

1 Steven G. Sklaver (237612)  
ssklaver@susmangodfrey.com  
2 SUSMAN GODFREY L.L.P.  
1900 Avenue of the Stars, 14th Floor  
3 Los Angeles, California 90067  
Telephone: (310) 789-3100  
4 Facsimile: (310) 789-3150

5 Seth Ard (*pro hac vice*)  
sard@susmangodfrey.com  
6 Ryan Kirkpatrick (243824)  
rkirkpatrick@susmangodfrey.com  
7 SUSMAN GODFREY L.L.P.  
1301 Avenue of the Americas, 32nd Floor  
8 New York, New York 10019  
Telephone: (212) 336-8330  
9 Facsimile: (212) 336-8340

10 Kevin Downs (331993)  
kdowns@susmangodfrey.com  
11 SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
12 Houston, Texas 77002  
Telephone: (713) 651-9366  
13 Facsimile: (713) 654-6666

14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

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

21 Plaintiff,

22 v.

23 AMERICAN NATIONAL INSURANCE  
COMPANY,

24 Defendant.

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

**DECLARATION OF ROBERT MILLS**

1 I, Robert Mills, hereby declare as follows:

2 **I. INTRODUCTION**

3 1. I am an economist and Director at Micronomics, Inc., an economic research and  
4 consulting firm located in Los Angeles County, California. I have more than 25 years of economic  
5 research and consulting experience in areas including the valuation of intellectual property and  
6 other assets, industrial organization, and the calculation of economic damages. Over the course of  
7 my career I have worked on numerous projects involving the life insurance industry, including  
8 matters in which I have been asked to compute damages caused by cost of insurance overcharges.  
9 In that context, I have analyzed and estimated cost of insurance charges for over 650,000 life  
10 insurance policies during my career. I also have analyzed, calculated, and reconciled numerous  
11 other variables pertaining to life insurance, including premium payments, administrative expenses,  
12 sales loads, rider charges, interest credits, account values, surrender values, corridor values, net  
13 amounts at risk, grace notice values, and death benefits, among other variables, and I have provided  
14 expert testimony concerning these analyses and calculations. I have qualified as an expert on  
15 damages issues and have provided expert testimony before United States District Courts, state  
16 courts, and at arbitration. A biographical summary is attached as **Exhibit 1**.

17 2. Micronomics, Inc. is being compensated for my work on this matter at a rate of \$550  
18 per hour.

19 3. I have been asked by counsel for Joe S. Yearby (“Plaintiff”) to calculate breach of  
20 contract damages caused by impermissible cost of insurance (“COI”) charges imposed by American  
21 National Insurance Company (“ANICO”). In that context, as is customary in matters such as this,  
22 I have been asked to assume for purposes of my analysis that ANICO is liable for breach of contract,  
23 the cause of action alleged in the operative complaint.<sup>1</sup> I understand that ANICO disputes this  
24 contention.<sup>2</sup>

25  
26 <sup>1</sup> Second Amended Class Action Complaint for Breach of Contract, *Joe S. Yearby v.*  
27 *American National Life Insurance Company*, Case No. 3:20-cv-09222-EMC, September 29, 2021.

28 <sup>2</sup> 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.

1           4.       In conducting my analysis, I have reviewed and considered the complaint and other  
2 pleadings, a policy insuring the life of Joe S. Yearby (“Yearby policy”), policy forms on which  
3 policies were issued to others, historical policy data, cost of insurance rate scales, mortality rate  
4 data, and other documents and data produced by Plaintiff and ANICO.

5       **II.    POLICIES AT ISSUE**

6           5.       Plaintiff seeks to certify a settlement class of ANICO policyholders who have been  
7 forced since January 1, 2010 to pay unlawful and excessive COI charges that are not, as the policies  
8 require, determined from time to time by ANICO based on its expectations as to future mortality  
9 experience. The “Settlement Class” Plaintiff seeks to certify consists of:

10                   All owners of universal life (including variable universal life)  
11 insurance policies issued in California by American National  
12 Insurance Company, or its predecessors in interest, that provide that  
13 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.

14           6.       I have reviewed and analyzed policy data provided by ANICO and determined that  
15 3,090 policies are owned by members of the Settlement Class (the “Settlement Class policies”).

16       **III.   DAMAGES FOR BREACH OF CONTRACT**

17           7.       The Yearby policy contemplates monthly deductions from the cash value for COI  
18 charges and other expenses:

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

- 21                   a) is the Cost of Insurance;  
22                   b) is the cost of additional benefits provided by rider; and  
23                   c) is the Monthly Expense Charge shown on the Policy Data Page.<sup>3</sup>

24           8.       The COI charge is calculated each month by ANICO using a formula set forth in the  
25 Yearby Policy:

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

28       <sup>3</sup> Yearby Policy, p. 11.

- 1
- 2 a) is the Cost of Insurance rate as described in the Cost of Insurance Rates section;
- 3 b) is the Insured's Proceeds at Death at the beginning of the policy month divided by 1.0032737; and
- 4 c) is the Cash Value at the beginning of the policy month.<sup>4</sup>

5 The result of (b) minus (c) in the COI formula is commonly referred to as the "net amount  
6 at risk." Accordingly, COI charges for the Yearby Policy are calculated each month as the COI rate  
7 multiplied by the net amount at risk. COI charges are similarly calculated for other Settlement Class  
8 policies.

9 9. Breach of contract damages can be calculated as the COI overcharges imposed by  
10 ANICO due to its failure to downwardly adjust COI rate scales, which Plaintiff contends is required  
11 under the Settlement Class policies. The overcharge for a particular policy on monthly deduction  
12 date,  $m$ , is equal to the actual COI charge deducted on that date less the COI charge that would have  
13 been imposed on that date but for the breach of contract ("but-for COI charge"):

14

$$15 \text{Overcharge}_m = \text{Actual COI Charge}_m - \text{But-For COI Charge}_m.$$

16

17 The but-for COI charge is determined by applying the COI rate that would have been in effect for  
18 the policy on date  $m$  but for the breach of contract to the net amount at risk ("NAAR") for the policy  
19 on date  $m$ .

20

$$21 \text{Overcharge}_m = \text{Actual COI Charge}_m - (\text{NAAR}_m \times \text{But-For COI Rate}_m).$$

22

23 10. I have been asked to assume for purposes of my analysis that ANICO should have  
24 reduced its COI rates to the current monthly mortality rate for months in which the current monthly  
25 mortality rate is lower than the actual COI rate used by ANICO to calculate COI charges. Given  
26 this assumption, COI overcharges can be calculated for each of the Settlement Class policies using  
27

28 <sup>4</sup> Yearby Policy, pp. 11-12.

1 four steps. The first step in the analysis is to identify the applicable mortality rate for each policy  
 2 year in the damages period for the policy from ANICO's mortality tables and scalars. The second  
 3 step in the analysis is to determine but-for COI rates by converting the annual mortality rates from  
 4 step one to monthly mortality rates. The third step in the analysis involves calculating but-for COI  
 5 charges for each month in the damages period by applying the but-for COI rates from step two to  
 6 actual NAAR as of each month in the damages period for the policy. The fourth and final step in  
 7 the analysis is to calculate the overcharge by deducting the but-for COI charges from step three  
 8 from the actual COI charges imposed by ANICO for each month in the damages period. Total  
 9 overcharges for a policy are calculated by summing the monthly overcharges for the policy during  
 10 the damages period.

11 11. ANICO has produced historical data showing the NAAR and actual COI charge for  
 12 the Settlement Class policies on each monthly deduction day from January 1, 2010 through  
 13 February 28, 2023.<sup>5</sup> ANICO also provided base mortality rate tables and applicable scalars for the  
 14 relevant period, which can be used to derive current mortality rates for the Settlement Class  
 15 policies.<sup>6</sup> I have used this information and the overcharge formula provided above to calculate COI  
 16 overcharges for each of the Settlement Class policies.

17 12. Total COI overcharges for the 3,090 Settlement Class policies are \$5,704,128  
 18 through February 28, 2023. COI overcharges for the Settlement Class policies are summarized by  
 19 year in the table below.

24 <sup>5</sup> Historical policy data ("YEARBY\_001280\_CONFIDENTIAL.xlsx";  
 25 "CONFIDENTIAL\_YEARBY\_1280 (Policy Coverages)\_Mar 1 2023.xlsx";  
 26 "CONFIDENTIAL\_YEARBY\_6607 (Policy Coverage Charges)\_Mar 1 2023.xlsx";  
 "CONFIDENTIAL\_YEARBY\_1278 (Monthly Values - UIMV)\_Feb 28 2023.xlsx"; "YEARBY\_006607\_CONFIDENTIAL.xlsx"; and "YEARBY\_001278\_CONFIDENTIAL.xlsx").

27 <sup>6</sup> I have relied upon ANICO mortality rate data compiled by James Rouse, an expert retained  
 28 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. 510000603  
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. *TVPXARS 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 Tomic), 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