2010) (Chen, J.) (awarding class counsel one-third of the total settlement amount, which was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"). Nor is there any agreement for ANICO not to object to Class Counsel's fee request. And the settlement is a non-reversionary fund—any unclaimed amounts will be re-distributed to class members who cashed the first round of checks. *See* Sklaver Decl., Ex. 4.

c) *The Relief Provided to the Settlement Class is Adequate*

Rule 23(e)(2)(C) requires that "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)."

i. The costs, risks, and delay of trial and appeal

In order to assess adequacy under Rule 23(e)(2)(C)(i), "courts may need to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." Fed. R. Civ. P. 23, 2018 Advisory Note, Paragraphs (C) and (D).

Here, there are substantial risks of establishing liability and damages. Plaintiff believes the case is strong on the merits, but ANICO has challenged the merits of Plaintiff's claims. For example, ANICO has argued that the "based on" language in the Class Policies' COI provision does not mean based "solely" on, and allows ANICO to calculate COI charges to include factors other than only its expectations as to future mortality experience. ANICO has also argued that the policies do not require it to reassess COI rates at any specific time, and it has challenged the variables used in Plaintiff's damages model. And ANICO has argued that a release from a prior class action bars Plaintiff's claims in this case. Moreover, this case involves complicated actuarial issues that courts have labeled "indisputably complex," and both liability and damages would likely come down to dueling expert opinions about actuarial standards, insurance principles, technical actuarial assumptions, documents, and data. As Judge McMahon explained in another COI case:

> The complaint alleged the breach of an insurance contract, the resolution of which would require conflicting testimony by experts as to actuarial standards, the original and revised pricing assumptions used by Phoenix for the PAUL insurance products at issue, and what it means to "recoup past losses" or "discriminate unfairly" within a "class" of insured. These complex claims were bitterly fought, as Defendants developed defenses to liability, damages, and class certification, and offered their own expert opinions on actuarial issues for the key questions. The court has issued opinions of great length of complexity in connection with motions to dismiss and for summary judgment.

Fleisher, 2015 WL 10847814, at *6.

The same is true here. For example, even if Plaintiff were to prevail on liability, damages

would be hotly contested. Plaintiff's claimed damages are calculated by taking the COI charges that were actually deducted from policyholder accounts using actual COI rates, and subtracting the COI charges that would have been charged if ANICO had used the but-for COI rates that Plaintiff alleges should have been determined "based on [ANICO's] expectations as to future mortality experience." *See* Sklaver Decl., Ex.3 at 12; Mills Decl. ¶¶ 9–10. The correctness of those but-for COI rates will be the subject of extensive, competing expert testimony about the correct actuarial assumptions to use and the reasonableness of the but-for redetermination methodology.

In addition to avoiding all of these risks, the Settlement provides $5 million in cash benefits to the Settlement Class (on a pre-opt out basis), which is approximately 88% of the Settlement Class's alleged damages as of February 28, 2023 under Plaintiff's overcharge methodology. Mills Decl. ¶ 12. This settlement-to-damages ratio exceeds the amount obtained in *Fleisher*, which the Court called "one of the most remunerative settlements this court has ever been asked to approve," *Fleisher,* 2015 WL 10847814, at **10-11, as well as the 42% recovery obtained in *Hancock COI*. It also is well in excess of settlements that have been approved in this Circuit. *See, e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of settlement worth "roughly one-sixth of the potential recovery, which, given the difficulties in proving the case, is fair and adequate"); *Betorina v. Randstad US, L.P.*, No. 15-CV-03646-EMC, 2017 WL 1278758, at *8 (N.D. Cal. Apr. 6, 2017) (Chen, J.) (approving settlement value that was "49% of the calculated damages estimated by Plaintiffs"). A chart of settlement outcomes for three other COI cases in which Class Counsel has been involved for which final approval has been granted, compared to Plaintiff's proposed settlement with ANICO, is provided in the summary chart below.[8]

[8] A more detailed chart of comparable outcomes in COI class action settlements, based on the factors listed in the Northern District of California's Procedural Guidance for Class Action Settlements, is included in the declaration of Steven Sklaver. *See* Sklaver Dec. ¶ 3 & Ex. 7. The class size and preliminary settlement fund information provided for in this chart is as of the time of preliminary approval. The final class size and final settlement fund in the identified actions changed after preliminary approval, depending on the number of opt-outs, but the percentage of total overcharges did not change because the reduction of the preliminary settlement funds were computed on a *pro-rata* basis also tied to overcharges.

Case Title	Class Size (number of policies)	Preliminary Settlement Fund	Percentage of Total Overcharges
Fleisher v. Phoenix Life Ins. Co., 11-cv-8405, (S.D.N.Y.)	1,728	$42.5MM	68.5%
37 Besen Parkway, LLC v. John Hancock Life Ins. Co., 15-cv-9924, (S.D.N.Y.)	79,033	$91.25MM	42%
Leonard v. John Hancock Life Ins. Co., 18-cv-04994, (S.D.N.Y.)	1,278	$123.07MM	91.25%
Yearby v. American National Ins. Co., 3:20-cv-09222 (N.D. Cal.)	3,090	$5MM	88%

This Settlement also avoids the enormous costs and delays associated with pursuing a judgment at trial. Given the complexities and expert witness issues described above, COI cases are extraordinarily expensive to try. Sklaver Decl. ¶ 9. Given that the total alleged historical damages through February 28, 2023 are only $5,704,128, there is a serious risk that expenses would severely diminish the distributions that the class would ultimately receive, if this case were to proceed to trial. Further, given the stage of this case, a jury verdict remains at least a year away, and will then face a long appellate process that would have significantly delayed any substantive relief. *Amador v. Baca*, 2:10-cv-1649, 2020 WL 5628938, at *3 (C.D. Cal. Aug. 11, 2020) (noting that "the possibility that any final judgment would lead to reversal on appeal" was a factor favoring approval); *In re Portal Software, Inc. Securities Litigation*, No. C–03–5138 VRW, 2007 WL 4171210, *3 (N.D. Cal. Nov. 26, 2007) (recognizing that the "inherent risks of proceeding to summary judgment, trial and appeal also support the settlement").

It would likely not be until *after* any appeals that any Class Member could even hope to receive any damages for their claim. Yet, the Settlement provides for $5 million in settlement cash benefits, including cash for the Settlement Class and additional noncash benefits, and each Settlement Class Member is assured significant relief without needing to file a claim. The Settlement removes substantial uncertainties about Plaintiff's chances of success and recovery, and *guarantees* relief. This factor supports approval because, "without a settlement, Plaintiffs would risk recovering nothing after a lengthy and costly litigation." *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 331 (N.D. Cal. 2014). *See also Kastler*, 2021 WL 3604714, at *9–10 (under the heightened scrutiny standard for pre-certification settlements, a settlement amount representing

only "a fraction of Defendant's potential statutory damages exposure" was "within the range of possible approval" due to the case's complexities).

ii. The effectiveness of any proposed method of distributing relief to the class.

The second Rule 23(e)(2)(C) subfactor takes into account "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). "Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 4207245, at *12 (N.D. Cal. Sept. 4, 2018) (quoting *In re Oracle Sec. Litig.*, No. C-90-0931-VRW, 1994 WL 502054, at *1-2 (N.D. Cal. June 16, 1994)).

Plaintiff's proposed plan of allocation provides for a *pro rata* distribution of proceeds with each Class Member receiving a $100 minimum distribution, without any claim form or process. *See* Sklaver Decl., Ex. 4. A plan that distributes funds on a *pro-rata* basis "need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel" to be approved. *See Cortez v. United Nat. Foods, Inc.*, No. 18-CV-04603-BLF, 2020 WL 13526688, at *8 (N.D. Cal. Feb. 6, 2020) (quoting *In re Aftermarket Auto. Lighting Prods. Antitrust Litig.*, 2014 WL 12591624, at *4 (C.D. Cal. Jan. 10, 2014)). "This type of distribution, where funds are distributed on a *pro rata* basis, has frequently been determined to be fair, adequate, and reasonable." *Fleisher*, 2015 WL 10847814, at *12 (collecting cases); *see also In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577 at *19 (S.D.N.Y. Nov. 26, 2002) ("[*P*]*ro rata* allocations provided in the Stipulation are not only reasonable and rational, but appear to be the fairest method of allocating the settlement benefits.").

iii. The terms of any proposed award of attorneys' fees.

The third Rule 23(e)(2)(C) subfactor takes into account "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Here, the Settlement Agreement provides that "Plaintiff will move for attorneys' fees not to exceed 33 1/3% of the gross benefits provided to the Settlement Class" and "reimbursement for all expenses incurred or to be incurred," which will be deducted from the Final Settlement Fund. *See* Settlement

Agreement § 60. The payment will be made "immediately upon entry of an order approving such fees and expenses, or at a later date if required by the Court." *Id.* Awards of this magnitude have been deemed reasonable in comparable class actions. *See In re Banc of Cal. Secs. Litig.*, 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (awarding Lead Counsel 33% of the settlement); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at *12 (C.D. Cal. Nov. 18, 2014) (awarding 33.3%); *Stuart*, 2010 WL 3155645, at *6 (awarding class counsel one-third of the total settlement amount"); *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding 34%).

Plaintiff will submit detailed information regarding the time spent by counsel on this case and expenses incurred with his motion for attorneys' fees to be filed prior to the final approval hearing. The chart below shows a summary of the hours worked. Based on a lodestar analysis as of June 9, 2023, an award of up to 33 1/3 % would result in a multiplier of 2.73, which is lower than other awards this Court has approved. *See, e.g.*, *McLeod v. Bank of Am., N.A.*, No. 16-CV-03294-EMC, 2019 WL 1170487, at *7 (N.D. Cal. Mar. 13, 2019) (Chen, J.) (awarding attorneys' fees of $3MM, for a lodestar multiplier of 3.5).

Attorneys/Paralegals	**Current Rate**	**Hours**	**Value**
Ard, Seth	$1,200	24.7	$29,640.00
Downs, Kevin	$600	507.6	$304,560.00
Kirkpatrick, Ryan	$1,000	54.7	$54,700.00
Santos, Vanessa	$350	51.4	$17,990.00
Sklaver, Steven	$1,300	155.3	$201,890.00
Stanley, Joanna	$400	6.5	$2,600.00
Totals		**801.2**	**$611,380.00**

In addition to attorney and paralegal time invested, Susman Godfrey has advanced a total of $167,818.96 in un-reimbursed expenses as of June 9, 2023, including expert fees, in connection with prosecuting this litigation. Susman Godfrey's current expenses are summarized in the chart below, which Plaintiff will supplement in his motion for attorneys' fees and expenses.

Expense Category	Cumulative Expenses
Photocopies/Reproduction/Messenger Services	$157.08
Document Review Hardware/Hosting	$4,283.82
Experts/Consultants	$146,122.50
Filing/Service/Court Reporter Fees/Transcripts/Court Fees	$2,077.27
Mediation	$11,640.00
Research/Westlaw	$3,538.29

iv. Agreements required to be identified under Rule 23(e)(3).

The final subfactor, Rule 23(e)(2)(C)(iv), takes into account "any agreement required to be identified under Rule 23(e)(3)." Rule 23(e)(3) requires the "parties seeking approval" to "file a statement identifying any agreement made in connection with the proposal." There are no agreements beyond the Settlement Agreement. Rule 23(e)(2)(C) therefore supports approval.

d) *The Proposal Treats All Settlement Class Members Equitably*

The final Rule 23(e)(2) factor requires the Court to consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). This analysis focuses on "inequitable treatment of some class members vis-a-vis others" and can include "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." *Id.*, 2018 Advisory Note, Paragraphs (C) and (D).

Here, the proposed plan of allocation equitably treats class members by distributing damages on a *pro rata* basis using each Class Members' share of the total damages, with each class member receiving a minimum distribution of $100. *See* Sklaver Decl., Ex. 4. The releases are also equitable, as they treat all Class Members equally and do not affect the apportionment of damages.

The proposal also warrants approval under the heightened scrutiny standard for pre-certification settlements. "The Ninth Circuit has instructed that district courts must be particularly vigilant for signs that counsel have allowed the self-interests of certain class members to infect negotiations." *Kastler v. Oh My Green, Inc.*, No. 19-CV-02411-HSG, 2021 WL 3604714, at *9

(N.D. Cal. Aug. 13, 2021) (quoting *In re Bluetooth*, 654 F.3d at 947)). "For that reason, courts in this district have consistently stated that preliminary approval of a class action settlement is inappropriate where the proposed agreement 'improperly grant[s] preferential treatment to class representatives.'" *Id.* (quoting *In re Lenovo Adware Litig.*, No. 15-MD-02624-HSG, 2018 WL 6099948, at *8 (N.D. Cal. Nov. 21, 2018)). While the Settlement Agreement authorizes payment of a service award of up to $25,000 to Plaintiff, the Court will ultimately determine whether such an award, and the amount, is reasonable. *See id.* (granting preliminary approval and finding that a request for an incentive award did not constitute preferential treatment). As Plaintiff will further detail in his motion to be filed in support of the service award, Mr. Yearby—who is 92 years old—has devoted significant time to reviewing pleadings with the assistance of family members during the more than two years this litigation has lasted. Mr. Yearby also took the initiative to seek out counsel after discovering the potential overcharges, and he should be rewarded for his role in reaching an early settlement for the Class that compensates Class Members for 88% of the total alleged COI overcharges. Courts "often award service payments to class representatives in compensation for shouldering significant burdens during the litigation: retaining counsel, producing documents, responding to written discovery, and conferring with counsel." *Marolda v. Symantec Corp.*, No. 08-CV-05701 EMC, 2013 WL 12310821, at *5 (N.D. Cal. Apr. 5, 2013) (Chen, J.). The proposal otherwise distributes the settlement on a *pro rata* basis and does not grant preferential treatment to the class representative. Rule 23(e)(2)(D) therefore supports approval.

e) *Ninth Circuit Factors Not Included in Rule 23(e)(2) Favor Approval*

"The amendments to Rule 23 do not displace any factor previously announced by the Ninth Circuit, but instead focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Amador*, 2020 WL 5628938, at *4 (cleaned up). Many of the non-Rule 23(e)(2) factors have been discussed as part of Rule 23(e)(2)—like the strength of the plaintiff's case; the risk and duration of further litigation; the risk of maintaining class action status; the amount offered in settlement; the extent of discovery completed and the stage of proceedings and the experience and views of counsel. The remaining non-Rule 23(e)(2) factors are irrelevant at this stage. There is no governmental participant, and

Class Members have not reacted to the Settlement because notice has not been issued. *Id.* at *4 (noting that "[o]ther factors not expressly included in Rule 23(e)(2) favor final approval").

3. The Proposed Class Likely Meets the Requirements for Settlement Class Certification

Rule 23(e)(1)(B)(ii) conditions preliminary approval and the direction of notice on a showing that the Court will likely be able to "certify the class for purposes of judgment on the proposal." However, the standard for certification for a settlement class is less stringent than for litigation purposes. *See* 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(1).

Even where a *higher* standard applies to *litigation* classes, courts in this District and across the country have certified litigation classes in COI breach-of-contract cases with facts very similar to these because the insurer engaged in class-wide conduct that allegedly breached form contracts written by the insurance company. *See, e.g., In re Conseco Life Ins. Co. LifeTrend Ins. Sales and Mktg. Litig.*, 270 F.R.D. 521, 533 (N.D. Cal. 2010) (certifying nationwide class of policyholders asserting breach-of-contract claims arising out of COI charges on form contracts); *In re AXA Equitable Life Ins. Co. COI Litig.*, 2020 WL 4694172, at *7 (S.D.N.Y. Aug. 13, 2020) ("The class members' contract claims rise and fall together. Their contracts with AXA are identical in all material respects, and Plaintiffs allege that AXA breached each contract through a single course of action with respect to every policy included in the class."); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 382 (S.D.N.Y. 2019) (certifying nationwide class in COI overcharge case where "[t]he contract language at issue does not vary by individual class member and is not materially different across the eighteen policies").

a) *Numerosity*

Numerosity is satisfied because "the class is so numerous that joinder of all members is impracticable." 3,090 Policies fall under the proposed Settlement Class definition. Mills Decl. at ¶ 6. "Courts generally find that numerosity is satisfied if the class includes forty or more members." *Nightingale v. U.S. Citizenship & Immigr. Servs.*, 333 F.R.D. 449, 457 (N.D. Cal. 2019). Joinder is therefore impracticable and Rule 23(a)(1) is satisfied.

b) *Commonality*

Commonality is satisfied where, as here, a classwide proceeding may "generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "Even a single common question will suffice to satisfy Rule 23(a)." *James v. Uber Techs. Inc.*, 338 F.R.D. 123, 131 (N.D. Cal. 2021) (Chen, J.) (citing *Walmart*, 564 U.S. at 359) (cleaned up).

This case presents numerous common questions of both law and fact that can be resolved on a classwide basis. This case involves form contracts, all of which contain substantially similar provisions dictating how COI rates will be determined. The questions of what that language means, and whether COI charges were properly based on expectations as to future mortality experience, are all common questions with common answers for the entire class. *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 or Lincoln Life used to calculate the 2016 COI rate increase and whether the insurance contracts allow for a rate increase based on those factors"); *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."); *In re Conseco*, 270 F.R.D. at 529 ("[S]everal courts have recognized that the law relating to the element of breach does not vary greatly from state to state.").

c) *Typicality*

Rule 23(a)(3) requires that "the [legal] claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Representative claims are typical if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *James v. Uber Techs. Inc.*, 338 F.R.D. 123, 132 (N.D. Cal. 2021) (Chen, J.) (internal quotation removed). Typicality is "satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Taylor*, 2015 WL 12658458, at *4 (citation omitted).

Here, typicality is satisfied because Plaintiff is a member of the Settlement Class and possesses the same interests and suffered the same alleged injury as each Settlement Class Member through ANICO's uniform course of conduct. Plaintiff, like all Settlement Class Members, was subjected to the COI charges in alleged violation of his policy's terms and shares a common interest in holding ANICO liable for these overcharges. *See, e.g., Phoenix COI*, 2013 WL 12224042, at *11 (S.D.N.Y. July 12, 2013) ("[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) *Adequacy*

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." A named plaintiff satisfies the adequacy test if the individual has no conflicts of interest with other class members and if the named plaintiff will prosecute the action vigorously on behalf of the class. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). "As other courts and commentators have noted, the typicality and adequacy inquiries tend to significantly overlap." *James v. Uber Techs. Inc.*, 338 F.R.D. 123, 133 (N.D. Cal. 2021).

Here, Plaintiff and the Settlement Class share the same legal claims under the same set of core facts. Plaintiff's interests are directly aligned with Settlement Class Members—to maximize the amount recovered from ANICO for its alleged breach of contract. Proceeds will be distributed equitably on a *pro rata* basis with every Class Member receiving at least $100, and all Settlement Class Members share an overriding interest in obtaining the largest monetary recovery possible from ANICO. For these reasons, Plaintiff's claim is typical and adequate for the Settlement Class, and he should be appointed as representative of the Settlement Class. Susman Godfrey has vigorously prosecuted this case 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 *Phoenix COI*, *Hancock COI*,

Reliastar COI, *North American COI*, *Voya COI*, *AXA COI*, *SLD COI*, and numerous other cases.[9] Thus, the Court should find that Susman Godfrey satisfies Rule 23(g).

e) *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" and that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Manageability is not at issue for a settlement class. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

Because Plaintiff's claims involve breach of standardized COI provisions in integrated, form contracts, as discussed above, common factual issues predominate. *See, e.g.*, *Fleisher*, 2013 WL 12224042, at *13 ("There is widespread agreement that certification under Rule 23(b)(3) is warranted for claims that involve contracts that . . . contain the same or essentially the same terms." (collecting cases)); *Transamerica COI*, 2017 WL 6496803, at *13 (certifying nationwide COI breach-of-contract case because "Plaintiffs' claims are premised on Transamerica's uniform policy language and uniform conduct").

Additionally, although not required under Ninth Circuit precedent, *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016), damages can be measured classwide. Plaintiff's damages expert Robert Mills has calculated the amount of damages for each Class policy through February 28, 2023 using ANICO's data. Mills Decl. ¶¶ 10–12, Ex. 2. The amount ANICO overcharged Class members through inflated COI charges is "the most reasonable basis for measuring the harm that was incurred during the life of the policyholders." *Vogt v. State Farm Life Ins. Co*., 963 F.3d 753, 770 (8th Cir. 2020).

Finally, as numerous other courts have found in actions regarding the lawfulness of alleged COI damages, class adjudication is far superior to individual litigation here in light of the costs to litigate COI claims individually. *See, e.g., Fleisher*, 2013 WL 12224042, at *15–18. Settlement permits Settlement Class Members to obtain substantive relief despite there being no individual actions filed against ANICO concerning its COI charges. And, if any Settlement Class Member

[9] Sklaver Decl., Ex. 1 (Susman Godfrey Firm Resume).

wishes to pursue an individual action, they can opt out. Concentrating Settlement Class Members in this forum is desirable because there are 3,090 policies affected. Rule 23(b)(3) is therefore satisfied.

B. The Proposed Form and Manner of Notice is Appropriate

Rule 23(e)(1)(B) requires that notice be directed "in a reasonable manner to all class members who would be bound by the proposal." "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Wal-Mart Stores*, 396 F.3d at 113.

First, Plaintiff's two forms of notice—the short-form and long-form notices attached as Exhibits A and B to the Bowden Declaration—apprise Class Members, in plain English, of the general terms of the settlement, the plan of distribution, the allocation of attorneys' fees, and specific information about the opt-out process and the final approval hearing. *See* Bowden Decl., Ex. A (Short-Form Notice); Ex. B (Long-Form Notice).

Second, Plaintiff proposes the appointment of JND as Settlement Administrator, who has extensive experience serving as administrator in large, complex class actions. *See* Bowden Decl. ¶¶ 4–9. Plaintiff received bids from three competing settlement administrators, using the same methods of notice and claims payment. Ultimately, Plaintiff selected JND due to a consideration of multiple factors, including JND's experience (including COI experience), competitive pricing, and JND's history of engagements with Susman Godfrey. *See* Sklaver Decl. ¶¶ 22–23. Plaintiff's counsel has worked with JND in many cases, including several other COI class actions during the past two years, and JND managed the class notice process in those cases with diligence and care. *Id.* ¶ 24. JND's history of engagements with Susman Godfrey during the past two years is detailed in the declaration of Gina Inrepido-Bowden. *See* Bowden Decl. ¶ 7. JND has extensive experience administering class-action settlements and has implemented robust procedures for handling class member data, as detailed in the Bowden Declaration. *See* Bowden Decl. ¶¶ 4–7 & n.1.

Third, direct mailing of the notice to Class Members via U.S. Mail is a particularly effective method because in-force policyholders are expected to maintain their current address with their policy administrator. *See, e.g.*, *In re Wachovia Corp. "Pick-A-Payment" Mortg. Mktg. & Sales*

Pracs. Litig., No. 5:09-MD-02015-JF, 2011 WL 1877630, at *3 (N.D. Cal. May 17, 2011) (notice by direct mail was adequate). A website will also be maintained so that anyone can read about the settlement and easily find all documents pertinent to the Settlement. *See* Bowden Decl. ¶ 20–21. An automated toll-free number will also be available. *See* Bowden Decl. ¶ 22–23.

The Court should therefore approve the proposed form and manner of notice as described in paragraphs 16–21 of the Sklaver Declaration and paragraphs 10–25 and Exhibits A and B of the Bowden Declaration because it is the "best notice practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

C. Proposed Schedule for Notice, Objections, and Final Approval

Plaintiff proposes the following schedule under the proposed Preliminary Approval Order, paragraphs of which are referenced in the chart, subject to the approval of the Court. This schedule provides due process for Class Members related to their rights concerning the Settlement.

Event	Days from Preliminary Approval
Deadline for ANICO to provide Class Member addresses to JND	14 days
Deadline for JND to send notice to Class Members	30 days
Deadline for JND to file proof of mailing	45 days
Deadline to file motion for award of attorneys' fees, expenses, and service awards	60 days
Deadline to request exclusion from the Settlement Class or object to the Settlement	75 days
Deadline to file motion for final approval	90 days
Deadline to serve any reply brief in support of any motion	103 days
Final Approval Hearing	110 days

III. CONCLUSION

Plaintiff respectfully requests that the Court (i) preliminarily approve the proposed Settlement, Plan of Allocation, and the form and manner of notice, and certify the proposed Class for settlement; (ii) direct notice to the Class under Rule 23(e)(1); and (iii) schedule a date and time for a hearing to consider final approval of the Settlement and related matters.

Dated: June 26, 2023

By: /s/ *Steven G. Sklaver*

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **[PROPOSED] PRELIMINARY APPROVAL ORDER**

Before the Court is Plaintiff's unopposed motion to approve the proposed Settlement, plan of allocation, and the form and manner of notice, certify the proposed Class for settlement, direct notice to the Class under Rule 23(e)(1), and schedule a final approval hearing at which the Court will consider final approval of the Settlement, final approval of the plan of allocation, and Class Counsel's motion for fees, costs, and service awards in this action, (ECF No. __). The terms of Plaintiff's proposed Settlement are set forth in a Joint Stipulation and Settlement Agreement with the accompanying exhibits (the "Agreement").[1]

The Court has considered the Agreement, Plaintiff's Motion for Preliminary Approval of Class Action Settlement and exhibits thereto, and all papers filed in support of the motion and the entire docket in this matter. Having fully considered the matter, pursuant to Federal Rule of Civil Procedure 23(e), it is hereby ORDERED that:

1. **Class Certification for Settlement Purposes Only.** The Court finds that it will likely be able to certify the following Settlement Class for purposes of judgment on the proposed Settlement:

> All owners of universal life (including variable universal life) insurance policies issued in California by American National Insurance Company ("ANICO"), or its predecessors in interest, that provide that cost of insurance rates are determined based on expectations as to future mortality experience, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010.
>
> Excluded from the Settlement Class are: (a) Class Counsel and their employees; ANICO; officers and directors of ANICO, and members of their immediate families; the heirs, successors or assigns of any of the foregoing; (b) the Court, the Court's staff, and their immediate families; and (c) Policyowners who submit a valid and timely Opt-Out request for exclusion.

2. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, the Court finds that giving notice is justified. The Court will direct notice to Settlement Class Members, as specified below, because it finds that it likely will be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that: (i) the Settlement Class is so numerous that joinder is impracticable; (ii) Plaintiff's claim presents common issues that are typical of the Class; (iii) Plaintiff and Class Counsel will fairly and adequately represent the Class; and (iv)

[1] All defined terms have the same meaning as set forth in the Agreement, which is attached to the Declaration of Steven Sklaver as Exhibit 2 (ECF No. __).

common issues predominate over any individual issues affecting the Settlement Class Members. The Court further finds that Plaintiff's interests are aligned with the interests of all other Settlement Class Members. The Court also finds that resolution of this action on a class basis for purposes of the Settlement is superior to other means of resolution.

3. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement as set forth in the Agreement, including the releases contained therein, and the proposed Plan of Allocation described in Exhibit 4 to the Sklaver Declaration, because the Court likely will be able to find that the Settlement is fair, reasonable, and adequate under Rule 23(e)(2). The Court's preliminary approval is subject to the right of any Settlement Class Member to challenge the fairness, reasonableness, or adequacy of the Agreement and to show cause, if any exists, why a final judgment dismissing the Action against ANICO, and ordering the release of the Released Claims against the Released Parties, should not be entered after due and adequate notice to the Settlement Class as set forth in the Agreement and after a hearing on final approval.

4. The Court finds that the Agreement was entered into at arm's length by highly experienced counsel with the assistance of former United States District Court Judge Vaughn Walker and is sufficiently within the range of reasonableness that notice of the Agreement should be given as provided in the Agreement. The case was thoroughly litigated by experienced counsel and settled after briefing and arguing a case-dispositive motion, conducting extensive discovery, and attending two separate mediations.

5. **Settlement Class Representative and Settlement Class Counsel.** The Court preliminarily finds that Plaintiff Joe S. Yearby satisfies the requirements of Rule 23(e)(2)(A) and therefore appoints him to serve as Settlement Class Representative. Additionally, the Court preliminarily finds that Susman Godfrey L.L.P. satisfies the requirements of Rule 23(e)(2)(A) and is appointed as Class Counsel pursuant to Rule 23(g).

6. **Settlement Administrator.** The Court appoints JND Legal Administration LLC ("JND") as the Settlement Administrator, with responsibility for class notice and claims administration. The Settlement Administrator is directed to perform all tasks the Agreement

requires. The Settlement Administrator's fees will be paid from the Settlement Fund as they become due as set forth in the Agreement.

7. **Notice.** Pursuant to Rule 23(e)(1)(B), the Court directs that notice be provided to class members and approves the proposed method for providing notice set forth in the Agreement and the forms of Class Notice attached to the Declaration of Gina Intrepido-Bowden as Exhibits A and B. Non-material modifications may be made with approval by the parties but without further order of the Court.

8. **Findings Concerning Notice.** The Court finds that the proposed form, content, and method of giving notice to the Settlement Class as described in the Agreement and exhibits: a) 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 Settlement, and their rights under the Settlement; c) are reasonable, and constitute due, adequate, and sufficient notice to Settlement Class Members; and d) comply fully with the requirements of Rule 23(c) and (e), and the due process requirements of the United States Constitution.

9. **Class Action Fairness Act Notice.** Within 10 days after the filing of the Motion for Preliminary Approval of the Settlement, American National Insurance Company shall serve a notice of the proposed Settlement on appropriate officials in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715. The cost of any CAFA notice is the sole responsibility of American National and will not be paid from the Final Settlement Fund.

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written request for exclusion to the Settlement Administrator at the address and in the manner provided in the Class Notice. Such Requests for Exclusion must meet the opt-out deadline established by this Order and stated in the Notice.

11. Settlement Class Members that own multiple Policies in their own name or on behalf of different principals (including as a securities intermediary or trustee) may stay in the Settlement Class as to some Policies and opt-out of the Settlement Class for other Policies.

12. Any Settlement Class Member that does not file a timely and proper written request for exclusion will be bound by all subsequent proceedings, orders, and judgments in the Action. Class Counsel shall file a list reflecting all valid Opt-Outs with the Court prior to the Fairness Hearing.

13. **Objections and Appearances.** Any Settlement Class Member that has not filed a timely and proper written request for exclusion and that wishes to file a written objection to the fairness, reasonableness, or adequacy of the proposed Settlement must file with the Court a written statement of objection no later than 45 days after the deadline for the Settlement Administrator to mail the Class Notice. Each such statement of objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member; (2) 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 list of all persons who will be called to testify in support of the objection (if any); (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (7) 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 Settlement 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.

14. **Fairness Hearing.** The Court hereby schedules a Final Fairness Hearing to occur on _____, 2023 at _____ before the Honorable Edward Chen in Courtroom No. 5 – 17th Floor, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, to determine, among other things, whether (i) the proposed Settlement as set forth in the Agreement, should be finally approved as fair, reasonable, and adequate pursuant to the Federal Rule of Civil Procedure 23(e); (ii) the Settlement Class shall be certified for purposes of

judgment on the proposal; (iii) an order approving the Agreement and a Final Judgment should be entered; (iv) an order approving the proposed Plan of Allocation; (v) Settlement Class Members and ANICO should be bound by the releases in the Agreement; and (vi) the application of Class Counsel for an award of attorneys' fees, expense reimbursements, and incentive awards ("Fee and Expense Request") in this matter should be approved.

15. Plaintiff's motion for final approval of the settlement must be filed by 90 days after the date of this Order. Any reply brief in support of a motion for final approval must be filed by 103 days after the date of this order.

16. All papers in support of any Fee and Expense Request shall be filed within 60 days after the Preliminary Approval Date.

17. **Use of Order.** Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or Settlement is or may be construed or used as an admission or evidence of (i) the validity of any claims, alleged wrongdoing or liability of ANICO or (ii) any fault or omission of ANICO in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

18. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement is or may be used as an admission or evidence that Plaintiff's claims lack merit in any proceeding.

19. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the Court entered this Order, if: a) the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement; or b) there is no Effective Date. In such event, the Settlement and Agreement shall be null and void and be of no further force and effect, and neither the Agreement nor the Court's orders relating to the Settlement, including this Order, shall be used or referred to for any purpose.

20. **Schedule and Deadlines.** The Court orders the following schedule of dates for the specified actions/further proceedings:

Event	Days from Preliminary Approval
Deadline for ANICO to provide Class Member addresses to settlement administrator	14 days
Deadline to send notice to Class Members	30 days
Deadline to file proof of mailing	45 days
Deadline to file motion for award of attorneys' fees, expenses, and service awards	60 days
Opt-out and Objection Deadline	75 days
Deadline to file motion for final approval	90 days
Deadline to serve any reply brief in support of any motion	103 days
Final Approval Hearing	110 days

For the reasons set forth above, the Court **GRANTS** Plaintiff's motion.

IT IS SO ORDERED.

Dated: _____

_____
Edward M. Chen
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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

1. I submit this declaration in support of Plaintiff's motion for preliminary approval of the proposed class action settlement between (i) Joe S. Yearby, individually and on behalf of the Class; and (ii) Defendant American National Insurance Company ("ANICO").

2. I am a member in good standing of the State Bar of California. I am a partner of the law firm of Susman Godfrey L.L.P., and counsel of record for Plaintiff 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 along with the profiles of the other counsels of record for Plaintiff are attached hereto as **Exhibit 1**.

3. I was among the principal negotiators of the proposed class action settlement (the "Settlement"). Following extensive negotiations, the parties reached an agreement on November 22, 2022, and the parties then negotiated a long-form Settlement Agreement, a true and correct copy of which is attached as **Exhibit 2**. A true and correct copy of Plaintiff's policy is attached as **Exhibit 3**. A true and correct copy of the Plan of Allocation is attached as **Exhibit 4**. True and correct copies of the verdict form, partial decertification order, judgment, and the trial transcript from *Meek v. Kansas City Life Ins. Co.*, 19-cv-472, Dkts. 311, 329-30 (W.D. Mo. May 25 & June 20, 2023), are attached as **Exhibit 5** and **Exhibit 6**. A chart showing a comparison of outcomes for three other COI cases in which Susman Godfrey has been involved for which final approval has been granted, compared to Plaintiff's proposed settlement with ANICO, is attached as **Exhibit 7**. It is the opinion of Class Counsel that the settlement is fair, adequate, and reasonable.

THE LITIGATION

4. In December 2020, Plaintiff filed a putative class action lawsuit, asserting a claim of breach of contract against ANICO. Dkt. 1.

5. ANICO moved to transfer venue to the Southern District of Texas and to dismiss based on lack of personal jurisdiction, res judicata, and failure to state a claim. Dkt. 25-28. Pursuant to Federal Rule of Civil Procedure 15(a)(1), Plaintiff filed a First Amended Complaint

("FAC") on April 23, 2021. Dkt 31. ANICO moved to dismiss the FAC on similar grounds as the original complaint, and also filed its renewed motion to transfer the action. Dkts. 43-44. Plaintiff opposed the motions, Dkts. 46-47, after conducting jurisdictional discovery by serving document requests on April 23, 2021. After hearing oral argument, the Court denied the motion to transfer and granted in part and denied in part the motion to dismiss, allowing Plaintiff to amend his tolling allegation. Dkt. 57. Plaintiff did so by filing a Second Amended Complaint ("SAC"). Dkt. 61. ANICO did not move to dismiss the SAC, and instead served its Answer. Dkt. 69.

6. After an unsuccessful first mediation on February 16, 2022, which was conducted at the suggestion of the Court, see Dkt. 41 at 2 (setting ADR deadline and limiting discovery until after the completion of ADR), the parties engaged in fact discovery, which included the service of 41 Requests for Production of documents, extensive negotiation over the scope of production and ESI protocol, and production and review of over 18,000 pages of documents and data sets, including documents produced pursuant to third-party subpoenas served on ANICO's independent auditors, Deloitte & Touche LLP and KPMG LLP, following numerous meet and confer efforts with both the auditors and ANICO. Plaintiff also served a Rule 30(b)(6) deposition notice on ANICO and, following ANICO's objections to the notice, engaged in meet and confer efforts over the scope of the topics shortly before the parties reached an agreement on settlement.

MEDIATION AND SETTLEMENT

7. The Settlement is the result of extensive, arms-length negotiations between the parties with the assistance of an experienced mediator, Vaughn R. Walker, a retired United States District Judge.

8. Through the life of the case, the parties have exchanged numerous settlement offers and counter-offers and engaged in an unsuccessful mediation on February 16, 2022, in person in San Francisco. Following extensive document and third-party discovery, the parties renewed mediation discussions in September 2022 and on November 22, 2022, the parties attended another mediation which resulted in agreement for a final settlement. A long-form settlement agreement was heavily negotiated and agreed to thereafter. Ex. 2 (Settlement Agreement).

9. Throughout the process, the Settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. Class Counsel was well informed of material facts and the negotiations were hard-fought and non-collusive. Class Counsel analyzed all of the contested legal and factual issues to thoroughly evaluate ANICO's contentions, and advocated in the settlement negotiation process for a fair and reasonable settlement that serves the best interests of the Class. Given the complexities and expert witness issues involved in COI cases, they are extraordinarily expensive to try, and there was a serious risk that further litigation expenses would have severely diminished the distributions given that the total alleged historical damages through February 28, 2023 are only $5,704,128. *See, e.g.*, *Leonard, et. al. v. John Hancock Life Ins. Co. of New York*, No. 1:18-cv-04994-AKH, Dkt. 208 at 14 (S.D.N.Y. March 11, 2022) (expenses of $1,427,596.29); *Helen Hanks v. Voya Retirement Life Ins. & Annuity Co.*, No. 1:16-cv-06399-PKC, Dkt. 293 at 16 (S.D.N.Y. April 4, 2022) (expenses of $2,183,929.18).

10. The Settlement Agreement provides for a Settlement Class of "[a]ll owners of universal life (including variable universal life) insurance Policies issued in California by American National Insurance Company, or its predecessors in interest, that provide that cost of insurance rates are determined based on expectations as to future mortality experience, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010," with the exclusion of the policies that timely and validly opt out during the Rule 23(e)(4) opt-out period (referred to as the "Opt-Outs" in the Settlement Agreement). *See* Ex. 2 §§ 5, 30. The awards and releases in the Settlement Agreement apply only to the Settlement Class.

11. The Settlement awards both cash relief and non-cash relief to the Settlement Class. With respect to the cash relief, a $5 million Settlement Fund will be funded for the benefit of the Settlement Class. *See* Settlement Agreement § 39. This amount will be reduced, on a *pro-rata* basis measured by the measured by the face amount for each policy that timely and validly opts out during the Rule 23(e)(4) opt-out period. *See id.* § 45.[1] No portion of the Final Settlement Fund (*i.e.* the post-reduction amount) will revert back to ANICO. *See id.* §§ 40, 45.

[1] For example, "if 1% of the total face amount of the in-scope policies owned by members of the Class is attributable to Opt-Outs, the Settlement Fund will be reduced by 1% (i.e., to $4,950,000)."

12. The Settlement Agreement also provides two forms of significant non-cash relief. *First*, for a period of five years after the date on which the Court approves the settlement, "American National agrees that Cost of Insurance Rates on the Class Policies will not be increased above the year-to-year increases contemplated under Defendant's current rate schedules in effect on November 23, 2022." *See* Settlement Agreement § 49. *Second*, "American National agrees 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 the application for, or otherwise made in applying for the policy" *Id.* § 50.

13. Once the settlement becomes final, the Settlement Class and certain related parties (referred to as the "Releasing Parties" in the Settlement Agreement) will release ANICO, certain related parties (referred to as the "Released Parties" in the Settlement Agreement) from "all Claims, from whatever jurisdiction, arising out of or related to any Policy, or Policies, that were alleged or could have been alleged in the Action arising out of the same Factual Predicate as that alleged in the Action and/or as clarified herein." Settlement Agreement §§ 31–33, 67. Expressly excluded from this release are claims arising from (i) future COI rate scale increases (after the 5 year COI rate freeze expires), (ii) other future increases to policy charges or credits that could not have been asserted in this action, or (iii) any failure to pay any death benefits that may be owed. *Id.* §§ 69, 71

14. The Settlement provides for an incentive award of up to $25,000 for Plaintiff and class representative Joe Yearby for her services on behalf of the Settlement Class. *See* Settlement Agreement §§ 21, 60. The Settlement Agreement also provides for attorneys' fees in an amount not to exceed 33 1/3% of the gross benefits provided to the Settlement Class and reimbursement for all expenses incurred or to be incurred. *See id.* §§ 61–62. The amounts as approved by the Court will be paid out of the Final Settlement Fund. *See id.* §§ 19, 21, 48, 61–62.

See id.

15. 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.

PROPOSED NOTICE PLAN

16. Plaintiff's proposed form and manner of notice is set forth in Plaintiff's motion for preliminary approval of class action settlement, and in the declaration of Gina Intrepido-Bowden.

17. Within 14 days of the Court's order granting the motion for preliminary approval, ANICO will provide JND with a list of owner-address information that is available from their files.

18. Within 30 days after the motion for preliminary approval is granted, JND will mail the short-form notice attached as Exhibit A to the Bowden Declaration to all addresses on the list from ANICO.

19. JND will also post a copy of the long-form notice attached as Exhibit B to the Bowden Declaration to a website that will be established for the settlement (https://www.anicocoisettlement.com/) and will establish and maintain an automated toll-free number that Class Members may call to obtain information about the litigation.

20. 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.

21. Within 10 days following the filing of this motion, ANICO 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.

SELECTION OF SETTLEMENT ADMINISTRATOR

22. Plaintiff received bids from three competing settlement administrators, using the same methods of notice and claims payment.

23. Ultimately, Plaintiff selected JND as a result of a review of multiple factors, including JND's experience (including in COI cases), competitive pricing, and JND's history of engagements with Susman Godfrey. JND's prior history of engagements with Susman Godfrey is detailed in the Declaration of Gina Intrepido-Bowden.

24. Plaintiff's counsel has worked with JND in many cases, including several other COI class actions during the past two years, and JND managed the class notice process in those cases with diligence and care.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of June 2023, in Los Angeles, California.

/s/ Steven G. Sklaver
Steven G. Sklaver

EXHIBIT 1

Insurance

Susman Godfrey has a long history of litigating and winning significant insurance matters on both sides of the "v." For plaintiffs, this includes representing insureds, policy owners, and businesses in national class actions, life insurance disputes and business interruption matters against some of the nation's largest insurers. For the insurance industry, this includes defending companies such as ACE Limited and ACE Bermuda (now Chubb), Equitas, and the members of the London Insurance Market against millions of dollars of potential exposure when litigation arises.

Insurance Class Actions

- ***Leonard et al. v. John Hancock Life Insurance Co. of New York et al.*** Secured a settlement valued at $143 million, before fees and expenses, including a cash fund of over $93 million and an agreement by John Hancock Life Insurance Company not to impose a higher cost of insurance rate scale for 5 years (even in the face of a worldwide pandemic), on behalf of a class of approximately 1,200 policyholders who alleged that Hancock breached the terms of their respective life insurance policies and overcharged them for life insurance. When granting final approval, the Court held that the settlement provided an "absolutely extraordinary" recovery rate for the class, and lauded Susman Godfrey's "extraordinary work."
- ***Helen Hanks v. Voya Retirement Insurance and Annuity Company.*** Negotiated settlement worth $118 million, before fees and expenses, including a cash fund of over $92 million and an agreement by Voya not to impose a higher rate scale for 5 years, on behalf of a certified class of 46,000+ policyholders over allegations that Voya improperly raised cost-of-insurance charges. Over the course of litigation, the team from Susman Godfrey secured certification of the nationwide class and defeated summary judgment. The Court recognized the quality of the work, stating: "I want to commend you all for the work done on the pretrial order and motions in limine . . . I'm very happy to have you as lawyers appearing before me."
- ***37 Bensen Parkway v. John Hancock Life Insurance Company.*** Secured a $91.25 million settlement all-cash, non-reversionary settlement (before fees and expenses) for insurance policy owners against John Hancock Life Insurance Company. The Honorable Paul Gardephe described the settlement as a "quite extraordinary . . . result achieved on behalf of the class."
- ***Fleisher v. Phoenix Life Insurance.*** Served as lead counsel to plaintiffs 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 with terms that included: a $48.5 million cash fund ($34 million after fees and expenses), a 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."

- ***Brach Family Foundation et al. v. AXA Equitable Life Insurance.*** Serving as lead counsel in a case challenging AXA's decision to raise cost of insurance rates on life insurance policies nationwide, and alleging that AXA made misrepresentations to policyholders in its insurance illustrations leading up to the cost of insurance increase. The Court certified two nationwide classes, one for policy-based claims and one for misrepresentation-based claims.
- ***Hanks et al. v. The Lincoln Life & Annuity Company of New York, et al.*** Serving as lead counsel in a case challenging Voya Life Insurance Company's decision to raise cost of insurance rates on life insurance policies nationwide. The Court certified a nationwide breach of contract class.
- ***In re Lincoln National COI Litigation.*** Serving as co-interim-lead counsel in two cases challenging Lincoln National's decision to raise cost of insurance rates nationwide.
- ***Brighton Trustees et al. v. Genworth Life and Annuity Insurance Company.*** Serving as interim lead class counsel in a case challenging Genworth's decision to raise cost of insurance rates nationwide.
- ***AvMed Inc. et al. v. BrownGreer, US Bancorp, and John Does.*** Represented a group of more than forty health plans (who between them comprise more than 70% of the US market for private health insurance) asserting healthcare reimbursement liens against claimants to the $4.85 billion Vioxx compensation fund. Susman Godfrey reached a groundbreaking settlement with the Vioxx Plaintiffs' Steering Committee, guaranteeing them certain payouts on their liens covering participating plaintiffs. *American Lawyer* magazine featured this settlement in the "Big Suits" column at the time of this decision

Life Insurance

- ***The Lincoln Life and Annuity Company of New York v. Berck;*** and ***Berck v. The Lincoln Life and Annuity Company of New York.*** Won a reversal in a $20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York as trial and appellate counsel for a group of investors. 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 was net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust affirmed the trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The $20 million policy matured before the trial court entered judgment in favor of the policy owner. We then sued the insurance carrier to effectuate payment of the $20 million policy. The case was the feature cover story in the publication, *California Lawyer*, at the time of this decision.
- ***The Lincoln Life and Annuity Company of New York v. Janis and Berck.*** 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. In this matter summary judgment was granted in favor of our client.

- ***In re James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, v. James J. Cotter, Jr., Respondent.*** Achieved a successful verdict invalidating a will on grounds of both undue influence and incapacity in this trust and estates case in Los Angeles Superior Court.

Other Significant Insurance Caces

- ***Universal Cable Productions v. Atlantic Specialty Insurance.*** Represented Universal Cable Productions (UCP)—a subsidiary of NBC Universal—in its dispute with insurance carrier, Atlantic, which claims it was not required to provide coverage when Hamas bombing forced UCP to relocate filming of the TV miniseries "Dig" out of Jerusalem. After a successful appeal to the Ninth Circuit by Susman Godfrey on the scope of the exclusions, UCP then received a full win in the district court which found in its favor on all remaining liability issues. The case—which was set for trial on the amount of damages Atlantic owed to UCP for the relocation, whether Atlantic's denial of coverage was done in bad faith and the amount of punitive damages owed to UCP—was settled favorably on the eve of trial.
- ***Alley Theater v. Hanover Insurance.*** Secured a partial summary judgment win for Houston's historic Alley Theatre in an insurance coverage lawsuit the firm handled pro bono. The suit claimed the theatre was not properly reimbursed by Hanover Insurance Company for claims related to business interruption losses sustained during Hurricane Harvey. The firm later scored its second victory for the theater when they settled the final piece of the litigation–terms of this settlement are confidential.
- **Insurance Litigation for Walmart.** Lead counsel for Walmart on insurance coverage claims against certain of its insurers, regarding the settlement of claims arising out of an accident on the NJ Turnpike that injured comedian Tracy Morgan and others.
- ***LyondellBasell v. Allianz Insurance.*** Secured a confidential recovery (ultimately disclosed in an SEC filing as more than $100 million) for LyondellBassell Industries in a London arbitration over business interruption losses arising from Hurricane Ike. Lyondell sought coverage for losses caused by a hurricane, but faced a $200 million deductible self-insured retention, which the insurers claimed exceeded any losses. We handled all coverage, accounting, and engineering issues (which included significant damage to refinery equipment and delays to turnaround construction projects). The case settled on the eve of the final evidentiary hearing after we won key disputes regarding certain insurance coverage and claim quantification issues.
- **Confidential Private Transportation Company Litigation.** Hired to represent a private transportation company against its insurer for bad-faith failure to settle. The firm was engaged after a South Texas jury returned a $25+ million verdict on personal injury claims against our client, far in excess of the insurance policy limits. The matter was resolved without the need to file a lawsuit, and without the client paying anything out of pocket on the verdict.

- ***Sabre v. The Insurance Company of the State of Pennsylvania.*** Hired months before trial to represent the worldwide travel technology leader in a $100 million insurance coverage dispute. Successfully settled the case on the eve of trial.
- ***Aetna v. Ace Bermuda.*** Represented Ace Bermuda Insurance (now part of Chubb) in a $25 million coverage claim brought by the bankruptcy estate of Boston Chicken in bankruptcy court in Phoenix, Arizona. The case raised novel issues of bankruptcy procedure, international law, and the enforcement of arbitration agreements involving a bankruptcy trustee.
- **London Insurance Market Asbestos Cases.** Defended insurance groups in the London Insurance Market including Equitas, a Lloyds of London runoff company, in litigation regarding asbestos insurance coverage, including bankruptcy adversary proceedings regarding Dresser Industries, a Halliburton subsidiary; Babcock & Wilcox Co., a McDermott International subsidiary; and Pittsburgh Corning Corp., a PPG Industries subsidiary. The firm tried the Babcock & Wilcox matter to the bench for many weeks and won. In both the Dresser Industries and the Babcock & Wilcox matters, our team ultimately achieved settlements for the London Market at very large discounts from the exposed policy limits, saving the firm's clients hundreds of millions of dollars. Pittsburgh Corning ultimately withdrew the bankruptcy plan to which our clients were objecting.
- ***City of Houston v. Hertz.*** Won a no liability verdict for The Hertz Corporation in a high-profile jury trial in which the plaintiff alleged violations of state insurance licensing laws and unfair and deceptive practices. In less than an hour of deliberations, the jury found for Hertz on all issues and rejected plaintiff's claims for attorneys' fees.

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Overview

Named one of *Lawdragon's* 500 Leading Lawyers since 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 2010-2022, 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

- *Lawdragon* 500 Leading Litigator (2022)
- Litigation Star, Benchmark Litigation (2022, Euromoney)
- Recommended Lawyer – Litigation – Labor and Employment, Best Lawyers in American (2020 – 2023, Woodward White, Inc.)
- Southern California California Super Lawyer (2010 – 2023, Thomson Reuters)
- *Lawdragon* 500 Leading Lawyers in America (2020, 2021, 2022, 2023)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers (2019, 2020, 2021, 2022, 2023)
- 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 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.

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 International, 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.

Ryan was named among Lawdragon's 500 Leading Litigators in America in 2022. 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

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Seth Ard

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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. Since 2019, Mr. Ard has been 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

- *Lawdragon* 500 Leading Litigator (2022)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers (2019, 2020, 2021 2022, 2023)

- New York Super Lawyer (2022, Thomson Reuters)
- New York Rising Star (2013-2018, 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) 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) 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) 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) 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) 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) 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) 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.) 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) 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.

Kevin Downs

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Overview

Kevin Downs represents plaintiffs and defendants in all types of commercial litigation. Kevin joined Susman Godfrey after clerking for Chief Judge Lee H. Rosenthal of the United States District Court for the Southern District of Texas. While clerking, Kevin worked on a wide range of cases, at both the trial-court and appellate levels. Kevin graduated *magna cum laude* from the University of Pennsylvania Law School.

Before law school, Kevin spent many years as a concert cellist. He served as the principal cellist of the Houston-based Mercury Chamber Orchestra, performed with the Houston Grand Opera, and gave solo recitals across North America and Europe. His performances have been broadcast on National Public Radio and public television stations.

Education

University of Pennsylvania Law School (J.D., *magna cum laude*)

New England Conservatory (M.M., cello performance)

Cleveland Institute of Music (B.M., cello performance)

Clerkship

Hon. Lee H. Rosenthal, Chief Judge, United States District Court for the Southern District of Texas

Professional Associations and Memberships

Texas State Bar

California State Bar

EXHIBIT 2

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **JOINT STIPULATION AND SETTLEMENT AGREEMENT**

JOINT STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, subject to approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, by and between: (i) Plaintiff Joe S. Yearby, individually and on behalf of the Class; and (ii) Defendant American National Insurance company, 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 Plaintiff and American National and is intended to fully, finally, and forever resolve, discharge, and settle the Action and Released Claims upon and subject to the terms and conditions hereof.

I. DEFINITIONS AND CONSTRUCTION

Capitalized terms in this Agreement shall have the meaning set forth below:

1. "Action" means the lawsuit, captioned *Joe S. Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC, currently pending in the United States District Court for the Northern District of California.

2. "Agreement" means this Joint Stipulation and Settlement Agreement.

3. "American National" or "Defendant" means Defendant American National Insurance Company and its predecessor and successor entities.

4. "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, consequential or incidental damages, statutory damages, liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys' fees, without regard to what jurisdiction or state law under which the "Claim" may exist or have arisen.

5. "Class" means "[a]ll owners of universal life (including variable universal life) insurance Policies issued in California by American National Insurance Company, or its predecessors in interest, that provide that cost of insurance rates are determined based on expectations as to future mortality experience, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010." Specifically excluded from the Class are Class Counsel and their employees; American National; officers and directors of American National, and members of their immediate families; the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

6. "Class Counsel" means Susman Godfrey L.L.P.

7. "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.

8. "Class Notice" means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Class.

9. "COI" means cost of insurance.

10. "COI Rate" means the rate used to calculate COI charges for the Policies.

11. "COI Rate Scale" or "COI Rate Scales" refers to the table(s) of COI rates for the Policies.

12. "Confidential Information" means material designated as "Confidential" in accordance with the terms of the Stipulated Protective Order entered in the Action on July 14, 2021 (Dkt. 52).

13. "Court" means The United States District Court for the Northern District of California, Hon. Edward M. Chen.

14. "Current COI Rate Scales" refers to the tables of COI rates for the Policies that were in effect as of November 22, 2022, and which have been produced in this Action. ANICO represents and warrants that the Current COI Rate Scales have not been changed as of the date of this Agreement.

15. "Excluded Claims" refers to all claims arising from a future increase to Defendant's Current COI Rate Scales, or increases to any other policy charges and credits, following the date of this Agreement and which could not have been asserted in the Action based on the Factual Predicate. For the avoidance of doubt, Excluded Claims do not include (a) Claims arising from year-to-year increases in COI Rates under Defendant's Current COI Rate Scales, whether occurring in the past or the future, due to an insured's sex, attained age or rating classification, so long as there has been no change in Defendant's Current COI Rate Scales, or (b) any other Claims challenging Defendant's Current COI Rate Scales. The right to pursue Excluded Claims is expressly reserved by the Settlement Class Members.

16. "Factual Predicate" means the facts, allegations, claims or assertions made by Plaintiff in the Action on his own behalf or on behalf of the Class and, for the avoidance of doubt and without limitation, specifically includes allegations related to American National's failure to decrease COI Rates; its methods, interpretations, processes or procedures in developing the Current COI Rate Scales; and/or its or methods, interpretations, processes or procedures for calculating and assessing COI in the past, present, or future using the Current COI Rate Scales, including whether or not such Current COI Rate Scales included or includes in the future: (a) consideration of factors in addition to sex, attained age, or rating class of the insured; and/or (b) any alleged expense in excess of alleged monthly percentages of premium dollar expense limits expressed through policy data pages.

17. "Final Approval Date" means the date on which the Court enters its Order and Judgment approving the Settlement.

18. "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.

19. "Final Settlement Fund" means the cash fund after any reductions in the amount of the Settlement Fund pursuant to paragraph 44. 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 Award; (iii) any 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 Settlement or the Order and Judgment. There will be no reversion of any portion of the Final Settlement Fund to American National. 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.

20. "Funding Date" means ten (10) calendar days after the Court grants preliminary approval of the Settlement.

21. "Incentive Award" means the amount of an award approved by the Court to be paid to Plaintiff from the Final Settlement Fund, in addition to any settlement relief he may be eligible to receive, to compensate Plaintiff for efforts undertaken by him on behalf of the Settlement Class.

22. "Mediator" means Judge Vaughn Walker (Ret.).

23. "Net Settlement Fund" means the Final Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Award; (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.

24. "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 to enforce the terms of the judgment and for a bar order (consistent with the provisions of paragraph 88) prohibiting claims by the Releasing Parties against Released Parties for the Released Claims.

25. "Owner" or "Owners" means a Policy's owner, whether person or entity, as recorded on Defendant's books as of January 1, 2023. For Policies that have lapsed, surrendered, matured, or otherwise terminated, Owner means a Policy's owner as recorded on Defendant's books as of the date the Policy lapsed, surrendered, matured, or otherwise terminated, or any updated information Defendant had as of January 1, 2023.

26. "Parties" means, collectively, Plaintiff and American National. The singular term "Party" means either of Plaintiff or American National as appropriate.

27. "Plaintiff" means Joe S. Yearby, individually and as representative of the Class, and his assigns, successors-in-interest, executors, administrators and/or representatives.

28. "Policy" or "Policies" means any universal life (including variable universal life) insurance issued in California by American National Insurance Company that provide that cost of insurance rates are determined based on expectations as to future mortality experience and no other factor, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010.

29. "Opt-Outs" means the Owner(s) that timely elect to opt-out of the Settlement during the opt-out period provided in paragraph 52.

30. "Released Claims" means all Claims, from whatever jurisdiction, arising out of or related to any Policy, or Policies, that were alleged or could have been alleged in the Action arising out of the same Factual Predicate as that alleged in the Action and/or as clarified herein. For the avoidance of doubt, Released Claims do not include Excluded Claims.

31. "Released Parties" means American National and their respective past, present, and future parent companies, direct and indirect subsidiaries, affiliates, predecessors, successors and assigns, together with each of the their respective past, present, and future officers, directors, shareholders, employees, representatives, attorneys, and agents (including but not limited to, those acting on behalf of American National and within the scope of their agency).

32. "Releasing Parties" means Plaintiff and each Settlement Class Member, on behalf of themselves and their respective agents, heirs, relatives, representatives, attorneys, successors, trustees, subrogees, executors, assignees, and all other persons or entities acting by, through, under, or in concert with any of them.

33. "Settlement" means the settlement set forth in this Agreement.

34. "Settlement Administration Expenses" means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including those fees incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Final Settlement Fund.

35. "Settlement Administrator" means the third-party settlement administrator of the Settlement. Plaintiff shall be responsible for selecting the Settlement Administrator. The Settlement Administrator's fees shall be paid from the Final Settlement Fund.

36. "Settlement Class" means the Class without the "Opt-Outs."

37. "Settlement Class Member(s)" means all persons and entities that are included in the Settlement Class.

38. "Settlement Fund" means a cash fund consisting of the consideration paid for the benefit of the Settlement Class.

39. "Settlement Fund Account" or "Escrow Account" means the separate escrow account designated and controlled by Class Counsel at one or more national banking institutions into which the Final Settlement Fund will be deposited for the benefit of the Class pursuant to this Agreement. As of the entry of Final Judgment or Order, including exhaustion of all appeals (if any) , Defendant shall no longer have any right, title, or interest in the sums held in the Escrow Account, except for any reduction in the amount owed for Opt-Outs. The Parties agree that upon entry of Final Judgment or Order, including exhaustion of all appeals (if any), this is a non-reversionary settlement, and, except as expressed in this Agreement, that there shall be no reversion of the Final Settlement Fund to Defendant unless the Final Order and Judgment is not entered or is overturned on appeal or review, and in no event shall Settlement Administration Expenses already expended at the time revert to Defendant.

40. "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 or could have been 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 or object to the Settlement.

41. 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.

42. All references herein to sections and paragraphs refer to sections and paragraphs of this Agreement, unless otherwise expressly stated in the reference.

II. SETTLEMENT RELIEF

1. Cash Consideration to the Settlement Class

43. American National shall fund the Settlement Fund, in the amount of $5,000,000 by the Funding Date.

44. The Settlement Fund shall be reduced on a pro-rata basis measured by the face amount for each Opt-Out. By way of example, if 1% of the total face amount of the in-scope policies owned by members of the Class is attributable to Opt-Outs, the Settlement Fund will be reduced by 1% (i.e., to $4,950,000). The reduced portion of the Settlement Fund, if any, shall be repaid to American National within thirty (30) days of entry of Final Judgment or Order, including exhaustion of all appeals (if any).

45. Any disputes regarding the reduction of the Settlement Fund shall first be presented to the Mediator for potential resolution, and, absent resolution, to the Court for a determination. The Settlement Fund, after any reduction for Opt-Outs is referred to herein as the Final Settlement Fund, and the Class 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 44 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 American National.

46. 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.

47. American National shall not be required make any payments to the Settlement Class in connection with this Action other than the Final Settlement Fund amount.

2. Non-Cash Consideration to the Settlement Class

48. For a period of five (5) years following the Final Approval Date, American National agrees that Current COI Rate Scales for the Class Policies will not be increased.

49. American National agrees 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 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 American National in the past. With the exception of the foregoing, nothing contained in this Agreement shall otherwise restrict American National 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 American National; 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.

III. PRELIMINARY APPROVAL AND CLASS NOTICE

50. The Parties agree that Plaintiff shall move for an order seeking preliminary approval of the Settlement within 14 days of executing this Agreement, which shall include a request to notify the Class of the settlement and provide a period during which Class members can request exclusion from the settlement. 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.

51. Plaintiff's form of Class Notice will be direct mailing by the Settlement Administrator to each Owner at address information that is available from American National's files as well as publication notice through a settlement website. Plaintiff understands and agrees that American National will provide its current Owner address information to the Settlement Administrator, but may not have updated, and has no obligation to update, address information related to policies that are no longer in force for any reason, including but not limited to death, lapse, or termination.

52. Any Owner that wishes to Opt-Out of the Settlement Class must submit to the Settlement Administrator a written request for exclusion sent by U.S. mail and postmarked no later than 45 calendar days after the date set by the Court or in the Preliminary Approval order for notice to go out to Owners. Unless otherwise directed by the Court, a list reflecting policy numbers of Opt-Outs who validly requested exclusion shall be filed with the Court by the Parties prior to the Fairness Hearing.

53. Opt-Outs must submit an opt-out request clearly stating that the Owner desires to be excluded from the Settlement Class, must identify the Polic(y/ies) to be excluded, and must be signed by such person or entity or by a person providing a valid power of attorney to act on behalf of such person or entity.

54. The Settlement Administrator shall maintain the post office box to which Opt-Out requests are required to be sent, monitor exclusion requests for accuracy and completeness, request any needed clarifications. Settlement Administrator shall jointly discuss any needs for additional information relating exclusively to the Settlement Agreement with Counsel for Plaintiff and Defendant.

55. Settlement Administrator shall refer to Counsel for Defendant any requests from an Owner for any insurance business-related information, including, without limitation, requests for policy status, agent, or premium information. Upon confirming the request is business-related, Counsel for Defendant shall refer the matter to a customer service representative for Defendant who typically deal with such requests. If the request specifically involves questions over the Settlement Agreement requiring Counsel involvement, Defendant's Counsel shall include

Plaintiff's Counsel on any communications. The Parties shall use their best efforts to prevent disclosure of identifying information in such communications.

56. 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 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) 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 list of all persons who will be called to testify in support of the objection (if any); (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (7) 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 Settlement 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.

57. Within 10 calendar days following the filing of this Agreement with the Court, American National shall serve notices at its own expense of the proposed Settlement upon appropriate officials in compliance with the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. §1715.

58. American National shall have the option, but is not obligated to, terminate this Agreement no later than 10 calendar days after expiration of the deadline for submitting Opt-Out requests from the Settlement Class pursuant to paragraph 52 of this Agreement if-more than 7% of the Policies, as measured by face amount, timely request to Opt-Out from the Settlement.

IV. INCENTIVE AWARD AND FEES AND EXPENSES

59. Plaintiff will move for an Incentive Award from the Final Settlement Fund in an amount up to but not more than $25,000, subject to Court approval. The purposes of such an award shall be to compensate the Plaintiff Joe S. Yearby for efforts undertaken by him on behalf of the Class. Any Incentive Award approved by the Court shall be made to Plaintiff in addition to, and shall not diminish or prejudice in any way, any settlement relief which he may be eligible to receive.

60. Plaintiff will move for attorneys' fees not to exceed 33 1/3% of the gross benefits provided to the Settlement Class, and reimbursement for all expenses incurred or to be incurred, payable only from the Final Settlement Fund. Class Counsel's Fees and Expenses, as awarded by the Court, may be paid from the Final Settlement Fund, at Plaintiff's option, immediately upon entry of an order approving such fees and expenses, or at a later date if required by the Court.

61. Neither Plaintiff nor American National 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.

62. 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.

V. TAX REPORTING AND NO PREVAILING PARTY

63. 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 American National shall have no 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.

64. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely out of the Final Settlement Fund.

65. No Party shall be deemed the prevailing party for any purposes of this Action.

VI. RELEASES AND WAIVERS

66. 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. For the avoidance of doubt, the Released Claims do not include Excluded Claims.

67. Any person or entity receiving any payment or consideration pursuant to this Agreement hereby expressly further warrants, represents and agrees that they are the sole Owner of the particular Policy in question, sole owner of Released Claims released herein and fully authorized to release such Released Claims.

68. The Releasing Parties hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, incite others to or themselves 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. Nothing in this provision shall be construed to restrict any attorney's right to practice law, including under Rule 5.6 of the California Rules of Professional Conduct, and for this paragraph only and for that reason, the definition of Releasing Parties excludes counsel.

69. 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.

70. Nothing in this Release shall preclude any action to enforce the terms of this Agreement.

71. 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.

72. For purposes of clarification only, this Agreement shall not release American National from paying any death benefits that may be owed, nor create liability for benefits not owed as of the date of this Agreement except as provided herein.

VI. OTHER PROVISIONS

73. 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 mediation including before the Mediator on February 16, 2022, and additional follow-on

communications, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

74. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, American National'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.

75. American National specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the Claims in the Action and make 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 American National and/or any of the Released Parties from using this Agreement and Settlement or the Order and Judgement 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.

76. American National agrees to provide, or cause to be provided to the Settlement Administrator, all data reasonably necessary to effectuate the distribution of Class Notice, allocation, and payments to the Settlement Class for Owners and/or Policies for which American National possesses such information. The parties agree that the Settlement Administrator shall refrain from disclosing policyholder personal identifying information, such as Owner, Insured or beneficiary names, addresses or social security numbers, to Class Counsel, but may provide any other data to Class Counsel. American National may provide separate data sets to assist Settlement Administrator with this obligation. For the avoidance of doubt, the Settlement Administrator shall

not be prohibited from sharing with Class Counsel, consistent with provisions of paragraph 55, any inquiries or requests initiated by any Settlement Class Member (or potential Settlement Class Member), including names and contact information of the person who made the request or inquiry. To the extent Class Counsel receives personal information from the Settlement Administrator, Class Counsel agrees that such information may only be used to aid or assist in responding to the inquiry or request and for no other purpose.

77. 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 all Settlement Administration Expenses shall not 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.

78. 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.

79. 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 Protective Order entered in the Action on July 14, 2021 (Dkt. 52) shall apply to any information necessary to effectuate the terms of this Agreement.

80. The 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. Plaintiff 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 settlement website.

81. Each person executing the Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

82. The 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.

83. 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 as to the Settlement Class Members.

84. 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 the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any Party.

85. 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 Plaintiff, Class Counsel and their agents until such time as the Parties file this Agreement with the Court.

86. 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 session 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.

87. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to its choice-of-law or conflict-of-laws rules.

88. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the 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.

89. 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 American National, then to:

Frank Busch
James M. Wagstaffe
Michael von Loewenfeldt
WAGSTAFFE, VON LOEWENFELDT, BUSCH & RADWICK LLP
100 Pine Street, Suite 725
San Francisco, CA 94111
Telephone: (415) 357-8900
Fax: (415) 357-8910

Joseph R. Russo, Jr.
Janet Rushing
GREER, HERZ & ADAMS LLP
One Moody Plaza, 18th Floor
Galveston, TX 77550

(b) If to Plaintiff or the Class, then to:

Steven G. Sklaver
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, 14th Floor
Los Angeles, California 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
ssklaver@susmangodfrey.com

Seth Ard
Ryan Kirkpatrick
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, New York 10019
Telephone: (212) 336-8330
Facsimile: (212) 336-8340
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

Kevin Downs
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
kdowns@susmangodfrey.com

90. The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

91. 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 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 New York Law.

AGREED TO BY:

Joe S. Yearby

Joe S. Yearby

Date: June 5, 2023

American National Insurance Company

By:

Title: EVP & Chief Administrative Officer

Date: 6/7/23

APPROVED ONLY AS TO FORM:

Date: 05/15/2023

By: Steven Sklaver

Steven G. Sklaver
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, 14th Floor
Los Angeles, California 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
ssklaver@susmangodfrey.com

Class Counsel and Attorneys for Plaintiff Joe S. Yearby

Date: 6/9/2023

By: */s/*

Frank Busch
WAGSTAFFE, VON LOEWENFELDT, BUSCH & RADWICK LLP
100 Pine Street, Suite 725
San Francisco, CA 94111
Telephone: (415) 357-8900
Fax: (415) 357-8910

Counsel for Defendant American National Insurance Company

Joseph Russo, Jr
Greer, Herz & Adams LLP

EXHIBIT 3

AMERICAN NATIONAL

AMERICAN NATIONAL INSURANCE COMPANY
A STOCK LIFE INSURANCE COMPANY

Insured	JOE S YEARBY	$50,000	Specified Amount
Policy Number	UL090652 1-099-	JUNE 9,1986	Date of Issue

Home Office: One Moody Plaza
Galveston, Texas 77550

AMERICAN NATIONAL INSURANCE COMPANY will pay the Proceeds at Death to the beneficiary subject to the provisions of the Policy. The Proceeds at Death are payable upon receipt at the Company's Home Office in Galveston, Texas, of due proof of the Insured's death. This Policy is issued in consideration of the Application and payment of the premiums as described within the Policy. This Policy and all its attachments represent a legal contract between the Owner and American National Insurance Company. **READ YOUR POLICY CAREFULLY.**

NOTICE OF 10 DAY RIGHT TO CANCEL POLICY. Not later than 10 days after this Policy is delivered, the Owner may return it with a written notice to cancel to: American National's Home Office; its agency office; or to the agent through whom it was bought. Not later than 10 days after receipt of notice to cancel and this Policy, the Company will refund all premiums paid. The Policy will be void from the start.

Signed for the Company at Galveston, Texas, on the Date of Issue.

J. Mick Flippin
SECRETARY

H.R. Ferdinandsen
PRESIDENT

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
NONPARTICIPATING. NO DIVIDENDS. DEATH BENEFIT PAYABLE PRIOR TO MATURITY DATE.

Form FPL83

POLICY PROVISIONS

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POLICY DATA PAGE

OWNER THE INSURED

BENEFICIARY AS STATED IN COPY OF APPLICATION ATTACHED UNLESS SUBSEQUENTLY CHANGED IN COMPLIANCE WITH POLICY PROVISION

AGE AT ISSUE 54

NAME OF INSURED JOE S YEARBY $50,000 SPECIFIED AMOUNT

POLICY NUMBER UL090652 1-099- JUNE 9,1986 ORIGINAL DATE OF ISSUE

FORM NUMBER	BENEFIT DESCRIPTION	FIRST YEAR MINIMUM ANNUAL PREMIUM
FPL83	FLEXIBLE PREMIUM ADJUSTABLE LIFE POLICY ENDOWMENT MATURING AT AGE 95 MATURITY DATE JUNE 9, 2027	$1,109.50
ULSTR83	SPOUSE TERM RIDER SPOUSE DEATH BENEFIT - $10,000 COVERED SPOUSE ANNA L YEARBY AGE 59 RIDER EXPIRY DATE JUNE 9, 2022 RIDER EFFECTIVE DATE JUNE 9, 1986	251.90
	TOTAL FIRST YEAR MINIMUM ANNUAL PREMIUM	$1,361.40

INSURED SEX	MALE	
INSURED CLASS	STANDARD	SPOUSE CLASS STANDARD
DEATH BENEFIT OPTION	A-DEATH BENEFIT INCLUSIVE OF CASH VALUE	
INITIAL PREMIUM	$ 0.00	
PLANNED PERIODIC PREMIUM	$ 2,000.00	ANNUALLY
EXPENSE CHARGES		
PERCENTAGE OF PREMIUM	9.5%	OF ALL PREMIUMS
ADDITIONAL FIRST YEAR	$ 48.59	MONTHLY
ADDITIONAL FIRST YEAR	$ 10.82	MONTHLY (SPOUSE)
LOAN RATE	8.00%	

IT IS POSSIBLE THAT COVERAGE WILL EXPIRE PRIOR TO THE MATURITY DATE SHOWN IF SUBSEQUENT PREMIUMS ARE NOT PAID FOLLOWING PAYMENT OF THE INITIAL PREMIUM OR CASH VALUE IS INSUFFICIENT TO CONTINUE COVERAGE TO SUCH DATE.

DATA PAGE CONTINUED FOR POLICY NUMBER UL090652

INSURED JOE S YEARBY MALE AGE 54

TABLE OF MONTHLY GUARANTEED COST OF INSURANCE RATES PER $1,000

BENEFITS AVAILABLE TO THE ATTAINED AGE FOR WHICH COST OF INSURANCE RATES ARE SHOWN.

ATTAINED AGE	FPL83	ULSTR83
54	1.04428	
55	1.14185	
56	1.24928	
57	1.36743	
58	1.49681	
59	1.63872	1.24928
60	1.79410	1.36743
61	1.96345	1.49681
62	2.14854	1.63872
63	2.35124	1.79410
64	2.57381	1.96345
65	2.81939	2.14854
66	3.09130	2.35124
67	3.39236	2.57381
68	3.72211	2.81939
69	4.07695	3.09130
70	4.45242	3.39236
71	4.84390	3.72211
72	5.24855	4.07695
73	5.67118	4.45242
74	6.12473	4.84390
75	6.62359	5.24855
76	7.18327	5.67118
77	7.81778	6.12473
78	8.53216	6.62359
79	9.32014	7.18327
80	10.17486	7.81778
81	11.08852	8.53216
82	12.05382	9.32014
83	13.07071	10.17486
84	14.14625	11.08852
85	15.28929	12.05382
86	16.50913	13.07071
87	17.82209	14.14625
88	19.25609	15.28929
89	20.85206	16.50913
90	22.66597	17.82209
91	24.76982	19.25609
92	27.25803	20.85206
93	30.25107	22.66597
94	34.02578	24.76982

AMERICAN NATIONAL

HOME OFFICE: ONE MOODY PLAZA
GALVESTON, TEXAS

POLICY ENDORSEMENT

The Policy, to which this Endorsement is attached is hereby amended. The Policy provision entitled "Death Benefit Options" is hereby superceded by the following:

DEATH BENEFIT OPTIONS. Subject to the provisions of this Policy, the proceeds at death of the Insured at any time prior to the Policy Maturity Date will depend on whether Death Benefit Option A or B is in effect on the date of death. Death Benefit Options A and B are as follows:

Option A. The Proceeds at Death will be the Specified Amount inclusive of the Cash Value. The Proceeds at Death at any time shall equal the greater of (1) or (2) where:

(1) is the Specified Amount; and
(2) is a percentage of the Cash Value that varies with the attained age of the Insured. If the Insured's attained age is 40 or under, the percentage is 250% of the Cash Value. The percentage decreases as the Insured's attained age increases in accordance with the table below.

Option B. The Proceeds at Death will be the Specified Amount in addition to the Cash Value. The Proceeds at Death at any time shall equal the greater of (1) or (2) where:

(1) is the Cash Value plus the Specified Amount; and
(2) is a percentage of the Cash Value that varies with the attained age of the Insured. If the Insured's attained age is 40 or under, the percentage is 250% of the Cash Value. The percentage decreases as the Insured's attained age increases in accordance with the table listed below.

TABLE OF CASH VALUE CORRIDORS

IF THE INSURED'S ATTAINED AGE IS:		THEN, THE APPLICABLE PERCENTAGE SHALL DECREASE BY A PROPORTIONATE AMOUNT FOR EACH FULL YEAR:	
MORE THAN:	BUT NOT MORE THAN:	FROM:	TO:
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100

Signed for the Company at Galveston, Texas, on the Date of Issue.

J. Mark Flippin
SECRETARY

D. R. Ferdinandtsen
PRESIDENT

Form RUL85

TABLE OF SETTLEMENT OPTIONS

OPTION 1-MONTHLY INSTALLMENTS FOR EACH $1000.00 OF THE NET SUM PAYABLE
Multiply the monthly payment by 2.994 to obtain the quarterly payment, by 5.969 to obtain the semiannual payment, and by 11.865 to obtain the annual payment.

TABLE A

Years	Amount	Years	Amount	Years	Amount	Years	Amount	Years	Amount
1	$84.28	7	$12.95	13	$7.49	19	$5.49	25	$4.46
2	42.66	8	11.47	14	7.03	20	5.27	26	4.34
3	28.79	9	10.32	15	6.64	21	5.08	27	4.22
4	21.86	10	9.39	16	6.30	22	4.90	28	4.12
5	17.70	11	8.64	17	6.00	23	4.74	29	4.02
6	14.93	12	8.02	18	5.73	24	4.60	30	3.93

OPTION 2-MONTHLY INCOME FOR A FIXED PERIOD AND LIFE THEREAFTER
Age in years means age of payee on birthday prior to the due date of the first installment. Multiply the monthly payment by 2.989 to obtain the quarterly payment, by 5.950 to obtain the semiannual payment, and by 11.781 to obtain the annual payment.

AGE IN YEARS		Equal Installments for each $1000 of the Net Sum Payable			AGE IN YEARS		Equal Installments for each $1000 of the Net Sum Payable		
		TABLE B Fixed Period 10 Years	TABLE C Fixed Period 20 Years	TABLE D Install-ment Refund			TABLE B Fixed Period 10 Years	TABLE C Fixed Period 20 Years	TABLE D Install-ment Refund
Male	Female	Amount	Amount	Amount	Male	Female	Amount	Amount	Amount
11+	16+	$2.74	$2.73	$2.71	46	51	$4.25	$4.01	$3.98
12	17	2.76	2.75	2.73	47	52	4.33	4.07	4.04
13	18	2.78	2.77	2.75	48	53	4.42	4.12	4.11
14	19	2.81	2.79	2.77	49	54	4.50	4.18	4.18
15	20	2.83	2.81	2.79	50	55	4.60	4.24	4.26
16	21	2.85	2.84	2.81	51	56	4.69	4.30	4.33
17	22	2.88	2.86	2.83	52	57	4.79	4.36	4.42
18	23	2.90	2.88	2.85	53	58	4.90	4.41	4.50
19	24	2.93	2.91	2.88	54	59	5.01	4.47	4.59
20	25	2.95	2.93	2.90	55	60	5.12	4.53	4.68
21	26	2.98	2.96	2.93	56	61	5.23	4.59	4.77
22	27	3.01	2.99	2.95	57	62	5.35	4.64	4.87
23	28	3.04	3.02	2.98	58	63	5.48	4.70	4.98
24	29	3.08	3.05	3.01	59	64	5.61	4.75	5.08
25	30	3.11	3.08	3.04	60	65	5.74	4.80	5.20
26	31	3.14	3.11	3.07	61	66	5.87	4.85	5.31
27	32	3.18	3.15	3.10	62	67	6.01	4.90	5.44
28	33	3.22	3.18	3.13	63	68	6.16	4.94	5.57
29	34	3.26	3.22	3.17	64	69	6.30	4.98	5.70
30	35	3.30	3.25	3.20	65	70	6.45	5.02	5.84
31	36	3.34	3.29	3.24	66	71	6.60	5.05	5.99
32	37	3.39	3.33	3.28	67	72	6.76	5.09	6.15
33	38	3.43	3.37	3.32	68	73	6.91	5.12	6.31
34	39	3.48	3.41	3.36	69	74	7.07	5.14	6.48
35	40	3.53	3.45	3.40	70	75	7.23	5.17	6.66
36	41	3.59	3.50	3.44	71	76	7.38	5.19	6.84
37	42	3.64	3.54	3.49	72	77	7.54	5.20	7.04
38	43	3.70	3.59	3.53	73	78	7.69	5.22	7.25
39	44	3.76	3.64	3.58	74	79	7.84	5.23	7.46
40	45	3.82	3.69	3.63	75	80	7.98	5.24	7.69
41	46	3.88	3.74	3.68	76	81	8.13	5.25	7.93
42	47	3.95	3.79	3.74	77	82	8.26	5.26	8.18
43	48	4.02	3.84	3.80	78	83	8.39	5.26	8.45
44	49	4.09	3.90	3.85	79	84	8.51	5.27	8.73
45	50	4.17	3.95	3.91	80*	85*	8.63	5.27	9.02

+ AND UNDER * AND OVER

DEFINITION OF POLICY TERMS

APPLICANT - the person whose signature is shown as such in the Application.

APPLICATION - the Application for this Policy and any Application for an increase in the Specified Amount.

BENEFICIARY - the person or persons named to receive the Proceeds of this Policy in the event of the Insured's death.

CASH VALUE - the value of the Policy as defined in the Nonforfeiture Provisions.

COMPANY - American National Insurance Company, hereinafter referred to as "the Company".

COST OF INSURANCE - that portion of the Monthly Deduction required to pay for the Policy's insurance coverage, other than that provided by any Riders.

INSURED - the person named as such on the Policy Data Page.

LAPSE - this Policy will lapse when the Cash Value is not sufficient to provide for a Monthly Deduction. Coverage will terminate in accordance with the Grace Period Provision of this Policy.

MONTHLY DEDUCTION DATE - the same date of each month as the date of the month of issue. This is the date, each month, that the Monthly Deduction is taken from the Cash Value.

MONTHLY DEDUCTION - the sum of the Cost of Insurance for the Policy plus the cost of any riders plus any expense charges.

NET PREMIUM - the premium paid less the percentage of premium expense charge shown on the Policy Data Page.

OWNER - the person or legal entity to whom this Policy belongs.

PAYEE - the person to whom any of the proceeds of this Policy and any Riders are paid.

PLANNED PERIODIC PREMIUM - the amount of periodic premium that the Premium Payer indicates he intends to pay. The initial Planned Periodic Premium is the amount shown in the Application as the "Billable Premium". This amount may be changed in accordance with Policy provisions.

POLICY - this life insurance contract.

POLICY DEBT - the total of all unpaid cash loans plus unpaid interest on the loans.

POLICY DATA PAGE - the pages of this Policy so entitled.

PREMIUM PAYER - the person responsible for the payment of premiums for this Policy.

SPECIFIED AMOUNT - the amount of coverage stipulated on the Application as Policy Face Amount and shown on the Policy Data Page as the Specified Amount. This amount may be increased or decreased in accordance with the provisions of this Policy, and any attached Riders providing for such increase or decrease.

SURRENDER VALUE - the Cash Value of this Policy less Policy Debt, if any, and surrender charges, if any.

NONPARTICIPATING POLICY

This Policy is nonparticipating. It does not share in the Company's profits or surplus.

POLICY OWNERSHIP

OWNER

Only the Owner may exercise the rights of ownership given by this Policy. If the Owner is a minor, first the Applicant, then the Beneficiary, if living and legally competent, may exercise all rights of ownership. If the Owner dies while the Insured is living, ownership will pass to the Owner's estate.

All rights of the Owner, the Applicant, and the Beneficiary are subject to the rights of:

(1) any assignee of record; and

(2) any irrevocable beneficiary.

PREMIUM PAYMENTS

PLANNED PERIODIC PREMIUM

The Planned Periodic Premium is shown on the Data Page. The Company will send periodic premium reminders to the Premium Payer for the amount of the Planned Periodic Premium. The Owner may request a change in the method or frequency of payment or the amount of Planned Periodic Premium:

(1) while the Insured is alive; and

(2) before this Policy's Maturity Date.

No request for a change in the Planned Periodic Premium will be effective without the Company's consent. The minimum Planned Periodic Premium will be $10.00. The actual amount and frequency of premium payments will affect the Cash Values and the amount and duration of the insurance coverage. The Company reserves the right to limit the amount of premium accepted. If the Company is unable to accept the Planned Periodic Premium amount, the Company reserves the right to decrease the amount of the premium shown on the premium reminder.

UNSCHEDULED ADDITIONAL PREMIUMS

The Owner may pay additional premiums at any time before the Maturity Date. The Company reserves the right to limit the number and amount of any unscheduled additional premiums.

INSURANCE COVERAGE PROVISIONS

DEATH BENEFIT OPTIONS

Subject to the provisions of this Policy, the Proceeds at Death of the Insured at any time prior to the Policy Maturity Date will depend on whether Death Benefit Option A or B is in effect on the date of death. Death Benefit Options A and B are as follows:

OPTION A. The Proceeds at Death will be the Specified Amount inclusive of the Cash Value. The Proceeds at Death at any time shall equal the greater of (1) or (2) where:

(1) is the Specified Amount; and

(2) is a percentage of the Cash Value that varies with the attained age of the Insured. If the Insured's attained age is 40 or under, the percentage is 140% of the Cash Value. The percentage decreases by 1% for each year after attained age 40, until it declines to 105% at attained age 75. Thereafter, the percentage will remain at 105% of the Cash Value.

OPTION B. The Proceeds at Death will be the Specified Amount in addition to the Cash Value. The Proceeds at Death at any time shall equal the greater of (1) or (2) where:

(1) is the Cash Value plus the Specified Amount; and
(2) is a percentage of the Cash Value that varies with the attained age of the Insured. If the Insured's attained age is 40 or under, the percentage is 140% of the Cash Value. The percentage decreases by 1% for each year after attained age 40, until it declines to 105% at attained age 75. Thereafter, the percentage will remain at 105% of the Cash Value.

CHANGE IN DEATH BENEFIT OPTION

The Owner may request a change from Death Benefit Option A to B or vice versa. This change request must be in writing, accompanied by this Policy, and will require the Company's consent. This change will be effective on the Monthly Deduction Date that coincides with or next follows receipt of such request, by the Company, subject to the following:

(a) if the change is from Option A to Option B, the Specified Amount after the change shall be the Specified Amount prior to the change less the Cash Value on the date of change; or

(b) if the change is from Option B to Option A, the Specified Amount after the change shall be the Specified Amount prior to the change plus the Cash Value on the date of change.

No change in Death Benefit Option shall be effective unless the Company has endorsed the change on this Policy. A change in Death Benefit Option will result in a change in the amount of the Monthly Deduction on Monthly Deduction Dates after the date of the change.

CHANGE IN SPECIFIED AMOUNT

At any time after the first Policy anniversary, the Owner may request an increase or decrease of the Specified Amount of the Policy. This change request must be in writing, accompanied by this Policy, and will require the Company's consent. This change will be subject to the following conditions:

(1) any decrease will become effective on the Monthly Deduction Date that falls on or next follows receipt of the request. The Specified Amount in effect after any requested decrease must be at least $10,000. Any decrease shall reduce the Specified Amount in the following order:
   (a) first, against the Specified Amount provided by the most recent increase;
   (b) next, against any other increases in reverse order; and
   (c) finally, against the Specified Amount provided under the Application at time of Issue;

(2) the Owner must provide the Company with proof satisfactory to it that the Insured is then insurable for the increased amount requested. Any increase will become effective on the Monthly Deduction Date that coincides with or next follows the date of the Company approval of the increase.

No change in the Specified Amount shall be effective unless the Company has endorsed the change on this Policy. A change in the Specified Amount may result in a change in the amount of the Monthly Deduction on Monthly Deduction Dates after the date of the change.

POLICY EXCHANGE

EXCHANGE PROVISION

The Owner may exchange this Policy for a Single Premium Endowment at 95 insurance coverage on the Insured. The exchange must occur during the lifetime of the Insured, but before the Insured's 95th birthday. The Proceeds at Surrender of this Policy must be used to purchase the new Policy. This exchange will be subject to the following:

(1) the Owner must submit a written request for the exchange accompanied by this Policy;

(2) the amount of Single Premium Endowment at 95 insurance that may be purchased without evidence of insurability shall be calculated as (a), plus (b), less (c), where:
   (a) is the current amount of the Proceeds at Death of the Insured under this Policy;
   (b) is the amount applied as a Single Premium for the new Policy; and
   (c) is the then current Cash Value of this Policy.

(3) a larger amount of Single Premium Endowment at 95 coverage will be issued only upon submission of evidence of insurability satisfactory to the Company;

(4) the date of issue of the new Policy will be the date that the Insured's coverage under this Policy terminates; and

(5) the Single Premium for the new Policy will be based on the single premium rates. The single premium rates will not be greater than those shown below in the Table of Guaranteed Maximum Insurance Rates, based on the Insured's sex and age last birthday on the date of issue of the new Policy.

Single Premium Endowment at 95
Guaranteed Rates Per Thousand

Age	Male Premium	Female Premium	Age	Male Premium	Female Premium
0	97.77	89.26	48	413.46	378.32
1	97.60	89.17	49	425.67	389.93
2	99.99	91.30	50	438.07	401.76
3	102.63	93.68	51	450.63	413.80
4	105.43	96.20	52	463.35	426.03
5	108.39	98.89	53	476.22	438.44
6	111.52	101.73	54	489.23	451.02
7	114.82	104.73	55	502.35	463.76
8	118.29	107.88	56	515.59	476.65
9	121.93	111.18	57	528.91	489.68
10	125.73	114.62	58	542.30	502.83
11	129.67	118.20	59	555.74	516.09
12	133.75	121.92	60	569.20	529.44
13	137.96	125.76	61	582.66	542.86
14	142.29	129.73	62	596.11	556.33
15	146.74	133.83	63	609.52	569.83
16	151.31	138.04	64	622.87	583.33
17	156.00	142.37	65	636.13	596.82
18	160.81	146.83	66	649.26	610.28
19	165.78	151.40	67	662.23	623.68
20	170.91	156.09	68	674.98	637.00
21	176.22	160.91	69	687.49	650.20
22	181.73	165.88	70	699.74	663.24
23	187.44	171.02	71	711.73	676.08
24	193.36	176.33	72	723.50	688.68
25	199.52	181.84	73	735.10	701.03
26	205.92	187.55	74	746.58	713.15
27	212.56	193.48	75	757.93	725.07
28	219.46	199.65	76	769.15	736.84
29	226.60	206.05	77	780.19	748.51
30	234.01	212.70	78	790.98	760.10
31	241.69	219.60	79	801.45	771.59
32	249.65	226.75	80	811.56	782.96
33	257.90	234.17	81	821.31	794.13
34	266.43	241.86	82	830.72	805.08
35	275.26	249.82	83	839.83	815.78
36	284.38	258.07	84	848.73	826.27
37	293.78	266.62	85	857.49	836.60
38	303.45	275.46	86	866.22	846.91
39	313.38	284.58	87	875.03	857.33
40	323.55	293.99	88	884.09	868.07
41	333.97	303.67	89	893.63	879.41
42	344.62	313.60	90	903.94	891.73
43	355.52	323.79	91	915.48	905.57
44	366.65	334.21	92	928.98	921.71
45	378.02	344.88	93	945.67	941.35
46	389.62	355.79	94	967.86	966.40
47	401.44	366.93			

PROCEEDS TO BE PAID

PROCEEDS

The Proceeds at Death payable on the death of the Insured shall be as specified by the Death Benefit Option in effect on the date of death, less any Policy Debt. The Proceeds at Death payable on the death of any person insured by Rider shall be as provided in the Rider. The Proceeds at Surrender shall be any Cash Value, less any Policy Debt. The Proceeds at Maturity shall be any Cash Value, less any Policy Debt. Any Proceeds payable under the terms of this Policy are subject to any adjustments provided in the Misstatement of Age or Sex, Incontestability, and Suicide provisions.

PAYMENT OF PROCEEDS

Proceeds may be paid in one sum or under the Settlement Options of the Policy.

SETTLEMENT OPTIONS

AVAILABILITY OF SETTLEMENT OPTIONS

All or a part of the Proceeds of the Policy may be applied to any of the following options. The Company will first discharge in a single sum any liability under an assignment of the Policy. Other options can be used if agreed to by the Company. If the Owner has not elected an option before the Insured's death, the beneficiary may choose one.

Any election or change must be written in a form that satisfies the Company. The Company's consent is required for any of the following:

(1) any payment to joint or successive payees;

(2) any payment to a corporation, association, partnership, trustee, or estate; or

(3) any change in an option previously elected.

The Company does not have to apply to an option a net sum payable of less than $2,000.00 for any payee.

SETTLEMENT OPTIONS

The Table of Settlement Options, referred to in this provision, is located in the front of this Policy. The options are:

Option 1. Installments for a Fixed Period. Equal installments will be paid for a fixed number of years. The amount of the installments will be based on Table A. Installments will include interest at the effective rate of 2 1/2% per year. At the Company's option, additional interest may be paid.

Option 2. Installments for a Fixed Period and Life Thereafter. Equal monthly installments will be paid for as long as the payee lives with installments certain for a fixed period. The fixed period is 10 years under Table B; 20 years under Table C; or until the sum of all the installments equals the net sum payable under Table D.

Option 3. Installments of a Fixed Amount. Equal annual, semi-annual, quarterly, or monthly installments will be paid. The sum of the installments paid in 1 year must be at least $40.00 for each $1,000.00 of the net sum payable. Installments will be paid until the total of the following amounts is exhausted: (1) the net sum payable; plus (2) interest at the effective rate of 2 1/2% per year; plus (3) any additional interest that the Company may elect to pay. The final installment shall be the balance of the net sum payable plus interest, and may be more or less than the other installments.

Option 4. Interest Payment. The Company will hold the net sum payable at interest. Interest will be paid at the effective rate of 2 1/2% per year. Additional interest may be paid at the Company's option. On interest due dates, an amount of at least $100.00 may be withdrawn from the amount held. If the amount held falls below $2,000.00, the Company will pay the entire amount held to the payee.

GENERAL PROVISIONS FOR SETTLEMENT OPTIONS

The first installment under Option 1, 2, or 3 is paid on the date the net sum payable is available. The first installment may be postponed for up to 10 years, but only with the Company's consent. If it is postponed, the net sum payable will accumulate with compound interest at the effective rate of 2 1/2% per year.

To avoid paying installments of less than $20.00 each, the Company may:

(1) change the installments to a quarterly, semi-annual, or annual basis;

(2) reduce the number of installments; or

(3) do both.

If the Owner elects an option, the Owner can withhold the Beneficiary's right to assign, encumber, or commute any unpaid amount. Except to the extent permitted by law, unpaid amounts are not subject to any claims of a beneficiary's creditors. In no case may installments under Option 2 be commuted. At the Company's option, installments under the other options may be commuted. When allowed, an effective interest rate of 2 1/2% per year will be used.

The payee under any option might die after payments under the option have started. If so, under Option 1 or 2 the Company will pay the commuted value of any unpaid fixed-period installments to the payee's estate. Under Option 3 or 4, the Company will pay any balance held by the Company to the payee's estate. With the Company's consent, the option elected may provide for payment in another manner.

BENEFICIARY INFORMATION

BENEFICIARY INTEREST

Beneficiaries will be designated as first, second, third, and so on. A beneficiary or class of beneficiaries will receive proceeds of a death claim in that order. All relationships are in reference to the Insured. Unless changed by endorsement or written request filed at the Company's Home Office:

(1) two or more class members will share proceeds equally;

(2) surviving class members will share equally the proceeds to which a deceased beneficiary would have been entitled; or

(3) if no beneficiary survives the Insured, proceeds will be paid to the Insured's estate.

A beneficiary will not share in any proceeds or benefits if:

(1) the beneficiary dies within 6 days after the Insured's death; and

(2) the Home Office has not then received proof of the Insured's death.

If the beneficiary is not a natural person, the beneficiary must still exist at the time of the Insured's death. All beneficiaries' interests are subject to any assignment on record at the Home Office.

CHANGE OF BENEFICIARY

The Owner may change a beneficiary if:

(1) the Insured is living; and

(2) written request in a form acceptable to the Company is filed at the Company's Home Office.

The change will not take effect until it is recorded at the Company's Home Office. However, once such a change is recorded, the change will take effect as of the date the request was signed, whether or not the Insured is living on the date the change is recorded, subject to any payment made or other action taken by the Company before such recording. The change is subject to:

(1) the rights of an assignee of record;

(2) the rights of an irrevocable beneficiary; and

(3) payments or actions by the Company before recording the change.

NONFORFEITURE PROVISIONS

CASH VALUE

The Cash Value on any Monthly Deduction Date shall be the sum of (a), (b), (c), and (d), less the sum of (e) and (f), where:

(a) is the Cash Value on the immediately preceding Monthly Deduction Date;

(b) is one month's interest on (a);

(c) is all Net Premiums received since the immediately preceding Monthly Deduction Date;

(d) is interest accumulated on (c) from the date of receipt of the Net Premium to the Monthly Deduction Date;

(e) is the sum of any partial surrenders, since the immediately preceding Monthly Deduction Date, and charges plus accumulated interest on such surrenders; and

(f) is the Monthly Deduction for the month beginning on the Monthly Deduction Date.

The Cash Value on any date other than a Monthly Deduction Date, hereinafter referred to as the Valuation Date, shall be the sum of (a), (b), (c), and (d), less (e), where:

(a) is the Cash Value on the Monthly Deduction Date immediately preceding the Valuation Date; and

(b) is interest on (a) accumulated to the Valuation Date;

(c) is all Net Premiums received since the immediately preceding Monthly Deduction Date;

(d) is interest on (c) from the date of receipt of the Net Premiums accumulated to the Valuation Date; and

(e) is the sum of any partial surrenders, which occurred since the Monthly Deduction Date immediately preceding the Valuation Date, and charges plus accumulated interest on such surrenders.

MONTHLY DEDUCTION

The Monthly Deduction shall be calculated as the sum of (a), (b), and (c), where:

(a) is the Cost of Insurance;

(b) is the cost of additional benefits provided by rider; and

(c) is the Monthly Expense Charge shown on the Policy Data Page.

The Monthly Expense Charge referred to in item (c) of this section applies only to the first twelve Policy months after the Policy Date of Issue. Any expense charges associated with an increase in Specified Amount will be shown on the Policy endorsement for that charge.

During the first Policy year, a monthly payment of the First Year Minimum Annual Premium divided by 12 will guarantee that the Policy will not lapse during that time period.

INTEREST RATE

The guaranteed interest rate applied in the calculation of the Cash Value is equal to 4 percent per year, compounded daily. This rate will apply to all Cash Values up to an amount equal to any Policy Debt. Cash Values greater than any Policy Debt may earn interest at a higher rate.

COST OF INSURANCE

The Cost of Insurance is determined on a monthly basis. The Cost of Insurance rates may be different for that portion of the Specified Amount attributable to the original Issue of the Policy and those portions of the Specified Amount attributable to any subsequent increases.

The Cost of Insurance for the Insured is calculated as (a) multiplied by the result of (b) minus (c), where:

(a) is the Cost of Insurance rate as described in the Cost of Insurance Rates section;

(b) is the Insured's Proceeds at Death at the beginning of the policy month divided by 1.0032737; and

(c) is the Cash Value at the beginning of the policy month.

If Death Benefit Option A has been elected and there have been increases in the Death Benefit, then the Cash Value shall be first considered a part of the initial Specified Amount. If the Cash Value under Death Benefit Option A exceeds the initial Specified Amount, then it shall be considered a part of additional Specified Amounts resulting from increases in the order the increases occurred.

COST OF INSURANCE RATE

The monthly Cost of Insurance rate is based on the sex, attained age, and rating class of the person insured. Attained age means the Insured's age last birthday on the previous Policy anniversary. Monthly Cost of Insurance Rates will be determined by the Company from time to time based on the Company's expectations as to future mortality experience. However, the Cost of Insurance Rates will not be greater than those shown in the Table of Guaranteed Maximum Insurance Rates. The Table of Guaranteed Maximum Insurance Rates for the Specified Amount at time of issue is shown on the Policy Data Page. The Table of Guaranteed Maximum Insurance Rates for any increases in Specified Amount will be shown on a Policy endorsement issued at the time of any increase.

INSUFFICIENT CASH VALUE

If the Cash Value less any indebtedness on the last day of any month is not sufficient to cover the Monthly Deduction for the next month, the Policy shall lapse subject to the provisions of the Grace Period section of this Policy. Any deduction for the Cost of Insurance after termination of the Policy at the end of the Grace Period shall not be considered a reinstatement of this Policy or a waiver by the Company of the termination. Any such deduction shall be credited to the Cash Value as of the date of deduction.

BASIS OF COMPUTATIONS

Minimum cash values and reserves are based on the 1958 CSO Mortality Table, Age Last Birthday, with interest at 4 percent per year compounded yearly. For female lives at attained ages 15 and greater, the same mortality table with ages 3 years less than the true age will be used. For attained ages under 15, the female extension of the mortality table will be used.

Reserves are calculated using a modified preliminary term method. Cash Values are at least equal to those required on the Policy Date of Issue by the jurisdiction in which this Policy is delivered. When required, a detailed statement of the method of computation of cash values and reserves under this Policy has been filed with the insurance department of the jurisdiction in which this Policy is delivered.

CONTINUATION OF INSURANCE

In the event Planned Periodic Premium payments are not continued, insurance coverage under this Policy and any benefits provided by rider will be continued in force until the Cash Value, less Policy Debt, if any, is insufficient to cover the Monthly Deduction, as provided in the Grace Period section of this Policy. This provision shall not continue the Policy beyond the Maturity Date nor continue any rider beyond the date of its termination, as provided in the rider.

SURRENDER AND SURRENDER VALUE

This Policy may be surrendered at any time during the lifetime of the Insured upon written request and submission of this Policy by the Owner to the Company. The Surrender Value of the Policy will be the Cash Value of the Policy, less any Policy Debt and any surrender charges. The only surrender charges will be during the first twelve months after the Policy Date of Issue. The amount of the surrender charge will be the First Year Minimum Annual Premium for this Policy, multiplied by the number of months remaining in the first Policy year at time of surrender divided by 12. In no case will the surrender charge be greater than the Cash Value less any Policy Debt.

If surrender is requested under this section within 30 days of a Policy anniversary, the Surrender Value shall not be less than the Surrender Value on that anniversary, less any partial surrenders made on or after such anniversary.

If this Policy is surrendered, all insurance coverage provided by the Policy and any Riders shall terminate as of the date of surrender. The Company reserves the right to defer the payment of the Surrender Value for up to six months.

PARTIAL SURRENDER

A partial surrender of this Policy may be made at any time during the lifetime of the Insured, upon the Owner's written request. The Owner must send the written request and this Policy to the Company for endorsement.

When a partial surrender is made, the Proceeds of the partial surrender and the partial surrender fee will be deducted from the Cash Value. The Insured's Proceeds at Death shall be reduced as a result of the partial surrender. If the Death Benefit Option in effect is Option A, the decrease in Proceeds at Death will result from a decrease in the Specified Amount by the Proceeds of the partial surrender. If the Death Benefit Option in effect is Option B, the decrease in Proceeds at Death will result from a decrease in the Cash Value with no change in the Specified Amount. There will be a partial surrender fee of $25.00 for each partial surrender. The maximum amount of partial surrender will be the Surrender Value of the Policy less any Policy Debt and the partial surrender fee. No partial surrender will be allowed if the Specified Amount after the partial surrender would be less than $10,000.

The Company reserves the right to defer payment of any partial surrender amount for up to 6 months.

POLICY LOANS

CASH LOANS

The Company will make a cash loan to the Owner for all or part of the Surrender Value of the Policy. At the time of the loan request, all these conditions must be met:

(1) the Insured must be living;

(2) the Policy must be in force;

(3) the Policy must not then be subject to any assignment; and

(4) the Owner must assign the Policy to the Company as sole security for the loan on a form approved by the Company.

If there is already a loan against the Policy, the Company will add the new loan to any previous loan. The Surrender Value remaining after deduction of all Policy loans must be enough to keep the Policy in force until the next Policy anniversary date if no further premiums are paid and there is no other Policy activity.

The Company reserves the right to defer payment of any cash loan for up to 6 months.

LOAN INTEREST

The Company will charge interest daily on any loan at the loan interest rate shown on the Policy Data Page. Interest is due:

(1) on each Policy anniversary date; or

(2) when the loan is paid back, if that comes first.

If interest is not paid when due, it will become part of the loan, subject to this provision.

EXCESS POLICY DEBT

At any time the outstanding loans on this Policy, including accrued loan interest, exceed the Surrender Value, this Policy will lapse without further value. However, in no event will the coverage provided by this Policy terminate until 61 days after the Policy has lapsed. The Company will mail a notice of termination to the last known address of the Owner and any assignee of record prior to the actual termination of the Policy.

LOAN REPAYMENT

All or part of a loan on this Policy can be repaid at any time this Policy is in force. If the coverage provided by this Policy has terminated, a loan may only be repaid if this Policy is reinstated. The Company will not accept a loan payment of less than $10.00.

TERMINATION OF COVERAGE

TERMINATION OF COVERAGE

The Policy coverage will terminate on the first to occur of:

(1) the Insured's death;

(2) the Insured's age 95;

(3) expiration of the Grace Period; or

(4) written request for surrender and submission of this Policy for its Surrender Value.

REINSTATEMENT

The Owner may reinstate this Policy after coverage provided by it has terminated. At the time of the reinstatement request, all these conditions must be met:

(1) the reinstatement must be within 5 years of the date coverage has terminated;

(2) the Owner must not have surrendered the Policy for its Surrender Value;

(3) the Owner must provide the Company any facts it needs to satisfy it that the Insured is then insurable for the Policy;

(4) the Owner must pay a minimum premium sufficient to keep the Policy in force for two months after the date of reinstatement and must pay any part of the First Year Minimum Annual Premium that is required to be paid as of the date of reinstatement that was not paid prior to the lapse of this Policy; and

(5) any Policy Debt must be restored or paid back with compound interest.

The interest rate for reinstatement of Policy Debts will be 6% per year. If the Policy Debt with interest would exceed the loan value of the reinstated Policy, the excess must be paid before reinstatement.

GENERAL PROVISIONS

CONTRACT AND REPRESENTATIONS

This Policy, any endorsements, and the Application, if attached on the Date of Issue, or the effective date of any increase, form the entire contract. All statements in the Application, in the absence of fraud, will be deemed representations and not warranties. No statement will void the Policy or be used in defense of a claim under it unless:

(1) it is contained in the written Application; and

(2) a copy of the Application is attached to the Policy at the time of issue or at the time that an increase occurs.

EFFECTIVE DATE

The Policy takes effect on the Date of Issue shown on the Data Page upon:

(1) payment of the first premium, which must be at least the First Year Minimum Annual Premium divided by 12; and

(2) policy delivery during the Insured's lifetime and good health.

Any increase in Specified Amount, addition of a supplemental benefit, or reinstatement of coverage will take effect on the Monthly Deduction Date which coincides with or next follows the date the Company approves an Application for such change or for reinstatement of this Policy.

Policy years, anniversaries, and months are measured from the Date of Issue.

GRACE PERIOD

A Grace Period of 61 days is granted for the payment of a premium sufficient to cover the Monthly Deduction described in the Insufficient Cash Value provision of the Nonforfeiture Section. Notice of such premium will be mailed to the last known address of the Owner. Coverage is provided throughout the Grace Period. If the death of the Insured occurs during the Grace Period, the amount of Monthly Deduction then due will be deducted from the Proceeds at Death that would otherwise be payable. If the required premium has not been received by the end of the Grace Period, all insurance coverage under this Policy and any Riders will terminate.

INCONTESTABILITY

This Policy will be incontestable after it has been in force during the Insured's lifetime for 2 years from the Date of Issue except for nonpayment of premium and except as to any provision or condition relating to disability benefits or additional benefits for accidental death.

Any increase in coverage, addition of a Rider after the Policy's Date of Issue, or any reinstatement shall be incontestable, after it has been in force during the Insured's lifetime for 2 years after the Effective Date of such increase in coverage, addition of a Rider, or reinstatement, except: (1) for nonpayment of a premium; and (2) as to any provision or condition relating to disability benefits or additional benefits for accidental death.

SUICIDE

If the Insured, whether sane or insane, dies from suicide within 2 years from the Date of Issue of this Policy, the Company is liable only for return of any premiums received less any Policy Debt or surrendered amounts.

The provisions of this paragraph shall apply to any increase in coverage, addition of a Rider, or a reinstatement, 2 years from the Effective Date of such increase, addition of a Rider, or reinstatement.

MATURITY DATE

The Maturity Date of this Policy is shown on the Policy Data Page. The Maturity Date is the Policy Anniversary next following the Insured's age 95. Coverage under this Policy will continue to the Maturity Date as long as there is sufficient Cash Value to provide for the Monthly Deduction in accordance with Policy provisions.

MISSTATEMENT OF AGE OR SEX

If there is a misstatement of age or sex of any Insured, of this Policy or any attached Riders, the proceeds payable shall be adjusted by the difference of the monthly deductions made and the monthly deductions which should have been made, accumulated at the interest rates that were credited to the Cash Value. The Monthly Deduction is described in the Nonforfeiture Section.

ASSIGNMENT

No assignment will bind the Company until recorded at its Home Office. The Company is not obliged to see that an assignment is valid or sufficient. Any claim by an assignee is subject to proof of the validity and extent of the assignee's interest in the Policy.

POWER TO MODIFY

Only the Company's President, a Vice President, or Secretary has the power to:

(1) change this Policy;

(2) extend the time for payment of premiums; or

(3) waive any Policy provisions.

Any change in the Policy will be by endorsement signed by one of the above-named officers.

ANNUAL REPORT

The Company will send the Owner and any assignee of record a report at least once a year. This report will show the then current Cash Value, premiums received, all fiscal changes, including an itemized listing of all deductions since the last report, and outstanding Policy loans.

SPECIAL METHODS OF PREMIUM PAYMENT

Planned Periodic Premiums may be paid by either the Pre-authorized Check Method or the Salary Deduction Method.

Payments of the Planned Periodic Premiums by one of the above methods of premium payment are subject to the following:

(1) Pre-authorized Check Method. Under this method the Company will present a pre-authorized check:

- (a) in the amount of the Planned Periodic Premium;
- (b) to a bank acceptable to both the Premium Payer and the Company; and
- (c) with the understanding that such pre-authorized check is accepted subject to its being honored when presented for payment.

If for any reason a pre-authorized check is not honored when presented for payment:

- (a) the check will cease to be an obligation of the Premium Payer;
- (b) the premium represented by the dishonored check will not have been paid;
- (c) the Company will not present any further pre-authorized checks for payment; and
- (d) the Company will discontinue this method of premium payment.

(2) Salary Deduction Method. Under the Salary Deduction Method, the Premium Payer's employer deducts premiums equal to the Planned Periodic Premiums from his salary. There must be a franchise agreement in effect between the Company and the Premium Payer's employer. It is the responsibility of the Premium Payer's employer to send the premium directly to the Company. If the Premium Payer's employer fails to send the premium to the Company:

- (a) the premium will not have been paid; and
- (b) the Company will discontinue this method of premium payment.

The Company or the Premium Payer can choose to stop either the Pre-authorized Check Method or the Salary Deduction Method by giving the other party 30 days' prior written notice.

If either Special Premium Method is stopped for any reason, the future premiums will be paid:

(1) by direct payment to the Company; or

(2) by a Special Premium Method if the method is restored by the Company.

AMERICAN NATIONAL INSURANCE COMPANY
ONE MOODY PLAZA
GALVESTON, TEXAS

SPOUSE'S TERM RIDER

DATE OF ISSUE. The Date of Issue of this Rider will be the Date of Issue of the Policy it is attached to, unless otherwise endorsed.

BENEFIT. The Company will pay the beneficiary, as specified below, the Covered Spouse's Death Benefit shown on the Policy Data Page, if all the terms of this Rider and the Policy are met. The Company must first receive due proof, at its Home Office, that the death of the Covered Spouse occurred: (1) before the Spouse's Term Rider expiry date; and (2) while this Rider is in full force and effect. The Spouse's Term Rider expiry date is shown on the Policy Data Page.

COVERED SPOUSE DEFINED. The Covered Spouse is named on the Policy Data Page.

INCREASING OR DECREASING THE COVERED SPOUSE'S DEATH BENEFIT. At any time after the first Policy year, the Owner can request an increase or decrease in the Covered Spouse's Death Benefit. The Owner's request must be in writing and accompained by the Policy. The change will require the Company's consent. No change in the Covered Spouse's Death Benefit shall be effective unless the Company has endorsed the change on the Policy. Any decrease will go into effect on the Monthly Deduction Date which coincides with or next follows the date the Company receives the request at its Home Office. The decrease will first be applied against the most recent increase in the Covered Spouse's Death Benefit. It will then be applied to other increases in the Covered Spouse's Death Benefit in the reverse order in which they occurred. The Covered Spouse's Death Benefit remaining in force after any decrease may not be less than the minimum Spouse Death Benefit allowed on the Date of Issue of this Rider.

The Owner must submit a written Application for any increase in the Covered Spouse's Death Benefit. The Company also requires satisfactory proof that the Covered Spouse is then insurable for the increase requested. If the Policy includes a Disability Waiver of Monthly Deduction Benefit, then satisfactory evidence of insurability for the Insured, named in the Policy, must also be presented. An increase will go into effect on the date shown on an endorsement to the Policy Data Page. The Cost of Insurance may be different for that portion of the Covered Spouse's Death Benefit attributable to the original issue of this Rider and those portions of the Covered Spouse's Death Benefit attributable to any subsequent increases. Increases in the Covered Spouse's Death Benefit may result in increased Cost of Insurance for this Rider.

BENEFIT ON DEATH OF INSURED. Coverage provided by this Rider on the Covered Spouse may be converted if:

(1) the Insured dies and the proceeds of the policy become payable; and

(2) the Policy and this Rider are then in full force.

The coverage provided by this Rider on the Covered Spouse may be converted as of the next Monthly Deduction Date after the Insured's date of death in accordance with the Convertibility provisions below. If no request for conversion, in accordance with this provision, is received upon the Insured's death, term insurance coverage on the Covered Spouse provided by this Rider will no longer be effective and shall terminate on the next Monthly Deduction Date.

CONVERTIBILITY. The term insurance on the Covered Spouse may be converted to a policy similar to the Policy to which this Rider is attached or to any level premium, non-participating life, or endowment policy. The Policy must be one the Company then offers. The Owner must apply in writing in a form acceptable to the Company and submit the Policy to the Company for endorsement. Conversion must take place:

(1) while the term insurance provided by this Rider is in full force and effect; and

(2) before the Policy anniversary which next follows the Covered Spouse's attained age 70.

The new Policy will contain a Disability Waiver Benefit upon the Company's consent if:

(1) it is a flexible premium adjustable life insurance policy type or a level premium whole life policy;

(2) the premiums are payable at least to the 95th birthday of the Covered Spouse; and

(3) the Covered Spouse provides the Company with any facts requested to prove the Covered Spouse is then eligible for the benefit.

Benefits will not be paid under this Disability Waiver Benefit unless the Covered Spouse becomes totally disabled:

(1) after the new Policy's Date of Issue; and

(2) the Total Disability is not the result of any injury, disease, or infection that occurred or existed before the new Policy's Date of Issue.

For any other policy form, the new Policy will not have this benefit unless facts satisfactory to the Company are given to the Company to prove that the Covered Spouse is then insurable.

The new Policy will be:

(1) effective on the date of conversion at the Covered Spouse's attained age;

(2) issued at premium rates used by the Company on the conversion date;

(3) based on the Covered Spouse's mortality class on the conversion date; and

(4) issued for any amount up to or equal to the amount of the death benefit, provided by this Rider, in force on the date of conversion for the Covered Spouse.

The new Policy amount is subject to the Company's minimum for the type of policy chosen. All of the following must be furnished to the Company at the same time:

(1) the Application for conversion;

(2) the Policy to which this Rider is attached; and

(3) the full first premium for the new Policy.

The effective dates of the conversion and the Issue Date of the new Policy are the same.

INCONTESTABILITY. This Rider shall be incontestable after it has been in force during the lifetime of the Covered Spouse for 2 years from its Effective Date, except for nonpayment of premium.

Any increase in the Covered Spouse's Death Benefit after the Effective Date of this Rider, or any reinstatement shall be incontestable after the increase or reinstatement is in force during the lifetime of the Covered Spouse for 2 years after the Effective Date of the increase or reinstatement, except for nonpayment of premium.

REINSTATEMENT. To reinstate this Rider, facts must be given to the Company to satisfy it that the Covered Spouse is then insurable. The provisions for reinstatement in the Policy must also be met.

BENEFICIARY DESIGNATION. Any amount payable under this Rider upon the death of the Covered Spouse will be paid to the Insured, if living. Otherwise, the amount payable will be paid to the Covered Spouse's estate. The Owner may name another beneficiary in the manner shown in the Policy's Change of Beneficiary section.

TERMINATION. This Rider's benefits will not be payable if death occurs after this Rider terminates. The Rider will terminate immediately upon any of these events, whichever occurs first:

(1) the date the Grace Period for the Policy expires;

(2) the date the Policy matures, expires, or is surrendered; or

(3) this Rider's expiry date, as shown on the Policy Data Page.

At the written request of the Owner, the Company will terminate this Rider. The Owner must return the Policy to the Company for endorsement. This Rider will terminate on the Monthly Deduction Date that coincides with or next follows the receipt, at the Company's Home Office, of the request to terminate this Rider. After the date this Rider terminates, the Cost of Insurance for this Rider's benefit will no longer be included in the Monthly Deduction.

COST OF INSURANCE. The Cost of Insurance for the benefit under the Spouse's Term Rider is determined on a monthly basis. The monthly cost is calculated as (a) multiplied by the result of (b) divided by (c) where:

(a) is the Cost of Spouse's Term Insurance rate;

(b) is the Covered Spouse's Death Benefit shown on the Policy Data Page or on an endorsement to the Policy Data Page; and

(c) is 1000.

The monthly cost of the Spouse's Term Insurance rate is based on the sex, attained age, and rating class of the Covered Spouse. "Attained age" means the Covered Spouse's age last birthday on the prior Policy anniversary. Monthly Cost of Insurance rates will be determined by the Company from time to time based on the Company's expectations as to future mortality experience. However, the Cost of Insurance rates will not be greater than those shown in the Table of Guaranteed Maximum Insurance Rates for this Rider. The Table of Guaranteed Maximum Rates for this Rider will be:

(1) shown on the Policy Data Page if this Rider is included in the Policy on the Date of Issue of the Policy;

(2) shown on the Policy endorsement if this Rider is added to the Policy after the Date of Issue of the Policy; and

(3) shown on the Policy endorsement if the Covered Spouse's Death Benefit is increased. The cost of this benefit will be included in the Monthly Deduction from the Cash Value on each Monthly Deduction Date on which this Rider is in force.

SURRENDER VALUES. This Rider has no Surrender Value.

This Rider is a part of the Policy to which it is attached. The Policy provisions that apply will be construed to be a part of this Rider.

Signed for the Company at Galveston, Texas, on the Date of Issue.

J. Mick Flippin
SECRETARY

D. R. Ferdinandtsen
PRESIDENT

EXHIBIT 4

PLAN OF ALLOCATION[1]

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 that Recipient's *pro-rata* share of the Net Settlement Fund. No claim form or claims process will be used. If there is more than one owner of a policy according to Defendant's records, the check will be issued to the first owner listed.

2. The minimum settlement relief payment for each policy shall be $100.

3. Each Recipient's *pro-rata* share of the Net Settlement Fund after deducting all minimum settlement relief payments from the Net Settlement Fund shall be computed as follows:

    a. First, each Recipient's alleged COI overcharge shall be computed.

        i. Each Recipient's alleged COI overcharge shall be calculated as the difference between (a) the actual historical COI charges that ANICO charged the Recipient (the "Actual COI Charge") and (b) the "But-For COI Charges" for the Recipient. The Actual COI Charges shall be obtained from historical policy data provided by ANICO. The "But-For COI Charges" are the amounts ANICO allegedly should have charged the policyholder, had it based its COI rate only on its expectations as to future mortality experience. The "But-For COI Charges" shall be derived from multiplying ANICO's expected mortality experience by the Net Amount at Risk, from the policies identified in and in accordance with the methodology set forth at ¶¶ 5–12 of the Declaration of Robert Mills attached to Plaintiff's Motion for Preliminary Approval of the Class Action Settlement.

    b. Second, divide each Recipient's alleged COI overcharge by the total alleged COI overcharges for all Recipients, and

    c. Third, multiply the resultant percentage for each Recipient by the Net Settlement Fund remaining after deducting all minimum settlement relief payments from the Net Settlement Fund.

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

[1] Unless otherwise noted, all Capitalized Terms mean the same as in the Settlement Agreement.

make such further distributions impossible or unfair. All costs associated with the disposition of residual funds—whether through additional distributions to Settlement 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.

EXHIBIT 5

VERDICT FORM A

Note: Complete this form by writing in the names required by your verdict.

On Plaintiffs' claim that Defendant breached the COI charge provision, as submitted in Instruction No. 18, we find in favor of:

Plaintiffs

(Plaintiffs) or (Defendant)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiffs.

For the period of June 18, 2014, to February 28, 2021:

We find Plaintiffs' damages for Defendant's consideration of factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate to be:

$ 908,075.00 (state the amount or, if none, write the word "none").

Note: Fill in the next blank only if you determined Defendant failed to apply its then-current mortality rates when setting the monthly COI charge.

We find Plaintiffs' damages for Defendant's failure to apply its then-current mortality rates when setting the monthly COI charge to be:

$ _____ (state the amount or, if none, write the word "none").

For the period of May 1, 1982, to February 28, 2021:

We find Plaintiffs' damages for Defendant's consideration of factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate to be:

$ 5,059,275.00 (state the amount or, if none, write the word "none").

Note: Fill in the next blank only if you determined Defendant failed to apply its then-current mortality rates when setting the monthly COI charge.

We find Plaintiffs' damages for Defendant's failure to apply its then-current mortality rates when setting the monthly COI charge to be:

$ _____ (state the amount or, if none, write the word "none").

Foreperson

Dated: 05/25/23

VERDICT FORM B

Note: Complete this form by writing in the names required by your verdict.

On Plaintiffs' claim that Defendant breached the expense charge provision, as submitted in Instruction No. 19, we find in favor of:

Defendant

_____ (Plaintiffs) or _____ (Defendant)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiffs.

For the period of June 18, 2014, to February 28, 2021:

We find Plaintiffs' damages to be:

$ 0 (state the amount or, if none, write the word "none").

For the period of May 1, 1982, to February 28, 2021:

We find Plaintiffs' damages to be:

$ 0 (state the amount or, if none, write the word "none").

Foreperson

Dated: 05/25/23

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

CHRISTOPHER Y. MEEK, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	Case No. 19-00472-CV-W-BP
KANSAS CITY LIFE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER (1) GRANTING DEFENDANT'S MOTION TO PARTIALLY DECERTIFY CLASS, (2) DISMISSING COUNT V WITHOUT PREJUDICE, AND (3) DIRECTING THAT JUDGMENT BE ENTERED

This lawsuit presents claims that Defendant—an insurance company—improperly calculated the rate for the cost of insurance (the "COI Rate"), resulting in improper and excessive charges for cost of insurance (the "COI charge") under a universal life insurance policy (the "Policy"). A trial was conducted the week of May 22, 2023, but several issues remained for resolution before a judgment could be entered. For the reasons discussed below, the Court (1) **GRANTS** Defendant's Motion to Partially Decertify the Class, (Doc. 299), (2) **DISMISSES** Count V without prejudice and (3) **DIRECTS** that judgment be entered.

I. BACKGROUND

The Court starts with a summary of the claims asserted in the Amended Complaint:

- Count I alleges Defendant breached the Policy by considering factors other than the policyholder's age, sex, and risk class and its own expectations as to future mortality experience when calculating the COI Rate;

- Count II alleges Defendant breached the Policy by deducting expense charges in excess of the amount allowed by the Policy;
- Count III alleges Defendant breached the Policy by failing to apply its updated mortality expectations when calculating the COI Rate;
- Count IV asserts a conversion claim; and
- Count V seeks declaratory and injunctive relief.

(*See* Doc. 8.) At trial the Court agreed with Plaintiff's counsel that Count I subsumes Count III.

In February 2022, the Court granted in part Plaintiff's Motion for Class Certification. As relevant here, it determined Kansas law governs Plaintiff's claims, (Doc. 136, p. 16),[1] and Kansas's statute of limitations applies. (Doc. 136, pp. 22-23 & n.10.) Based on these determinations (and others that need not be detailed here) the Court certified the following Class:

> All persons who own or owned [certain specified life insurance policies] issued or administered by Defendant, or its predecessors in interest, that [were] active on or after January 1, 2002, and [who] purchased the life insurance policy while domiciled in Kansas. Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

(Doc. 136, p. 25.) The Class was certified only for Counts I through IV. (Doc. 136, p. 25.)

On March 27, 2023, the Court granted in part the parties' separate motions for summary judgment. One of the critical issues addressed in that Order related to the statute of limitations. The Court:

[1] All page numbers are those generated by the Court's CM/ECF system.

1. Adhered to its conclusion that Kansas's statute of limitations applied;
2. Held the statute of limitations for the contract claims (Counts I – III) was five years, and all breaches occurring within five years of the suit's filing (June 18, 2019) were timely;
3. Held that, under certain circumstances, Kansas will equitably estop a defendant from asserting the statute of limitations as a defense; and
4. The parties' arguments did not permit the Court to determine whether equitable estoppel applied in this case.

(Doc. 243, pp. 6-12.) The Court then construed the meaning of relevant Policy provisions and determined (1) Defendant had considered improper factors (including, among other things, expenses and profits) in determining the COI Rate, but (2) factual disputes precluded summary judgment on any aspect of Plaintiff's claims that Defendant failed to apply its then-current expectations as to future mortality experience when setting the COI rate. (Doc. 243, pp. 12-17.) These determinations (which need not be detailed further here) essentially granted Plaintiff summary judgment on liability with respect to (1) a portion of Count I and (2) Count II. Finally, the Court granted Defendant summary judgment on the conversion claim (Count IV). (Doc. 243, pp. 18-19.)

Shortly after the summary judgment order was issued, the Court participated in a telephone conference with the parties, and thereafter the parties submitted supplemental briefs. Among other things, the parties agreed the facts relevant to equitable estoppel were to be determined by the Court and not the jury. (Doc. 253, pp. 14-15; Doc. 254, pp. 18-19.)

At the pretrial conference, the Court indicated it needed to hear evidence before it could rule on the issue of equitable estoppel and decided the appropriate course was to proceed to trial and allow the parties to present any additional evidence that related solely to equitable estoppel

outside the jury's hearing. (Doc. 292, p. 10.) To avoid the need for a second trial, the Court also proposed having the jury return a verdict regarding damages for two time periods based on the application (or not) of equitable estoppel. (Doc. 292, pp. 10-11.)[2]

At trial, the Court largely adopted Plaintiff's proposed approach with respect to the verdict directing instructions. The first Verdict Director, (Doc. 309, p. 23 (Instruction No. 18)), told the jury that Defendant breached the Policy if it "(1) considered factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate" *or* "(2) failed to use . . . its then-current mortality rates when setting the monthly COI charge." The jury was then told it had previously been determined Defendant considered impermissible factors when setting the COI Rate, but it had not been determined whether Defendant failed to apply its then-current mortality rates. The jury was also told it had not been determined whether the Class suffered damages. On the corresponding Verdict Form, the jury was directed to determine (for the two separate periods) damages for Defendant's consideration of impermissible factors. The jury was also directed to indicate whether it found Defendant failed to apply its then-current mortality rates by inserting the amount of damages; if it found Defendant did not breach the policy in this manner, it was to leave the line for damages blank. (Doc. 311, pp. 1-2 (Verdict Form A).) In this way, the first Verdict Director and Verdict Form A addressed Counts I and III.

The second Verdict Director, (Doc. 309, p. 24 (Instruction No. 19)), addressed Count II. The jury was told it had been determined that (1) "Defendant cannot consider expenses when setting the COI rate" but (2) it had done so, and the jury had to "determine whether Plaintiffs were damaged by Defendant's consideration of expenses and, if so, the amount of damages."

[2] Conducting a hearing before trial solely with respect to equitable estoppel would not have been efficient because some evidence relevant to liability and damages also potentially applied to equitable estoppel. A separate hearing before trial would have required that evidence to be presented twice.

For the two time periods at issue, the jury

1. Awarded damages for Defendant's consideration of improper factors in setting the COI Rate,
2. Determined damages for Defendant's consideration of expenses was zero, and
3. Determined Defendant did not breach the Policy by failing to apply its then-current mortality rates.

(Doc. 311.) The Court must determine whether equitable estoppel applies so the appropriate monetary award can be included in the judgment. The Court must also adjudicate Count V.

II. DISCUSSION

A. Statute of Limitations

As stated earlier, the statute of limitations for a breach of contract claim under Kansas law is five years. Under Kansas law a breach of contract claim accrues when the breach occurs; Kansas law does not apply a "discovery rule" and accrual does not depend on when the plaintiff learned (or should have learned) about the breach. *E.g.*, *Great Plains Trust Co. v. Union Pac. R. Co.*, 492 F.3d 986, 993 (8th Cir. 2007) (citing *Pizel v. Zuspann*, 795 P.2d 42, 54 (Kan. 1990)); *Dunn v. Dunn*, 281 P.3d 540, 548 (Kan. Ct. App. 2012). Kansas law also does not recognize the "fraudulent concealment" doctrine, under which the statute of limitations is tolled against a party that has tried to conceal its breach. *E.g., Freebird, Inc. v. Merit Energy Co.*, 883 F. Supp. 2d 1026, 1035 (D. Kan. 2012) (analyzing Kansas law). However, there are circumstances in which Kansas courts will hold a party is estopped from asserting the statute of limitations as a defense.

In briefing on this issue, the parties extensively discuss the elements of equitable estoppel. The Court, however, declines to analyze whether equitable estoppel applies because it finds one of the requirements for equitable estoppel—reliance—is an individualized determination that cannot be decided for the entire Class.

1. Reliance

A defendant is equitably estopped from asserting the statute of limitations as a defense if,

> by acts, representations, admissions, or silence when [the defendant] had a duty to speak, [it] induced the [plaintiff] to believe certain facts existed. The [plaintiff] must also show that [he] *reasonably relied and acted upon such belief* and would now be prejudiced if the [defendant] were permitted to deny the existence of such facts.

L. Ruth Fawcett Trust v. Oil Producers Inc. of Kansas, 507 P.3d 1124, 1144 (Kan. 2022) (quotation omitted; emphasis supplied) (hereafter "*Ruth Fawcett Trust*"). More succinctly, the defendant's actions must create "a false sense of security that prevented the plaintiff from timely suing." *Id.* at 291; *see also Dunn*, 281 P.3d at 544; *Newman Mem. Hosp. v. Walton Const. Co.*, 149 P.3d 525, 542 (Kan. Ct. App. 2007); *Robinson v. Shah*, 936 P.2d 784, 798 (Kan. Ct. App. 1997). "To determine whether the doctrine applies, courts must look at the facts and circumstances of each case and should not apply it in a formulaic manner." *Ruth Fawcett Trust*, 507 P.3d at 1144.

Here, Plaintiff argues the Annual Statements Defendant sent to policy holders established reliance.[3] The Annual Statements disclose, among other things, deductions for Cost of Insurance and Expense Charges. The Court sets aside any questions about whether equitable estoppel can be based on the Annual Statements. Instead, the Court concludes equitable estoppel can be based on the Annual Statements only if they were seen and read by a would-be plaintiff.

Ruth Fawcett Trust repeatedly described the reliance element as requiring the plaintiff to demonstrate he "detrimentally relied" on the defendant's representations. *Ruth Fawcett Trust*, 507 P.3d at 290-91. It also upheld application of equitable estoppel because the defendant in that case

[3] To the extent Plaintiff argues the Policy holders relied on Defendant to comply with the contract, the Court rejects this argument. All parties to a contract rely on the other party to comply, but equitable estoppel requires the would-be plaintiff to rely on something that caused him or her to not sue. A general expectation that the other party will comply with the contract, or a general statement from the defendant that it complied, is insufficient. To hold otherwise would allow equitable estoppel to be the norm or effectively create a discovery rule where Kansas law does not provide one. *See McCaffree Fin. Corp. v. Nunnink*, 847 P.2d 1321, 1332 (Kan Ct. App. 1993); *see also Murray v. Miracorp, Inc.*, 522 P.3d 805, at *9 (Kan. Ct. App. 2023) (citing *McCaffree*).

"made affirmative misrepresentations that deterred the Class members from pursuing timely legal action." *Id*. at 292. This explanation demonstrates there must be a causal relationship between the defendant's actions and plaintiff's deterrence. As a factual matter, the deterrence required by the Kansas Supreme Court cannot be ascribed to the defendant's statements unless the plaintiff is aware of those statements. Thus, in this case, a Class member could not have suffered detriment based on anything in the Annual Statements unless that Class member read the Annual Statements.

Cases decided before *Ruth Fawcett Trust* support this analysis. For instance, in *Iola State Bank v. Biggs*, the Kansas Supreme Court stated the party asserting estoppel must have been "induced . . . to believe certain facts existed. It must also show it rightly relied and acted upon such belief . . . ." 662 P.2d 563, 571 (Kan. 1983). However, Class members could not be induced to believe anything in the Annual Statements unless they read them. Similarly, in *Dunn*, the Kansas Court of Appeals cited another Kansas Supreme Court decision for the proposition that the defendant's actions must have caused the plaintiff to "'act[ ] in good faith in reliance thereon to his prejudice whereby he failed to commence the action within the statutory period.'" *Dunn*, 281 P.3d at 550 (quoting *Klepper v. Stover*, 392 P.2d 957, 959 (Kan. 1964)). A Class member cannot rely on the Annual Statements, and nothing in the Annual Statements could have caused a Class member to "fail[ ] to commence the action within the statutory period," unless the Class member saw the Annual Statements.

2. Rule 23 of the Federal Rules of Civil Procedure

Rule 23 of the Federal Rules of Civil Procedure allows a class to be certified if, among other things, (1) there are questions of law or fact common to the class and (2) the common questions of law or fact predominate over individual questions. *See* Fed. R. Civ. P. 23(a)(2), 23(b)(3). As the Court discussed in more detail when it certified the class, the common questions

included determinations regarding choice of law issues, the appropriate statute of limitations, and whether certain doctrines (such as fraudulent concealment or the discovery rule) applied. (Doc. 136, pp. 23-25.) However, equitable estoppel was not discussed by the parties when the issue of class certification was raised, so the Court did not have occasion to consider its impact on the Rule 23 analysis. Defendant has raised the issue subsequently; in fact, currently pending is its Motion to Partially Decertify the Class because the issue of equitable estoppel cannot be decided on a class-wide basis. Given the inquiry required to determine if equitable estoppel applies, the Court agrees and concludes the motion, (Doc. 299), should be **GRANTED**.

Plaintiffs allege the Annual Statements misled class members into not realizing they had a cause of action. However, as explained above, the Annual Statements could only mislead those Class members who read the Annual Statements. Whether a plaintiff read the Annual Statements is not a fact common to the class members, so it is not capable of determination on a class-wide basis. *See Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011) (discussing what qualifies as a "common question"). This conclusion is consistent with other cases holding (in a variety of legal contexts) that the issue of reliance is not amenable to class-wide determination because it requires an individualized determination of what information each class member saw or what each class member thought. *E.g.*, *Hucock v. LG Elec. U.S.A., Inc.*, 12 F.4th 773, 777 (8th Cir. 2021); *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 985-86 (8th Cir. 2021); *In re St. Jude Med., Inc.*, 522 F.3d 836, 839-40 (8th Cir. 2008); *see also Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 462-3 (2013) ("Absent the fraud-on-the-market theory, the requirement that [securities fraud] plaintiffs establish reliance would ordinarily preclude certification of a class

action seeking money damages because individual reliance issues would overwhelm questions common to the class.").[4]

Plaintiff argues he can rely on class-wide circumstantial evidence to establish reliance; however, he does not identify any such evidence. Facts about Defendant's billing practices, mailing practices, and the format of and information contained in the Annual Statements could be decided class-wide; however, none of this evidence permits the Court to conclude, for each and every class member, whether they looked at the Annual Statements and thereby relied on anything Defendant said therein. Plaintiff's argument cites *Ruth Fawcett Trust*, but there are significant differences between the facts and procedural posture in this case and in *Ruth Fawcett Trust.* The defendant in that case (Oil Producers Incorporated of Kansas, or "OPIK") had leased mineral rights from the plaintiffs. OPIK was required to pay a monthly royalty and was allowed to deduct certain costs (including taxes) from those royalty payments; it itemized those deductions on the monthly check stubs. OPIK was not permitted to deduct conservation fees from the royalty payments, but it did so anyway. To avoid detection, it "disguised" the conservation fees as taxes on the monthly check stubs. *Ruth Fawcett Trust*, 507 P.3d at 1143-44.

The issue of reliance was discussed in greater detail by the trial court and the Kansas Court of Appeals than it was by the Kansas Supreme Court. The trial court made specific findings regarding the check stubs and the information they contained and concluded the class members must have seen the information OPIK provided because they cashed the checks. *L. Ruth Fawcett*

[4] On at least two occasions, the District of Kansas has declined to certify a class to resolve assertions of equitable estoppel because of the individualized nature of the inquiry. "Whether the Court would apply an equitable doctrine to toll a particular class member's statute of limitations must depend on the particular circumstances of that class member's closing, including the particular representations made to the member and the facts available to him." *Doll v. Chicago Title Ins. Co*., 246 F.R.D. 683, 688 (D. Kan. 2007) (emphasis deleted); *see also Commander Properties Corp. v. Beech Aircraft Corp.*, 164 F.R.D. 529, 539 (D. Kan. 1995) ("[A] determination of whether the doctrine of equitable tolling or fraudulent concealment can be invoked by a particular plaintiff requires individual inquiries into [the defendant's] conduct with regard to that plaintiff.")

Trust v. Oil Producers, Inc. of KS, 2016 WL 11775738, at * 2-5, 8 (Kan. Dist. Ct. Sept. 1, 2016). The Kansas Court of Appeals affirmed the finding "that *by cashing the monthly checks* and not questioning the deductions, the royalty owners demonstrated reliance on the check stubs being truthful and accurate." *L. Ruth Fawcett Trust v. Oil Producers, Inc. of KS*, 475 P.3d 1268, 1281 (Kan. Ct. App. 2020) (emphasis added). In addition to the trial court's explanations, the court of appeals opined that reliance could "be inferred because there is no other way to explain why they would not question the deduction. The only reasonable explanation is that the Class members relied on the misrepresentation." *Id*. at 1283.

In this case, there is another plausible and obvious reason why the Class members might not have taken action: they did not look at the Annual Statements. In *Ruth Fawcett Trust*, the trial judge found the class members were aware of the check stubs' contents because the class members cashed the checks; here, there is no similar fact that would permit the Court to find the class members were aware of the Annual Statements's contents. Plaintiff makes much of the Kansas Court of Appeals's observation that "[i]t would not be feasible to take the testimony of every Class member," *id.,* but this does not permit the Court to make a class-wide determination of an individualized fact. To the contrary, it explains why such a determination cannot be made under Rule 23: this individual issue predominates over common issues by requiring testimony from each class member. Moreover, the Kansas Court of Appeals also observed "OPIK does not challenge the Class certification on appeal," *id*., which may explain why OPIK's challenge to the class-wide determination was rejected. In contrast, here, Defendant has challenged the certification through its Motion to Partially Decertify, so the Court must consider the Rule 23 implications of this significant, individualized question's emergence after the class was certified.

3. Decertification

"[A]fter initial certification, the duty remains with the district court to assure that the class continues to be certifiable throughout the litigation," *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608, 612 (8th Cir.), *amended,* 855 F.3d 913 (8th Cir. 2017), and when (as is the case here) the Court concludes the original certification's scope is too broad, it may alter or amend the order certifying the class. Fed. R. Civ. P. 23(c)(1)(C). Accordingly, the Court amends the class definition to obviate the individualized inquiry related to equitable estoppel.

The Court previously determined claims related to improper charges imposed within five years of the filing of suit (that is, on or after June 18, 2014) are timely. The Court will therefore amend the class definition to limit the claims to this period; the new class definition is:[5]

> All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (3) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for "Cost of Insurance" or "Expense Charges" between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

Consistent with the Court's ruling and to minimize prejudice to the class members, all claims based on charges incurred before June 18, 2014, are dismissed without prejudice. The Court will enter judgment based on the jury's verdict for the period between June 18, 2014, and February 28, 2021.

[5] The only substantive change is to add the portion in bold.

B. Count V

Count V is entitled "Declaratory and Injunctive Relief." A request for declaratory or injunctive relief is not an independent claim, and Plaintiff has not demonstrated he is entitled to these remedies.

Plaintiff seeks a declaration establishing "the parties' respective rights and duties under the Policy" and that Defendant's conduct was "unlawful and in material breach of the Policy . . . ." (Doc. 8, ¶ 95.) However, any declaration to which Plaintiff is entitled has already been issued as part of the Court's prior rulings and the jury's verdict; any further relief in the form of a declaration would be redundant and unnecessary.

Plaintiff also asks for an injunction to prevent Defendant from further breaches of the Policy, (Doc. 8, ¶ 96), but he has not satisfied the requirements for an injunction under Kansas law. In particular, Plaintiff has not demonstrated a reasonable probability of irreparable future injury or that an action for damages would not be an adequate remedy. *See Empire Mfg. Co. v. Empire Candle, Inc.*, 41 P.3d 798, 808 (Kan. 2002) (discussing availability of injunctive relief to prevent future breaches of a contract). Therefore, the Court dismisses Count V without prejudice to the Court's other rulings in the case.

III. CONCLUSION

The Court directs that judgment be entered with respect to the following Class:

> All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (2) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for "Cost of Insurance" or "Expense Charges" between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of

the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

The judgment to be entered is as follows:

1. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and this Order, judgment is entered in favor of the Class and against Defendant on Count I in the amount of $908,075.00.
2. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict and this Order, judgment is entered in favor of the Class and against Defendant on Count II in the amount of zero dollars.
3. Pursuant to the jury's May 25, 2023, verdict, and this Order, judgment is entered in favor of Defendant and against the Class on Count III.
4. Pursuant to the Court's March 27, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count IV.
5. Pursuant to this Order, Count V is dismissed without prejudice to the other rulings in this case.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATE: June 20, 2023

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

CHRISTOPHER Y. MEEK, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	Case No. 19-00472-CV-W-BP
KANSAS CITY LIFE INSURANCE COMPANY,	)	
Defendant.	)	

JUDGMENT IN A CIVIL CASE

__X__ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

__X__ **Decision by Court.** This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
The Court directs that judgment be entered with respect to the following Class:

> All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (2) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for "Cost of Insurance" or "Expense Charges" between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

The judgment to be entered is as follows:

1. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and the Court's June 20, 2023, Order, judgment is entered in favor of the Class and against Defendant on Count I in the amount of $908,075.00.
2. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and the Court's June 20, 2023, Order, judgment is entered in favor of the Class and against Defendant on Count II in the amount of zero dollars.
3. Pursuant to the jury's May 25, 2023, verdict, and the Court's June 20, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count III.
4. Pursuant to the Court's March 27, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count IV.
5. Pursuant to the Court's June 20, 2023, Order, Count V is dismissed without prejudice to the other rulings in this case.

June 20, 2023
Date

Paige Wymore-Wynn
Clerk of Court

/s/ Shauna Murphy-Carr
(by) Deputy Clerk

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHRISTOPHER Y. MEEK, *Individually and On Behalf of All Others Similarly Situated,*	)	No. 19-00472-CV-W-BP
Plaintiff,	)	April 28, 2023
V.	)	Kansas City, Missouri
KANSAS CITY LIFE INSURANCE COMPANY,	)	CIVIL
Defendant.	)	

TRANSCRIPT OF INTERIM PRETRIAL CONFERENCE

BEFORE THE HONORABLE BETH PHILLIPS
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

Kathleen M. Wirt, RDR, CRR
United States Court Reporter
400 E. 9th Street, Suite 7452 * Kansas City, MO 64106
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APRIL 28, 2023

- - -

THE COURT: Good afternoon. We are here on Meek versus Kansas City Life Insurance Company, Case No. 19-472.

Could counsel please enter their appearance?

MR. STUEVE: Good afternoon, Your Honor. Patrick Stueve here on behalf of the plaintiffs. Along with me is my partner Brad Wilders, Ethan Lange, and Lindsay Perkins, and co-counsel Matt Lytle.

THE COURT: Thank you.

MR. DELNERO: Good morning, Your Honor. Daniel Delnero on behalf of the defendant, Kansas City Life, with my partner Randy Evans, co-counsel John Shaw and Lauren Tallent, and our paralegal, Lauren Gleason.

THE COURT: Okay. Thank you. So I have a number of topics I'd like to discuss with the parties today. I'm not confident that I'm going to be able to resolve all of the issues that the parties would wish to be resolved before the mediation next week, but I'm going to endeavor to at least give some -- if not make some rulings, give some direction as to the way that I am leaning on some issues, take up as many issues as we can. I will then open up the floor at the end of the hearing for any remaining topics that the parties would like to discuss, questions that you may have, topics that, if, heaven forbid, the mediation isn't successful, we need to take up at

the next pretrial conference. So that's kind of how I expect to proceed today.

I don't have a strong feeling about the order of the topics which I take up. The three main topics that I would like to make sure to discuss is a discussion of the experts, the paragraphs in the expert reports that I referenced in the order on the motion to strike.

Discuss the equitable estoppel issue. That's one where I'm not confident I'm going to be able to give you a ruling. I will tell you, and I'll go into more detail when we get to that topic, I did find the additional briefing helpful, and it actually made, when I went back to the original briefing, the original briefing a little bit more helpful. And I'll be honest. I think I was incorrect to put as much emphasis on the *Ruth Fawcett* case as I did in the order that I entered. With the additional briefing, I understand now a little bit more about why you relied on some of the cases that you relied on in your original briefing on this topic.

And then the request of the plaintiffs to enter partial summary judgment on Count III.

Those are the three main topics that I'd like to discuss today. To the extent we have time, I know that the plaintiffs would like to discuss the disclosure, or failure to disclose the mortality study in Milton's rebuttal report; and then some expert issues that the defendants have raised and

whether or not the experts -- plaintiff's experts need to review their calculation.

So that's my goal today is to get through those topics. To the extent there are other topics and we have time, I'm happy to discuss those with you. Do the parties have any strong feelings as to which order it would make most sense to go through the topics that I just listed?

MR. STUEVE: Plaintiffs don't, Your Honor.

MR. DELNERO: No.

THE COURT: Okay. Well, let's start with the experts, then.

What I have done is gone through the order that I entered on the motion to strike and highlighted the paragraphs in which I thought that the testimony was not relevant in light of the rulings, but left open the possibility that I was missing something. I understand from the briefing plaintiff's position on these.

But I will be honest, from defendants, I didn't find the brief -- the additional briefing that enlightening; and so to the extent you have any additional arguments on the paragraphs, what I would suggest is that we start with Pfeifer's report, and the first paragraph that I see is Paragraphs 20 and 21.

Again, to reiterate the statements I made on the telephone conference, I wouldn't normally go through these with

this level of detail, especially this early, but I feel very strongly that these issues need to be hashed out before the trial starts, most certainly when a jury is not present in the courtroom. This is just not the type of issue that we should be wasting a jury's time on, and I really think that this trial needs to be concluded in three days. And so those are the reasons that I'm taking a slightly different tack than I do oftentimes with respect to these issues and think that maybe we can push them down the road a bit.

So with that, in Mr. Pfeifer's report, which I have in front of me as Document 221-4, it seems to me under the rulings that Paragraphs 20 and 21 are not relevant. Does counsel for defendant -- do you have any additional argument you'd like to make on that issue?

MR. DELNERO: Yes, Your Honor, briefly. Do you prefer the podium or here?

THE COURT: Wherever you're most comfortable. It's most important that you speak up, which you're doing, so that both I and the court reporter can hear you.

MR. DELNERO: Okay. That's usually not an issue for me, regardless of where I'm standing.

Your Honor, I actually had -- I believe in the initial e-mail, you raised a question about Paragraph 10, as well, from Mr. Pfeifer's report.

THE COURT: I may have, and I may have just missed

that in my notes. Yes. Yes. So proceed with your argument, whatever is the most efficient.

MR. DELNERO: Sure. So I'll start with Paragraph 10.

And, Your Honor, I believe the portions of Paragraph 10 that are relevant and appropriate for the jury to hear, at least topic-wise, are the inappropriateness of using mortality rates drawn from GAAP and, more specifically, deferred acquisition -- yes, deferred acquisition costs accounting and unlocking, and cash-flow testing, and a pricing or damages model.

Paragraph 10 in Mr. Pfeifer's report addresses why those unique metrics for the purpose of financial reporting and for cash-flow testing are not appropriate metrics on -- as far as pricing or, in this situation, as far as saying the price that Kansas City Life should have charged under the Court and plaintiff's interpretation of the contract.

So we are not seeking to introduce that testimony and that evidence to counteract contractual interpretation. We understand the Court has already ruled on that issue and ruled as to the appropriate interpretation of the agreement. But as far as the measure of damages and the rates used in plaintiff's damages model, I believe the Court's Daubert order said that that was appropriate for cross and appropriate for testimony.

THE COURT: And I agree with that. I don't see

where in the order I excluded Paragraph 10, although, again, I may be wrong.

Generally speaking, I agree that it is appropriate to cross-examine Mr. Witt on his damages calculation based upon the fact that he used mortality factors or rates that, in your client's opinion, are only proper for purposes of cash-flow analysis, damages, things of that sort.

So which counsel for -- Mr. Wilders?

MR. WILDERS: Good afternoon, Judge. We understand that to be the Court's order, and we're not objecting to that issue.

I think the only part of Paragraph 10 that we would really be objecting to is the statement that insurers do not set COI rates equal to pricing mortality. To the extent that they want to introduce industry standards or what other insurance companies have done, we don't think that's consistent with the obligation that here we're calculating damages based on this Court's interpretation of this policy.

THE COURT: I do agree that any industry standards are not appropriate; but to the extent, again, his testimony is simply that it is not appropriate to use mortality rates from other calculations, then that testimony will be permitted.

MR. DELNERO: The only, I think, caveat to what they said is if equitable estoppel -- I know we're addressing that later, but if equitable estoppel is going to the jury or is

part of the trial, then industry standards are relevant for state of mind for intent to deceive and for the extent of any duty to disclose the manner in which the COI rate is determined.

THE COURT: Okay. Let's table that issue because I think there's an argument that you don't need to establish intent to deceive under Kansas law. But let's table that issue. We'll take that up later.

Let's move, then, to Paragraphs 20 and 21 of Mr. Pfeifer's report.

MR. DELNERO: Thank you, Your Honor. And on Paragraph 20, I think it's admissible to the extent that it's appropriate for Mr. Pfeifer to explain the manner in -- the background of UL policies and the manner in which they operate so the jury has an understanding.

That is potentially something that could be handled through a court instruction, but if the jury does not have a full understanding of what these policies are and how they operate, I think it will be difficult for them to understand some of the other actuarial issues at play that go to damages.

So, again, not admissible to the extent it's seeking to disagree with or enlighten contractual interpretation, but it's the *Old Chief* issue of the jury needing a narrative and not have everything slashed and stipulated to the point of it not being comprehensible.

THE COURT: Mr. Wilders, do you agree that a background is appropriate to be said?

MR. WILDERS: I think some background about how the policy operates is appropriate. What my concern with 20 and 21 is, is it focuses on this distinction between guaranteed and nonguaranteed pricing elements of the policy. And because the Court has already determined that the cost of insurance rate has to be set in a specific manner, referring to it as a nonguaranteed element and emphasizing that point will be confusing to the jury.

THE COURT: I think I'm going to have to hear the testimony. I'm not confident that I think that it's going to be any more confusing to the jury than a number of aspects of this whole litigation are going to be. So generally speaking, it's appropriate for both sides to lay some background, explain the difference in the policies. Whether or not it is confusing to talk about guaranteed or nonguaranteed elements, I'll just have to hear some testimony on that one.

Moving on, then, to Paragraphs 69 through 72. Again, these are paragraphs that contain some information regarding contract interpretation, which, obviously, I've excluded, but also contain information that I'm open to an argument that they could also be used to properly criticize Mr. Witt's testimony. And in these, I was trying to give the defendant the benefit of the doubt that, you know, maybe there

is some valid use of these paragraphs.

Do you have any argument as to why Paragraphs 29 through -- 69 through 72 should be used to criticize Mr. Witt?

MR. DELNERO: Yes, Your Honor. I think it's -- to me, it's three points contained in those paragraphs that are relevant.

The first is those paragraphs contain testimony that Mr. Meek was actually better off, did not suffer damages as a result of the manner in which Kansas City Life set the COI rate, as opposed to the manner in which plaintiff's expert calculated the rate. And that goes -- I think it was Footnote 11 or 12 of the Court's summary judgment order where you said that that specific issue, whether plaintiff was better off or worse off, is one for the jury, not for the Court. So the paragraphs are relevant to that, whether Mr. Meek and other class members actually did not suffer any damages by consideration of the broader factors than age, sex, risk class.

The other point which we discussed earlier was inappropriateness of using DAC and cash-flow testing. That's contained in those paragraphs and some of the others, as well, but it's contained within those paragraphs.

The final point is the one where Mr. Pfeifer opines that Mr. Witt, plaintiff's expert, did not set his alternative rate damages calculation, whatever you want to call it, strictly equal to mortality is relevant. The fact that he

derived a smoker-distinct rate from the unismoke rate, and there were some other calculations in there, rather than just performing a simple addition and subtraction, go to the appropriateness, accuracy, and ability to challenge Mr. Witt, as well.

So, in our view, topics along the lines of those paragraphs are admissible for those three purposes, not contract interpretation.

THE COURT: Mr. Wilders, I think in my order, I made it clear that this dispute between the experts as to whether or not Mr. Meek and class members were -- suffered any damages is something that the jury is going to have to decide.

Furthermore, as I've also said, to the extent that the defendant's experts believe that the calculations or the mortality rates used by Mr. Witt are inappropriate because they should only be used for cash-flow testing and other reasons is something that the jury is able to hear.

I don't fully understand, I'll be honest, your argument and Mr. Witt's testimony regarding the smoker/nonsmoker calculations and alternative damages. And so what's your position with respect to defense counsel's argument that these paragraphs, to the extent they touch on that topic, should be admitted?

MR. WILDERS: So let me start with the "some class members are better off or not better off" as it's laid out in

the expert report here. The criticism being levied at Mr. Witt was that he found one of his damages calculations accrued damages only where the mortality rate was lower than the cost of insurance or higher than the cost -- or lower. Let me back up.

THE COURT: You're not helping me.

MR. WILDERS: When the mortality rate -- I apologize. When the mortality rate was lower than the cost of insurance.

THE COURT: Okay.

MR. WILDERS: And that produces positive damages, for lack of a better word.

THE COURT: Right.

MR. WILDERS: There was also, because our theory of the case was in months where the mortality rate was higher but Kansas City Life elected voluntarily to charge a lower cost of insurance rate, there would be no breach in that situation. And so the appropriate, for that month, damages would be zero, rather than a negative amount of damages that would reduce the overall damages.

As we understand the Court's orders to date, the Court believes that when you do account for both so that there is what the Eighth Circuit characterized in the *Vogt* case as an offset -- so if you have positive damages in one month and negative damages ten years down the line, it offsets to zero.

Because of, as we understand the Court's orders, we don't plan to present that calculation to the jury. We plan to present Mr. Witt's calculation that shows the -- it incorporates the offset. And so if they want to criticize Mr. Witt for adopting what the Court has determined is the appropriate way to calculate damages, we think that would be inappropriate in front of the jury because he's following what we understand the Court's interpretation of the contract to be.

THE COURT: Right. And so do you disagree with that?

MR. DELNERO: With that stipulation, no --

THE COURT: Okay.

MR. DELNERO: -- as long as -- but the paragraph does go broader than that and addressed -- more than just the undercharges was addressed in those paragraphs of Mr. Pfeifer. He also took out the GAAP and took out the CFT improvements to show that Mr. Meek did not actually suffer damages.

So I think the testimony as a whole related to Mr. Meek not suffering damages under Pfeifer's report is proper, as the Court alluded in the footnote in the summary judgment order. But we're not -- if they're not introducing the model that does not have the undercharges, then there's no reason for that to be brought up. I think that takes care of 78, as well.

THE COURT: Okay. I think we're on the same page on

that topic.

And so, then, Mr. Wilders, I was also curious about the defendant's argument regarding the -- well, does that issue, then, address his Point 3, that Mr. Witt did not set the alternatives strictly from mortality, he used the smoker/nonsmoker?

MR. WILDERS: My understanding is that Mr. Witt -- or Mr. Witt has calculated a smoker distinct set of rates from the pricing mortality rates that were produced by Kansas City Life. We understand that they are going to criticize him on the fact that he split those rates from smoker/unismoke, one rate for smoker or nonsmoker and smoker distinct, one rate for not -- for both of them.

THE COURT: Okay. So you don't have any problem with the paragraphs related to that topic?

MR. WILDERS: Yeah. I mean, I wasn't sure where that was in here, but we don't have an issue with him bringing that up at trial.

THE COURT: Okay. It appears as though, then, the previous discussion addressed Paragraph 78, so let's talk about Paragraph 85.

Again, it appears now, based upon our previous conversation, that some of this would -- this paragraph would criticize, would constitute criticism of Mr. Witt for, again, his failure to use -- or for his use of mortality rates that,

in the defendant's opinion, should be limited to cash flow and other uses. Is there any other reason that you believe sections of 85 would be relevant?

MR. DELNERO: 85 through 90, no.

THE COURT: Okay.

MR. DELNERO: 90 through 92 I think we should address separately because it's ASOPs related to GAAP and cash-flow testing. I know in general the Court said that industry standards, things of that nature, can't be used to necessarily attack the entirety of the concept or to alter the contractual language.

THE COURT: Right.

MR. DELNERO: In this case, though, ASOP, I believe it's 2 and 10, for sure ASOP 10, are being used to explain what GAAP and DAC accounting methods are, how they're created, what they're used for; and what the cash-flow testing assumptions are, what they're used for; and when Kansas City Life performs those calculations and those functions, they're guided and essentially bound by those. So it's -- they're proper in that sense to show why these are not appropriately to pull aside and plug into a pricing damages model.

THE COURT: So this seems to me to be relevant because, No. 1, I could use some education on this; and to the extent I permitted them to cross-examine Mr. Witt on this, it seems as though if the ASOPs are necessary to provide

background to his testimony, then -- and not to engage in contract interpretation, then these ASOPs would be admissible.

MR. WILDERS: Well, the objection that we have to the use of the ASOP that they want to rely upon is that it is an ASOP that was from 1992. And that's before we started -- that precedes the rates we're using from the GAAP and the DAC testing. And in 1992, the ASOP language that they're relying on was taken out of the ASOP, the language that says that this is only relevant to GAAP and DAC pricing. So from our perspective, the expert shouldn't be able to rely on a standard that wasn't in place at the time that these prices -- these rates should have been changed.

THE COURT: So why do you think an ASOP that was not in place at the time that the pricing was set is relevant?

MR. DELNERO: That's not accurate. Their damages model runs, includes periods when those ASOPs were in place. The ASOPs that were in place at the time of the DAC and CFT are the versions that should be used. We agree that the versions that were in place at the time of the exercise is the ones that the witness should reference on the stand.

THE COURT: Okay. It seems to me that this is generally admissible, but I do agree that the ones that were in effect at the time that the decisions are made are the ones that should be used in cross-examination. And to the extent the parties are not on the same page as to what was in effect

at the time that the decision was made, I would ask that you meet and confer; and if there continues to be a disagreement as to which ASOP is proper for cross-examination, let me know. But as a general rule, I think it's admissible, but I agree, you can't use an ASOP that wasn't in effect at the time the decision was made.

I also have Paragraph 97 on my list, that it should be excluded to the extent he is discussing the impact on KCL's profitability. Do you have any other argument as to why -- do you have any argument as to why there's another reason that the information in Paragraph 97 should be used?

MR. DELNERO: Yes, Your Honor. The other reason is the appropriateness of using the credited and accumulated interest rates, which, as Mr. Pfeifer points out in Paragraph 97, at times were well over 10 percent. And it really goes to the expectation model of damages, which the Court has found is appropriate, that if the COI charge had to be lower or recalculated, then we can't just assume Kansas City Life would have continued paying, at times, 15, 16, 17, 18 percent interest.

And what Mr. Pfeifer is pointing out here is that, really, if you remove the interest from -- those extremely high interest rates from the damage model under Mr. Pfeifer's calculation in Paragraph 97, then damages are inflated by two or three times. In reality, it's closer to five times.

THE COURT: So I will be 100 percent honest, I do not understand this issue at all. But what I do understand plaintiff's arguments to be is, No. 1, this issue was not timely raised; and, No. 2, determining what the interest rates would be if the COI would have been calculated differently would be based on speculation. And so what's your response to those arguments?

MR. DELNERO: Well, it was raised here. I understand their timeliness argument about what we filed in our supplemental brief, or the April 14th brief, but it's raised in this paragraph. So even if there's a timeliness issue to what we later filed, that discussion in this paragraph was timely.

THE COURT: And so would you foresee this playing out that he would testify -- I don't see that there's a determination of what the interest rate would be. Would he just testify that had the COI been calculated differently, the interest rate would have been calculated differently, but no testimony as to what that interest rate would be?

MR. DELNERO: So in Paragraph 97, it says that the high credited interest rates inflate damages by two or three times. So the testimony would be consistent with this paragraph.

THE COURT: I have not read this entire report, but where does the two to three times --

MR. WILDERS: I think, Your Honor, what he says is

that the impact of Mr. Witt's use of historical credited interest rates is large, overall damages could be doubled or tripled due to the application of these credited rates.

But there was no calculation done in the report; there was no backup material provided in which he did this analysis; and there's no evidence in the record as to the critical point, which is what would the interest rates have been, even if this was an appropriate theory for the defendants to make -- to criticize Mr. Witt for.

And I would go back to the point being that I'm not aware of how you can argue that, okay, yes, we've been found in breach of contract; but, you know, if we had known -- if we had known we were going to be found to have breached the contract, we wouldn't have given you all the interest that we gave you, you know, 10, 20, 30 years ago.

That does not seem to me to be an appropriate expectation of the plaintiff in terms of what the damages would have been under the contract because, as I understand it, the expectations form of damages is the plaintiff gets the amount you overcharged them and anything that would have been expected to accrue from that overcharge. And in this case, these are the interest rates, Mr. Witt used the interest rates that they credited the accounts at the time that the transactions occurred.

And so we don't think any of the testimony about

alternative interest rates that might have or could have or, perhaps, would have been used if they had not breached the contract should be introduced into the evidence at trial.

THE COURT: So what's your response to that?

MR. DELNERO: Your Honor, the interest rate that Mr. Pfeifer is saying would have been used is contained in Paragraph 97. He refers to this 3 percent rate, which is the guaranteed minimum under the policy that Mr. Meek has. Some of the other policies were 4.5 percent, but he's referring to the guaranteed minimum rate.

Regarding whether that's appropriate to take into account for damages, the Court's ruling is that Kansas City Life should have set the cost of insurance rate solely equal to age, sex, risk class, the mortality factors. When you're saying that the policy has to be set only according to those rates, then you can't ignore what would have happened elsewhere with the policy and say, well, if we're required to say it this way, rather than the way the company interpreted it, and other -- frankly, other courts have interpreted the policy as allowing for determination of interest rates, you can't pretend that we still would have paid 15, 16, 17, 18 percent. And so the jury is entitled to hear the other consequences of that contractual interpretation, and, frankly, they're entitled to hear testimony about the impact of interest rates on Mr. Witt's damages model.

THE COURT: So I think that I'm struggling with this for probably a variety of reasons, but one of which is I don't fully understand how interest rates are calculated in connection with the cost of insurance. And so maybe because I haven't looked at that provision of the policy, maybe because this is a whole new world for me, but can either of you give me a brief summary of how this works?

MR. DELNERO: Sure. If helpful, I can kind of take a step back and go over how the policy works.

It is a unique policy in that you have the cash value portion, which is similar but not identical to a savings account. But you have the cash value portion, which accrues interest; and then you have kind of the typical life insurance portion, which pays out a death benefit. And the cost of insurance rate, the cost of insurance charge is deducted from the cash value and applied to the policy.

THE COURT: Right.

MR. DELNERO: But that cash value, while there's cash in it, it's accruing interest rates, at times 3 percent. Remember, these have been around since Mr. Meek purchased the policy in 1984. There were periods where interest rates were higher, where they were 15, 16, 17, 18 percent.

But what Mr. Pfeifer is saying is that if you have -- if the insurer has to calculate or determine, to use the policy language, the COI rate limited to age, sex, risk

class, rather than broader market factors, competition, et cetera, it wouldn't and couldn't pay those extremely high interest rates.

THE COURT: And so how -- under the policy, how is the interest rate set?

MR. DELNERO: The interest rate under the policy is at the insured -- insurer's discretion. It doesn't -- it differs from the COI rate provision in that there's not a metric for how it needs to be determined, subject to a guaranteed minimum. And I believe the BLP plan which Mr. Meek had was 3 percent, other policies within this kind of cohort were 4.5 percent.

THE COURT: And so, Mr. Wilders, do you agree that the interest rate was set at the insurer's discretion?

MR. WILDERS: Well, for some policies. It varies by policy, but our expert has used the interest rate that they set at their discretion if it was higher than the minimum.

THE COURT: Right, other than the minimum.

MR. WILDERS: I do want to correct something. The cost of insurance rate is entirely separate from the interest rate.

THE COURT: Right.

MR. WILDERS: It's much like -- it is like a savings account. If your bank says they're going to give you, they're going to charge you $20 a month to maintain your savings

account, and then they charge -- and then they give you the interest rate of whatever the competitive interest rate is at that point, let's say it's 5 percent. And then let's say six months later you realize the bank has been charging you $50 a month, and you say, I want my $30 back for each month. And then the bank is like, well, you know, if we knew you were going to complain about us overcharging you, we only would have given you 3 percent interest instead of 5 percent interest.

In our view, this is another way of them saying, it wouldn't have been profitable for us to use these rates, so we would have adjusted other aspects of what we were providing under the policy, and the Court has ruled that the profitability is gone. That's what Mr. Pfeifer is saying, we wouldn't have been able to afford to give you these interest rates if we had been complying with the terms of the policy.

THE COURT: So I don't know that I've ever encountered a damages issue of this sort. I would assume, since the parties haven't provided any case law on this issue, that you haven't found any case law that would discuss a damages model under similar or even somewhat related circumstances.

MR. WILDERS: I've looked, Your Honor, and I haven't found any.

THE COURT: Okay. I assumed that to be the case.

I'm going to have to think about this one. I

haven't had this issue come up before, and so I'm not real sure -- I need to ponder this one for a minute. So I'm going to explicitly defer ruling on 97.

The next one I have on my list is Paragraph 121, to the extent that it is inconsistent with the summary judgment order.

MR. WILDERS: If I might go first on this, Your Honor. I think this is similar to the issue of offset, which is Mr. Witt offered two different calculations for Count II damages, one in which the damages for Count II were the same number -- was the same number as Count I, and another way of calculating what isolated under the Court's interpretation of the policy just the expense portion of the overcharge. And we plan to present the second model to the jury, and so the criticism levied here we don't think applies to that calculation.

THE COURT: Do you agree with that?

MR. DELNERO: Yes, Your Honor. We have a disagreement that is addressed in later reports about the manner in which Mr. Witt calculated the distinction for Count II, but we agree that this was before he separated those out, so it's no longer relevant.

THE COURT: Okay.

MR. DELNERO: And, Your Honor, I also had down that you raised an issue with Paragraph 98. That was GAAP, CFT, and

unismoke/smoker, so I think that's taken care of by the prior rulings.

THE COURT: Okay. Then there were a couple of paragraphs in Mr. Pfeifer's rebuttal report, specifically 40 to 41, and whether or not those paragraphs could properly be used to discuss industry standards.

MR. DELNERO: Your Honor, similar to the -- what we discussed earlier with ASOPs, and I think that was Paragraph 21, appropriate to discuss putting in context for what DAC and CFT are and why they're not appropriate for a pricing damages model.

THE COURT: Mr. Wilders, do you have any thoughts on that?

MR. WILDERS: We don't think the standards are relevant because he wasn't conducting a pricing exercise. You know, a pricing exercise would be pricing the policy in accordance with certain actuarial principles, and here the issue is calculating the damages based on the Court's interpretation of the policy.

MR. DELNERO: And to us, that's the point.

THE COURT: Right. Again, I think that, to the extent that Mr. Pfeifer is criticizing Mr. Witt because he's using mortality rates improperly, or his position being that they should only be used for other purposes, damages, cash flow and the like, I will permit that testimony.

There were a couple of paragraphs of Mr. Milton's report, 49 through 52 and 54. Again, the question is whether or not these paragraphs have any value in terms of criticizing Mr. Witt's calculation of damages. Obviously, they will be excluded to the extent that they are opining on contractual interpretation.

MR. DELNERO: Yes, Your Honor. And I also have down Paragraph 71 for Mr. Pfeifer. That was DAC, CFT, unismoke, smoker distinct. I don't think we need to discuss that one. I just want to make sure everything in your list we addressed today.

THE COURT: I think I have two lists, and, unfortunately, they're not identical. So I didn't get all of the paragraphs from both lists on my notes here. But if you don't think that paragraph needs to be raised, then that's music to my ears.

So let's move on to Milton 49 through 52.

MR. DELNERO: Sure. And so 49 to 52 you have the DAC and CFT issue, which, for the same reasons, we think are proper.

You also have that the policies contain different language. And the different language, in light of the Court's order and rulings, we believe is admissible to show why DAC and CFT metrics are not appropriate for the damages model because they include policies -- they include groupings of policies

that do not have identical COI determination language.

For example, some of the policies, like Mr. Meek's, say age, sex, and risk class. Other policies only say age and risk class and leave out the sex. Those policies, when they're priced, have unique rates, and Mr. Witt applied the unique rates when he was using the pricing mortality rate. But when you fast forward to DAC and CFT, they clump together broader groupings of policies because you're not doing it to price, you're doing it for other metrics, so it's appropriate to do so. But those groupings together would not be appropriate to just borrow the rate for pricing because the insurer is permitted to take, under the Court's interpretation of the contract, is permitted to take different metrics into account.

So the differing policy language we believe is relevant for that issue, for the appropriateness of the rates Mr. Witt used.

THE COURT: Mr. Wilders?

MR. WILDERS: Your Honor, I don't see the DAC issue being raised at all in any of these paragraphs. These paragraphs were attempting to show that there was different policy language. The Court held on the record at summary judgment that there were no material differences. We don't believe there are material differences to the policy language here. Mr. Witt used the rates that were identified in their pricing files for purposes of calculating damages; and if they

were to be allowed to put different policy forms with additional language related to the cost of insurance rates, but language which doesn't change the Court's interpretation and has never been suggested that it changes the Court's interpretation of the policies at issue here, that's going to be highly confusing to the jury and prejudicial, we think. And we think the case needs to be tried on the Court's interpretation of the policy, not an attempt -- what we would view as a backdoor attempt to offer an interpretation of other policy form language.

And I would point out, none of the language that's different here changes the fact, as the Court has found, that the policy does not permit expenses and profits to be loaded into the cost of insurance rates, nor does it change the Court's interpretation that the defendant is required to use the then-current, at the time the deduction is taken, mortality rates.

THE COURT: So what is the change in the language of some of the policies that you believe is important for the jury to know?

MR. DELNERO: So I was mistaken. The reference to DAC and CFT was in Paragraph 54, but it's one string. That's why I was kind of putting it together. So I do want to correct that.

But it's to show that, why you can't borrow those

DAC and CFT metrics. Correct, it does not alter the Court's summary judgment ruling as far as contract interpretation or the pricing mortality rate used prior to, I believe it was 2008. But once you start including those other rates, it shows why they're not designed to be used for that group, for the policies for pricing purposes when some will just say age and sex. Some say age, sex, risk class. Some say age, sex, risk class, duration.

So the issue of whether you can include and take into account not just expenses and profits, but also competitive factors that can drop the rate below where Mr. Witt had it and to account is the same, but when you're borrowing rates from other exercises, that difference in language shows why it's inappropriate. And we believe it's limited -- it should be admissible limited to that purpose.

MR. WILDERS: Your Honor, the whole section of this report is entitled, "Point 1, the policy language does not require Kansas City Life to set its COI rates equal to the assumed future mortality rates." That's a policy interpretation issue.

The conclusion of the paragraphs that they're relying on is that Mr. Pfeifer says, (quoted as read) "The differences in policy language support my understanding that the sentence refers to characteristics Kansas City Life has identified as ones it will use in assigning particular rates to

the insureds for the particular product, not the manner in which it will numerically specify those rates."

There's, then, no opinion in this section that the policy language from these policy forms is related to the criticism Mr. Witt should not have used the DAC or the cash-flow testing rates. That is an opinion that is not contained in the report here. And so they're trying to -- I think what's occurring here is they're using additional facts to support another opinion that wasn't disclosed.

MR. DELNERO: Your Honor, it's contained in -- the language I'm referencing is contained in Paragraph 54, second, third sentence. (Quoted as read.) "I also understand that plaintiff's expert proposes using, as substitutes for KCL's actual COI rates for the purposes of computing damages, (a) KCL pricing mortality rates up to 2005, (b) KCL's internal assumed future mortality rates used for purposes of GAAP DAC unlocking, the GAAP mortality rates, up to 2015, and then (c), for the BLP, LifeTrack, AGP, PGP, and MGP products only, beginning in 2015, the internal assumed future mortality rates KCL used for purposes of cash-flow testing, the CFT mortality rates, while for other products continuing to use -- continuing to substitute the GAAP mortality rates."

So the different policy groupings and the different policy language, once Mr. Witt in 2005 moves off of the pricing mortality rates and on to these other rates that were never

determined, considered, or used in pricing is where that different policy language is admissible. It's not to contradict in any way the Court's summary judgment order, it's to further explain why use of these improvements is improper, which is particularly critical for Mr. Meek because, without these improvements, it's very difficult for them to show any damages with respect to him.

THE COURT: Okay. I'll tell you what I'm going to need to do with these paragraphs is take a step back with the information that you've provided, go through this again. This has provided a lot of information that I didn't have before, and so I need to take your arguments, put them in the context of this, and defer ruling on this particular one, and, in all honesty, probably ask some more questions the next time we all meet. But let me defer ruling on those paragraphs.

I think the only remaining paragraph, then, would be Mr. Milton's rebuttal? Paragraph 16 in Mr. Milton's rebuttal? Those are my notes. Did the e-mail have another paragraph?

MR. DELNERO: Yes, but it's all -- frankly, it's all the same as this, so I can address them collectively. I'll give you the paragraph numbers I have from the e-mail.

THE COURT: Okay.

MR. DELNERO: But I also have 56 and 62, 68, and 96 from the original, and then 16 from the rebuttal. 56 through 62, 68, and 96, we believe or submit are admissible to the

extent they discuss GAAP and DAC and go to the pricing, so the same issue we've discussed.

THE COURT: Okay. So when you say 56, 62, 96, those are on the original report?

MR. DELNERO: Correct.

THE COURT: And those -- your arguments are all related to the issue that we discussed with respect to Paragraphs 49 through 52 and 54.

MR. DELNERO: No. It's the one we discussed before regarding specific -- not the difference in policy language, the -- that DAC and GAAP, criticisms of using those for pricing model are admissible, not admissible to the extent they're discussing contract interpretation.

THE COURT: Okay. Mr. Wilders, do you have anything to add to that?

MR. WILDERS: Only that we don't believe that they should be able to accuse Mr. Witt of not creating his own actuarial -- actuarially sound rates because the point here is he's supposed to be relying on Kansas City Life's mortality rates. We understand they're going to make argument that the GAAP do not reflect their mortality rates, but we don't think they should be able to criticize Mr. Witt for not coming up with his own rates.

THE COURT: So I do tend to agree that criticizing him for not coming up with his own actuarial model is not

appropriate. Now, using the wrong mortality rates is fair, but he is very clear that he did not do an actuarial analysis of the damages. It's purely a numbers in, numbers out.

MR. DELNERO: On cross, I think we're entitled to elicit that testimony so the jury understands that he was not doing an actuarial analysis because I think that's important because he's going to testify as to his actuarial experience, decades in the industry, and a bunch of, you know, really fancy credentials. So I think it's appropriate for the jury to know what he did and what he didn't do.

As long as he testifies consistently with his report that he didn't do an actuarial analysis, he just did the damages-in-and-damages-out, then I agree, our witnesses can't double down or address that issue. But I don't think it's appropriate for the jury to be misled into thinking he did something that he actually didn't.

THE COURT: I guess I'm going to have to rule on this at the time of the testimony. I agree, you can't suggest he did an actuarial analysis when, in fact, he didn't; but if there is no suggestion that he did an actuarial analysis, then I don't think it's relevant that he didn't do one. And I think, then, that that kind of opens up a whole other line of questioning that isn't relevant.

So that's my general thought on that topic. To the extent there's any other issues that need to be addressed, I

think it's probably going to have to wait for his actual testimony.

Moving, then, on to Mr. Milton's report, rebuttal report, Paragraph 16.

MR. DELNERO: And, Your Honor, I think I can save time on that one. It's the same issue as 49 to 52, and then 54.

THE COURT: Okay. Mr. Wilders, do you have anything to add to that?

MR. WILDERS: No. We agree, Your Honor.

THE COURT: Okay. That was all of the topics I wanted to discuss with respect to the experts' reports as it related to the motion to strike. Any questions or other topics that the parties would like to discuss on that issue?

MR. DELNERO: Not from us, Your Honor.

MR. STUEVE: Not from plaintiffs, Your Honor.

THE COURT: Okay. Then let's move to the discussion of equitable estoppel, and I can tell you right now that I'm not going to rule on this issue today, just so no one has any expectations that are not met.

My first question is for whoever from counsel for defendant's table is taking this issue. One area that I'm struggling with is I now have a better understanding of plaintiff's arguments regarding the statements they believe provide the basis for application of equitable estoppel. I'm

having some struggles with determining whether or not the defendant's statements that the COI is comprised of age, sex, and risk class induced the other party to believe that certain facts existed that, in fact, did not, that it induced them to believe that there were no expenses that were being added. And so I, in that respect, see some similarities to other Kansas cases that have applied equitable estoppel, and the *Ruth Fawcett* case where the taxes and other fees were used as the basis for equitable estoppel.

So can you explain to me in a little bit more detail why you believe that the statement "cost of insurance will be limited to age, sex, and risk class" was not a -- did not induce the plaintiff to believe that certain facts existed that did not?

MR. DELNERO: Sure, Your Honor. So there's a couple of things to that.

One, that statement, which it's not -- it never says limited. The statement in the policy is that the cost of insurance rate will be based on age, sex, risk class. It's contained in the policy, in the contract itself; and as the Court held on Page 11, the statement has to be something other than the contractual promise. You can't just point back to the contract, because otherwise, then, every breach of contract case would have no end because there was some contractual promise that wasn't followed. And so you could always point

back to the original contract language.

Second, Your Honor, the annual statements -- which I have a copy of the 2018 annual statements which I'm happy to provide to the Court and plaintiff's counsel. None of the annual statements contained that language. They disclosed the COI charge, and the COI charge is the dollar figure, which everyone -- there's no dispute that that dollar figure is accurate. That is the COI charge that Kansas City Life applied and deducted.

Their theory is that, well, by disclosing the charge, you're necessarily disclosing that you calculated it correctly. But there's no statement in any of the annual statements regarding the manner in which the charge was calculated, unlike in the *Fawcett Trust* case.

In the *Fawcett Trust* case, the check stubs which were in issue had a specific disclosure that state taxes were being withheld, and then it had a dollar figure for the state tax. What the defendant in that case did was they also included cost -- they didn't just include state taxes, they included conservation fees, which are not taxes. So they called the conservation fee a state tax. They called something X when really it was Y. That's not present in any of the Kansas City Life statements.

Further, Your Honor, you also don't have the testimony on reliance here.

THE COURT: And let's hold off on reliance. I've got a lot of questions about reliance. I have not -- I most certainly have not concluded that plaintiffs have established reliance, but I first want to stay on this point.

To me, there is more of a similarity to the *Ruth Fawcett Trust* in that, you know, they said they were paying -- that the fee was taxes. It was actually taxes and a conservation fee. Here, they say the COI, that this is the cost of the COI, when, in reality, it's the COI and expenses and/or some profit margin.

So can you explain to me in a little bit more detail how you think that those two situations are actually more different than what I currently see them?

MR. DELNERO: Sure. And part of it, we have to go into a bit what the COI charges and the COI actually are and how they're determined.

So in *Ruth Fawcett*, you just took the conservation fee and added it to the state taxes. You subtract out what they added, there's your damages, there's your misstatement. That's not the case with the COI charge.

The COI charge, it's not that Kansas City Life took the mortality rate -- by the way, Mr. Witt testified consistent with this.

It wasn't the case that Kansas City Life simply took the mortality rate and then lobbed on profit, lobbed on

expense. That's not -- if that had happened, then you would never have situations where KCL undercharged, because it would always be the mortality rate plus some extra.

What we actually have here and the Court's actual finding is that Kansas City Life considered more factors than it was permitted to. Some months, that consideration of additional factors resulted in a higher charge than would have been permitted under the Court's interpretation. Other months, it was a lower charge. So it's not just the simple addition of improper charges.

THE COURT: But it's still a misstatement. I mean, from a mathematical perspective, *Ruth Fawcett Trust* would be obviously much easier to calculate the damages, but it's the saying that certain facts existed when in actuality they didn't.

MR. DELNERO: Well, you have to go to the contract interpretation to actually get there. So then another thing that *Ruth Fawcett* says was that for equitable estoppel to apply, the facts can't be ambiguous or subject to multiple construction. There it was unambiguous that the insurer -- it was unambiguous that the defendant, OPIK, lobbed conservation fees and called it a state tax.

Here, we don't have that. We have a theory of contractual interpretation as adopted by this Court and some others, as rejected by additional courts, that says you took

factors into account that you shouldn't have. But the annual statements contained no representation, no statements regarding the manner in which the charge was calculated. So they're referring to an act, not a false statement.

THE COURT: So I'm happy to hear from counsel for plaintiff, whoever is taking this argument. And I do -- be careful. Why don't we start with this particular topic and not yet move to reliance.

MR. STUEVE: So, Your Honor, the Court found that non-mortality factors like expenses were not permitted to be added to the cost of insurance charge. They did that. The Court found they breached it. If you look at the annual statement, it says cost of insurance charge. There is no disclosure in there that, in fact, they added expenses into the cost of insurance charge.

The other nondisclosure is it has the separate expense charge with the dollar amount. There's no disclosure in there that they lumped additional expenses into the cost of insurance charge. The Court found separately that that was not permitted by the contract, and they breached that. That's precisely what the *Ruth Fawcett* court found was a misrepresentation, concealment, failure to disclose those charges.

THE COURT: Did you say that that was on the annual statement?

MR. STUEVE: Yes, Your Honor.

THE COURT: And is that what you say is -- are you also referring to the annual statement?

MR. STUEVE: I've got an example.

THE COURT: Yeah, why don't I see both of them.

MR. DELNERO: Might have the same one.

MR. STUEVE: Exhibit 34 from the deposition of -- it's these charges.

MR. DELNERO: Which year is that?

MR. STUEVE: Right here. It's from his deposition.

MR. DELNERO: Yes. So it's different ones, but it's the same language.

THE COURT: Okay. Can I keep these?

MR. DELNERO: Sure.

THE COURT: Okay. Let me look at these. Like I said, I'm not making a ruling on this today. So you've given me Exhibit 34 --

MR. STUEVE: That was from Mr. Meek's deposition.

THE COURT: Meek's deposition?

MR. STUEVE: Yes.

THE COURT: And just for purposes of the record, you provided me something similar but just for the year --

MR. DELNERO: 2018.

THE COURT: Yeah, I think these are the same documents.

MR. DELNERO: They all look the same, so it probably is.

THE COURT: The only difference is that this has two pages of a privacy notice, a letter and a privacy notice. So, okay, let me look at these.

Mr. Stueve, I am interested in the issue on reliance. It seems as though from your briefing you rely primarily on the fact that it was assumed in the *Ruth Fawcett Trust* case and, therefore, we should assume it here. I didn't see it really discussed in *Ruth Fawcett*, so I'm curious -- taking out the issue of Mr. Meek's affidavit that was provided in the supplemental -- I know that there's been a motion to strike, let's take that out. I'm curious about your thoughts on how we can infer or conclude reliance on a class-wide basis.

MR. STUEVE: Let me, if I could, if I can start with the *Ruth Fawcett* case, and the Court of Appeals specifically addressed this. "The district court found that the royalty owners demonstrated reliance on misrepresentations" --

THE COURT: Could you do two things: No. 1, slow down. And No. 2, I have a highlighted copy right here with me. So if you could point me to where you are.

MR. STUEVE: So I am on -- it looks like 475-1268. I've got the -- I have a Westlaw copy, Your Honor.

THE COURT: Okay.

MR. STUEVE: It's the second to the last page of the

opinion under why equitable estoppel applies here. The Court of Appeals opinion?

THE COURT: Okay.

MR. STUEVE: It's the heading of why equitable estoppel applies here.

THE COURT: Oh, the Court of Appeals opinion.

MR. STUEVE: Yes.

THE COURT: I don't have that one. So go ahead, just speak slowly, please.

MR. STUEVE: Yes. So "The district court found that the royalty owners demonstrated reliance on the misrepresentation by cashing the monthly checks without questioning the deductions. The court found the reliance was reasonable because the royalty owners were not given any information on what taxes were owed."

It went on to say, "How are royalty owners going to reasonably question a deduction that is not even listed on the information given them?"

With respect to the class-wide reliance, the court went on to say, "Moreover, an inference of reliance by the class is appropriate where circumstantial evidence used to show reliance is common to the whole class."

So the similarities in the case are remarkably similar in this respect, Your Honor. The calculation of the cost of insurance charge is done with data that is solely in

the possession of the defendant. Both the mortality expectations and the cost of insurance rate that are necessary to calculate that cost of insurance charge are completely in their possession. It's never disclosed. That's never disclosed, not disclosed how they calculate the cost of insurance charge in the annual report.

We've cited to the record that, in fact, Kansas City Life recognizes that the policyholders have to trust Kansas City Life that they've calculated those monthly deductions correctly because there's no way for them to independently ascertain whether that's accurate or not. So it is the policyholders allowing them to deduct from their cash value on a monthly basis those deductions that are based on calculations solely in Kansas City Life's possession, never disclosed to the policyholders. So we think the *Ruth Fawcett* case is directly on point on that front.

Now, they want to make -- and I want to talk about the reliance. And if I could, what they do is cherry-pick some deposition testimony by our client, the class representative, Mr. Meek. Remember, he had this policy for decades. They put in front of him certain annual reports and asked him specifically, did he recall seeing that in an annual report. He indicated that he didn't. But when asked -- and I'd like to -- if I may, his deposition is in the record, but I want to -- if I could approach, Your Honor, very briefly on this

point.

THE COURT: Thank you. Oh, you gave me two copies.

MR. DELNERO: One is probably mine.

THE COURT: Yeah.

MR. STUEVE: There you go.

If you look at 195, he was asked -- it's Line 11 -- "You were getting annual reports each year, correct?"

Answer: "I was being sent annual reports every year."

Okay. Then if you would, if you go over to Page 203, Line 4, he is handed Exhibit 34, which I gave the Court.

"This is an annual report letter for October 19th of 2009, correct?"

Answer: "Correct."

"It shows on Page 3 of 6" -- and if, Your Honor, if you -- that is the page that has those, a monthly deduction summary.

"It shows on Page 3 of 6 in the gray box the kind of information you received -- you were receiving each and every year since you owned the policy, correct?"

The answer is, "Yes."

So he does not dispute that he received those, that that information was contained in there. He couldn't have possibly questioned the accuracy. The *Vogt* court on nearly identical facts found that no policyholder would know about

these overcharges. The Eighth Circuit affirmed that. We cited in Footnote No. 1 of our supplemental brief, several courts have found as a matter of law that a policyholder could not have determined these overcharges because all of the information is in the possession of the defendant in calculating these.

So they did not go on and ask him, well, did you understand that those calculations were accurate, but, you know, obviously, that can be reasonably inferred. There's no other information that would have been presented to him in that annual report that would have allowed him or any other class member to have questioned the accuracy. They had to trust Kansas City Life.

Now, that's why it's reasonable to infer reliance based on those undisputed facts, not only that Mr. Meek relied on the nondisclosure of the critical information, but that the rest of the class did. And the *Ruth Fawcett* court expressly found that that was permitted under Kansas law. This Court should, in applying Kansas law, should follow that substantive law.

And that is not a violation of the Rules Enabling Act which they contend. The Court is permitted, in determining whether Rule 23 is satisfied, to apply the substantive law of the State of Kansas.

THE COURT: Okay. Let's briefly hear some argument

regarding the reliance issue that you wanted to make previously.

MR. DELNERO: Sure, Your Honor. And real quick, though, another difference between *Fawcett Trust* and this case, plaintiff's counsel's entire argument just now was premised on an omission, something Kansas City Life did not disclose. The *Fawcett Trust* case specifically said, this case deals with a false statement, the misrepresentation that a conservation fee was a state tax, when it wasn't. Every brief they filed on this issue, the arguments now keep coming back to omission. So that's why we addressed the *Dunn* case and omission as the appropriate metric.

Second, Your Honor, in *Murray v. Miracorp* decided by the Kansas Court of Appeals, which is cited in our brief, roughly a year after -- six months to a year after the *Fawcett Trust* case came about, the court said, quote, no defendant is ever going to admit to stealing another's trade secrets.

It's the same issue here. The omission that they keep bringing up is we never told them that you were breaching the contract. You never told them that you were calculating the rate in a way not permitted by the contract. Well, they're seeking to impose a duty to disclose that you're violating the contract. That would, as the *Murray v. Miracorp* court in the analogous tolling context said, would blow the statute of limitations out of the water because it would never happen.

Second on reliance, you can't rely on something you've never seen or never read. In the *Ruth Fawcett* case, you could infer reliance because the class members received a check with the stub, and then went and cashed it. So they did some affirmative act, demonstrating that they had it in their possession and looked at it.

Here, you don't have that. The cost of insurance rate, the cost of insurance charge is deducted automatically. Mr. Meek testified in paragraph -- Page 169, Lines 19 through 21, question: "And did you read each annual report you received?"

Answer: "No."

On Page 173, starts around Line 23 and continues on to the next page. After going back and forth with Mr. Shaw about the 2008 annual statement. "If I didn't see it and I didn't read it, then I wouldn't have any thought or concern."

Now, Mr. Meek's an attorney. He's a well-regarded criminal defense attorney. He's tried cases, frankly, all over the world. If he's saying he didn't see and didn't read every annual statement, I can almost guarantee you there are class members who didn't read a single one. Frankly, I don't know that I've read any of my annual disclosures from my life insurance product. I don't even remember which company issued it.

So when you can't establish that every single class

member read it and took some act, affirmative act based on it, you can't establish even an inferred reliance class-wide. Further, this is where the difference between the addition of a conservation fee and the cost of insurance rate and charge really come into effect. Every single class member who was charged a conservation fee when they shouldn't have was harmed, and they were all harmed in the same way.

Here, even Mr. Witt's model has multiple cells where class members were undercharged. He even admits that at least one class member -- we believe it's more, but Mr. Witt admits at least one class member was undercharged through the life of policy once he netted it out. Well, if you're being undercharged, then you're not going to run to the insurance company and say, oh, no, my rate is supposed to be set equal to mortality. You charged me $5, you were only supposed -- you were actually supposed to charge ten, here is the extra five bucks. That's like a Monopoly, a bank error in your favor, collect 200 bucks.

So there's an incentive for at least some class members that's not common throughout the class not to complain, particularly for older class members. Because Mr. Witt has testified in prior cases that the mortality rates used by insurers, including Kansas City Life, underestimate and undercharge for what he calls upper-age mortality. Well, those class members certainly are going to have no incentive to jump

up and say, "You're charging me incorrectly."

And so when you can't uniformly say that the only reasons a class member would have taken a certain action or would have taken no action is because of a misrepresentation or an omission, then you cannot apply even inferred reliance across the class. It just simply does not exist, and it does not exist here.

THE COURT: Okay. Let me ask Mr. Stueve a quick question. So are you relying on a false statement or an omission, or both?

MR. STUEVE: Well, it's interesting, Your Honor. The *Ruth Fawcett* case at 507 P.3d, at 1146, says the defendant's concealment of the conservation fees amounts to an affirmative misrepresentation.

What we're saying here is they identified the COI charge, but failed to disclose that they had lumped in expenses. And the same thing with the expense charge. They had the expense charge on the annual statement, but failed to disclose that they included additional expenses in the COI charge. So it's that concealment that constitutes affirmative misrepresentation that, under Kansas law, we meet that standard.

THE COURT: Okay. Okay. As I said, I'm going to take this issue under advisement. I need to think about this in light of the case law and your arguments.

MR. STUEVE: Your Honor, the only other thing that I would point out, if I could, in response to his argument is that -- the suggestion that we have to put on evidence that either Mr. Meek or the class saw every annual statement. That was not the requirement in *Ruth Fawcett*. There was no requirement that they had to put on evidence of every check stub. The point there and the point here is that there is no disclosure of the information that would be necessary for a policyholder to determine that they've been overcharged.

THE COURT: Okay. Let's move on to the next topic that I'd like to discuss, and that is the plaintiff's argument in the supplemental briefing that a summary judgment should be entered with respect to liability on Count III and, like the other two counts, only damages should remain.

So I think it's important to go back to the principle I found applies to this case, which is Kansas law that if the term is ambiguous, you look at the two reasonable interpretations and take the approach that's most favorable to the insured. I think we would all assume that, or conclude, and to the extent you don't, you can put that in your appeal notice, that this is ambiguous.

I'm a little unclear as to -- for example, the plaintiff's argument as to which interpretation is most favorable to the plaintiff. You argue, and in a footnote I think the defendant adopts the statement that the COI rates

using projected death claims would be lower than expected mortality rates because future policy owners are paid a death claim, and a number of the policy -- the policy owners who die due to pre-death termination.

So why wouldn't I adopt the interpretation that you believe is most favorable to the insured?

MR. WILDERS: Well, frankly, Your Honor, we don't believe -- although that would, we believe, produce larger damages, it's not a reasonable interpretation. It's something that they've invented. And if you look through the expert reports and their discussion of why they came up with this theory that it means projected death claims, they were using it as an effort to say that we calculate the cost of insurance based on our profitability. We do a holistic analysis where we put, you know, everything into the pot, including what we want our profits to be, what we think our expenses are going to be, and we generate all of these rates.

That's why they attempted to say projected death claims. But when you take out the expenses and the profits, projected death claims, you can't really create a mortality rate from a dollar amount paid out in death benefits, which is how they define it.

THE COURT: So let me ask you to stop right there and get their input because this does seem to be an odd way to calculate mortality rates by looking at projected payout

because, No. 1, it's going to include a lot of other elements than simply the death rate.

And so my first question was why wouldn't we take this approach? But I still had the question of why is this a reasonable interpretation?

MR. DELNERO: Your Honor, as an initial matter, it's the way life insurance companies think of this. So the holistic method of determining the COI rate was the way Mr. Witt testified life insurance companies determine a COI rate. In fact, Mr. Witt was asked, have you ever seen a policy -- or do you know of any insurance company that calculates the COI rate solely based on age, sex, and risk class? And he said no, other than a few highly specialized products not available to the general market. So it's not an interpretation we invented or invented for this case, it's how it actually works in practice.

Second, Your Honor, when an insurance company is viewing mortality, it's not doing it as a population study or to see generally how life expectancy is going, it's looking for a particular policy or cohort of insureds, how long they will live, how likely they are to die in a specific year, and what are the economic consequences to the insurer of them dying at various years, or a percentage of the policyholders dying at various years because they have to ensure that they have enough money to pay claims, ensure that the reserves are adequate, and

ensure there is some profitability. So it's not -- describing it as a profitability exercise is not really accurate, it's looking to see whether the pricing model actually works and actually works in reality.

Now, I understand the Court's ruling on Count I that, well, if that's what you're doing, the contract has to describe what you're doing. But in terms of how it actually works in practice, in terms of how every insurer applies it, that's how they view mortality. They view it as projected death claims, not as some hypothetical rate of what's going to happen to the population as a whole.

MR. WILDERS: That's just rearguing the policy interpretation issues that have already been decided because the point is not what insurance companies may do or how they do it, the point is what a reasonable person would understand this policy language to mean. And just like the *Vogt* case and just like the case in Jackson County in front of Judge Torrence involving this same defendant and this same policy language, the conclusion was that this language meant assumed future mortality rates. It means the rate of death for these policyholders at the time, in the future. So if you're looking at it today, it might be a projection of how many people are going to die ten years from now, and eleven years from now, and twelve years from now, and you calculate all of those rates, and those are the rates that are supposed to be applied.

THE COURT: Let me ask you a quick question. So I realize Judge Torrence was dealing with Missouri law, which I'm personally partial to, so I wish that this case was Missouri, but that's beside the point. How did he handle this issue? Did he decide it's a matter of contract interpretation that it meant future mortality rates and sent the issue of damages to the jury?

MR. WILDERS: Yes, he did. He said in Page 10 of his order, which is Exhibit D to our supplemental brief, the defendant has admitted that its expectations as to future mortality experience for the policies have been updated every few years since 2000. They established new rates in 2000, 2005, 2011, '15 and '16, and they haven't updated those rates since 1996, and for some policies since the 1980s, and that the expectations as to future mortality experience were lower at least in 2000 and 2005, and that established that there was at least a breach because they never changed their rates.

And then to the extent that the breach varied by age, sex, and rate class or the amount of damages or the DAC testing wasn't the appropriate rates upon which to calculate the damages for some class members, all of that went to the jury, and the jury agreed ultimately with Mr. Witt's calculations.

But I would also -- if I may --

THE COURT: Briefly.

MR. WILDERS: -- point out that when you're looking at how to interpret language that a reasonable policyholder is going to look at and understand, the Missouri standard is exactly the same as the Kansas standard. You look at it from the perspective of a consumer, a reasonable layperson, not the insurance company and how they operate, and ambiguity must be construed in favor of the reasonable policyholder if there are two reasonable interpretations.

Only one of us in the briefing has attempted to show why the phrase future -- "expectations as to future mortality experience" is basically synonymous with an assumed mortality rate, future mortality rate. It's a rate of death, it's an expectation of what the mortality is going to be in the future.

THE COURT: So what is your argument against Judge Torrence's interpretation of the phrase "expectations as to future mortality experience"?

MR. DELNERO: Your Honor, a few things. One, Judge Torrence's order is not an appropriate model for this trial. A, it's under different law; B, there are already -- they're a damages model, and Mr. Witt's testimony is different here than it is there. So there he just had one number for everything, he didn't break it apart, there was no separate Count III, and the jury just wrote the same number for all three counts, which cannot literally be true.

Regarding who this favors, under their

interpretation, the mortality rate would have to be changed. The COI would have to be changed anytime that there's a difference. With what we've lived through the past three years, that certainly does not favor the insured. And Mr. Witt testified at trial that for -- even for the pricing mortality, upper-age mortality is underestimated. So you reach a certain age, and you're being undercharged based on what the mortality-only rate would say. And certainly if you update that in light of COVID and other risk factors, that would require your rate to have to be significantly higher.

So that's one where maybe it will help a young insured, a healthy 25-year-old marathon runner, but other class members it's going to be particularly detrimental to. And the kind of age cohorts for these policies include several individuals like Mr. Meek, frankly, like Mr. Milton, our corporate rep and the individual who submitted the expert report, has the same policy Mr. Meek does, and he's close to 70, it would hurt them. Their interpretation would hurt those individuals. So this is one where you can't cleanly say contra proferentem, resolve the ambiguity in favor of the insured, because their suggested interpretation would harm at least certain class members.

Further, our interpretation which insures that the insurer has enough in reserves to satisfy claims and death benefits certainly helps the policyholders. They buy life

insurance to have that death benefit, and an interpretation that puts that in jeopardy and says, well, you can't take reserves into account, you can't take future projected death claims into account -- that death benefit from the company you purchased it from is much better than a claim against the state insurance fund for when an insurer fails.

So particularly with respect to Count III, our interpretation ensures that policyholders, that there are reserve funds available to pay death claims of policyholders, the reason they bought the policy; and it also means that when there's an event like COVID or other environmental or risk factors that result in mortality actually getting worse and not improving -- and we cited an NPR article discussing how post-COVID and pre-COVID, mortality is not improving in the United States.

THE COURT: Right, right, right. But I think in Count III I've ruled that the mortality rate had to be applied when it was updated, not that you had to update it at certain provisions. So NPR articles to the side, I think we need to focus on the interpretation of this and whether or not -- how to interpret this and whether or not, then, the mortality rates were updated.

So let me ask Mr. Wilder a question to follow up on a topic you mentioned. Was this count in the Jackson County case?

MR. WILDERS: It was, Your Honor. The damages number was different, but the count was in the Jackson County case. We cited in our brief where he interpreted this provision of the policy.

THE COURT: Okay. Let me look back at this issue.

MR. WILDERS: If I could point to two quick points to counsel's argument.

The first is, you know, Judge Laughrey addressed in the *Vogt* case this idea that, well, maybe it harms the class member. The reason it can't harm the class member is because under their interpretation of the policy, they can set the rates to anything they want. They can choose to undercharge below mortality, or they can choose to charge above mortality. An interpretation that says you can never charge a class member above mortality does not harm any class member. That was briefed to Judge Laughrey, and she specifically concluded that. Because if they have to set it at the mortality rate, they're not breaching the policy if they choose to charge less, but they certainly are breaching the policy if they choose to charge more.

And the second point is, the suggestion that maybe there are undercharges defeats summary judgment, we don't have to prove that it was an overcharge every month for every class member. We just have to prove there was at least one overcharge for each class member, and we have done that, with

the exception of the one individual that they were remarking about.

THE COURT: Okay. Do you have a very brief comment?

MR. DELNERO: Yes, Your Honor. First, *Vogt*, the *Vogt* case did not have a Count III, it did not have the improvement. It was only looking at the static model.

MR. WILDERS: That's true. Didn't have Count III, but it had the argument that it harmed the policyholders to impose a limitation on the maximum cost of insurance rate you could charge equals mortality.

THE COURT: And that's where I'm getting the case that had Count III and the case that didn't have Count III confused. Okay.

So very briefly, do you have a comment you'd like to make?

MR. DELNERO: Yes. *Vogt* did not. And the other issue with this is that Count III with the improvements, they loaded those damages into Count I, as well. So Count I has the updated -- what they call updated assumed mortality.

THE COURT: Well, that's a good segue into the next topic I'd like to discuss is a clarification to make sure that all three of us are on the same page as to what each count contains.

It seems to me that Count I -- and this goes to the point you made with respect to the defendant's damages expert.

Seems to me that Count I argues the full overcharge, the mortality -- the mortality rate and the expenses. Count II and III break those issues out, and Count II discusses only the damages associated with incorporating expenses and other fees, costs, into the COI; and Count III, then, only discusses the failure to update the mortality rates.

Mr. Wilders, do you agree with that?

MR. WILDERS: Yes, Your Honor.

THE COURT: So it doesn't seem to me that the plaintiff's experts, then -- expert needs to -- I don't fully understand, then, your argument that plaintiff's expert damage calculation needs to be recalculated in light of the Court's ruling because it seems to me that Count II and III are in one sense alternative theories to Count I.

MR. DELNERO: Your Honor, our position is that Count I should not include the improvements, the alleged improvements. Once you start introducing the alleged improvements, that gets you to Count III. Those improvements should be segregated and a part of Count III, not loaded into Count I.

THE COURT: Tell me what you mean when you say improvements.

MR. DELNERO: So it's the DAC and CFT issue. So Mr. Witt's model for Count I includes, oh, in 2008 you came out with this DAC unlocking exercise, and that had a lower

mortality rate than when the policies were initially underwritten, priced. So from 2008 forward, he uses that DAC unlocking rate, the improved rate, not the original pricing rate.

Around 2015, oh, you have this cash-flow testing rate. That's a further improvement. So from then forward, he uses -- I might be off by a year or two. But from then forward, he uses for not all of the policies, but for a certain cohort, this cash-flow testing rate as his damages model, not the original pricing rate, not the DAC unlocking rate he switched to around 2008.

So those incremental improvements should be in Count III, not part of Count I.

THE COURT: Why doesn't that -- why isn't that a topic of cross-examination for you that Mr. Witt improperly used mortality rates for calculation of the COI that were really done in connection with other purposes?

MR. DELNERO: Because under the way they've pled the complaint and under the Court's order and the way the jury will be charged, those are two separate theories of breach. One theory of breach is that you included items other than -- and I'm lumping Count I and Count II together in this. You included or considered factors that you weren't permitted to. Count III is that you failed to update them, and the contract required you to update it.

THE COURT: And why can't you combine both of them into Count I?

MR. DELNERO: Because there's not a separate model. Mr. Witt's Count I model and Count I damages figure includes the updates. So there should be a model that does -- at a minimum, a model that does not include the updates.

THE COURT: When you say updates, don't you mean update to the mortality? Now, you argue that's not the proper update to the mortality rates, but when you say update, isn't that Mr. Witt's testimony as to how mortality was updated?

MR. DELNERO: Correct, Your Honor, that should be included in Count III and Count III only, not included in Count I, which no part of their Count I theory, no part of the complaint, no part of the Court's order in Count I requires Kansas City Life to readjust the COI rate based on changes or improvements in mortality. So since that's not part of the substantive count, it's not part of the theory, there's a mismatch between the damages model and the actual count that I think will confuse the jury, regardless of the amount of cross-examination. That could be easily fixed by moving that all into Count III where it should be.

THE COURT: So what do you see as the difference between Count I and II?

MR. DELNERO: Count II is a subset of Count I, and Mr. Witt went through the rate where he said, well, based on a

few different calculations -- we take issue with the way he did it, but putting that aside, based on my calculations, 52 to 68 percent of the overcharges appear to be related to expenses rather than profit, duration, reserve setting, et cetera. So the jury could somehow reject Count I as a whole but still find that expenses were inappropriate to include. I'm not entirely sure how they would reach that based on the summary judgment finding, but in theory, they could find in favor of them on expenses, but not on the other factors, and award the 52 percent number. It's literally a percentage of the Count I damages.

THE COURT: Okay. So Count II in your mind is expenses, and what is Count I?

MR. DELNERO: Count I is everything.

THE COURT: But not the failure to increase the mortality rates.

MR. DELNERO: Correct.

THE COURT: Okay. So it's not everything.

MR. DELNERO: Well, it's all of the alleged improper factors and charges.

THE COURT: Okay.

MR. DELNERO: Count II is expense only, Count III is improvements. So Count I should be, in my view, under the Court's order, should be the full scope of the improper considerations; Count II, a subset; and then Count III -- this

is the way they pled it. I didn't plead the complaint.

THE COURT: No, I want to know what your understanding is. So, Mr. Wilders?

MR. WILDERS: So, Your Honor, we really feel like this is rearguing Daubert and summary judgment because the Court's already found that Mr. Witt's damages opinions on all three counts are reliable enough to be admitted and presented to the jury.

We did plead Count I to include all of the overcharges. Paragraph 69 of our complaint, "Defendant does not determine cost of insurance rates based on its expectations as to future mortality experience." That's the language that requires them to use their then-current mortality assumptions, as the Court held in its summary judgment order.

We pled the complaint, Count I is everything. Count II is a subset of only expenses, and Count III is a subset of only the improvements. If the jury thinks that Mr. Witt's damages model as to Count I is not persuasive, they can award -- they can still find a percentage as to the expenses persuasive or their percentage as to the improvements persuasive. I think we're entitled to present that in an alternative theory.

If they wanted to present a model that was only original mortality without the profit and expense components that were loaded into the rates, their experts could have done

that. They've had his report for a very long time. They've only produced that damages figure to us in the last few days. So we consider that to be quite untimely, given that we asked all of their experts, both of their experts, Mr. Milton and Mr. Pfeifer, did you produce an alternative damages calculation, and they both said no. And that's exactly how they're litigating the case, which is there's our damages model, they're going to critique it at trial, and the jury is going to determine whether it satisfies a preponderance of the evidence.

THE COURT: Okay. We're kind of shifting topics here.

MR. WILDERS: Yeah.

THE COURT: But why don't we go ahead into that topic.

Do your experts now -- do you expect your experts to now testify as to a damages model?

MR. DELNERO: Yes, Your Honor, to the ones that we attached to our supplemental brief. There's two pieces to it, one correcting this issue, the -- and separating out the improvements from the original based on the Court's summary judgment order. Those are two separate counts, and Count III may not even be sent to the jury.

THE COURT: I just don't know how I can now admit expert reports that are based upon a summary judgment order.

Discovery is done for one purpose, summary judgment is done, and then the case goes to the jury. So, you know, I'll take this under consideration, but I've got to tell you, if you can't tell from my tone of voice, you've got an uphill battle as to why now you have additional evidence, new evidence that you can put forth to the jury.

MR. DELNERO: Your Honor, it really isn't new. They didn't create any new calculations, it's -- just they made -- they just made two to three specific changes to Mr. Witt's spreadsheet.

THE COURT: Okay. Were they asked at their deposition if they had done any calculations?

MR. DELNERO: The testimony he recounted was accurate.

THE COURT: And they said no, and now they've done calculations.

MR. DELNERO: Now they have, based on Mr. Witt's own models. They didn't create their own model. They literally used his spreadsheets that he produced.

THE COURT: To do additional calculations.

MR. DELNERO: Yes, Your Honor.

THE COURT: Okay. So you kind of see my point. You've got a high hill to climb here. We can take this up at the actual pretrial conference, as opposed to the pre-pretrial conference we're in today. So let's -- we can discuss that

issue. I'll make a final decision on that later, but I'll tell you, it's -- I'm not likely to rule with you on that issue.

But that brings me to another issue that I'd like to discuss briefly, and then I think that is the last issue that I want to discuss. But to the extent the parties briefly have any questions or topics you want to bring up, we can do so.

Again, this question is for counsel for plaintiff. The disclosure of this mortality study that was included in Mr. Milton's rebuttal report -- and if this is something that you would prefer that we discuss at the pretrial conference, but it's the issue that plaintiff brought up in, I think, their supplemental briefing.

MR. DELNERO: Your Honor, it hasn't been completed.

THE COURT: What has not been completed?

MR. DELNERO: The mortality study reference was a potential ongoing project, I believe. I think that's something that we need to discuss at the next --

THE COURT: Okay. Why don't you guys discuss that and flesh that out to the extent you can, and we'll push that off to the next pretrial conference.

So let me go through my notes, but I do believe those were all of the topics that I wanted to discuss with the parties at this time. I know I haven't necessarily given you as much final -- as many final rulings as maybe you'd hoped, especially in light of the pretrial conference that's coming

up, but this is just an area of law and just a topic generally that I know so little about that it's taking me longer to get up to speed on what the terms mean, what the concepts mean. And so this has been helpful, but I just need to go back to the drawing board and look through all of this again before making rulings on a lot of these issues.

With that, does counsel for plaintiff have anything else that you'd like to discuss at this time?

MR. STUEVE: Your Honor, just very briefly. I want to make sure the Court understood. We didn't have this number, but we do argue the prejudice that's required for equitable estoppel, if the Court were to limit the damages to those five -- the past five years, over 56 percent of the class will not have any damages because their policies would have lapsed before that time frame, and the damages number goes from about 18 million to approximately one million.

THE COURT: Okay. There were two other topics that I wanted -- I would like a copy of the Jackson County jury instructions. We looked online and weren't able to access them, so I would like to get a copy of those.

MR. STUEVE: Okay.

THE COURT: And I don't need an answer to this question right now, but to the extent you have any witnesses that will be testifying via deposition, the rule is -- the rule I follow is a little bit different than the Missouri state

court rule. If the witness is not testifying, then the testimony can be presented via deposition. If the witness is testifying, then we won't have any additional reading or playing of the deposition.

MR. STUEVE: So here is the question that we have. We have very limited depo designations of the corporate representative of Kansas City Life. Our plan was to play those in our case-in-chief. Is that consistent with the Court's --

THE COURT: Is the corporate representative testifying?

MR. DELNERO: I believe so, Your Honor. And we'll confirm.

THE COURT: But, then, if the corporate representative is here, the corporate representative who testified, then the corporate representative needs to be called.

MR. STUEVE: Let me just be clear. Your corporate representative that you had at the *Karr* trial was different than the corporate representative that we deposed on those points.

You're saying if the same witness that was produced as the corporate rep is going to be in the courtroom, you want us to call him.

THE COURT: Yes.

MR. STUEVE: So we'll just need to confirm because

you had a different corporate rep.

MR. DELNERO: Right. So there were two different 30(b)(6) representatives.

THE COURT: I'll tell you, why don't you guys talk about this and see if you can work it out. What I don't want is someone here, able to testify, but instead you play deposition testimony. I don't want someone who is going to testify, and in addition we play deposition testimony. So work out who your corporate rep is going to be. If they're going to be here, what the issue is with respect to playing of the testimony, and then we can take it up at the next hearing.

MR. STUEVE: Will do, Your Honor, thank you.

MR. WILDERS: I do think under -- as I understand it, under the rule for admitting depositions in federal court, if the witness is available within 100 miles, we can't play the deposition, but there is a carve-out for people who were deposed under 30(b)(6) because we can't call a 30(b)(6) witness that was required to be ready for those topics at trial. And so the rule says an officer or a corporate designee on behalf of 30(b)(6) you can play in federal court. Is that different from what I understand you're saying?

THE COURT: No. If the corporate representative is here, however, you call the person is all I'm saying.

MR. WILDERS: Okay.

THE COURT: Any other topics?

MR. EVANS: Your Honor, Randy Evans. I actually tried the *Karr* case in Jackson County. And the only thing that I just want to put in your head, because if I were sitting where you're sitting, I would make a lot less money, but I would also want to know what are the trouble spots that are ahead.

So in the *Karr* case, what happened was the jury wrote down the same number for everything. And, in fact, they were told in closing argument, just put the same number down, the judge will fix it. And that's not where we want to end up here, and that's why these -- my colleague, who is way smarter than I am, is very good at isolating Count I, Count II, and Count III. And I just wanted to -- I truly appreciate the fact you're going to get the instructions because I think that will tell you a little bit about what transpired to lead to such a result.

The second thing that I just want to make sure that we don't lose sight of is until the *Vogt* decision, nobody, including Kansas City Life, had an idea about this other interpretation of its policy. So equitable estoppel, as you know, I mean -- remember, I'm the oldest lawyer in the room, so --

THE COURT: Wasn't that also the case in *Ruth Fawcett*?

MR. EVANS: I'm sorry?

THE COURT: Wasn't that also the case in *Ruth Fawcett*? They didn't know that it was illegal until two thousand, either '11 or '14.

MR. EVANS: Right, except that, here is the difference. Kansas City Life didn't start charging one rate and then right after Mr. Meek left the office decided to charge a different rate. What he was told there was the same all the way through; whereas, with *Fawcett* what happened was they were told, you're going to be charged taxes, and then afterwards they grouped in conservation fees after the fact.

The fact is Kansas City Life didn't know any of this until *Vogt* came down, and even then, while there was early success for Mr. Stueve's firm, most of the recent cases coming down have all started to go the other way, which is --

THE COURT: Well, and I appreciate that. As you probably know, I follow the Eighth Circuit law, and the Eighth Circuit law on this issue is very, very clear. And so that is, for a variety of reasons, why my ruling is the way that it is.

So, you know, I've been doing this for a while now, and what I've found is that civil attorneys like to talk. And so, therefore, I've developed a rule that if there are different topics, then the attorneys can most certainly take a specific and distinct topic. These are complex issues, there are a lot of issues, but the attorneys need to stay on the topic that you've been assigned. Tag-teaming usually is

ineffective, and it most certainly extends the argument in the trial, which is something that I'm always working to avoid.

So again, I apologize I haven't been more definitive in my rulings. This has been helpful. I'm going to go back to the drawing board and review these issues with this argument in mind.

We, as you know, have the next pretrial conference set. It looks as though maybe this case won't have as many traditional pretrial issues in terms of motions in limine and things of that sort. Maybe I'm wrong, but it seems as though a lot of these issues are still -- will be related to the issues that are outstanding. So file whatever is necessary for the pretrial conference, and I will be better prepared to rule on some of these outstanding issues then. And godspeed with the mediation.

So have a good weekend.

(Hearing adjourned.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

May 3, 2023

/s/
Kathleen M. Wirt, RDR, CRR
U.S. Court Reporter

EXHIBIT 7

Case Title	Class Size/Number of Notices Sent[1]	Preliminary Settlement Fund/Final Settlement Fund	Average recovery per policy[2]	Percentage of Total COI Overcharges Recovered	Claims Asserted	Type and Value of Non-Monetary Relief	Attorneys' Fees/ Expenses/ Administrative Costs incurred[3]
Fleisher v. Phoenix Life Ins. Co., 11-cv-8405, (S.D.N.Y.)	1,728/ 758	$42.5MM/ $34,759,820.88	$24,594.91	68.5%	Breach of contract; N.Y. Gen. Bus. Law § 349; breach of covenant of good faith	5-year COI rate freeze; validity stipulation $94.3MM	$2,770,410.00/ $902,564.49/ $22,799.00
37 Besen Parkway, LLC v. John Hancock Life Ins. Co., 15-cv-9924, (S.D.N.Y.)	79,033/ 83,961	$91.25MM/ $91.25MM	$1,154.58	42%	Breach of contract	none	$3,957,834.00/ $2,240,112.22/ $133,654.29
Leonard v. John Hancock Life Ins. Co., 18-cv-04994, (S.D.N.Y.)	1,278/ 1,308	$123.07MM/ $93,097,406.44	$82,049.42	91.25%	Breach of contract; N.Y. Insurance Law § 4226; N.Y. Gen. Bus. Law § 349;	5-year COI rate freeze; rate freeze most-favored-nation agreement with opt-	$8,956,015.00/ $1,427,596.29/ $90,197.06

[1] All cases summarized used the same form of notice: direct notice via U.S Mail, to addresses on file for the policyholders. None required claims forms. None have been distributed to *cy pres*, though any uncashed funds that remained after distributions were completed in *Fleisher* were, pursuant to the plan of allocation approved by the court, distributed through an escheatment process consistent with applicable law. *Fleisher*, 11-CV-8405 (Dkt. 299) at ¶ 14. In some COI cases, large institutions or securities intermediaries (e.g., Wells Fargo, Wilmington Trust, or M&T Bank) own multiple life insurance policies that fall into the class definition, and in some cases, policies have multiple owners, which is why the number of notices sent differs from the class size.

[2] Calculated based on preliminary settlement fund divided by class size, which does not reflect the differing COI overcharges per policy.

[3] The amounts listed reflect the amounts incurred by hours billed, not the amounts awarded by the court. Administrative costs incurred by the settlement administrator reflect the amounts provided in the motions for attorneys' fees.

					Cal. UCL § 17200; Cal. Elder Abuse claim; Tex. Ins. Code § 21.21; N.J. Consumer Fraud Act §56:8-1	outs; validity stipulation $50.48MM	
Yearby v. American National Ins. Co., 3:20-cv-09222 (N.D. Cal.)	3,090	$5MM	$1,618.12	88%	Breach of contract	5-year COI rate freeze; validity stipulation $362,289	$611,380.00/ $129,818.96[4]

[4] ANICO fees and expenses are current through June 9, 2023.

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **DECLARATION OF KEITH MCNALLY**

I, Keith McNally, hereby declare as follows:

1. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, in connection with the class action settlement between Plaintiff, on behalf of itself and the class, and Defendant American National Insurance Company. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

A. Experience and Qualifications

2. I am a company director and the Chief Operating Officer at Demeter Capital Limited ("Demeter Capital"). Demeter Capital is authorized and regulated by the United Kingdom's Financial Conduct Authority (FRN 745647) and is a financial consulting company that offers independent, discrete and high quality analysis to clients active in alternative investments with a core focus in the insurance market. Demeter Capital has 3 other company directors, James Rouse, Marcos Flores, and Alejandra Limones who have worked together in a broad range of senior positions in institutional investor capacities in the longevity markets, which includes working at a large bank, large asset manager and as advisors to insurance companies. Demeter Capital works with large, regulated institutional investors with a mandate to assess and acquire life related exposure in the US and Europe to include life settlements and longevity/mortality derivatives. The team at Demeter Capital has traded in over $20bn longevity risk swaps, notes and securitizations since 2003. Additionally, the team at Demeter Capital executed the first ever swap in the UK Pension fund market.

3. At Demeter Capital, I am responsible for advising on the creation of new life settlement investment funds and consulting for large financial institutions on their investment in life settlements. Prior to Demeter Capital, I was a Managing Director and Global Head of Macro Investor Products at Credit Suisse. I was also a member of the Credit Suisse's European Fixed Income Operating Committee. From 2006 to 2011, along with Demeter Capital company directors James Rouse and Marcos Flores, I was a leading member of the Credit Suisse Longevity Markets Group which structured and executed a number of pioneering synthetic longevity/mortality deals in the financial markets. I was also internal legal counsel at Credit Suisse in New York supporting

various fixed income structuring businesses including the Latin American team. I was a New York State qualified attorney (retired) and hold an MSc in International Securities, Investment and Banking as well as a Law (LLB (Hons)) degree.

4. My colleague James Rouse is also a company director of Demeter Capital as well as its Chief Investment Officer, responsible for the risk models and underwriting of life settlement assets. Prior to Demeter Capital, Mr. Rouse was a Managing Director at Fortress Investment Group where he was primarily responsible for the analysis and pricing of life settlement portfolios. Prior to Fortress, Mr. Rouse had spent 11 years at Credit Suisse most recently as a Director within the Longevity Markets Group where he was responsible for the development of structured products and longevity derivatives linked to life settlements and pension schemes. Prior to the Longevity Markets Group, Mr. Rouse was in the Risk Management Division of Credit Suisse. Prior to Credit Suisse, Mr. Rouse worked as a manager within the Risk Control division at Sumitomo Bank and as a manager in the Financial Institutions Group at Deloitte and Touche.

5. My colleague Marcos Flores is also a company director of Demeter Capital as well as its Chief Executive Officer, acting as an expert consulting advisor for institutional clients in the insurance and credit lending markets globally. Prior to Demeter Capital, Mr. Flores started Hibiscus Capital Limited ("Hibiscus") in 2012, a consultant to large Private Equity Funds and Insurance Companies with strategic investments. Prior to Hibiscus, Mr. Flores spent 12 years working at Credit Suisse as a Managing Director within the Longevity Markets Group. In his role, Mr. Flores was responsible for the origination, structuring and distribution of longevity risk, which included life settlements. During this time, he was a SIAP (Significant Influential Approved Person) for the Financial Services Authority of the UK and worked with CARMAC (Credit and Risk Management Committee) within Credit Suisse to develop the global strategy of the longevity business at the bank. Prior to his activity in the longevity asset class, Mr. Flores led the Fixed Income structuring teams at Credit Suisse for Europe and Latin America. Mr. Flores joined Credit Suisse when the firm merged with Donaldson, Lufkin & Jenrette, where he was a member of the Latin American Structuring team. Mr. Flores had also spent three years in Commodities Sales and three years at an affiliate of the Spanish development bank, Banco Exterior de Espana, based in Mexico.

B. Valuation Purpose and Materials Considered

6. Demeter Capital was retained by Class Counsel to independently value the non-monetary benefits for a specific portfolio of life insurance policies (the "Class Policies") contained in the proposed settlement of the above referenced action. These benefits include: (a) a commitment not to increase the cost of insurance rates ("COI") for a period of 5 years following final approval of the settlement, which we have been asked to value as starting from July 1, 2023 and ending July 1, 2028 (the "COI Rate Freeze"); and (b) a commitment not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application (the "Validity Confirmation" and together with the COI Rate Freeze, the "Non-Monetary Benefits").

7. In conjunction with my colleagues, I participated in the preparation of the valuation of the Non-Monetary Benefits. I have relied on the financial market and modeling expertise of my colleagues in the completion of this work. The valuation methodology, valuation opinion and primary significant assumptions for the opinion, are proffered below and, in more detail, in the report, dated June 22, 2023, on the valuation of the Non-Monetary Benefits, which is attached as **Exhibit A** (the "Report").

8. In determining the estimated valuations of the Non-Monetary Benefits set forth in this Declaration, I have employed methods and analyses of a type reasonably relied upon by experts in the field of life settlements in forming the opinions and inferences on the subject.

C. Assumptions and Valuation Methodology

9. The primary significant scenario assumptions are set forth in Section 1 of the Report. The valuation methodology is set forth in the introduction of the Report.

10. Demeter Capital is receiving compensation for time spent on this assignment. The engagement of Demeter Capital for this assignment and the compensation for completing it are not contingent on the development or reporting of a predetermined value or any direction in value, the amount of the valuation opinion, or the attainment of a subsequent event directly related to the intended use of this valuation.

D. Valuation Opinion

11. As a result of procedures performed, it is my opinion that a reasonable estimate of the Non-Monetary Benefits is $362,289. This amount represents the estimate of the COI Rate Freeze of $263,292 as detailed in the Report and the estimate of the Validity Confirmation of $98,997 as detailed in the Report.

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

Executed this 26th day of June, 2023 at London, United Kingdom.

/s/ Keith McNally
Keith McNally

Exhibit A

Report On the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with American National Insurance Company ("ANICO") (the "Report")

Executive Summary

As a result of the analysis set forth in this Report, Demeter Capital Limited ("Demeter") has determined that a reasonable estimate of the value of the two Non-Monetary Benefits secured for the benefit of the Settlement Class, is the following:

Commitment	Value
COI Rate Freeze	$ 263,292
Validity Confirmation	$ 98,997
Total	**$ 362,289**

For this Report "Settlement Class" is assumed as the 3,090 policies identified in the file of policy data provided to Demeter by Class Counsel and assumes that there are no opt-outs to the Class (policies which opt-out are "Opt-Out Policies").

Scope

Demeter was retained by counsel for the plaintiffs in connection with a class action against American National Insurance Company ("ANICO") in order to value the non-monetary benefits contained in the settlement agreement in connection with its forthcoming motions for preliminary approval and final approval of the settlement.

This Report provides an estimate of the value of two commitments from ANICO with respect to the Settlement Class.

The two non-monetary benefits (the "Non-Monetary Benefits") that are the subject of this Report are the following commitments by ANICO:

- **COI Rate Freeze**. Agreement not to impose a new COI rate schedule for 5 years following final approval of the settlement. We have been asked to value this (minimum) 5-year period as starting from July 1, 2023 and ending July 1, 2028. We understand the 5 year period is likely to start from the date of final approval by the court.

- **Validity Confirmation**. An agreement by ANICO not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application. This promise lasts in perpetuity.

General Approach and Data Considered

A reasonable and fair approach to measure the value of the Non-Monetary Benefits to the Class is a present value of the expected cost of the promises– *i.e.*, the cost of providing the benefit. The discount rate applied to the calculations is representative of life insurance industry projects. A discount rate of 5% has been used. This is discussed in Section 1.8.

The calculations of the benefits' value are made by using future projections of the cashflows of the policies. The projections are performed both with and without the promises, and the value of the benefits is taken as the present value of the difference between the two projections.

The future projections require a modelling of the future mortality of the policies. Demeter has extensive experience with cash flow projections for life insurance policies including universal life insurance policies like policies in the Class. Demeter has regularly performed these types of calculations for our clients including life insurance companies and life settlement funds.

ANICO has provided its own expectations of mortality for the Settlement Class, referred to in this report as ANICO's base case mortality assumption. For the purposes of this Report Demeter has used this as the base scenario table. Demeter has estimated the volatility of expectations of mortality around this base case mortality, as described in detail in section 1.

We have been provided with data for 3,090 policies that we understand were in force on January10, 2010 and have not had their COI rates decreased. We have also been provided with a file of policy data as of April 30, 2021, with deaths updated through April 30, 2021[1]. This file also contains, for each policy, the difference between what COI charges would have been under the scale as of April 30, 2021.

We were asked to assume that the Non-Monetary Benefits start on July 1, 2023. Therefore, it was necessary to update the Settlement Class from May 31, 2021, to July 1, 2023. For the purposes of this Report, we have assumed a certain rate of lapse as described in section 1.2 and maturities consistent with ANICO's base mortality assumptions from May 31, 2021, to July 1, 2023.

Approach for Valuing the COI Rate Freeze

"COI Rate Freeze": For a period of 5 years following the Final Approval Date of the Settlement, ANICO agrees to not increase the COI rate schedules on the Final Settlement Class above the COI rate schedules in place as of April 30, 2021.

In providing the COI Rate Freeze, ANICO is foregoing the ability to raise COI rates even in the event of negative changes to the mortality expectations of the Settlement Class (or for any other reason). To evaluate the benefit of the COI Rate Freeze, we considered the probabilities of various future changes in mortality scenarios of differing degrees of magnitude, and, using those numbers, the difference in what ANICO would have been able to charge using a COI increase compared to what they now cannot for the next five years.

Methodology for COI Rate Freeze Valuation

The main driver of a potential COI increase we have considered is the mortality performance of the Settlement Class.

The methodology for the COI Rate Freeze valuation is to project death benefits and COI deductions for the policies in five scenarios:

[1] The experience data is through April 30, 2021 but the data was gathered as of 15th September 2021. For example, if someone died on April 15, 2021, but only notified ANICO on October 2, 2021, that death will not be included in the file.

Scenario 1: ANICO's mortality expectations improve slightly
Scenario 2: ANICO's mortality expectations improve significantly
Scenario 3: ANICO's mortality expectations stay roughly consistent
Scenario 4: ANICO's mortality expectations worsen slightly
Scenario 5: ANICO's mortality expectations worsen significantly

Considering only the mortality factor, the COI Rate Freeze provides meaningful benefits to the Settlement Class in the scenarios where ANICO's expectations of mortality worsen, and ANICO might have implemented a COI increase but for the freeze – i.e., Scenarios 4 & 5. The Scenarios of this Report have been built around ANICO's base mortality assumptions as of September 30, 2021. Nothing in this Report should be taken as an endorsement of these assumptions or the accuracy or suitability of these assumptions for any purposes, other than that it records ANICO's expectations of mortality as of September 30, 2021.

To ensure that ANICO's base case mortality assumptions were suitable for the Scenarios of this Report, Demeter reviewed the mortality experience of the Settlement Class during the period January 1, 2010, to December 31, 2020. The COI Rate Freeze provides meaningful benefits in the scenarios where ANICO's expectations worsen, and ANICO might have implemented a COI increase but for the freeze – i.e., Scenarios 4 & 5. We therefore combine Scenarios 1-3 into a single scenario.

The probability weights applied to the scenarios are calculated using the Gaussian Quadrature rule with inputs of the distribution assumption and variable volatility. The settings of the volatility and distributions for mortality and interest spread are described in section 1.

For future mortality improvements for the purposes of this Report, we have used an internal mortality improvement assumption from ANICO's mortality experience studies.

Mortality for Scenarios 1, 2, 3, 4 & 5 have been generated as described below in Section 1.1 (Mortality).

We have then calculated the value in these scenarios with a present value calculation of the resulting cash flows, using a discount rate of 5%.

The calculations use cashflows through July 1, 2028, which consider that ANICO cannot raise rates for that period. Cashflows after July 1, 2028 are not included in the calculation as the COI Rate Freeze promise ends.

Each of the five scenarios needs to be quantified for

- Extent of the change in mortality expectations; and
- Probability of the scenario.

The quantification of the scenarios and outcomes are detailed in Section 2.

Approach for Valuing the Validity Confirmation

The Validity Confirmation is an agreement by ANICO not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application. The Validity Confirmation is set forth in Section 49 of the Settlement Agreement which provides:

> American National agrees 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 the application for, or otherwise made in applying for the policy

All policies in the Settlement Class have been in force for more than 2 years and are all outside of their contestable periods. This means the risk for a policy holder of a contest to a death claim for reasons such as suicide or inaccuracy in medical statements has now passed. As a result, absent trivial issues such as a failure to present a death certificate, fraud or lack of insurable interest now present the main reasons why ANICO would not pay a death benefit claim.

The calculation of the value of the Validity Confirmation was performed as the present value of the difference between two projections:

- ANICO's base case mortality and lapse rate assumptions, and a risk of a challenge to the death benefit payment.
- ANICO's base case mortality and lapse rate assumptions, and no risk of a challenge to the death benefit payment.

In providing the Validity Confirmation, ANICO is foregoing the ability to challenge and resist death benefit claims in the future for the Settlement Class. In order to provide a valuation of the Validity Confirmation, we estimated the following:

- timing of the future claims for death benefits for the Settlement Class.
- the probability that ANICO could successfully resist a claim; and
- the amount of pay-out that ANICO would have saved in the event of successfully resisting a claim that ANICO is now foregoing (and that is therefore a benefit going to the Class).

The timing of the future claims was projected using ANICO's base case mortality and the lapse assumptions described in Section 1.2. However, whereas the projections for the COI Rate Freeze ended July 1, 2028, the Validity Confirmation has no end date and therefore projections were extended for 40 years – after the likely last policy maturity in the Settlement Class.

The present value of the death benefit claims was calculated by discounting at 5%.

Values are shown in Section 2.

Section 1 - Scenario Assumptions

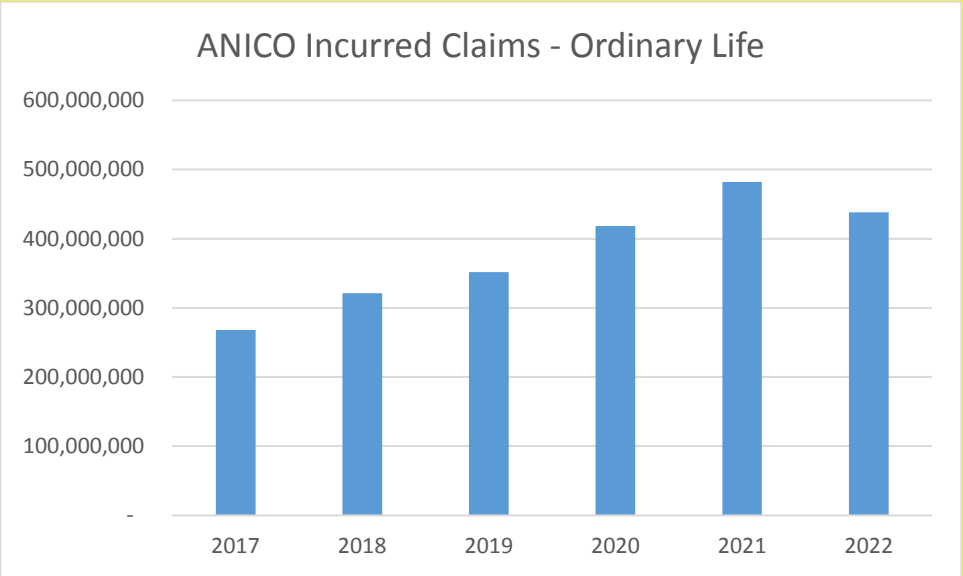
For purposes of this Report, Demeter has considered only the potential for COI increases driven by the projected performance of the Settlement Class. For purposes of this Settlement and in this litigation, we take no position and offer no opinion as to when a COI increase would be permissible under the terms of the policies, or what factors may appropriately be considered under those terms, or what grouping of policies into classes is permitted under the terms of the policies.

Our projections make use of the following assumptions.

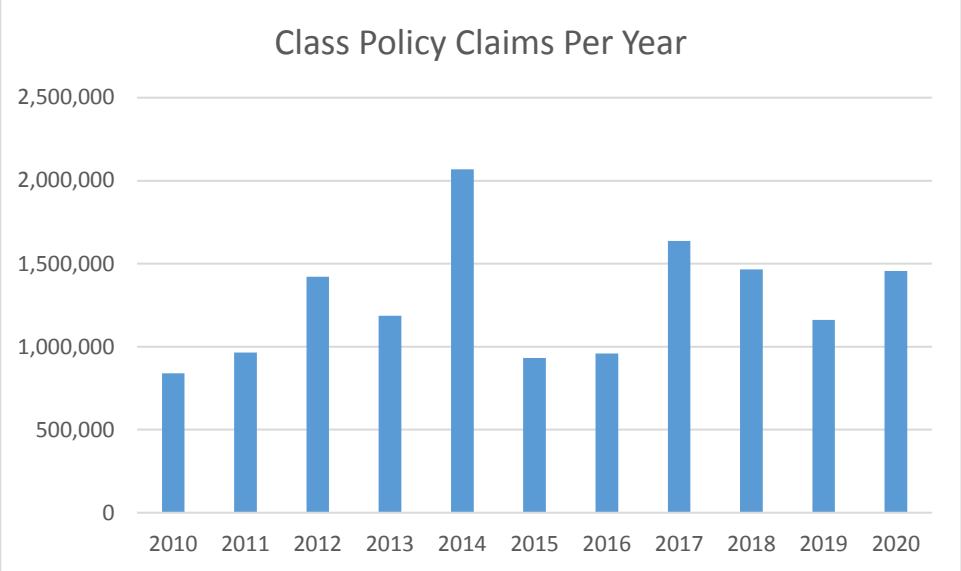
1.1 Mortality

ANICO used its own internal mortality table with various scalars and future mortality improvements applied to project mortality. This Report has used the various scaler and mortality improvement assumptions approved by ANICO's management as of September 30, 2021. This Report considers the potential for variation in ANICO's mortality rates for the Settlement Class over the next 5 years. ANICO has the risk that its mortality expectations for the Settlement Class increases and is unable to increase COI rates as a result of this settlement.

Mortality varies over time. ANICO's NAIC returns show that total claims for ordinary life policies increased in 2020/21 during the time of the Covid-19 pandemic.



On a year-by-year basis the Settlement Class demonstrates greater volatility than would be seen in aggregate for a year across the whole of ANICO's platforms. The graph below shows the claims history for the Settlement Class from Jan 2010 – December 2020.



In providing the COI Rate Freeze, ANICO is foregoing the ability to raise COI rates in the event of negative changes to ANICO's best estimate mortality expectations of the Settlement Class. To evaluate the benefit of the COI Rate Freeze, we considered the probabilities of various future changes in ANICO's best estimate mortality by using scenarios of differing degrees of magnitude, and, using those numbers, the difference in what ANICO would have been able to recover using a COI increase compared to that ANICO now cannot increase COI rates for the next five years.

To calculate the probabilities of changes in mortality we required estimates of the volatility of mortality rates.

In August 2015, Demeter published a report using base Qx shock variance of 12% and mortality improvement variance of 0.75%. For the purposes of this Report, Demeter reviewed industry data around expectations of shock changes in mortality rates to see what changes or updates should be made to this.

Sources for this review included insurance industry regulators who require life insurance companies to hold surplus capital above what might be expected, for unexpected shocks to risk factors. Demeter's analysis included the review of publications from the following authorities:

- The European Insurance and Occupational Pensions Authority's[2] Solvency II capital adequacy program.
- The International Association of Insurance Supervisors[3]
- The Financial Stability Board[4]
- Office of the Superintendent of Financial Institutions (OSFI)[5]
- Australian Prudential Regulation Authority (APRA)[6]

The American Academy of Actuaries provided a presentation to the NAIC[7] in a report dated November 9, 2019, by the Mortality Work Group of which considered a number of risk factors to mortality, including,

- Volatility risk: The risk of natural statistical deviations in mortality experience.
- Level risk: The risk of incorrect experience mortality assumptions.
- Trend Risk: The risk that future mortality improvement is different than assumed.
- Catastrophe Risk: The risk of a short-term spike in mortality or a longer-term increase in mortality from a currently unknown health event, including Pandemic or Terrorism.

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[3] https://www.iaisweb.org

[4] https://www.fsb.org/

[5] https://www.osfi-bsif.gc.ca/Eng/Pages/default.aspx

[6] https://www.apra.gov.au/

[7] https://content.naic.org/sites/default/files/call_materials/Agenda%20%26%20Materials%20LRBC%2011-9-21.pdf at attachment C

Many regulators work towards high degrees of confidence. For example, The American Academy of Actuaries work uses the 95% percentile of risk.

For the purposes of this Report, we needed to estimate the expected value of the Non-Monetary Benefits, and not the 95% percentile. To do this we have assumed a log normal distribution for mortality changes.

Review of the literature sources listed above revealed nothing that would conflict with Demeter's report of 2015. If anything, the events of the past few years have confirmed the reasonableness of the settings used in that report and this Report uses the same settings.

These give rise to the following scenarios:

Scenario	QX Shock	FMI[8] Shock	Scenario Weight[9]
Scenario 4 – Worsen Slightly	+9.2%	-0.55%	23.9%
Scenario 5 – Worsen Significantly	+22.3%	-1.3%	11.8%
Scenarios 1, 2 & 3 - No COI rate adjustment	None	None	64.2%

For comparison, the life insurance industry incurred an increase in claims of 15% in 2020 (*Source*: NAIC data) during which the Covid-19 pandemic occurred. The CDC have reported excess population mortality for 2020 of 10.9% and 12.5% for 2021.

1.2 Lapse

The relationship between COI charges and mortality for the products is such that lapses favour ANICO. ANICO faces the risk that lapse rates are lower than expected and is unable to increase COI rates as a result of this settlement.

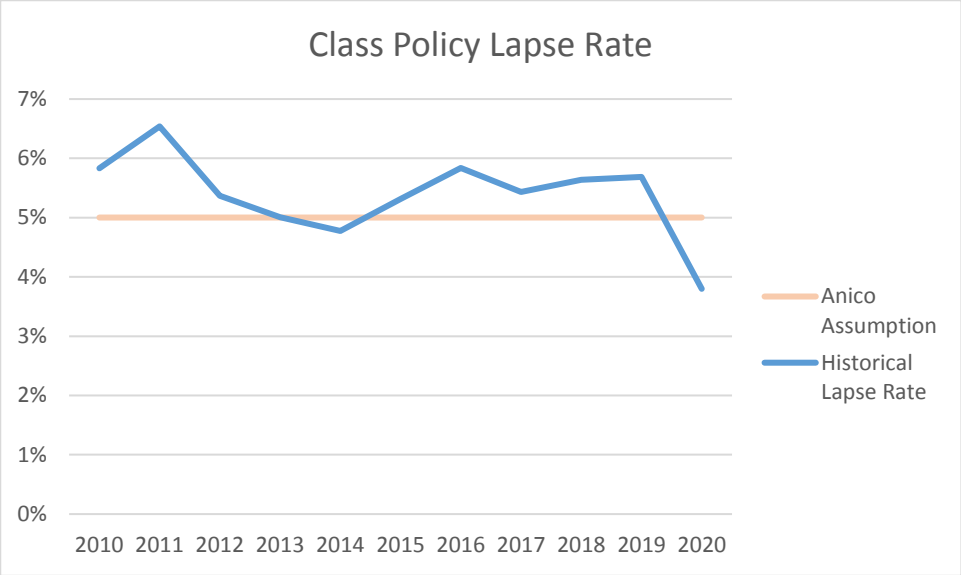
Demeter reviewed the assumptions for lapse that ANICO used in the last annual memorandum from 2021 and compared them to the Settlement Class experience for the period January 2010 to December 2020.

Demeter found ANICO's lapse rate assumptions were reasonably in line with the actual lapse rate of the Settlement Class policies.

The graph below shows the lapse rate history for the Settlement Class during the period January 2010 to December 2020.

[8] FMI means future mortality improvement.

[9] Weights use the Gaussian Quadrature rule.



Accordingly, ANICO's lapse rate assumption has been used in all of the projection scenarios to evaluate the Non-Monetary Benefits.

1.3 Investment Returns

The cash value of the policies was low ($14.5m on $114.2m of death benefit or 12.7% of death benefit[10]) and can be expected to remain low as the book is well seasoned.

These factors mean there is little further downside to ANICO from investment returns in the next 5 years and variations in this factor have not been considered for this Report. Investment returns have not been included in the projection scenarios.

1.4 Expenses and Premium Taxes

The average face size of the Settlement Class is $77,000, which is smaller than the industry average policy size of $183,780.[11] However, as the average issuance date of the policies within the Settlement Class is February 1990, this means the Settlement Class is well seasoned and means that COI and Premium load deductions are much larger than expense deductions. Changes in Premium Taxes rates are infrequent and tend to be for small amounts. For these reasons, potential variations in expenses and premium taxes were considered immaterial for the purposes of this Report. As a result, expenses and premium taxes have not been included in the projection scenarios.

1.5 Premium Funding Pattern

For the purposes of this Report, premiums have been projected as the minimum premium to maintain the account value balance steady each month. This is consistent with the well seasoned nature of the policies in the Settlement Class, which have now been in force for over 30 years.

[10] Total for all 3,090 policies including opt-outs.

[11] Source ACLI data for 2020.

The premium payment pattern has been assumed for all projection scenarios, with the low cash account values (see section 1.3) there is little further downside to ANICO from a change in funding patterns in the next 5 years, and variations in this factor have not been considered for this Report.

1.6 Taxes

The personal rates of taxation that might apply to individual policy holders could differ substantially from one holder to another. So, for purposes of this Report, we have calculated the value of the Non-Monetary Benefit of freezing COI increases gross of taxes.

1.7 Contest Success Probability and Pay-out Rates of Resisted Claims

Data from market aggregate figures provides information about how often carriers resist a death claim:

Year	Disputes Settled ($millions)	Amount Paid ($millions)	Amount Denied ($millions)	Incurred Claims ($billions)	Denied / Incurred Ratio
2015	829.1	206.5	622.5	73.5	0.85%
2016	805.9	153.8	652.0	74.8	0.87%
2017	812.2	247.9	564.3	77.0	0.73%
2018	855.8	110.4	745.4	78.4	0.95%
2019	868.8	303.0	565.8	79.8	0.71%
2020	669.1	320.5	348.6	92.0	0.38%
2021	568.7	219.3	349.4	103.3	0.34%
Total	5409.6	1561.4	3848.0	577.1	0.67%

Source: ACLI tabulations of NAIC data.

The last few years have seen a resurgence of STOLI litigation.[12] By making this settlement, ANICO is foregoing the option to take part of this wave of new STOLI litigation and instead provides payment certainty on the policies and thus value to the Settlement Class. Also new in this trend has been an increase in success rates where some carriers have been able to convince courts to permit the retention of some or all the premiums received.

For these reasons, it is reasonable for settlement purposes to use the aggregate market rate data to provide the settings for the model scenario that includes risk of a challenge to payment of death benefit:

[12] *See, e.g, Pacific Life Ins. Co. v. Wells Fargo Bank, N.A.*, C.A. No. 8:21-cv-737 (PJM) (D. Md.), *Columbus Life Ins. Co. v. Wilmington Trust, N.A.*, C.A. No. 20-735-MN-JLH (D. Del); *Sun Life Assurance Co. of Canada v. Bank of Utah*, Case No. 21-CV-3973-LMM (N.D. Ga.).

- Probability of resisting claim = $5,409.6 m / $577.1 bn = 0.94%
- Pay-out amount for resisted claim = $1,561.4m / $5,409.6 m = 28.9%

1.8 Discount Rates

To define the value today of the Non-Monetary Benefits provided by the Settlement, we have to present value the future cash flows with a certain discount rate.

The owners of the portfolio are likely to fall into one of two disparate groups.

- Individuals who are currently receiving low rates of interest on their bank deposits, often less than 3% and who rarely use discounting to assess the value of a project. They are currently earing 4.5% in the crediting account rate of the policies.
- Life settlement funds who target high returns on capital and who are typically earning 8-9% returns on capital.

Extremely few of the policies in the portfolio display characteristics of investor ownership such as low lapse rates, minimal account value funding, average face size greater than $1,000,000 and average issuance dates in 2004-7– see section 1. 4 and 1.7 for details.

We have used a 5% percent discount rate for this Report which represents the low rates of return expected by individuals.

1.9 Reinsurance

Reinsurance is excluded from all the calculations in this Report. Although the availability of reinsurance may have an impact on ANICO's costs, reinsurance is not relevant to the value that policyholders would obtain from the Non-Monetary Benefits.

Section 2 - Results

2.1 COI Rate Freeze Valuation

As with the Validity Confirmation valuation, we assumed a starting balance of death benefits given the in-force data as of May 31, 2021 and rolled this to July 1, 2023 using ANICO's base case mortality assumption and the lapse rate assumption described in section 1.1 and 1.2.

The assumed in-force balance was then projected forward for 60 months using the scenarios described earlier, including lapse, premium payment, and mortality assumptions. The projections were for account balance and death benefits of the policies. The present value of the difference between net death benefit payments[13] and COI charges was calculated:

Scenario $million	PV COI Charges	PV Net Death Benefit	Difference	Benefit	Scenario Weight
Scenario 4 - Worsen Slightly	$6,481,754	$4,962,739	$1,519,015	$501,354	23.9%

[13] Net means difference between death benefit and account value.

Scenario 5 – Worsen Significantly	$6,418,769	$5,608,145	$810,624	$1,209,745	11.8%
Scenario 1,2 & 3 - No COI rate adjustment	$6,526,569	$4,506,200	$2,020,369	Nil	64.2%

The COI Rate Freeze Value was calculated as

(Worsen Slightly Scenario Benefit x Scenario Weight) + (Worsen Significantly Scenario Benefit x Scenario Weight)

The benefit is the difference between the scenario and the COI Rate freeze that ANICO will be stuck with due to the settlement.

Worsen Slightly Scenario Benefit = $2,020,369 - $1,519,015 = $501,354

Worsen Significantly Scenario Benefit = $2,020,369 - $810,624 = $1,209,745

Total weighted benefit = $501,354 x 23.9% + $1,209,745 x 11.8% = $263,292

2.2 Validity Confirmation Valuation

In providing the Validity Confirmation, ANICO is foregoing the ability to challenge and resist death benefit claims in the future for the Settlement Class. To determine the value of the Validity Confirmation, we performed a probability weighted net present value calculation using the assumptions set forth above. We utilized the data provided to project for the Settlement Class policies death benefits, and account balances for the period from June 30, 2023 to maturity. The projection includes the future probability of lapsing a policy, starting at July 1, 2023 using the lapse rate assumption. We assumed a starting balance of death benefits given the in-force data as of May 31, 2021 and rolled this to July 1, 2023 using ANICO's base case mortality and the lapse rate assumptions described in section 1.1 and 1.2.

We then applied ANICO's base case mortality assumption table and future mortality improvements to generate forward Qx, i.e., mortality rates, for each Class Policy and built a set of future survival probabilities starting at July 1, 2023. The future death benefits of the policies were projected using the probability of lapse and death for each month.

For the without Validity Confirmation scenario, the death benefits were reduced for a probability of being contested of 0.94% and a pay-out ratio of 28.9%.

Estimates of legal expenses incurred in resisting policies were not considered.

The results of each life insurance policy in the Settlement Class were then aggregated and discounted to reach our estimated value of the Validity Confirmation.

PV of future death benefits without Validity Confirmation = **$ 14,747,983**

PV of future death benefits with Validity Confirmation = **$ 14,846,980**

Value of Validity Confirmation = **$ 98,997**

Section 3 – Impact of Opt Outs

We understand that the opt out period is still ongoing, and that some of the Settlement Class may opt out of the settlement by the opt out deadline, which is a deadline to be provided by the Court. As policies opt out of the class, the value of the Non-Monetary Benefits will likely decrease. Because the number of opt outs is unknown at this point, the analysis in this Report assumes zero opt outs. We will update this analysis when the final number of opt outs becomes known.

Conclusion

Using the methodology and assumptions set forth above as well as our own expertise in the subject matter, we calculated the values of the COI Rate Freeze and the Validity Confirmation. A summary of our findings are set forth in the table below.

Commitment	**Value $**
COI Rate Freeze	$ 263,292
Validity Confirmation	$ 98,997
Total	**$ 362,289**

We have performed a qualitative review of these results and believe that they are a reasonable calculation of the value of the Non-Monetary Benefits.

Demeter Capital

DocuSigned by:
Keith McNally
6832B5C4E1824A5...

Keith McNally

June 23, 2023

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **DECLARATION OF GINA INTREPIDO-BOWDEN REGARDING PROPOSED SETTLEMENT NOTICE PLAN**

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

1. I am a Vice President at JND Legal Administration LLC ("JND"). This Declaration is based upon my personal knowledge, as well as upon information provided to me by experienced JND employees and Class Counsel and Counsel for 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 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.

3. I submit this Declaration at the request of Counsel in the above-referenced action to describe the proposed plan for providing notice to Class Members (the "Notice Plan") 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 most recently, the Consumer

Financial Protection Bureau ("CFPB"). In addition, we have worked with a number of government agencies including: the U.S. Equal Employment Opportunity Commission ("EEOC"), the Office of the Comptroller of the Currency ("OCC"), 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 and banks, which were only awarded after JND underwent rigorous reviews of our systems, privacy policies, and procedures. JND has been certified as SOC 2 compliant by noted accounting firm Moss Adams.[1]

6. JND has been recognized by various publications, including the *National Law Journal*, the *Legal Times* and the *New York Law Journal*, for excellence in class action administration. JND was named the #1 Class Action Claims Administrator in the U.S. by the national legal community for multiple consecutive years, and we were inducted into the *National Law Journal* Hall of Fame in 2022 and 2023 for having held this title. JND was also recognized last year as the Most Trusted Class Action Administration Specialists in the Americas by *New World Report* (formerly *U.S. Business News*) in the publication's 2022 Legal Elite Awards program.

7. The principals of JND collectively have over 80 years of experience in class action legal and administrative fields. JND has overseen claims processes for some for 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. JND was appointed the notice and claims administrator in the $2.67 billion Blue Cross Blue Shield antitrust settlement, in which we mailed over 100 million postcard notices; sent hundreds of millions of email notices and reminders; placed notice via print, television, radio, internet and more; received and processed more than eight million claims; and staffed the call center with more than 250 agents during the peak notice program. JND was also appointed the settlement administrator in the $1.3 billion Equifax Data Breach Settlement, the largest class action in terms of the 18 million claims received.

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

Email notice was sent twice to over 140 million class members, the interactive website received more than 130 million hits, and the call center was staffed with approximately 1,500 agents at the peak of call volume. Over the past two years, since June 2021, JND's engagements with Susman Godfrey, either as sole lead counsel or as co-lead counsel, include:

a. *Advance Trust & Life Escrow Services, LTA et al. v. PHL Variable Insurance Company*, Case No. 1:18-cv-03444 (S.D.N.Y.).

b. *Advance Trust & Life Escrow Services, LTA v. North American Company For Life and Health Insurance*, Case No. 4:18-cv-00368 (S.D. Iowa).

c. *Brighton Trustees LLC, et al. v. Genworth Life & Annuity Insurance Company*, Case No. 3:20-cv-00240 (E.D. Va.).

d. *Hanks v. Lincoln Life & Annuity Company of New York, et al.*, Case No. 1:16-cv-06399 (S.D.N.Y.).

e. *Langer, et al. v. CME Group, Inc., et al.*, Case No. 2014-CH-00829 (Ill. Cir. Cook).

f. *Leonard, et al. v. John Hancock Life Insurance Company of New York, et al.*, Case No. 1:18-cv-04994 (S.D.N.Y.).

g. *LSIMC, LLC v. American General Life Insurance Company*, Case No. 2:20-cv-11518 (C.D. Cal.).

h. *Mamboleo v. Pacific Life Insurance Company*, Case No. 30-2021-01208045 (Cal. Super. Orange).

i. *Markson, et al v. CRST International, Inc.*, et al., Case No. 5:17-cv-01261 (C.D. Cal.).

j. *PHT Holding I LLC v. Security Life of Denver Insurance Company*, Case No. 1:18-cv-01897 (D. Colo.).

k. *PHT Holding I LLC, et al. v. ReliaStar Life Insurance Company*, Case No. 0:18-cv-02863 (D. Minn.).

l. *Plavin v. Group Health Incorporated*, Case No. 3:17-cv-01462 (M.D. Pa.).

m. *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*, Case No. 1:19-cv-06004 (S.D.N.Y.).

8. Other large JND matters include 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 settlement, where we sent notice to nearly 30 million class members and processed over 1.5 million claims; 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.

9. 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 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

10. We have been asked by Counsel to prepare a Notice Plan to reach Settlement Class Members and inform them about the Settlement, and their rights and options.

11. 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* consider a Notice Plan with a high reach (above 70%) to be effective.

12. The Settlement Class consists of all owners of universal life (including variable universal life) insurance policies issued in California by American National Insurance Company ("ANICO"), or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010.

13. The proposed Notice Plan consists of a direct mailed notice effort to Settlement Class Members, as identified by Defendant.

14. JND will create a website, www.AnicoCOISettlement.com, which will include information about the Settlement, including the Settlement Agreement, the Preliminary Approval Motion, the Settlement Class Notices, any potential Preliminary Approval Order, any proposed Final Approval Order and Judgment, and related documents. We will also create a toll-free telephone line (1-877-381-0370), which will include an interactive voice response (IVR) so that Settlement Class Members may call to obtain more information about the Settlement. A case-specific post office box will also be created and maintained.

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

16. From my experience in developing and implementing class notice programs, I believe the proposed Notice Plan will prove the best notice practicable under the circumstances.

DIRECT NOTICE

17. JND will send the Settlement Class Postcard Notice by U.S. mail to the addresses in the Class List provided by Defendant for this action. A copy of the proposed Settlement Class Postcard Notice is attached hereto as **Exhibit A.**

18. Prior to mailing the Settlement Class Notice JND will update the mailing addresses using the United States Postal Services ("USPS") National Change of Address ("NCOA") database.[2] JND will track all notices returned undeliverable by the USPS and will promptly re-mail notices that are returned with a forwarding address.

19. 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 class data, as well as to reduce the risk of loss, misuse, or unauthorized access, disclosure, or modification of class data.

WEBSITE

20. JND will create and maintain the case website so that Settlement Class Members may obtain more information about the Settlement. That case website is prominently disclosed in

[2] The NCOA database is the official USPS technology product which makes changes of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream.

the proposed Settlement Class Postcard and Long Form Notices as a source for additional information. The case 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 deadline. It will provide a link to download the Settlement Class Long Form Notice, attached hereto as **Exhibit B**, along with the Settlement Agreement, Preliminary Approval Order, and other important case documents.

21. The website will be optimized for mobile visitors so that information loads quickly on mobile devices and will be designed to maximize search engine optimization though 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

22. JND will create and maintain an automated toll-free telephone line so that Settlement Class Members may call for information related to the Settlement. The telephone line will be available 24 hours a day, seven days a week.

23. JND will also create and maintain a dedicated post office box for this matter where Settlement Class Members may send their exclusion requests.

NOTICE DESIGN

24. JND reviewed the proposed Settlement Class Notice to ensure that it is written in plain language and complies 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.* The Notice also conforms to the Northern District's Procedural Guidance for Class Action Settlements, available at https://cand.uscourts.gov/ClassActionSettlementGuidance. The Settlement Class Notice contains easy-to-read summaries of the Settlement and the objection and exclusion options that are available to Settlement Class Members. The Settlement Class Notice also provides instructions on how to receive more information about the Settlement. Many courts, as well as the FJC, have approved notices that have been written as designed in a similar manner.

REACH

25. 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

26. In my opinion, the proposed Notice Plan provides the best notice practicable under the circumstances; is consistent with the requirements of Rule 23 and the Northern District of California's Procedural Guidance for Class Action Settlements; and is consistent with other similar court-approved notice programs. The Notice Plan is designed to provide Settlement Class Members with the opportunity to review the notice and the ability to easily take next steps to learn more about the Settlement

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

Executed this 23rd day of June 2023, in Philadelphia, PA.

Gina Intrepido-Bowden

EXHIBIT A

COURT AUTHORIZED
LEGAL NOTICE

If you own or owned a universal life policy issued in California by ANICO that was subject to monthly COI deductions on or after January 1, 2010, you may be affected by a class action settlement

A proposed settlement has been reached in a class action lawsuit called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.) (the "Settlement"). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at www.AnicoCOISettlement.com.

American National Insurance COI Litigation
c/o JND Legal Administration
P.O. Box 91237
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 American National Insurance Company ("ANICO") violated its contractual commitment to policyholders by refusing to decrease its cost of insurance ("COI") rates despite what is alleged to be improved future mortality expectations. Plaintiff seeks monetary relief for the COI overcharges. ANICO denies Plaintiff's claims and any and all liability or wrongdoing. 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 universal life (including variable universal life) insurance policies issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

What does the Settlement provide? A Settlement Fund of $5 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 gross benefits provided to the Settlement Class) and litigation expenses, and Plaintiff's Service Award (up to $25,000); 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 February 28, 2023, with each Settlement Class Member receiving a minimum distribution of $100. No portion of the Settlement Fund will be returned to ANICO. In addition, ANICO has also agreed to provide non-monetary relief valued at $362,289, which consists of a promise for a period of five years after the Court finally approves the Settlement, current COI rate scales for the Class Members' policies will not be increased, and that it will 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 the application for, or otherwise made in applying for the policy, as outlined in the Settlement Agreement available at www.AnicoCOISettlement.com.

What are my options? You can do nothing, exclude yourself, or object to the Settlement.

Do nothing. You will remain 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 ANICO for the claims in this case.

Exclude yourself. You will remove yourself from the Settlement Class. You will not receive a payment from the Settlement. You will keep your right to sue or continue to sue ANICO at your own expense and with your own attorney for the claims in this case. Your exclusion request must include the case name (*Yearby v. American National 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 x, 2023**.

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. The Court can only approve or deny the Settlement. The Court cannot alter the terms of the Settlement. Objections must be **filed and served by Month x, 2023**.

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

What happens next? The Court will hold a Fairness Hearing on Month x, 2023 at x:xx x.m. PT at x, to consider whether the Settlement is fair, reasonable, and adequate; and how much to pay and reimburse Class Counsel and Plaintiff. 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. The date of the Fairness Hearing may change without further notice, so please check www.AnicoCOISettlement.com or https://ecf.cand.uscourts.gov for updates.

How can I get more information? Go to www.AnicoCOISettlement.com, call toll-free 1-877-381-0370, or write to American National Insurance COI Litigation, c/o JND Legal Administration, P.O. Box 91237, Seattle, WA 98111. Complete copies of the pleadings, orders and other publicly filed documents in the lawsuit may also be accessed for a fee through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov.

Carefully separate this Address Change Form at the perforation

PLACE STAMP HERE

Name: _____

Current Address: _____

_____

_____

Unique ID: [JND Unique ID]

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.

American National Insurance COI Litigation
c/o JND Legal Administration
P.O. Box 91237
Seattle, WA 98111

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you own or owned a universal life policy issued in California by ANICO that was subject to monthly COI deductions on or after January 1, 2010, you 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 *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.) (the "Settlement").
- Plaintiff alleges that Defendant American National Insurance Company ("ANICO") violated its contractual commitment to policyholders by refusing to decrease its cost of insurance ("COI") rates despite alleged, improved future mortality expectations. Plaintiff seeks monetary relief for the COI overcharges. ANICO denies Plaintiff's claims and any and all liability or wrongdoing.
- If the Court approves the Settlement, Settlement Class Members will be eligible to receive payment from a cash Settlement Fund of up to $5 million, as further detailed in Question 10.
- In addition, ANICO agrees that for a period of five years after the Court finally approves the Settlement, current COI rate scales for the Class Members' policies will not be increased, and that it will 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 the application for, or otherwise made in applying for the policy, as outlined in the Settlement Agreement available at www.AnicoCOISettlement.com. An insurance expert has quantified that non-monetary relief as having a present value of $362,289.
- You are a Settlement Class Member if you own or owned a universal life (including variable universal life) insurance policy issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Your legal rights are affected whether or not you act. ***Please read this Notice carefully***.

YOUR LEGAL RIGHTS AND OPTIONS		
Do Nothing	• 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 ANICO for the claims in this case	
Ask to be Excluded **("Opt Out")**	• Remove yourself from the Settlement Class • Get no benefits from the Settlement • Keep your right to sue or continue to sue ANICO, at your own expense, for the claims in this case	Postmarked by Month x, 2023
Object	• 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 x, 2023

- 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.AnicoCOISettlement.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.

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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.

Honorable Edward M. Chen of the United States District Court for the Northern District of California (the "Court") is in charge of this case. The case is called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.). The individual who sued is Plaintiff Joe S. Yearby. The company he sued, ANICO, is called the Defendant.

2. What is this lawsuit about?

The class action lawsuit alleges that that ANICO violated its contractual commitment to policyholders by refusing to decrease its COI rates despite alleged, improved future mortality expectations. Plaintiff asserts that he and members of the Class have been damaged as a result. ANICO denies Plaintiff's 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. Who is affected by the lawsuit?

The Settlement affects all owners of universal life (including variable universal life) insurance policies issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

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, Plaintiff Joe S. Yearby represents other eligible ANICO 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 the Court's Order Preliminarily Approving Class Action Settlement, the Court decided that the settlement of the breach of contract claim against ANICO 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 Representative's claims are typical of the claims of the rest of the Class;
- The Class Representative 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

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

6. Why is there a Settlement?

ANICO denies any and all liability or wrongdoing of any sort with regard to its COI rates. Instead, the parties 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 Plaintiff or the Defendant. Plaintiff 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?

You are a member of the Settlement Class if you own or owned a universal life (including variable universal life) insurance policy issued in California by ANICO, or its predecessors in interest, that provides that COI rates are determined based on expectations as to future mortality experience, and that was subjected to monthly COI deductions on or after January 1, 2010. See Questions 3 and 8 for more information.

8. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

In addition, policy owners have an opportunity to request exclusion from the Settlement, as described below. Policy owners 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 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.AnicoCOISettlement.com, call the Settlement Administrator toll-free at 1-877-381-0370, or write to: American National Insurance COI Litigation, c/o JND Legal Administration, P.O. Box 91237, Seattle, WA 98111.

WHAT SETTLEMENT CLASS MEMBERS GET

10. What does the Settlement provide?

A Settlement Fund of $5 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 payment to the Class Representative (*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 February 28, 2023, with each Class Member receiving a minimum distribution of $100. No portion of the Settlement Fund will be returned to ANICO.

ANICO has also agreed to provide the following relief, quantified as having present value of $362,289, not to:

- Increase current COI rate scales for the Class Members' policies for a period of five years after the Court finally approves the Settlement.
- 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 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.AnicoCOISettlement.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 ANICO 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.AnicoCOISettlement.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 ANICO 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 (*Yearby v. American National Insurance Company*)
- The policy number(s) to be excluded; and
- Your signature.

You must mail your exclusion request **postmarked by Month x, 2023** to:

American National Insurance COI Litigation
c/o JND Legal Administration
P.O. Box 91237
Seattle, WA 98111

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 x, 2023, 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 ANICO for the same thing later?

No. Unless you exclude yourself, you give up any right to sue ANICO 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
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Seth Ard
Ryan Kirkpatrick
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Kevin Downs
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kdowns@susmangodfrey.com
Telephone: 713-651-9366

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 gross benefits provided to the Settlement Class (that is, will not exceed 33 1/3% of $5,362,289, which is $1,787,429.67). 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 a Service Award up to $25,000 for Plaintiff for his service as the representative 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 ANICO 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. The Court can only approve or deny the Settlement. The Court cannot alter the terms of the Settlement. 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 list of all persons who will be called to testify in support of the objection (if any);
- 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 at the address below by **Month x, 2023**.

Phillip Burton Federal Building & United States Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

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 x, 2023 at x:xx x.m. PT at x. 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 Service Award payment to Plaintiff. 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. The date of the Fairness Hearing may change without further notice, so please check www.AnicoCOISettlement.com or https://ecf.cand.uscourts.gov for updates.

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 x, 2023.

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 ANICO 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.AnicoCOISettlement.com. You can also call the Settlement Administrator toll-free at 1-877-381-0370, or write to:

American National Insurance COI Litigation
c/o JND Legal Administration
P.O. Box 91237
Seattle, WA 98111

Complete copies of the pleadings, orders and other publicly filed documents in the lawsuit may also be accessed for a fee through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov.

PLEASE DO NOT CONTACT THE COURT

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **DECLARATION OF VAUGHN R. WALKER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Vaughn R. Walker, declare as follows:

1. I submit this declaration in connection with the motion for preliminary approval of the proposed class action settlement between the named plaintiff Joe S. Yearby, in Case No. 3:20-cv-09222-EMC, for himself and on behalf of the proposed settlement class, and defendant American National Insurance Company ("ANICO"). I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

2. I am an arbitrator and mediator with FedArb, a nationwide ADR firm. I am an attorney admitted to practice before the Supreme Court of the United States and all courts in California and various federal courts in the United States. In 2011, I retired as a United States District Judge for the Northern District of California, having served on that court from 1990 and as Chief Judge of that court from 2004 through 2010. During my 20-plus years as a federal judge, I presided over thousands of cases and hundreds of trials involving disputes under United States federal law and the laws of several states, predominantly California. I also sat by designation as an appellate judge with the United States Courts of Appeals for the Ninth Circuit and the Federal Circuit. From 2006 to 2011, I served on the Civil Rules Advisory Committee of the Judicial Conference of the United States. Prior to serving as a judge, I practiced law in San Francisco from 1972 to 1990. My practice principally involved complex civil litigation, including securities, antitrust, environmental, land use, and sports law.

3. Since retiring from the federal bench, I have served as a mediator and arbitrator in private practice in San Francisco and elsewhere. I have also taught law courses as an adjunct instructor at the University of California Berkeley School of Law, Stanford University School of Law, and the University of California College of Law at San Francisco.

4. I am a 1966 graduate of the University of Michigan. I worked briefly at the Securities and Exchange Commission and was a Woodrow Wilson Fellow in economics at the University of California (Berkeley). I studied law at the University of Chicago and Stanford University and received my J.D. from Stanford 1970. From 1971 to 1972, I was a law clerk to the Honorable Robert J. Kelleher of the United States District Court in Los Angeles, and from 1972 to

1990, I practiced with Pillsbury Madison & Sutro (now Pillsbury Winthrop Shaw Pittman) in San Francisco and became a partner in 1978.

5. I was retained by the Parties in the above-referenced matter to serve as a private mediator to facilitate potential settlement discussions. As discussed below, the settlement of the class action was negotiated after an extended mediation process and hard-fought litigation. The settlement represents an arms-length, well-reasoned, and sound resolution of highly uncertain litigation. The Court, of course, will determine the fairness, reasonableness, and adequacy of the settlement under applicable legal standards. From the mediator's perspective, however, I can attest that the proposed settlement was a reasonable result, obtained at arm's-length after a difficult, protracted, adversarial negotiation, and is consistent with the the parties' apprehension of the risks and potential rewards of the claims asserted when measured against the "no-agreement alternative" of continued, uncertain litigation. Based on my experience as a mediator, and my personal discussions with the Parties, I believe that the proposed settlement is reasonable. Without waiving the mediation privilege, I provide the following information in support of my view.

6. The first in-person mediation was conducted at the office of Pillsbury Winthrop Shaw Pittman LLP on February 16, 2022. In advance of the mediation, counsel for the Parties submitted detailed mediation statements, with multiple exhibits, setting forth their positions on the key liability, class certification, and damages issues. During this mediation session, the Parties engaged in vigorous, arms-length debate about all aspects of the merits of the case and damages. I met with each party individually to discern areas of common ground. In these individual sessions, I engaged in candid discussions with counsel from each party concerning my perception of the risks associated with their respective positions. The session lasted the entire day, but this meeting did not result in an agreement to settle the Plaintiffs' claims.

7. The Parties renewed mediation discussions in September 2022, with my assistance. On November 22, 2022, the Parties attended another mediation via Zoom and reached an agreement for a final settlement amount of a non-reversionary fund of up to $5 million, a COI-rate freeze for five years, and an agreement not to void, cancel, or deny coverage due to an alleged lack of insurable interest or misrepresentation. I observed no collusion in reaching the terms of the

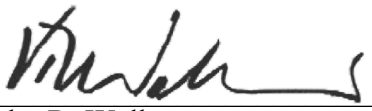
settlement. I believe the settlement agreement now before the Court is in the best interest of all parties and the Class.

8. Throughout the settlement process, including the negotiations outside the formal mediation process, this case was conducted on both sides by highly experienced and capable counsel who were fully prepared and had an excellent understanding of the strengths and weaknesses of the contrasting claims and defenses. The quality of the advocacy on both sides was impressive. All counsel were professional and cooperative, but each side zealously advanced their respective arguments in the best interests of their clients. Moreover, each side demonstrated a willingness to continue to litigate rather than accept a settlement that they did not perceive to be in the best interest of their clients. During the negotiations, the Parties had extensive discussions about potential resolutions, and made several proposals, offers, and counteroffers, after extensive discussions with the mediator.

9. As a result of the facts and circumstances presented by the Parties and my experience in the mediation of class actions, it is my opinion that the settlement warrants serious consideration by the court as an excellent result for the settlement class.

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

Executed this 1st day of May, 2023, in San Francisco, California.



Vaughn R. Walker
United States District Judge (Ret.)

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **DECLARATION OF ROBERT MILLS**

I, Robert Mills, hereby declare as follows:

I. INTRODUCTION

1. I am an economist and Director at Micronomics, Inc., an economic research and consulting firm located in Los Angeles County, California. I have more than 25 years of economic research and consulting experience in areas including the valuation of intellectual property and other assets, industrial organization, and the calculation of economic damages. Over the course of my career I have worked on numerous projects involving the life insurance industry, including matters in which I have been asked to compute damages caused by cost of insurance overcharges. In that context, I have analyzed and estimated cost of insurance charges for over 650,000 life insurance policies during my career. I also have analyzed, calculated, and reconciled numerous other variables pertaining to life insurance, including premium payments, administrative expenses, sales loads, rider charges, interest credits, account values, surrender values, corridor values, net amounts at risk, grace notice values, and death benefits, among other variables, and I have provided expert testimony concerning these analyses and calculations. I have qualified as an expert on damages issues and have provided expert testimony before United States District Courts, state courts, and at arbitration. A biographical summary is attached as **Exhibit 1.**

2. Micronomics, Inc. is being compensated for my work on this matter at a rate of $550 per hour.

3. I have been asked by counsel for Joe S. Yearby ("Plaintiff") to calculate breach of contract damages caused by impermissible cost of insurance ("COI") charges imposed by American National Insurance Company ("ANICO"). In that context, as is customary in matters such as this, I have been asked to assume for purposes of my analysis that ANICO is liable for breach of contract, the cause of action alleged in the operative complaint.[1] I understand that ANICO disputes this contention.[2]

[1] Second Amended Class Action Complaint for Breach of Contract, *Joe S. Yearby v. American National Life Insurance Company*, Case No. 3:20-cv-09222-EMC, September 29, 2021.

[2] Defendant American National Insurance Company's Answer and Affirmative Defenses to Plaintiff's Second Amended Class Action Complaint for Breach of Contract, *Joe S. Yearby v. American National Life Insurance Company*, Case No. 3:20-cv-09222-EMC, March 25, 2022.

4. In conducting my analysis, I have reviewed and considered the complaint and other pleadings, a policy insuring the life of Joe S. Yearby ("Yearby policy"), policy forms on which policies were issued to others, historical policy data, cost of insurance rate scales, mortality rate data, and other documents and data produced by Plaintiff and ANICO.

II. POLICIES AT ISSUE

5. Plaintiff seeks to certify a settlement class of ANICO policyholders who have been forced since January 1, 2010 to pay unlawful and excessive COI charges that are not, as the policies require, determined from time to time by ANICO based on its expectations as to future mortality experience. The "Settlement Class" Plaintiff seeks to certify consists of:

> All owners of universal life (including variable universal life) insurance policies issued in California by American National Insurance Company, or its predecessors in interest, that provide that cost of insurance rates are determined based on expectations as to future mortality experience, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010.

6. I have reviewed and analyzed policy data provided by ANICO and determined that 3,090 policies are owned by members of the Settlement Class (the "Settlement Class policies").

III. DAMAGES FOR BREACH OF CONTRACT

7. The Yearby policy contemplates monthly deductions from the cash value for COI charges and other expenses:

> The Monthly Deduction shall be calculated as the sum of (a), (b), and (c), where:
>
> a) is the Cost of Insurance;
>
> b) is the cost of additional benefits provided by rider; and
>
> c) is the Monthly Expense Charge shown on the Policy Data Page.[3]

8. The COI charge is calculated each month by ANICO using a formula set forth in the Yearby Policy:

> The Cost of Insurance for the Insured is calculated as (a) multiplied by the result of (b) minus (c), where:

[3] Yearby Policy, p. 11.

a) is the Cost of Insurance rate as described in the Cost of Insurance Rates section;

b) is the Insured's Proceeds at Death at the beginning of the policy month divided by 1.0032737; and

c) is the Cash Value at the beginning of the policy month.[4]

The result of (b) minus (c) in the COI formula is commonly referred to as the "net amount at risk." Accordingly, COI charges for the Yearby Policy are calculated each month as the COI rate multiplied by the net amount at risk. COI charges are similarly calculated for other Settlement Class policies.

9. Breach of contract damages can be calculated as the COI overcharges imposed by ANICO due to its failure to downwardly adjust COI rate scales, which Plaintiff contends is required under the Settlement Class policies. The overcharge for a particular policy on monthly deduction date, *m*, is equal to the actual COI charge deducted on that date less the COI charge that would have been imposed on that date but for the breach of contract ("but-for COI charge"):

$$\text{Overcharge}_m = \text{Actual COI Charge}_m - \text{But-For COI Charge}_m.$$

The but-for COI charge is determined by applying the COI rate that would have been in effect for the policy on date *m* but for the breach of contract to the net amount at risk ("NAAR") for the policy on date *m*.

$$\text{Overcharge}_m = \text{Actual COI Charge}_m - (\text{NAAR}_m \times \text{But-For COI Rate}_m).$$

10. I have been asked to assume for purposes of my analysis that ANICO should have reduced its COI rates to the current monthly mortality rate for months in which the current monthly mortality rate is lower than the actual COI rate used by ANICO to calculate COI charges. Given this assumption, COI overcharges can be calculated for each of the Settlement Class policies using

[4] Yearby Policy, pp. 11-12.

four steps. The first step in the analysis is to identify the applicable mortality rate for each policy year in the damages period for the policy from ANICO's mortality tables and scalars. The second step in the analysis is to determine but-for COI rates by converting the annual mortality rates from step one to monthly mortality rates. The third step in the analysis involves calculating but-for COI charges for each month in the damages period by applying the but-for COI rates from step two to actual NAAR as of each month in the damages period for the policy. The fourth and final step in the analysis is to calculate the overcharge by deducting the but-for COI charges from step three from the actual COI charges imposed by ANICO for each month in the damages period. Total overcharges for a policy are calculated by summing the monthly overcharges for the policy during the damages period.

11. ANICO has produced historical data showing the NAAR and actual COI charge for the Settlement Class policies on each monthly deduction day from January 1, 2010 through February 28, 2023.[5] ANICO also provided base mortality rate tables and applicable scalars for the relevant period, which can be used to derive current mortality rates for the Settlement Class policies.[6] I have used this information and the overcharge formula provided above to calculate COI overcharges for each of the Settlement Class policies.

12. Total COI overcharges for the 3,090 Settlement Class policies are $5,704,128 through February 28, 2023. COI overcharges for the Settlement Class policies are summarized by year in the table below.

[5] Historical policy data ("YEARBY 001280_CONFIDENTIAL.xlsx"; "CONFIDENTIAL_YEARBY_1280 (Policy Coverages)_Mar 1 2023.xlsx"; "CONFIDENTIAL_YEARBY_6607 (Policy Coverage Charges)_Mar 1 2023.xlsx"; "CONFIDENTIAL_YEARBY_1278 (Monthly Values - U1MV)_Feb 28 2023.xlsx"; "YEARBY 006607_CONFIDENTIAL.xlsx"; and "YEARBY 001278_CONFIDENTIAL.xlsx").

[6] I have relied upon ANICO mortality rate data compiled by James Rouse, an expert retained by Plaintiff to analyze ANICO's mortality rate data. Mr. Rouse provided base mortality tables and scalars, which I used to calculate current mortality rates for each of the Settlement Class policies. Monthly rates were calculated as $1-(1-qx)^{1/12}$, where qx is the annual mortality rate.

Table 1: COI Overcharges for Settlement Class Policies
January 1, 2010 Through February 28, 2023

Year	Actual COI Charges	But-For COI Charges	COI Overcharges
2010	$ 1,866,168	$ 1,613,731	$ 252,437
2011	1,818,811	1,584,155	234,656
2012	1,774,939	1,557,996	216,943
2013	1,753,727	1,166,745	586,982
2014	1,710,775	1,094,455	616,320
2015	1,668,232	1,081,993	586,239
2016	1,649,402	1,075,911	573,492
2017	1,643,695	1,078,580	565,115
2018	1,583,225	1,136,925	446,300
2019	1,528,268	1,092,474	435,794
2020	1,468,912	1,075,185	393,728
2021	1,367,263	996,287	370,976
2022	1,340,836	975,987	364,848
2023	220,865	160,568	60,297
Total	$ 21,395,119	$ 15,690,992	$ 5,704,128

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

Executed this 22nd day of June 2023, in Redondo Beach, CA.

Robert Mills

EXHIBIT 1

MICRONOMICS
Economic Research & Consulting

ROBERT MILLS
Director

Robert Mills has extensive experience quantifying economic damages in connection with commercial litigation. He has served as an expert witness or consultant in a wide range of matters, including patent, trademark and copyright infringement, theft of trade secrets, breach of contract, interference, conversion, fraud, predatory pricing, attempted monopolization, and labor disputes. His consulting experience spans many industries, including software, semiconductors, telecommunications, manufacturing, apparel, insurance, energy, entertainment, waste, real estate, sporting goods, health care, pharmaceuticals, and medical devices, among others. Mr. Mills has testified as an economic expert in Federal District Court, state courts in multiple jurisdictions, and at arbitration. He has appeared at mediation venues and before the U.S. Department of Justice.

Mr. Mills also engages in economic research and consulting activities outside the context of litigation. He has assessed the anticipated competitive effects of mergers and joint ventures on behalf of government regulatory agencies and merging parties; developed forecasts and strategic recommendations for government agencies and clients involved with real estate development; and assisted clients with the valuation of intangible assets and entire businesses.

FIELDS OF CONCENTRATION

Intellectual Property; Industrial Organization; Economic Valuation and Damages Calculations

EMPLOYMENT

Micronomics, 1998 – present (affiliated with InteCap, Inc., 2000 – 2003)
Los Angeles, California

Hobson Johnson & Associates
Associate, 1996 – 1998
Portland, Oregon

University of California, Santa Barbara
Teaching Assistant, Department of Economics, 1994 – 1995
Santa Barbara, California

SELECTED CONSULTING EXPERIENCE

Economic Damages/Lost Profits

- Calculated lost profits on behalf of plaintiffs and defendants in connection with contract disputes, patent infringement, fraud, interference, antitrust, and other causes of action. Addressed lost sales, incremental cost, market definition, capacity, foreseeability, mitigation, and alter ego issues.
- Assessed feasibility of calculating damages on a class-wide basis in numerous class action matters involving alleged breaches of contract, securities violations, employment disputes, and other causes of action.
- Quantified relevant profits under disgorgement theories of damages.
- Determined magnitude of alleged underpayment of overtime to a class of exempt employees on behalf of a national retail chain.
- Quantified lost earnings and benefits in connection with wrongful termination and personal injury matters.
- Determined damages resulting from cost of insurance rate increases in the life insurance industry.
- Analyzed irreparable harm issues in connection with motions for temporary restraining orders and preliminary injunctions.

Intellectual Property

- Determined reasonable royalties and calculated lost profits in connection with patent infringement matters on behalf of patent owners and alleged infringers. Addressed royalty base, reasonable royalty rates, commercial success, non-infringing substitutes, availability, comparability, capacity constraints, convoyed sales, price erosion damages, and the entire market value rule.
- Calculated damages on behalf of clients involved with theft of trade secrets, trademark infringement, and copyright infringement litigation.
- Reviewed numerous license and cross-license agreements covering technologies related to telecommunications, semiconductors, software, sporting goods, medical devices, security, construction materials, motion control, and consumer products, among other industries.
- Assisted with the negotiation of patent license agreements.

Valuation

- Valued controlling and minority interests in closely held businesses. Addressed issues of liquidity, marketability, comparability, and the cost of capital.
- Valued stock options, earn-outs, and escrowed contingencies in connection with acquisitions and intellectual property transfers.
- Analyzed commercial and industrial real estate appraisals and made strategic recommendations to government agencies contemplating real estate transactions.

Antitrust

- Assessed the anticipated competitive effects of mergers, acquisitions, and joint ventures on behalf of government regulatory agencies as well as merging parties.
- Estimated anticipated post-merger prices using merger simulation techniques on behalf of a manufacturer of branded consumer products. Presented findings to U.S. Department of Justice.
- Conducted studies of market definition, attempted monopolization, below-cost pricing, price discrimination, and economic damages on behalf of plaintiffs and defendants involved with antitrust litigation.
- Evaluated price fixing allegations in the semiconductor industry.
- Analyzed relevant markets and economic damages in connection with a patent misuse claim.
- Conducted econometric analyses of pricing and output in a matter involving price fixing allegations.

Real Estate

- Assisted government agencies with eminent domain compensation issues.
- Prepared feasibility studies and financial projections for income producing properties, including commercial, industrial, residential, and resort projects.
- Prepared forecasts of vacancy, absorption, rental rates, and new construction for financial institutions, government agencies, and real estate developers.
- Conducted study of student housing options on behalf of a university. Recommended adjustments to university housing rental rates and determined target rates for planned development.

- Recommended development strategies to numerous real estate developers. Addressed product size, mix, location, and other qualitative factors.
- Calculated damages caused by interference with development of a master planned community.

Cost-Benefit Analysis

- Estimated the economic, fiscal, and social impact of instituting system development fees for new real estate development.
- Assisted a multi-jurisdiction planning commission in assessing economic, fiscal and social impacts of anticipated demilitarization.
- Advised the developer of a major destination resort of the economic and fiscal impacts of the proposed project.
- Advised client of financial and other costs and benefits of relocating headquarters and manufacturing operations.
- Recommended development strategies to a port authority based on analysis of the costs and benefits of its options.

Econometrics

- Developed econometric models used to assess the competitive impacts of proposed mergers.
- Estimated own- and cross-price elasticity of demand for differentiated products in the baking industry.
- Prepared and evaluated revenue and earnings forecasts on behalf of plaintiffs and defendants involved with commercial litigation.
- Evaluated econometric models provided to a government regulatory agency by parties contemplating a merger.
- Developed econometric models used to measure the effects of economic events on the value of firms.
- Assisted clients with survey design, sampling, and hypothesis testing.

Risk Analysis

- Assisted law firms, corporate legal departments, and mediators with assessments of litigation risk and the expected value of litigation.
- Analyzed risk associated with litigation versus settlement in insurance claim disputes on behalf of insurers and insured parties.

RECENT TESTIMONY

1. *Eland 1 Solar CEI Parent, LLC, et al. v. 8minutenergy US Solar, LLC, et al.*
   JAMS Alternative Dispute Resolution
   JAMS Ref No. 5100000603
   Breach of Contract, Fraud
   Reports, Deposition, Trial

2. *Ericsson Inc., et al. v. Apple Inc.*
   United States District Court, Eastern District of Texas
   Case No. 2:21-cv-376-JRG
   Breach of Contract
   Reports, Deposition, Trial

3. *In the matter of Certain Mobile Telephones, Tablet Computers with Cellular Connectivity, and Smart Watches with Cellular Connectivity, Components Thereof, and Products Containing Same*
   United States International Trade Commission
   Investigation No. 337-TA-1299
   Reports, Deposition

4. *Advance Trust & Life Escrow Services, LTA, et al. v. PHL Variable Insurance Company*
   United States District Court, Southern District of New York
   Case No. 1:18-cv-03444 (PAC)
   Breach of Contract
   Reports, Deposition

5. *TVPX ARS Inc., et al. v. Lincoln National Life Insurance Company*
   United States District Court, Eastern District of Pennsylvania
   Case No. 18-CV-05173 (RBS)
   Breach of Contract
   Reports, Deposition

6. *Aspect Pharmaceuticals, LLC v. Allergan, Inc., et al.*
   JAMS Ref. No. 1220067779
   Breach of Contract
   Report, Trial

7. *LSIMC, LLC v. American General Life Insurance Company*
   United States District Court, Central District of California
   Case No. 20-CV-11518-SVW-PVC
   Breach of Contract
   Declaration, Deposition

8. *HTC Corporation v. Telefonaktiebolaget LM Ericsson*
   International Chamber of Commerce International Court of Arbitration
   ICC Case No. 24176/MK
   Reports, Trial

9. *TRU Creditor Litigation Trust v. David A. Brandon, et al.*
   United States District Court, Eastern District of Virginia
   Case No. 17-34665 (KLP)
   Breach of Duty, Fraud
   Reports, Deposition

10. *In Re: Lincoln National 2017 COI Litigation*
    United States District Court, Eastern District of Pennsylvania
    Case No. 17-CV-04150-GJP
    Breach of Contract
    Declaration, Deposition

11. *In Re: Lincoln National COI Litigation*
    United States District Court, Eastern District of Pennsylvania
    Case No. 16-CV-06605-GJP
    Breach of Contract
    Declaration, Deposition

12. *Rebotix Repair LLC v. Intuitive Surgical, Inc.*
    United States District Court, Middle District of Florida
    Case No. 20-CV-02274-VMC-TGW
    Antitrust
    Reports, Deposition

13. *Brighton Trustees, LLC v. Genworth Life and Annuity Insurance Company*
    United States District Court, Eastern District of Virginia
    Case No. 3:20-CV-240-DJN
    Breach of Contract
    Report, Deposition

14. *Fractus, S.A. v. TCL Corp., et al.*
    United States District Court, Eastern District of Texas
    Case No. 2:20-CV-00097-JRG
    Patent Infringement
    Report, Deposition

15. *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*
United States District Court, Southern District of New York
Case No. 1:19-cv-06004-ALC-DCF
Breach of Contract
Reports, Deposition

16. *Advance Trust & Life Escrow Services, LTA v. North American Company for Life and Health Insurance*
United States District Court, Southern District of Iowa
Case No. 4:18-cv-00368-SMR-HCA
Breach of Contract
Declaration, Reports, Depositions

17. *Damonie Earl, et al. v. The Boeing Company, et al.*
United States District Court, Eastern District of Texas
Case No. 4:19-cv-00507
Fraud
Report, Deposition

18. *Ancora Technologies, Inc. v. Samsung Electronics Co., Ltd., et al.*
United States District Court, Western District of Texas
Case No. 6:19-cv-384
Patent Infringement
Report, Deposition

19. *Soundgarden, et al. v. UMG Recordings, Inc.*
United States District Court, Central District of California
Case No. 2:19-cv-05449-JAK-MRW
Breach of Contract
Deposition

20. *Lois Friedman, et al. v. John Murphy, et al.*
Superior Court of the State of California, County of Los Angeles
Case No. SC 121128
Shareholder Dispute and Professional Negligence
Deposition

21. *Brach Family Foundation, Inc., et al. v. AXA Equitable Life Insurance Co.*
United States District Court, Southern District of New York
Case No. 16-cv-740
Breach of Contract and Statutory Claims
Reports, Deposition

22. *Fractus, S.A. v. AT&T Mobility LLC, et al.*
United States District Court, Eastern District of Texas
Case No. 2:18-cv-00135-JRG
Patent Infringement
Reports, Depositions, Trial

23. *Fractus, S.A. v. ZTE Corporation, et al.*
United States District Court, Northern District of Texas
Case No. 3:18-cv-2838-K
Patent Infringement
Reports, Deposition

24. *HTC Corporation, et al. v. Telefonaktiebolaget LM Ericsson, et al.*
United States District Court, Eastern District of Texas
Case No. 6:18-cv-00243-JRG
Breach of Contract
Report, Deposition, Trial

25. *Denis Marc Audet, et al. v. Stuart A. Fraser, et al.*
United States District Court, District of Connecticut
Case No. 3:16-cv-00940
Fraud
Reports, Depositions

26. *Helen Hanks v. The Lincoln Life & Annuity Company of New York, et al.*
United States District Court, Southern District of New York
Case No. 16-CV-6399
Breach of Contract and Unjust Enrichment
Reports, Deposition

27. *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)*
United States District Court, Southern District of New York
Case No. 1:15-CV-9924
Breach of Contract
Report, Deposition

28. *Network-1 Technologies, Inc. v. Alcatel-Lucent USA Inc., et al.*
United States District Court, Eastern District of Texas
Case No. 6:11-cv-00492-RWS-KNM
Patent Infringement
Reports, Depositions, Trial

29. *Isaac Jakobovits v. Allianz Life Insurance Company of North America*
United States District Court, Southern District of New York
Case No. 1:15-CV-9977
Breach of Contract
Report, Deposition

EDUCATION

M.A., Economics, University of California, Santa Barbara, 1995
M.S., Applied Economics, Portland State University, 1994
B.S., Economics and History, Portland State University, 1992

PAPERS/SPEECHES/PRESENTATIONS

- "Practical Elements of Finance," Practising Law Institute, New York, New York, June 13-14, 2011.
- "Regression Analysis Applications in Litigation," (with Dubravka Tosic), chapter in *Pocket MBA: Finance for Lawyers*, Practising Law Institute, March 2011.
- "Industry Norms and Reasonable Royalty Rate Determination," (with Roy Weinstein and Michelle Porter), *les Nouvelles*, March 2008.
- "Market Concentration and Unilateral Effects," UCLA First Annual Institute on US and EU Antitrust Aspects of Mergers and Acquisitions, Ritz-Carlton Hotel, Marina Del Ray, California, February 28, 2004.
- "Hot Topics in Intellectual Property Valuation," California Mandatory Continuing Legal Education Program, Los Angeles, November 2000.
- "Valuing Intellectual Property," California Mandatory Continuing Legal Education Program, Los Angeles, July 2000.
- "Unilateral Effects in Merger Analysis: The Simulation Approach," for the Los Angeles County Bar Association, February 1999.

AFFILIATIONS

American Economic Association
Licensing Executives Society