UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

After nearly five years of hard-fought litigation, Plaintiff obtained an outstanding settlement for the Class weeks after defeating summary judgment and less than 72 hours before trial. The Settlement provides the following benefits to the Class:[1]

- **CASH PAYMENTS**: A $59 million settlement fund that benefits all Class Members. This is not a claims-made settlement: checks will be mailed directly to owners of terminated policies and money will be deposited directly into the policy accounts of owners of in-force policies. No settlement funds revert to North American to keep for itself.
- **VALIDITY STIPULATION AND STOLI WAIVER**: An agreement by North American not to challenge the validity and enforceability of policies on the grounds of lack of an insurable interest or as stranger originated life insurance ("STOLI").

The cash payments alone are exceptional: they represent **36.2%** of the alleged COI overcharges collected by North American Company for Life and Health Insurance ("North American") from the Class Policies through March 31, 2023 under Plaintiff's maximum damage model. And they represent **over 107%** of alleged damages under the "multiplicative" approach proposed by North American's experts, under which COI rates are reduced by the same percentage that North American's mortality expectations have improved. In other words, the Class is receiving more than it would have received even assuming the jury had found in favor of Plaintiff on every disputed question of fact, but decided that the COI redetermination methodology proposed by North American's expert was more reasonable.

Plaintiff was able to obtain this exceptional result by taking this case to the brink of trial, settling only after obtaining key pretrial victories that greatly enhanced the value of the case. Plaintiff won a hotly contested motion to certify the Class after this Court had denied class certification in a similar COI case brought against North American's sister company Midland.[2] In

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

[2] *See Taylor v. Midland Nat'l Life Ins. Co.*, 2019 WL 7500238, at *2 n.4 (S.D. Iowa May 3, 2019).

other key victories, Plaintiff excluded many defense fact witnesses as untimely disclosed under Rule 26 and defeated Defendant's Rule 706 motion for court appointment of a neutral expert. The settlement was reached weeks after a series of favorable rulings in which Plaintiff (i) defeated Defendant's summary judgment motion, (ii) defeated Defendant's *Daubert* motions and Plaintiff successfully excluded key defense expert opinions; and (iii) won exclusion of Defendant's untimely disclosed witnesses and declarations. *See* Dkts. 148, 221, 294, 296. Quite simply, the Class never could have obtained this superb recovery without those key successes, achieved up through the eve of trial.

The Settlement is outstanding when compared to the risks the Class faced. North American contested virtually every aspect of Plaintiff's claim—from what "based on [EFME]" means, to whether North American has any duty to update COI rates, to the proper redetermination methodology and whether the Class actually suffered any monetary damages at all. *See* Dkt. 294 at 12, 21; Dkt. 297-1 at 18. *See* Dkt. 294 at 12, 21; Dkt. 297-1 at 18. One particularly hotly-disputed factual question was what North American's mortality expectations actually were at pricing: those reflected in a New Jersey regulatory submission, which did not include a future mortality improvement ("FMI") assumption, or those reflected in a binder and on floppy disks that North American located during discovery, which North American contends do include an FMI assumption. *See, e.g.*, Dkt. 299 at 7–8, 13; Dkt. 294 at 51. If North American had prevailed on ***just that one argument***, and lost on every single other one, damages would have been reduced to $367,688—a tiny fraction of what the Class is guaranteed to receive in the Settlement.

This Court is well-aware of the risks posed by the North American's arguments. And that risk was real; in another COI case tried to a jury in the Eight Circuit less than two months ago, the

class prevailed on liability but recovered less than $1 million of the $18 million sought (*i.e.*, less than 6% of damages requested). *See, e.g.*, Sklaver Decl. ¶¶ 9-10 & Exs. 3-5.

In the face of these risks, the Settlement guarantees $59 million to the Class, likely by the end of the year, and other significant non-monetary relief. The cash payments will be made directly by check to terminated policies, using the addresses in North American's files, and will be put directly into the policy accounts of active policies. There are no claim forms, and no possibility of reversion to North American to keep any funds for itself. *Id.* ¶ 32.

On preliminary approval, the question is whether the Court "will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). The Settlement easily surpasses that bar.

II. BACKGROUND

A. Plaintiff Challenges COI Overcharges

Plaintiff's predecessor-in-interest, Advance Trust & Life Escrow Services, LTA ("ATLES"), filed this lawsuit almost five years ago, on October 30, 2018. The complaint alleged that North American was breaching the terms of its policy, and all Class policies, by failing to lower COI rates to reflect decades of mortality improvement, and that North American was overcharging policyholders as a result. Dkt. 1; *see* Dkt. 29 (amended complaint).

On March 22, 2022, the Court certified the Class, appointed ATLES as class representative, and appointed Susman Godfrey as class counsel. Dkt. 148. Susman Godfrey is highly experienced in representing classes of policyowners seeking recovery of COI overcharges against insurers. Sklaver Decl. ¶ 3–4 & Ex. 1. By stipulation of the parties and so-ordered by the Court, ATLES' successor-in-interest PHT Holding II LLC ("PHT") was substituted in as plaintiff and class representative on March 3, 2023, Dkts. 246–47, and deposed on April 27, 2023, *see* Dkt. 286 at 2.

B. Plaintiff Engages in Nearly Five Years of Litigation

Plaintiff has vigorously prosecuted this case for nearly five years, to the eve of trial, through fact and expert discovery, class certification, a motion for a court-appointed expert under Federal Rule of Evidence 706, summary judgment, *Daubert* motions, and motions *in limine*.

Fact discovery lasted until March 4, 2021. *See* Dkts. 74, 96. Plaintiff and its experts analyzed over 17,600 documents produced by North American spanning more than 115,000 pages, which included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies, and thousands of complex spreadsheets. And Plaintiff took and defended five fact and 30(b)(6) depositions and four expert depositions, through which Plaintiff obtained key admissions that it deployed to overcome summary judgment and win a *Daubert* motion excluding a substantial portion of defense expert Craig Merrill's opinions. Sklaver Decl. ¶¶ 11-13, 19, 21.

Through extensive discovery efforts, Plaintiff uncovered documents key to driving this case to this successful Settlement. These key discoveries included: (1) an internal email from 2004 that Plaintiff said contradicted North American's reading of the disputed policy language, *see* Dkt. 231 at 15 (MSJ Res.); (2) a memorandum North American submitted to the New Jersey insurance regulator documenting what Plaintiff said were North American's pricing assumptions for the Classic Term UL products without any FMI, *id.* at 30; and (3) a communication with the New Jersey regulator in which North American said that it could only adjust COI rates based on EFME, and not on future expectations as to investment earnings, persistency and expenses, because that conflicted with the policy language, *id.* at 15–16.

Expert discovery in this highly technical case was also a herculean task. Class Counsel and their experts had to sift through and analyze hundreds of decades-old mortality tables, pricing models, and actuarial memoranda to determine the mortality expectations that North American

actually used to price these policies. Sklaver Decl. ¶ 11. Plaintiff ultimately disclosed two testifying experts: actuarial expert Howard Zail and damages expert Robert Mills. Between class certification, merits reports (opening and rebuttal), and supplemental pretrial reports, the parties produced 18 expert reports that totaled more than 583 pages, not including voluminous tables and appendices totaling thousands of additional pages. *Id.* ¶ 13. All four experts were deposed (with North American deposing Plaintiff's experts twice). *Id.* And all four experts were the subject of extensive *Daubert* motion practice. *Id.* ¶ 21.

Throughout the long life of this case, Plaintiff has prevailed in litigating critical motions. In March 2022, after receiving nearly 75 pages of briefing, the Court granted Plaintiff's motion for class certification. Dkt. 148. In May 2023, after receiving nearly 350 pages of briefing, the Court denied North American's motion for summary judgment, granted in part Plaintiff's *Daubert* motions and denied North American's *Daubert* motion, and granted Plaintiff's motion to exclude untimely disclosed witnesses in a 63-page order. Dkt. 294.

C. The Class and Notice and Opt-Out Period

In its March 22, 2022 order, Dkt. 148, the Court certified the following Class:

> All current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period.

After certifying the Class, the Court appointed JND as notice administrator and approved the form and manner of notice consisting of direct mail to all members of the Class, using the contact information for registered owners in North American's records. *See* Dkt. 188 at 2–3. The Court gave members of the Class forty-five days after the notice date to submit opt-out requests. *Id.* at 3. Pursuant to the Court's order, JND mailed the approved short-form notice to members of the Class and established the notice website on November 18, 2022. Dkt. 220 at 1. The short- and long-form notices explained the procedure for opting out of the Class. The deadline to opt out was

January 3, 2023. Intrepido-Bowden Decl. ¶ 13. Of the 18,592 policies in the Class, JND received only seven opt-out requests. *Id.* ¶ 14.

D. Trial Preparations

The Court set the trial for June 20, 2023. After the Court denied North American's late-breaking requests for a continuance and to extend the discovery period, Dkts. 260 & 286, the parties prepared intensely for trial, including readying trial examinations, deposition designations, exhibit lists, witness lists, stipulations, jury instructions, verdict forms, and the proposed joint pretrial order (which the parties revised substantially following the Court's ruling on summary judgment and *Daubert* motions). Dkts. 276, 278, 279, 280, 281, 282, 297, 298, 299, 303; Sklaver Decl. ¶¶ 8, 22. The parties briefed a total of 15 motions *in limine* and filed more than 30 pages of single-spaced briefing on hotly contested jury instructions relating to *contra proferentem*, statutes of limitations, laches, and damages. Dkts. 252, 253, 263, 266, 281-2, 292, 293, 297-2; Sklaver Decl. ¶ 23. Before this, on April 13, 2023, Plaintiff conducted a mock trial in Des Moines, involving dozens of local residents acting as jurors. Sklaver Decl. ¶ 8. On June 12, 2023, the Court granted in part and denied in part each party's motions *in limine*, Dkt. 296. The Court held a final pretrial conference on June 16, 2023, during which the Court granted Plaintiff's request for certain preliminary jury instructions and stated the Court would adopt Plaintiff's proposed final jury instructions on *contra proferentem* and laches. Dkts. 306, 308 at 12:12–13, 31:14–21.

E. Settlement Negotiations

The parties held an in-person mediation session, which was followed by six months of extensive mediator-facilitated settlement negotiations leading up to the trial. The parties' in-person mediation took place on December 9, 2022 in Corona Del Mar, California, with mediators Hon. Layn R. Phillips, Jeffrey Mishkin, and Clay Cogman of Phillips ADR. Before the mediation, the parties submitted lengthy mediation statements, draft term sheets, and the summary judgment and

Daubert briefs that had already been filed, and Plaintiff also provided an updated damages estimate. Sklaver Decl. ¶¶ 6–7.

The parties were unable to reach an agreement at that mediation but continued to work through the mediators as trial approached. The parties ultimately executed a term sheet with trial less than 72 hours away, under the guidance and with the assistance of Mr. Cogman. The negotiations that led to the settlement were hard-fought and conducted at arm's length by highly qualified and experienced counsel. *Id.* ¶¶ 3-4, 9; Cogman Decl. ¶¶ 9–10. Those negotiations were fruitful only after the parties had extensively litigated key issues in the case and were preparing for trial. A long-form settlement agreement was negotiated and agreed to thereafter. Sklaver Decl., Ex. 2 ("Settlement Agreement"). These efforts culminated in the proposed Settlement, which Mr. Cogman believes is a "fair and reasonable result." *See* Cogman Decl. ¶ 11.

F. The Settlement Agreement

1. Consideration and Class

The Settlement has two main components:

1. **CASH:** A Settlement Amount of **$59,000,000.00**, which is equal to approximately **36.2%** of all overcharges collected by North American from the Class Policies through March 31, 2023.

2. **VALIDITY STIPULATION AND STOLI WAIVER:** An agreement that North American will not challenge the validity and enforceability of any eligible policies owned by participating members of the Class on the grounds of lack of an insurable interest or as being STOLI.

The Class is the class the Court already certified. Sklaver Decl. Ex. 2, Settlement Agreement § 1.7.

2. Payments and Release

Upon final approval, the Settlement Administrator will distribute to Final Class Members their *pro rata* share of the Final Class Member Settlement Benefits, according to the plan of allocation discussed below. Checks will be mailed directly to Final Class Members whose policies have terminated, using the addresses in North American's files, while Final Class Members with

in-force policies will receive payments directly in the accumulation values of their policy accounts, all without requiring any Final Class Member to submit claim forms. Sklaver Decl. ¶ 32; Settlement Agreement § 2.2(c).[3] This is not a claims-made settlement; none of the settlement funds will revert to North American to keep for itself. *Id*. § 2.1(g).

Plaintiff and Final Class Members will release any and all claims that were or could have been asserted in this Action concerning the Policies through the Final Approval Date, but have expressly excluded "Claims arising out of COI deductions made after the Final Approval Date, any Claims that relate to any policies other than Class Policies owned by Class Members, any claims to complete or enforce the Settlement, and any Claims to enforce a death benefit." *Id.* § 1.22. The release is a historical release only and does not release any Claims arising out of COI deductions made after the Final Approval Date. *Id.* § 1.48.

3. Fees, Costs, and Awards

The Settlement Agreement provides that, subject to Court approval, a portion of the Settlement Escrow Account may be used for fees incurred in administering the Settlement, as well as attorneys' fees and the reimbursement of all expenses incurred or to be incurred. *Id*. § 6.1. Plaintiff will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and All Settlement Administration Expenses, combined, will not exceed $21,366,666.67. Sklaver Decl. ¶ 30. The Settlement also provides that Plaintiff may request a Service Award for up to $25,000, to be paid from the Settlement Escrow Account, for its services on behalf of the Class. Settlement Agreement § 6.4. Members of the Class will be given an opportunity to object to these applications, which will be filed prior to the objection deadline.

[3] The parties have disputed the characterization of accumulation value credits throughout this litigation and this memorandum of law reflects Plaintiff's characterization.

4. Notice and Plan of Allocation

Under the proposed notice plan, as it did previously, the Court would appoint JND as administrator. Dkt. 188 at 3. Within 21 days of preliminary approval, JND will mail a short-form notice to the Class Members' addresses in North American's files. Intrepido-Bowden Decl. ¶ 31; *id.*, Ex. B. JND will also post a copy of a long-form notice to the website it established following class certification and will maintain a toll-free number for Class Members to obtain information. *Id.* ¶ 34; *id.*, Ex. C. Class Members will be notified of the settlement as well as their right to object or opt-out and the timeline and manner to do so. *Id.*, Exs. B, C; Settlement Agreement §§ 5.1, 5.7. Although Class Members were previously given the opportunity to opt out and only seven (out of nearly 19,000) did, the parties agreed to propose a second 45-day opt-out period.

The proposed plan of allocation distributes settlement proceeds equitably and directly to class members on a *pro rata* basis using each Final Class Member's share of COI overcharges. Sklaver Decl., Ex. 7. The COI overcharges represent the difference between the COI charges North American actually assessed on the policy and the amount it would have assessed under the "but-for" COI rates calculated by Plaintiff's experts. All members of the Class who are current owners or owners of matured policies will also benefit from the guarantee of policy validity.

Members of the Class will not need to fill out claim forms. As stated above, money will be sent automatically in the mail, using the addresses that North American maintains on file, or distributed directly to in-force policyholders' account accumulation values. Sklaver Decl. ¶ 32; Intrepido-Bowden Decl. ¶ 31. The proposed notice and distribution plan also accounts for *pro rata* redistribution of any unclaimed amounts among in-force and terminated policies, subject to the economic and administrative feasibility of making such redistribution. Sklaver Decl., Ex. 7 ¶ 5.

III. ARGUMENT

A class action settlement is subject to approval under Rule 23(e). Approval of a class action settlement "is entrusted 'to the sound discretion' of the district court." *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975)). Although the court must consider the terms of a class action settlement, it "should not substitute [its] own judgment as to optimal settlement terms for the judgment of the litigants and their counsel." *Id.* at 570 (internal quotation marks omitted). "The policy in federal court of favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context." *Beaver Cnty. Employees' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2574005, at *2 (D. Minn. June 14, 2017) (same).

Preliminary approval is a provisional step and requires a consideration of whether "following notice to the class and a final fairness hearing, the [c]ourt will likely be able to" grant final approval of the settlement and certify the proposed class. *Swinton v. SquareTrade, Inc.*, 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019). At this stage, the Court must direct notice of the settlement "if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B).

Rule 23(e)(2), in turn, provides that a court may approve a proposed class settlement "only on finding that it is fair, reasonable, and adequate after considering whether" four factors are satisfied. These factors, discussed in detail below, are "not intended to displace the various factors that courts have developed in assessing the fairness of a settlement." *Swinton*, 2019 WL 617791, at *5. Instead, they "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.* (quoting Rule 23, 2018 Advisory Note, Subdivision (e)(2)). A proposed class action settlement should therefore be

preliminarily approved where it "[has] no obvious defects and was within the range of possible settlement approval." *Meller v. Bank of the W.*, 2018 WL 5305562, at *3 (S.D. Iowa Sept. 10, 2018), *report and recommendation adopted*, 2018 WL 5305556 (S.D. Iowa Oct. 1, 2018).

A. The Proposed Settlement Satisfies Rule 23(e)(2).

1. The Settlement is Procedurally Fair

The Court must first consider whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A)–(B). Adequacy involves two questions: "(1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Kelly*, 277 F.R.D. at 569. Where, as here, a settlement is "obtained through arm's-length negotiations," there is "[an] assumption of fairness and reasonableness." *Id.* at 570 (internal quotation marks omitted).

The Court already held that the class representative and Class Counsel adequately represent the Class. Dkt. 148 at 20–23, 28–29. Plaintiff's interests are aligned with the Class: each suffered the same injury (improper COI overcharges) and have the same interest in maximizing recovery from North American. *See Grove v. Principal Mutual Life Ins. Co.*, 200 F.R.D. 434, 440 (S.D. Iowa 2001) (finding that plaintiffs' interests aligned with the class when the plaintiffs were class members, suffered the same injury, and did not have interests antagonistic to the class).

Class Counsel is highly qualified. They have represented classes in numerous other COI cases, including cases against Phoenix, John Hancock, Voya, Security Life of Denver, AXA, Genworth, and ReliaStar; are highly experienced in the prosecution of contract and insurance litigation; and are also of the view that the Settlement is an excellent result. Sklaver Decl. ¶ 3–4, 9 & Ex. 1. Class Counsel's view as to the fairness of the Settlement is well informed: this case has been pending for nearly five years, fact and expert discovery is closed, the parties have produced

nearly 20,000 documents, and Plaintiff defeated North American's motion for summary judgment and *Daubert* motions. *Id*. ¶¶ 11, 19, 21. All that is left was trial and, after that, appeal. Further, as discussed below, the result here—measured by percent of damages recovered via settlement—is comparable to the results obtained in a similar COI decrease case, far exceeds the typical settlement in other types of class actions, and is particularly exceptional given the unique factual disputes at issue in this case (*e.g.*, what were North American's actual mortality expectations at pricing).

The agreement was also reached at arm's length. The Settlement is the culmination of negotiation and mediation efforts that spanned six months, including an in-person mediation session under the supervision of highly experienced, respected, and neutral mediators, one of whom, Hon. Layn R. Phillips, used to be a U.S. federal judge. *See* Sklaver Decl. ¶¶ 6–7; Cogman Decl. ¶¶ 2–3. The mediator agrees that the parties achieved a settlement "at arm's length, carefully, deliberately and in good faith to advance the best interests of their clients." Cogman Decl. ¶ 10.

2. The Relief Provided to the Class Is More than Adequate.

Next, the Court must assess substantive fairness. Rule 23(e)(2)(C) enumerates four factors to be considered: (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)." To assess the adequacy of relief 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." Rule 23, 2018 Advisory Note, ¶¶ (C) & (D).

Courts in this Circuit consider these factors "along with" those commonly known as the "*Van Horn* factors" from the Eighth Circuit opinion, *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 861 (S.D. Iowa 2020); *see* Fed. R.

Civ. P. 23(e)(2) Comm. Notes to 2018 amendments (Rule 23(e)(2) factors do not "displace" circuit case-law factors but rather "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

The four *Van Horn* factors are: (1) the merits of the plaintiff's case weighed against the terms of the settlement; (2) the defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. 840 F.2d at 607. No one factor is determinative, but "[t]he single most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement." *Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015)) (quoting *Van Horn*, 840 F.2d at 607).

a. Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i) requires courts to consider "the costs, risks, and delay of trial and appeal." This inquiry overlaps with *Van Horn* factors one ("the merits of the plaintiffs' case weighed against the terms of the settlement") and three ("the complexity and expense of further litigation."). 840 F.2d at 607.

In general, class actions "place an enormous burden of costs and expense upon [] parties." *Marshall*, 787 F.3d at 512. And, as this Court is aware, this case is more complex than most. Plaintiff alleged breaches of insurance contracts, and establishing those breaches required interpreting technical terms and concepts from the Actuarial Standards of Practice. Resolving those claims would require the jury to weigh, among other things, conflicting testimony by experts as to actuarial standards and practices, the proper pricing assumptions, the proper EFME to use, and the proper methodology for determining COI rates—essentially reducing the case to a highly uncertain "battle of experts." *See* Dkt. 294 at 24 ("disagreement between experts is a paradigmatic factual dispute"); *Fleischer v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *9 (S.D.N.Y. Sept. 9, 2015)

("*Phoenix COI*") (noting, in light of competing expert opinions concerning actuarial concepts in COI case, it was "unclear how a jury would decide these disputed issues at trial").

Substantial risks existed as to both liability and damages. North American, represented by experienced and reputable counsel, challenged virtually every aspect of Plaintiff's claim. *See, e.g., Kelly*, 277 F.R.D. at 570 (considering that the defendant had "capable counsel at its disposal" who "intended to challenge nearly every aspect of Settlement Class Members' case" as a factor that supported approving the settlement). The Court left numerous questions critical to proving breach for the jury, including which factors North American could consider in setting COI rates, what were North American's pricing assumptions, and whether and when North American had a duty to update COI rates at all. Dkt. 294 at 10, 19–23.

Even if Plaintiff prevailed on all contractual interpretation issues, there would have been no guarantee of any meaningful recovery at trial, let alone a recovery of $59 million. For example, if North American prevailed on its argument that it already expected FMI at original pricing, damages would have been reduced to $367,668, even if Plaintiff prevailed on every single other issue. *See* Gibson Suppl. Rpt. at 121, *id.* at 76 ¶ 134 (May 31, 2023).; *see also* Dkt. 235-1 at 8–9 (Defendant arguing that correcting for a purported error in Plaintiff's model would reduce damages by 98.5%). And even if the jury agreed with Plaintiff that FMI was not assumed at pricing, and also fully agreed with Plaintiff's interpretation of the policy language, it could have nonetheless concluded that Plaintiff's proposed redetermination methodology was too complicated and endorsed Mr. Gibson's "multiplicative approach," under which damages would total only $54,888,640.[4] *See* Gibson Suppl. Rpt. at 121.

[4] This risk of a lower-than-expected recovery is real. In a recent COI class trial in *Meek v. Kansas City Life Insurance Co.*, No. 19-CV-472 (W.D. Mo.), the class sought $18 million in damages but recovered less than $1 million. *See* Sklaver Decl., Ex. 3 ((*Meek* Tr.) at 69:9-16); *id.* Ex. 4 (*Meek* verdict form); *id*. Ex. 5 (*Meek* Decertification Order).

In addition, North American's affirmative defenses remained, which, if successful, would have substantially reduced any recoverable damages. *See* Dkt. 308, 6/16 Tr. at 30:24–31:21; Dkt. 297-1 at 29–31; Dkt. 298-1 at 2–3. Although the Court denied North American's affirmative motion for summary judgment on these defenses, it did so only because of disputed fact issues, concluding that "[w]hether PHT and its predecessors were unreasonable in failing to bring its claim sooner is a disputed fact. The same goes for whether they had knowledge or notice of the insurer's failure to adjust the COI rates." Dkt. 294 at 29.

Lastly, even if Plaintiff fully prevailed on both liability and damages at trial, North American would inevitably appeal the class certification order, the summary judgment order, and the jury's verdict, which, even if unsuccessful, would likely delay any distributions to Class Members for several years. *See Phoenix COI*, 2015 WL 10847814, at *6 ("Even if the Class could recover a judgment at trial and survive any decertification challenges, post-verdict and appellate litigation would likely have lasted for years.").

Given these risks, the recovery here is an exceptional result. The Settlement Amount accounts for **36.2%** of the historical COI overcharges through March 31, 2023 under Plaintiff's damages model; over **107%** of the damages under the multiplicative approach proposed by North American's experts; and over **160 times** the damages that would have been awarded if the jury found that FMI was assumed at pricing. Sklaver Decl. ¶ 27.

Even under the higher final approval standard, courts routinely approve settlements with substantially lower-percentage awards. *See, e.g.*, *Beaver Cty.*, 2017 WL 2574005, at *2 (holding that a "recovery of approximately 6.8% to 9.5% of . . . of the Class' [estimated] maximum provable damages . . . exceeds the median recovery of estimated damages in similar securities class actions settled in 2016, as well as the median settlement as a percentage of estimated damages in the Eighth

Circuit"); *Hancock COI*, No. 15-cv-0024 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) (cash fund equal to 42% of COI overcharges was "quite extraordinary"); *see generally Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("As courts routinely recognize, a settlement is a product of compromise and the fact that a settlement provides only a portion of the potential recovery does not make such settlement unfair, unreasonable or inadequate.") (internal quotation marks omitted). And, importantly, if the parties' proposed schedule is adopted and final approval is granted, the Settlement will allow Class Members to be paid ***this year***. *Kelly*, 277 F.R.D. at 570 (noting that even if class members "receive a favorable trial verdict, they still would have faced costly and lengthy appeals, delaying the receipt of benefits").

The Settlement is even more exceptional given both the validity guarantee and the narrow scope of the release. The validity guarantee ensures that policyowners will receive their policy benefits at maturity (assuming appropriate premiums are paid and death benefit submissions are made), and prevents North American from undermining the value of the Settlement by challenging the validity of Class Policies on STOLI grounds. This is a real concern given that North American attempted to functionally invalidate Plaintiff's own policy despite the two-year non-contestability clause. *See* Dkt. 294 at 29–35. On final approval in *Phoenix COI*, the court adopted an expert valuation of a similar non-monetary policy validity guarantee of $33.3 million. *Id.* at *11. Plaintiff here will submit expert valuation of this term as well, in connection with its request for final approval. Additionally, unlike many COI settlements, the Class is providing a release for historical conduct only, and retains the right to pursue all claims related to any COI charges imposed after the Final Approval Date.

In sum, the Settlement is an excellent result for the Class, particularly given the myriad risks that Plaintiff would face at trial. Class Counsel—which has been appointed class counsel in

numerous COI class actions, is intimately familiar with the facts and legal issues of this case, received information about the profile of the potential jury (including their questionnaires) before settlement was reached, and even conducted a mock trial in Des Moines in advance of trial—attests to its reasonableness and fairness. Sklaver Decl. ¶ 8; *see also DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement). This factor thus weighs strongly in favor of preliminary approval. *See, e.g.*, *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005) ("Weighing the uncertainty of relief against the immediate benefit provided in the settlement, we conclude that the district court acted within its discretion when considering the strength of the claims and the amount of the settlement.").

b. Effectiveness of Any Proposed Method of Distributing Relief

Next, Rule 23(e)(2)(C)(ii) requires that the "proposed method of distributing relief" be "effective." A proposed settlement satisfies this subfactor where it "includes detailed procedures for processing Settlement Class Members' claims and distributing the proceeds of the Settlement to eligible claims." *In re Resideo Techs., Inc., Secs. Litig.*, 2022 WL 872909, at *3 (D. Minn. Mar. 24, 2022). Plaintiff's proposed plan requires nothing of class members, automatically distributing payments to them. *See* Sklaver Decl. ¶ 32; Intrepido-Bowden Decl. ¶¶ 17, 31.

c. The Terms of Any Proposed Award of Attorney's Fees

The Court also considers "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Class Counsel will apply for an award of attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by the Settlement. Sklaver Decl. ¶ 30. Class Counsel will not receive any funds until the Court has entered an order on its fee request. Sklaver Decl., Ex. 2 §§ 6.1, 6.2. The Settlement is not conditioned on the Court's approval of Class Counsel's Fees and Expenses request. *Id.* § 7.7.

Awards of this amount have been deemed reasonable and typical in comparable class actions and accords with fee awards approved by this Court and the Eighth Circuit. *See, e.g., Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) ("Indeed, courts have frequently awarded attorneys' fees ranging up to 36% in class actions."); *Huyer*, 314 F.R.D. at 629 (awarding $8.58 million, 1/3 of the total settlement fund, as "in line with other awards in the Eighth Circuit"); *see also Vogt v. State Farm Life Ins. Co.*, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021), *aff'd*, 19 F.4th 1071 (8th Cir. 2021) (awarding one-third of roughly $40 million common fund in a COI case). Class Counsel's fee request will be briefed more fulsomely at final approval.

d. Any Agreement Required to Be Identified Under Rule 23(e)(3)

Rules 23(e)(2)(C)(iv) and 23(e)(3) require that any agreement "made in connection with the proposal" be identified. There are no such agreements here beyond the Settlement Agreement.

3. The Plan of Allocation Treats Class Members Equitably

The final Rule 23(e)(2)(D) factor focuses on equitable treatment of class members, which is easily satisfied because the proposed plan of allocation distributes settlement proceeds on a *pro rata* basis using each class member's share of the total claimed damages. Sklaver Decl., Ex. 7. Courts have repeatedly approved of *pro rata* allocation plans. *See, e.g.*, *Carroll v. Flexsteel Indus., Inc.*, 2022 WL 4002313, at *3 (N.D. Iowa Sept. 1, 2022) (finding "equitable" the "proposed distribution formula" which distributes settlement amounts "pro rata among the class"); *Phoenix COI*, 2015 WL 10847814, at *12 ("This type of distribution, where funds are distributed on a *pro rata* basis, has frequently been determined to be fair, adequate, and reasonable.").

4. The Proposed Settlement Satisfies Other *Van Horn* Factors

The remaining *Van Horn* factors—the defendant's financial condition and the amount of opposition to the settlement—are neutral. North American is "in good financial standing, which would permit it to adequately pay for its settlement obligations or continue with a spirited defense

in the litigation." *Marshall*, 787 F.3d at 512 (finding this factor neutral); *Swinton*, 454 F. Supp. 3d at 878–79 (same). And while the members of the Class have not yet had the opportunity to provide their views on the proposed Settlement, Class Counsel believe it will be well received, and any objections thereto will be provided to the Court and addressed in advance of the fairness hearing. Accordingly, this factor also supports issuing notice of the Settlement to the Class.

B. The Court Need Not Re-Certify the Class

"If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23, Advisory Note 2018, Subdivision (e)(1). Here, the Settlement does not call for any such changes.

C. 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." That rule, as well as the Due Process Clause, requires that notice be the "best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 617 (1997); *Grunin*, 513 F.2d at 121 ("notice need only satisfy the broad reasonableness standards imposed by due process") (internal quotation marks omitted).

Plaintiff's proposed notice plan is substantially the same as the one the Court previously approved and should be approved for the same reasons. *See* Dkt. 188 at 2–3. Notice delivery by first-class mail is specifically authorized by Rule 23(c)(2)(B) and was approved by the Court. *See* Dkt. 188 at 3; *see also Edwards v. Orchestrate Hosp. Grp., L.L.C.*, 2017 WL 2423792, at *2 (S.D. Iowa Feb. 23, 2017) ("Individualized notice by mail met due process requirements."). The Court also previously approved JND as the Notice Administrator. Dkt. 188 at 3. JND adequately discharged its duties in that role. Sklaver Decl. ¶ 17. The notices will plainly inform Class

Members about the settlement terms, the plan of distribution, the allocation of fees and expenses, their right to opt out or object, and the final approval hearing. *See* Intrepido-Bowden Decl., Exs. B–C.

Like the prior notice plan, the settlement notice plan provides forty-five days for the parties' agreed second opt-out period, and the same amount of time for objections. This period is reasonable. *See, e.g.*, *Carroll*, 2022 WL 4002313, at *3 (noting court previously approved 30-day opt-out period in ERISA class action).

D. Proposed Schedule

Plaintiff proposes the following schedule:

EVENT	DAYS FROM PRELIMINARY APPROVAL
Deadline to send notice to Class Members	21 days
Deadline to file motion for award of attorneys' fees, expenses and service awards	52 days
Opt-Out and Objection Deadline	66 days
Deadline for file Final Approval motion	80 days
Deadline to file any reply brief in support of any motion	101 days
Final Approval Hearing	108 days

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court (i) preliminarily approve the proposed Settlement; (ii) approve the proposed form and manner of notice to the Class; and (iii) schedule a date and time for a hearing to consider final approval of the Settlement and related matters.

Dated: July 17, 2023

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CERTIFICATE OF SERVICE

I hereby certify this 17th day of July, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the court using the CM/ECF system which will send notification to the attorneys of record, and is available for viewing and downloading.

/s/ Steven G. Sklaver

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, Steven G. Sklaver, declare as follows:

1. I submit this declaration in support of preliminary approval of the proposed class action settlement between Plaintiff PHT Holding II LLC ("Plaintiff" or "PHT"), on behalf of itself and the Class, and Defendant North American Company for Life and Health Insurance ("Defendant" or "North American").

2. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Plaintiff and the Court-appointed Class Counsel (referred to herein as "Class Counsel") in the above-captioned matter. 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.

3. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance ("COI") class actions and settlements thereof. Susman Godfrey has been appointed sole Class Counsel in numerous cases seeking recovery of COI overcharges against insurers, including cases involving Phoenix Life Insurance Company, Security Life of Denver Insurance Company, Genworth Life Insurance & Annuity Company, Voya Retirement Insurance and Annuity Company, Lincoln Life & Annuity Company of New York, AXA Equitable Life Insurance Company, ReliaStar Life Insurance Company, John Hancock Life Insurance Company (U.S.A.), and PHL Variable Insurance Company.[1] A copy of the firm's

[1] The following is a non-exhaustive list of COI cases in which Susman Godfrey has been found to be "adequate" class counsel: *Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *12 (S.D.N.Y. July 12, 2013); *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of N.Y.*, 2022 WL 986071, at *5 (S.D.N.Y. Mar. 31, 2022); *Advance Tr. & Life Escrow Servs., LTA v. Sec. Life of Denver Ins. Co.*, 2021 WL 62339, at *9 (D. Colo. Jan. 6, 2021); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 387 (S.D.N.Y. 2019); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *11 (D. Minn. Mar. 29, 2022); *In re AXA*

profile in such cases, and the profiles of myself and my fellow Class Counsel, are attached hereto as **Exhibit 1**.

4. My firm's results in such cases have been lauded by federal judges as "superb," *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (S.D.N.Y. Sep. 24, 2015), Dkt. 319 at 3:9-11, "the best settlement pound for pound for the class I've ever seen," *id.*, and "quite extraordinary," *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) ("*Hancock COI*"). I also closely follow other class actions involving life insurance, particularly COI class actions. I am thus intimately familiar with the terms of settlement in these types of cases, how to evaluate the relative strengths and weaknesses in such cases, and what a successful result looks like.

5. I was the principal negotiator of the proposed class action settlement with North American. Following extensive negotiations, the parties reached an agreement to resolve the litigation memorialized in a term sheet executed on June 17, 2023, and the long form settlement agreement was fully executed on July 17, 2023. I attach a true and correct copy of the Settlement Agreement as **Exhibit 2**.[2] It is the opinion of Class Counsel that this settlement with North American is fair, adequate, and reasonable. Indeed, given the unique risks and issues present in this case, the result here is on par with the results in *Hancock COI* referenced above. The named Plaintiff similarly supports this settlement and believe it to be fair, adequate, and reasonable.

Equitable Life Ins. Co. COI Litig., 2020 WL 4694172, at *16 (S.D.N.Y. Aug. 13, 2020);; and *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15 Civ. 9924 (S.D.N.Y. Nov. 1, 2018), Dkt. 139 ¶¶ 7-8.

[2] The capitalized terms used herein shall have the meanings set forth in the Settlement Agreement.

6. The Settlement Agreement is the result of extended settlement discussions and negotiations over a six-month period, including an in-person, all-day mediation session and numerous telephone and email exchanges. The parties initiated the settlement discussions on December 9, 2022, with an in-person, all day mediation in Corona Del Mar, California led by mediators Hon. Layn Phillips (retired U.S. District Judge for the Western District of Oklahoma), Jeffrey Mishkin, and Clay Cogman. Although no agreement was reached during the initial session, over the past six months, the parties continued to negotiate with the assistance of the mediators. Less than 72 hours before the trial was scheduled to commence, the parties reached an agreement as to the terms of a settlement and promptly informed the Court of the development.

7. As part of the mediation process, the parties exchanged lengthy mediation statements, several settlement offers and counteroffers as well as the summary judgment and *Daubert* briefing filed with the Court, and updated damages estimates for the case. The parties had sharply different views about virtually all issues, including the merits, damages, and what could be argued to the jury.

8. It would be an understatement to say that Class Counsel was well informed of all material facts. This case had long advanced past class certification and summary judgment; full expert reports had not only been completed but supplemented with updated damage figures as of March 31, 2023; the parties' motions *in limine*, exhibit objections, and deposition designations had all been ruled upon or resolved by the parties; the Court had addressed some preliminary jury instructions; and the parties had engaged in extensive discussions regarding their proposed jury instructions and verdict forms and voluminous briefing on these issues had been submitted to the Court. Throughout this case, Class Counsel took steps to ensure that we had all the necessary

information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Class. These efforts included a professionally administered full-day mock trial in Des Moines on April 13, 2023 with over two dozen mock jurors from the local community.

9. The settlement negotiations were hard fought and non-collusive. Even the process of reducing the binding term sheet to a settlement agreement required dozens of phone calls and emails, and the involvement of a mediator. It is my unequivocal opinion that the Settlement is fair, adequate, and reasonable, and reflects an excellent result for the Class, particularly given the risks faced at trial. One particularly hotly disputed factual issue is whether North American expected future mortality improvement ("FMI") at pricing. If North American had prevailed on just that one issue, and lost every single other issue, the Class's damages would have been reduced to $367,688, which is just 0.6% of the Settlement Amount. And even if Plaintiff prevailed on the FMI issue, and every other disputed issue of fact, the jury could have decided that Plaintiff's but-for redetermination methodology was too complicated and that the "multiplicative" approach proposed by North American's expert Jack Gibson was more reasonable. The damages under that approach, while substantial ($54,888,640), are only 93% of the Settlement Amount.

10. This risk of a lower-than-expected recovery is aptly illustrated in a recent COI class action trial in *Meek v. Kansas City Life Insurance Co.*, No. 19-CV-472 (W.D. Mo.), where the class sought $18 million in damages. Despite prevailing on liability, that class ultimately recovered less than six percent of the alleged overcharges after jury only awarded $5 million, which was further reduced to just $900,000 after the court granted partial decertification post-trial. *See Meek* 4/28/2023 Tr. at 69:9-16 (a true and correct copy attached as **Exhibit 3**); *Meek* Dkt. 311 (verdict form) (a true and correct copy attached as **Exhibit 4**); Meek Dkt. 329 (Order (1) Granting

Defendant's Motion to Partially Decertify Class, (2) Dismissing Count V Without Prejudice, and (3) Directing that Judgment be Entered) (a true and correct copy attached as **Exhibit 5**).

11. This case was originally filed almost five years ago on October 30, 2018. Fact discovery lasted until March 4, 2021, with supplemental discovery obligations under Federal Rule of Civil Procedure 26(e) continuing thereafter. The parties produced nearly 20,000 documents. Plaintiff and its experts analyzed over 17,600 documents, which included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies, and thousands of spreadsheets. In total, Plaintiff issued 39 requests for production, 25 interrogatories, and 3 requests for admission, and Defendant issued 29 requests for production and 17 interrogatories. Plaintiff also issued subpoenas to North American's parent and sister companies. Plaintiff engaged in numerous rounds of meet and confers with respect to these discovery requests, including extended negotiations over search terms, custodians, supplementation of interrogatory responses, and other issues. Class Counsel and their experts had to sift through and analyze hundreds of decades-old mortality tables, pricing models, and actuarial memoranda to determine the mortality expectations that North American actually used to price these policies. Plaintiff's diligence was rewarded as during the discovery process, where it uncovered key documents on liability and damage issues. Plaintiff also secured access to Milliman's MG-ALFA actuarial software, which was used by North American to model its corporate loss reserves and other financials.

12. Plaintiff took five highly technical fact depositions (one of which took place over three days) and two expert depositions. Through these depositions, which included testimony from individuals designated to testify on behalf of North American under Rule 30(b)(6), Plaintiff

obtained key admissions that they deployed to support class certification, overcome summary judgment, and win a *Daubert* motion excluding a substantial portion of defense expert Craig Merrill's opinions. Plaintiff also defended two depositions of corporate representatives, four depositions of its experts, and prepared for and participated in the deposition of the original owner of Plaintiff's policy.

13. This Action involved significant expert analyses and reporting. Plaintiff ultimately disclosed expert reports from the following experts: actuarial expert Howard Zail and damages expert Robert Mills. Plaintiff produced opening expert reports from Zail and Mills on June 6, 2022. In response, North American designated actuarial expert Jack Gibson and financial expert Craig Merrill. North American produced reports from its experts on July 22, 2022. On September 9, 2022, Plaintiff produced rebuttal reports from Zail and Mills. North American then served sur-rebuttal reports from Gibson and Merrill on October 26, 2022, and October 31, 2022, respectively. All four experts were deposed; both of Plaintiff's experts were deposed twice. After receiving updated policyholder data, Plaintiff's experts produced supplemental reports on May 18, 2023. In response to the Court's order excluding certain opinions by Merrill and the updated policyholder data, North American's experts produced supplemental reports on May 31, 2023. Zail and Mills produced supplemental rebuttal reports on June 5, 2023. Collectively, the parties produced eighteen expert reports that totaled approximately 583 pages, with thousands of pages of exhibits and appendices. Class Counsel also retained a consulting expert, who provided invaluable assistance to Plaintiff and the Class. Plaintiff's experts engaged in extensive analyses of North American's models, data and documents produced in the Action. Plaintiff's experts spent hundreds of hours conducting their essential work in this case.

14. Plaintiff engaged in extensive motion practice in this Action. On March 22, 2022, after over 200 pages of briefing (and over 40,000 pages of exhibits), the Court certified a nationwide class "consisting of all current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period." Dkt. 148 at 29. As part of its class certification submission, Plaintiff provided over 50 pages of comprehensive surveys marshaling the law across the nationwide class on state rules of contract interpretation and statute of limitations and synthesized that law into a manageable approach for trial. Dkt. 92-5-8 & 92-10. The Court found that this analysis overcame the shortcomings in *Taylor v. Midland Nat'l Life Ins. Co.*, Case No. 4:16-cv-00140-SMR- HCA, 2019 WL 7500238 (S.D. Iowa May 3, 2019), another case involving a challenge to COI charges, where the plaintiff failed to submit and "'extensive analysis of state law variations' to carry his burden of demonstrating compliance with Rule 23(b)(3)" resulting in the denial of class certification and supported a finding here that common questions of fact and law predominated. Dkt. 148-25-26 (citing *Taylor*, 2019 WL 7500238, at *7). In appointing Susman Godfrey as class counsel, the Court noted that Susman Godfrey has "extensive experience litigating class actions, including class actions very similar to this case" and had already expended "[s]ubstantial time, years in fact, investigating potential claims in this case during discovery." Dkt. 148 at 28-29.

15. In opposition to Plaintiff's motion for class certification, Defendant filed motions to exclude Plaintiff's experts – Howard Zail and Robert Mills. Dkt. Nos. 117, 119. Plaintiff opposed these motions, including submitting of rebuttal declarations by Howard Zail and Robert Mills. Dkt. 132; Dkt. 133; Dkt. 134-1; Dkt. 134-3. In its order denying North American's motions to exclude, the Court refused to adopt North American's attempt to "resurrect the long-buried

theory-of-the-pleadings doctrine" by arguing that Zail's opinions must be excluded because he did not address the Plaintiff's abandoned Consideration Theory; rejected North American's claim that Mills' opinions should be excluded because his models were inconsistent with models he has prepared in other COI cases; and dismissed North American's other attacks as relating to merits or credibility issues, not the admissibility of the testimony. Dkt. 148 at 9-18.

16. At class certification, North American made its first of three attempts during this litigation to offer testimony from previously undisclosed witnesses in violation of Rule 26(a). Specifically, North American submitted declarations from four undisclosed agent witnesses to inject individualized issues of contract interpretation. Dkt. 116-32; Dkt. 116-34; 116-55. Plaintiff promptly moved to strike these declarations, arguing that despite knowing from the outset of the case that evidence of individualized issues would be necessary to defeat predominance and a direct disavowal by its corporate representative of any knowledge of communications with agents, North American engaged in "litigation by ambush" by not disclosing such witnesses until after the close of discovery causing prejudice and harm to Plaintiff. Dkt. 128. Agreeing with Plaintiff, the Court rejected North American's self-serving attempts to justify its belated disclosure of these witnesses and concluded that exclusion of these witnesses was appropriate. Dkt. 148 at 9 ("None of these declarations may be used as evidence in this case."). The Court also rejected North American motion to reconsider the witness exclusion order. Dkt. 221 at 8–10.

17. Following class certification, the Court approved Class Counsel's proposed notice plan and appointed JND Legal Administration LLC ("JND") as the Notice Administrator. Dkt. 188 at 2. Class Members were given notice by first-class mail and were given a 45-day window in which to opt out. Dkt. 156-2 ¶¶ 13 & 16; Dkt. 188. JND also set up a website with information in

a long form notice, as well as a toll-free number that Class Members could call. Dkt. 156-2 ¶¶ 14-15. Of the 18,595 policies in the Class, JND received 7 requests to opt out of the class during the opt-out period. It is my opinion that JND adequately discharged its duties in its role as the Notice Administrator.

18. On September 16, 2022, North American moved for an order to show cause why the court should not appoint a neutral expert under Federal Rule of Evidence 706 to address "the complex and technical nature of the actuarial issues," "the conflicting expert testimony that is difficult to reconcile," and "the absence of a neutral perspective on the issues for the Court and the jury." Dkt. 175 at 1–2. The Court denied North American's motion, concluding that appointing an expert was "unnecessary and improper" and that "this is not an 'extraordinary case' requiring a Rule 706 expert," and determining that North American "fail[ed] to explain how the addition of another expert would clarify the issues for the Court and the jury." Dkt. 221 at 5, 7, 8.

19. On November 18, 2022, North American moved for summary judgment arguing, among other things, that Plaintiff cannot demonstrate genuine issue of fact exist demonstrating breach of contract, that the case is barred by statute of limitations and laches and that Plaintiff's claim is barred by fraud. Dkt. 201; Dkt. 210. On January 31, 2023, Plaintiff filed its opposition to summary judgment. Dkt. 227; Dkt. 230. After full briefing by the parties, encompassing over 150 pages of briefing (and over 1000 pages of exhibits), the Court denied North American's motion for summary judgment against the Plaintiff. Dkt. 294. Agreeing with Plaintiff, the Court found that the policy provisions at issue were ambiguous. *Id.* at 22 ("PHT's interpretation of 'based on' is not unreasonable and the proper interpretation of 'based on' contained in the COI rate provision is ambiguous."); *Id.* at 23 ("The COI rate provision of the Class Policies is ambiguous and PHT has

offered a reasonable interpretation of it."). The Court also held that whether the North American breached the contract was a question of fact for the jury. *Id.* at 24. The Court further rejected North American's affirmative defenses that Plaintiff's claims were barred by fraud and statute of limitations. *Id.* at 35 ("North American's fraud defense is barred by the incontestability clause."); *Id.* at 28 ("Put simply, PHT's claim for breach of contract did not accrue years ago."). The Court found that summary judgment was not proper on North American's affirmative defense of laches. *Id.* at 29.

20. At summary judgment, North American submitted declarations from two additional previously undisclosed witnesses. Dkt. 201-4; Dkt. 201-5. Plaintiff moved to strike these two declarations, arguing that North American again without justification ambushed Plaintiff by failing to disclose prior to the close of discovery these witnesses who offered testimony in support of defenses that North American has been aware of for years. The Court held that "[i]t is clear that North American has violated Rule 26" and "exclusion in the proper remedy." Dkt. 294 at 61-62.

21. Both parties filed *Daubert* motions to exclude the other party's experts. Dkt. 193; Dkt. 194; Dkt. 195-1; Dkt. 199; Dkt. 200. The parties submitted over 150 pages of briefing and over 1200 pages of exhibits and appendices in connection with the *Daubert* motions. The Court denied North American's motion to exclude Plaintiff's experts. Dkt. 294 at 53 & 57. North American's experts did not fare as well. The Court granted Plaintiff's motion in part prohibiting "[Craig] Merrill from offering testimony or opinions on actuarial matters." *Id.* at 44.

22. The Court initially set a trial date for June 12, 2023, but due to the Court's trial schedule reset the trial date to June 20, 2023. Dkt. 250; Dkt. 260. After the Court denied North American's late-breaking requests for a continuance and to extend the discovery period, Dkts.

260 & 286, the parties prepared intensely for trial, including readying trial examinations, deposition designations, exhibit lists, witness lists, stipulations, jury instructions, verdict forms, and the proposed joint pretrial order (which the parties revised substantially following the Court's ruling on summary judgment and *Daubert* motions). Dkts. 276, 278, 279, 280, 281, 282, 297, 298, 299, 303.

23. The parties briefed a total of 15 motions *in limine* and filed more than 30 pages of single-spaced briefing on hotly contested jury instructions relating to *contra proferentem*, statute of limitations, laches, and damages. Dkts. 252, 253, 263, 266, 281-2, 292, 293, 297-2. For a third time, North American tried to circumvent Rule 26(a) by listing four previously undisclosed witnesses on its trial exhibit list. Plaintiff filed a motion *in limine* to exclude these witnesses from trial. Finding Plaintiff's motion had merit, the Court refused to permit three of the witnesses to testify and limited the testimony of the fourth witness to verifying certain extracted data is true and correct. Dkt. 296 at 2.

24. During the final pretrial conference on June 16, 2023, the Court granted Plaintiff's request for certain preliminary jury instructions and stated the Court intended to adopt "something very similar to" Plaintiff's proposed final jury instructions on *contra proferentem* and laches as "those are, I think, correct statements of the law." Final Pretrial Conference Tr. at 12:12 – 13, 31:14–21. A true and correct copy of the transcript of the June 16, 2023, final pretrial conference is attached hereto as **Exhibit 6**.

25. Under Plaintiff's maximum damage model, Class Members nationally paid, through March 2023 (the date of North American's last refresh of damages), $163,118,625 more than they would have had North American decreased the COIs in accordance with its expectations

of future mortality. In addition to disputing liability and the existence of damages altogether, North American offered five alternative overcharge models. The first used the exact same methodology used by Plaintiff's experts, but instead of using the pricing mortality assumptions set forth in a New Jersey regulatory submission, which did not include an FMI assumption, it used the pricing mortality assumptions reflected in a binder and on floppy disks that North American located during discovery, which North American contends do include an FMI assumption. With that one modification, the $163.1 million in overcharges would be reduced to a mere $367,688. North American's second alternative model, referred to North American's expert Jack Gibson as the "multiplicative" approach, assumed that, in the but-for world, COI rates should have been reduced by the same percentage that North American's mortality expectations have improved. The COI overcharges under that approach were $54,888,640.

26. The specific terms and conditions of the settlement are set forth in the Settlement Agreement, which is attached as **Exhibit 2**. The principal terms of the settlement are as follows:

- **CASH PAYMENTS**: $59 million in cash payments for terminated policies and cash credits to accumulation values for in-force policies. This is not a claims-made settlement. Checks will be mailed directly to class members and cash credits will be deposited directly in policy accounts, and settlement funds do not revert to North American to keep for itself.

- **VALIDITY STIUPLATION AND STOLI WAIVER**: An agreement by North American not to challenge the validity and enforceability of policies on the grounds of lack of an insurable interest, stranger originated life insurance ("STOLI"), or misrepresentation.

27. The cash portion of the Settlement alone is, in Class Counsel's view, exceptional: It represents over 36.2% of Plaintiffs' maximum damages model; over 107% of the overcharges under Mr. Gibson's multiplicative approach; and over 160 times the damages if the jury found

that FMI had been assumed at pricing, but otherwise agreed with Plaintiff and its experts on all other issues.

28. The non-monetary benefits provide additional, real value to the Class. The Validity Clause prevents North American from nullifying the benefits provided in this settlement by challenging the validity of any Class Policy on STOLI grounds. In another case where I was Class Counsel, the court, on final approval, adopted an expert valuation of a similar non-monetary policy validity guarantee of $33.3 million. *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-CV-8405 (CM), 14-CV-8714 (CM) 2015 WL 10847814. *11 (S.D.N.Y. Sept. 9, 2015), Plaintiff here will submit expert valuation of this term as well, in connection with its request for final approval.

29. Class Counsel also negotiated an unusually narrow release. Unlike most other COI settlements, the Class is releasing North American for historical overcharges only, and every Class Member retains the right to pursue all claims arising from COI charges imposed after the Final Approval Date.

30. Class Counsel will file a motion seeking reimbursement of their costs, fees, and Service Awards for the Class Representatives, which Plaintiffs propose to be heard at the same time as the final approval hearing. Class Counsel has committed to seeking fees not to exceed 1/3 of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed $21,366,666.67, and this is reflected in the proposed notices. Class Counsel will not receive any funds until the Court has granted their fee request.

31. In Class Counsel's experience, this is an outstanding recovery, particularly given the complexity of COI cases, the conflicting expert testimony on technical actuarial issues that a

jury would be required to weigh, the unique dispute that existed as to what North American's pricing mortality assumption actually was, and the inherent uncertainties of litigation.

32. Class Counsel recommends the proposed plan of allocation described in the Notice and attached in full as **Exhibit 7**. This plan was developed in conjunction with Plaintiffs' expert Robert Mills who has significant experience developing such plans for COI litigation. This distribution plan treats all Final Class Members equitably because it distributes settlement proceeds on a *pro rata* basis using each Final Class Member's share of overcharges as applicable for each policy. The COI overcharges represent the difference between the COI charges North American actually assessed on the policy and the amount it would have assessed but for the failure to decrease the COIs consistent with its expectations of future mortality. Checks will be mailed directly to members of the Class whose policies have terminated, using the addresses in North American's files, while members of the Class with in-force policies will receive cash credits directly to the accumulation values of their policy accounts, and with no possibility of reversion to North American to keep any funds for itself. The cash payments and cash credits are automatic and do not require Final Class Members to submit a claim form.

33. The Releases are also equitable, as they treat all Class Members equally and do not affect apportionment of damages.

34. In sum, it is my strong opinion that the proposal is fair, adequate, and reasonable, especially in light of Class Counsel's detailed assessments of the strengths and weaknesses of the claims asserted, the applicable damages, and the likelihood of recovery.

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

Dated: July 17, 2023

/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.

SUSMAN GODFREY L.L.P.

Steven G. Sklaver

Partner

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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 – 2022, Thomson Reuters)
- *Lawdragon* 500 Leading Lawyers in America (2020, 2021, 2022, 2023)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers (2019, 2020, 2021, 2022)
- 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.

Seth Ard

Partner

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Overview

Seth Ard, a partner in Susman Godfrey's New York office and a member of the firm's Executive Committee, has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Ard was co-lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." For defendants, Ard has obtained take-nothing judgments for NASDAQ and Dorfman Pacific in contract and intellectual property actions seeking tens of millions of dollars. 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)

- 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

Ryan Kirkpatrick

Partner

New York

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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.

Experience

- Judge Approves $25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Court Approves $16,500,000 Settlement in Securities Class Action Brought by Susman Godfrey Against Dendreon

Education

The University of California, Los Angeles (J.D., Order of the Coif, 2005)

Yale University (B.A., Political Science, , 2001)

Admissions

Bar Admissions

- New York
- California
- District of Columbia

Court Admissions

- U.S. District Court for Central District of California
- U.S. District Court for the Northern District of California
- U.S. Court of Appeals for the Seventh Circuit
- U.S. District Court for the Eastern District of Texas

SUSMAN GODFREY

Krysta Kauble Pachman

Partner

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Overview

Krysta Pachman represents plaintiffs and defendants in high-stakes commercial litigation, including class actions, patent cases, trademark & copyright matters, and other disputes. Ms. Pachman has a track record of obtaining trial wins, favorable settlements and arbitration victories for her clients, who range from small businesses and individuals to Fortune 500 companies.

> *"Krysta absorbed a lot of technical information, digested it, and helped the team understand the challenges with our case. [She] developed and recommended strategies and stood [her] ground when the other side and their expert tried to bully [her]. Krysta's professionalism and skill was essential to the outcome we received from the panel."*
> **Denise M. Buffington, Director, Federal Regulatory Affairs & Corporate Counsel, Kansas City Power & Light Company**

In 2021 Ms. Pachman was appointed to serve as co-lead counsel in the Blackbaud Data Breach Class Action. She will lead a class action brought over a data breach involving cloud management software firm Blackbaud. Ms. Pachman represents a class of plaintiffs who are suing Blackbaud for negligence, as well as violations of California's Consumer Privacy Act and other state law statutes. The leadership team is being hailed as 'most diverse leadership team ever' in data breach class action.

In the landmark copyright action, *Ferrick, et al. v. Spotify USA,* Ms. Pachman was an integral part of a trial team that secured a settlement valued at more than $100 million dollars, including a $43.45 million cash settlement fund and an agreement to pay future royalties to settle a class-action lawsuit with

Spotify brought on behalf of music copyright owners. This case made national news, receiving press from *Billboard*, *Forbes*, *and Reuters*.

Ms. Pachman was also part of a team that secured a $40 million settlement for a class of derivatives traders in *Timber Hill v. Pershing Square Capital Management, L.P., et al*. Timber Hill alleged Defendants violated federal securities laws through their illicit insider trading and front-running scheme that damaged Timber Hill and other investors by artificially deflating the value of options and equity forwards traded by Timber Hill and Class Members. This is the largest ever stand-alone options settlement and the largest ever Section 20A options settlement.

Ms. Pachman played a key role in *Schulein, et al. v. Petroleum Development Corp.*, representing a class of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships, who alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. Ms. Pachman took key depositions, wrote the opposition to defendants' motion for summary judgment, and wrote the successful opposition to defendants' motion to decertify the class. The case was settled for $37.5 million in March 2015, with the class receiving approximately $24 million.

Ms. Pachman also represented Kansas City Power & Light Company (KCPL) in a high-stakes renewable energy arbitration. During arbitration she delivered the opening statement, cross-examined the other side's expert, presented fact and expert witnesses, handled depositions, managed expert reports, and wrote the pre-and post-hearing briefs. The panel unanimously ruled in KCPL's favor.

Ms. Pachman currently serves as counsel for one of the largest-ever certified consumer classes, which encompasses nearly all U.S. cellular phone purchasers, all of whom have been impacted by Qualcomm's anti-competitive conduct. This complex case straddles the intersection of antitrust and technology and involves Qualcomm's monopoly in the cellular modem chip market to extract supra-competitive licensing fees on its intellectual property. Ms. Pachman briefed and successfully obtained class certification for the group – synthesizing hundreds of pages of expert analyses, voluminous fact evidence, and case law spanning complex antitrust and intellectual property issues. In 2018, the Court granted class certification in a 66-page order finding "substantial," "strong" and "compelling" evidence to support the certification. Click here for the certification order.

For these wins and more, in 2022 Pachman was recognized as a Top Woman Lawyer in California by *The Daily Journal*. In 2021, she was named a Rising Star of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers (ALM) and one of the Top 40 Lawyers Under 40 by the Daily Journal (Daily Journal

Corp.). *The Recorder* named her a California Trailblazer in 2020 (ALM), and *Best Lawyers* called her "One to Watch, Commercial Litigation" (2021, Woodward White, Inc.).

Prior to joining Susman Godfrey, Ms. Pachman served as a Law Clerk to the Honorable Philip S. Gutierrez in the U.S. District Court for the Central District of California. She also serves on the Board of Governors for the Women Lawyers' Association of Los Angeles and serves on the Board of the Association of Business Trial Lawyers.

Experience

- Susman Godfrey and Gradstein & Marzano Secure $43.45 Million Settlement with Spotify in Copyright Class Action
- Susman Godfrey Obtains $37.5 Million for Investors in Oil & Gas in Limited Partnerships

Honors & Distinctions

- Class Action Litigation Rising Star, Law360 (2023)
- Rising Star of the Plaintiff's Bar, *National Law Journal* (2023, ALM)
- *Lawdragon* 500 Leading Litigator (2022)
- Top Woman Lawyer, *Daily Journal* (2022, Daily Journal Corp.)
- Future Star, Benchmark Litigation (2022, 2023 Euromoney)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers (2021, 2022, 2023)
- One to Watch, Commercial Litigation *Best Lawyers* (2021, 2022, 2023 Woodward White, Inc.)
- Top 40 Under 40, *Daily Journal* (2021, Daily Journal Corp.)
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2021, 2023 ALM)
- California Trailblazer, *The Recorder* (2020, ALM)
- 40 and Under Hot List, Benchmark Litigation (2020, 2021, 2022 Euromoney)
- Recommended Lawyer, Dispute Resolution: General Commercial Disputes, The Legal 500, (2019, Legal 500)
- Next Generation Woman Leader in Tech Law, *The Recorder* (2018, ALM)
- Southern California Rising Star, *Super Lawyers* (2017, 2018, 2019, 2020, 2021, 2022, 2023; Thomson Reuters)
- UCLA Law Review, Chief Comments Editor, Vol. 58

SUSMAN GODFREY

Education

UCLA School of Law (J.D.,)

Northwestern University (B.A., Political Science and Communication Studies, magna cum laude)

Admissions

Bar Admissions

- California

Leadership & Professional Memberships

- Board of Governors, Women Lawyers Association of Los Angeles

SUSMAN GODFREY L.L.P.

Glenn Bridgman

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Overview

Glenn Bridgman is a trusted resource, valued trial lawyer, and relied upon legal counsel to his clients and colleagues. Glenn represents both plaintiffs and defendants in high stakes commercial litigation, trying cases successfully across practice areas and industries such as insurance, antitrust, intellectual property, securities, and breach of contract. In 2023 Mr. Bridgman was recognized as a California Lawyer Attorney of the Year by *The Daily Journal*. In 2019, Mr. Bridgman was named a California Trailblazer by *The Recorder* (ALM) and a Rising Star in Insurance Litigation by *Law360*. In 2020 he was named a Rising Star in General Commercial Litigation by *The Legal 500*.

In *37 Besen Parkway, LLC v. John Hancock Life Insurance Company*, Glenn was a critical part of a legal team that secured a $91.25 million 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*." Glenn started on this case at inception and quickly assumed the role of running the case on a day–to-day basis – from filing of the complaint, combing through over 340,000 pages of documents, taking and defending more than 15 highly technical depositions involving highly complex subjects, and filing a motion for class certification and supporting expert report – all of which resulted in the successful settlement that was struck two and a half years later. Glenn was quoted about the case and the enormous result for the Class in an article by *Law360*.

In TVPX ARS, Inc., v. Genworth Life and Annuity Insurance Company, Glenn represented life settlement fund, TVPX, in its breach of contract action against Genworth Insurance Company. After Genworth secured an injunction based on a 2004 settlement of a prior case, Glenn took over the appellate argument before the Eleventh Circuit Court of Appeals and persuaded the Eleventh Circuit to vacate the district court's injunction. The opinion can be read here and you can listen to Glenn's argument before the court here (start at 3:15).

However, Glenn's litigation savvy is not limited to insurance matters. Glenn is well-versed in all types of high stakes litigation. He has:

- Represented Australian solar energy company, Jasmin Solar Pty Ltd., in its breach of contract action against a Chinese equipment supplier. After the solar company suffered defeats with prior counsel before both an arbitrator and the district court, Glenn and a team from Susman Godfrey took over the appeal at the Second Circuit Court of Appeals. Glenn's briefing persuaded the Second Circuit to not only overturn the district court's previous order confirming the arbitration award, but also to vacate entire judgment against Jasmin.
- Defeated a trademark-infringement preliminary injunction sought against one of the world's largest technology companies;
- Litigated the LIBOR OTC class action currently pending in the Southern District of New York, which has

already produced $590 million in settlements (fees and expenses not yet determined) and a certified class against additional defendants; and

- Secured favorable settlements on behalf of, among other clients, a large telecommunications company, lease-financing companies, and defrauded individual entrepreneurs in both federal and state court.

Glenn also maintains an active pro bono practice. He currently represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The *Daily Journal* and *Law360* profiled Glenn and his colleagues for their work in this area.

Glenn attended Yale Law School where he was the Notes Editor for the Yale Law Journal and served the Jerome N. Frank Legal Services Organization as both a Board Member and the Clinic Director. Glenn also received the William K.S. Wang Prize for Excellence in Corporate Law, the Thomas I. Emerson Prize for Best Paper on Legislation, and the C. LaRue Munson Prize for Excellence in the Presentation of a Clinical Case. Glenn also directed the Yale Landlord Tenant Clinic.

Before attending law school, Glenn was a Peace Corps Volunteer in rural Bulgaria. Before starting his practice at Susman Godfrey, Glenn clerked for Chief Judge Robert A. Katzmann of the Second Circuit Court of Appeals and Judge Christina A. Snyder of the Central District of California.

Education

- Dartmouth College (B.A., Physics & Philosophy, minor in Mathematics, *magna cum laude*, 2008)
- Yale Law School (J.D., 2013)

Clerkship

Law Clerk to Chief Judge Robert A. Katzmann, United States Court of Appeals for the Second Circuit (2014-15)

Law Clerk to Judge Christina A. Snyder, United States District Court for the Central District of California (2013-2014)

Notable Representations

INSURANCE LITIGATION

37 Besen Parkway LLC v. John Hancock Life Insurance Co., Glenn helped secure a $91.25 million all-cash, non-reversionary settlement for insurance policy owners (amount after fees and expenses to be determined) in this certified class action against John Hancock Life Insurance Co. Glenn's efforts over the course of two and a half years led to a successful settlement at mediation before Judge Theodore H. Katz (Ret.). Bridgman was quoted about the case and the enormous result for the Class in this article by *Law360*.

TVPX ARS, Inc., v. Genworth Life and Annuity Insurance Company, Glenn represented life settlement fund, TVPX, in their breach of contract action against Genworth Insurance Company. After Genworth secured an injunction based on a 2004 settlement of a prior case, Glenn took over the appellate argument before the Eleventh Circuit Court of Appeals and persuaded the Eleventh Circuit to vacate the district court's injunction. The opinion can be read here and you can listen to Glenn's argument before the court here (start at 3:15).

In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent, Glenn was instrumental in achieving 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. At trial, Glenn examined witnesses and delivered closing argument on the successful undue influence claim.

Brach Family Foundation, et al. v. AXA Equitable Life Insurance Company*,* Glenn is an integral part of a team of lawyers who represent a putative class of plaintiffs in an insurance action pending in the Southern District of New York. The putative class is challenging AXA's 2016 hike of cost on insurance rates on hundreds of elderly insureds, claiming AXA has unfairly increased the cost of insurance for certain flexible-premium universal life insurance policies.

Helen Hanks on behalf of herself and all others similarly situated, vs. The Lincoln Life & Annuity Company of New York; Voya Retirement Insurance and Annuity Company*,* Glenn is litigating an insurance matter against Voya Life Insurance Company. He has taken the lead on the depositions in this matter, which was recently certified by the court, and is currently preparing for trial. More information on the Voya class action, a certified class with over 45,000 members, is available here.

ANTITRUST

In Re: LIBOR-Based Financial Instruments Antitrust Litigation, Glenn, together with a legal team of senior partners from Susman Godfrey, served as co-lead counsel to a certified class of 16 plaintiffs, including cities, pension funds and others known as the "OTC" investors, who sued a number of investment banks for conspiring with rivals to rig LIBOR. The team has helped secure $590 million in settlements for the class against defendant banks, Barclays, Citigroup, HSBC and Deutsche Bank. The class was certified in 2018 by the court, the only class in the coordinated LIBOR litigation to receive class certification.

INTELLECTUAL PROPERTY

Confidential Patent Infringement Matter on Behalf of Bitdefender, Glenn defended cybersecurity company, Bitdefender, in patent action filed by a well-known non-practicing entity. Bridgman took the lead on the damages portion of the case and handled Daubert briefing seeking to exclude plaintiffs' entire damages case, briefing which shortly preceded a favorable settlement of the entire matter.

Confidential Trademark Dispute on behalf of Amazon, Glenn defended online retail giant, Amazon, in a complex trademark dispute. After defeating plaintiff's request for a preliminary injunction, the case settled confidentially on favorable terms.

BUSINESS DISPUTES

Jasmin Solar Pty Ltd. V. Chinese Equipment Supplier*,* Glenn represented Australian solar energy company, Jasmin Solar Pty Ltd., in their breach of contract action against a Chinese equipment supplier. After suffering defeats with prior counsel before both an arbitrator and the district court, Bridgman and a team from Susman Godfrey took over the case at the Second Circuit Court of Appeals. A briefing written by Bridgman persuaded Second Circuit to not only overturn the district court's previous order confirming arbitration award, but also to vacate entire judgment against Jasmin.

Winthrop Resources v. Ventura County, Glenn represented longtime Susman Godfrey client, Winthrop Resources, in a breach of contract dispute with Ventura County. The matter successfully resolved after multiple mediations led by Glenn.

Honors and Distinctions

- California Lawyer Attorney of the Year, *Daily Journal* (2023)
- Rising Star in General Commercial Litigation, *The Legal 500* (2020)
- Rising Star – Insurance, *Law360* (2019)
- California Trailblazer, *The Recorder* (ALM, 2019)

Professional Associations and Memberships

State Bar of California

Los Angeles County Bar Association

Association of Business Trial Lawyers Los Angeles

SUSMAN GODFREY

Nick Spear

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Overview

Nick Spear litigates high-stakes and high-profile matters across the United States, representing both plaintiffs and defendants and regularly facing-off against industry titans. Spear has tried cases in federal courts, state courts, and arbitrations across a variety of legal areas including false claims, insurance, securities, real property, breach of contract, personal injury, intellectual property, and employment. Spear's cases have been covered by the *Los Angeles Times*, the *Associated Press*, and numerous industry publications.

Named a California Lawyer Attorney of the Year by *The Daily Journal* in 2023, a Rising Star of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers, a Litigation Trailblazer by *National Law Journal* (ALM), and a Southern California Super Lawyers Rising Star (Thomson Reuters) in 2021 and 2022, Spear plays a central role in his cases, regularly leading deposition efforts that elicit critical information, writing persuasive motions and briefs, and winning crucial arguments in court. Spear frequently argues and succeeds against lawyers with decades more experience, including successfully opposing a demurrer argued by a former United States Attorney.

LANDMARK LITIGATION

In *State of California v. Cellco Partnership*, Spear served as co-lead counsel to some of the largest government entities in California—including the University of California system, the California State University System, and the County of Los Angeles—in a ground-breaking California False Claims Act lawsuit against several major wireless carriers. The carriers were alleged to have fraudulently overbilled their government customers for wireless services by failing to provide contractually required "lowest cost available" service. Spear played a key role in the matter, leading efforts to pursue the offensive case against AT&T. In total, the four telecommunications giants—AT&T, Verizon, Sprint, and T-Mobile—agreed pay $175 million to the government

plaintiffs in California and Nevada, including over $50 million from AT&T alone (net settlement after fees and expenses not yet determined). These record-setting settlements are among the largest of their kind in California. Read more in the *Los Angeles Times'* coverage.

Spear is at the forefront of protecting policyholders from improper insurance charges by many of the nation's largest insurers, including Voya, Lincoln Life, North American, Genworth, Phoenix, and John Hancock. In *Helen Hanks v. Lincoln Life & Annuity Company of New York*, Spear secured a settlement valued at over $118 million (before fees and expenses), which included a $92.5 million non-reversionary cash settlement fund, for thousands of insurance policy owners against Voya Retirement Insurance and Annuity Company over allegations that Voya improperly raised policyholders' cost-of-insurance charges. In *37 Besen Parkway LLC v. John Hancock Life Insurance Co*, Spear helped secure a $91.25 million all-cash, non-reversionary settlement for insurance policy owners against John Hancock Life Insurance Co over allegations that Hancock breached the life insurance contracts of the class (before fees and expenses). Read more here (subscription required). Spear now represents a certified class of insurance policyowners in *Advance Trust & Life Escrow Services, LTA v. North American Company for Life and Health Insurance* over allegations that North American has overcharged universal life insurance policyowners

Spear also tries cases at the cutting edge of law and technology, including representing the Lead Plaintiff in a putative securities class action alleging that the cryptocurrency XRP is an unregistered security.

Spear maintains an active pro bono practice. He currently represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The *Daily Journal* profiled Spear and his colleagues for their work in this area. You can also read more about it in *San Francisco Chronicle's* coverage and in *Law360* (subscription required).

COMMUNITY LEADERSHIP

Spear is actively involved in the community. He is an officer on the Executive Committee of the Barristers/Young Attorneys section of the Los Angeles County Bar Association (LACBA), which represents the interests of thousands of early-career attorneys across Los Angeles county. Spear is the President-Elect and will serve as President during the 2023–24 term. In addition, Spear is on the LACBA Executive Committee and Board of Trustees, as well as the Bench and Bar Committee.

Spear is also on the Advisory Board of the Western Center on Law and Poverty where he has helped raise thousands of dollars to support Western Center's mission to protect California's most vulnerable citizens. Spear has also spent more than a decade as a staff member for the American Legion's California Boys' State program, one of the nation's premier governmental

education programs for high school students, and currently serves as one of the program's Legal and Elections counselors. Spear also sits on the Board of Directors of the California Boys & Girls State Foundation.

BACKGROUND

Before joining the firm, Spear served as law clerk to the Honorable Andrew D. Hurwitz of the United States Court of Appeals for the Ninth Circuit and to the Honorable Philip S. Gutierrez of United States District Court for the Central District of California.

Spear earned his JD from University of Chicago Law School where he graduated order of the coif and with high honors, and his Bachelor of Arts degree from UCLA, where he graduated *cum laude* and Phi Beta Kappa.

Experience

- Verizon, AT&T Agree to Pay $116 Million in California and $11 Million in Nevada to Settle Whistleblower Cases

Honors & Distinctions

- California Lawyer Attorney of the Year, *Daily Journal* (2023)
- Recommended Lawyer, Energy Litigation: Oil & Gas, The Legal 500 (2022, Legalease)
- Litigation Trailblazer, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- Southern California Rising Star, Super Lawyers (2021, 2022, 2023 Thomson Reuters)
- Comments Editor, *The University of Chicago Law Review*
- Order of the Coif, University of Chicago Law School
- Kirkland & Ellis Scholar, University of Chicago Law School
- The Ann Watson Barber Outstanding Service Award, University of Chicago Law School
- The Thomas R. Mulroy Prize for Excellence in Appellate Advocacy and Oral Argument, University of Chicago Law School
- Phi Beta Kappa, UCLA

Education

The University of Chicago Law School (J.D., with High Honors, 2014)

- Order of the Coif

UCLA (A.B., Political Science, cum laude, 2009)

- College Honors, Phi Beta Kappa

Admissions

Bar Admissions

- California

Court Admissions

- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California

Leadership & Professional Memberships

- American Bar Association
- American Bar Foundation, Fellow
- Association of Business Trial Lawyers
- California Lawyers Association
- Federal Bar Association
- Judge Paul R. Michel Intellectual Property American Inn of Court
- Los Angeles County Bar Association, Executive Committee

SUSMAN GODFREY L.L.P.

Halley Josephs

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Overview

Halley Josephs is an accomplished trial lawyer and trusted adviser who represents clients in complex business disputes and high-stakes litigation. Her experience covers a wide range of practice areas, such as breach of contract, consumer protection, intellectual property, and False Claims Act litigation. She regularly advocates for clients before state and federal courts around the country, including in California, New York, the District of Columbia, Colorado, Oklahoma, Pennsylvania, and Texas. Beyond her active trial court practice, she has argued appeals in the Third and Ninth Circuits.

Ms. Josephs' recent notable representations include:

- Defending Uber Technologies, Inc. in the "Tech Trial of the Century," in which Waymo (the self-driving car subsidiary of Google's parent company, Alphabet Inc.) claimed more than $2 billion in damages for alleged trade secret theft. Susman Godfrey was hired by Uber only months before the jury trial in the Northern District of California was scheduled to begin. Susman Godfrey's team successfully argued for the exclusion of Waymo's expert damages opinions, and the case settled during the first week of trial.
- Representing universal life insurance policyholders in *In re AXA Equitable Life Insurance Company Litigation*, a breach of contract and consumer protection class action lawsuit pending in the Southern District of New York that challenges increases to cost-of-insurance charges for certain flexible-premium life insurance policies covering elderly insureds. In 2020, Ms. Josephs and her team secured class certification of breach-of-contract claims and claims under New York General Business Law § 349 and New York Insurance Law § 4226.
- Representing a major sports agency in a confidential arbitration concerning the departure of agents to a competing agency.
- Arguing and winning an appeal before the U.S. Court of Appeals for the Third Circuit in *Plavin v. Group Health Inc.*, where Ms. Josephs represents a retired NYPD officer, the named plaintiff for a putative class of hundreds of thousands of NYC employees and retirees, alleging the employees' health insurer violated New York's consumer protection laws. You can listen to her oral argument here and read the Court's opinion here.
- Representing a *qui tam* whistleblower in ongoing False Claims Act litigation against Walgreens and its affiliates concerning their failure to pass on "usual and customary" generic prescription drug prices to Medicaid and Medicare Part D programs. Ms. Josephs successfully opposed multiple motions to dismiss in this case in the Northern District of Oklahoma, enabling her client to proceed to discovery on his claims. Read about the district court's opinion denying defendants' motions to dismiss here.
- Representing an international aviation financing and leasing company in actions seeking to recover more than $40 million in damages from various lessees. Ms. Josephs led mediations which resulted in

confidential settlements in several of the actions.

Ms. Josephs also dedicates a significant portion of her docket to pro bono matters. She currently represents SAJE, ACCE Action, and CES, tenant advocacy groups, as intervenors to help defend the constitutionality of eviction moratoria enacted in the wake of the COVID-19 pandemic by the City of Los Angeles and County of San Diego. In February 2022, Ms. Josephs argued an appeal before the Ninth Circuit on behalf of ACCE Action, urging the court to affirm the denial of a preliminary injunction targeting the County of San Diego's expired eviction ordinance. Click here to watch her argument. The *Daily Journal* and *Law360* profiled Josephs and her colleagues for their work in this area.

Ms. Josephs joined Susman Godfrey after clerking for Judge Patty Shwartz of the U.S. Court of Appeals for the Third Circuit and Judge Anita B. Brody of the U.S. District Court for the Eastern District of Pennsylvania. She earned her J.D. from Yale Law School and graduated Phi Beta Kappa and with distinction from the University of Virginia.

Education

Yale Law School (J.D., 2014)

University of Virginia (B.A., with distinction, Phi Beta Kappa, 2011)

Clerkship

Law Clerk to the Honorable Patty Shwartz, United States Court of Appeals for the Third Circuit

Law Clerk to the Honorable Anita B. Brody, United States District Court for the Eastern District of Pennsylvania

Honors and Distinctions

- California Lawyer Attorney of the Year, Daily Journal (2023)
- Rising Stars of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2022, ALM)
- Recipient of National Impact Case of the Year Award by Benchmark Litigation (2019)
- Coker Fellow, Torts, Professor Douglas Kysar
- Teaching Assistant to the Honorable Stefan R. Underhill (D. Conn.), Complex Civil Litigation
- Articles Editor, *Yale Journal on Regulation*
- Phi Beta Kappa
- Raven Society

Professional Associations and Memberships

- California State Bar
- New York State Bar
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States District Court for the Eastern District of New York

- United States District Court for the Southern District of New York

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

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, between and among Plaintiff, individually and on behalf of the Class, and Defendant, that the causes of action raised by this lawsuit, or which could have been raised by this lawsuit, as captioned above, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement and the releases set forth herein.

This Agreement is made and entered into by and among Plaintiff and Defendant and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Action and Released Claims with prejudice upon and subject to the terms and conditions hereof.

1. Definitions

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

1.1 "Action" means the lawsuit, captioned *PHT Holding II LLC, on behalf of itself and all others similarly situated, v. North American Company for Life and Health Insurance*, Case No. 18-CV-00368 (SMR), pending in the United States District Court for the Southern District of Iowa as embodied in the pleadings, court filings, and proceedings before the Court.

1.2 "Accounting" means an accounting of all payments or credits to be made under this Agreement.

1.3 "Accumulation Value Credits" means credits to be made to the accumulation values of the Class Policies that are in-force (have not been terminated for any reason under the terms of the Class Policies) at the times specified for such credits to be applied following the Final Settlement Date, as specified in Section 2.2(c) and (e) below.

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

1.5 "Classic Term UL" means all life insurance policies that were issued by North American which are associated in North American's policy administration system with one of the plan codes listed in Exhibit A hereto. Each such policy is referred to as either Classic Term UL I or Classic Term UL II. North American represents that the plan codes listed in Exhibit A are associated only with Classic Term UL I or Classic Term UL II policies.

1.6 "Claims" means any and all claims in equity or law, however denominated or presented, including Unknown Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, accrued or not yet accrued, seeking any form of relief or compensation for any injury, damage, obligation, penalty or loss whatsoever.

1.7 "Class" means the class certified by the Class Certification Order, except that the Class shall not include Class Members who timely and validly opted-out during the Original Opt-Out Period, which expired on January 3, 2023. The Class Certification Order identified the class as follows:

> [A]ll current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period. This Class shall not include Defendant North American, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

1.8 "Class Certification Order" means the Court's March 22, 2022 Order (Dkt. 148).

1.9 "Class Counsel" means Susman Godfrey L.L.P., the attorneys appointed by the Court to serve as class counsel in the Class Certification Order.

1.10 "Class Counsel's Fees and Expenses" means the amount of the award approved by the Court to be paid to Class Counsel from the Settlement Escrow Account in respect of attorneys' fees and expenses, including any fees or expenses of other counsel for Plaintiff and any fees or expenses of any consultants or experts engaged by Plaintiff or any counsel for Plaintiff.

1.11 "Class Member" means a person or entity that is a member of the Class.

1.12 "Class Settlement Notice" means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator, as described in Section 4, to the persons and entities on the Notice List. Class Counsel will submit the short-form and long-form Class Settlement Notices substantially in the form attached to this Agreement as Exhibit B for the Court's approval.

1.13 "Class Period" means, as to each policy, the applicable statute of limitations period as set forth in Plaintiff's Notice of Motion and Motion for Class Certification, Dkt. 92 at 2, as modified by Dkt. 297-1 at 24. The applicable statute of limitations period for this purpose for each Class Policy shall be deemed to be the period specified in Exhibit C hereto for the state which is identified in North American's policy administration system as the "issue state."

1.14 "Class Policy" or "Class Policies" means any of the policies defined in Section 1.5 as Classic Term UL that were in force for any amount of time during the Class Period, excluding (i) the Policies that were validly excluded from the Class during the Original Opt-Out Period and (ii) the Policies owned by defendant North American, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

1.15 "Class Representative" means Plaintiff PHT Holding II LLC, individually and as representative of the Class, and any of its assigns, successors-in-interest, representatives, employees, managers, partners, beneficiaries, and members.

1.16 "Class Settlement Notice" means the notice in the forms approved by the Court to be used to notify Class Members of the settlement of the Action and the other matters set forth in such forms.

1.17 "Class Website" means the website set up by the Settlement Administrator concerning the Action pursuant to Section 4.6 below.

1.18 "COI" means cost of insurance as described in the Class Policies.

1.19 "Confidential Information" means material designated as "Confidential" in accordance with the terms of the Protective Order.

1.20 "Court" means the United States District Court for the Southern District of Iowa.

1.21 "Defendant" or "North American" means North American Company for Life and Health Insurance, and any of its predecessor and successor entities.

1.22 "Distribution Date" means the date on which checks for cash payments are to be mailed to Final Class Members with Terminated Policies as determined pursuant to Section 2.2(c).

1.23 "Excluded Claims" means (a) any Claims arising out of COI deductions made after the Final Approval Date, (b) any Claims that relate to any policies other than Class Policies owned by Class Members, (c) any claims to complete or enforce the Settlement, (d) any Claims to enforce a death benefit, and (e) any claims arising from any change to the COI rate scales that were in effect on June 17, 2023.

1.24 "Fairness Hearing" means any hearing held by the Court on any motion(s) for final approval of the Settlement for the purposes of: (i) entering the Order and Judgment; (ii) determining whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Final Class Members; (iii) ruling upon an application by Class Counsel for attorneys' fees and reimbursement of expenses and payment of a Service Award to the Class Representative, all from the Settlement Escrow Account; and (iv) ruling on any other matters raised or considered in connection with settlement of the above-captioned litigation.

1.25 "Fees and Expenses Order" means the Court's order to be entered with respect to Class Counsel's Fees and Expenses.

1.26 "Final Class Member Settlement Benefits" means the cash payments and Accumulation Value Credits to be provided to Final Class Members from the Settlement Amount in accordance with Sections 2.1 and 2.2.

1.27 "Final Approval Date" means the date on which the Court enters its Order and Judgment finally approving the Settlement and dismissing the Action with prejudice.

1.28 "Final Class Member(s)" means all persons and entities that are included in the Class, excluding any Class Members who validly opt out during the Second Opt-Out Period.

1.29 "Final Class Policy(ies)" means any and all Class Policies, excluding the Opt-Out Policies.

1.30 "Final Settlement Date" when referring to the Order and Judgment means the date when the Judgment is final, meaning: (i) if no appeal from or request for review of the Order and Judgment is filed, the day after the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment; or (ii) if an appeal or request for review is filed, the day after the date on which all appeals or requests for review have been dismissed, or the Order and Judgment is upheld by orders concluding all such appeals or reviews, and is not subject to further review on appeal or by certiorari or otherwise; provided, however, that no order of the Court or modification or reversal on appeal or any other order relating solely to the Class Counsel's Fees and Expenses or Service Award shall constitute grounds for cancellation or termination of this Agreement or affect its terms, or shall affect or delay the date on which the Order and Judgment becomes final.

1.31 "In-Force Policy" means a Final Class Policy that was not a Terminated Policy as of March 31, 2023.

1.32 "In-Force Policyowner" means a Final Class Member who is the owner of an In-Force Policy.

1.33 "Mediator" means Phillips ADR.

1.34 "Mills Supplemental Report" means the Supplemental Expert Report of Robert Mills using data through March 31, 2023, provided by Plaintiff to North American on May 18, 2023.

1.35 "Notice Date" means the date on which the Settlement Administrator first mails the Class Settlement Notice.

1.36 "Notice List" means the list of Class Members to be provided by Class Counsel to the Settlement Administrator. North American shall provide all data in North American's possession that is reasonably necessary for Plaintiff to effectuate mailing of the Class Settlement Notice; however North American shall not be responsible for the contents of the Class Settlement Notice nor any determination of the Final Class Member Settlement Benefits to be allocated to any Final Class Member.

1.37 "Opt-Out Policy(ies)" means any Policy that is validly excluded during the Second Opt-Out Period.

1.38 "Order and Judgment" means the Court's order approving the Settlement and entering final judgment, which as a condition of settlement shall be materially in the form attached hereto as Exhibit D.

1.39 "Original Opt-Out Period" means the 45-day period previously provided to Class Members to opt-out following the issuance of class notice on November 18, 2022, which period expired on January 3, 2023.

1.40 "Owner" or "Owners" means any and all former and current owners of Class Policies.

1.41 "Party" or "Parties" means, individually or collectively, Plaintiff, on behalf of itself and the Class, and Defendant.

1.42 "Plaintiff" means PHT Holding II LLC, individually and as representative of the Class, and any of its predecessor and successor entities.

1.43 "Policy" or "Policies" means all applications, schedules, riders, and other forms specifically made a part of a Class Policy at the time of issue, plus all riders, endorsements, and amendments issued thereafter.

1.44 "Policy Credit Date" means the first monthly deduction day for an In-Force Policy following the Distribution Date or Redistribution Date, as applicable, and it is the date as of which Defendant will apply an Accumulation Value Credit to that In-Force Policy.

1.45 "Post-Settlement Terminated Policies" means In-Force Policies that have lapsed, matured, or been surrendered prior to their respective Policy Credit Dates.

1.46 "Preliminary Approval Date" means the date on which the Court enters an order granting preliminary approval of the proposed Settlement and directing that notice of that Settlement be provided to the Class.

1.47 "Protective Order" means the Stipulated Protective Order entered in the Action on April 9, 2019 (Dkt. 38) and the Stipulated Supplemental Protective Order entered in the Action on April 27, 2020 (Dkt. 67), as applicable.

1.48 "Redistribution Date" means the date on which checks for a second distribution are mailed pursuant to Section 2.2(e).

1.49 "Released Claims" means all Claims that were asserted or could have been asserted in the Action related to the Policies from the beginning of time through the Final Approval Date. Released Claims do not include Excluded Claims. For the avoidance of doubt, this is a historical release only and the release does not release any Claims arising out of COI deductions made after the Final Approval Date.

1.50 "Releasees" means Defendant and the Defendant's past, present, and future parent companies, direct and indirect subsidiaries, affiliates, predecessors, joint ventures, successors and assigns, together with each of the foregoing Releasees' respective past, present, and future officers, directors, shareholders, employees, actuaries, consultants, representatives, and attorneys, including but not limited to, all of the above-referenced Releasees' heirs, administrators, executors, predecessors, successors and assigns, or any of them, and including any person or entity acting on behalf or at the direction of any of them.

1.51 "Releasing Parties" means Plaintiff and all Final Class Members, on their own behalf and on behalf of their respective agents, heirs, relatives, attorneys, consultants, successors, predecessors, payors, trustees, grantors, beneficiaries, principals, subrogees, executors, assignees, and all other persons or entities acting by, through, under, or in concert with any of them or purporting to claim on their behalf. To the extent a Final Class Member is an Owner of both an Excluded Policy and a Final Class Policy, any release by that Final Class Member will only be applicable to Claims related to the Final Class Policy and not to Claims related to the Excluded Policy.

1.52 "Service Award" means the amount of an award approved by the Court to be paid from the Settlement Escrow Account to the Class Representative, in addition to any settlement relief it may be eligible to receive, to compensate the Class Representative for efforts undertaken by it on behalf of the Class.

1.53 "Settlement" means the settlement of the Action on the terms set forth in this Agreement.

1.54 "Settlement Administration Expenses" means all administrative fees and expenses incurred in administering the Settlement, including all expenses related to the Class Settlement

Notice and any other fees or expenses incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Settlement Escrow Account.

1.55 "Settlement Administrator" means JND Legal Administration LLC, which the Court previously approved in its Order Approving Form and Manner of Notice (Dkt. 188 at 2) to administer Class Notice, as the Settlement Administrator. The Settlement Administrator's fees shall be paid from the Settlement Escrow Account.

1.56 "Settlement Amount" means $59 million (and nothing more) in combined cash and Accumulation Value Credits.

1.57 "Settlement Escrow Account" means the escrow account established pursuant to section 2.1(c).

1.58 "Second Opt-Out Period" means the additional 45-day period in which Class Members are given an opportunity to opt out of the Class following the mailing of the Class Settlement Notice.

1.59 "Terminated Policy" means a Final Class Policy as to which North American cannot provide Accumulation Value Credits because it lapsed, matured, or was surrendered on or before March 31, 2023.

1.60 "Terminated Policyowner" means a Final Class Member who is the owner of a Terminated Policy, or their estate.

1.61 "Unknown Claims" means any claims asserted, that might have been asserted, or that hereafter may be asserted, concerning or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged or could have been alleged in the Action with respect to the Released Claims that one or more of the Releasing Parties do not know or suspect to exist in his, her, or its favor.

1.62 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.

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

2. Settlement Relief

In consideration of the releases provided herein, North American agrees as follows:

2.1 Settlement Payments and Accumulation Value Credits

(a) North American shall provide the Settlement Amount to fully and completely resolve all Released Claims by Final Class Members. This Settlement Amount will cover all Accumulation Value Credits to In-force Policyowners, all cash payments to Final Class Members, all Settlement Administration Expenses, and any Service Award and any Class

Counsel's Fees and Expenses awarded by the Court. For purposes of this Agreement, Accumulation Value Credits shall be deducted from the Settlement Amount on a dollar-for-dollar basis to determine the amount of cash to be provided by Defendant for the funding of the Settlement Escrow Account to pay the cash payments to Final Class Members, Settlement Administration Expenses, any Service Award, and any Class Counsel's Fees and Expenses. In connection with this Settlement, North American shall have no obligation to pay or provide to Plaintiff, Class Counsel, other Plaintiff's counsel, any Final Class Member, the Settlement Administrator, or any other person or entity, any payment, credit, or amounts other than the Settlement Amount.

(b) Class Counsel shall be responsible for determining the amount of the Final Class Member Settlement Benefits that are allocable to each In-Force Policy and each Terminated Policy such that the Final Class Member Settlement Benefits provided with respect to each policy are in the same proportion to the amount of alleged damages for that policy set forth in the Mills Supplemental Report.

(c) North American shall fund the Settlement Escrow Account to be established by Class Counsel with $39 million in cash within ten (10) business days following Preliminary Approval of the Settlement. Within ten (10) business days after finalization of the Accounting to be made pursuant to Section 2.2(b) below, (i) if the Accumulation Value Credits to be provided to Final Class Members with respect to policies then in force exceed $20 million, then the Settlement Administrator shall pay to North American from the Settlement Escrow Account an amount of cash corresponding to such excess in order to be paid as Accumulation Value Credits or (ii) if the Accumulation Value Credits to be provided to Final Class Members with respect to policies then in force is less than $20 million, North American will provide additional funding of the Settlement Escrow Account in the amount by which $20 million exceeds the Accumulation Value Credits to be provided to Final Class Members.

(d) The funds deposited to the Settlement Escrow Account pursuant to Section 2.1(c) and any earnings thereon shall be used to pay: (i) all Settlement Administration Expenses; (ii) any Service Award; (iii) any Class Counsel's Fees and Expenses; and (iv) all payments to Terminated Policyowners.

(e) The Settlement Escrow Account, and all earnings thereon, shall be deemed to be in the Court's custody 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.

(f) The funds deposited in the Settlement Escrow Account shall be invested in instruments, accounts, or funds backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof. Such permissible investments include investments in a United States Treasury money market fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation; or (b) secured by instruments backed by the full faith and credit of the United States Government. The Parties and their respective counsel shall have no responsibility for or liability whatsoever with respect to investment decisions made for the Settlement Escrow Account. All risks related to the

investment of the funds deposited in the Settlement Escrow Account shall be borne solely by the Class.

(g) The Parties agree that this is a non-reversionary settlement and that there shall be no reversion of any portion of the funds deposited to the Settlement Escrow Account to North American for it to keep for itself, unless the Order and Judgment is not entered or is overturned on appeal or review.

2.2 Distribution of the Final Class Member Settlement Benefits

(a) After payment of Settlement Administration Expenses and any Class Counsel's Fees and Expenses and any Service Award, the remainder of the Settlement Amount will be the Final Class Member Settlement Benefits distributed among the In-force and Terminated Policies. Such amounts shall be distributed *pro rata* to the Final Class Members in accordance with the alleged damages as set forth in the Mills Supplemental Report, as follows:

(i) In-Force Policyowners will be provided with their *pro rata* share of the Final Class Member Settlement Benefits by an increase to the accumulation value of each In-Force Class Policy owned by each such Final Class Member (an "Accumulation Value Credit").

(ii) Terminated Policyowners will be provided with their *pro rata* share of the Final Class Member Settlement Benefits by a cash payment issued in the form of a check drawn on the Settlement Escrow Account.

(b) Within thirty (30) calendar days after the Final Settlement Date, Class Counsel shall provide Defendant's counsel the Accounting. The form of the Accounting shall conform in all material respects to the examples provided by Class Counsel to Defendant's Counsel on July 7, 2023, and July 15, 2023. Any dispute about such Accounting shall be submitted first to the Mediator for resolution within fourteen (14) calendar days after Counsel provides the Accounting, and then, absent a stipulated resolution, the Court.

(c) Within thirty (30) calendar days of Defendant's counsel's receipt of the Accounting or, in the event of a dispute, within ten (10) calendar days after resolution of any disputes related to the Accounting, (i) the Settlement Administrator will notify the Parties of the Distribution Date, which shall be not less than seven (7) nor more than ten (10) calendar days following such notification. On the Distribution Date, (i) the Settlement Administrator will send for delivery to each Final Class Member with a Terminated Policy by U.S. mail, first-class postage prepaid, a settlement check in the amount of the share of the Final Class Member Settlement Benefits to which he/she/it is entitled, and (ii) North American will commence applying Accumulation Value Credits for each In-Force Policy that remains in-force and will make such credits effective for each such policy as of the Policy Credit Date. Accumulation Value Credits will be automatically made and settlement checks will be automatically mailed without any proof of claim or further action on the part of the Final Class Members. Settlement checks sent pursuant to this provision will expire 180 days after issuance. Within thirty (30)

calendar days after applying the Accumulation Value Credits to the In-Force Policies with the latest Policy Credit Date, North American will certify to Class Counsel that it has complied with its obligation to apply such Accumulation Value Credits. North American will provide a certification on the same timeline following any redistribution as described in Section 2.2(e) below.

(d) For any Post-Settlement Terminated Policies, North American shall (i) transfer, within forty-five (45) calendar days of the Distribution Date, via wire to the Settlement Escrow Account, on a dollar-for-dollar basis the total amount of the Accumulation Value Credits that would have been provided with respect to Post-Settlement Terminated Policies if they had remained in-force on their Policy Credit Dates, and (ii) provide the Settlement Administrator and Class Counsel with a list of all Post-Settlement Terminated Policies and the Accumulation Value Credits they would have received if their policies had remained in-force on their Policy Credit Dates. The Class Administrator shall then, within thirty (30) calendar days of receipt, send for delivery by U.S. mail, first-class postage prepaid, a settlement check for such amounts to each Final Class Member with a Post-Settlement Terminated Policy.

(e) Within nine (9) months after the Distribution Date, the Settlement Administrator shall determine the amount of funds in the Settlement Escrow Account equal to the amount of any checks sent pursuant to Section (c)(i) that have not been cashed, and that amount, less any Settlement Administration Expenses incurred or to be incurred in complying with this paragraph, shall be redistributed on a *pro rata* basis to Final Class Members who previously cashed the checks they received or who received an Accumulation Value Credit, to the extent feasible and practical in light of the expenses of administering such subsequent payments. No later than fourteen (14) calendar days before the Redistribution Date, Defendant shall provide to Class Counsel and the Settlement Administrator a list of the Final Class Policies that are then in-force. Policyowners of those in-force policies will be provided with their *pro rata* share of the redistribution by an Accumulation Value Credit on the first monthly deduction day for that policy following the Redistribution Date, and policyowners of policies that are not in-force will be provided with their *pro rata* share of the redistribution by check. The Settlement Administrator shall transfer to Defendant, via wire from the Settlement Escrow Account, on a dollar-for-dollar basis the total amount necessary to fund the Accumulation Value Credits for the redistribution. To the extent Defendant is unable to provide an Accumulation Value Credit because a policy terminates prior to that policy's first monthly deduction day following the Redistribution Date, Defendant shall transfer to the Settlement Escrow Account, via wire on a dollar-for-dollar basis the amount necessary to send that policyowner a redistribution check. A redistribution will be deemed infeasible or impractical if, in the Settlement Administrator's judgment, the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.

(f) The Parties and their respective counsel shall not be responsible for any claims, damages, liabilities, losses, suits, or actions arising out of, or relating to the distributions made by the Settlement Administrator, including determinations of ownership of a Policy.

2.3 Representation and Warranty of Transferees of Policies.

Each Final Class Member who or which obtained its interest in any Class Policy subsequent to the issuance of the policy by North American represents and warrants that it obtained any and all claims with respect to such Policy.

2.4 Defendant's Covenant Not to Sue/Assert as a Defense.

Defendant shall forever be barred from taking and shall not take any legal action (including asserting as an affirmative defense or counterclaim) that seeks to void, rescind, cancel, have declared void, or seek to deny coverage under or deny a death claim for any Final Class Member on a Classic Term UL policy because of an alleged lack of valid insurable interest or as stranger originated life insurance ("STOLI") under any applicable law or equitable principles, except as set forth below. The covenant set forth in this paragraph is solely prospective, and it does not apply to any actions taken by Defendant in the past. Nothing contained in this Agreement shall otherwise restrict Defendant 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 Defendant; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age, gender, or smoking status of the insured or with respect to any other misrepresentation allegedly made on or related to the application for, or otherwise made in applying for, an insurance policy; (iii) in the event any Final Class Member initiates after the Final Approval Date a legal proceeding concerning any Released Claim, asserting any affirmative defenses or counterclaim in such litigation; or (iv) complying with any court order, law or regulatory requirements or requests.

3. Releases and Waivers

3.1 Effective as of the Final Settlement Date, the Releasing Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, fully, finally, and forever release and discharge the Releasees of and from all Released Claims.

3.2 The Releasing Parties expressly agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Releasees asserting Released Claims.

3.3 (a) With respect to any Released Claims under this Agreement, Plaintiff and every Final Class Member acknowledge that it is possible that unknown losses or claims exist or might exist and that present losses may have been underestimated in amount. Plaintiff and every Final Class Member are deemed to acknowledge and understand that they are familiar with principles of law such as and including Section 1542 of the Civil Code of the State of California, 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.

Plaintiff, on behalf of itself and as representative of the Final Class Members, and each Final Class Member are hereby deemed upon the Final Settlement Date to knowingly and voluntarily waive 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. The Parties expressly acknowledge and each other Releasing Party and Released Party by operation of law shall be deemed to have acknowledged that the inclusion of Unknown Claims among Released Claims was separately bargained for and a material element of the Settlement.

(b) Plaintiff acknowledges that Class Counsel have advised it and that it is familiar with the provisions of Section 1542 of the California Civil Code, as well as the provision of any and all comparable or similar statutes or principles of law of any other state or federal jurisdiction that might otherwise be deemed applicable, and that, being aware of Section 1542 and other similar statutes or principles of law, Plaintiff expressly waives any and all rights and benefits conferred by Section 1542 or other similar statutes or principles of law on behalf of itself and on behalf of all Final Class Members. Plaintiff, on behalf of itself and on behalf of all Final Class Members, admits to full knowledge and understanding of the consequences and effect of this waiver.

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

3.5 The scope of the Released Claims or Releasees shall not be impaired in any way by the fact, if it arises, that any Final Class Member does not actually receive any portion of the benefits to be provided to such Final Class Member under this Agreement.

3.6 Notwithstanding the foregoing, for purposes of clarification only, this Agreement shall not release Defendant from paying any future death benefits that may be owed.

4. Notice to Class Members

4.1 Subject to the requirements of any orders entered by the Court, no later than 21 calendar days after the Preliminary Approval Date, the Settlement Administrator shall mail a short-form Class Settlement Notice in the form attached hereto as Exhibit B by first-class mail to

the addresses on the Notice List. The Parties agree and understand that if more time is needed to prepare the Notice List and mail the Class Settlement Notice, they will agree on another date for mailing the Class Settlement Notice, unless otherwise ordered by the Court.

4.2 The Class Settlement Notice shall advise Class Members of their right to opt out of the Class during the Second Opt-Out Period and the deadline to do so.

4.3 The mailing of a Class Settlement Notice to any person or entity that is not in the Class shall not render such person or entity a part of the Class or otherwise entitle such person to participate in this Settlement.

4.4 Within 5 business days after the Preliminary Approval Date, Class Counsel will deliver the Notice List to the Settlement Administrator. The Parties agree and understand that if more time is needed to prepare the Notice List, they will agree on another date for delivering the Notice List to the Settlement Administrator, unless otherwise ordered by the Court. Defendant further agrees to provide all other data in Defendant's possession that is reasonably necessary for Class Counsel to effectuate the distribution of Class Settlement Notice, allocation of the Settlement Amount, and cash payments to the Final Class Members in accordance with the other provisions of this Settlement Agreement.

4.5 The Settlement Administrator will run an update of the last known addresses provided by Defendant and Class Counsel through the National Change of Address database before initially mailing the Class Settlement Notice. If a Class Settlement Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will endeavor to: (i) re-mail any Class Settlement Notice so returned with a forwarding address; and (ii) make reasonable efforts to attempt to find an address for any returned Class Settlement Notice that does not include a forwarding address. The Settlement Administrator will endeavor to re-mail the Class Settlement Notice to every person and entity in the Notice List for which it obtains an updated address. If any Class Member is known to be deceased, the Class Settlement Notice will be addressed to the deceased Class Member's last known address and "To the Estate of [the deceased Class Member]."

4.6 The Settlement Administrator will establish, maintain, and update a Class Website to provide relevant information to Class Members regarding the Settlement, including copies of the Class Settlement Notice and certain non-confidential court filings and orders related to the Settlement.

5. Responses to Class Settlement Notice

5.1 Any Class Member that wishes to be excluded from the 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 Notice Date. A list reflecting all valid requests for exclusion shall be filed with the Court, by Class Counsel, prior to the Fairness Hearing.

5.2 Exclusion requests must: (i) clearly state that the Class Member desires to be excluded from the Class for the Settlement; (ii) must identify by policy number the Policy(ies) to be excluded; and (iii) 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.

5.3 If the Settlement Administrator determines that a person or entity submitting a request for exclusion with respect to a Class Policy is not the same person or entity reflected in the Notice List, then the Settlement Administrator shall require the person or entity submitting the request for exclusion to provide proof of ownership of the Policy or Policies in question.

5.4 To the extent there are conflicting elections of Owners as it relates to a Class Policy, including any election that purports to split or divide exclusion from or participation in the Class with respect to the same Class Policy, or to the extent the Parties or their respective counsel have concerns regarding the ownership rights of Class Members, the Court shall resolve all disputes or issues regarding ownership of a policy or exclusion of a Class Policy. Any disputes relating to conflicting elections or challenges to ownership of a Class Policy must be brought to the attention of the Court within 14 calendar days after the close of the Second Opt-Out Period.

5.5 The Settlement Administrator shall maintain the post office box to which exclusion requests are required to be sent, monitor exclusion requests for accuracy and completeness, request any needed clarifications, and provide copies of all such materials to Class Counsel and Defendant's Counsel.

5.6 Any Class Member that does not file a timely written request for exclusion in accordance with this Section shall be bound by all subsequent proceedings, orders, and judgments in this Action.

5.7 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 Settlement 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 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 Class Member intends to appear at the Fairness Hearing; and (7) the signature of the Class Member or his/her counsel. If an objecting 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 Class Member who will appear at the Fairness Hearing. Unless otherwise ordered by the Court, 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 Settlement Notice shall advise Class Members of their right to object and the manner required to do so.

6. Fees, Expenses, and Service Award

6.1 Class Counsel will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, capped at 33 1/3% of the Settlement Amount (*i.e.*, will not exceed $19,666,666.67). Class Counsel may also move for

reimbursement of expenses incurred by Class Counsel in prosecuting this Action; however, Class Counsel will not seek reimbursement of its expenses in excess of $1,700,000.00 minus Settlement Administration Expenses. Any award of fees or expenses to Class Counsel and all Settlement Administration Costs shall be paid exclusively from the Settlement Escrow Account. North American agrees not to oppose Plaintiff's motion for Class Counsel's Fees and Expenses to the extent Plaintiff's request does not exceed the amounts set forth above.

6.2 Class Counsel's Fees and Expenses, as awarded by the Court, may be paid from the Settlement Escrow Account, at Plaintiff's option, immediately upon entry of the Fees and Expenses Order; provided, however, that if Class Counsel seeks to draw down any portion of Class Counsel's Fees and Expenses prior to the Fees and Expenses Order becoming final shall secure the repayment of the amount drawn down (plus one year of interest at the rate of interest published by the Wall Street Journal for one-year U.S. Treasury Bills) by a letter of credit or letters of credit on terms and by banks acceptable to Defendant. The Fees and Expenses Order becomes final when the time for appeal or to seek permission to appeal from the Fees and Expenses Order has expired or, if appealed, has been affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. In order to receive distribution of funds prior to the Fees and Expenses Order becoming final, Class Counsel shall be required to provide the Settlement Administrator or the escrow agent or administrator of the Settlement Escrow Account the approved letter(s) of credit in the amount of its requested draw-down (plus one year of interest at the rate of interest published by the Wall Street Journal for one-year U.S. Treasury Bills), and Class Counsel shall be required to reimburse the Settlement Escrow Account within 30 business days all or the pertinent portion of the amount drawn-down with interest, calculated as the rate of interest published in the Wall Street Journal for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the Fees and Expenses Order is reduced or overturned on appeal. The Settlement Administrator, escrow agent, or administrator of the Settlement Escrow Account may present the letter(s) of credit in the event Class Counsel fails to honor the obligation to repay the amount withdrawn.

6.3 Class Counsel will, in its sole discretion, allocate and distribute the fees and expenses that they receive pursuant to this Settlement among Class Counsel and any and all other counsel, if applicable.

6.4 Plaintiff will move for a Service Award to be paid from the Settlement Escrow Account in the amount up to $25,000. The purpose of such award shall be to compensate Plaintiff for efforts undertaken on behalf of the Class as the Class Representative. North American will not oppose Plaintiff's motion. The Service Award shall be made to Plaintiff in addition to, and shall not diminish or prejudice in any way, any settlement relief which it may be eligible to receive. All sums paid to Plaintiff pursuant to this paragraph shall be paid from the Settlement Escrow Account.

6.5 After Preliminary Approval of the Settlement, all Settlement Administration Expenses may be paid from the Settlement Escrow Account to the Settlement Administrator. The first $50,000 of payments from the Settlement Escrow Account to the Settlement Administrator shall be on a nonrefundable basis.

6.6 The Parties shall not be liable or obligated to pay any fees, expenses, 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, by reason of the settlement. Each Party shall be responsible for its own expenses, including without limitation amounts owed to experts and other consultants retained by such party, except that Class Counsel may apply for an award of expenses and costs as described in this Section.

6.7 The Parties agree that the Settlement is not conditioned on the Court's approval of the Service Award or Class Counsel's Fees and Expenses.

7. Tax Reporting and No Prevailing Party

7.1 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 Defendant 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, and has no responsibility to offer – and expressly disclaims – any tax advice to any person or entity in respect of this Settlement.

7.2 All taxes resulting from any tax liabilities of the Settlement Escrow Account shall be paid solely out of the Settlement Escrow Fund.

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

8. Preliminary and Final Approval

8.1 Plaintiff will file a motion seeking preliminary approval of the Settlement no later than July 17, 2023.

8.2 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. Notwithstanding anything in this Agreement, if the total percentage of Class Members (as measured either by count of policies or percentage of benefits to be provided) who submit timely and valid requests for exclusion from the Class during the Second Opt-Out Period, or on whose behalf timely and valid requests for such exclusion are submitted during the Second Opt-Out Period, exceeds ten percent (10%), North American shall have the option, but not the obligation, to terminate this Agreement no later than ten (10) business days after the later of (i) the expiration of the Second Opt-Out Period, or (ii) North American's receipt of information sufficient to identify which Class Members have timely and validly opted out of the Class.

8.3 Subject to Court approval, Class Counsel agrees to file a Motion for Plaintiff's Service Award and Class Counsel's Fees and Expenses no later than 14 days before the Second Opt-Out Period and objection deadline expires. Class Counsel further agrees to file a Motion for Final Approval of the Settlement. The Motion for Final Approval of the Settlement will include

a proposed Order and Judgment materially in the form set forth in Exhibit D hereto, subject to modification by agreement of the Parties.

8.4 Within ten (10) calendar days following the filing of this Agreement with the Court, Defendant 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.

9. Other Provisions

9.1 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.

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

9.3 No person or entity shall have any claim against Class Counsel, the Settlement Administrator, Defendant's counsel or any of the Releasees with respect to actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

9.4 Defendant specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the Claims asserted or that could have been asserted in the Action and makes no concessions or admissions of liability or misconduct of any sort. Neither this Agreement nor the fact or terms of 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, concession, presumption, proof or evidence of, the validity of any Claims, or of any fault, wrongdoing or liability of the Releasees, or any of them or of any damages to the Class or of any infirmity of any of Defendant's defenses; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault, liability, misconduct or omission of any kind whatsoever of the Releasees, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Nothing in this paragraph or Agreement shall prevent Defendant and/or any of the Releasees from using this Agreement and Settlement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim using 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.

9.5 North American represents that it has not entered into any prior settlement agreements regarding the claims at issue in the Action with any Final Class Member.

9.6 If this Agreement or the Settlement fails to be approved, fails to become effective, or 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 of June 17, 2023, as if this Agreement had never been negotiated or executed, with the right to assert in the Action any argument or defense that was available to it at that time, except that each Party shall bear one half of the Settlement Administration Expenses and all interest earned on the funds in the Settlement Escrow Account shall be paid to North American.

9.7 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.

9.8 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 Protective Order shall apply to any information necessary to effectuate the terms of this Agreement. Within 30 days of the Final Settlement Date, Plaintiff shall confirm that it has returned to Defendant or destroyed all Confidential Information excluding any Confidential Information reasonably necessary to effectuate the terms of this Agreement and distribution of funds to Final Class Members. Notwithstanding Plaintiff's agreement to return or destroy Confidential Information, Class Counsel may retain: (i) attorney work product; (ii) email communications between the Parties; and (iii) all documents filed with the Court including those filed under seal. Any retained Confidential Information shall continue to be protected under the Protective Order.

9.9 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 Class Members, including written or publication notice, unless ordered by the Court. Plaintiff and Class Counsel agree not to seek such additional notice. Class Counsel shall provide updates on any amendments or modifications made to this Agreement on the Class Website as described in Section 4.6.

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

9.11 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, electronic signatures on PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as an original manual signature. A complete set of executed counterparts shall be filed with the Court.

9.12 The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties hereto, but this Agreement is not designed to and does not create any third-party beneficiaries either express or implied, except as to the Class Members.

9.13 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 either 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 of the Parties and their 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.

9.14 Other than necessary disclosures made to the Court or the Settlement Administrator or the Parties' retained experts, 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.

9.15 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 the Parties' counsel, accountants or insurers, and any 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 referring to the existence of such information in connection with the Settlement of the Action.

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

9.17 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.

9.18 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 Defendant, then to:

William H. Higgins
ALSTON & BIRD, LLP
1120 South Tryon Street, Suite 300
Charlotte, NC 28203-6818
william.higgins@alston.com

Andrew J. Tuck
ALSTON & BIRD, LLP
1201 W. Peachtree St., Suite 4900
Atlanta, GA 30309-3424
andy.tuck@alston.com

(b) If to Plaintiff, then to:

Steven Sklaver
Krysta Pachman
Glenn Bridgman
Nicholas Spear
Halley Josephs
SUSMAN GODFREY LLP
1900 Avenue of the Stars
Los Angeles, California 90067
ssklaver@susmangodfrey.com
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nspear@susmangodfrey.com
hjosephs@susmangodfrey.com

Seth D. Ard
Ryan Kirkpatrick
SUSMAN GODFREY LLP
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

9.19 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.

9.20 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 such 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.

Stipulated and agreed to by:

PHT Holding II LLC, on behalf of itself and as representative of the Class Members

DocuSigned by:
John McFarland
4073A245B6DA498...

By: John McFarland

Title: Manager

Date: 7/17/2023

North American Company for Life and Health Insurance

By: Brian Hansen

Title: General Counsel, SVP & Secretary

Date: July 17, 2023

APPROVED ONLY AS TO FORM

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Krysta Pachman
Glenn Bridgman
Nicholas Spear
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Class Counsel and Counsel for Plaintiff

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1120 South Tryon Street, Suite 300
Charlotte, NC 28203-6818
william.higgins@alston.com

Counsel for Defendant North American Company for Life and Health Insurance

EXHIBIT A

EXHIBIT: CTUL 1 AND CTUL 2 PLAN CODES

Product Name	Plan Code	Policy Form	Short Name
Classic Term UL 1	181100	LS35A	LTPR
Classic Term UL 1	181101	LS35A	LTPRUS
Classic Term UL 1	181104	LS35E	LTPRUS89
Classic Term UL 1	181116	LS35A	LTP95
Classic Term UL 1	182100	LS35A	LTNS
Classic Term UL 1	182101	LS35A	LTNSUS
Classic Term UL 1	182102	LS35A	THLTNS
Classic Term UL 1	182103	LS35A	THLTNSUS
Classic Term UL 1	182104	LS35E	LTNSUS89
Classic Term UL 1	182116	LS35A	LTN95
Classic Term UL 1	183100	LS35A	LTSM
Classic Term UL 1	183101	LS35A	LTSMUS
Classic Term UL 1	183102	LS35A	THLTSM
Classic Term UL 1	183103	LS35A	THLTSMUS
Classic Term UL 1	183104	LS35A	LTSMUS89
Classic Term UL 1	183116	LS35A	LTS95
Classic Term UL 2	181105	LS58B	LTPR90
Classic Term UL 2	181106	LS58B	LTPRUS90
Classic Term UL 2	181108	LS58B	LTPRMASS
Classic Term UL 2	181109	LS58B	LTPR92
Classic Term UL 2	181111	LS58B	LTPR93
Classic Term UL 2	181112	LS58B	LTPRU93
Classic Term UL 2	181114	LS58B	LTP93
Classic Term UL 2	181115	LS58B	LTPU93
Classic Term UL 2	182105	LS58B	LTNS90
Classic Term UL 2	182106	LS58B	LTNSUS90
Classic Term UL 2	182108	LS58B	LTNSMASS
Classic Term UL 2	182109	LS58B	LTNS92
Classic Term UL 2	182111	LS58B	LTNS93
Classic Term UL 2	182112	LS58B	LTNSU93
Classic Term UL 2	182114	LS58B	LTN93
Classic Term UL 2	182115	LS58B	LTNU93
Classic Term UL 2	183105	LS58B	LTSM90
Classic Term UL 2	183106	LS58B	LTSMUS90
Classic Term UL 2	183108	LS58B	LTSMMASS
Classic Term UL 2	183109	LS58B	LTSM92
Classic Term UL 2	183111	LS58B	LTSM93
Classic Term UL 2	183112	LS58B	LTSMU93
Classic Term UL 2	183114	LS58B	LTS93
Classic Term UL 2	183115	LS58B	LTSU93

EXHIBIT B

COURT AUTHORIZED
LEGAL NOTICE

If you own or owned a Classic Term UL I or Classic Term UL II life insurance policy issued or insured by North American Company for Life and Health Insurance or its predecessors, you may be affected by a class action settlement

www.coiclassaction-na.com

North American Company COI Settlement
c/o JND Legal Administration
P.O. Box 11037
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»

A proposed settlement has been reached in a class action lawsuit called *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (S.D. Iowa) (the "Settlement"). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at www.coiclassaction-na.com.

What is this about? PHT Holding II LLC ("Plaintiff") alleges that North American Company for Life and Health Insurance ("Defendant") breached the contracts with Classic Term UL I and Classic Term UL II policyowners by imposing cost of insurance ("COI") rates that were in violation of the policy provisions. Defendant denies Plaintiff's claims. The Court has not decided who is right or wrong. Instead, both sides have agreed to the Settlement to avoid risks, costs, and delays of further litigation.

Who is affected? The Class consists of all current and former owners of Classic Term UL I or Classic Term UL II issued or insured by Defendant, or its predecessors, during the Class Period. The Class Period is defined in the FAQ Section at www.coiclassaction-na.com. Excluded from the Class are Defendant, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; any Judge to whom this case is assigned, and his or her immediate family; and any policyowner that validly opted-out in the Original Opt-Out Period which expired on January 3, 2023. Records indicate you may be a Class Member. This Notice summarizes your rights and options.

What does the Settlement provide? Defendant will provide a total settlement amount of $59 million to be used for cash payments for terminated policies, account credits for active policies, settlement administration costs, Plaintiff's attorneys' fees and expenses, and a Service Award for Plaintiff (up to $25,000). Class Counsel will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed $21,366,666.67. The benefits will be distributed to Class Members on a pro-rata basis calculated by dividing that Class Member's alleged COI overcharges by the total alleged overcharge damages allegedly incurred by the Class Members. More details are in a document called the Settlement Agreement, which is available at www.coiclassaction-na.com.

What are my options? You can do nothing, ask to be excluded, or object to the Settlement.

Do nothing. Remain in the Class and automatically receive a credit on your active policy(ies) or a payment in the mail if your policy(ies) is terminated at the time of distribution. You will be bound by the Settlement, and you will give up your right to sue Defendant for claims that were or could have been alleged in this case.

Ask to be Excluded ("Opt Out"). Remove yourself from the Class and get no benefits from the Settlement. Keep your right to sue Defendant, at your own expense, for the claims in this case. If you previously opted out of this Action, you do not need to opt out again.

Object. If you do not opt out, you may object or 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.

The deadline to opt out or object is **[date, 2023]**. For more details about your rights and options and how to opt out or object, go to www.coiclassaction-na.com.

What happens next? The Court will hold a Fairness Hearing on [**date, 2023 at XX CT**] 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.

How can I get more information? Go to www.coiclassaction-na.com, call toll-free 1-844-633-0709, or write to North American Company COI Settlement, c/o JND Legal Administration, P.O. Box 11037, Seattle, WA 98111.

Carefully separate this Address Change Form at the perforation

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.

PLACE
STAMP
HERE

North American Company COI Settlement
c/o JND Legal Administration
P.O. Box 11037
Seattle, WA 98111

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

NOTICE OF CLASS ACTION SETTLEMENT

If you own or owned a Classic Term UL I or Classic Term UL II life insurance policy issued or insured by North American Company for Life and Health Insurance or its predecessors, 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 certified class action lawsuit called *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (the "Settlement").

- PHT Holding II LLC ("Plaintiff") alleges that North American Company for Life and Health Insurance ("Defendant") imposed unlawful cost of insurance ("COI") charges on Classic Term UL I and II policyowners. Plaintiff asserts that North American's failure to lower COI rates when its expectations as to future mortality experience allegedly improved violated the terms of the policyowners' contracts, and that Plaintiff and members of the Class have been damaged as a result. Defendant denies Plaintiff's claims. Defendant asserts multiple defenses, including that it had no contractual obligation to decrease COI rates. It also asserts that future mortality improvement already was assumed when the COI rates were set at the inception of the contracts. The Court has not decided who is right or wrong. Instead, both sides have agreed to the Settlement to avoid risks, costs, and delays of further litigation.

- If the Court approves the Settlement, Defendant will make available a total settlement amount of $59 million in combined cash payments and Accumulation Value Credits. This amount will be used to make cash payments to terminated policyholders and policy account credits for active policyholders, and to pay settlement administration costs, any Class Counsel's fees and expenses, and any Service Award to the Plaintiff, as further detailed in Question 18.

- You are a Class Member if you own or owned a Classic Term UL I or Classic Term UL II life insurance policy issued or insured by North American Company for Life and Health Insurance, or its predecessors, during the Class Period outlined in Question 7. Excluded from the Class are Defendant, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; and the Judge to whom this case is assigned and her immediate family.

- 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 an Accumulation Value Credit on active policy(ies) or a cash payment in the mail if your policy(ies) is terminated at the time of distribution • Be bound by the Settlement • Give up your right to sue Defendant for the claims that were or could have been alleged in this case through the Final Approval Date.	
Ask to be Excluded **("Opt Out")**	• Remove yourself from the Class • Get no benefits from the Settlement • Keep your right to sue Defendant, at your own expense, for the claims in this case **If you previously opted out of this Action, you do not need to opt out again**	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.coiclassaction-na.com regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

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.

Chief Judge Stephanie M. Rose of the United States District Court for the Southern District of Iowa (the "Court") is in charge of this case. The case is called *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (S.D. Iowa). PHT Holding II LLC is the Plaintiff in this case. The company being sued, North American Company for Life and Health Insurance, is called the Defendant.

2. What is this lawsuit about?

The class action lawsuit alleges that Defendant breached its contracts with certain policyowners. Plaintiff's policy states, in part:

> **Cost of Insurance.** The cost of insurance for the Insured is determined on a monthly basis. Such cost is calculated as (1) times (2), where: (1) is the cost of insurance rate as described in the Cost of Insurance Rates section. (2) is the net amount at risk, as defined in the Changing Death Benefit Options provision. . . .
>
> **Cost of Insurance Rates.** The monthly cost of insurance rate is based on the sex, attained age, and rating class of the Insured. Policy duration is also a factor in determining the monthly cost of insurance rates. Attained age for the initial Specified Amount means age nearest birthday on the prior policy anniversary. Attained age for any increase in Specified Amount or increase in net amount at risk applied for when changing Death Benefit options means age nearest birthday on the prior anniversary of the date such increase became effective. Monthly cost of insurance rates are determined by us, based on our expectations as to future mortality experience. Any change in cost of insurance rates applies to all individuals of the same class as the insured. Under no circumstances are cost of insurance rates for insureds in that standard risk class greater than those shown in the Table of Guaranteed Maximum Insurance Rates. Age nearest birthday is used in determining such guaranteed maximum rates.

Plaintiff alleges that Defendant breached these contractual provisions because Defendant failed to lower its cost of insurance rates when its expectations as to future mortality experience allegedly improved, and that Plaintiff and members of the Class have been damaged as a result. Defendant denies Plaintiff's claims and asserts multiple defenses, including that it had no contractual obligation to decrease COI rates and that the COI rates are and have always been in compliance with the contract. It also asserts that future mortality improvement already was assumed when the COI rates were set at the inception of the contracts.

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

Classic Term UL I or Classic Term UL II life insurance policies issued or insured by North American Company for Life and Health Insurance, or its predecessors, during the Class Period are affected by the lawsuit. The Class Period is defined in Question 7 of this Notice.

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 represents other eligible policyowners (current and

former) and together they are called the "Class" or "Class Members." Plaintiff will serve as the Class Representative. 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 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?

The Court decided that the breach of contract claim against Defendant in this lawsuit can proceed as a class action because 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
- The Class is ascertainable because it is defined by identifiable objective criteria.

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

6. Why is there a Settlement?

Defendant denies any and all liability or wrongdoing of any sort with regard to Plaintiff's allegations. The Court has not decided in favor of Plaintiff or Defendant. Instead, the parties have agreed to the Settlement to avoid the risks, costs, and delays of further litigation. Plaintiff and Class Counsel think the Settlement is in the best interests of the Class and is fair, reasonable, and adequate.

THE SETTLEMENT CLASS

7. Am I part of the Class?

The Class consists of all current and former owners of Classic Term UL I or Classic Term UL II life insurance policies issued or insured by North American Company for Life and Health Insurance, or its predecessors, during the Class Period.

The "Class Period" starts on the following dates:

Start Date of Class Period	Classic Term UL I or Classic Term UL II Issue State
Oct. 30, 2008	Illinois, Indiana, Iowa, Kentucky, Louisiana, Rhode Island, West Virginia, and Wyoming
Oct. 30, 2010	Montana and Ohio
Oct. 30, 2012	Alabama, Arizona, Connecticut, Georgia, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, Washington, and Wisconsin
Oct. 30, 2013	Arkansas, Florida, Idaho, Kansas, Missouri, Nebraska, Oklahoma, and Virginia
Oct. 30, 2014	California, Pennsylvania, and Texas
Oct. 30, 2015	Alaska, Colorado, Delaware, Maryland, Mississippi, New Hampshire, North Carolina, South Carolina, and Washington, D.C.

8. Are there exceptions to being included?

Yes. Excluded from the Class are Defendant North American Company for Life and Health Insurance, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; any Judge to whom this case is assigned, and his or her immediate family; and any policyowner who validly opted out during the Original Opt-Out Period, which expired on January 3, 2023.

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

If you are still not sure whether you are a Class Member, please visit www.coiclassaction-na.com, call the Settlement Administrator toll-free at 1-844-633-0709, or write to: North American Company COI Settlement Administrator, c/o JND Legal Administration, P.O. Box 11037, Seattle, WA 98111.

WHAT SETTLEMENT CLASS MEMBERS GET

10. What does the Settlement provide?

Defendant will provide a total of $59 million in combined cash payments and Accumulation Value Credits to the Class Members, Class Counsel, the Class Representative, and the Settlement Administrator. After payment of settlement administration costs, Class Counsel's attorneys' fees and expenses, and any service award to the Class Representative (*see* Question 18 below), the Settlement Administrator will distribute the remaining amounts to Class Members on a pro-rata basis calculated by dividing that Class Member's alleged COI overcharges by the total alleged overcharge damages incurred by the Class Members. Class Members with In-Force Policies will receive Accumulation Value Credits and Class Members with Terminated Policies will receive cash payments by check. No portion of the Settlement Fund will be returned to Defendant to keep for itself.

More details are in a document called the Settlement Agreement, which is available at www.coiclassaction-na.com.

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

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant involving any claims that were 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 release in the Settlement is a historical release only and does not release any claims arising out of COI deductions made after the Final Approval Date. The Settlement Agreement is available at www.coiclassaction-na.com.

HOW TO GET A PAYMENT

12. How can I get a payment?

If you are entitled to a payment, you will automatically receive it. No claims need to be filed or submitted.

13. When will I get my payment?

Payments will be distributed by mail to Class Members with Terminated Policies and Accumulation Value Credits will be credited to Class Members with In-Force Policies 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 Defendant 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.

If you previously opted out of this class action, you do not need to opt out again.

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 Class;
- The case name (*PHT Holding II LLC v. North American Company for Life and Health Insurance*);
- The Classic Term UL I or Classic Term UL II insurance policy number(s) to be excluded; and
- Your signature.

You must mail your exclusion request **postmarked by Month x, 2023** to:

North American COI Settlement Administrator
c/o JND Legal Administration
P.O. Box 11037
Seattle, WA 98111

IF YOU DO NOT EXCLUDE YOURSELF BY MONTH X, 2023, YOU WILL REMAIN PART OF THE CLASS AND BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT.

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

No. Unless you exclude yourself, you give up any right to sue Defendant 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
Krysta Kauble Pachman
Glenn C. Bridgman
Nicholas N. Spear
Halley W. Josephs
SUSMAN GODFREY LLP
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
ssklaver@susmangodfrey.com
kpachman@susmangodfrey.com
gbridgman@susmangodfrey.com
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hjosephs@susmangodfrey.com
Telephone: 310-789-3100

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

18. How will the lawyers be paid?

Class Counsel will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed $21,366,666.67. Class Counsel will also seek a Service Award up to $25,000 for Plaintiff for its service as the representative on behalf of the Class. All such payments will be paid from the $59 million settlement amount made available by Defendant. 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 Class, you do not need to hire your own lawyer to pursue the claims against Defendant. Class Counsel is working on behalf of the 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 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. Class Members who wish to object to any term of the Settlement must do so, in writing, by filing a written objection with the Court, and serving copies on Class Counsel and Counsel for Defendant. The written objection must include:

- The case name and number (*PHT Holding II LLC v. North American Company for Life and Health Insurance,* Case No. 4:18-cv-00368-SMR-HCA)
- Your full name, address, telephone number, and email address (if any);
- Your Classic Term UL I or Classic Term UL II insurance policy number(s);
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A statement of whether you intend to appear at the Fairness Hearing; and
- Your or your counsel's signature.

If you intend to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Your objection, along with any supporting material you wish to submit, must be filed with the Clerk of the Court, with a copy served on Class Counsel and Counsel for Defendant by **Month x, 2023** at the following addresses:

<table>
<tr><th colspan="2">Clerk of the Court</th></tr>
<tr><td colspan="2">Clerk of Court
U.S. District Court
Southern District of Iowa
123 East Walnut Street
Suite 300
Des Moines, IA 50309</td></tr>
<tr><th>Class Counsel</th><th>Counsel for Defendant</th></tr>
<tr><td>Steven G. Sklaver
Seth Ard
Ryan Kirkpatrick
Krysta Kauble Pachman
Glenn C. Bridgman
Nicholas N. Spear
Halley W. Josephs
SUSMAN GODFREY LLP
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
ssklaver@susmangodfrey.com
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
kpachman@susmangodfrey.com
gbridgman@susmangodfrey.com
nspear@susmangodfrey.com
hjosephs@susmangodfrey.com</td><td>William H. Higgins
Andrew J. Tuck
Tania Rice
ALSTON & BIRD, LLP
1201 W. Peachtree St., Suite 4900
Atlanta, GA 30309-3424
william.higgins@alston.com
andy.tuck@alston.com
tania.rice@alston.com</td></tr>
</table>

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 p.m. CT 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.

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 any person who 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 Defendant about the claims being released in this Settlement before the Final Approval Date, 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.coiclassaction-na.com. You can also call the Settlement Administrator toll-free at 1-844-633-0709, or write to:

North American Company COI Settlement Administrator
c/o JND Legal Administration
P.O. Box 11037
Seattle, WA 98111

PLEASE DO NOT CONTACT THE COURT

EXHIBIT C

Class Period By Issue State

Issue State/Territory	Start of Class Period
Illinois, Indiana, Iowa, Kentucky, Louisiana, Rhode Island, West Virginia, and Wyoming	10/30/2008
Montana and Ohio	10/30/2010
Alabama, Arizona, Connecticut, Georgia, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, Washington, and Wisconsin	10/30/2012
Arkansas, Florida, Idaho, Kansas, Missouri, Nebraska, Oklahoma, and Virginia	10/30/2013
California, Pennsylvania, and Texas	10/30/2014
Alaska, Colorado, Delaware, Maryland, Mississippi, New Hampshire, North Carolina, South Carolina, and Washington, D.C.	10/30/2015

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

[PROPOSED] FINAL ORDER AND JUDGMENT

WHEREAS, Plaintiff PHT Holding II LLC, on behalf of itself and the Class, entered into a settlement (the "Settlement") with Defendant North American Company for Life and Health Insurance;

WHEREAS, Class Plaintiff PHT Holding II LLC ("Plaintiff"), on behalf of itself and the Class, entered into a settlement (the "Settlement," Dkt. ____) with Defendant North American Company for Life and Health Insurance ("North American");

WHEREAS, on _____, 2023, the Court entered its Order Preliminarily Approving Class Action Settlement (Dkt. ___) ("Preliminary Approval Order"). Among other things, the Preliminary Approval Order authorized Class Counsel to disseminate notice of the Settlement, the fairness hearing, and related matters to the Class.

WHEREAS, notice was provided to the Class pursuant to the Preliminary Approval Order (Dkts. _____), a website was established with the approved long-form notice, and a call-in line was established;

WHEREAS, [Insert number, if any] Final Class Members objected to the Settlement by the deadline provided for in the Preliminary Approval Order, and [Insert number, if any] Class Members opted out;

WHEREAS, the Court held a fairness hearing on _____, 2023, at _____;

WHEREAS, the Settlement requires, among other things that all Released Claims against Released Parties be settled and compromised;

WHEREAS, this application is uncontested by Defendant; and

WHEREAS, this Court has considered Plaintiff's Motion for Final Approval of Class Action Settlement, supporting declarations, oral argument presented at the fairness hearing, and the complete records and files in this matter.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The capitalized terms used herein shall have the meanings set forth in the Settlement Agreement (Dkt. _____), which is incorporated herein by reference.

2. The Preliminary Approval Order outlined the form and manner by which Plaintiff would provide Class Members with notice of the Settlement, the fairness hearing, and related matters. Proof that Notice complied with the Preliminary Approval Order has been filed with the Court and is further detailed in the "Motion for Final Approval of Class Action Settlement." The Notice given to Class Members complied in all respects with the requirements of Rule 23 of the

Federal Rules of Civil Procedure and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

3. The Court finds that the Attorney General of the United States and the appropriate state officials have received notice of the Settlement Agreement in accordance with the terms of the Class Action Fairness Act, 28 U.S.C. § 1715(b).

4. The Settlement was attained following an extensive investigation of the facts. It resulted from vigorous arm's-length negotiations which were undertaken with the assistance of a mediator and in good faith by counsel with significant experience litigating class actions.

5. The Class is the class certified by this Court on March 22, 2022 (Dkt. 148), with the exclusion of the policyholders that submitted timely and valid requests to be excluded from the Class in the Original Opt-Out Period or Second Opt-Out Period. Dkt. _____ (identifying opt-out policies), as well as policies owned by Class Counsel and their employees; North American; officers and directors of North American, or members of their immediate families; the heirs, successors or assigns of any of the foregoing; the Court and his or her immediate family.

6. The Settlement is fully and finally approved because its terms are fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and the Court directs its consummation pursuant to its terms and conditions. In reaching this conclusion, the Court considered the four factors listed in Rule 23(e)(2) and the four factors listed in *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988).

7. In reaching this conclusion, the Court considered the complexity, expense, and likely duration of the litigation, the Class's reaction to the Settlement, and the result achieved. [Insert whether any objections to the Settlement or the plan of distribution were received or timely filed.]

8. North American shall fund the Settlement Escrow Account in accordance with the terms of the Settlement Agreement. The Settlement Escrow Account is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

9. The distribution plan, as described in the Motion for Final Approval of Class Action Settlement and supporting documents, and previously preliminarily approved by the Court, is approved because it is fair, reasonable, and adequate.

10. This Final Order and Judgment shall apply to and bind the Releasing Parties as defined and set forth in Section 1.50 of the Settlement Agreement.

11. This Final Order and Judgment shall apply to the Class with the exception of the policyholders that submitted timely and valid requests to be excluded from the Class in the Original Opt-Out Period or Second Opt-Out Period. Dkt. (identifying opt-out policies). The individuals or entities that own these opt-out policies are not included in or bound by this Final Order and Judgment, solely as it relates to the opt-out policies, and are not entitled to any recovery from the settlement proceeds obtained through this Settlement with respect to the opt-out policies. To the extent an individual or entity owns both a policy that is excluded from the Class and a policy that is included in the Class, such individual or entity shall be bound by this Final Order and Judgment in connection with any policies included in the Class. For the avoidance of doubt, such individuals or entities shall not be bound by this Final Order and Judgment to the extent it relates to policies that are excluded from, or otherwise not a part of, the Settlement.

12. This Court has jurisdiction over the subject matter of this action and the Releasing Parties are subject to this Court's jurisdiction for purposes of implementing and enforcing the Settlement, bar order, and releases contained herein.

13. This Final Order and Judgment shall operate as a complete and permanent bar order that discharges and releases the Released Claims by the Releasing Parties as to all the Released Parties. The Released Claims do not include the Excluded Claims.

14. The Releasing Parties shall be deemed to have, and by operation of this Final Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims including Unknown Claims, which are expressly deemed waived and released by operation of this Final Order and Judgment.

15. The institution, maintenance and prosecution by any of the Releasing Parties, either directly, individually, representatively, derivatively or in any other capacity, by whatever means, of any other action against the Released Parties in any court, or in any agency or other authority or arbitral or other forum wherever located, asserting any of the Released Claims is permanently and completely barred, enjoined, and restrained.

16. The applicability of this Final Order and Judgment and the bar order and releases contained herein shall not be dependent on a Releasing Party's actual receipt of any settlement proceeds obtained through this Settlement.

17. The Released Parties may file the Agreement and/or this Final Order and Judgment in any action that may be brought against them to support a defense or counterclaim involving principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. Within 30 calendar days after the Final Settlement Date, Class Counsel shall calculate each Class Member's distribution pursuant to the plan of allocation proposed by Class Counsel and approved by the Court (Dkt.) and provide an Accounting to Defendant's

counsel and the Settlement Administrator. Within 30 calendar days of Defendant's counsel's receipt of the Accounting or, in the event of a dispute, within 10 calendar days after resolution of any disputed related to the Accounting, the Settlement Administrator will notify the Parties of the Distribution Date. On the Distribution Date, the Settlement Administrator will, with respect to Final Class Members who own Terminated Policies, send for delivery by U.S. mail a settlement check in the amount of the share of the Final Class Member Settlement Benefits to which he/she/it is entitled. On the Distribution Date, North American will commence applying Accumulation Value Credits for each In-Force Policy and will make such credits effective for each In-Force Policy on the Policy Credit Date. Any further distributions will be made in accordance with Section 2.2 of the Settlement Agreement and the plan of allocation proposed by Class Counsel and approved by the Court (Dkt.).

19. The Releasing Parties are permanently barred, enjoined and restrained from making any claims against the Settlement Escrow Account, and all persons, including the Settlement Administrator, Plaintiff and Class Counsel, Defendant, and its Counsel, are released and discharged from any claims arising out of the administration, management or distribution of the Settlement Escrow Account.

20. There is no just reason for delay in directing entry of a Final Judgment and immediate entry by the Clerk of the Court is expressly directed.

21. Settlement Administration Expenses may be paid out of the Settlement Escrow Account as they become due, subject to the terms of the Settlement.

22. Neither the fact nor substance of the Settlement, nor any act performed or document executed pursuant to the Settlement, may be deemed or used as a presumption, inference or

admission of fault, liability, injury or wrongdoing in any civil, criminal, administrative, or other proceeding in any jurisdiction.

23. The Action is dismissed with prejudice as to Defendant and, except as provided in the Settlement Agreement and the Court's Order Awarding Fees and Expenses (Dkt. ___), without costs to either party.

24. Without affecting the finality of this Final Order and Judgment, the Court specifically retains continuing and exclusive jurisdiction over the enforcement of this Final Order and Judgment and bar order and the enforcement of the Settlement, including all future proceedings concerning the administration and enforcement of the Settlement Agreement.

25. This Final Order and Judgment shall become effective immediately.

ENTERED this _____ day _____of _____.

_____

Hon. Stephanie M. Rose
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

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

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

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
816.512.5608

APPEARANCES

For Plaintiff:

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MR. BRADLEY WILDERS
MR. ETHAN M. LANGE
MS. LINDSAY TODD PERKINS
Stueve Siegel Hanson, LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112

MR. MATTHEW W. LYTLE
Miller Schirger, LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111

For Defendant:

MR. DANIEL L. DELNERO
MR. JAMES RANDOLPH EVANS
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Atlanta, GA 30309

MR. JOHN W. SHAW
MS. LAUREN TALLENT ROGERS
Berkowitz Oliver LLP
2600 Grand Boulevard, Suite 1200
Kansas City, MO 64108

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.)

- - -

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 4

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").

Dated: 05/25/23

Foreperson

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

EXHIBIT 5

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

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated,	:	
Plaintiff,	:	
vs.	:	Case No. 4:18-cv-368
NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE,	:	TRANSCRIPT OF TELEPHONIC FINAL PRETRIAL CONFERENCE
Defendant.	:	

U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Friday, June 16, 2023
11:00 a.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Chief District Judge

TONYA R. GERKE, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 197
Des Moines, Iowa 50309

APPEARANCES:

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P R O C E E D I N G S

THE COURT: All right. Good morning.

We are here in the matter of PHT Holding versus North American. It's assigned Case Number 4:18-cv-368. We're here for purposes of a final pretrial hearing in anticipation of the trial that's scheduled to begin on Tuesday.

Mr. Sklaver, is that how your name is pronounced?

MR. SKLAVER: Good morning, Your Honor. Mr. Steven Sklaver.

THE COURT: Thank you. And are you lead counsel for purposes of the trial?

MR. SKLAVER: I am.

THE COURT: All right. Can you tell me who is on with us on behalf of the plaintiff this morning?

MR. SKLAVER: Yes, Your Honor. With Steven Sklaver, Krysta Pachman, Nick Spear, Halley Josephs, and Seth Ard are on the line.

THE COURT: All right.

MS. MAXON: And, Your Honor, this is Robin Maxon on behalf of the local counsel for the plaintiff.

MS. SURRENCY: And Chandler Surrency as well for local counsel, Your Honor.

THE COURT: And, Ms. Surrency, I'm sorry I left you off the voir dire list accidentally when I listed who the attorneys were. You'll be involved in trying the case as well;

correct?

MS. SURRENCY: Yes. I will be there throughout the trial, Your Honor. Thank you.

THE COURT: All right. I noticed in the most recent motion that the plaintiff filed asking for permission to have their electronics during trial that you listed three other attorneys as attorneys on the case who are not -- had not entered appearances in the case: Rodney Polanco, Matt Boles, and Aracelys Pena. None of those three have entered an appearance. Did you intend for them to act as counsel in this case?

MR. SKLAVER: This is Steven Sklaver, Your Honor.

Those are not attorneys; those are paralegals, a secretary, or IT tech -- graphics.

THE COURT: Okay. Okay. Matt Boles is a local attorney, so that was where that confusion came from.

All right. Then who do we have joining us on behalf of defendant?

Mr. Tuck, are you lead counsel on behalf of the defendant?

MR. STEPHENSON: Your Honor, it's John Stephenson with Alston Bird. I'll be the lead counsel at trial, and our trial team and with us this morning by conference call is Andy Tuck, Bill Higgins, Tania Rice, and then Mike Dee from the Brown Winick firm locally.

THE COURT: Okay.

MS. POWERS: And Tiffany Powers is also on.

THE COURT: All right. Thank you.

And as far as just clarification of who will be somebody who I should introduce the jury to, John McFarland I think is planning to be the corporate rep on behalf of PHT; is that right, Mr. Sklaver?

MR. SKLAVER: That's correct, Your Honor.

THE COURT: All right. And as I understand it, Marcy Baker will be serving -- or will be sitting at counsel table as well on behalf of the defendant. Is that right, Mr. Stephenson?

MR. STEPHENSON: That's right, Your Honor.

MR. SKLAVER: And, Your Honor, this is Steven Sklaver.

My apologies. Glenn Bridgman of Susman Godfrey is also on the phone.

THE COURT: All right. Thank you for that and --

Okay. Let's talk about voir dire just briefly here. A reminder each party will have 20 minutes to conduct your voir dire. You've received by now the jury questionnaires, my proposed voir dire, and the seating chart. You'll see that we've preseated all of the jurors who have been identified as potential jurors in this case.

Once we've concluded judicial voir dire and the parties have done their voir dire and we have excused anybody that's going to be excused either for hardship or for cause, at

that point I'll excuse all of the extra jurors who are preseated that will not be among those you would exercise strikes on, so essentially anybody beyond the first -- it would be 15 people seated in the box starting at number 1, whoever those first 15 people or the lowest numbered 15 people would be, and you'll each then exercise your strikes.

As Judge Adams told you, plaintiff will have 3; defendant will have 3. You'll exercise them alternatively, so plaintiff will strike 1; defendant will strike 1. We'll pass the sheet back and forth until all 6 of those have been utilized.

Did either party have any objection to my proposed judicial voir dire?

Mr. Slaver -- I'm sorry -- Skav -- I'm going to work on that. Can you say your name for me again?

MR. SKLAVER: Sklaver. If you need a mnemonic, Sklaver; it rhymes with slaver.

THE COURT: Oh, nice. That does help me a lot.

Any objection to the proposed voir dire on behalf of the plaintiff?

MR. SKLAVER: No, Your Honor.

THE COURT: And on behalf of the defendant, Mr. Stephenson?

MR. STEPHENSON: No, Your Honor.

THE COURT: All right. Any particular problem jurors

I should be looking at? Any of you know them or see anybody who we want to talk about right now? Obviously we'll check in Tuesday morning on more of those issues.

But anything you saw right now, Sklaver -- Mr. Sklaver?

MR. SKLAVER: No, Your Honor.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: No.

THE COURT: All right. As far as names that I should identify for the jury, I know the parties filed a glossary of terms, Attachment F, that was filed yesterday. That has a number of individuals listed. Are there any other names other than those in the glossary and those who have been identified by the parties in the final pretrial order as potential witnesses who we should ask the jury about?

Mr. Sklaver?

MR. SKLAVER: The plaintiff has nothing to add at this time, Your Honor.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: Well, Judge, as long as Mr. Sklaver does not intend to identify the 18,000 policyholders on whose behalf the class action is proceeding, then no, but to the extent he would purport to introduce evidence about those people's names, they have to be qualified. We took that matter up pretrial. I don't know whether that is still their position,

but I don't -- you know, the damages have been calculated based on the number of policyholders in the class. There's no relevance to their names, and the use of their names would create, you know, a rippling effect with respect to qualifications and dramatically slow down the trial.

THE COURT: Mr. Sklaver?

MR. SKLAVER: We intend to mention the generic first name "Michelle" in our opening but no last name, no other identifying information, so I don't think it's appropriate to prohibit us from mentioning the fact that there are 18,000 class members or a generic name, but we don't intend to mention full names or anything like that.

THE COURT: Okay. All right. No. Obviously you can talk about how many class members are involved, but that will resolve that issue.

Okay. As far as preliminary jury instructions on behalf of the plaintiff, Mr. Sklaver, any objection?

MR. SKLAVER: Ms. Josephs is going to argue -- raise a position on the preliminary instructions, Your Honor.

THE COURT: Ms. Josephs?

MS. JOSEPHS: Good morning, Your Honor. This is Halley Josephs. Can you hear me?

THE COURT: I can. Go ahead.

MS. JOSEPHS: Okay. And apologies for the delay.

So we have one issue that the parties weren't able to

agree on in the nature-of-the-case instruction that I believe Your Honor adopted as Preliminary Instruction Number 2, so I'd like to start there.

The -- you'll see in the quote from the cost of insurance rates provision that there's a bracketed -- there's a bracketed sentence, and we don't believe that that sentence should be in the preliminary instruction on the nature of the case. We don't think it belongs in the neutral statement. It suggests that it's more important than it is. This is the maximum guaranteed rate provision.

Your Honor already ruled on this at summary judgment, and this is also the subject of a motion in limine where the concern we raised was that North American would be pointing to this provision as to have bearing on its compliance with contracts. That's exactly what we are asking the Court in our motion in limine to avoid. The Court already ruled on this. I think it's page 24 to 25 of the summary judgment order, and we just don't think that it's a necessary part of the language to include in this brief neutral statement.

THE COURT: All right. Mr. Stephenson?

MR. STEPHENSON: Mr. Tuck will address our jury charge issues, Judge.

MR. TUCK: Thank you, Your Honor.

North American requests that all of the relevant sentences from the COI rates provision be included in the

preliminary instruction, and the guaranteed rates provision is one of those. There's going to be a lot of testimony and discussion of the difference between the current COI rates and the rate guaranteed in the contract, and, you know, North American thinks that that should be part of the preliminary instruction. It's part of the contract provision on which plaintiff and the class have sued North American.

THE COURT: Okay. I'll -- I'll take a look at that again and go back and look through the summary judgment materials and let the parties know how that one will be resolved.

Any other objections on behalf of the plaintiff?

MS. JOSEPHS: Yes, Your Honor. Just first as Your Honor is going back and looking at the summary judgment and at this instruction, I would note that the parties agreed not to include all of the language from this provision. You can see the ellipses on the third line, so I do think that the parties were trying to narrow this provision, but I understand Your Honor will take that under advisement.

We did have two other requests. First, we just noticed -- this is very minor -- but as far as the case caption that was on this document, if Your Honor was going to file it on the docket eventually, we would just ask that it be amended to simply list the caption Summary Judgment Order which just identifies that PHT is bringing this case on behalf of itself

and all others similarly situated. That was a very minor point that we noticed.

And then the other point that we wanted to raise is in docket 297, plaintiff had asked for three additional preliminary instructions beyond the standard instructions that we understand Your Honor typically uses, and we were not sure if this -- if this document reflected that you were not inclined to give those or if you had not had a chance to look at those yet, but I would like to briefly explain why we think those are important, if I may.

THE COURT: Go ahead.

MS. JOSEPHS: Okay. So the first instruction that we had asked for was a class-action instruction which is a standard instruction. That's given, we understand, in typically every case. This is modeled off of the variety of sources that we've mentioned in our instructions.

We would ask the Court reference the fact that this is a class action, that PHT is the plaintiff, and the class representative is bringing this claim on behalf of itself and on behalf of the absent class members. We think that -- I mean, if Your Honor is amenable to giving the entire instruction, we would ask that that be given, but we in the alternative would ask that the nature-of-the case instruction at least be amended to add the fact that it is a class action and that, you know, the case is being brought on behalf of absent class members as

well.

THE COURT: And Mr. Stephenson?

MR. STEPHENSON: Mr. Tuck will address it, Your Honor.

THE COURT: Mr. Tuck?

MR. TUCK: Your Honor, we -- sure, Your Honor. We didn't think this was necessary at the preliminary stage. The jury will hear in opening arguments about who the plaintiffs are and who counsel represents. Instructing them about class actions at the front end we don't think is necessary, and, you know, we were fine with Your Honor's omission of that particular instruction.

THE COURT: All right. I will add a class-action instruction. I do think that would be helpful.

Go ahead with respect to your next instruction.

MS. JOSEPHS: Thank you, Your Honor.

The second instruction we had included was a nature-of-the-case instruction, and we believe that the parties, you know, agreed neutral statement that Your Honor has proposed in Instruction Number 2 largely resolves that with two exceptions.

Our instruction has asked the Court to instruct the jury on its central role in this case, just to mention that Your Honor has held that the insurance policies are ambiguous as to what the COI provisions require, and that it is, therefore, for the jury to decide, just to frame the question of why is the

jury here and what its role in this case will be.

And then relatedly, we had asked for some language that would -- that would frame the jury's consideration of evidence in light of the Court's ambiguity finding, and so we had asked for a brief reference to the rule regarding construction against the drafter and that the way that that applies in various states would affect the jury's consideration of the evidence, and that language is in docket 297 at 4 -- at page 4.

THE COURT: I think one of the problems with telling the jury that at the beginning before they've heard any evidence is that does not apply to some of the states; correct?

MS. JOSEPHS: No, Your Honor. The way that the contra proferentem rule applies varies by state, so there's a group of states which don't consider any evidence, but then you just construe the contract against the drafter, here North American.

In the other categories which we've called group 2 and group 3, you either consider all the evidence alongside this rule, or you consider the rule as a tool of last resort, as some courts have called it, in the event that the jury is unable to resolve the ambiguity just by resorting to the extrinsic evidence.

So it is a rule that applies in all 50 states. That's undisputed. I would add plus the District of Columbia. But

just the way that it applies differs but -- I'll stop there.

THE COURT: Yeah. I think that's an issue best left to final instructions when we have a lot more clarity on what the evidence has showed and a lot more ability to explain nuances to the jury. I don't think we want to frame it at the top without giving them any other related legal definitions so that they're thinking throughout the trial that no matter what it should be held against North American. I just don't think that's a particularly neutral thing to tell them at the onset.

The other concern I have is about telling the jury that I have found that this policy is ambiguous. I think no matter how you phrase that, that sounds negative against the defendant, so I think we can say to the jury, You're going to be determining what this phrase means, without telling them, I've directed that you find this because X, Y, and Z has occurred.

What's your thought on that, Mr. Tuck?

MR. TUCK: I completely agree, Your Honor.

THE COURT: Okay. I'll -- I can take a look at the statement -- or the nature-of-the-case instruction and add something that explains to the jury that they're going to be making a determination of what this language means. I'll take a crack at that, and then I'll give the parties a chance to take a look at that again.

What's next on the list?

MS. JOSEPHS: Thank you, Your Honor. I appreciate

that.

The third instruction that plaintiff had requested -- and this is the final one -- was an instruction regarding the number of witnesses, and I think that -- I don't want to speak for North American, but I think the parties have agreed to include that in the final instructions, and we had requested that a similar instruction just be given at the outset of the case.

I'll note that I think Your Honor has as a standard instruction, you know, a comment -- or an instruction regarding the fact that a party is a corporation should not affect your decision, and we thought it would be important also to include the number-of-witnesses instruction here especially in light of the fact that this is a class action and the absent class members will not be here testifying.

THE COURT: Okay. I routinely give the weight-of-the-evidence language that you've proposed here at Instruction Number 7 in your filing at docket 297 -- I routinely give that as a final instruction. I think that's where it belongs.

Really this jury is going to be so overwhelmed, I think, in the first few hours of their service that, frankly, the less we tell them the better in my view other than just broad strokes of what they're here to do, so I'll save that one for final jury instructions.

MS. JOSEPHS: Thank you.

THE COURT: Anything else on behalf of plaintiff?

MS. JOSEPHS: No. Thank you, Your Honor. We appreciate your consideration.

So just so we understand the order of operations regarding the preliminary instructions, Your Honor is going to send a class-action instruction as well as some language regarding the jury's role in determining what this language means without expressly referencing your ambiguity finding; is that correct?

THE COURT: Correct, and I'll recirculate essentially what would be -- what will be Instruction Number 2 to the parties just to see if I've crafted that in a way that's objectionable.

I'll also add to the caption "on behalf of," the language that is part of the docket, as well.

Mr. Tuck, anything for the defendant on preliminary jury instructions?

MR. TUCK: Nothing further from the defendant, Your Honor.

THE COURT: Okay. I'll make those changes and get something circulated to the parties yet today.

All right. As far as what the parties are expecting at this point as far as the number of trial days it will need, I had added in the voir dire section seven business days as kind

of an estimate, but what -- I looked at the list of witnesses the parties have. I'm trying to understand -- the jury may deliberate forever, but I'm trying to understand how we're going to get, you know, a week of -- a business week of trial out of potentially ten witnesses or less.

Can -- can the plaintiff tell me how much you're expecting by way of trial presentation here?

MR. SKLAVER: Yes, Your Honor. This is Steven Sklaver.

I think we can have our case done in two days, I mean, subject to how long the defendant intends to take for cross-examination and the like, but we have four witnesses plus one by deposition so we -- the intent is to put it on efficiently.

THE COURT: And, Mr. Stephenson, what about the defendant's case?

MR. STEPHENSON: Well, Judge, it's hard to know until we see the direct testimony how long the crosses will go. My bet is that we will be into the third day in the plaintiff's case, and I would expect that our case in response will run three to four days, so, I mean, I -- you know, we -- I hope we will do better than seven days, but I don't think -- I don't think the Court's estimate is far off, so whether it's six days, whether it's seven days, I do think we'll get it to the jury by the seventh day, and we might do better.

THE COURT: Okay.

MR. STEPHENSON: So that's my best estimate before we see how the testimony unfolds at trial.

THE COURT: All right. I think each party should plan on having three days to present your cases, and when I say three days, a trial day is typically about six active hours of available time by the time you take out lunch and morning-and-afternoon breaks and, you know, sidebars and things like that, so each party should plan to utilize, you know, about 18 hours to present your case.

And I often utilize a trial clock. When I do that, I'll keep track of each party's direct and cross-examinations. Those go against the party's total, and then at the end of each day, I'll advise each party of where you are on your trial clock, how many hours and minutes you have left on your trial clock, and that does tend to ensure that we don't have, you know, six redirects and six recrosses and that the parties are effectively utilizing their time, so I've found that to be a very useful thing to do, and almost always when I utilize a trial clock, the parties don't end up expending all of the time in any event on the trial clock. So make your plans for about 18 hours worth of material whether you're cross-examining or direct examining, and we'll plan it that way.

MR. STEPHENSON: Judge, may I -- I understand what you told the parties. I'm -- I'm hearing you say that's not a hard

order at this point, but it's an expectation by the Court of the parties which we take and appreciate, but I am assuming by the same token that as the case unfolds and the Court's hearing the evidence, if you agree either party is not wasting the jury's time or the Court's time that you're not going to hold us to a hard 18 hours, and we might revisit that as the trial proceeds. Is that a fair interpretation of what the Court's telling us?

THE COURT: It is. I'll say this. I know Mr. Dee has tried cases in front of me before. I don't know that I've had trials with any of the rest of you.

Iowa juries are eminently practical, and one of the things that they do not like is what they see as squabbles between lawyers or what they see as abuse of a witness no matter how objectionable, frankly, that witness may be, and when I talk to juries after trials, they say those things. And in civil cases in particular, they are very swayed by how much they like the lawyers involved in the case, and if they really hate the lawyers, they tend to take it out on the plaintiffs and the defendants, and that's just the nature of kind of midwest nice and what happens around here.

They really hate depositions which we are going to talk about in a minute, especially if they're being read to them. They get almost nothing out of that, and so part of the reason I encourage lawyers to use the trial clock is because I know what the jury is doing when they see what they see as a

waste of time, and so that I think that really helps lawyers hone in on what's important, and it stops a lot of the squabbling.

We've seen a lot of lobbing grenades at each other in the pleadings in this case, almost sort of objections just to make objections, and if that happens in front of the jury, it's going to cost the parties a lot.

And so, yes, it is not a hard-and-fast rule at this point; it can be adjusted, but it is my best advice to the parties at this point in time.

While we are on the issue of depositions, Mr. Gimbel's deposition, is that a video deposition, or are you intending to read portions of that into the record?

I guess, Mr. Sklaver, that's a question for you.

MR. SKLAVER: Yes, it's a video deposition, and it's about seven minutes in length.

THE COURT: Okay. Perfect.

And I know that defendants had advised that they may offer by deposition information from Eduardo and I think Mr. McFarland. Are those also video depositions?

MR. STEPHENSON: They are, Your Honor.

THE COURT: Okay. That helps at least. The jury really hates it when people read depositions.

Okay. Any other questions on the trial clock and what that means and doesn't mean at this stage?

MR. STEPHENSON: No, Your Honor.

MR. SKLAVER: No.

I'm sorry. For the plaintiff, Your Honor, just a question. We have a -- I assume we have the right if we so choose to have a rebuttal case. I just want to --

THE COURT: You do.

MR. SKLAVER: Okay.

THE COURT: Yep. Just, yep, think about how that time -- that certainly sounds like if you're planning a two-day case with cross-examination, you'd have plenty of time on your trial clock even if that becomes a hard-and-fast rule.

The parties have a number of "A" exhibits. The parties have agreed that they're automatically admitted. Is it your intention that all of those will go to the jury whether they are referenced or otherwise during the case?

Mr. Sklaver, what's your plan on that?

MR. SKLAVER: The plaintiff's position is that they should be able to go in to the jury.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: No, Your Honor. We think -- if they're not discussed in the trial, we don't think they should go back.

MR. TUCK: And this is Mr. Tuck.

I would add that this has been worked out with Mr. Spear from Mr. Sklaver's firm, and they had agreed that that

was the procedure the parties would follow.

THE COURT: All right. The agreement was that if they're not actually referenced --

MR. SKLAVER: Well --

THE COURT: Hold on. If they're not actually referenced during the trial that they would not go to the jury? That's what you're saying Mr. Tuck agreed to?

MR. TUCK: That was our understanding, Your Honor, and that's certainly our position. This is a massive list of exhibit -- "A" exhibits.

MR. SKLAVER: Well, Mr. Spear can talk -- he can go ahead. The point is for efficiency sake especially given the time, I think it would be more efficient -- since there's no problem with admissibility that they should be able to go back, but Mr. Spear would be able to discuss --

THE COURT: Okay. Mr. Spear?

MR. SPEAR: Your Honor, this is Mr. Spear. I don't recall specifically discussing any sort of agreement with Mr. Tuck on this. I'm certainly happy to sit down with him and meet and confer over that. I understand that Judge Adams maybe may have mentioned the conduct between witnesses which is maybe what Mr. Tuck is referring to.

I think the big issue is that for a number of exhibits, it's like -- it's like summary sheets that were used for purposes of calculating damages or there were a whole slew

of reports that were sort of rolled up by some of our damages experts, so some of those things we think having to just sit and introduce them one by one to the jury -- it is a waste of time, and it will be much easier just for those to be preadmitted certainly. I'm happy to meet and confer with Mr. Tuck on the others.

THE COURT: Yeah. And to be clear, I'm not talking about preadmitted. They'll all be preadmitted. The question is whether they go to the jury if you never end up referencing them. You could reference with an expert witness, you know, Exhibits 1 through 1,000 were used by you as part of your consideration of your expert opinion, and in my view that means you've touched upon 1 through 1,000 of your exhibits as far as going to the jury, but I'll let the parties continue thinking about that. I will say if you never discuss an exhibit even in that loose-reference way that I just used as an example, I don't know that they'll understand what they're supposed to do with that exhibit when they get back to deliberations.

MR. STEPHENSON: Well, and, Your Honor --

THE COURT: Go ahead.

MR. STEPHENSON: -- it would confuse the jury; right? If they have documents that they are told are evidence about which they've been told nothing in either party's case-in-chief, the confusion that may result from that and the prejudice to either party is -- that's what we are concerned about.

THE COURT: And that's Mr. Stephenson speaking; correct?

MR. STEPHENSON: Yes, Your Honor.

THE COURT: Yeah. That is my concern, so I'll let the parties think through that, but generally my rule of thumb is if it's not discussed in any way during trial, it doesn't go to the jury for just the reason Mr. Stephenson has highlighted.

I am going to be utilizing during trial the JERS program which is our Jury Evidence Recording System. I'll send an e-mail to the parties later today that outlines what the process is to upload all of your exhibits into JERS.

For those of you who have not used it before, it is an electronic evidence database of all of the exhibits that are admitted that allows the jury to search that exhibit. It displays it for all the jury on a large screen in the jury deliberation room, and it is particularly useful in large document cases like this one where there is, you know, a vast array of documents that they could be looking at and through.

So I'll send out that e-mail on how to upload your materials to Box and how to label them. I'll get that out to the parties yet today.

The parties have entered into a large number of stipulations. Is it the intent of the parties that those will be read to the jury at some point by me? By one of the lawyers? Are we just going to put them into final jury instructions? Has

there been any discussion of that at all?

Mr. Sklaver, what can you tell me about that?

MR. SKLAVER: Yes, Your Honor. Our anticipation is that they'll be read to the jury at the time of final instructions if need be or wherever the Court thinks is appropriate.

THE COURT: All right. And are you wanting me to read them to the jury, or do the parties plan to do that?

MR. STEPHENSON: Our preference would be that the Court read them, Your Honor.

THE COURT: All right. Mr. Stephenson, what's your thought on that?

MR. STEPHENSON: I'm sorry.

Steven, I apologize.

I didn't -- I wasn't speaking for Mr. Sklaver. This is John E. Stephenson.

Yes. We think the Court should read them.

THE COURT: Okay.

MR. SKLAVER: And the plaintiff does not oppose that. That's fine, Your Honor.

THE COURT: All right. And so I'll read those. Just let me know when the time is that you would like me to do so unless you know right now. Do you want it done at the top of the case, or do you want them read at various points in time?

MR. SKLAVER: Why don't the parties meet and confer

about that. I think we can just agree about that. I think our -- just as a proposal, the plaintiff is proposing to do it at the end of the case before final instructions.

THE COURT: And that was --

MR. SKLAVER: That was Mr. Sklaver.

THE COURT: Okay. That was Mr. Stephenson answering.

MR. STEPHENSON: Yes, Your Honor. I think that's what we contemplated in the proposed pretrial order as well, so we agree with that.

THE COURT: Both parties have filed motions allowing computers and phones into the courtroom for the people they've identified. Those are filed at dockets 302 and 304. Those motions are granted. You can have your phones and computers for all those individuals identified. Obviously just make sure phones are on silent if they're in the courtroom.

Trial hours. I try cases between 8:30 and 5 each day, so you should have enough witnesses to fill that period of time. I'll take at least a 20-minute break in the morning and at least a 20-minute break in the afternoon, and we'll take an hour for lunch every day at least. Sometimes it's more like an hour and 15 minutes especially on day one when the jury isn't familiar with downtown Des Moines and needs to find places to eat and things, but as you're planning your schedule, that's what it will look like.

Voir dire usually takes about an hour and a half to

two hours to complete, so you can assume that we'll get that finished up on the first morning. I then give the jury preliminary jury instructions and send them off to lunch, so once they come back from lunch, we'll get started with opening statements and evidence.

Each party has 45 minutes to make your opening statements. Closing argument -- each party will have an hour, and that's inclusive of any rebuttal time.

The courtroom will be locked up over the lunch hour and at night. Nobody else will be using our courtroom during trial, so you're welcome to leave your materials, you know, set up in the courtroom. You can leave all your boxes and your things in the courtroom. Nobody will touch those, and we won't have one party in the courtroom and not the other, so you don't have to worry about somebody looking at your secret stuff, I guess, while the others are away.

I do permit the lawyers and the jury to have drinks in the courtroom. I just ask that you keep -- have something with a lid on it so if it tips over we can save carpet, but if you want to bring in coffee or soda or bottles of water or whatever you might want to bring in, you're welcome to do that, and the jury will have the same option, so you don't have to feel bad about drinking in front of them.

Any other kinds of, you know, administrative questions I can answer for the parties before we turn to a discussion of

the pretrial issues that were raised in the final pretrial order? Some of the legal questions that the parties have asked for clarification on?

Mr. Sklaver?

MR. SKLAVER: Yes, Your Honor, just to ask you a few questions.

First is does the Court permit demonstratives to go back to the jury for deliberations?

THE COURT: Yes, as long as -- well, let me think. It depends on what you're calling a demonstrative, and it depends on whether it was introduced. If it's a pure demonstrative that you're only utilizing in front of the jury, then, no, it doesn't go back. If it was later introduced as an exhibit, you've created it during the course of the testimony and you've marked it as an exhibit and it's now sort of, you know, an expert report or something along that and it's admitted, then, yes, it would go back to the jury. Does that make sense?

MR. SKLAVER: It does, Your Honor. Thank you.

The next question is another administrative question which is are we permitted to stand in the well during voir dire, or do we stand at counsel table?

THE COURT: You can move about the courtroom freely during the trial, approach witnesses without leave of the Court as long as you keep your voices up. The most important thing will be just that the court reporter can hear you, so you can

either question witnesses from counsel table, you can use the podium if you're more comfortable there, or you can kind of walk back and forth showing the witnesses exhibits if they're not electronic if that's more suitable to what you're doing. Just keep your voice up so the jury and the court reporter can hear you.

I know the parties are doing -- I think at least one of the parties is doing kind of a tech review this afternoon in the courtroom. The courtroom has touch screens for the witnesses to use, and so if you're showing the witness a document, the witness will have the ability to annotate on the screen in front of the jury as will the lawyers. So you can utilize the electronic version of exhibits; just make sure as you do you're making a record that's visible in the court reporter's record of what the witness is highlighting or touching or what you're highlighting and touching.

MR. SKLAVER: Okay. Thank you, Your Honor. That's understood.

I guess the third question is another one related to demonstratives. I think both parties have demonstratives that their experts are using or they're being used in opening that weren't in the expert reports, and I just want to make sure that the Court is okay that as long as we disclose the demonstratives in advance that the parties can use demonstratives with their experts that are not in their reports, you know, to just

summarize their opinions and kind of put it in easy-to-read format for the jury.

THE COURT: Yeah. As far as opening statements go, obviously they're not evidence. You're presenting to the jury what you expect the evidence to show. As long as that's true, you can utilize whatever you want to during openings.

MR. SKLAVER: Nothing further from the plaintiff, Your Honor.

THE COURT: All right. Mr. Stephenson on behalf of defendants?

MR. STEPHENSON: No, Your Honor. I think you've covered everything we had in mind.

THE COURT: Okay. Let's talk then about some of the legal issues that the jury -- or that the lawyers asked for some additional information on. Some of the legal issues that were raised in the final pretrial order filed yesterday I don't know that I understood, but I've taken a crack at trying to answer the questions that you had, and at this point maybe you can give me some more clarification.

As far as jury instructions go, obviously they'll be neutral. They'll be consistent with the summary judgment ruling. They'll be consistent on whether or not *Ruderman* applies or doesn't apply to the different states. Obviously we'll have to instruct the jury on laches and who it might apply to and who it might not apply to, as the defense has

established, so we'll take care of that.

As far as the objection to affirmative defenses, I don't think either party's asking for a fraud instruction. That was obviously disposed of as to the policy -- the one particular policy at issue, and I assume that would extend to all the other policies since they all have similar incontestability language in them.

The statute of limitations I think we're going to have to iron out probably painfully after some evidence has come in during trial. I think we're going to have to figure out as a group how we can present that information to the jury in a way that makes sense, and so we'll have to sort that out once we've heard some more of the evidence.

As far as the request for plaintiff's Jury Instructions 15 and 17, I anticipate -- those are, I think, correct statements of the law. I anticipate that I'll give something very similar to Instruction Number 15 -- plaintiff's proposed 15. I anticipate I would give something very similar to plaintiff's proposed Instruction 17, but we'd have to identify which of the states laches does not apply to, so we'll want to make sure that that's clear.

Defendant has made a number of objections to plaintiff's opening demonstratives. Again, it's an opening statement. Without hearing the context in which those slides are being offered, I can't really address any of those arguments

here. I think the defendant's going to have to make those objections at the time the slide that is objectionable is being utilized, and I'll look at those objections in the context of what is said and what isn't said.

There are -- there was a request for sort of some setting up post-trial briefing schedule with respect to how we figure out damages in some of these cases. I think if we get to that point, then we'll set that schedule up down the road. I don't think that's something we need to set at this time.

There was a request for a clarification of the order on plaintiff's motion to exclude the opinions of Craig Merrill. I don't understand what particular parts of that need to be clarified, so if defendant will identify what parts of the ruling they think are too broad with some specificity, I can rule on that, but right now I'm not understanding exactly what portions of the rule -- the ruling conflicts with exactly what portions of the opinion that are going to be offered, so I need more information to answer that concern.

And --

MR. STEPHENSON: Your Honor, would you like to hear that now, or how are you asking us to provide that additional clarification about what we're --

THE COURT: And is that Mr. Stephenson speaking again?

MR. STEPHENSON: Yes, Your Honor. Thank you.

THE COURT: Okay. I think file something with the

specific, you know, sections you think are either objectionable or not objectionable and why, and I'll take it up at that point unless you know there's one particular, you know, thing that you're concerned about right now, and we can try and resolve it now, but if it's more than --

MR. STEPHENSON: No. I --

THE COURT: Go ahead.

MR. STEPHENSON: We're happy to lay it out for the Court and so you can see it, Your Honor. I think that's fine.

THE COURT: Okay. I'll take a crack at it then after I've had time to look at your additional information.

And, again, obviously the parties know we're not going to relitigate issues that have been resolved by the summary judgment order.

What other legal issues, if any, do the plaintiffs think need to be resolved before Tuesday morning, and how can I help get that resolved to move the case forward?

Mr. Sklaver?

MR. SKLAVER: Yes, Your Honor.

I guess one issue might be the statute of limitations. Maybe we can defer this until after our case, but -- I think it's footnote 7 of the Court's order as well as the Court's order as applied to the plaintiff's policy. In our view it shuts down statute of limitations because we're only seeking damages within the statute of limitations for each state.

That's the class period that the Court certified, and there's no issue that any of our statute of limitations are incorrect, but, you know, we can brief that issue if we need to come final jury instruction time.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: Your Honor, we can address it at the jury instructions. We have an issue with that articulation, but I think it's best if we take it up at the close of the case.

THE COURT: All right. I do think it's sort of a mixed bag of factual issues the jury will have to resolve and then legal issues that we all may have to take up later depending on the jury's verdict. It's unfortunate, I think, that it can't be resolved sooner, but I do think there's some factual components to that decision that the jury's going to have to address.

Anything else for the plaintiff, Mr. Sklaver?

MR. SKLAVER: From the plaintiff, no, Your Honor.

THE COURT: All right. Mr. Stephenson, on behalf of the defendants?

MR. STEPHENSON: Yes, Your Honor, one thing.

And we've identified under the defendant's legal issues number 3, clarification with respect to the Court's order on motion in limine number 3 regarding anticipated losses in the class policy, and I think I can quickly and squarely center the Court on what we're -- what we're asking there in terms of

clarification.

We take the Court's order that we may not -- we may not provide evidence or argue about anticipated future losses, that is, standing today and looking into the future, but the case has factual historical facts that are at issue in the case about loss reserves that were established at relevant times when the plaintiffs argue we should have been adjusting cost of insurance rates based on future expectations about mortality experience. Those loss reserves are factual matters that reflect the then-current thinking of the company about its expectations of future mortality experience. They're evidential. They should be considered by the jury.

And we're not talking about arguing today what the company is looking forward about losses under these products, but at relevant times when the plaintiffs are arguing we should have been making cost of insurance adjustments, the fact that the company -- both loss reserves, substantial loss reserves because its then-current view about expectations of future mortality required that is relevant evidence that we would expect to be able to show to the jury.

So that -- we just want clarification that historic facts about loss reserves that existed in the company in the periods in question are directly relevant to either the plaintiff or defense theory of the case and can be -- and can be discussed by witnesses on the stand as opposed to North American

arguing today we're expecting losses into the future and that that how -- that somehow should affect the jury's determination of the breach issue. That's the question.

THE COURT: Mr. Sklaver?

MR. SKLAVER: Yes, Your Honor.

This is exactly the argument made in the motion in limine. This is not clarification; this is reconsideration.

In the motion in limine, it was argued that historical anticipated losses -- and that means, like, at pricing the projected losses going forward or, you know, if you look at page 7 of our motion in limine brief, we talk about this -- in the mid 1990s, they had appraisals showing they were anticipating future losses and in 2004 that they were aware of these built-in losses -- and that the Court held that's not a defense to a breach of contract. If the defense is we entered into a bad contract and we're losing money, that doesn't mean you can breach it.

And so this has already been adjudicated. It's doesn't make it relevant. There's going to be a whole side show on why losing money is not a defense of breach of contract, and the Court should not reconsider what it already ruled on.

MR. STEPHENSON: Your Honor --

THE COURT: No. I do think there's a distinction here between the ruling I made and the evidence as it's been articulated by Mr. Stephenson. I do think that it is acceptable

for the defendant to present evidence that adds context to their legal position. I think it's a needle that's going to have to be carefully threaded, but I do think that that type of evidence is admissible to help explain the history of how this provision was interpreted by the company and the actions that the company took. In my view, there is a distinction there.

Now, I'm going to have to hear it as it's coming in to make sure that it's threading that needle correctly, but I don't think the defendant is barred completely from talking at any point about losses to the company as long as they're careful about how they articulate those.

Does that make sense to you, Mr. Stephenson?

MR. STEPHENSON: It absolutely does, Your Honor. We appreciate that clarification, and we will -- we will put on our evidence accordingly.

THE COURT: Okay.

Anything else for the defendants at this point in time?

MR. STEPHENSON: No, Your Honor. I think that's all that we had. Thank you very much.

THE COURT: Okay. I'll see everybody then Tuesday morning. Let's get together -- the jury won't be in until 9:00 on that first day. That's when they all will arrive at the courthouse, so if everybody can be in the courtroom at 8:30, we'll resolve any, you know, final issues, and everybody can get

settled in, and we'll talk through anything else that's come up.

Enjoy your weekend, and I'll see everybody Tuesday morning. Thank you.

(Proceedings concluded at 11:50 a.m.)

C E R T I F I C A T E

I, Tonya R. Gerke, a Certified Shorthand Reporter of the State of Iowa and Federal Official Realtime Court Reporter in and for the United States District Court for the Southern District of Iowa, do hereby certify, pursuant to Title 28 U.S.C. Section 753, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated at Des Moines, Iowa, July 11, 2023.

/s/ Tonya R. Gerke
Tonya R. Gerke, CSR, RDR, CRR
Federal Official Court Reporter

EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

PLAN OF ALLOCATION[1]

1. As set forth in Section 2.2 of the Settlement Agreement, Each Final Class Member who is the most recent owner of a policy according to Defendant's records ("Recipient") shall, (a) in the case of Terminated Policyowners, be issued a check for that policy equal to that Recipient's pro-rata share of the Final Class Member Settlement Benefits, and (b) in the case of In-Force Policyowners, be provided an Accumulation Value Credit for that policy equal to that Recipient's pro-rata share of the Final Class Member Settlement Benefits.

2. Each Recipient's pro-rata share of the Final Class Member Settlement Benefits shall be computed as follows:

   a. First, identify the damages amount for each Recipient (hereinafter "Recipient's Damages") as set forth in the Mills Supplemental Report.

[1] All capitalized terms herein are used as defined in the Settlement Agreement. To the extent this plan of allocation is inconsistent with the Settlement Agreement, the Settlement Agreement controls.

b. Second, determine the total damages for all Recipients ("Total Class Damages") by summing the damages for all Recipients as set forth in the Mills Supplemental Report.

c. Third, divide the Recipient's Damages by the Total Class Damages.

d. Fourth, multiply the resultant percentage for each Recipient by the Final Class Member Settlement Benefits (i.e., the remainder of the Settlement Amount after payment of Settlement Administration Expenses and any Class Counsel's Fees and Expenses and any Service Award).

3. If a Recipient would receive multiple checks pursuant to paragraphs 1-2 above, such checks may be consolidated into a single check.

4. North American shall fund the Settlement Escrow Account in accordance with Section 2.1(c) of the Settlement Agreement. For any Post-Settlement Terminated Policies, North American shall (i) transfer, within forty-five (45) calendar days of the Distribution Date, via wire to the Settlement Escrow Account, on a dollar-for-dollar basis the total amount of the Accumulation Value Credits that would have been provided with respect to Post-Settlement Terminated Policies if they had remained in-force on their Policy Credit Dates, and (ii) provide the Settlement Administrator and Class Counsel with a list of all Post-Settlement Terminated Policies and the Accumulation Value Credits they would have received if their policies had remained in-force on their Policy Credit Dates. The Class Administrator shall then, within thirty (30) calendar days of receipt, send for delivery by U.S. mail, first-class postage prepaid, a settlement check for such amounts to each Final Class Member with a Post-Settlement Terminated Policy.

5. Within nine (9) months after the Distribution Date, the Settlement Administrator shall determine the amount of funds in the Settlement Escrow Account equal to the amount of any checks sent pursuant to Section 2.2(c)(i) of the Settlement Agreement that have not been cashed, and that amount, less any costs associated with the disposition of residual funds, shall be redistributed on a *pro rata* basis to Final Class Members who previously cashed the checks they received or who received an Accumulation Value Credit, to the extent feasible and practical in light of the costs of administering such subsequent payments. No later than fourteen (14) calendar days before the Redistribution Date, Defendant shall provide to Class Counsel and the Settlement Administrator a list of the Final Class Policies that are then in-force. Policyowners of those in-force policies will be provided with their *pro rata* share of the redistribution by an Accumulation Value Credit on the first monthly deduction day for that policy following the Redistribution Date, and policyowners of policies that are not in-force will be provided with their *pro rata* share of the redistribution by check. The Settlement Administrator shall transfer to Defendant, via wire from the Settlement Escrow Account, on a dollar-for-dollar basis the total amount necessary to fund the Accumulation Value Credits for the redistribution. To the extent Defendant is unable to provide an Accumulation Value Credit because a policy terminates prior to that policy's first monthly deduction day following the Redistribution Date, Defendant shall transfer to the Settlement Escrow Account, via wire on a dollar-for-dollar basis the amount necessary to send that policyowner a redistribution check. A redistribution will be deemed infeasible or impractical if, in the Settlement Administrator's judgment, the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.

6. All costs associated with the disposition of residual funds – whether through additional distributions to Final Class Members and/or through an alternative plan approved by the Court – shall be borne solely by the Settlement Escrow Account.

7. 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 Class Website.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

DECLARATION OF CLAY COGMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, Clay Cogman, declare as follows:

1. I am over 18 years of age and am legally competent to make this Declaration. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Along with the Hon. Layn R. Phillips and Jeffrey Mishkin, I served as mediator for settlement discussions with respect to the class action of *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (S.D. Iowa) (the "Action"). I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement with North American Company for Life and Health Insurance.

3. I am a full-time professional mediator with Phillips ADR, an alternative dispute resolution firm founded by Judge Phillips, who is a former federal district court judge. I joined

Phillips ADR in 2011. I earned my Bachelor of Arts in History from Pepperdine University, and my J.D. from Fordham University.

4. During my tenure with Phillips ADR, I have worked on several hundred mediations involving some of the world's largest and most sophisticated companies and a wide range of complex practice areas including antitrust, class action, multi-district litigation, intellectual property, insurance coverage, derivative, securities, subprime lending, corporate governance, consumer protection, professional liability and contract disputes.

5. Judge Phillips, Mr. Mishkin, and I were retained by the parties in this case to preside over the settlement discussion and negotiations between the parties. In that role, we reviewed detailed mediation statements and related exhibits, draft term sheets, and certain Court rulings on matters of contention between the parties, including the Court's May 27, 2023 ruling on Defendant's motion for summary judgment, the parties' *Daubert* motions, and Plaintiff's motion to exclude certain fact witnesses.

6. Judge Phillips, Mr. Mishkin, and I assisted the parties with extensive settlement discussions and negotiations over a six-month period, beginning with an in-person, all-day mediation session on December 9, 2022 at Phillips ADR in Corona Del Mar, California. Before that in-person session, the parties submitted detailed mediation statements, draft term sheets, and the summary judgment and *Daubert* briefs that had already been filed at that time. Plaintiff also submitted an updated damages estimate.

7. Following this full-day session in December 2022, I conducted further settlement discussions and negotiations via telephone and email throughout the spring of 2023 until the parties reached agreement on material terms. I facilitated extensive negotiations in the week leading up to the scheduled June 20, 2023 trial. Those negotiations culminated in a binding term sheet signed

on Saturday, June 17, 2023—less than 72 hours before I understand that jury selection was scheduled to begin.

8. The mediation process involved extensive analysis of the parties' positions and assessment of the strengths and weaknesses of their positions, as well as candid conversations with counsel from each side regarding the potential risks and rewards of continued litigation.

9. The negotiations were vigorous and hard-fought and ultimately led to the settlement agreement currently being considered by the Court for approval.

10. Based on the materials provided by the settling parties and our extensive participation in the process, Judge Phillips, Mr. Mishkin, and I became familiar with the factual and legal issues involved in the Action, including the allegations asserted by Plaintiff and the defenses to liability and damages asserted by Defendant. I am also familiar with the process by which the parties negotiated the settlement, and I believe that the settlement was reached by the parties acting at arm's length, carefully, deliberately, and in good faith to advance the best interests of their clients. I have conferred with Judge Phillips and Mr. Mishkin, and they share this belief.

11. Based on my experience as a neutral, independent mediator and Judge Phillips', Mr. Mishkin's, and my assessment of the claims and defenses in this class action, I believe, as do Judge Phillips and Mr. Mishkin, that the parties achieved a fair and reasonable result in the settlement of the Class claims here.

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

Executed this 14th day of July, 2023 at Corona del Mar, California.

CLAY COGMAN

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

DECLARATION OF GINA INTREPIDO-BOWDEN REGARDING PROPOSED SETTLEMENT NOTICE PROGRAM

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

INTRODUCTION

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

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

3. I submit this Declaration at the request of Class Counsel in the above-referenced action to describe the proposed program 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 United States Securities and Exchange Commission ("SEC"), the Federal Trade Commission ("FTC"), and most recently, the Consumer Financial Protection Bureau (CFPB). In addition, we have been working with a number of other Unites States 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 law firms, corporations, banks, and other government agencies, which were only awarded after JND underwent rigorous reviews of our systems, privacy policies, and procedures. JND has also been certified as SOC 2 Compliant by noted accounting firm Moss Adams.[1]

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 was 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 of the largest legal claims administration matters in the country's history, and regularly prepare and implement court approved notice and administration campaigns throughout the United States. 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,

[1] As a SOC 2 Compliant organization, JND has passed an audit under AICPA (American Institute of Certified Public Accountants) criteria for providing data security.

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. 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.

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, the $215 million USC Student Health Center Settlement on behalf of women who were sexually abused by a doctor at USC, and the $123 million COI settlement against John Hancock Life Insurance Company of New York, 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.

PREVIOUS CLASS CERTIFICATION NOTICE

10. On March 22, 2022, the Court certified a nationwide Class "consisting of all current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period." ECF No. 148 at 29. The Class excluded "Defendant North American, its officers and directors, members

of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family." *Id*.

11. On April 15, 2022, Plaintiff filed a motion requesting approval of the form and manner of class notice. ECF No. 156. In connection with that motion, Plaintiff sought approval of JND as the Notice Administrator. *Id.* at 1. JND's Chief Executive Officer, Jennifer M. Keough, submitted a Declaration Regarding the Proposed Notice Plan describing the proposed notice plan and the opt-out procedure, as well as attaching the proposed short-form and long-form notices. ECF Nos. 156-2, 156-4, 156-5. Defendant did not oppose Plaintiff's motion. ECF No. 156 at 1. On October 19, 2022, the Court granted Plaintiff's motion for approval of the form and manner of notice and appointed JND as the Notice Administrator. ECF No. 188 at 2.

12. Pursuant to the Court's order approving the form and manner of notice, on November 18, 2022, after receiving the list of Class Members and their last known addresses and updating those addresses using the United States Postal Service ("USPS") National Change of Address ("NCOA") database, JND mailed the short-form notices to Class Members.[2] JND also established (1) a notice website designed for this lawsuit, www.coiclassaction-na.com, which allowed viewers to download copies of the long-form notice and other documents; (2) a case-specific toll-free number, 1-844-633-0709, for individuals to call to obtain information about the litigation; and (3) a case specific post office box.

[2] The NCOA database is the official USPS technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

13. The short and long-form notices explained to Class Members the procedure for opting out of the Class and notified the Class Members that the deadline to opt out of the Class was January 3, 2023.

14. Of the 18,592 policies in the Class, JND received 7 requests from Class Members to opt out of the Class during the opt-out period.

NOTICE PLAN OVERVIEW

15. We have been asked by Class Counsel to prepare a Notice Plan to reach Class Members and inform them about the proposed settlement, as well as their rights and options.

16. The objective of the proposed Notice Plan is to provide the best notice practicable, consistent with the methods and tools employed in other court-approved notice programs. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers a Notice Plan with a high reach (above 70%) effective. As discussed above, a nationwide Class defined as "all current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period." ECF No. 148 at 29.

17. The proposed Notice Plan consists of a direct mailed notice effort to Class Members using the list of Class Members to be provided by Class Counsel, excluding opt-outs.

18. JND will also update the case website, www.coiclassaction-na.com, to include information about the Settlement, as well as copies of relevant case documentation, including but not limited to the Settlement Agreement, the Preliminary Approval Motion, the Settlement Notices, any potential Preliminary Approval Order, any proposed Final Approval Order and Judgment, and related documents. We will also update the case toll-free telephone line (1-844-

633-0709) interactive voice response (IVR) so that Class Members may call to obtain more information about the Settlement. The case specific post office box will also be maintained.

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

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

DATA PRIVACY AND SECURITY

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

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

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

24. JND performs background checks on all personnel at onboarding and requires each individual to enter into a non-disclosure and confidentiality agreement. Additionally,

everyone must complete security and privacy training during the onboarding process, which educates staff on the proper handling of sensitive data. Refresher training is required of employees each year and JND periodically disseminates security and privacy awareness messages to all staff. Personnel are also required to review and attest to applicable security and privacy policies.

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

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

27. JND's defense-in-depth approach to security includes a myriad of tools and solutions to ensure its environment remains protected. Next Generation Firewalls are deployed at all perimeter points and provide intrusion detection and prevention protection (IDS/IPS) to

proactively block suspicious and malicious traffic without the need for human intervention. Similarly, Web Application Firewalls (WAF) are in positioned in from of public facing web applications which are designed in adherence to industry standard architecture. Security event and audit log data is transmitted to JND's Security Information and Event Management (SIEM) solution which aggregates data from across the enterprise to deliver analytics and threat intelligence. This is coupled with an Endpoint Detection and Response (EDR) solution, which is deployed on all endpoints to perform real-time and scheduled scanning along with behavioral analysis to ensure all systems are free from malicious software and activity. Encryption is also in use throughout JND's systems and services. Access to JND's information processing system is provided via a Microsoft IIS web application configured to be only accessible via Transport Layer Security (TLS) web traffic. Transmission of data outside on JND's environment also occurs via TLS encrypted web traffic, via SFTP, or similarly protected secure and encrypted protocols. Data is housed in databases and protected with full and/or field/column level encryption to ensure the utmost security of data. Furthermore, the physical disks of all servers and workstations are protected with encryption, as well.

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

29. JND facilities used to process or store data have in place adequate physical controls to prevent unauthorized access to, or dissemination of, sensitive information. Access to, and within, facilities is controlled by key cards assigned only to authorized personnel and

only at the level required to perform job duties. Access to highly sensitive areas, such as datacenters, server rooms, mailrooms, etc., while also controlled by key cards, are controlled by restricted levels of access. Access to JND's facilities is reviewed periodically, as well. Facilities are also protected by alarm systems and employ CCTV monitoring and recording systems. JND educates staff on maintaining a clean desk and securely storing and disposing of sensitive documentation, and also prohibits by default access to removeable media devices. Disposal of media, whether physical or electronic, is done so securely and in accordance with NIST 800-88 guidelines to ensure the data cannot be reconstituted.

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

DIRECT NOTICE

31. For this Settlement, JND will send a Postcard Settlement Notice by first class mail to all Class Members at their last known addresses, which will be taken from the Class Notice list provided to JND by Class Counsel. This Notice will notify Class Members of their right to opt out of the Class during the Second Opt-Out Period and the deadline to do so.

32. Prior to mailing the Class Notice, JND will run the mailing addresses through the USPS NCOA database to update the addresses. JND will track all notices returned undeliverable by the USPS and will promptly re-mail notices that are returned with a forwarding address. In addition, JND will also take reasonable efforts to locate a mailing address for any Class Member for whom a notice is returned without a forwarding address. If any Class Member is known to be deceased, the Class Notice will be addressed to the deceased Class Member's last known address and "To the Estate of [the deceased Class Member]."

33. A copy of the proposed Postcard Settlement Notice for all Class Members is attached hereto as Exhibit B.

CASE WEBSITE

34. JND will update the case website so that Class Members may obtain more information about the Settlement. JND designed the case website to be easy-to-navigate and we formatted it to emphasize important information regarding Class Members' rights. The updated case website will provide a link to download the Long Form Settlement Notice (attached hereto as Exhibit C), Settlement Agreement, Preliminary Approval Order, and other important court documents.

35. The case website is optimized for mobile visitors so that information loads quickly on mobile devices and is designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms are included in the site's metadata to maximize search engine rankings.

TOLL-FREE NUMBER AND POST OFFICE BOX

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

37. JND will maintain the dedicated post office box.

NOTICE DESIGN AND CONTENT

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

REACH

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

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

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

Executed on July 17, 2023, at Stone Harbor, NJ.

Gina Intrepido-Bowden

EXHIBIT A

GINA INTREPIDO-BOWDEN

VICE PRESIDENT

JND | LEGAL ADMINISTRATION

I. INTRODUCTION

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

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

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

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

II. JUDICIAL RECOGNITION

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

1. Honorable Dana M. Sabraw

***In re Packaged Seafood Prods. Antitrust Litig.* (EPP Class),** (July 15, 2022) No. 15-md-02670 (S.D. Cal.):

An experienced and well-respected claims administrator, JND Legal Administration LLC ("JND"), administered a comprehensive and robust notice plan to alert Settlement Class Members of the COSI Settlement Agreement…The Notice Plan surpassed the 85% reach goal…The Court recognizes JND's extensive experience in processing claim especially for millions of claimants…The Court finds due process was satisfied and the Notice Program provided adequate notice to settlement class members in a reasonable manner through all major and common forms of media.

2. Judge Fernando M. Olguin

***Gupta v. Aeries Software, Inc.*,** (July 7, 2022) No. 20-cv-00995 (C.D. Cal.):

Under the circumstances, the court finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members and complies with the requirements of due process…The court appoints JND as settlement administrator.

3. Judge Cormac J. Carney

***Gifford v. Pets Global, Inc.*,** (June 24, 2022) No. 21-cv-02136-CJC-MRW (C.D. Cal.):

The Settlement also proposes that JND Legal Administration act as Settlement Administrator and offers a provisional plan for Class Notice… The proposed notice

plan here is designed to reach at least 70% of the class at least two times. The Notices proposed in this matter inform Class Members of the salient terms of the Settlement, the Class to be certified, the final approval hearing and the rights of all parties, including the rights to file objections or to opt-out of the Settlement Class… This proposed notice program provides a fair opportunity for Class Members to obtain full disclosure of the conditions of the Settlement and to make an informed decision regarding the Settlement.

4. Judge David J. Novak

Brighton Tr. LLC, as Tr. v. Genworth Life & Annuity Ins. Co., (June 3, 2022) No. 20-cv-240-DJN (E.D. Va.):

The Court appoints JND Legal Administration LLC ("JND"), a competent firm, as the Settlement Administrator…The Court approves the Notice Plan, as set forth in… paragraphs 9-15 and Exhibits B-C of the May 9, 2022 Declaration of Gina Intrepido-Bowden ("Intrepido-Bowden Declaration").

5. Judge Cecilia M. Altonaga

In re Farm-raised Salmon and Salmon Prod. Antitrust Litig., (May 26, 2022) No. 19-cv-21551-CMA (S.D. Fla.):

The Court approves the form and content of: (a) the Long Form Notice, attached as Exhibit B to the Declaration of Gina Intrepido-Bowden of JND Administration; and (b) the Informational Press Release (the "Press Release"), attached as Exhibit C to that Declaration. The Court finds that the mailing of the Notice and the Press Release in the manner set forth herein constitutes the best notice that is practicable under the circumstances, is valid, due, and sufficient notice to all persons entitled thereto and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

6. Judge Victoria A. Roberts

Graham v. Univ. of Michigan, (March 29, 2022)
No. 21-cv-11168-VAR-EAS (E.D. Mich.):

The Court finds that the foregoing program of Class Notice and the manner of its dissemination is sufficient under the circumstances and is reasonably calculated to apprise the Settlement Class of the pendency of this Action and their right to object to the Settlement. The Court further finds that the Class Notice program is reasonable; that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and that it meets the requirements of due process and Federal Rule of Civil Procedure 23.

7. Honorable P. Kevin Castel

Hanks v. Lincoln Life & Annuity Co. of New York, (February 23, 2022)
No. 16-cv-6399 PKC (S.D.N.Y.):

The Court appoints JND Legal Administration LLC ("JND"), a competent firm, as the Settlement Administrator…The form and content of the notices, as well as the manner of dissemination described below, meet the requirements of Rule 23 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

8. Judge William M. Conley

Bruzek v. Husky Oil Operations Ltd., (January 31, 2022)
No. 18-cv-00697 (W.D. Wis.):

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

9. Honorable Dana M. Sabraw

In re Packaged Seafood Prods. Antitrust Litig. (DPP Class), (January 26, 2022) No. 15-md-02670 (S.D. Cal.):

The rigorous notice plan proposed by JND satisfies requirements imposed by Rule 23 and the Due Process clause of the United States Constitution. Moreover, the content of the notice satisfactorily informs Settlement Class members of their rights under the Settlement.

10. Honorable Dana M. Sabraw

In re Packaged Seafood Prods. Antitrust Litig. (EPP Class), (January 26, 2022)) No. 15-md-02670 (S.D. Cal.):

Class Counsel retained JND, an experienced notice and claims administrator, to serve as the notice provider and settlement claims administrator. The Court approves and appoints JND as the Claims Administrator. EPPs and JND have developed an extensive and robust notice program which satisfies prevailing reach standards. JND also developed a distribution plan which includes an efficient and user-friendly claims process with an effective distribution program. The Notice is estimated to reach over 85% of potential class members via notice placements with the leading digital network (Google Display Network), the top social media site (Facebook), and a highly read consumer magazine (People)… The Court approves the notice content and plan for providing notice of the COSI Settlement to members of the Settlement Class.

11. Judge Alvin K. Hellerstein

Leonard v. John Hancock Life Ins. Co. of NY, (January 10, 2022) No. 18-CV-04994 (S.D.N.Y.):

The Court appoints Gina Intrepido-Bowden of JND Legal Administration LLC, a competent firm, as the Settlement Administrator…the Court directs that notice be provided to class members through the Notices, attached as Exhibits B-C to the Declaration of Gina M. Intrepido-Bowden (the "Intrepido-Bowden Declaration"), and through the notice program described in described in Section 5 of the Agreement and

Paragraphs 24-33 of the Intrepido-Bowden Declaration. The Court finds that the manner of distribution of the Notices constitutes the best practicable notice under the circumstances as well as valid, due and sufficient notice to the Class and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.

12. Judge Timothy J. Corrigan

***Levy v. Dolgencorp, LLC*,** (December 2, 2021)
No. 20-cv-01037-TJC-MCR (M.D. Fla.):

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

13. Honorable Nelson S. Roman

***Swetz v. GSK Consumer Health, Inc.*,** (November 22, 2021)
No. 20-cv-04731 (S.D.N.Y.):

The Notice Plan provided for notice through a nationwide press release; direct notice through electronic mail, or in the alternative, mailed, first-class postage prepaid for identified Settlement Class Members; notice through electronic media—such as Google Display Network and Facebook—using a digital advertising campaign with links to the dedicated Settlement Website; and a toll-free telephone number that provides Settlement Class Members detailed information and directs them to the Settlement Website. The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order.

14. Honorable James V. Selna

Herrera v. Wells Fargo Bank, N.A., (November 16, 2021)
No. 18-cv-00332-JVS-MRW (C.D. Cal.):

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

15. Judge Morrison C. England, Jr.

Martinelli v. Johnson & Johnson, (September 27, 2021)
No. 15-cv-01733-MCE-DB (E.D. Cal.):

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

16. Honorable Nathanael M. Cousins

Malone v. Western Digital Corp., (July 21, 2021)
No. 20-cv-03584-NC (N.D. Cal.):

The Court hereby appoints JND Legal Administration as Settlement Administrator… The Court finds that the proposed notice program meets the requirements of Due Process under the U.S. Constitution and Rule 23; and that such notice program-which includes individual direct notice to known Settlement Class Members via email, mail, and a second reminder email, a media and Internet notice program, and the establishment of a Settlement Website and Toll-Free Number-is the best notice practicable under the circumstances and shall constitute due and sufficient notice

to all persons entitled thereto. The Court further finds that the proposed form and content of the forms of the notice are adequate and will give the Settlement Class Members sufficient information to enable them to make informed decisions as to the Settlement Class, the right to object or opt-out, and the proposed Settlement and its terms.

17. Judge Vernon S. Broderick, Jr.

***In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*,** (June 7, 2021) No. 14-md-02542 (S.D.N.Y.):

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

18. Honorable Louis L. Stanton

***Rick Nelson Co. v. Sony Music Ent.*,** (May 25, 2021) No. 18-cv-08791 (S.D.N.Y.):

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

19. Honorable Daniel D. Domenico

Advance Trust & Life Escrow Serv., LTA v. Sec. Life of Denver Ins. Co., (January 29, 2021) No. 18-cv-01897-DDD-NYW (D. Colo.):

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

20. Honorable Virginia A. Phillips

Sonner v. Schwabe North America, Inc., (January 25, 2021) No. 15-cv-01358 VAP (SPx) (C.D. Cal.):

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

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

21. Honorable R. Gary Klausner

A.B. v. Regents of the Univ. of California, (January 8, 2021) No. 20-cv-09555-RGK-E (C.D. Cal.):

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

22. Judge Jesse M. Furman

***In re General Motors LLC Ignition Switch Litig.*, economic settlement,** (December 18, 2020) No. 2543 (MDL) (S.D.N.Y.):

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

23. Judge Vernon S. Broderick, Jr.

***In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*,** (December 16, 2020) No. 14-md-02542 (S.D.N.Y.):

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

24. Judge R. David Proctor

***In re Blue Cross Blue Shield Antitrust Litig.*,** (November 30, 2020) Master File No. 13-CV-20000-RDP (N.D. Ala.):

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

25. Honorable Laurel Beeler

Sidibe v. Sutter Health, (November 5, 2020)
No. 12-cv-4854-LB (N.D. Cal.):

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

26. Judge Carolyn B. Kuhl

Sandoval v. Merlex Stucco Inc., (October 30, 2020)
No. BC619322 (Cal. Super. Ct.):

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

27. Honorable Louis L. Stanton

Rick Nelson Co. v. Sony Music Ent., (September 16, 2020)
No. 18-cv-08791 (S.D.N.Y.):

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

28. Honorable Jesse M. Furman

***In re General Motors LLC Ignition Switch Litig.*, economic settlement,** (April 27, 2020) No. 2543 (MDL) (S.D.N.Y.):

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

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

29. Honorable Virginia A. Phillips

***Sonner v. Schwabe North America, Inc.*,** (April 7, 2020) No. 15-cv-01358 VAP (SPx) (C.D. Cal.):

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

30. Judge Fernando M. Olguin

***Ahmed v. HSBC Bank USA, NA*,** (December 30, 2019) No. 15-cv-2057-FMO-SPx (N.D. Ill.):

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

31. Honorable Stephen V. Wilson

***USC Student Health Ctr. Settlement*,** (June 12, 2019)
No. 18-cv-04258-SVW (C.D. Cal.):

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

32. Judge J. Walton McLeod

***Boskie v. Backgroundchecks.com*,** (May 17, 2019)
No. 2019CP3200824 (S.C. C.P.):

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

33. Judge Kathleen M. Daily

***Podawiltz v. Swisher Int'l, Inc.*,** (February 7, 2019)
No. 16CV27621 (Or. Cir. Ct.):

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

34. Honorable Kenneth J. Medel

Huntzinger v. Suunto Oy, (December 14, 2018)
No. 37-2018-27159 (CU) (BT) (CTL) (Cal. Super. Ct.):

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

35. Honorable Thomas M. Durkin

In re Broiler Chicken Antitrust Litig., (November 16, 2018)
No. 16-cv-8637 (N.D. Ill.):

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

36. Honorable Kenneth J. Medel

Huntzinger v. Suunto Oy, (August 10, 2018)
No. 37-2018-27159 (CU) (BT) (CTL) (Cal. Super. Ct.):

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

37. Honorable Thomas M. Durkin

***In re Broiler Chicken Antitrust Litig.*,** (June 22, 2018)
No. 16-cv-8637 (N.D. Ill.):

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

38. Judge John Bailey

***In re Monitronics Int'l, Inc. TCPA Litig.*,** (September 28, 2017)
No. 11-cv-00090 (N.D. W.Va.):

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

39. Honorable Ann I. Jones

***Eck v. City of Los Angeles*,** (September 15, 2017)
No. BC577028 (Cal. Super. Cal.):

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

40. Honorable James Ashford

Nishimura v. Gentry Homes, LTD., (September 14, 2017)
No. 11-11-1-1522-07-RAN (Haw. Cir. Ct.):

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

41. Judge Cecilia M. Altonaga

Flaum v. Doctor's Assoc., Inc., (March 22, 2017)
No. 16-cv-61198 (S.D. Fla.):

...the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of due process and FED. R. CIV. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice. The Court approves the notice program in all respects (including the proposed forms of notice, Summary Notice, Full Notice for the Settlement Website, Publication Notice, Press Release and Settlement Claim Forms, and orders that notice be given in substantial conformity therewith.

42. Judge Manish S. Shah

Johnson v. Yahoo! Inc., (December 12, 2016)
No. 14-cv-02028 (N.D. Ill.):

The Court approves the notice plan set forth in Plaintiff's Amended Motion to Approve Class Notice (Doc. 252) (the "Notice Plan"). The Notice Plan, in form,

method, and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances.

43. Judge Joan A. Leonard

Barba v. Shire U.S., Inc., (December 2, 2016)
No. 13-cv-21158 (S.D. Fla.):

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

44. Judge Marco A. Hernandez

Kearney v. Equilon Enter. LLC, (October 25, 2016)
No. 14-cv-00254 (D. Ore.):

The papers supporting the Final Approval Motion, including, but not limited to, the Declaration of Robert A. Curtis and the two Declarations filed by Gina Intrepido-Bowden, describe the Parties' provision of Notice of the Settlement. Notice was directed to all members of the Settlement Classes defined in paragraph 2, above. No objections to the method or contents of the Notice have been received. Based on the above-mentioned

declarations, inter alia, the Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

45. Honorable Amy J. St. Eve

In re Rust-Oleum Restore Mktg, Sales Practices & Prod. Liab. Litig.,(October 20, 2016) No. 15-cv-01364 (N.D. Ill.):

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

46. Honorable R. Gary Klausner

Russell v. Kohl's Dep't Stores, Inc., (October 20, 2016) No. 15-cv-01143 (C.D. Cal.):

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

47. Judge Fernando M. Olguin

Chambers v. Whirlpool Corp., (October 11, 2016) No. 11-cv-01733 (C.D. Cal.):

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

48. Honourable Justice Stack

***Anderson v. Canada*,** (September 28, 2016)
No. 2007 01T4955CP (NL Sup. Ct.):

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

49. Judge Mary M. Rowland

***In re Home Depot, Inc., Customer Data Sec. Breach Litig.*,** (August 23, 2016)
No. 14-md-02583 (N.D. Ga.):

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

50. Honorable Manish S. Shah

***Campos v. Calumet Transload R.R., LLC*,** (August 3, 2016)
No. 13-cv-08376 (N.D. Ill.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate, reasonable, and constitute the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth therein, and these proceedings to all Persons entitled to such notice. The notice satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") and due process.

51. Honorable Lynn Adelman

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

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

52. Judge Marco A. Hernandez

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

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

53. Judge Joan A. Leonard

Barba v. Shire U.S., Inc., (April 11, 2016)
No. 13-cv-21158 (S.D. Fla.):

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

54. Honorable Manish S. Shah

Campos v. Calumet Transload R.R., LLC, (March 10, 2016 and April 18, 2016)
No. 13-cv-08376 (N.D. Ill.):

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

55. Judge Thomas W. Thrash Jr.

In re Home Depot, Inc., Customer Data Sec. Breach Litig., (March 8, 2016)
No. 14-md-02583 (N.D. Ga.):

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

Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

56. Judge Mary M. Rowland

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

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

57. Honorable Lynn Adelman

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

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

58. Judge Curtis L. Collier

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

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

59. Honorable Mitchell D. Dembin

Lerma v. Schiff Nutrition Int'l, Inc., (November 3, 2015)
No. 11-CV-01056 (S.D. Cal.):

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

60. Honorable Lynn Adelman

Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Ins. Co.,
(Indirect Purchaser–Gordon Settlement), (August 4, 2015)
No. 09-CV-00852 (E.D. Wis.):

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

61. Honorable Sara I. Ellis

Thomas v. Lennox Indus. Inc., (July 9, 2015)
No. 13-CV-07747 (N.D. Ill.):

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

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

62. Honorable Lynn Adelman

Fond du Lac Bumper Exch., Inc. v. Jui Li Enter.Co., Ltd. (Indirect Purchaser–Tong Yang Settlement), (May 29, 2015)
No. 09-CV-00852 (E.D. Wis.):

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

63. Honorable Mitchell D. Dembin

Lerma v. Schiff Nutrition Int'l, Inc., (May 25, 2015)
No. 11-CV-01056 (S.D. Cal.):

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

64. Honorable Lynn Adelman

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

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

65. Honorable José L. Linares

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

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

66. Honorable David O. Carter

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

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

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

67. Honorable José L. Linares

Demmick v. Cellco P'ship, (November 19, 2014)
No. 06-CV-2163 (D.N.J.):

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

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

68. Honorable Christina A. Snyder

Roberts v. Electrolux Home Prod., Inc., (September 11, 2014)
No. 12-CV-01644 (C.D. Cal.):

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

69. Judge Gregory A. Presnell

Poertner v. Gillette Co., (August 21, 2014)
No. 12-CV-00803 (M.D. Fla.):

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

70. Honorable Christina A. Snyder

Roberts v. Electrolux Home Prod., Inc., (May 5, 2014)
No. 12-CV-01644 (C.D. Cal.):

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

71. Honorable William E. Smith

Cappalli v. BJ's Wholesale Club, Inc., (December 12, 2013)
No. 10-CV-00407 (D.R.I.):

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

72. Judge Gregory A. Presnell

Poertner v. Gillette Co., (November 5, 2013)
No. 12-CV-00803 (M.D. Fla.):

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

73. Judge Marilyn L. Huff

Beck-Ellman v. Kaz USA, Inc., (June 11, 2013)
No. 10-cv-02134 (S.D. Cal.):

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

74. Judge Tom A. Lucas

Stroud v. eMachines, Inc., (March 27, 2013)
No. CJ-2003-968 L (W.D. Okla.):

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

75. Judge Marilyn L. Huff

Beck-Ellman v. Kaz USA, Inc., (January 7, 2013)
No. 10-cv-02134 (S.D. Cal.):

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

76. Judge Tom A. Lucas

***Stroud v. eMachines, Inc.*,** (December 21, 2012)
No. CJ-2003-968 L (W.D. Okla.):

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

77. Honorable Michael M. Anello

***Shames v. Hertz Corp.*,** (November 5, 2012)
No. 07-cv-02174 (S.D. Cal.):

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

78. Judge Ann D. Montgomery

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

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

79. Judge Ann D. Montgomery

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

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

80. Honorable Michael M. Anello

Shames v. Hertz Corp., (May 22, 2012)
No. 07-cv-02174 (S.D. Cal.):

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

81. Judge Ann D. Montgomery

In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig., (January 18, 2012)
No. 11-MD-2247 (D. Minn.):

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

82. Judge Jeffrey Goering

Molina v. Intrust Bank, N.A., (January 17, 2012)
No. 10-CV-3686 (Ks. 18th J.D. Ct.):

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

83. Judge Charles E. Atwell

Allen v. UMB Bank, N.A., (October 31, 2011)
No. 1016-CV34791 (Mo. Cir. Ct.):

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

84. Judge Charles E. Atwell

Allen v. UMB Bank, N.A., (June 27, 2011)
No. 1016-CV34791 (Mo. Cir. Ct.):

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

85. Judge Jeremy Fogel

Ko v. Natura Pet Prod., Inc., (June 24, 2011)
No. 09cv2619 (N.D. Cal.):

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

86. Judge M. Joseph Tiemann

Billieson v. City of New Orleans, (May 27, 2011)
No. 94-19231 (La. Civ. Dist. Ct.):

The plan to disseminate notice for the Insurance Settlements (the "Insurance Settlements Notice Plan") which was designed at the request of Class Counsel by experienced Notice Professionals Gina Intrepido-Bowden… IT IS ORDERED as follows: 1. The Insurance Settlements Notice Plan is hereby approved and shall be executed by the Notice Administrator; 2. The Insurance Settlements Notice Documents, substantially in the form included in the Insurance Settlements Notice Plan, are hereby approved.

87. Judge James Robertson

In re Dep't of Veterans Affairs (VA) Data Theft Litig., (February 11, 2009)
MDL No. 1796 (D.D.C.):

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

88. Judge Louis J. Farina

***Soders v. Gen. Motors Corp.*,** (December 19, 2008)
No. CI-00-04255 (C.P. Pa.):

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

89. Judge Robert W. Gettleman

***In re Trans Union Corp.*,** (September 17, 2008)
MDL No. 1350 (N.D. Ill.):

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

90. Judge William G. Young

***In re TJX Cos. Retail Security Breach Litig.*,** (September 2, 2008)
MDL No. 1838 (D. Mass.):

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

91. Judge David De Alba

Ford Explorer Cases, (May 29, 2008)
JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

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

III. SPEAKING ENGAGEMENTS

1. ***'Marching to Their Own Drumbeat.' What Lawyers Don't Understand About Notice and Claims Administration***, AMERICAN BAR ASSOCIATION, American Bar Association's (ABA) 23rd Annual National Institute on Class Actions, panelist (October 2019).

2. ***Rule 23 Amendments and Digital Notice Ethics, accredited CLE Program***, presenter at Terrell Marshall Law Group PLLC, Seattle, WA (June 2019); Severson & Werson, San Francisco, CA and broadcast to office in Irvine (June 2019); Greenberg Traurig, LLP, Los Angeles, CA (May 2019); Chicago Bar Association, Chicago, IL (January 2019); Sidley Austin LLP, Century City, CA and broadcast to offices in Los Angeles, San Francisco, New York, Chicago, Washington D.C. (January 2019); Burns Charest LLP, Dallas, TX (November 2018); Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN (October 2018); Zimmerman Reed LLP, Minneapolis, MN (October 2018); Gustafson Gluek PLLC, Minneapolis, MN (October 2018).

3. ***Ethics in Legal Notification*, accredited CLE Program**, presenter at Kessler Topaz Meltzer & Check LLP, Radnor, PA (September 2015); The St. Regis Resort, Deer Valley, UT (March 2014); and Morgan Lewis & Bockius, New York, NY (December 2012).

4. ***Pitfalls of Class Action Notice and Settlement Administration*, accredited CLE Program**, PRACTISING LAW INSTITUTE (PLI), Class Action Litigation 2013, presenter/panelist (July 2013).

5. ***The Fundamentals of Settlement Administration*, accredited CLE Program**, presenter at Skadden, Arps, Slate, Meagher & Flom LLP, Chicago, IL (January 2013); Wexler Wallace LLP, Chicago, IL (January 2013); Hinshaw & Culbertson LLP, Chicago, IL (October 2012); and Spector Roseman Kodroff & Willis, P.C., Philadelphia, PA (December 2011).

6. ***Class Action Settlement Administration Tips & Pitfalls on the Path to Approval*, accredited CLE Program**, presenter at Jenner & Block, Chicago, IL and broadcast to offices in Washington DC, New York and California (October 2012).

7. ***Reaching Class Members & Driving Take Rates***, CONSUMER ATTORNEYS OF SAN DIEGO, 4th Annual Class Action Symposium, presenter/panelist (October 2011).

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

9. ***Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice, accredited CLE Program***, presenter, Kansas Bar Association (March 2009).

IV. ARTICLES

1. Gina M. Intrepido-Bowden, *Time to Allow More Streamlined Class Action Notice Formats – Adapting Short Form Notice Requirements to Accommodate Today's Fast Paced Society*, LAW360 (2021).

2. Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and* Due *Process: The "Desire-to-Inform" Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006); reprinted in course materials for: CENTER FOR LEGAL EDUCATION INTERNATIONAL, Class Actions: Prosecuting and Defending Complex Litigation (2007); AMERICAN BAR ASSOCIATION, 10th Annual National Institute on Class Actions (2006); NATIONAL BUSINESS INSTITUTE, Class Action Update: Today's Trends & Strategies for Success (2006).

3. Gina M. Intrepido, *Notice Experts May Help Resolve CAFA Removal Issues, Notification to Officials*, 6 CLASS ACTION LITIG. REP. 759 (2005).

4. Todd B. Hilsee, Shannon R. Wheatman, & Gina M. Intrepido, *Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform*, 18 GEORGETOWN JOURNAL LEGAL ETHICS 1359 (2005).

V. CASE EXPERIENCE

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

CASE NAME	CASE NUMBER	LOCATION
A.B. v. Regents of the Univ. of California	20-cv-09555-RGK-E	C.D. Cal.
Abante Rooter & Plumbing, Inc. v. New York Life Ins. Co.	16-cv-03588	S.D.N.Y.
Advance Trust & Life Escrow Serv. LTA, v. N. Am. Co. for Life and Health Ins.	18-CV-00368	S.D. Iowa
Advance Trust & Life Escrow Serv., LTA v. ReliaStar Life Ins. Co.	18-cv-2863-DWF-ECW	D. Minn.
Advance Trust & Life Escrow Serv., LTA v. Sec. Life of Denver Ins. Co.	18-cv-01897-DDD-NYW	D. Colo.
Ahmed v. HSBC Bank USA, NA	15-cv-2057-FMO-SPx	N.D. Ill.
Allen v. UMB Bank, N.A.	1016-CV34791	Mo. Cir. Ct.
Anderson v. Canada (Phase I)	2008NLTD166	NL Sup. Ct.
Anderson v. Canada (Phase II)	2007 01T4955CP	NL Sup. Ct.
Andrews v. Plains All Am. Pipeline, L.P.	15-cv-04113-PSG-JEM	C.D. Cal.
Angel v. U.S. Tire Recovery	06-C-855	W. Va. Cir. Ct.
Baiz v. Mountain View Cemetery	809869-2	Cal. Super. Ct.
Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc.	00-L-9664	Ill. Cir. Ct.
Barba v. Shire U.S., Inc.	13-cv-21158	S.D. Fla.
Beck-Ellman v. Kaz USA Inc.	10-cv-2134	S.D. Cal.
Beringer v. Certegy Check Serv., Inc.	07-cv-1657-T-23TGW	M.D. Fla.
Bibb v. Monsanto Co. (Nitro)	041465	W. Va. Cir. Ct.
Billieson v. City of New Orleans	94-19231	La. Civ. Dist. Ct.
Bland v. Premier Nutrition Corp.	RG19-002714	Cal. Super. Ct.
Boskie v. Backgroundchecks.com	2019CP3200824	S.C. C.P.
Brighton Tr. LLC, as Tr. v. Genworth Life & Annuity Ins. Co.	20-cv-240-DJN	E.D. Va.

CASE NAME	CASE NUMBER	LOCATION
Brookshire Bros. v. Chiquita	05-CIV-21962	S.D. Fla.
Brown v. Am. Tobacco	J.C.C.P. 4042 No. 711400	Cal. Super. Ct.
Bruzek v. Husky Oil Operations Ltd.	18-cv-00697	W.D. Wis.
Campos v. Calumet Transload R.R., LLC	13-cv-08376	N.D. Ill.
Cappalli v. BJ's Wholesale Club, Inc.	10-cv-00407	D.R.I.
Carter v. Monsanto Co. (Nitro)	00-C-300	W. Va. Cir. Ct.
Chambers v. Whirlpool Corp.	11-cv-01733	C.D. Cal.
Cobb v. BSH Home Appliances Corp.	10-cv-00711	C.D. Cal.
Davis v. Am. Home Prods. Corp.	94-11684	La. Civ. Dist. Ct., Div. K
DC 16 v. Sutter Health	RG15753647	Cal. Super. Ct.
Defrates v. Hollywood Ent. Corp.	02L707	Ill. Cir. Ct.
de Lacour v. Colgate-Palmolive Co.	16-cv-8364-KW	S.D.N.Y.
Demereckis v. BSH Home Appliances Corp.	8:10-cv-00711	C.D. Cal.
Demmick v. Cellco P'ship	06-cv-2163	D.N.J.
Desportes v. Am. Gen. Assurance Co.	SU-04-CV-3637	Ga. Super. Ct.
Dolen v. ABN AMRO Bank N.V.	01-L-454 & 01-L-493	Ill. Cir. Ct.
Donnelly v. United Tech. Corp.	06-CV-320045CP	Ont. S.C.J.
Eck v. City of Los Angeles	BC577028	Cal. Super. Ct.
Elec. Welfare Trust Fund v. United States	19-353C	Fed. Cl.
Engquist v. City of Los Angeles	BC591331	Cal. Super. Ct.
Ervin v. Movie Gallery Inc.	CV-13007	Tenn. Ch. Fayette Co.
First State Orthopaedics v. Concentra, Inc.	05-CV-04951-AB	E.D. Pa.
Fisher v. Virginia Electric & Power Co.	02-CV-431	E.D. Va.
Fishon v. Premier Nutrition Corp.	16-CV-06980-RS	N.D. Cal.
Flaum v. Doctor's Assoc., Inc. (d/b/a Subway)	16-cv-61198	S.D. Fla.
Fond du Lac Bumper Exch. Inc. v. Jui Li Enter. Co. Ltd. (Direct & Indirect Purchasers Classes)	09-cv-00852	E.D. Wis.
Ford Explorer Cases	JCCP Nos. 4226 & 4270	Cal. Super. Ct.
Friedman v. Microsoft Corp.	2000-000722	Ariz. Super. Ct.
FTC v. Reckitt Benckiser Grp. PLC	19CV00028	W.D. Va.
Gardner v. Stimson Lumber Co.	00-2-17633-3SEA	Wash. Super. Ct.

CASE NAME	CASE NUMBER	LOCATION
Gifford v. Pets Global, Inc.	21-cv-02136-CJC-MRW	C.D. Cal.
Gordon v. Microsoft Corp.	00-5994	D. Minn.
Grays Harbor v. Carrier Corp.	05-05437-RBL	W.D. Wash.
Griffin v. Dell Canada Inc.	07-CV-325223D2	Ont. Super. Ct.
Gunderson v. F.A. Richard & Assoc., Inc.	2004-2417-D	La. 14th Jud. Dist. Ct.
Gupta v. Aeries Software, Inc.	20-cv-00995	C.D. Cal.
Hanks v. Lincoln Life & Annuity Co. of New York	16-cv-6399 PKC	S.D.N.Y.
Herrera v. Wells Fargo Bank, N.A.	18-cv-00332-JVS-MRW	C.D. Cal.
Hill-Green v. Experian Info. Solutions, Inc.	19-cv-708-MHL	E.D. Va.
Huntzinger v. Suunto Oy	37-2018-00027159-CU-BT-CTL	Cal. Super. Ct.
In re Anthem, Inc. Data Breach Litig.	15-md-02617	N.D. Cal.
In re Arizona Theranos, Inc. Litig.	16-cv-2138-DGC	D. Ariz.
In re Babcock & Wilcox Co.	00-10992	E.D. La.
In re Blue Cross Blue Shield Antitrust Litig.	13-CV-20000-RDP	N.D. Ala.
In re Broiler Chicken Antitrust Litig.	16-cv-08637	N.D. Ill.
In re Countrywide Fin. Corp. Customer Data Sec. Breach	MDL 08-md-1998	W.D. Ky.
In re Farm-raised Salmon and Salmon Prod. Antitrust Litig.	19-cv-21551-CMA	S.D. Fla.
In re General Motors LLC Ignition Switch Litig. (economic settlement)	2543 (MDL)	S.D.N.Y.
In re High Sulfur Content Gasoline Prod. Liab.	MDL No. 1632	E.D. La.
In re Home Depot, Inc., Customer Data Sec. Breach Litig.	14-md-02583	N.D. Ga.
In re Hypodermic Prod. Antitrust Litig.	05-cv-01602	D.N.J.
In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig. (Indirect-Purchasers)	14-md-02542	S.D.N.Y.
In re Lidoderm Antitrust Litig.	14-md-02521	N.D. Cal.
In re Lupron Mktg. & Sales Practices	MDL No.1430	D. Mass.
In re Mercedes-Benz Emissions Litig.	16-cv-881 (KM) (ESK)	D.N.J.
In re Monitronics Int'l, Inc., TCPA Litig.	11-cv-00090	N.D. W.Va.
In re Packaged Seafood Prods. Antitrust Litig. (DPP and EPP Class)	15-md-02670	S.D. Cal.

CASE NAME	CASE NUMBER	LOCATION
In re Parmalat Sec.	04-md-01653 (LAK)	S.D.N.Y.
In re Residential Schools Litig.	00-CV-192059 CPA	Ont. Super. Ct.
In re Resistors Antitrust Litig.	15-cv-03820-JD	N.D. Cal.
In re Royal Ahold Sec. & "ERISA"	03-md-01539	D. Md.
In re Rust-Oleum Restore Mktg. Sales Practices & Prod. Liab. Litig.	15-cv01364	N.D. Ill.
In re Sears, Roebuck & Co. Front-Loading Washer Prod. Liab. Litig.	06-cv-07023	N.D. Ill.
In re Serzone Prod. Liab.	02-md-1477	S.D. W. Va.
In re Skelaxin (Metaxalone) Antitrust Litig.	12-cv-194	E.D. Ten.
In re Solodyn (Minocycline Hydrochloride) Antitrust Litig. (Direct Purchaser Class)	14-md-2503	D. Mass.
In re: Subaru Battery Drain Prods. Liab. Litig.	20-cv-03095-JHR-MJS	D.N.J.
In re TJX Cos. Retail Sec. Breach Litig.	MDL No. 1838	D. Mass.
In re Trans Union Corp. Privacy Litig.	MDL No. 1350	N.D. Ill.
In re Uponor, Inc., F1807 Prod. Liab. Litig.	2247	D. Minn.
In re U.S. Dep't of Veterans Affairs Data Theft Litig.	MDL 1796	D.D.C.
In re Volkswagen "Clean Diesel" Mktg., Sales Practice and Prods. Liab. Litig.	MDL 2672 CRB	N.D. Cal.
In re Zurn Pex Plumbing Prod. Liab. Litig.	MDL 08-1958	D. Minn.
In the Matter of GTV Media Grp. Inc.	3-20537	SEC
James v. PacifiCorp.	20cv33885	Or. Cir. Ct.
Johnson v. Yahoo! Inc.	14-cv02028	N.D. Ill.
Kearney v. Equilon Enter. LLC	14-cv-00254	D. Ore.
Ko v. Natura Pet Prod., Inc.	09cv02619	N.D. Cal.
Langan v. Johnson & Johnson Consumer Co.	13-cv-01471	D. Conn.
Lavinsky v. City of Los Angeles	BC542245	Cal. Super. Ct.
Lee v. Stonebridge Life Ins. Co.	11-cv-00043	N.D. Cal.
Leonard v. John Hancock Life Ins. Co. of NY	18-CV-04994	S.D.N.Y.
Lerma v. Schiff Nutrition Int'l, Inc.	11-cv-01056	S.D. Cal.
Levy v. Dolgencorp, LLC	20-cv-01037-TJC-MCR	M.D. Fla.
Lockwood v. Certegy Check Serv., Inc.	07-CV-587-FtM-29-DNF	M.D. Fla.
LSIMC, LLC v. Am. Gen. Life Ins. Co.	20-cv-11518	C.D. Cal.

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Lerma v. Schiff Nutrition Int'l, Inc.	11-cv-01056	S.D. Cal.
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Lockwood v. Certegy Check Serv., Inc.	07-CV-587-FtM-29-DNF	M.D. Fla.
Luster v. Wells Fargo Dealer Serv., Inc.	15-cv-01058	N.D. Ga.
Malone v. Western Digital Corp.	20-cv-03584-NC	N.D. Cal.
Markson v. CRST Int'l, Inc.	17-cv-01261-SB (SPx)	C.D. Cal.
Martinelli v. Johnson & Johnson	15-cv-01733-MCE-DB	E.D. Cal.
McCall v. Hercules Corp.	66810/2021	N.Y. Super. Ct.
McCrary v. Elations Co., LLC	13-cv-00242	C.D. Cal.
Microsoft I-V Cases	J.C.C.P. No. 4106	Cal. Super. Ct.
Molina v. Intrust Bank, N.A.	10-cv-3686	Ks. 18th Jud. Dist. Ct.
Morrow v. Conoco Inc.	2002-3860	La. Dist. Ct.
Mullins v. Direct Digital LLC.	13-cv-01829	N.D. Ill.
Myers v. Rite Aid of PA, Inc.	01-2771	Pa. C.P.
Naef v. Masonite Corp.	CV-94-4033	Ala. Cir. Ct.
Nature Guard Cement Roofing Shingles Cases	J.C.C.P. No. 4215	Cal. Super. Ct.
Nichols v. SmithKline Beecham Corp.	00-6222	E.D. Pa.
Nishimura v Gentry Homes, LTD.	11-11-1-1522-07-RAN	Haw. Cir. Ct.
Novoa v. The GEO Grp., Inc.	17-cv-02514-JGB-SHK	C.D. Cal.
Nwauzor v. GEO Grp., Inc.	17-cv-05769	W.D. Wash.

CASE NAME	CASE NUMBER	LOCATION
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Nwauzor v. GEO Grp., Inc.	17-cv-05769	W.D. Wash.
Palace v. DaimlerChrysler	01-CH-13168	Ill. Cir. Ct.
Peek v. Microsoft Corp.	CV-2006-2612	Ark. Cir. Ct.
Plubell v. Merck & Co., Inc.	04CV235817-01	Mo. Cir. Ct.
Podawiltz v. Swisher Int'l, Inc.	16CV27621	Or. Cir. Ct.
Poertner v. Gillette Co.	12-cv-00803	M.D. Fla.
Prather v. Wells Fargo Bank, N.A.	15-cv-04231	N.D. Ga.
Q+ Food, LLC v. Mitsubishi Fuso Truck of Am., Inc.	14-cv-06046	D.N.J.
Richison v. Am. Cemwood Corp.	005532	Cal. Super. Ct.
Rick Nelson Co. v. Sony Music Ent.	18-cv-08791	S.D.N.Y.
Roberts v. Electrolux Home Prod., Inc.	12-cv-01644	C.D. Cal.
Russell v. Kohl's Dep't Stores, Inc.	15-cv-01143	C.D. Cal.
Sandoval v. Merlex Stucco Inc.	BC619322	Cal. Super. Ct.
Scott v. Blockbuster, Inc.	D 162-535	136th Tex. Jud. Dist.
Senne v Office of the Comm'r of Baseball	14-cv-00608-JCS	N.D. Cal.

CASE NAME	CASE NUMBER	LOCATION
Shames v. Hertz Corp.	07cv2174-MMA	S.D. Cal.
Sidibe v. Sutter Health	12-cv-4854-LB	N.D. Cal.
Staats v. City of Palo Alto	2015-1-CV-284956	Cal. Super. Ct.
Soders v. Gen. Motors Corp.	CI-00-04255	Pa. C.P.
Sonner v. Schwabe North America, Inc.	15-cv-01358 VAP (SPx)	C.D. Cal.
Stroud v. eMachines, Inc.	CJ-2003-968-L	W.D. Okla.
Swetz v. GSK Consumer Health, Inc.	20-cv-04731	S.D.N.Y.
Talalai v. Cooper Tire & Rubber Co.	MID-L-8839-00 MT	N.J. Super. Ct.
Tech. Training Assoc. v. Buccaneers Ltd. P'ship	16-cv-01622	M.D. Fla.
Thibodeaux v. Conoco Philips Co.	2003-481	La. 4th Jud. Dist. Ct.
Thomas v. Lennox Indus. Inc.	13-cv-07747	N.D. Ill.
Thompson v. Metropolitan Life Ins. Co.	00-CIV-5071 HB	S.D. N.Y.
Turner v. Murphy Oil USA, Inc.	05-CV-04206-EEF-JCW	E.D. La.
USC Student Health Ctr. Settlement	18-cv-04258-SVW	C.D. Cal.
Walker v. Rite Aid of PA, Inc.	99-6210	Pa. C.P.
Wells v. Abbott Lab., Inc. (AdvantEdge/ Myoplex nutrition bars)	BC389753	Cal. Super. Ct.
Wener v. United Tech. Corp.	500-06-000425-088	QC. Super. Ct.
West v. G&H Seed Co.	99-C-4984-A	La. 27th Jud. Dist. Ct.
Williams v. Weyerhaeuser Co.	CV-995787	Cal. Super. Ct.
Yamagata v. Reckitt Benckiser, LLC	17-cv-03529-CV	N.D.Cal.
Zarebski v. Hartford Ins. Co. of the Midwest	CV-2006-409-3	Ark. Cir. Ct.

EXHIBIT B

COURT AUTHORIZED
LEGAL NOTICE

If you own or owned a Classic Term UL I or Classic Term UL II life insurance policy issued or insured by North American Company for Life and Health Insurance or its predecessors, you may be affected by a class action settlement

www.coiclassaction-na.com

North American Company COI Settlement
c/o JND Legal Administration
P.O. Box 11037
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»

A proposed settlement has been reached in a class action lawsuit called *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (S.D. Iowa) (the "Settlement"). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at www.coiclassaction-na.com.

What is this about? PHT Holding II LLC ("Plaintiff") alleges that North American Company for Life and Health Insurance ("Defendant") breached the contracts with Classic Term UL I and Classic Term UL II policyowners by imposing cost of insurance ("COI") rates that were in violation of the policy provisions. Defendant denies Plaintiff's claims. The Court has not decided who is right or wrong. Instead, both sides have agreed to the Settlement to avoid risks, costs, and delays of further litigation.

Who is affected? The Class consists of all current and former owners of Classic Term UL I or Classic Term UL II issued or insured by Defendant, or its predecessors, during the Class Period. The Class Period is defined in the FAQ Section at www.coiclassaction-na.com. Excluded from the Class are Defendant, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; any Judge to whom this case is assigned, and his or her immediate family; and any policyowner that validly opted-out in the Original Opt-Out Period which expired on January 3, 2023. Records indicate you may be a Class Member. This Notice summarizes your rights and options.

What does the Settlement provide? Defendant will provide a total settlement amount of $59 million to be used for cash payments for terminated policies, account credits for active policies, settlement administration costs, Plaintiff's attorneys' fees and expenses, and a Service Award for Plaintiff (up to $25,000). Class Counsel will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed $21,366,666.67. The benefits will be distributed to Class Members on a pro-rata basis calculated by dividing that Class Member's alleged COI overcharges by the total alleged overcharge damages allegedly incurred by the Class Members. More details are in a document called the Settlement Agreement, which is available at www.coiclassaction-na.com.

What are my options? You can do nothing, ask to be excluded, or object to the Settlement.

Do nothing. Remain in the Class and automatically receive a credit on your active policy(ies) or a payment in the mail if your policy(ies) is terminated at the time of distribution. You will be bound by the Settlement, and you will give up your right to sue Defendant for claims that were or could have been alleged in this case.

Ask to be Excluded ("Opt Out"). Remove yourself from the Class and get no benefits from the Settlement. Keep your right to sue Defendant, at your own expense, for the claims in this case. If you previously opted out of this Action, you do not need to opt out again.

Object. If you do not opt out, you may object or 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.

The deadline to opt out or object is **[date, 2023]**. For more details about your rights and options and how to opt out or object, go to www.coiclassaction-na.com.

What happens next? The Court will hold a Fairness Hearing on [**date, 2023 at XX CT**] 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.

How can I get more information? Go to www.coiclassaction-na.com, call toll-free 1-844-633-0709, or write to North American Company COI Settlement, c/o JND Legal Administration, P.O. Box 11037, Seattle, WA 98111.

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.

North American Company COI Settlement
c/o JND Legal Administration
P.O. Box 11037
Seattle, WA 98111

EXHIBIT C

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

NOTICE OF CLASS ACTION SETTLEMENT

If you own or owned a Classic Term UL I or Classic Term UL II life insurance policy issued or insured by North American Company for Life and Health Insurance or its predecessors, 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 certified class action lawsuit called *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (the "Settlement").

- PHT Holding II LLC ("Plaintiff") alleges that North American Company for Life and Health Insurance ("Defendant") imposed unlawful cost of insurance ("COI") charges on Classic Term UL I and II policyowners. Plaintiff asserts that North American's failure to lower COI rates when its expectations as to future mortality experience allegedly improved violated the terms of the policyowners' contracts, and that Plaintiff and members of the Class have been damaged as a result. Defendant denies Plaintiff's claims. Defendant asserts multiple defenses, including that it had no contractual obligation to decrease COI rates. It also asserts that future mortality improvement already was assumed when the COI rates were set at the inception of the contracts. The Court has not decided who is right or wrong. Instead, both sides have agreed to the Settlement to avoid risks, costs, and delays of further litigation.

- If the Court approves the Settlement, Defendant will make available a total settlement amount of $59 million in combined cash payments and Accumulation Value Credits. This amount will be used to make cash payments to terminated policyholders and policy account credits for active policyholders, and to pay settlement administration costs, any Class Counsel's fees and expenses, and any Service Award to the Plaintiff, as further detailed in Question 18.

- You are a Class Member if you own or owned a Classic Term UL I or Classic Term UL II life insurance policy issued or insured by North American Company for Life and Health Insurance, or its predecessors, during the Class Period outlined in Question 7. Excluded from the Class are Defendant, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; and the Judge to whom this case is assigned and her immediate family.

- 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 an Accumulation Value Credit on active policy(ies) or a cash payment in the mail if your policy(ies) is terminated at the time of distribution • Be bound by the Settlement • Give up your right to sue Defendant for the claims that were or could have been alleged in this case through the Final Approval Date.	
Ask to be Excluded **("Opt Out")**	• Remove yourself from the Class • Get no benefits from the Settlement • Keep your right to sue Defendant, at your own expense, for the claims in this case **If you previously opted out of this Action, you do not need to opt out again**	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.coiclassaction-na.com regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

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.

Chief Judge Stephanie M. Rose of the United States District Court for the Southern District of Iowa (the "Court") is in charge of this case. The case is called *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA (S.D. Iowa). PHT Holding II LLC is the Plaintiff in this case. The company being sued, North American Company for Life and Health Insurance, is called the Defendant.

2. What is this lawsuit about?

The class action lawsuit alleges that Defendant breached its contracts with certain policyowners. Plaintiff's policy states, in part:

> **Cost of Insurance.** The cost of insurance for the Insured is determined on a monthly basis. Such cost is calculated as (1) times (2), where: (1) is the cost of insurance rate as described in the Cost of Insurance Rates section. (2) is the net amount at risk, as defined in the Changing Death Benefit Options provision. . . .
>
> **Cost of Insurance Rates.** The monthly cost of insurance rate is based on the sex, attained age, and rating class of the Insured. Policy duration is also a factor in determining the monthly cost of insurance rates. Attained age for the initial Specified Amount means age nearest birthday on the prior policy anniversary. Attained age for any increase in Specified Amount or increase in net amount at risk applied for when changing Death Benefit options means age nearest birthday on the prior anniversary of the date such increase became effective. Monthly cost of insurance rates are determined by us, based on our expectations as to future mortality experience. Any change in cost of insurance rates applies to all individuals of the same class as the insured. Under no circumstances are cost of insurance rates for insureds in that standard risk class greater than those shown in the Table of Guaranteed Maximum Insurance Rates. Age nearest birthday is used in determining such guaranteed maximum rates.

Plaintiff alleges that Defendant breached these contractual provisions because Defendant failed to lower its cost of insurance rates when its expectations as to future mortality experience allegedly improved, and that Plaintiff and members of the Class have been damaged as a result. Defendant denies Plaintiff's claims and asserts multiple defenses, including that it had no contractual obligation to decrease COI rates and that the COI rates are and have always been in compliance with the contract. It also asserts that future mortality improvement already was assumed when the COI rates were set at the inception of the contracts.

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

Classic Term UL I or Classic Term UL II life insurance policies issued or insured by North American Company for Life and Health Insurance, or its predecessors, during the Class Period are affected by the lawsuit. The Class Period is defined in Question 7 of this Notice.

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 represents other eligible policyowners (current and

former) and together they are called the "Class" or "Class Members." Plaintiff will serve as the Class Representative. 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 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?

The Court decided that the breach of contract claim against Defendant in this lawsuit can proceed as a class action because 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
- The Class is ascertainable because it is defined by identifiable objective criteria.

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

6. Why is there a Settlement?

Defendant denies any and all liability or wrongdoing of any sort with regard to Plaintiff's allegations. The Court has not decided in favor of Plaintiff or Defendant. Instead, the parties have agreed to the Settlement to avoid the risks, costs, and delays of further litigation. Plaintiff and Class Counsel think the Settlement is in the best interests of the Class and is fair, reasonable, and adequate.

THE SETTLEMENT CLASS

7. Am I part of the Class?

The Class consists of all current and former owners of Classic Term UL I or Classic Term UL II life insurance policies issued or insured by North American Company for Life and Health Insurance, or its predecessors, during the Class Period.

The "Class Period" starts on the following dates:

Start Date of Class Period	Classic Term UL I or Classic Term UL II Issue State
Oct. 30, 2008	Illinois, Indiana, Iowa, Kentucky, Louisiana, Rhode Island, West Virginia, and Wyoming
Oct. 30, 2010	Montana and Ohio
Oct. 30, 2012	Alabama, Arizona, Connecticut, Georgia, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, Washington, and Wisconsin
Oct. 30, 2013	Arkansas, Florida, Idaho, Kansas, Missouri, Nebraska, Oklahoma, and Virginia
Oct. 30, 2014	California, Pennsylvania, and Texas
Oct. 30, 2015	Alaska, Colorado, Delaware, Maryland, Mississippi, New Hampshire, North Carolina, South Carolina, and Washington, D.C.

8. Are there exceptions to being included?

Yes. Excluded from the Class are Defendant North American Company for Life and Health Insurance, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; anyone employed with Plaintiff's counsel's firms; any Judge to whom this case is assigned, and his or her immediate family; and any policyowner who validly opted out during the Original Opt-Out Period, which expired on January 3, 2023.

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

If you are still not sure whether you are a Class Member, please visit www.coiclassaction-na.com, call the Settlement Administrator toll-free at 1-844-633-0709, or write to: North American Company COI Settlement Administrator, c/o JND Legal Administration, P.O. Box 11037, Seattle, WA 98111.

WHAT SETTLEMENT CLASS MEMBERS GET

10. What does the Settlement provide?

Defendant will provide a total of $59 million in combined cash payments and Accumulation Value Credits to the Class Members, Class Counsel, the Class Representative, and the Settlement Administrator. After payment of settlement administration costs, Class Counsel's attorneys' fees and expenses, and any service award to the Class Representative (*see* Question 18 below), the Settlement Administrator will distribute the remaining amounts to Class Members on a pro-rata basis calculated by dividing that Class Member's alleged COI overcharges by the total alleged overcharge damages incurred by the Class Members. Class Members with In-Force Policies will receive Accumulation Value Credits and Class Members with Terminated Policies will receive cash payments by check. No portion of the Settlement Fund will be returned to Defendant to keep for itself.

More details are in a document called the Settlement Agreement, which is available at www.coiclassaction-na.com.

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

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant involving any claims that were 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 release in the Settlement is a historical release only and does not release any claims arising out of COI deductions made after the Final Approval Date. The Settlement Agreement is available at www.coiclassaction-na.com.

HOW TO GET A PAYMENT

12. How can I get a payment?

If you are entitled to a payment, you will automatically receive it. No claims need to be filed or submitted.

13. When will I get my payment?

Payments will be distributed by mail to Class Members with Terminated Policies and Accumulation Value Credits will be credited to Class Members with In-Force Policies 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 Defendant 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.

If you previously opted out of this class action, you do not need to opt out again.

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 Class;
- The case name (*PHT Holding II LLC v. North American Company for Life and Health Insurance*);
- The Classic Term UL I or Classic Term UL II insurance policy number(s) to be excluded; and
- Your signature.

You must mail your exclusion request **postmarked by Month x, 2023** to:

North American COI Settlement Administrator
c/o JND Legal Administration
P.O. Box 11037
Seattle, WA 98111

IF YOU DO NOT EXCLUDE YOURSELF BY MONTH X, 2023, YOU WILL REMAIN PART OF THE CLASS AND BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT.

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

No. Unless you exclude yourself, you give up any right to sue Defendant 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
Krysta Kauble Pachman
Glenn C. Bridgman
Nicholas N. Spear
Halley W. Josephs
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1301 Avenue of the Americas, 32nd Floor
New York, NY 10019-6023
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
Telephone: 212-336-8330

18. How will the lawyers be paid?

Class Counsel will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed $21,366,666.67. Class Counsel will also seek a Service Award up to $25,000 for Plaintiff for its service as the representative on behalf of the Class. All such payments will be paid from the $59 million settlement amount made available by Defendant. 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 Class, you do not need to hire your own lawyer to pursue the claims against Defendant. Class Counsel is working on behalf of the 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 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. Class Members who wish to object to any term of the Settlement must do so, in writing, by filing a written objection with the Court, and serving copies on Class Counsel and Counsel for Defendant. The written objection must include:

- The case name and number (*PHT Holding II LLC v. North American Company for Life and Health Insurance,* Case No. 4:18-cv-00368-SMR-HCA)
- Your full name, address, telephone number, and email address (if any);
- Your Classic Term UL I or Classic Term UL II insurance policy number(s);
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A statement of whether you intend to appear at the Fairness Hearing; and
- Your or your counsel's signature.

If you intend to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Your objection, along with any supporting material you wish to submit, must be filed with the Clerk of the Court, with a copy served on Class Counsel and Counsel for Defendant by **Month x, 2023** at the following addresses:

<table>
<tr><th colspan="2">Clerk of the Court</th></tr>
<tr><td colspan="2">Clerk of Court
U.S. District Court
Southern District of Iowa
123 East Walnut Street
Suite 300
Des Moines, IA 50309</td></tr>
<tr><th>Class Counsel</th><th>Counsel for Defendant</th></tr>
<tr><td>Steven G. Sklaver
Seth Ard
Ryan Kirkpatrick
Krysta Kauble Pachman
Glenn C. Bridgman
Nicholas N. Spear
Halley W. Josephs
SUSMAN GODFREY LLP
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
ssklaver@susmangodfrey.com
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
kpachman@susmangodfrey.com
gbridgman@susmangodfrey.com
nspear@susmangodfrey.com
hjosephs@susmangodfrey.com</td><td>William H. Higgins
Andrew J. Tuck
Tania Rice
ALSTON & BIRD, LLP
1201 W. Peachtree St., Suite 4900
Atlanta, GA 30309-3424
william.higgins@alston.com
andy.tuck@alston.com
tania.rice@alston.com</td></tr>
</table>

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 p.m. CT 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.

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 any person who 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 Defendant about the claims being released in this Settlement before the Final Approval Date, 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.coiclassaction-na.com. You can also call the Settlement Administrator toll-free at 1-844-633-0709, or write to:

North American Company COI Settlement Administrator
c/o JND Legal Administration
P.O. Box 11037
Seattle, WA 98111

PLEASE DO NOT CONTACT THE COURT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PHT HOLDING II LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, Defendant.	Civil Action No. 18-CV-00368 Honorable Stephanie M. Rose Honorable Helen C. Adams

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

WHEREAS, Plaintiff on behalf of itself and the Class has moved for an order preliminarily approving the terms and conditions of the Settlement with Defendant North American Company for Life and Health Insurance ("North American" or "Defendant"), as set forth in the Joint Stipulation and Settlement Agreement ("Agreement") that is attached as Exhibit 2 to the Declaration of Steven Sklaver ("Sklaver Declaration");

WHEREAS, the Settlement requires, among other things, that all Released Claims against Released Parties be settled and compromised;

WHEREAS, this motion is uncontested by Defendant; and

WHEREAS, this Court having considered the Agreement and Exhibits annexed thereto, Plaintiff's Motion for Preliminary Approval of the Settlement and all papers filed in support of such motion.

NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 23(e), it is hereby ORDERED that:

1. The capitalized terms used herein shall have the meanings set forth in the Agreement.

2. Pursuant to Rule 23(e)(1)(B)(i), the Court finds that it will likely be able to approve the Settlement under Rule 23(e)(2), and therefore preliminarily approves the Settlement as set forth in the Agreement, including the releases contained therein, as being fair, reasonable and adequate to the Class under the relevant factors set forth in Rule 23(e)(2) and *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988), subject to the right of any 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 Defendant, and ordering the release of the Released Claims against

Releasees, should not be entered after due and adequate notice to the Class as set forth in the Agreement and after a hearing on final approval.

3. The Court finds that the Agreement was entered into at arm's length by highly experienced counsel with the assistance of a mediator and is sufficiently within the range of reasonableness that notice of the Agreement should be given as provided in the Agreement.

4. The Court finds that the proposed plan of allocation, attached as Exhibit 7 to the Sklaver Declaration, is sufficiently fair and reasonable that notice of the distribution plan should be given as provided in the Notice.

5. The Court appoints JND Legal Administration LLC ("JND") as the Settlement Administrator. Funds required to pay the Settlement Administrator may be paid from the Settlement Fund as they become due as set forth in the Agreement. The Settlement Administrator shall be responsible for receiving requests for exclusion from the Class Members.

6. As of the date hereof, all proceedings in the above-captioned class action shall be stayed and suspended until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

7. Pursuant to Rule 23(e)(1)(B), the Court directs that notice be provided to Class Members through the Notices, attached as Exhibits B and C to the Declaration of Gina M. Intrepido-Bowden (the "Intrepido-Bowden Declaration"), and through the notice program described in described in Section 4 of the Agreement and Paragraphs 15-20 and 31-37 of the Intrepido-Bowden Declaration. The Court finds that the manner of distribution of the Notices constitutes the best practicable notice under the circumstances as well as valid, due and sufficient notice to the Class and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.

8. Upon entry of this Preliminary Approval Order, the parties shall begin implementation of the notice program as outlined in Section 4 of the Agreement and Paragraphs 15-20 and 31-37 of the Intrepido-Bowden Declaration.

9. The Settlement Administrator will run an update of the last known addresses in the Notice List provided by Class Counsel through the National Change of Address database before initially mailing the short-form Class Notice. If a Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will endeavor to: (i) re-mail any Class Notice so returned with a forwarding address; and (ii) make reasonable efforts to attempt to find an address for any returned Class Notice that does not include a forwarding address. The Settlement Administrator will endeavor to re-mail the Class Notice to every person and entity in the Notice List for which it obtains an updated address. If any Class Member is known to be deceased, the Class Notice will be addressed to the deceased Class Member's last known address and "To the Estate of [the deceased Class Member]." The mailing of a Class Notice to a person or entity that is not in the Class shall not render such person or entity a part of the Class or otherwise entitle such person to participate in this Settlement.

10. A copy of the Notice shall also be posted on the Internet at the following website address: www.coiclassaction-na.com. Any Court-approved changes to the Agreement, or to any filings made in connection with the Agreement, may be posted to that website address, and by doing so, will be deemed due and sufficient notice to Class Members in compliance with Due Process and Rule 23 of the Federal Rules of Civil Procedure.

11. 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. The objection must contain:

(1) the full name, address, telephone number, and email address, if any, of the 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 Class Member intends to appear at the Fairness Hearing; and (7) the signature of the Class Member or his/her counsel. If an objecting 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 Class Member who will appear at the Settlement Hearing. 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.

12. Any Class Member that wishes to be excluded from the 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 Notice Date. Exclusion requests must: (i) clearly state that the Class Member desires to be excluded from the Class for the Settlement; (ii) must identify by policy number the Policy(ies) to be excluded; and (iii) 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.

13. Any Class Member who does not submit a timely, written request for exclusion from the Class shall be bound by all proceedings, orders, and judgments in the Action. A list reflecting all valid requests for exclusion shall be filed with the Court, by Class Counsel, prior to the Fairness Hearing.

14. The Court hereby schedules a Final Fairness Hearing to occur on _____, 2023, at _____ before the Honorable Stephanie M. Rose in United States District Court for the

Southern District of Iowa, United States Courthouse, Courtroom __, 123 East Walnut Street, Des Moines, IA 50309, to determine 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)(2); (ii) the class shall remain 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 a proposed plan of allocation should be approved; and (v) the application of Class Counsel for an award of attorneys' fees, expense reimbursements, and service award ("Fee and Expense Request") in this matter should be approved.

15. The Court hereby adopts the following schedule for events and Court submissions which must be completed prior to the Fairness hearing. All time periods run from the date of this Preliminary Approval Order:

EVENT	DAYS FROM PRELIMINARY APPROVAL
Deadline to send notice to Class Members	21 days
Deadline to file motion for award of attorneys' fees, expenses and service awards	52 days
Opt-Out and Objection Deadline	66 days
Deadline to file Final Approval motion	80 days
Deadline to file any reply brief in support of any motion	101 days
Final Approval Hearing	108 days

16. 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 used as an admission or evidence (i) of the validity of any claims, alleged wrongdoing

or liability of Defendant or (ii) of any fault or omission of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

17. 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 the claims of Plaintiff or the Class lacked merit in any proceeding.

18. If the Settlement or the Agreement fails to be approved, fails to become effective, or 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 of June 17, 2023, as if this Agreement had never been negotiated or executed, with the right to assert in the Action any argument or defense that was available to it at that time, except that each Party shall bear one-half of the Settlement Administration Expenses and all interest earned on the funds in the Settlement Escrow Account shall be paid to North American.

19. The Settlement Escrow Account to be established pursuant to the Settlement Agreement is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

20. No later than ten (10) days after the Motion for Preliminary Approval of the Settlement has been filed with the Court, Defendant will serve the Class Action Fairness Act ("CAFA") Notice on the Attorney General of the United States and the appropriate state officials as required by 28 U.S.C. § 1715(b). Thereafter, Defendant will serve any supplemental CAFA Notice as appropriate.

ENTERED this _____ day _____of _____.

_____

Hon. Stephanie M. Rose
UNITED STATES DISTRICT JUDGE