

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

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

v.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant.

Civil No. 3:20cv240 (DJN)

**DECLARATION OF STEVEN SKLAVER IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND
INCENTIVE AWARD**

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

1. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Award, in connection with the proposed class action settlement between Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust; Bank of Utah, solely as securities intermediary for Diamond LS Trust; and Ronald L. Daubenmier, on behalf of themselves and the certified class, and Defendant Genworth Life and Annuity Insurance Company ("GLAIC").

2. I am admitted *pro hac vice* before this Court. I am also member in good standing of the State Bars of California, Colorado, and Illinois. I am a partner in the law firm of Susman Godfrey L.L.P. and counsel of record for Plaintiffs and court-appointed Class Counsel in the above-captioned case. I have personal knowledge of the facts set forth herein or they are readily discernible, and if called to testify as a witness, could and would testify competently thereto.

3. Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation and Settlement Agreement in this matter, which was fully executed on May 6, 2022.

4. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance (“COI”) class actions and settlements thereof. Susman Godfrey has represented numerous classes of policyholders seeking recovery of COI overcharges against insurers, including AXA Equitable Life Insurance Company, North American Company for Life and Health Insurance, Security Life of Denver Insurance Company, and Voya Retirement Insurance and Annuity Company. Class Counsel has substantial experience prosecuting large-scale class actions and life settlement litigation. A copy of the firm’s class action profile and the profiles of myself and my fellow class counsel at Susman Godfrey are attached hereto as **Exhibit 2**.

5. Plaintiff Brighton Trustees, LLC, as trustee, owns a life insurance policy issued by First Colony Life Insurance Company, now GLAIC, in 1999 (“Pinsof Policy”). Plaintiff Bank of Utah is the custodian and securities intermediary for Diamond LS Trust, the trust managed by Brighton Trustees, LLC. Bank of Utah is responsible for collecting maturity proceeds and paying premiums for the policy. Attached as **Exhibit 3** hereto is a true and correct copy of the Pinsof Policy.

6. In December 2019, GLAIC changed COI rates for Gold and Gold II universal life insurance policies (“Class Policies”), issued by First Colony between 1999 and 2007 (the “2019 COI Increase”).

7. Class Counsel immediately investigated whether the 2019 COI Increase was made in compliance with the terms of the Class Policies. Class Counsel worked with industry experts to do a comprehensive review of publicly available information about the Class Policies and the 2019 COI Rate Increase, including studying the GLAIC policy forms, analyzing trends in actuarial assumptions—detailed in GLAIC’s public filings with insurance regulators—from the

time the policies were issued, and reviewing the information GLAIC provided to policyowners about the 2019 COI Increase.

8. Plaintiffs Brighton Trustees LLC, as trustee, and Bank of Utah filed the first case against GLAIC on April 6, 2020. ECF No. 1. Their complaint included a claim for breach of contract. *Id.* Plaintiff Ronald Daubenmier filed a second complaint against GLAIC on May 13, 2020. Case No. 3:20-cv-0240, ECF No. 1. On June 30, 2022, the Court granted the Parties' Consent Motion to Consolidate Related Cases and Plaintiffs' Unopposed Motion to Appoint Susman Godfrey LLP Interim Lead Counsel. ECF No. 21.

9. Plaintiffs filed a Consolidated Complaint on July 17, 2020. ECF No. 26. GLAIC filed an answer on to the Consolidated Complaint on August 31, 2020. ECF No. 35.

10. Fact discovery lasted until December 17, 2021, with supplemental discovery obligations under Federal Rule of Civil Procedure 26(e) continuing thereafter. During this time, Plaintiffs served twenty-three interrogatories, twenty requests for production of documents, and sixty-nine requests for admission. GLAIC produced more than 435,800 pages of documents and spreadsheets, including actuarial tables, policy-level data, and thousands of data sets, many with dozens of separate individual worksheets. Plaintiffs, in turn, responded to GLAIC's thirty-six interrogatories and forty-two requests for production.

11. Plaintiffs took a corporate representative deposition and six depositions of individual witnesses from GLAIC. Class Counsel's depositions included GLAIC's vice president and actuary for life projections and valuations, illustration actuary, and senior project manager, as well as the COI actuary responsible for day-to-day operations on the COI project. Plaintiffs' 30(b)(6) deposition notice included thirty-six topics on multiple subparts, including topics on technical data issues. The parties met and conferred for two months on the Rule 30(b)(6) topics,

and filed a joint discovery brief to seek the Court's guidance on matters where the parties could not reach resolution. GLAIC also deposed Plaintiffs Brighton Trustees, LLC, as trustee, and Ronald Daubenmier.

12. GLAIC's productions included detailed policy-level data, providing information on historical payments, deductions, and credit history for each universal life insurance policy in the putative class. Class Counsel, working with Plaintiffs' damages expert Robert Mills, spent significant time processing and analyzing this data. With the assistance of Mr. Mills, Class Counsel drafted detailed topics about policy data for Plaintiffs' Federal Rule of Civil Procedure 30(b)(6) notices.

13. Plaintiffs also issued subpoenas to thirteen reinsurers, three actuarial consultants, and one auditor that worked with GLAIC, including Milliman, Willis Towers Watson, Oliver Wyman, and KPMG. These subpoenas resulted in the production of relevant documents related to the 2019 COI Increase. For example, Plaintiffs' subpoena to Milliman secured Plaintiffs' access to Milliman's proprietary actuarial software, MG-ALFA. Plaintiffs' experts have been trained to use MG-ALFA, and so used it to analyze GLAIC's actuarial models in the same software used by GLAIC's own actuaries. Plaintiffs also obtained internal emails from GLAIC's consultants at Willis Towers Watson who questioned GLAIC's COI methodology, including GLAIC's treatment of statutory reserves. One of the core issues in this case was the way GLAIC accounted for its statutory reserves. Plaintiffs argued GLAIC's handling of its statutory reserves rendered the COI increase improper because it recouped prior losses. Plaintiffs also deposed corporate representatives from Milliman and Willis Towers Watson.

14. Plaintiff has also made Freedom of Information requests to state insurance departments throughout the United States relating to GLAIC's 2019 COI increase.

15. Expert discovery related to class certification took place in the fall of 2021. On August 16, 2021, Plaintiffs filed expert reports in support of class certification from two experts: actuarial expert Howard Zail and damages expert Robert Mills. These reports totaled 78 pages supported by 9,984 pages of exhibits, attachments, and appendices. On November 1, 2021, GLAIC filed an expert report in opposition to class certification from actuarial expert Lisa Kuklinski. This report totaled 52 pages with 18 pages of appendices. On December 20, 2021, Plaintiffs produced reply reports for their experts. The reply reports totaled 45 pages with 43 pages of appendices. All three experts were subsequently deposed.

16. Expert merits discovery commenced in 2022. On January 24, 2022, Plaintiffs produced merits reports from Mr. Zail and Mr. Mills. These reports totaled 151 pages supported by 9,953 pages of exhibits, attachments, and appendices. On February 24, 2022, GLAIC produced merits reports from Ms. Kuklinski and actuarial expert Craig Merrill, totaling 120 pages with 27 pages of exhibits. On March 8, 2022, Plaintiffs produced reply reports for both their experts. The reply reports totaled 84 pages.

17. Plaintiffs' opening motion for class certification was filed on August 16, 2021; GLAIC's opposition was filed on November 1, 2021; and Plaintiffs' reply was filed on December 20, 2021. ECF Nos. 49, 67-68, 100-101. Collectively, Plaintiffs filed 48 pages of briefing supported by 45 exhibits totaling hundreds of additional pages in addition to Plaintiffs' expert reports in support of class certification. GLAIC filed a 30-page opposition brief, supported by the declaration of GLAIC actuary Carrie Jaso and 18 exhibits.

18. GLAIC also moved to exclude Plaintiffs' expert testimony and reports in support of class certification. GLAIC filed motions to exclude Messrs. Zail and Mills on November 1, 2021; Plaintiffs filed oppositions on December 6, 2021; and GLAIC filed replies on December

20, 2021. ECF No. 58, 64, 80, 82, 95, 96. GLAIC filed 54 pages of briefing in support of its motions, and Plaintiffs filed 37 pages of briefing in opposition.

19. On February 9, 2022, the Court denied GLAIC's motions to exclude. ECF No. 109. The Court concluded that it could rely on Mr. Zail's testimony at the class certification stage "for his demonstration that common evidence can identify the class members and that Genworth used common methods in redetermining the COI Rate." *Id.* at 7. The Court also found Mr. Mills' methods reliable "[w]ith respect to comparing the original COI Rate with the redetermined COI Rate to determine the amount of damages." *Id.* at 7. It also concluded that "at the class certification stage," it could "rely on Mills' testimony and report in determining whether Plaintiffs can present a damages model that will prevent individual damages issues from predominating over common issues." *Id.* at 8.

20. On February 14, 2022, the Court convened a telephone conference with all parties. A transcript of the telephone conference is attached as **Exhibit 4**. On the call, the Court indicated it had reviewed the extensive briefing and was inclined to certify the class, "unless something completely unusual happens" at the forthcoming certification hearing. Ex. 4 at 4:17-21. Without prohibiting the parties from filing dispositive motions or pre-judging the issues, the Court, by this point very familiar with the expert reports and the record developed by Class Counsel, explained that Genworth would not likely prevail on summary judgment because of the genuine dispute of facts identified by the experts. *Id.* at 4:24-5:2 ("[I]t's also clear to me that summary judgment is a waste of time in this case. There's going to be a genuine dispute as to material fact. Just your experts alone is going to create that."). The Court exhorted the parties to settle. *Id.* at 6:8-10 ("So to me, this is a case that needs to settle, and I'd like to see if you can get something done over the next couple weeks."); *id.* at 5:13-15 ("And you all had engaged in

private mediation last year, and I understand it wasn't fruitful. I think this is a case that needs to settle."); *id.* at 9:12-16 ("I really want you to put every effort that you can into settling this case.").

21. GLAIC filed a motion for summary judgment on March 16, 2022. ECF No. 119. The Parties reached a Settlement Agreement before Plaintiffs' deadline to oppose the motion.

22. The parties first conducted an in-person mediation session with experienced mediator Rodney Max in Miami on October 17, 2021. The parties reopened the settlement dialogue and scheduled additional mediations with Mr. Max after the February 14, 2022 telephone conference with the Court. Those remote mediation sessions took place on March 12, 2022, and March 25, 2022 by Zoom. The parties reached an agreement in principle after the last remote session. The parties informed the Court about the development, and the Court convened a telephone conference to discuss the schedule for preliminary approval. *See* ECF No. 126.

23. After the parties agreed to a settlement in principle, GLAIC produced updated COI data and actuarial modeling from its administrative systems. Plaintiffs reviewed the updated data and complex modeling with their experts and confirmed their intent to proceed with the Settlement. A long-form settlement agreement was heavily negotiated and agreed to on May 6, 2022.

24. Class Counsel has actively litigated this case for years—through fact and expert discovery, and class certification—and is well versed in all the factual and legal issues posed by this litigation. Before mediation, Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Settlement Class. During mediation and in the settlement discussions that followed, Class Counsel aggressively advocated for the class, while taking into account the

strengths and weaknesses of the claims asserted, the risks of continued litigation and trial, and the likelihood of recovery.

25. The specific terms and conditions of the Settlement are set forth in the Settlement Agreement (**Exhibit 1**). The monetary and non-monetary benefits for the Settlement Class are the following:

- **CASH**: A cash Settlement Fund of up to \$25,000,000.
 - The cash fund is equal to 163% of all overcharged collected by GLAIC through March 31, 2022.
 - For any policy that timely and validly opts out during the Federal Rule of Civil Procedure 23(e)(4) period, the Settlement Fund decreases on a *pro-rata* basis calculated by multiplying the amount of the Settlement Fund (*i.e.*, \$25,000,000) by a fraction where (i) the numerator is the combined Specified Amount, as of March 31, 2022 (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of March 31, 2022, of all Policies owned by members of the Class. *Id.* ¶ 2. As of July 1, 2022, there was one opt out. The Final Settlement Fund as of July 1, 2022 after the *pro rata* reduction for this policy is \$24,999,417.50. No portion of the Settlement Fund will revert back to GLAIC, and checks will be mailed directly to Class Members without having to fill out claim forms.
- **CLASS COI RATE SCHEDULE INCREASE FREEZE**. A total and complete freeze on any cost of insurance (“COI”) increase for Class Policies for seven years. Thus, even if GLAIC has a future change in enumerated factors that would otherwise permit a COI rate increase under the terms of the Class Policies—including any cost factors that may have increased due to any surge in mortality due to the COVID-19 pandemic—GLAIC will not increase COI rates for seven years.
- **VALIDITY STIPULATION & STOLI WAIVER**. As part of the Settlement, GLAIC has agreed not to challenge the validity and enforceability of any eligible policies owned by participating Class members on the grounds of lack of an insurable interest or misrepresentations in the application for such policies. Class members now have the assurance that a death benefit will be paid if an otherwise valid claim for the policy proceeds is submitted.

26. In my opinion, the cash payment alone adequately compensates the members of the Settlement Class for their damages in view of the risks of litigation. Class Counsel, with the assistance of its damages expert Mr. Mills, analyzed data provided by GLAIC and determined that, as a result of the 2019 COI increase, the Class paid, through March 31, 2022, \$15,319,514 more in COI charges than they would have had the COI increase not been implemented. A cash

fund by GLAIC of \$25 million therefore represents 163% of those alleged overcharges through that period.

27. The Class will further benefit because checks will be mailed automatically to eligible Class Members, with no need to fill out claim forms, and none of the cash in the Final Settlement Fund will be returned to GLAIC.

28. In addition to the cash payment to the Class, the Settlement Agreement states GLAIC will provide two non-monetary benefits to the Class: (i) a promise not to raise COI rates for the next 7 years (the “COI Rate Freeze”), and (ii) a promise not to contest a death claim on the grounds that the policy lacks an insurable interest or that the application policy contained misrepresentations (the “Validity Stipulation”). As described in the Report on the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with GLAIC, filed concurrently with Class Counsel’s fee motion, a reasonable estimate of the value of the COI Rate Freeze is \$19,506,664 and a reasonable estimate of the value of the Validity Stipulation is \$382,453. These non-monetary guarantees, totaling \$19,899,117, provide substantial benefits to the Class that would not have been obtained even if the litigation had been successful.

29. The Court preliminary approved the Settlement in an order issued on June 3, 2022. ECF No. 136. The Order stated that Class Counsel “had provided the Court with information sufficient to enable it to determine whether to give notice of the proposed settlement to the Class pursuant to Rule 23(e)(1)(A).” *Id.* ¶ 2. Using this information, the Court determined that it “will likely be able to approve the Settlement under Rule 23(e)(2).” *Id.* ¶ 4. The Court also held a hearing on Plaintiffs’ motion for preliminary approval. A transcript of the preliminary approval hearing is attached as **Exhibit 5** to this declaration. At the hearing, the Court further

noted, “I previously appointed plaintiffs and found lead counsel to adequately lead this case and their litigation conduct has confirmed the wisdom of my decision.” Ex. 5 at 8:3-10.

30. It is the opinion of Class Counsel that the Settlement with GLAIC is fair and reasonable, especially in view of the large size of the cash payment by GLAIC, Class Counsel’s detailed assessments of the strengths and weaknesses of the claims asserted, the applicable damages, and the likelihood and timing of recovery, if any.

31. Following negotiations for this Settlement, Class Counsel expended time and effort drafting and filing papers in support of preliminary approval of this Settlement. Class Counsel will expend further time and effort drafting and filing papers in support of final approval of this Settlement, and in helping with the administration of funds from the Settlement.

32. The schedule below is a summary reflecting the amount of time spent, through May 31, 2022, by the attorneys and professional support staff of Susman Godfrey who were involved in this litigation. The following schedule was prepared from daily time records regularly prepared and maintained by Susman Godfrey, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses are excluded and not reflected below.

Attorneys	Current Rate	Hours	Value
Ard, Seth (Partner)	\$975	295	\$287,625.00
Kirkpatrick, Ryan (Partner)	\$900	188.4	\$169,560.00
Ross, Jonathan (Partner)	\$900	688.4	\$619,560.00
Sklaver, Steven (Partner)	\$1,200	301.6	\$361,920.00
Krsulich, Lora (Associate)	\$625	1556.8	\$973,000.00
Adimora, Brenda (Staff Attorney)	\$350	112.7	\$39,445.00
Fenwick, Samantha (Staff Attorney)	\$375	28.5	\$10,687.00
Kaminsky, Alex (Staff Attorney)	\$375	38.4	\$14,400.00
Paralegals	Current Rate	Hours	Value
Abalos, Jianna	\$300	1	\$300.00
Chokshi, Aashka	\$275	11	\$3,025.00
Polanco, Rodney	\$325	6.6	\$2,145.00
Santos, Vanessa	\$325	135.7	\$44,102.50

Totals		3,364.1	\$2,525,769.50
---------------	--	----------------	-----------------------

33. The total number of hours expended on this litigation by Susman Godfrey's attorneys, paralegals, and staff is 3,364.1 hours through May 31, 2022. The total lodestar value of Susman Godfrey's professional services, derived by multiplying each professional's hours by his or her current hourly rates, is \$2,525,769.50. All time spent litigating this matter was reasonably necessary and appropriate to prosecute the action, and the results achieved further confirm that the time spent on the case was proportionate to the amounts at stake.

34. The hourly rates for Susman Godfrey's attorneys and professional staff are the firm's standard hourly rates. The hourly rates of Class Counsel's attorneys range from \$350-\$375 for staff attorneys, \$625 for an associate, and \$900-\$1200 for partners. Susman Godfrey only has equity partners. All partners and associates who worked on this case are based in either New York or Los Angeles, with the exception of Jonathan Ross, who is based in Houston. The hourly rates of paralegals range from \$275-\$325.

35. In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in October 2021, the median standard billing rate for equity partners was \$1,253, the 1st quartile standard billing rate was \$1,397, and the 3rd quartile standard billing rate was \$1,144. Here, all of the partners working on this matter are equity partners who have billing rates under the median rate for equity partners.

36. The same survey stated that the median standard billing rate for associates was \$819, the 1st quartile standard billing rate was \$892, and the 3rd quartile standard billing rate was \$709. The billing rate of the associate working on this case is below the 3rd quartile standard billing rate.

37. Pursuant to the Court's "Order Preliminarily Approving Class Action Settlement," Class Counsel seeks an award of attorney's fees in the amount of 33 1/3% of the Final

Settlement Fund. The Final Settlement Fund is the amount of the Settlement Fund after any pro-rata reductions calculated by multiplying the amount of the Settlement Fund (*i.e.*, \$25,000,000) by a fraction where (i) the numerator is the combined Specified Amount, as of March 31, 2022 (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of March 31, 2022, of all Policies owned by members of the Class. See Exhibit 1, ¶ 2. As of July 1, 2022, there has been one opt out. The overcharge for this policy is 0.002330% of the total overcharges. The Final Settlement Fund after the pro-rata reduction for this policy is \$24,999,417.50, meaning that the amount Class Counsel is currently seeking in attorney's fees is \$8,333,139.08 (33 1/3% of the projected Final Settlement Fund, assuming no further opt outs). This represents 18.6% of the gross settlement value (monetary and nonmonetary) available to Class Members. As of July 1, 2022, no Class Member has told Class Counsel that they oppose a 33 1/3% fee award or filed an objection to Class Counsel's fees. Nor has any Class Member objected to reimbursement of litigation expenses or Plaintiffs' requested case contribution awards.

38. Unlike many firms on the class action side, Susman Godfrey represents plaintiffs and defendants. When entering into result-based fee deals, Susman Godfrey strives for a substantial return on its investment in time and expenses to compensate for risks and opportunity costs, including the risk of no recovery and the opportunity to work on hourly billing work that provides a steady income stream. As is common in the industry, Susman Godfrey's standard contingency percentages are based on the gross amount recovered and provide for the recoupment of any advanced expenses.

39. Susman Godfrey frequently takes high-stakes non-class commercial cases on a contingent fee basis. In cases like this one where the firm is advancing expenses, the firm has a

standard contingency agreement, under which it receives 40% of the gross sum recovered by a settlement that is agreed upon, or other resolution that occurs, on or before the 60th day preceding any trial, plus reimbursement of expenses. Many sophisticated parties and institutions have agreed to these market terms. The requested fee here of 33 1/3% of the Final Settlement Fund viewed in isolation or 18.6% of the value of the gross settlement benefit is far less than what Susman Godfrey would receive under its standard contingency agreement entered into in a competitive market.

40. As described above, the total lodestar value of Susman Godfrey's professional services is \$2,525,769.50. The total lodestar values of the Bonnet Fairbourn Friedman & Balint, and Holmes Costin & Marcus law firms are \$130,155.00 and \$81,640.00, respectively. Therefore, the total combined lodestar value for all professional services is \$2,737,564.50. The requested attorney's fee as of July 1, 2022—\$8,333,139.08—is a lodestar multiplier of 3.04.

41. As detailed and categorized in the below schedule, Susman Godfrey has advanced a total of \$796,608.80 in un-reimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably necessary to the prosecution of this action and directly benefitted the Class, and are of the type that Susman Godfrey normally incurs in litigation.

Expense Category	Cumulative Expenses
Deposition Expenses	\$53,494.25
Document Review Hardware/Hosting	\$51,380.36
Expert/Consultants	\$645,831.41
Filing/Service/Court Reporter Fees/Transcripts/Court Fees	\$5,098.30
Mediation	\$28,875.00
Photocopies/Reproduction/Messenger Services	\$1,542.77
Research/Westlaw/Freedom of Information Requests	\$5,742.37
Travel/Meals/Hotels/Transportation	\$4,644.34
Total	\$796,608.80

The total expenses advanced by the Bonnet Fairbourn Friedman & Balint, and Holmes Costin & Marcus law firms are \$3,382.08 and \$990.15, respectively. Therefore, the total combined expenses for which Class Counsel is seeking reimbursement is \$800,981.03.

42. The amount of Settlement Administration Expenses incurred by Settlement Administrator JND through June 30, 2022 is \$26,826.81. *See* Declaration of Gina Intrepido-Bowden ¶ 4. Pursuant to the Court's Order Preliminarily Approving Class Action Settlement, ECF No. 136, ¶ 8, Class Counsel seeks permission to reimburse the foregoing Settlement Administration Expenses pursuant to paragraph 85 of the Settlement Agreement, and such additional expenses as may be incurred by the Settlement Administrator.

43. Class Counsel will update this information in conjunction with its Reply in Support of the Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Award, due on September 2, 2022.

44. Plaintiffs Brighton Trustees, LLC, and Bank of Utah have contributed their time to the benefit of the Class. On September 16, 2019, Plaintiff Brighton Trustees, LLC received a letter from GLAIC announcing an "adjustment in current cost of insurance charges." After further investigation, Plaintiff Brighton Trustees learned that the adjustment would require Brighton Trustees to increase its current premium payments to keep its policy in force for the desired duration.

45. Brighton Trustees, LLC reached out to Class Counsel, with whom it had a prior attorney-client relationship, to determine whether it would be possible to challenge the COI increase. Brighton Trustees also instructed its securities intermediary, Bank of Utah, to act on its behalf in the litigation. Brighton Trustees and Bank of Utah ultimately retained Susman Godfrey on a purely contingent basis to challenge the legitimacy of the increase.

46. Plaintiffs Brighton Trustees, LLC and Bank of Utah have remained knowledgeable about the nature of this case and have devoted significant time to it. In particular, Plaintiff Brighton Trustees, LLC:

- a. Prepared an investment fund advisor, BroadRiver Asset Management LP, and managing director, operations officer, and chief administrative officer, David Louie, to testify on Brighton Trustees, LLC's behalf on twenty-six different 30(b)(6) topics and subparts. The deposition topics included highly technical and involved issues such as Brighton Trustees LLC's analysis of the subject policy's cost of insurance rates, and any due diligence that Brighton Trustees LLC performed in connection with the sale or purchase of the subject policy;
- b. Submitted a declaration from Philip Siller, managing member of Brighton Trustees LLC, in support of Plaintiffs' motion for class certification;
- c. Reviewed drafts of the initial complaint and consolidated complaint;
- d. Consulted with Susman Godfrey regarding Brighton Trustees, LLC's responsibility as a putative class representative;
- e. Reviewed paper and electronic files for pertinent documents and correspondence;
- f. Produced and discussed responsive materials with Susman Godfrey;
- g. Assisted in preparation of initial disclosures required under the applicable rules of civil procedure;
- h. Discussed confidentiality issues and concerns with Susman Godfrey;
- i. Reviewed and provided initial responses to interrogatories served on Brighton Trustees, LLC by GLAIC;

- j. Engaged in renewed search efforts to locate additional documents and communications within the broad scope of GLAIC's discovery requests;
- k. Reviewed and provided supplemental responses to document requests served on Plaintiff Brighton Trustees LLC by GLAIC;
- l. Met with Susman Godfrey on at least three occasions to prepare for the 30(b)(6) deposition noticed by GLAIC;
- m. Gave testimony under oath for more than four hours in a deposition taken on October 11, 2021;
- n. Reviewed the deposition transcript for corrections;
- o. Reviewed the papers submitted in support of Plaintiffs' Motion for Class Certification;
- p. Consulted with Susman Godfrey regarding the scheduled mediation and potential resolution of the putative class claims, and
- q. Otherwise kept themselves apprised of case status and strategies.

Plaintiff Bank of Utah:

- a. Submitted a declaration from Kade Baird, corporate trust officer for Bank of Utah, in support of Plaintiffs' motion for class certification. In his declaration, Mr. Baird indicated that Bank of Utah was "ready and able to serve as a class representative in this action" and would be "willing to designate a representative to testify at trial and deposition";
- b. Reviewed drafts of the initial complaint and consolidated complaint;
- c. Consulted with Susman Godfrey regarding Bank of Utah's responsibilities as a putative class representative;

- d. Assisted in preparation of initial disclosures required under the applicable rules of civil procedure;
- e. Reviewed the papers submitted in support of Plaintiffs' Motion for Class Certification;
- f. Consulted with Susman Godfrey regarding the scheduled mediation and potential resolution of the putative class claims, and
- g. Otherwise kept themselves apprised of case status and strategies.

47. In the opinion of Class Counsel, Plaintiffs Brighton Trustees, LLC, as trustee, Bank of Utah, and Ronald Daubenmier are deserving of the requested service awards of \$25,000.

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

Executed this 8th day of July, 2022 in Los Angeles, CA.

/s/ Steven G. Sklaver
Steven Sklaver
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90245
Tel: 310-789-3100
Fax: 310-789-3150
ssklaver@susmangodfrey.com

Class Counsel

CERTIFICATE OF SERVICE

I certify that on this 8th day of July 2022, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

/s/ Kathleen J.L. Holmes

HOLMES COSTIN & MARCUS PLLC

301 N. Fairfax Street, Suite 202

Alexandria, VA 22314

Tel: 703-260-6401

Fax: 703-439-1873

kholmes@hcmlawva.com

EXHIBIT 1

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

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

Plaintiffs,

vs.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,

Defendant.

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

JOINT STIPULATION AND SETTLEMENT AGREEMENT

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

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

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

I. SETTLEMENT RELIEF

A. Cash Consideration to the Settlement Class

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

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

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

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

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

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

B. Non-Cash Consideration to the Settlement Class

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

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

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

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

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

II. PRELIMINARY APPROVAL AND CLASS NOTICE

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

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

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

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

14. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) no later than forty-five (45) calendar days after the Notice Date, or as otherwise determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member; (2) the Policy number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (4) copies of any papers, briefs, or other documents upon which the objection is based; (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (7) the signature of the Settlement Class Member or his/her counsel. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing the objecting Settlement Class Member who will appear at the Fairness Hearing. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections as provided in this paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. The Class Notice shall advise Settlement Class Members of their right to object and the manner required to do so.

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

III. INCENTIVE AWARD AND FEES AND EXPENSES

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

17. Class Counsel may move for an award of attorneys’ fees not to exceed 33 1/3% of the Final Settlement Fund, in addition to reimbursement for all expenses incurred by them or to be incurred by them, payable only from the Final Settlement Fund. Class Counsel’s Fees and Expenses, as awarded by the Court, shall be paid from the Final Settlement Fund, and may be paid, at Class Counsel’s option, immediately upon entry of an order approving such fees and expenses, or at a later date if required by the Court. GLAIC agrees not to oppose Class Counsel’s motion for Class Counsel’s Fees and Expenses to the extent Plaintiffs’ request does not exceed the amounts set forth above.

18. Neither Plaintiffs nor GLAIC shall be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, this Agreement, or the Settlement, other than those expressly provided in this Agreement.

19. The Parties agree that the Settlement is not conditioned on the Court’s approval of the Incentive Award or Class Counsel’s Fees and Expenses.

IV. TAX REPORTING AND NO PREVAILING PARTY

20. Any person or entity receiving any payment or consideration pursuant to this Agreement shall alone be responsible for the reporting and payment of any federal, state, and/or

local income or other form of tax on any payment or consideration made pursuant to this Agreement, and GLAIC shall not have obligations to report or pay any federal, state, and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement.

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

22. No Party shall be deemed the prevailing party of this Action for any purpose.

V. RELEASES AND WAIVERS

23. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims. The Released Claims do not include any Excluded Claims.

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

25. With respect to any Released Claims under this Agreement, the Parties stipulate and agree that, upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Releasing Parties shall upon the Final Settlement Date be deemed to have, and by operation of the Order and Judgment shall have, waived any and all provisions, rights, or benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties upon the Final Settlement Date, shall be deemed to have, and by operation of the Order and Judgment shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct relating to the Released Claims that is negligent, intentional, with or without malice, or any breach of any duty, law, or rule without regard to subsequent discovery or existence of such different or additional facts.

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

27. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

28. Notwithstanding the foregoing, for purposes of clarification only, this Agreement shall not release GLAIC from paying any future death benefits that may be owed and is not a release of any kind to any class or individual claims at issue in *TVPX ARS Inc, v. Genworth Life*

and Annuity Insurance Company, Case No. 3:18-cv-637-JAG (E.D.V.A.) and Case No. 00-CV-217 (CDL) (M.D. Ga.), appeal filed, 22-11185-A (11th Cir.) (collectively, the “TVPX Action”).

VI. OTHER PROVISIONS

29. The Parties: (i) acknowledge that it is their intent to consummate this Agreement, (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in good faith, and at arm’s length by the Parties, with the assistance of the Mediator, following numerous mediation sessions including before the Mediator on March 25, 2022, and additional follow-on communications, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

30. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, GLAIC’s counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

31. GLAIC specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the Claims in the Action and makes no concessions or admissions of liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or communications related thereto, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (ii) is or may be deemed to be or may be used as an admission of, or evidence

of, any fault or omission of the Released Parties, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal. Nothing in this paragraph shall prevent GLAIC and/or any of the Released Parties from using this Agreement and Settlement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

32. GLAIC agrees promptly to provide, or cause to be provided, all data reasonably necessary for Class Counsel to effectuate the distribution of the Class Notice, to determine the payment allocations to Settlement Class Members, and to send payments to Settlement Class Members.

33. The Parties agree that if this Agreement or the Settlement fails to be approved, fails to become effective, otherwise fails to be consummated, is declared void, or if there is no Final Settlement Date, then the Parties will be returned to *status quo ante*, as if this Agreement had never been negotiated or executed, except that no incurred Settlement Administration Expenses shall be recouped. Each Party will be restored to the place it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense that was available to it at that time.

34. Except as expressly provided herein, nothing in this Agreement shall change the terms of any Policy. Nothing in this Agreement shall preclude any action to enforce the terms of this Agreement.

35. The Parties agree, to the extent permitted by law, that all agreements made and orders entered during the course of the Action relating to confidentiality of information shall

survive this Agreement. To the extent Class Counsel or the Settlement Administrator requires Confidential Information to effectuate the terms of this Agreement, the terms of the Stipulated Confidentiality Agreement and Protective Order and Addendum entered in the Action on October 5, 2020 (Dkt. 38) shall apply to any information necessary to effectuate the terms of this Agreement.

36. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiffs and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on the website as described in Paragraph 11.

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

38. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, electronically signed PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as the original. A complete set of executed counterparts shall be filed with the Court.

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

40. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of this Agreement are contractual and are the product of arms-length negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement shall not be construed against any Party.

41. Other than necessary disclosures made to the Court or the Settlement Administrator, this Agreement and all related information and communication shall be held strictly confidential by Plaintiffs, Class Counsel, and their agents until such time as the Parties file this Agreement with the Court.

42. The Parties and their counsel further agree that their discussions and the information exchanged in the course of negotiating this Settlement are confidential under the terms of the mediation agreement signed by the Parties in connection with the mediation sessions with the Mediator and any follow-up negotiations between the Parties' counsel. Such exchanged information was made available on the condition that neither the Parties nor their counsel may disclose it to third parties (other than experts or consultants retained by the Parties in connection with the Action and subject to confidentiality restrictions), that it not be the subject of public comment, and that it not be publicly disclosed or used by the Parties or their counsel in any way in the Action should it not settle, or in any other proceeding; provided however, that nothing

contained herein shall prohibit the Parties from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of the Action.

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

44. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement and any discovery sought from or concerning objectors to this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

45. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and Sunday) express delivery service as follows:

(a) If to GLAIC, then to:

Brian E. Pumphrey
Elizabeth F. Tyler
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Phone: 804-775-1000
Fax: 804-775-1061
bpumphrey@mcguirewoods.com
etyler@mcguirewoods.com

Patrick J. Gennardo
ALSTON & BIRD LLP
90 Park Avenue, 15th Floor
New York, NY 10016-1387
Phone: 212-210-9400
Fax: 212-210-9444
patrick.gennardo@alston.com

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

Seth Ard
Ryan C. Kirkpatrick
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
Fax: 212-336-8340

Steven G. Sklaver
Lora Krsulich
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150

sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

ssklaver@susmangodfrey.com
lkrsulich@susmangodfrey.com

46. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

47. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Each other day of the period to be computed shall be included, including the last day thereof, unless such last day is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court on a day in which the court is closed during regular business hours. In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the court is closed. When a time period is less than seven (7) business days, intermediate Saturdays, Sundays, legal holidays, and days on which the court is closed shall be excluded from the computation. As used in this paragraph, legal holidays include New Year's Day, Dr. Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by Federal law or Virginia Law.

VII. DEFINITIONS AND CONSTRUCTION

48. "Action" means the lawsuit, captioned *Brighton Trustees, LLC, As Trustee, et al. v. Genworth Life and Annuity Insurance Company*, Case No. 3:20-cv-00240 (DJN), currently pending in the United States District Court for the Eastern District of Virginia.

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

50. “Claims” means all suits, claims, cross-claims, counter-claims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), including Unknown Claims, of any nature, character, or description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, present or contingent, for any injury, damage, obligation, or loss whatsoever, including but not limited to compensatory damages, statutory damages, liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys’ fees.

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

52. “Class Counsel” means Susman Godfrey L.L.P., the attorneys appointed as interim class counsel by the Court.

53. “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Final Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses.

54. “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Class.

55. “Class Policy” means any Policy for which an Owner is a Settlement Class Member. “Class Policies” means all of the Policies for which the Owners are Settlement Class Members.

56. “COI” means cost of insurance.

57. “COI Deduction” means the amount deducted from a Policy’s value each month for COI.

58. “COI Rate(s)” means the rates used to calculate the COI Deduction. For the purpose of this Agreement, “COI Rates” include Monthly Risk Rates, as that term is defined in the Policies.

59. “COI Rate Scale(s)” means the schedule of COI Rates applicable to each Policy for all years that the Policy is in force.

60. “2019 COI Rate Adjustment” means the change in COI Rate Scales applicable to the Policies, announced in 2019 and effective beginning December 1, 2019, in which new COI Rate tables were adopted for the Policies.

61. “Court” means The United States District Court for the Eastern District of Virginia, Hon. David J. Novak.

62. “Excluded Claims” means (i) new claims that could not have been asserted in the Action because they are based upon a future COI Rate Scale increase that occurs after March 25, 2022 (“New COI Increase Claims”), (ii) claims relating to the COI Rate Scale increases imposed

by Genworth Life Insurance Company, on Gold and Gold II policies issued, insured, and/or assumed by it, and (iii) claims at issue in the TVPX Action. New COI Increase Claims are limited to claims and damages that could not have been included in the Action because a future COI Rate Scale increase has not yet taken place, but do not include any claims challenging the COI Rates and/or COI Rate Scales adopted under the 2019 COI Rate Adjustment. To the extent that a Settlement Class Member is an owner of both a GLAIC Policy and a Genworth Life Insurance Company policy (or any other policy that is not a Policy), this release will only be applicable for the GLAIC Policy and not any other policy.

63. “Fairness Hearing” means the hearing at which the Court considers final approval of the Settlement.

64. “Final Approval Date” means the date on which the Court enters its Order and Judgment approving the Settlement.

65. “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment.

66. “Final Settlement Fund” means the cash fund after any reductions in the amount of the Settlement Fund pursuant to Paragraph 2 of this Agreement. The Final Settlement Fund will be a single qualified settlement fund pursuant to 26 U.S.C. § 468B that will be used to pay: (i) Settlement Administration Expenses; (ii) any Incentive Awards; (iii) any of Class Counsel’s Fees and Expenses awarded by the Court; (iv) all payments to the Settlement Class; and (v) any other payments provided for under this Agreement or the Order and Judgment. There will be no

reversion of any portion of the Final Settlement Fund to GLAIC. All funds held in the Final Settlement Fund and all earnings thereon, shall be deemed to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall have been disbursed pursuant to the terms of this Agreement or further order of the Court.

67. “GLAIC” means Genworth Life and Annuity Insurance Company and its predecessor and successor entities.

68. “Incentive Awards” means the aggregate amount of any awards approved by the Court to be paid to Plaintiffs from the Final Settlement Fund, in addition to any settlement relief they may be eligible to receive, to compensate Plaintiffs for their efforts undertaken on behalf of the Settlement Class.

69. “Incremental COI Deduction” means the difference between the COI Deduction from a Policy as determined under the COI Rate Scale applied to a Policy under the 2019 COI Rate Adjustment and the COI Deduction that would have existed under the COI Rate Scale that applied to the Policy before the 2019 COI Rate Adjustment, where the COI Deduction under the 2019 COI Rate Adjustment is higher than the COI Deduction that would have applied under the previous COI Rate Scale.

70. “Mediator” means Rodney A. Max, Esq.

71. “Net Settlement Fund” means the Final Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Awards; (iii) any Class Counsel’s Fees and Expenses awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

72. “Notice Date” means the earliest date on which any form of the Class Notice is first mailed, published, or appears online.

73. “Opt-Outs” means the Owners of Policies who timely elect to opt out of the Settlement Class during the Opt-Out Period.

74. “Opt-Out Period” means a period that begins on the Notice Date and ends forty-five (45) days after the Notice Date, or as otherwise determined by the Court. The deadline for the Opt-Out Period will be specified in the Class Notice.

75. “Order and Judgment” means the Court’s order approving the Settlement and entering final judgment. The judgment will include a provision for the retention of the Court’s jurisdiction over the Parties and Releasing Parties to enforce the terms of the judgment and for a bar order (consistent with the provisions of Paragraphs 23-28 above) prohibiting claims by the Releasing Parties against Released Parties for the Released Claims.

76. “Owner” or “Owners” means each Policy’s owner or owners of record in GLAIC’s files, whether a person or entity and whether in an individual or representative capacity.

77. “Parties” means, collectively, Plaintiffs and GLAIC. The singular term “Party” means any of Plaintiffs or GLAIC, as appropriate.

78. “Plaintiffs” means Brighton Trustees, LLC, Bank of Utah, and Ronald L. Daubenmier, individually and as representatives of the Class, and their assigns, successors-in-interest, and representatives.

79. “Policy” or “Policies” means any Gold and Gold II universal life insurance policy issued, insured, or assumed by GLAIC, or its predecessors or successors, for which the applicable COI Rate Scales were changed by the 2019 COI Rate Adjustment. For clarity, this does not include any policies issued, insured, and/or assumed by Genworth Life Insurance Company.

80. “Released Claims” means all Claims asserted in the Action or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act

that were alleged or could have been alleged in the Action related to the 2019 COI Rate Adjustment. Released Claims do not include Excluded Claims.

81. “Released Parties” means GLAIC and its past, present, and future parent companies, direct and indirect subsidiaries, affiliates, predecessors, joint ventures, successors and assigns, together with each of their respective past, present, and future officers, directors, shareholders, employees, representatives, insurers, attorneys, and agents, and including any person or entity acting on behalf or at the direction of any of them.

82. “Releasing Parties” means Plaintiffs and each Settlement Class Member, on behalf of themselves and their respective agents, heirs, relatives, attorneys, successors, predecessors, payors, trustees, grantors, securities intermediaries, beneficiaries, principals, subrogees, executors, and assignees, and all other persons or entities acting by, through, under, or in concert with any of them.

83. “Settlement” means the settlement set forth in this Agreement.

84. “Settlement Administration Expenses” means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including the fees charged by the Settlement Administrator, as well as the fees, costs, and expenses incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Final Settlement Fund.

85. “Settlement Administrator” means the third-party settlement administrator of the Settlement who is selected and approved by the Parties. Plaintiffs shall be responsible for selecting the Settlement Administrator and consent from GLAIC will not be unreasonably withheld. The Settlement Administrator’s fees, as well as the costs, fees, and expenses incurred by the Settlement Administrator, shall be paid from the Final Settlement Fund.

86. “Settlement Class” means the Class, excluding any Opt-Outs.

87. “Settlement Class Member(s)” means all persons and entities that are included in the Settlement Class.

88. “Settlement Fund” means a cash fund consisting of the consideration paid for the benefit of the Settlement Class.

89. “Settlement Fund Account” means the escrow account from which all payments out of the Settlement Fund will be made. The Settlement Fund Account shall be established under terms acceptable to the Parties at a depository institution and such funds shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Parties and their respective counsel shall have no responsibility for or liability whatsoever with respect to investment decisions made for the Settlement Fund Account. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Class.

90. “Unknown Claims” means any claims asserted, that might have been asserted, or that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action with respect to the Released Claims that the Releasing Parties do not know or suspect to exist in his or her favor at the Final Approval Date, and which if known by him or her might have affected his or her decision to opt out of the Class or to object to the Settlement.

91. The terms "he or she" and "his or her" include "it" or "its," where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

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

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: Ardun Plevis

Title: Managing Member

Date: 5/6/2022

Bank of Utah

By: [Signature]

Kade Baird
Assistant Vice President

Title: _____

Date: 5/6/2022

Ronald L. Daubenmier

Date: _____

Defendant

Genworth Life and Annuity Insurance Company

By: _____

Title: _____

Date: _____

91. The terms “he or she” and “his or her” include “it” or “its,” where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

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

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: _____

Title: _____

Date: _____

Bank of Utah

By: _____

Title: _____

Date: _____

Ronald L. Daubenmier

Date: _____

Defendant

Genworth Life and Annuity Insurance Company

By: 

Title: President

Date: 05/06/2022

91. The terms "he or she" and "his or her" include "it" or "its," where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

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

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: _____

Title: _____

Date: _____

Bank of Utah

By: _____

Title: _____

Date: _____


Ronald L. Daubenmier

Date: 5-6-2022

Defendant

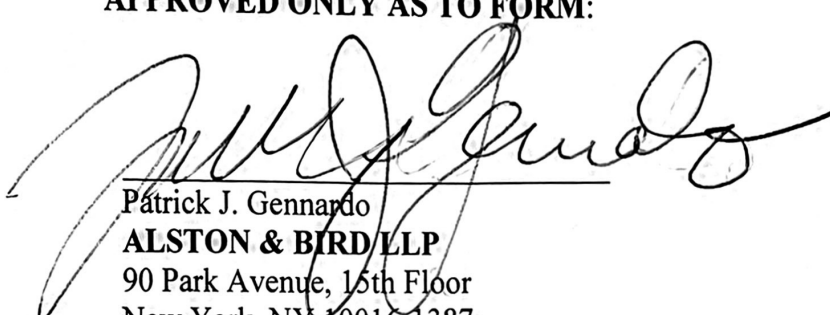
Genworth Life and Annuity Insurance Company

By: _____

Title: _____

Date: _____

APPROVED ONLY AS TO FORM:



Patrick J. Gennardo
ALSTON & BIRD/LLP
90 Park Avenue, 15th Floor
New York, NY 10016-1387
Phone: 212-210-9400
Fax: 212-210-9444
patrick.gennardo@alston.com

Counsel for Defendant Genworth Life and Annuity Insurance Company



Steven G. Sklaver
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150
ssklaver@susmangodfrey.com

Class Counsel and Attorneys for Plaintiffs

EXHIBIT 2

The Susman Godfrey Difference

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

The Will to Win

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

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

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

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

Unique Perspective

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

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

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

An Uncommon Structure

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

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

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

Unparalleled Talent

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

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

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

A Record of Winning

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

Recent high-profile victories include:

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

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

Pro Bono

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

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

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

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

Constitutional Challenges

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

Human Rights/Anti-Discrimination

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

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

Death Penalty Appeals/Prisoners' Rights

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

Other Significant Pro Bono Work

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

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

Office Locations

Houston

1000 Louisiana St
Suite 5100
Houston, TX, 77002
T: 713-651-9366
F: 713-654-6666

Los Angeles

1900 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
T: 310-789-3100
F: 310-789-3150

New York

1301 Avenue of the Americas
32nd Floor
New York, NY 10019
T: 212-336-8330
F: 212-336-8340

Seattle

1201 Third Avenue
Suite 3800
Seattle, WA 98101
T: 206-516-3880
F: 206-516-3883

SUSMAN GODFREY L.L.P.



Steven G. Sklaver Partner

Los Angeles
(310) 789-3123
ssklaver@susmangodfrey.com

Overview

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

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

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

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

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

Sklaver has tried complex commercial and class action disputes — including jury trials and bench trials in federal and state court, as well as arbitrations. Sklaver graduated cum laude from Dartmouth College, magna cum laude and Order of the Coif from Northwestern University School of Law, and clerked for Judge David Ebel on the United States Court of Appeals for the Tenth Circuit. Sklaver also won the National Debate Tournament for Dartmouth College, and is just one of four individuals in debate history to win three national championships at the high school and collegiate level. From 2010-2022, 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

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

Articles and Speeches

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

Speaking Engagements

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

Professional Associations and Memberships

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

Notable Representations

Class Actions

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

- **Insurance:** In a seminal insurance class action filed in the Southern District of New York, resolved in September 2015, Mr. Sklaver served as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference — less than two months before trial. Settlement terms included: \$48.5 million cash fund (\$34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded, ***"I want to say publicly that I think this is an excellent settlement. I think this is a superb – this may be the best settlement pound for pound for the class that I've ever seen."*** You can read the statement in full on page 3 [here](#). You can also read more about the case in *The Deal's* feature on the matter [here](#).
- **Antitrust:** *In 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

New York
(212) 471-8354
sard@susmangodfrey.com

Overview

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

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

Education

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

Clerkship

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

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

Honors and Distinctions

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

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

Professional Associations and Memberships

State of New York

Notable Representations

In re LIBOR-Based Financial Instruments Litigation (SDNY)

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

In re Municipal Derivatives Litigation (SDNY)

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

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

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

Globus Medical v. Bonutti Skeletal (EDPA)

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

Sentius v. Microsoft (NDCA)

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

Jefferies v. NASDAQ Arbitration (New York)

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

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

GMA v. Dorfman Pacific (SDNY)

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

Washington Mutual Bankruptcy (Bkrtcy. Del.)

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

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

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

SUSMAN GODFREY L.L.P.



Ryan Kirkpatrick

Partner

New York
(212) 729-2017
rkirkpatrick@susmangodfrey.com

Overview

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

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

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

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

Education

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

Clerkship

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

Notable Representations

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

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

Articles

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

Professional Associations and Memberships

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

SUSMAN GODFREY L.L.P.



Jonathan J. Ross

Partner

Houston
(713) 653-7813
jross@susmangodfrey.com

Overview

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

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

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

Education

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

Clerkship

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

Notable Representations

Current

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

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

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

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

2019

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

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

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

2018

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

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

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

2017

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

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

2016

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

2015

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

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

2014

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

2013

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

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

2012

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

2011

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

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

2010

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

2009

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

2008

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

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

2007

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

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

2006

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

2005

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

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

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

2004

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

2003

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

2002

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

2001

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

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

2000

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

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

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

1999

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

1998

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

1996

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

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

1995

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

Honors and Distinctions

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

Professional Memberships and Associations

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

SUSMAN GODFREY L.L.P.



Lora Krsulich Associate

Los Angeles
(310) 789-3145
lkrsulich@susmangodfrey.com

Overview

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

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

Results

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

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

Background

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

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

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

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

Education

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

Administration)

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

Clerkship

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

Notable Representations

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

Honors and Distinctions

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

Publications

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

Professional Associations and Memberships

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

EXHIBIT 3

TRADE
SECRET

**FIRST COLONY LIFE INSURANCE COMPANY
LYNCHBURG, VIRGINIA**

AMENDMENT ATTACHED TO AND MADE PART OF POLICY NUMBER 2957767 ON THE LIFE OF LESLIE S PINSOFF

IN ACCORDANCE WITH THE POLICY CHANGE FORM DATED NOVEMBER 1, 1999, THIS POLICY IS HEREBY ISSUED FOR A \$2,000,000 FIRSTCHOICE GOLD(R) OPTION ONE PREFERRED NO NICOTINE USE CONTRACT BY CONVERTING POLICY NUMBER 2364687.

DATED: NOVEMBER 15, 1999

David H. McNamee

SECRETARY

TRADE
SECRET

Handwritten text, possibly initials or a signature, including the letter 'H'.

FIRST COLONY LIFE INSURANCE COMPANY
 Service Center: P. O. Box 1280, Lynchburg, Virginia 24505-1280
 Telephone: (888) 325-5433, Extension 2240

TRADE
SECRET

STATEMENT OF POLICY COST AND BENEFIT INFORMATION AS OF 11/15/99
 FOR FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE

POLICY INFORMATION

POLICY NO. 2,957,767
 Insured - LESLIE S PINSOF
 Age 59 MALE
 Class - PREFERRED
 NO NICOTINE USE

For more information about
 the Policy please contact

WILLIAM VANPELT III
 SUITE 150
 2000 BERING DR
 HOUSTON TX 77057

Initial Specified Amount - \$2,000,000
 Option - 1

INTEREST RATES

Current interest rates are subject to change at any time; however, the Company will not credit an interest rate lower than, or charge an interest rate higher than, the applicable Guaranteed rate.

	GUARANTEED	NONGUARANTEED
Unloaned Policy Value (credited)	4.00 %	6.250 %
Loaned Policy Value (credited)	4.00 %	4.00%
Preferred Loaned Policy Value (charged)	4.00 %	4.00%
Nonpreferred Loaned Policy Value (charged)	6.00 %	6.00%

ASSUMPTIONS FOR VALUES AND BENEFITS

The guaranteed and current values and benefits shown assume: (1) the premiums shown are paid, (2) premium payments are made in the frequency specified by the Owner and received on their due dates, (3) the Designated Monthly Premium Guarantee is not applicable, (4) no changes are made in the plan as issued, and (5) no policy loans or partial withdrawals are made. Nonguaranteed values and benefits also assume that nonguaranteed risk rates and interest rates remain unchanged. We may change the monthly risk rates and the credited interest rates at any time subject to the guarantees stated in your policy. We will base any change on our expectations as to future investment earnings, mortality, persistency, expenses, and taxes. Nonguaranteed values and benefits are illustrative only and are not guaranteed.

5% INTEREST ADJUSTED INDICES

The life insurance buyer's guide explains the intended use of these indices.

	Guaranteed	NonGuaranteed
10 Year Net Payment	17.00	17.00
10 Year Surrender	17.00	8.15
20 Year Net Payment	17.00	17.00
20 Year Surrender	17.00	6.91

TABLE OF END OF YEAR VALUES

YEAR	GUARANTEED			NONGUARANTEED		
	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT
1	34,000	0	2,000,000	34,000	0	2,000,000
2	34,000	0	2,000,000	34,000	0	2,000,000
3	34,000	0	2,000,000	34,000	0	2,000,000
4	34,000	0	2,000,000	34,000	18,668	2,000,000
5	34,000	0	2,000,000	34,000	52,757	2,000,000
6	34,000	0	2,000,000	34,000	87,625	2,000,000
7	34,000	0	2,000,000	34,000	123,143	2,000,000
8	34,000	0	2,000,000	34,000	158,964	2,000,000
9	34,000	0	2,000,000	34,000	195,642	2,000,000
10	34,000	0	2,000,000	34,000	233,707	2,000,000
11	34,000	0	2,000,000	34,000	271,676	2,000,000
12	34,000	0	2,000,000	34,000	310,669	2,000,000
13	34,000	0	2,000,000	34,000	350,218	2,000,000
14	34,000	0	2,000,000	34,000	390,310	2,000,000
15	34,000	0	2,000,000	34,000	432,673	2,000,000
16	34,000	0	2,000,000	34,000	478,259	2,000,000
17	34,000	0	2,000,000	34,000	527,455	2,000,000
18	34,000	0	2,000,000	34,000	580,586	2,000,000
19	34,000	0	2,000,000	34,000	638,137	2,000,000
20	34,000	0	2,000,000	34,000	700,614	2,000,000
21	34,000	**	**	34,000	755,633	2,000,000
22	0			34,000	812,571	2,000,000
23	0			34,000	871,401	2,000,000
24	0			34,000	932,041	2,000,000
25	0			34,000	995,143	2,000,000
26	0			34,000	1,061,658	2,000,000
27	0			34,000	1,132,022	2,000,000
28	0			34,000	1,207,104	2,000,000
29	0			34,000	1,287,589	2,000,000
30	0			34,000	1,374,505	2,000,000
31	0			34,000	1,468,901	2,000,000
32	0			34,000	1,572,199	2,000,000
33	0			34,000	1,685,973	2,000,000
34	0			34,000	1,812,202	2,000,000
35	0			9,215	1,924,364	2,092,212
36	0			0	2,034,551	2,187,189
37	0			0	2,152,050	2,285,135
38	0			0	2,277,730	2,387,036
39	0			0	2,412,476	2,496,019
40	0			0	2,556,837	2,622,414

TRADE
SECRET

TRADE
SECRET

TABLE OF END OF YEAR VALUES

YEAR	PREMIUMS	GUARANTEED		NONGUARANTEED		
		CASH SURRENDER VALUE	DEATH BENEFIT	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT
41	0			0	2,713,255	2,713,255

SUMMARY OF END OF YEAR VALUES

YEAR	PREMIUMS	GUARANTEED		NONGUARANTEED		
		CASH SURRENDER VALUE	DEATH BENEFIT	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT
5	170,000	0	2,000,000	170,000	52,757	2,000,000
10	340,000	0	2,000,000	340,000	233,707	2,000,000
15	510,000	0	2,000,000	510,000	432,673	2,000,000
20	680,000	0	2,000,000	680,000	700,614	2,000,000
AGE 65	204,000	0	2,000,000	204,000	87,625	2,000,000

*This Policy will lapse at this time unless a higher premium is paid.

This Policy will continue as long as premiums paid plus credited interest are sufficient to keep the policy in force and it has not terminated in accordance with any other policy provision.

Page 4 Of 4

There is a monthly administrative fee of \$4.65 per month.

A premium expense charge of 7% is deducted from each premium received.

The administrative fee for partial withdrawal is \$25.00.

A surrender charge is deducted from the policy value in determining the cash surrender value. The surrender charges applicable on the Policy Date are shown below:

Policy Year	Surrender Charge
1	\$ 110,180.00
2	105,940.00
3	101,600.00
4	97,160.00
5	92,640.00
6	88,020.00
7	83,300.00
8	78,480.00
9	73,520.00
10	68,420.00
11	63,140.00
12	57,660.00
13	51,980.00
14	46,040.00
15	39,760.00
16	33,120.00
17	25,960.00
18	18,200.00
19	9,620.00
20 & Later	0.00

TRADE
SECRET



FIRST COLONY LIFE INSURANCE COMPANY

TRADE
SECRET

Our Commitment to You *A Customer Guide to Ethics in Insurance*

As a member of GE Financial Assurance's family of financial service companies, we welcome this opportunity to share with you our commitment to meeting the needs of customers through quality products, dependable service and ethical business standards.

We are dedicated to promoting fair business practices.

We select qualified professionals to sell our policies, and we provide or make available to them education about our products, sales ethics, laws, regulations, and developments in the insurance industry.

We think that all customers should be treated with respect and dignity. We expect representatives of the company to safeguard your privacy and hold all financial and personal information in the strictest confidence.

We are committed to providing you with choices of insurance policies and annuity contracts from which you can select the ones that are appropriate for your insurable needs or financial objectives.

To assist representatives in the sales process we make available tools to help them in determining various customer needs and financial goals. We are also committed to providing you with illustrations and where applicable sales materials that are designed to explain the features of our products in clear and straightforward terms.

We strive to help you understand the consequences of replacing one policy with another.

When thinking about replacing one policy with another or using funds from one policy to pay for another, you should have the opportunity to examine the following questions:

1. What are the advantages and disadvantages of both the new and the original policies?
2. Are there costs associated with terminating or altering the original policy?

In addition, you are provided with statements disclosing the features of both the original and the replacement policies, when required.

We value your input and are committed to addressing your needs.

We are aware that you may, from time to time, have questions about your purchase or the service you have received. In order to live up to our commitment, we encourage you to contact us with questions.

We expect representatives to reply promptly and professionally to all your inquiries. However, if you have any remaining questions, you may call (888) 325-5433.

We will address your concerns in a timely and thorough manner.

We support ethical standards in the insurance industry.

In accordance with our own **Code of Ethical Conduct**, we along with GE Financial Assurance, promote industry-wide standards and ethical business practices that protect consumers.

**TRADE
SECRET**

TRADE
SECRET



First Colony Life Insurance Company

LYNCHBURG, VIRGINIA

CONSUMER NOTICE

Should you have any questions, please address your inquiry to:

First Colony Life Insurance Company and/or
Policy Services Department
P. O. Box 1280
Lynchburg, Virginia 24505-1280
Telephone: (888) 325-5433

State of Illinois
Department of Insurance
320 West Washington Street
Springfield, Illinois 62767
ATTENTION: Consumer Services Section

**TRADE
SECRET**

TRADE SECRET

**ILLINOIS LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION LAW**

Residents of Illinois who purchase health insurance, life insurance, and annuities should know that the insurance companies licensed in Illinois to write these types of insurance are members of the Illinois Life and Health Insurance Guaranty Association. The purpose of this Guaranty Association is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its policy obligations. If this should happen, the Guaranty Association will assess its other member insurance companies for the money to pay the covered claims of policyholders that live in Illinois (and their payees, beneficiaries, and assignees) and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the Guaranty Association is not unlimited, however, as noted below.

**ILLINOIS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
DISCLAIMER**

The Illinois Life and Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent. **COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY.** Even if coverage is provided, there are substantial limitations and exclusions. Coverage is generally conditioned on continued residence in Illinois. Other conditions may also preclude coverage.

You should not rely on availability of coverage under the Life and Health Insurance Guaranty Association Law when selecting an insurer. Your insurer and agent are prohibited by law from using the existence of the Association or its coverage to sell you an insurance policy.

The Illinois Life and Health Insurance Guaranty Association or the Illinois Department of Insurance will respond to any questions you may have which are not answered by this document. Policyholders with additional questions may contact:

Illinois Life and Health Insurance Guaranty Association 8420 West Bryn Mawr Avenue Chicago, Illinois 60631 (312) 714-8050	or	Illinois Department of Insurance 320 West Washington Street – 4th Floor Springfield, Illinois 62767 (217) 782-4515
------------------------------------------------------------------------------------------------------------------------------------	----	-----------------------------------------------------------------------------------------------------------------------------

**SUMMARY OF GENERAL PURPOSES AND
CURRENT LIMITATIONS OF COVERAGE**

The Illinois law that provides for this safety-net coverage is called the Illinois Life and Health Insurance Guaranty Association Law ("Law") [215 ILCS 5/531.01, et seq.]. On the back of this page is a brief summary of the Law's coverages, exclusions, and limits. This summary does not cover all provisions, nor does it in any way change anyone's rights or obligations under the Law or the rights and obligations of the Guaranty Association. If you have obtained this document from an agent in connection with the purchase of a policy, you should be aware that its delivery to you does not guarantee that your policy is covered by the Guaranty Association.

A. COVERAGE:

The Illinois Life and Health Insurance Guaranty Association provides coverage to policyholders that reside in Illinois for insurance issued by members of the Guaranty Association, including :

- 1) life insurance, health insurance, and annuity contracts;
- 2) life, health or annuity certificates under direct group policies or contracts;
- 3) unallocated annuity contracts; and
- 4) contracts to furnish health care services and subscription certificates for medical or health care services issued by certain licensed entities. The beneficiaries, payees, or assignees of such persons are also protected, even if they live in another state.

B. EXCLUSIONS FROM COVERAGE:

- 1) The Guaranty Association does not provide coverage for:
 - a) any policy or portion of a policy for which the individual has assumed the risk;
 - b) any policy of reinsurance (unless an assumption certificate was issued);
 - c) interest rate guarantees which exceed certain statutory limitations;
 - d) certain unallocated annuity contracts issued to an employee benefit plan protected under the Pension Benefit Guaranty Corporation and any portion of a contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery;
 - e) any portion of a variable life insurance or variable annuity contract not guaranteed by an insurer; or
 - f) any stop loss insurance.
- 2) In addition, persons are not protected by the Guaranty Association if:
 - a) the Illinois Director of Insurance determines that, in the case of an insurer which is not domiciled in Illinois, the insurer's home state provides substantially similar protection to Illinois residents which will be provided in a timely manner; or
 - b) their policy was issued by an organization which is not a member insurer of the Association.

C. LIMITS ON AMOUNT OF COVERAGE:

- 1) The Law also limits the amount the Illinois Life and Health Insurance Guaranty Association is obligated to pay. The Guaranty Association's liability is limited to the lesser of either:
 - a) the contractual obligations for which the insurer is liable or for which the insurer would have been liable if it were not an impaired or insolvent insurer; or
 - b) with respect to any one life, regardless of the number of policies, contracts, or certificates:
 - i) in the case of life insurance, \$300,000 in death benefits but not more than \$100,000 in net cash surrender or withdrawal values;
 - ii) in the case of health insurance, \$300,000 in health insurance benefits, including net cash surrender or withdrawal values; and
 - iii) with respect to annuities, \$100,000 in the present value of annuity benefits, including net cash surrender or withdrawal values, and \$100,000 in the present value of annuity benefits for individuals participating in certain government retirement plans covered by an unallocated annuity contract. The limit for coverage of unallocated annuity contracts other than those issued to certain governmental retirement plans is \$5,000,000 in benefits per contract holder, regardless of the number of contracts.
- 2) However, in no event is the Guaranty Association liable for more than \$300,000 with respect to any one individual.

SECRET
TRADE

ILLINOIS LIFE INSURANCE BUYER'S GUIDE

This guide can show you how to save money when you shop for life insurance. It helps you to:

- Decide how much life insurance you should buy.
- Decide what kind of life insurance policy you need, and,
- Compare the relative cost of similar life insurance policies.

This guide has been prepared by the Illinois Department of Insurance, in part using materials developed by the National Association of Insurance Commissioners

Reprinted by

First Colony Life Insurance Company

Lynchburg, Virginia 24505
February, 1993

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.

THIS GUIDE DOES NOT ENDORSE ANY COMPANY OR POLICY.

Buying Life Insurance

When you buy life insurance, you want a policy which fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes which are described in this guide. A good life insurance agent or company will be able and willing to help you with each of these shopping steps.

If you are going to make a good choice when you buy life insurance, you need to understand which kinds are available. If one kind does not seem to fit your needs, ask about the other kinds which are described in this guide. If you feel that you need more information than is given here, you may want to check with a life insurance agent or company or books on life insurance in your public library.

Life Insurance can be bought either on an individual basis or on a group basis. Group insurance may be inexpensive when compared to individual insurance. It is important to remember that insurance purchased on this basis is usually term insurance, and hence will not develop cash values, and is dependent on your continued membership in the group or employment. Also, the amount of insurance that is available for purchase is usually limited.

Choosing the Amount

One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. Life insurance can provide cash for last expenses, and income for your family's future living expenses. Your insurance should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need at some time in the future when needs change.

TRADE
SECRET

Choosing the Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance.

1. Term insurance
2. Whole life insurance
3. Endowment insurance

The kind of life insurance you purchase is dependent on the need you are trying to satisfy. Some needs are temporary, i.e. do not exist throughout your life, while other needs are permanent. As an example, the need to finance your children's education is a temporary need. The need to meet mortgage payments is also a temporary need since it exists only while the mortgage exists. On the other hand, the financial needs of your family after your death is a permanent need.

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the agent or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

Term Insurance

Term insurance is death protection for a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible." This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits." This refers to benefits you do not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money which you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

Endowment Insurance

An endowment insurance policy pays a sum or income to you - the policyholder - if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than for the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

Finding a Low Cost Policy

After you have decided which kind of life insurance fits your needs, look for a good buy. **YOUR CHANCES OF FINDING A GOOD BUY ARE BETTER IF YOU USE TWO TYPES OF INDEX NUMBERS THAT HAVE BEEN DEVELOPED TO AID IN SHOPPING FOR LIFE INSURANCE.** One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them **ONLY** for comparing the relative costs of similar policies. **LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.**

TRADE
SECRET

What is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "nonparticipating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums
2. Cash values
3. Dividends

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and to subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply and divide many numbers yourself, you just compare the index numbers which you can get from life insurance agents and companies.

1. LIFE INSURANCE SURRENDER COST INDEX

This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, you were to surrender the policy and take its cash value.

2. LIFE INSURANCE NET PAYMENT COST INDEX

This index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point in time, such as 10 or 20 years, if you continue paying premiums on your policy and do not take its cash value.

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a nonparticipating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the nonparticipating policy will not change.

How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

(1) Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.

(2) Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "Shopper's Guide" tells you that one company's policy is a good buy for a particular age and amount, you should not assume that all of that company's policies are equally good buys.

(3) Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its agent. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.

(4) In any event, you will need other information on which to base your purchase decision. **BE SURE YOU CAN AFFORD THE PREMIUMS, AND THAT YOU UNDERSTAND ITS CASH VALUES, DIVIDENDS AND DEATH BENEFITS.** You should also make a judgement on how well the life insurance company or agent will provide service in the future, to you as a policyholder.

TRADE SECRET

(5) These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for awhile, in favor of a new one. If such a replacement is suggested, you should ask for information from the company which issued the old policy before you take action.

(6) An important fact to note is the difference in premium payments paid during one year's time based on an annual premium versus the annualized periodic premium. For example, if you choose to pay premiums on a monthly basis, the annualized periodic premium would be twelve (12) times the monthly premium. There may be a significant difference between the annualized periodic premium and the annual premium and it should be considered when deciding on a payment schedule.

Important Things to Remember - A Summary

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums most closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. **REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS.** A good life insurance agent can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you can make cost comparisons of similar policies.

DON'T BUY LIFE INSURANCE UNLESS YOU INTEND TO STICK WITH IT. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the agent or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities.

TRADE SECRET

FIRST COLONY LIFE INSURANCE COMPANY
 Service Center: P. O. Box 1280, Lynchburg, Virginia 24505-1280
 Telephone: (888) 326-6433, Extension 2240

**STATEMENT OF POLICY COST AND BENEFIT INFORMATION AS OF 11/15/99
 FOR FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE**

POLICY INFORMATION

POLICY NO. 2,957,767
Insured - LESLIE S PINSOF
Age 59 MALE
Class - PREFERRED
 NO NICOTINE USE

For more information about
 the Policy please contact

WILLIAM VANPELT III
 SUITE 150
 2000 BERING DR
 HOUSTON TX 77057

Initial Specified Amount - \$2,000,000
Option - 1

INTEREST RATES

Current interest rates are subject to change at any time; however, the Company will not credit an interest rate lower than, or charge an interest rate higher than, the applicable Guaranteed rate.

	GUARANTEED	NONGUARANTEED
Unloaned Policy Value (credited)	4.00 %	6.250 %
Loaned Policy Value (credited)	4.00 %	4.00%
Preferred Loaned Policy Value (charged)	4.00 %	4.00%
Nonpreferred Loaned Policy Value (charged)	6.00 %	6.00%

ASSUMPTIONS FOR VALUES AND BENEFITS

The guaranteed and current values and benefits shown assume: (1) the premiums shown are paid, (2) premium payments are made in the frequency specified by the Owner and received on their due dates, (3) the Designated Monthly Premium Guarantee is not applicable, (4) no changes are made in the plan as issued, and (5) no policy loans or partial withdrawals are made. Nonguaranteed values and benefits also assume that nonguaranteed risk rates and interest rates remain unchanged. We may change the monthly risk rates and the credited interest rates at any time subject to the guarantees stated in your policy. We will base any change on our expectations as to future investment earnings, mortality, persistency, expenses, and taxes. Nonguaranteed values and benefits are illustrative only and are not guaranteed.

5% INTEREST ADJUSTED INDICES

The life insurance buyer's guide explains the intended use of these indices.

	Guaranteed	NonGuaranteed
10 Year Net Payment	17.00	17.00
10 Year Surrender	17.00	8.15
20 Year Net Payment	17.00	17.00
20 Year Surrender	17.00	6.91

TABLE OF END OF YEAR VALUES

YEAR	GUARANTEED			NONGUARANTEED		
	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT
1	34,000	0	2,000,000	34,000	0	2,000,000
2	34,000	0	2,000,000	34,000	0	2,000,000
3	34,000	0	2,000,000	34,000	0	2,000,000
4	34,000	0	2,000,000	34,000	18,668	2,000,000
5	34,000	0	2,000,000	34,000	52,757	2,000,000
6	34,000	0	2,000,000	34,000	87,625	2,000,000
7	34,000	0	2,000,000	34,000	123,143	2,000,000
8	34,000	0	2,000,000	34,000	158,964	2,000,000
9	34,000	0	2,000,000	34,000	195,642	2,000,000
10	34,000	0	2,000,000	34,000	233,707	2,000,000
11	34,000	0	2,000,000	34,000	271,676	2,000,000
12	34,000	0	2,000,000	34,000	310,669	2,000,000
13	34,000	0	2,000,000	34,000	350,218	2,000,000
14	34,000	0	2,000,000	34,000	390,310	2,000,000
15	34,000	0	2,000,000	34,000	432,673	2,000,000
16	34,000	0	2,000,000	34,000	478,259	2,000,000
17	34,000	0	2,000,000	34,000	527,455	2,000,000
18	34,000	0	2,000,000	34,000	580,586	2,000,000
19	34,000	0	2,000,000	34,000	638,137	2,000,000
20	34,000	0	2,000,000	34,000	700,614	2,000,000
21	34,000	**	**	34,000	755,633	2,000,000
22	0			34,000	812,571	2,000,000
23	0			34,000	871,401	2,000,000
24	0			34,000	932,041	2,000,000
25	0			34,000	995,143	2,000,000
26	0			34,000	1,061,658	2,000,000
27	0			34,000	1,132,022	2,000,000
28	0			34,000	1,207,104	2,000,000
29	0			34,000	1,287,589	2,000,000
30	0			34,000	1,374,505	2,000,000
31	0			34,000	1,468,901	2,000,000
32	0			34,000	1,572,199	2,000,000
33	0			34,000	1,685,973	2,000,000
34	0			34,000	1,812,202	2,000,000
35	0			9,215	1,924,364	2,092,212
36	0			0	2,034,551	2,187,189
37	0			0	2,152,050	2,285,135
38	0			0	2,277,730	2,387,036
39	0			0	2,412,476	2,496,019
40	0			0	2,556,837	2,622,414

TRADE
SECRET

TRADE SECRET

TABLE OF END OF YEAR VALUES

YEAR	PREMIUMS	GUARANTEED		NONGUARANTEED		
		CASH SURRENDER VALUE	DEATH BENEFIT	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT
41	0			0	2,713,255	2,713,255

SUMMARY OF END OF YEAR VALUES

YEAR	PREMIUMS	GUARANTEED		NONGUARANTEED		
		CASH SURRENDER VALUE	DEATH BENEFIT	PREMIUMS	CASH SURRENDER VALUE	DEATH BENEFIT
5	170,000	0	2,000,000	170,000	52,757	2,000,000
10	340,000	0	2,000,000	340,000	233,707	2,000,000
15	510,000	0	2,000,000	510,000	432,673	2,000,000
20	680,000	0	2,000,000	680,000	700,614	2,000,000
AGE 65	204,000	0	2,000,000	204,000	87,625	2,000,000

**This Policy will lapse at this time unless a higher premium is paid.

This Policy will continue as long as premiums paid plus credited interest are sufficient to keep the policy in force and it has not terminated in accordance with any other policy provision.

Page 4 Of 4

There is a monthly administrative fee of \$4.65 per month.

A premium expense charge of 7% is deducted from each premium received.

The administrative fee for partial withdrawal is \$25.00.

A surrender charge is deducted from the policy value in determining the cash surrender value. The surrender charges applicable on the Policy Date are shown below:

Policy Year	Surrender Charge
1	\$ 110,180.00
2	105,940.00
3	101,600.00
4	97,160.00
5	92,640.00
6	88,020.00
7	83,300.00
8	78,480.00
9	73,520.00
10	68,420.00
11	63,140.00
12	57,660.00
13	51,980.00
14	46,040.00
15	39,760.00
16	33,120.00
17	25,960.00
18	18,200.00
19	9,620.00
20 & Later	0.00

TRADE
SECRET

TRADE SECRET

First Colony Life Insurance Company

A GE Financial Assurance Company
Home Office: 700 Main Street - Lynchburg, VA 24504
Service Center: P. O. Box 1280 - Lynchburg, VA 24505-1280
A Stock Company

The Company will pay the beneficiary the death proceeds as defined in this Policy. Payment will not be made until all of the following have been received at the Service Center:

- this Policy;
- due proof that the Insured died while this Policy was in force;
- a written claim for the death proceeds completed on a form supplied by the Company; and
- an authorization, on a form supplied by the Company, from a person authorized to allow the Company to obtain and disclose information concerning the Insured.

Any payment is subject to the provisions on this page and on the following pages.

The consideration for this Policy is the application and payment of the Initial Premium on or before policy delivery.

RIGHT TO EXAMINE POLICY. The Owner may return this Policy within 20 days after its delivery by taking it or mailing it to the Company or to any life insurance agent appointed by the Company. Immediately upon delivery or mailing, this Policy will be deemed void from the beginning. Any premium paid will be returned.

This Policy was signed on the Date of Issue.

Acting President

Secretary

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable During Insured's Lifetime
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating - No Dividends

Insured	LESLIE S PINSOF	Policy Number	2,957,767
Initial Specified Amount	\$2,000,000	Policy Date	OCTOBER 22, 1999
Initial Premium	\$34,000.00	Date of Issue	NOVEMBER 15, 1999

This Policy is a legal contract between the Owner and the Company.

READ YOUR POLICY CAREFULLY.

TABLE OF CONTENTS

	Page		Page
SCHEDULE	3,4	NONFORFEITURE PROVISIONS	
GENERAL DEFINITIONS	5	Policy Value	12,13
GENERAL PROVISIONS		Monthly Deduction	13
The Contract	5	Cost of Insurance	13
Policy Date	6	Monthly Risk Rates	14
Owner and Beneficiary	6	Interest Rate	14
Change of Owner and Beneficiary	6	Changes in Rates, Charges and Fees	14
Assignment	7	Continuation of Insurance	14
Misstatement	7	Cash Surrender Value	14
Suicide	7	Surrender Charge	14
Incontestability	7	Surrender and Net Cash Surrender	
Payment of Proceeds	7	Value	14
Annual Report	8	Partial Withdrawal	15
Projection of Benefits and Values	8	Paid-Up Insurance	15
Nonparticipating	8	Basis of Computations	16
PREMIUM PROVISIONS		POLICY LOANS	
Premium Payments	8	Cash Loan	16
Grace Period	8	Deferral	16
Minimum Monthly Premium Guarantee	9	Loan Interest and Repayment	17
Designated Monthly Premium		SETTLEMENT OPTIONS	
Guarantee	9	General Provisions	18
Minimum Monthly Premiums and		Death of Payee	18
Designated Monthly Premiums	9	First Installment	18
Refund of Premium	9	Interest	18
Reinstatement	9,10	Option 1 - Fixed Period	18
INSURANCE PROVISIONS		Option 2 - Life Income with	
Death Benefit	10	Installments Certain	18
Changes in Death Benefit Option	11	Option 3 - Interest	18
Amount of the Death Proceeds	11,12	Option 4 - Fixed Installments	18
Changes in Specified Amount	12	Option 5 - Single Premium Annuity	18
		Other Settlement Options	18
		Option 1 Table	19
		Option 2 Table	19

TRADE SECRET

TRADE SECRET

SCHEDULE

Flexible Premium Adjustable Life Insurance

Accelerated Death Benefit Rider

INITIAL PREMIUM - \$34,000.00
 SCHEDULED MODAL PREMIUM - \$34,000.00 ANNUALLY

Even if premiums are paid, this Policy may terminate if the premiums paid plus credited interest are insufficient to continue it in force.

MINIMUM MONTHLY PREMIUM - \$1,665.00
 MINIMUM MONTHLY PREMIUM PERIOD - First 20 policy years
 DESIGNATED MONTHLY PREMIUM - \$3,105.00
 PREMIUM EXPENSE CHARGE - 7% of each premium received
 MONTHLY ADMINISTRATIVE FEE - \$4.65 per month
 ADMINISTRATIVE FEE FOR PARTIAL WITHDRAWAL - \$25.00

GUARANTEED CREDITED INTEREST RATE - an annual effective rate of 4%. For purposes of the Cost of Insurance section, the monthly decimal equivalent of this rate is .0032737.

GUARANTEED POLICY LOAN INTEREST RATE(S) CHARGED - On the portion of the policy value equal to the preferred loan balance, the rate charged will be 4% a year. On the portion of the policy value equal to the nonpreferred loan balance, the rate charged will be a rate not greater than 6% a year.

MORTALITY TABLE - 1980 CSO NONSMOKER Mortality Table, Sex Distinct, Age Nearest Birthday

Insured: LESLIE S PINSOFF

Death Benefit Option: OPTION 1

Premium Class: PREFERRED
 NO NICOTINE USE

Initial Specified Amount: \$2,000,000

Age/Sex: 59 MALE

Beneficiary: TRUSTEE OF THE LESLIE S PINSOFF
 INSURANCE TRUST DATED
 JANUARY 4, 1995

Policy Date: OCTOBER 22, 1999

Date of Issue: NOVEMBER 15, 1999

Owner: TRUSTEE OF THE LESLIE S PINSOFF
 INSURANCE TRUST DATED
 JANUARY 4, 1995

Policy Number: 2,957,767

Pol No 2,957,767

SCHEDULE *CONTINUED*

Surrender Charge

Policy Year	Surrender Charge
1	\$ 110,180.00
2	105,940.00
3	101,600.00
4	97,160.00
5	92,640.00
6	88,020.00
7	83,300.00
8	78,480.00
9	73,520.00
10	68,420.00
11	63,140.00
12	57,660.00
13	51,980.00
14	46,040.00
15	39,760.00
16	33,120.00
17	25,960.00
18	18,200.00
19	9,620.00
20 & later	0.00

The surrender charge is deducted from the policy value in determining the cash surrender value.

TRACE
SECRET

Pol No 2,957,767

TRADE
SECRET

SCHEDULE *CONTINUED*

Table of Guaranteed
Maximum Monthly Risk Rates

This Table shows the guaranteed maximum monthly risk rates for this Policy. The rates shown are for the Insured's attained age and sex and the Premium Class shown on page 3. If this Policy includes an extra risk rating, then the risk rates have been adjusted to include an additional amount for that rating.

Attained Age	Monthly Rate Per \$1,000 Of Net Amount At Risk	Attained Age	Monthly Rate Per \$1,000 Of Net Amount At Risk
59	0.960	80	8.160
60	1.060	81	8.970
61	1.170	82	9.900
62	1.290	83	10.950
63	1.440	84	12.120
64	1.600	85	13.370
65	1.780	86	14.700
66	1.970	87	16.080
67	2.180	88	17.500
68	2.410	89	18.970
69	2.650	90	20.510
70	2.930	91	22.170
71	3.300	92	23.990
72	3.620	93	26.070
73	4.040	94	28.780
74	4.520	95	32.820
75	5.040	96	39.640
76	5.590	97	53.070
77	6.180	98	83.330
78	6.790	99 & up	83.330
79	7.440		

Pol No 2,957,767

SCHEDULE *CONTINUED*

Table of End-of-Policy-Year Death Benefit Factors
for the Initial Specified Amount

This Table shows the death benefit factor applicable to this Policy during the last policy month of each policy year. The figures shown are based on the Insured's attained age and sex and the Premium Class shown on page 3.

End of Policy Year	Death Benefit Factor	End of Policy Year	Death Benefit Factor
1	1.9456803	22	1.2459308
2	1.8927868	23	1.2289176
3	1.8422248	24	1.2129740
4	1.7938774	25	1.1981492
5	1.7479443	26	1.1844677
6	1.7042390	27	1.1718306
7	1.6627162	28	1.1601376
8	1.6231751	29	1.1492128
9	1.5855384	30	1.1388472
10	1.5497088	31	1.1288241
11	1.5154742	32	1.1189122
12	1.4829036	33	1.1088824
13	1.4524340	34	1.0984381
14	1.4233001	35	1.0872223
15	1.3959140	36	1.0750228
16	1.3703141	37	1.0618409
17	1.3463815	38	1.0479892
18	1.3239348	39	1.0346294
19	1.3028472	40	1.0256477
20	1.2828902	41 & later	1.0000000
21	1.2639274		

For an explanation of these factors, refer to the Death Benefit section on page 10.

SECRET

TRADE
SECRET

GENERAL DEFINITIONS

Other specific definitions are included throughout this Policy.

Attained Age - The Age shown in the Schedule plus the number of whole years elapsed from the Policy Date.

Company - First Colony Life Insurance Company

Evidence - Evidence of the insurability of the Insured acceptable to the Company.

Date of Issue - The Date of Issue is shown in the Schedule. It is the date on which this Policy is considered to have been produced.

Initial Premium - The Initial Premium is shown in the Schedule. It is the premium received as part of the consideration for this Policy.

Notice - A written notice received at the Service Center in a form acceptable to the Company. It must include the Owner's signature, the date the notice was signed, and the policy number of this Policy.

Request - A written request received at the Service Center in a form acceptable to the Company. It must include the Owner's signature, the date the request was signed, and the policy number of this Policy. A Request is subject to Company approval.

Service Center - The office of the Company designated for the servicing of this Policy. All correspondence regarding this Policy should be sent to the Service Center.

Specified Amount - The Specified Amount equals:

- the Initial Specified Amount of this Policy; plus
- the sum of all subsequent increases in Specified Amount; less
- the sum of all subsequent decreases in Specified Amount.

GENERAL PROVISIONS

THE CONTRACT

The entire contract consists of the following:

- this Policy, including any applicable endorsements, riders and amendments;
- the application;
- any supplemental application for a policy change; and
- any application for reinstatement.

The application is evidenced by the copy that was attached to this Policy at issue or delivery. Any supplemental application or application for reinstatement will be evidenced by the copy sent to the Owner for attachment to this Policy following Company approval. For purposes of this section, any applications sent to the Owner will be considered to have been attached to this Policy at issue or delivery.

An application includes all sections and forms the Company has specifically designated as parts of that application. All statements made in an application are, in the absence of fraud, deemed representations and not warranties. No statement will void this Policy or be used in defense of a claim unless it is contained in an application attached to, or considered to have been attached to, this Policy when issued or delivered.

The Owner may amend this Policy during the Insured's lifetime with the Company's consent. Only an authorized officer of the Company can consent to change or waive policy provisions. Any change or waiver must be made in writing.

POLICY DATE

The Policy Date is the date from which:

- premiums for this Policy are payable; and
- policy anniversaries, policy years, policy months, and the Minimum Monthly Premium Period are measured.

The first policy year begins on the Policy Date. Subsequent policy years begin on the same date each year thereafter. A policy anniversary occurs at the beginning of each policy year after the first policy year. The first policy month begins on the Policy Date. Each subsequent policy month begins on the same day of the month as the Policy Date unless the month does not contain that day. In that case, the policy month will begin on the last day of the respective month.

Policy Dating When the Initial Premium is Received Before the Date of Issue - When the Initial Premium is received before the Date of Issue, the Policy Date of this Policy will be as shown in the Schedule.

Policy Dating When the Initial Premium is Received On Or After the Date of Issue - When the Initial Premium is received on or after the Date of Issue, coverage under this Policy will begin on the date of delivery. The Policy Date will be the same as the date of delivery unless on the date of delivery the Insured's age for insurance purposes would be different from the Age shown in the Schedule. In that case, the Policy Date will be the last day that the Age shown in the Schedule is applicable.

The date of delivery is the date on which this Policy is delivered to the Owner and the first modal premium is paid while all persons proposed for insurance are living and insurable as described in the application.

OWNER AND BENEFICIARY

The designations of Owner, Contingent Owner, Primary Beneficiary and Contingent Beneficiary are as shown in the application or as subsequently elected by the Owner in a Notice. If the Insured becomes the Owner, any designation of Contingent Owner is automatically revoked.

The Owner has all rights stated in this Policy. If the Owner is other than the Insured and the Owner dies or ceases to exist during the Insured's lifetime, all rights of the Owner vest in the surviving Contingent Owner and the Contingent Owner becomes the Owner. If there is no surviving Contingent Owner, all ownership rights vest in the Owner's estate (if the Owner is an individual) or the Owner's successor in interest (if the Owner is a non-natural person).

The interest of a beneficiary terminates if that beneficiary dies or ceases to exist before the Insured dies. Upon the Insured's death, the Company will pay the proceeds to any surviving Primary Beneficiaries. If there are no surviving Primary Beneficiaries, the Company will pay the proceeds to any surviving Contingent Beneficiaries. If there are no surviving beneficiaries, the Company will pay the surviving Owner. If there is no surviving Owner, the Company will pay the Owner's estate (if the Owner is an individual) or the Owner's successor in interest (if the Owner is a non-natural person).

CHANGE OF OWNER AND BENEFICIARY

The Owner may change the designations of Owner, Contingent Owner, and Primary and Contingent Beneficiary during the Insured's lifetime; Notice is required. The new designation will take effect as of the date the Owner signed the Notice. Such a change does not affect any payment made or other action taken by the Company before the Notice is received. If the designation of Owner is changed, any existing revocable beneficiary designations and any Contingent Owner designation are automatically revoked. The terms of an irrevocable beneficiary designation cannot be changed or revoked without the consent of that beneficiary.

TRADE
SECRET

TRADE
SECRET

ASSIGNMENT

Only the Owner has the right to assign this Policy. No assignment will bind the Company until it has been recorded at the Service Center. The Company is not responsible for the validity or effect of any assignment of this Policy by the Owner.

MISSTATEMENT

If the Insured's age or sex is misstated, the Company will adjust the death benefit to the amount that the most recent cost of insurance will purchase based on the correct information.

SUICIDE

If the Insured, while sane or insane, dies by suicide within two years beginning with the Date of Issue, the death proceeds will be an amount equal to:

- the premiums paid; less
- the loan balance on the date of death; less
- any reductions in policy value for partial withdrawals from this Policy.

If the Insured, while sane or insane, dies by suicide within two years beginning with the effective date of an increase in Specified Amount but more than two years after the Date of Issue, the death proceeds will be an amount equal to:

- the Assumed Death Benefit; less
- the loan balance on the date of death.

The Assumed Death Benefit is equal to:

- the death benefit as defined in the **Death Benefit** section assuming the increase had not occurred; plus
- the difference between the monthly deductions that were deducted from the policy value and the monthly deductions that would have been deducted had the increase not occurred, accumulated at the interest rates credited to the policy value.

These proceeds may be further adjusted as explained in the second paragraph of the **Proceeds Payable at the Death of the Insured** section. Any premiums paid after the date of the Insured's death will be paid in addition to these proceeds.

INCONTESTABILITY

With respect to statements made in the application, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the Date of Issue. With respect to statements made in a supplemental application, the applicable policy change is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with its effective date. With respect to statements made in an application for reinstatement, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the date of reinstatement.

This provision does not apply to any rider providing additional benefits.

PAYMENT OF PROCEEDS

Proceeds means the amount that becomes payable upon the Insured's death or upon surrender of this Policy. The proceeds will be paid from the Service Center. This Policy must be returned to the Company. Unless paid in accordance with a settlement option, the proceeds will be paid in one sum.

ANNUAL REPORT

An annual report will be sent to the Owner. It will show the following for the period covered by the report:

- the actual policy values;
- all policy activity, including all credits and deductions; and
- any other information required by state law and regulation.

By comparing the actual policy values to the projection of values received when this Policy was purchased, the Owner can determine if this Policy is performing as planned. If asked, the Company will provide a new projection of values.

PROJECTION OF BENEFITS AND VALUES

The Owner may ask for a projection of illustrative future death benefits and policy values. A fee of up to \$25.00 may be charged for each projection after the first projection requested in a policy year.

NONPARTICIPATING

This Policy does not share in any distribution of surplus. No dividends are payable.

PREMIUM PROVISIONS

PREMIUM PAYMENTS

Each premium after the first is payable in advance at the Service Center or at the address designated by the Company for receipt of premium payments. Payment may be made to a Company life insurance agent but only in exchange for a receipt signed by an authorized officer of the Company and countersigned by the agent.

Premiums may be paid by any mutually agreeable method during the Insured's lifetime while this Policy is in force. The Owner may change the mode of premium payment to any mutually agreeable mode, including annual, semiannual, quarterly, and monthly bank draft.

When item (b) of either death benefit option applies, premium payments may substantially increase the death benefit; therefore, when item (b) applies, the Company may limit premium payments to the amount required to keep this Policy in force. The Company will not otherwise impose limits on the amount or timing of premium payments. Item (b) is defined in the **Death Benefit** section.

GRACE PERIOD

After the first policy month, a grace period of 62 days is provided under this Policy for payment of the amount required to keep this Policy from terminating. This Policy and all riders will stay in force during a grace period. Except as stated in the **Minimum Monthly Premium Guarantee** and **Designated Monthly Premium Guarantee** sections, this Policy will enter a grace period at the beginning of a policy month if the net cash surrender value is less than the monthly deduction for that month.

If this Policy enters a grace period, the Company will mail premium information to the Owner and any assignee of record at their last known addresses. If an amount sufficient to remove this Policy from the grace period is not paid, this Policy and all riders will terminate without value as of the later of the following:

- the 31st day after the Company mails the initial premium due notice for the grace period; and
- the 62nd day of the grace period.

TRADE
SECRET

TRADE SECRET

MINIMUM MONTHLY PREMIUM GUARANTEE

This guarantee applies during the Minimum Monthly Premium Period shown in the Schedule only if the loan balance has never exceeded the cash surrender value.

When this guarantee applies, this Policy will not enter a grace period provided the Minimum Monthly Premium Requirement is met. The Minimum Monthly Premium Requirement is met if the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals, equals or exceeds the sum of the minimum monthly premiums due from the Policy Date to the end of the current policy month.

DESIGNATED MONTHLY PREMIUM GUARANTEE

This guarantee applies only if:

- Option 1 was the death benefit option elected in the application;
- the death benefit option has never been changed;
- the Specified Amount has never been increased in accordance with the *Increases in Specified Amount* section; and
- the loan balance has never exceeded the cash surrender value.

When this guarantee applies, this Policy will not enter a grace period provided the Designated Monthly Premium Requirement is met. The Designated Monthly Premium Requirement is met if the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals, equals or exceeds the sum of the designated monthly premiums due from the Policy Date to the end of the current policy month.

MINIMUM MONTHLY PREMIUMS AND DESIGNATED MONTHLY PREMIUMS

The premiums in effect on the Policy Date are shown in the Schedule.

The minimum monthly and designated monthly premiums will change when any of the following occurs:

- a decrease in the Specified Amount of this Policy unless the change is due to a partial withdrawal;
- a change in any extra risk rating applicable to this Policy;
- a change in premium class;
- a change in the scheduled cost of any rider attached to this Policy; or
- the addition, deletion, or termination of any rider.

In addition, the minimum monthly premiums will change when either of the following occurs:

- an increase in the Specified Amount of this Policy; or
- a change in death benefit option.

The new monthly premiums will be effective from the date of any of the above changes. The Owner will be notified of the new premiums.

REFUND OF PREMIUM

No premium refunds will be made except as specifically stated in this Policy.

REINSTATEMENT

If this Policy has terminated according to the *Grace Period* section, the Owner may request reinstatement of this Policy. The following must be received at the Service Center within five years beginning with the date of termination:

- Evidence;
- payment or reinstatement of the loan balance; and
- payment of the Premium for Reinstatement. The amount of this Premium depends on the date of reinstatement.

After the Company has approved the application for reinstatement, this Policy, including any applicable surrender charges, minimum monthly premiums, and designated monthly premiums will be reinstated on the day the above conditions are satisfied, which is the date of reinstatement.

(Continued)

If the date of reinstatement occurs during the Minimum Monthly Premium Period, the Premium for Reinstatement will equal the lesser of the following amounts:

- the Reinstatement Minimum Premium; and
- the Reinstatement Net Cash Surrender Value.

If the date of reinstatement occurs at some other time and the Designated Monthly Premium Guarantee is in effect, the Premium for Reinstatement will equal the lesser of the following amounts:

- the Reinstatement Designated Premium; and
- the Reinstatement Net Cash Surrender Value.

If the date of reinstatement occurs at some other time and the Designated Monthly Premium Guarantee is not in effect, the Premium for Reinstatement will equal the Reinstatement Net Cash Surrender Value.

The Reinstatement Minimum Premium is an amount equal to:

- the sum of the minimum monthly premiums due from the Policy Date to the end of the period that contains the date that is two policy months after the date of reinstatement; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

The Reinstatement Designated Premium is an amount equal to:

- the sum of the designated monthly premiums due from the Policy Date to the end of the period that contains the date that is two policy months after the date of reinstatement; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

The Reinstatement Net Cash Surrender Value is an amount equal to:

- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of reinstatement; plus
- two monthly deductions.

INSURANCE PROVISIONS

DEATH BENEFIT

The death benefit depends on the option in effect on the date of the Insured's death. The Schedule shows the option in effect on the Policy Date.

OPTION 1

The death benefit under this option is the greater of the following amounts.

- (a) The Specified Amount as of the date of death.
- (b) The sum of the Factored Policy Values for all coverage layers.

OPTION 2

The death benefit under this option is the greater of the following amounts.

- (a) An amount equal to:
 - the policy value as of the date of death; plus
 - the Specified Amount as of the date of death.
- (b) The sum of the Factored Policy Values for all coverage layers.

The Factored Policy Value for a coverage layer is equal to:

- the policy value that has been allocated to that coverage layer as of the date of death; times
- the death benefit factor for that layer for the policy month of death.

Coverage layer is explained in the **Cost of Insurance** section.

The Schedule contains a Table of End-of-Policy-Year Death Benefit Factors for the Initial Specified Amount; monthly factors not shown are available upon request. A new set of death benefit factors may apply to an increase in Specified Amount; the Company will notify the Owner of these factors.

TRADE SECRET

TRADE
SECRET**CHANGES IN DEATH BENEFIT OPTION**

The Owner may file a Request for a change in the death benefit option. To change to Option 2, Evidence is also required. The Company will change the option effective at the beginning of the policy month following Company approval only if the death benefit on that date is the amount provided by item (a) of the option. The Company will notify the Owner regarding the change.

If the change is to Option 1, the Specified Amount after the change will not be less than the Specified Amount before the change plus the policy value on the effective date of the change. If the change is to Option 2, the Specified Amount after the change will equal the Specified Amount before the change less the policy value on the effective date of the change. These automatic adjustments to the Specified Amount are not considered to be changes made in accordance with the **Changes in Specified Amount** section. The first change to Option 2 will cancel the Designated Premium Guarantee if it is in effect on the effective date of the change.

AMOUNT OF THE DEATH PROCEEDS**Proceeds Payable at the Death of the Insured**

The death proceeds payable will be an amount equal to:

- the death benefit as defined in the **Death Benefit** section; less
- the loan balance as of the date of death.

Any premiums received at the Service Center after the date of death will be paid in addition to the death proceeds.

The amount of the death proceeds will be adjusted due to any of the following:

- misstatement as explained in the **Misstatement** section;
- a successful contest of this Policy in accordance with the **Incontestability** section; and
- death during the grace period as explained in the **Death During the Grace Period** section.

If the Insured dies by suicide, the amount of the death proceeds may be determined in accordance with the **Suicide** section.

Death During the Grace Period

If the Insured dies while this Policy is in a grace period, the premium required to remove this Policy from the grace period as of the date of death will be deducted from the death proceeds. The amount of this premium will depend on the date this Policy entered the grace period. If this Policy entered a grace period during the Minimum Monthly Premium Period, this premium will equal the lesser of the following:

- the Minimum Monthly Premium Balance; and
- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

If this Policy entered a grace period at some other time and the Designated Monthly Premium Guarantee was in effect, this premium will equal the lesser of the following:

- the Designated Monthly Premium Balance; and
- the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

If this Policy entered a grace period at some other time and the Designated Premium Guarantee was not in effect, this premium will equal the amount of premium required to give this Policy a net cash surrender value of zero as of the date of death.

The Minimum Monthly Premium Balance is an amount equal to:

- the sum of the minimum monthly premiums due from the Policy Date to the end of the policy month of death; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

(Continued)

The Designated Monthly Premium Balance is an amount equal to:

- the sum of the designated monthly premiums due from the Policy Date to the end of the policy month of death; less
- the sum of the premiums paid since the Policy Date, less any reductions in policy value for partial withdrawals.

CHANGES IN SPECIFIED AMOUNT

Increases in Specified Amount To increase the Specified Amount, the Owner must provide the following:

- a Request;
- a supplemental application; and
- Evidence.

The effective date of an increase in Specified Amount will be the beginning of the policy month on or immediately following Company approval of the increase. A new set of death benefit factors may apply to the increase. The first increase made in accordance with this section will cancel the Designated Monthly Premium Guarantee if it is in effect on the effective date of the increase.

Decreases in Specified Amount The Owner may decrease the Specified Amount by filing Notice. A decrease in Specified Amount will be effective at the beginning of the policy month on or immediately following the date Notice is received. Other than for a partial withdrawal, a decrease is applied:

- first, to reduce the amount provided by the most recent increase;
- next, to reduce the next most recent increases successively;
- finally, to reduce the Initial Specified Amount.

After the decrease, the death benefit cannot be less than \$25,000.

A charge will be taken for the decrease. In addition, the Company will adjust the surrender charges and death benefit factors. The policy value will be reduced by the amount of this charge; however, the policy value will not be reduced below zero. The Company will notify the Owner of the amount of the charge taken and of any adjustments to the surrender charge and death benefit factors. The Company will reduce the policy value and make the new charges and factors effective as of the effective date of the decrease.

NONFORFEITURE PROVISIONS

POLICY VALUE

The policy value on the Policy Date is equal to:

- any net premium credited on the Policy Date; less
- the monthly deduction for the first policy month.

The net premium is the premium paid less the Premium Expense Charge shown in the Schedule.

The policy value at the beginning of a policy month other than the first policy month equals:

- the policy value at the beginning of the preceding policy month accumulated with interest to the beginning of the current month; plus
- the net premiums credited to this Policy since the beginning of the preceding policy month; plus
- interest on each net premium from the day it was credited to this Policy to the beginning of the current month; less
- the reduction in policy value for each partial withdrawal made since the beginning of the preceding policy month; less
- interest on each reduction in policy value from the date of partial withdrawal to the beginning of the current month; less
- any charge taken for a decrease in Specified Amount which is effective at the beginning of the policy month; less
- the monthly deduction for the current month.

TRADE SECRET

TRADE SECRET

The policy value on any other day equals:

- the policy value at the beginning of the policy month accumulated with interest to the day on which the policy value is being determined; plus
- the net premiums credited to this Policy after the beginning of the policy month; plus
- interest on each net premium from the day it was credited to this Policy to the day on which the policy value is being determined; less
- the reduction in policy value for each partial withdrawal made since the beginning of the policy month; less
- interest on each reduction in policy value from the date of partial withdrawal to the day on which the policy value is being determined.

MONTHLY DEDUCTION

The monthly deduction for a policy month includes:

- the cost of insurance for the policy month;
- the cost of riders for the policy month; and
- the Monthly Administrative Fee shown in the Schedule.

COST OF INSURANCE

The death benefit is divided into coverage layers for purposes of calculating the cost of insurance. Each coverage layer has its own cost of insurance rate and net amount at risk. On the Policy Date, there is only one coverage layer, the initial coverage layer. A new coverage layer is created when an increase in Specified Amount is made in accordance with the **Changes in Specified Amount** section or the death benefit becomes the amount provided by item (b) of either death benefit option. A decrease in Specified Amount, other than a decrease due to a death benefit option change, may eliminate all or a portion of a layer. The cost of insurance for a policy month is the sum of the costs of insurance for all coverage layers for that month.

The cost of insurance for a coverage layer for a policy month equals:

- the monthly cost of insurance rate per thousand for that layer, times
- the number of thousands of net amount at risk for that month for that layer.

The monthly cost of insurance rate per thousand equals:

- the monthly risk rate per thousand for the coverage layer; divided by,
- one (1) plus the monthly decimal equivalent of the interest rate used to calculate this cost of insurance rate.

The net amount at risk for a coverage layer for a policy month equals:

- the death benefit allocated to that layer; less
- the portion of the projected policy value at the end of the month allocated to that layer for the month.

The projected policy value at the end of a policy month is the policy value at the beginning of the month accumulated with interest to the end of the month at the rate(s) assumed to be credited for that month.

The Company will first allocate the projected policy value to the initial coverage layer. Any portion of the projected policy value that exceeds this initial layer will then be allocated to any additional coverage layers in the order in which they were created. For purposes of allocating the projected policy value, the coverage layer created when the death benefit becomes the amount provided by item (b) of either death benefit option is considered the most recently created coverage layer.

MONTHLY RISK RATES

The monthly risk rates for each coverage layer are based on the Insured's attained age and sex and the premium class for that coverage layer.

INTEREST RATE

The credited interest rate used to calculate the policy value will never be less than the Guaranteed Credited Interest Rate shown in the Schedule.

CHANGES IN RATES, CHARGES AND FEES

At its sole discretion, the Company may change the monthly risk rates and the credited interest rates. The monthly risk rates will not exceed the Guaranteed Maximum Monthly Risk rates and the credited interest rates will not be less than the Guaranteed Credited Interest Rate. The Guaranteed Maximum Monthly Risk rates and the Guaranteed Credited Interest Rate are shown in the Schedule.

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

CONTINUATION OF INSURANCE

This Policy will continue in force until the earlier of the following:

- it terminates in accordance with the **Grace Period** section;
- it terminates in accordance with the **Loan Interest and Repayment** section;
- it terminates upon the death of the Insured; and
- it terminates upon surrender in accordance with the **Surrender and Net Cash Surrender Value** section.

If premium payments are discontinued, this Policy will continue in force until it terminates as provided in the Grace Period section.

CASH SURRENDER VALUE

The cash surrender value on any day is equal to the policy value on that day less the surrender charge.

SURRENDER CHARGE

A surrender charge will be taken upon surrender of this Policy.

SURRENDER AND NET CASH SURRENDER VALUE

The Owner may surrender this Policy by filing Notice. Surrender occurs on the date of surrender provided the Insured is living on the date the Notice is signed. This Policy will terminate as of the date of surrender. A grace period does not apply to termination due to surrender.

The date of surrender will be one of the following:

- the date the Notice was signed if the Notice is received at the Service Center within 30 days after the date it was signed; or
- the date the Company receives the Notice if the Notice is received at the Service Center more than 30 days after the date it was signed.

The net cash surrender value is the amount payable on surrender. It equals:

- the cash surrender value on the date of surrender; less
- the loan balance on the date of surrender.

The Company may defer payment up to six months after Notice is received.

If the date of surrender is within 30 days after a policy anniversary, the net cash surrender value will not be less than:

- the net cash surrender value on the anniversary; less
- each policy loan made since the anniversary and the accrued interest on each loan; less
- the reduction in policy value for each partial withdrawal made since the anniversary and the interest on each reduction.

TRADE SECRET

PARTIAL WITHDRAWAL

The Owner may make a partial withdrawal by filing Notice. A partial withdrawal will be made on the date of partial withdrawal provided the Insured is then living and this Policy is not then being continued as paid-up insurance in accordance with the **Paid-Up Insurance** section. The date of partial withdrawal will be one of the following:

- the date the Notice was signed if the Notice is received at the Service Center within 30 days after the date it was signed; or
- the date the Company receives the Notice if the Notice is received at the Service Center more than 30 days after the date it was signed.

The maximum amount that may be paid to the Owner as a partial withdrawal is equal to the lesser of (1) and (2) below.

- (1) An amount equal to:
 - the net cash surrender value on the date of partial withdrawal less \$275.00; less
 - loan interest to the end of the policy year.
- (2) An amount such that the death benefit after the partial withdrawal is \$25,000.

Payment to the Owner may be deferred up to six months after Notice is received; however, a partial withdrawal to pay premiums to the Company will not be deferred.

The policy value is reduced on the date of partial withdrawal by an amount referred to as the reduction in policy value. The amount of this reduction is equal to:

- the amount paid to the Owner; plus
- the Administrative Fee for Partial Withdrawal shown in the Schedule.

The Specified Amount will be decreased on the date of partial withdrawal by an amount equal to the greater of (1) and (2) below.

- (1) The amount of the reduction in policy value less the greater of:
 - zero; and
 - the policy value immediately prior to the partial withdrawal less the result obtained by dividing the Specified Amount on the date of partial withdrawal by the death benefit factor applicable to the most recently created coverage layer on the date of partial withdrawal.
- (2) Zero.

A decrease in Specified Amount due to a partial withdrawal is applied:

- first, to reduce the Initial Specified Amount;
- next, to reduce all increases, starting with the first, in the order of such increases;
- finally, to reduce the amount provided by the most recent increase.

PAID-UP INSURANCE

If this Policy has a positive net cash surrender value, the Owner may elect to continue this Policy as a level amount of paid-up insurance; Notice is required. The effective date of the paid-up insurance will be the beginning of the policy month on or immediately following receipt of the Notice provided the Insured is then living.

The amount of this paid-up insurance will be that which the cash surrender value on the effective date of the paid-up insurance will provide when applied as a net single premium.

This paid-up insurance may be surrendered at any time. The amount payable on surrender is the net cash surrender value. The net cash surrender value is the cash surrender value less the loan balance. The cash surrender value is the net single premium for the benefits remaining under the paid-up insurance.

If the date of surrender is within 30 days after a policy anniversary, the net cash surrender value will not be less than:

- the net cash surrender value on the anniversary; less
- each policy loan made since the anniversary and the accrued interest on each loan.

BASIS OF COMPUTATIONS

The mortality tables and rates of interest used in calculating minimum policy values and net single premiums are shown in the Schedule. Values are at least equal to those required by statute in the state in which this Policy was delivered. A detailed statement of the method of computing these values has been filed with the insurance department of that state.

POLICY LOANS

CASH LOAN

The Company will make a loan upon the sole security and assignment of this Policy. The Owner may obtain the loan while this Policy is in force; Notice is required. The amount advanced as a policy loan will not exceed:

- the loan value; less
- the loan balance on the date the loan is to be made; less
- loan interest to the end of the policy year.

The loan value is equal to:

- the cash surrender value on the date the loan value is being determined; less
- the monthly deductions for the remainder of the current policy year. For purposes of determining the loan value, these monthly deductions are considered to be equal.

The loan balance at any time is equal to:

- the sum of all policy loans made; less
- the sum of all loan repayments; plus
- accrued loan interest.

The loan balance is segregated into preferred and nonpreferred loan balances. The Company will allocate a policy loan to the appropriate loan balance(s) at the time a loan is made. Only the first loan requested in a policy year is eligible for allocation to the preferred loan balance. The maximum amount of this first loan that the Company will allocate to the preferred loan balance is equal to:

- the policy value at the time the loan is made; less
- the loan balance immediately prior to the loan; less
- the sum of the premiums paid.

This amount will not be less than zero.

On a policy anniversary, the Company will reallocate the loan balance among the preferred and nonpreferred loan balances. The preferred loan balance after reallocation will not exceed an amount equal to:

- the policy value at the time of reallocation; less
- the sum of the premiums paid.

If this Policy is continued as paid-up insurance in accordance with the **Paid-Up Insurance** section, any preferred loan balance will be allocated to the nonpreferred loan balance on the date this Policy is continued as paid-up insurance. No further allocations will be made to the preferred loan balance as long as this Policy continues as paid-up insurance.

A loan repayment will be applied first to reduce the nonpreferred loan balance; any excess will then be applied to reduce the preferred loan balance.

DEFERRAL

The Company may defer making a policy loan up to six months after it receives Notice; however, a loan for payment of premiums to the Company will not be deferred.

TRADE
SECRET

LOAN INTEREST AND REPAYMENT

The interest rate that will be charged on the preferred loan balance is 4% a year. The interest rate that may be charged on the nonpreferred loan balance will not exceed 6% a year.

Loan interest is due annually at the end of each policy year and on the earliest of these dates:

- the date of surrender of this Policy;
- the date of a loan repayment;
- the date of termination of this Policy; and
- the date of the Insured's death.

Interest accrues daily from the date a loan is made and is compounded annually. Loan interest for fractional years will be calculated using simple interest. Interest not paid when due is added to the loan and bears interest at the same rate.

All or any part of a policy loan may be repaid during the Insured's lifetime while this Policy is in force; however, a loan that is in existence when this Policy terminates in accordance with the **Grace Period** section may not be repaid unless this Policy is reinstated. Any amount paid to the Company that is not clearly marked as a loan repayment will be considered a premium payment.

When the loan balance exceeds the cash surrender value, this Policy will terminate. The Owner and any assignee of record will be notified of termination at their last known addresses. Termination will be effective 31 days after the notification is mailed.

SETTLEMENT OPTIONS

GENERAL PROVISIONS

Policy proceeds may be paid in a single sum or left with the Company for payment under one or more of the following settlement options. The amount applied under an option must be at least \$2,000. The amount of each payment under an option must be at least \$50.

The Owner may elect or revoke a settlement option at any time before the proceeds are payable. If no settlement option election is in effect at the time proceeds are payable, the payee may make an election. Notice must be filed at the Service Center. Election or revocation will take effect as of the date the Owner or payee signed the Notice. An election does not affect any payment made or other action taken by the Company before the Notice is received. A payee that is not a natural person may elect a settlement option only with the Company's consent. An assignee cannot elect any settlement option. Change of owner or beneficiary automatically revokes any election in effect.

DEATH OF PAYEE

Unless otherwise specified, at the death of the last payee a final payment will be made to the payee's estate. For Options 1 and 2, the final payment will be the commuted value of the remaining unpaid installments certain. Such value will be computed based on the rate of interest used in the calculation of the payments. For Options 3 and 4, the final payment will be the unpaid proceeds with any unpaid interest to the date of death of the payee.

FIRST INSTALLMENT

The first installment under Options 1, 2, and 4 is payable on the effective date of the option. The effective date is:

- the date of surrender of this Policy; or
- the date of the Insured's death; or
- any later date agreeable with the Company.

INTEREST

The guaranteed interest rate for Options 1, 2, 3, and 4 is 2 ½ % a year, compounded annually. Excess interest may be declared annually by the Company.

OPTION 1 - FIXED PERIOD

Proceeds will be paid for a fixed period. The amount of the payments is determined from the Option 1 Table - Fixed Period Installments.

OPTION 2 - LIFE INCOME WITH INSTALLMENTS CERTAIN

Proceeds will be paid in equal installments throughout the certain period. After the certain period, payments will continue to be made throughout the payee's lifetime. The amount and certain period of the payments are determined from the Option 2 Table - Life Income with Installments Certain. At some ages the same amount is payable for different periods certain. In such a case the Company will assume that the longest period was chosen. Satisfactory proof of the payee's age is required. The Company may require evidence that the payee is living on the due date of each payment.

OPTION 3 - INTEREST

Interest on the proceeds will be paid in the manner agreed upon when the option is elected.

OPTION 4 - FIXED INSTALLMENTS

Proceeds will be paid in fixed installments at regular intervals until proceeds, together with interest on the unpaid balance, are exhausted.

OPTION 5 - SINGLE PREMIUM ANNUITY

Proceeds will be used to purchase any single premium annuity the Company offers for this purpose at the time proceeds are applied. The annuity payments will be 102% of the payments otherwise purchased by the single premium.

OTHER SETTLEMENT OPTIONS

Proceeds may be applied in any other mutually agreeable manner.

TRADE
SECRET

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable During Insured's Lifetime
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating – No Dividends

**TRADE
SECRET**

UNCLASSIFIED
SECRET

First Colony Life Insurance Company

LYNCHBURG, VIRGINIA

ACCELERATED DEATH BENEFIT RIDER

This Rider provides for an accelerated payment of life insurance proceeds. It is not intended or designed to provide health, nursing home, or long-term care insurance. Receipt of an accelerated death benefit payment will reduce the death proceeds of the Policy and limit the availability of any surrender or loan values provided by the Policy.

Disclosure: Receipt of an accelerated death benefit payment may be taxable. The Owner of the Policy should seek assistance from a tax advisor before electing to receive a payment.

BENEFIT

The Company will make an accelerated death benefit payment to the Owner of the Policy subject to the provisions of this Rider. The requirements for payment are:

- the Owner's written request for an accelerated death benefit payment;
- proof acceptable to the Company that the Owner is eligible for a payment according to the terms of this Rider;
- written approval of payment from any irrevocable beneficiary; and
- full release of any collateral assignment of the Policy except a collateral assignment to the Company.

Payment will be made in a single sum. The Company will make only one accelerated death benefit payment under this Rider.

The Company will not make an accelerated death benefit payment if:

- it does not receive all of the requirements for payment as stated above at its home office;
- the Policy is being continued as extended term insurance on the date payment is to be made;
- there is less than one year remaining until any expiry or maturity date for the Policy on the date payment is to be made; or
- the Policy is being contested or has been voided as the result of a successful contest.

BENEFIT LIMITATIONS

The Owner requests the amount of accelerated death benefit subject to the maximums stated below.

The maximum accelerated death benefit available for request is equal to the difference between (1) and (2) below.

1. An amount equal to the lesser of (a) and (b) below:
 - (a) The sum of the following:
 - 75% of the difference between the primary death benefit on the date the Company approves payment of an accelerated death benefit and the loan value on that date; and
 - the loan value on the date the Company approves payment of an accelerated death benefit.
 - (b) \$500,000.
2. The amount of any policy loan, including interest, against the Policy.

The primary death benefit is the death benefit provided by the Policy and does not include any accidental death benefits, the amount of the death benefit of any riders, or any benefits payable because of the death of any person other than the Insured. If the Policy provides for policy loans, loan value is defined in the Policy; otherwise, loan value is defined to be zero.

The maximum aggregate amount of accelerated death benefit payments the Company will make under all policies issued by the Company on the Insured's life is \$500,000.

ELIGIBILITY

To be eligible to receive an accelerated death benefit payment, the Owner must provide the following to the Company:

- evidence acceptable to the Company that the Insured is living and that the Insured's life expectancy does not exceed six months; this evidence must include, but is not limited to, certification by a physician approved by the Company who is licensed to practice medicine in the United States or Canada and is acting within the scope of that license;
- evidence that election of this benefit is voluntary and without coercion on the part of any third party, including any creditor or government agency; and
- evidence that only one of the Insureds is living if the Policy is a last survivor policy.

GENERAL PROVISIONS

Wherever used in this Rider, the term "Policy" means the Policy to which this Rider is attached. This Rider is a part of the Policy. Policy provisions apply to this Rider except where modified by this Rider.

If the Policy is in a grace period at the time an accelerated death benefit payment is made, the premium required to remove the Policy from the grace period will be deducted from the payment.

The Owner will remain liable for any required premium payments under the Policy after the Company makes an accelerated death benefit payment. After an accelerated death benefit payment has been made, the amount of any premium required to keep the Policy in force that is not paid or waived through the Owner's exercise of a waiver benefit will be added to the lien.

There is no premium or cost of insurance charge for this Rider; however, an administrative fee that will not exceed \$250 will be deducted from the accelerated death benefit prior to payment to the Owner.

EFFECT OF AN ACCELERATED DEATH BENEFIT PAYMENT

The accelerated death benefit will be treated as a lien against the primary death benefit. This lien will limit the availability of any surrender benefit and of any future policy loans or partial withdrawals (surrenders) under the Policy; they will be available only to the extent that values under the Policy exceed the sum of the lien amount and any outstanding policy loan. This lien will not affect the death benefit of any rider attached to the Policy however.

The lien amount at any time will equal:

- the amount of the accelerated death benefit payment made to the Owner; plus
- the administrative fee; plus
- the amount of any premium required to remove the Policy from the grace period; plus
- any unpaid premiums added to the lien; plus
- accrued lien interest; less
- any lien repayments.

Interest at the policy loan interest rate(s) stated in the Policy will be charged on the portion of the lien amount equal to the difference between the loan value and any outstanding policy loan. Interest will be charged on the portion of the lien amount that exceeds this difference at a rate no greater than the greater of:

- the current yield on a 90-day treasury bill on the date of payment; and
- the current maximum adjustable policy loan interest rate allowed by law on the date of payment in the state in which the Policy was delivered.

After payment of the accelerated death benefit, the proceeds payable under the Policy at the death of the Insured will equal:

- the death proceeds as defined in the Policy; less
- the lien amount as of the date of death.

TERMINATION

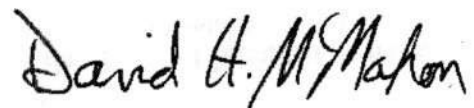
This Rider will terminate on the earliest of the following dates:

- the date of maturity or termination of the Policy; and
- the date the Owner's written request for termination of this Rider is signed; the request must be received at the home office.

If at any time the lien amount equals or exceeds the death proceeds as defined in the Policy, the Policy will terminate. Termination will occur 31 days after the Company has mailed notice of termination to the last known address of the Owner, unless all or part of the lien amount is repaid within 31 days after the date the notice is mailed. The Company will accept a partial repayment only if the death proceeds of the Policy would exceed the lien amount after application of the partial repayment.



Acting President



Secretary



First Colony Life Insurance Company

TRADE SECRET

A GE Financial Assurance Company
Home Office: 700 Main Street • Lynchburg, VA 24504
Service Center P. O. Box 1380 • Lynchburg, VA 24505-1280
A Stock Company

ENDORSEMENT

Insured Leslie S Pinsof

2957767 Policy Number

Incontestability Date October 22, 1999

The section of this Policy entitled "INCONTESTABILITY" under the heading "GENERAL PROVISIONS" is hereby amended to read in its entirety as follows:

"With respect to statements made in the application, this Policy is not contestable beginning with the Incontestability Date specified above provided this Policy is in force during the lifetime of the Insured on the specified date. With respect to statements made in a supplemental application, the applicable policy change is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with its effective date. With respect to statements made in an application for reinstatement, this Policy is not contestable after it has been in force during the Insured's lifetime for a period of two years beginning with the date of reinstatement.

This provision does not apply to any rider providing additional benefits."

The section of this Policy entitled "SUICIDE" under the heading "GENERAL PROVISIONS" is hereby amended to read in its entirety as follows:

"If the Insured, while sane or insane, dies by suicide while this Policy is in force and prior to, but not including, the Incontestability Date specified above, the death proceeds under this Policy will be an amount equal to:

- the premiums paid; less
- the loan balance on the date of death; less
- any reductions in policy value for partial withdrawals from this Policy.

If the Insured, while sane or insane, dies by suicide within two years beginning with the effective date of an increase in Specified Amount but on or after the Incontestability Date specified above, the death proceeds will be an amount equal to:

- the Assumed Death Benefit; less
- the loan balance on the date of death.

The Assumed Death Benefit is equal to:

- the death benefit as defined in the **Death Benefit** section assuming the increase had not occurred; plus
- the difference between the monthly deductions that were deducted from the policy value and the monthly deductions that would have been deducted had the increase not occurred, accumulated at the interest rates credited to the policy value.

These proceeds may be further adjusted as explained in the second paragraph of the **Proceeds Payable at the Death of the Insured** section. Any premiums paid after the date of the Insured's death will be paid in addition to these proceeds."

The first paragraph of the section of this Policy entitled "DEATH BENEFIT" under the heading "INSURANCE PROVISIONS" is hereby amended to read in its entirety as follows:

"The death benefit depends on the option in effect on the date of the Insured's death. The Schedule shows the option elected on the Policy Date."

David H. McMahon

Secretary

**TRADE
SECRET**

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION

4 _____)
5 BRIGHTON TRUSTEES, LLC, et al.)
6 v.)
7 GENWORTH LIFE AND ANNUITY)
8 INSURANCE COMPANY)

Civil Action No.:
3:20 CV 00240

February 14, 2022

9 COMPLETE TRANSCRIPT OF CONFERENCE CALL
10 BEFORE THE HONORABLE DAVID J. NOVAK
11 UNITED STATES DISTRICT COURT JUDGE

12 APPEARANCES:

13 Steven G. Sklaver, Esquire (via phone)
14 Lora Krsulich, Esquire (via phone)
15 Seth Ard, Esquire (via phone)
16 SUSMAN GODFREY LLP
17 1901 Avenue of the Stars, Suite 950
18 Los Angeles, CA 90067

19 Kathleen J.L. Holmes, Esquire (via phone)
20 HOLMES COSTIN & MARCUS PLLC
21 301 N Fairfax Street, Suite 202
22 Alexandria, VA 22314

23 Counsel on behalf of the Plaintiffs

24 TRACY J. STROH, RPR
25 OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 APPEARANCES (CONTINUED):

2 Patrick Gennardo, Esquire (via phone)
3 Thomas A. Evans, Esquire (via phone)
4 William H. Higgins, Esquire (via phone)
5 Andrew Tuck, Esquire (via phone)

6 ALSTON & BIRD LLP
7 90 Park Ave
8 New York, NY 10016

9 Elizabeth F. Tyler, Esquire (via phone)
10 MCGUIREWOODS LLP
11 800 East Canal Street
12 Richmond, Virginia 23219

13
14
15
16
17
18
19
20
21
22
23
24
25
Counsel on behalf of the Defendant

1 (The conference call commenced at 11:30 a.m.)

2 THE COURT: All right. We're going to go on the
3 record here. This is *Brighton Trustees v. Genworth*, Civil
4 Case Number 3:20 CV 240.

5 I understand, Mr. Sklaver, you're speaking for
6 the plaintiffs; is that right?

7 MR. SKLAVER: That's right.

8 THE COURT: Do you want to identify yourself for
9 the record and identify who else for the plaintiffs is on
10 the call?

11 MR. SKLAVER: Good morning, Your Honor. This is
12 Steven Sklaver of Susman Godfrey. And with me on the call
13 is Seth Ard, also of Susman Godfrey, and Lora Krsulich,
14 also Susman Godfrey, and Kathleen Holmes of Holmes Costin
15 & Marcus.

16 THE COURT: All right. It dawned on me you're
17 in Los Angeles. It's 8:30 in the morning and you're
18 probably hung over from that Rams victory last night. Am
19 I right about that?

20 MR. SKLAVER: I am a Dallas Cowboys fan due to
21 my place of origin. So --

22 THE COURT: Right. That's even worse. We'll
23 deal with that another day.

24 All right. The defense, I think you have
25 Mr. Gennardo; is that right?

1 MR. GENNARDO: That's correct, Your Honor.

2 THE COURT: Do you want to identify yourself for
3 the record and who else is on the call for your side?

4 MR. GENNARDO: Yes, sir. My name is Patrick
5 Gennardo from the Alston & Bird firm in New York. I have
6 with me my partners Tom Evans, Andy Tuck, and Bill
7 Higgins, as well as Liz Tyler from the McGuireWoods firm.

8 THE COURT: All right. So the reason I wanted
9 to do this call is the following: You saw already that I
10 denied the motion to exclude the declarations of the
11 plaintiffs' expert.

12 So I did a deep dive on this case last week
13 before deciding those motions, including the class
14 certification, and I thought I would kind of give you my
15 readout of where we stand on this and I thought I would
16 give you some guidance.

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

23 Now, I gave you a little bit less time on the
24 summary judgment motions, but it's also clear to me that
25 summary judgment is a waste of time in this case. There's

1 going to be a genuine dispute as to material fact. Just
2 your experts alone is going to create that. Look, you can
3 obviously file the motions. You have the right to do it,
4 but if I were you, I would expect a one-paragraph order
5 that says I find a genuine dispute over material facts,
6 it's denied. I don't -- when I deny summary judgment, I
7 don't write the epic opinion denying it. I know that it
8 drives lawyers crazy, but we just don't have the time to
9 do that. So to me, your summary judgment motions are a
10 waste of time. If you want to spend money on it, that's
11 up to you, but it's a waste of time.

12 So the question is where do we go from here?
13 And you all had engaged in private mediation last year,
14 and I understand it wasn't fruitful. I think this is a
15 case that needs to settle. I think you would be much
16 better served by putting a lot of time and money now into
17 trying to settle the case before we go any further.

18 And I will say, plaintiffs, just because I
19 intend to certify the class and I denied the motion to
20 exclude, that doesn't mean I think your case is a winner.
21 I think this is a case that's triable from both sides.
22 It's mainly going to be a battle of these experts. And I
23 will tell you, on one hand, for the plaintiffs, nobody is
24 going to have a clue on the jury as to what's going on in
25 this case. It took me double readings, with large degrees

1 of caffeine, to figure this out, and I have a feeling the
2 jury is going to be glazed over. On the other side,
3 defense, nobody likes insurance companies. I can tell you
4 that right now. And Genworth doesn't have the greatest
5 reputation, at least in my world, for the way they treat
6 their employees, and there's going to be enough people
7 that have been laid off by Genworth in this area that
8 aren't going to be loving them. So to me, this is a case
9 that needs to settle, and I'd like to see if you can get
10 something done over the next couple weeks.

11 So my first question to you is do you want to go
12 to a magistrate judge or do you want to go back to a
13 private mediator? But I expect you to try to get this
14 done. We're not doing this -- this is not playtime.
15 Like, I want you to really make all effort you can to get
16 it done.

17 So, Mr. Sklaver, what do you want to do here?
18 Do you want to give it the college effort to get this
19 thing settled?

20 MR. SKLAVER: This is Steven Sklaver. I do,
21 Your Honor. Happy to make another serious run at
22 settlement.

23 THE COURT: Do you want a private mediator again
24 or do you want to do a magistrate judge? Our magistrate
25 judges are really booked up right now. I think it would

1 be better for all of us if you spend some money on the
2 private mediator, but I'll give you your choice. What do
3 you want to do?

4 MR. SKLAVER: Well, this is a situation where we
5 are -- since we are asking the defendant for their money,
6 it's really -- I prefer for them to be comfortable with
7 who the mediator is that we are working with.

8 THE COURT: They're going to get a chance to be
9 heard too. I'm just asking do you have a preference, or
10 do you guys want to talk after you get off the phone?

11 MR. SKLAVER: We can talk after the phone. My
12 instinct is to continue with the current mediator we had,
13 but obviously, it failed so there may be some wisdom in
14 choosing somebody else. But we were able to work
15 professionally together to find a mutually agreeable
16 mediator, and I'm inclined to go that route, subject to
17 the Court's guidance. But, you know, we are all systems a
18 go to try and resolve this case. We agree with the
19 approach.

20 THE COURT: All right. Mr. Gennardo, what do
21 you think?

22 MR. GENNARDO: You know, Your Honor, I think it
23 probably makes sense to stick with the mediator that we
24 have. He understands the issues. It wasn't a
25 one-time-and-done thing. We actually -- I think the

1 mediation just finally broke down in the last couple of
2 days, in the afternoon. So I think we --

3 THE COURT: Yeah, but it's different now because
4 you -- look, class certification plays a big role in this
5 case, right? And so -- you know, this is not my first
6 rodeo. It seems to me now that I'm telling you what the
7 lay of the land is. It gives you, you know, more reason
8 to get in there and get it done.

9 So here's what -- my real question, then, is
10 this. To me, the class certification, which is set for
11 February 25th, is a pretty big day. I would rather have
12 you spend that day trying to settle the case and maybe
13 bump that hearing back a little bit since to me, the
14 summary judgment deadline is just a total waste of time.
15 So do you want to move that back a couple weeks and use
16 that day to settle this case? Plaintiff.

17 MR. SKLAVER: Yes, Your Honor. This is Steven
18 Sklaver for the plaintiff.

19 THE COURT: Defense.

20 MR. GENNARDO: It makes sense to me too,
21 Your Honor.

22 THE COURT: All right. So here's what I'm
23 thinking. What if we move this back -- the latest I can
24 go on this is March 24th for the class certification. I
25 won't move -- so if you don't settle the case, we're going

1 forward on the 24th. Does that work for the plaintiffs?

2 MR. SKLAVER: Steven Sklaver for the plaintiff.

3 It does work.

4 THE COURT: All right. Defense.

5 MR. GENNARDO: We'll make it work, Your Honor.

6 We have a big enough team.

7 THE COURT: Okay. 10 a.m. on the 24th. We'll
8 do an order today.

9 Again, I'm just encouraging you, don't waste
10 your time on summary judgment if you don't settle the
11 case. I'd much rather have you preparing to try the case
12 if you don't get it settled, but I really want you to put
13 every effort that you can into settling this case. That's
14 why we're moving this back. This case needs to settle.
15 It's triable from both sides, not a slam dunk for either
16 side. Let's try to get it done.

17 All right. Anything else from the plaintiff?

18 MR. SKLAVER: No, Your Honor.

19 THE COURT: Anything else from the defense?

20 MR. GENNARDO: No, sir. Thank you.

21 THE COURT: All right. I'm going to expect some
22 good news on that Friday, the 25th. So just e-mail my law
23 clerk when you get it settled. Okay?

24 So -- all right. Have a good day. Take care.

25 (The conference call concluded at 11:38 a.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Tracy J. Stroh, OCR, RPR, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires September 30, 2023, Notary Registration Number 7108255, do hereby certify that the pages contained herein accurately reflect the stenographic notes taken by me, to the best of my ability, in the above-styled action.

Given under my hand this 19th day of February 2022.

/s/
Tracy J. Stroh, RPR

EXHIBIT 5

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

* * * * *

BRIGHTON TRUSTEES, LLC,	* CIVIL NO. 3:20-CV-240
ET AL.,	* MAY 26, 2022 10:59 A.M.
Plaintiffs,	* PRELIMINARY APPROVAL HEARING BY
	* TELECONFERENCE
	* VOLUME I OF I
vs.	*
	*
GENWORTH LIFE AND ANNUITY	*
INSURANCE COMPANY,	* Before:
	* HONORABLE DAVID J. NOVAK
Defendant.	* UNITED STATES DISTRICT JUDGE
* * * * *	* EASTERN DISTRICT OF VIRGINIA

APPEARANCES:

For the Plaintiffs:	STEVEN GERALD SKLAVER, ESQUIRE Susman Godfrey, LLP 1901 Avenue of the Stars Suite 950 Los Angeles, California 90067-6029
	KATHLEEN JOANNA LYNCH HOLMES, ESQUIRE Holmes Costin & Marcus PLLC 301 N. Fairfax Street Suite 202 Alexandria, Virginia 22314
For the Defendants:	PATRICK GENNARDO, ESQUIRE Alston & Bird LLP 90 Park Avenue New York, New York 10016
Court Reporter:	Melissa H. Custis, RPR 701 East Broad Street Richmond, Virginia 23219 (804) 916-2278

Proceedings recorded by mechanical stenography,
transcript produced by computer.

Brighton v. Genworth - 5/26/2022

1 APPEARANCES (Continued):

2 THOMAS ARNOLD EVANS, ESQUIRE
3 Alston & Bird, LLP
4 560 Mission Street
5 Suite 2100
6 San Francisco, California 94105-0912

7 WILLIAM HAYDEN HIGGINS, ESQUIRE
8 Alston & Bird LLP
9 101 South Tryon Street
10 Suite 4000
11 Charlotte, North Carolina 28280-4000

12 ANDREW TUCK, ESQUIRE
13 Alston & Tuck LLP
14 One Atlantic Center
15 1201 W. Peachtree Street
16 Atlanta, Georgia 30309

17 BRIAN EMORY PUMPHREY, ESQUIRE
18 ELIZABETH F. TYLER, ESQUIRE
19 McGuireWoods LLP
20 800 East Canal Street
21 Richmond, Virginia 23219

22
23
24
25

Brighton v. Genworth - 5/26/2022

1 (Court convened at 10:59 a.m.)

2 THE COURT: We're going to go on the record here.
3 This is *Brighton Trustees, LLC, versus Genworth Life and*
4 *Annuity*, Civil Case Number 3:20-CV-240.

5 What I'm going to ask lead counsel for the plaintiff,
6 whoever is going to speak, to identify themselves and then
7 introduce everybody else on the call for the plaintiffs. So
8 who's speaking for the plaintiffs?

9 MR. SKLAVER: Good morning, Your Honor. This is
10 Steven Sklaver of Susman Godfrey speaking for the plaintiffs.
11 With me is Kathleen Holmes.

12 THE COURT: Okay. Who do we have for the defense?
13 Same rules apply.

14 MR. GENNARDO: Good morning, Your Honor. This is
15 Patrick Gennardo from the Alston & Bird firm. I have Brian
16 Pumphrey and Liz Tyler from McGuireWoods on with me, as well
17 as my partners Andy Tuck, Tom Evans, and Bill Higgins.

18 THE COURT: All right. I think we have some other
19 folks that may have joined on the call just to listen in. I
20 just wanted to remind everybody that there's no recordings
21 allowed. We're treating this just as if we were in the
22 courtroom. The only record will be from my court reporter,
23 who's here with me, and everybody else has to keep their
24 phones muted during this proceeding.

25 So we're here to address the plaintiffs' unopposed

Brighton v. Genworth - 5/26/2022

1 motion for preliminary approval of the class action
2 settlement.

3 Mr. Sklaver, do you want to put on the record the
4 terms and the key points in terms of why you believe
5 preliminary approval is appropriate?

6 MR. SKLAVER: Yes, Your Honor. This is Steven
7 Sklaver for the plaintiffs.

8 The key terms, although there are additional terms
9 that are on the docket, it's really three components. One is
10 an all cash fund, up to \$25 million, that will not revert back
11 to Genworth. The only reversion -- really, it's not even a
12 reversion. It's that the \$25 million will decrease if there
13 are opt-outs.

14 THE COURT: Well, isn't that technically a reversion,
15 though? I mean, I -- you know, I saw that in your papers, but
16 if there's a decrease by the opt-outs, isn't that money
17 technically just remaining with the defendant?

18 MR. SKLAVER: Well, it depends how you view it. It's
19 money that the defendant has never agreed to pay in the first
20 instance; that the parties have agreed that if there are no
21 opt-outs, it will be \$25 million and then that will be paid
22 into a final settlement fund. That is the settlement fund.
23 Once that money is paid in, none of it reverts to the
24 defendant. It will be all distributed to class members.

25 THE COURT: All right.

Brighton v. Genworth - 5/26/2022

1 MR. SKLAVER: But the question is what is the
2 ultimate number, and that's just a function of who remains in
3 the class, which we hope will be a large number.

4 THE COURT: Okay. Go ahead.

5 MR. SKLAVER: So it's a cash fund; it is not claims
6 made. Checks will be issued to all class members using the
7 information in Genworth's files. Genworth has their contact
8 information as part of the administration, where you send
9 invoice statements and information about the policies, and
10 that information -- I believe that that should have already
11 been produced to us so that we could get a head start on
12 disseminating notice if preliminary approval is granted. So
13 that is the cash fund component.

14 Then there is some noncash benefits as well, the
15 first of which, which we think will be the most valuable, and
16 these will be quantified in an expert report that will be
17 submitted in support of our final approval, as well as fee
18 application, and that is a COI freeze and that is for seven
19 years. And what that means is that the defendant cannot
20 increase the currency of our rate schedule no matter what
21 happens under any of the enumerated factors, for example, or
22 for any reason.

23 So some insurance companies are claiming that
24 COVID-19 caused a spike in mortality, which is a new,
25 independent justification for adjusting rates. That's

Brighton v. Genworth - 5/26/2022

1 prohibited now for seven years which provides class members
2 assurances that the current scale will be their scale for a
3 substantial amount of time and that any decreases in COI rates
4 that have been previously imposed will stay locked in.

5 And the third benefit is a STOLI waiver. STOLI
6 stands for Stranger-Originated Life Insurance. There has been
7 a wave of insurance litigation that have been filed recently,
8 probably in the last seven years. There's been a large uptick
9 recently of carriers suing even after two years, which is the
10 contestability period, to void a policy on the grounds that it
11 is not a legal policy. And the carrier has agreed here,
12 Genworth has agreed here forever not to challenge any of the
13 policies in the proposed class, the settlement class, on the
14 grounds of STOLI. So that way the benefits of the settlement
15 can't be undermined to, you know, avoid paying a death
16 benefit, for example, on insurable interest issues.

17 So those are the three main components of the
18 settlement, and the plaintiff allocation for the cash fund is
19 really pro rata based on the COI overcharges that some of the
20 class members have received through March of 2022. We've
21 received the data. We received it in two transactions and
22 it's taken some work to get through, but we would be able to
23 have a formula and an Excel spreadsheet that details the
24 overcharges to the penny and then allocate it on a pro rata
25 basis.

Brighton v. Genworth - 5/26/2022

1 THE COURT: All right. Mr. Gennardo, anything you
2 want to add to that?

3 MR. GENNARDO: No, Your Honor. That certainly
4 reflects my understanding of the settlement, for sure.

5 THE COURT: Well, I'm going to conditionally certify
6 the class based upon the settlement, and define the class in a
7 manner as set forth in the motion in the proposed order.
8 Essentially, the class is defined to include all owners of
9 Gold and Gold II universal life policies that had not been
10 terminated by death by March 31st of 2022 who's COI rate
11 scales were changed in 2019. The parties estimate that the
12 class size is close to 15,000 class members.

13 I find that the class meets the Rule 23(a)
14 requirements of numerosity, commonality, typicality, and
15 adequacy. I also find that the settlement class meets the
16 demands of Rule 23(b) (3) and that the questions of law or fact
17 are common to class members, they predominate over questions
18 affecting individual members. Also, a class action is the
19 superior method for fairly and efficiently adjudicating this
20 controversy.

21 I'm also going to preliminarily approve the class
22 settlement. In doing so, the Court must determine the
23 likelihood that there will be final approval with the
24 settlement being determined as fair, reasonable, and adequate
25 using the factors delineated in Rule 23 and the case of *In re*

Brighton v. Genworth - 5/26/2022

1 *Jiffy Lube Securities Litigation*. I'm going to mention each
2 of those factors now.

3 One. Plaintiffs and lead counsel have adequately
4 represented the class. I think I previously appointed
5 plaintiffs and found lead counsel to adequately lead this case
6 and their litigation conduct has confirmed the wisdom of my
7 decision. Lead counsel has undertaken a thorough
8 investigation of the claims. They have engaged in extensive
9 discovery, including numerous depositions and extensive
10 document review. This is all detailed in the motion for
11 preliminary approval. They've prepared multiple expert
12 reports. Indeed, we've engaged in some *Daubert* litigation
13 here. They've moved for and fully briefed class certification
14 and successfully fought off motions to strike their experts in
15 support of the certification, and they have engaged in
16 strenuous negotiations of this settlement. It's clear there's
17 no concerns about collusion that I have to be concerned about,
18 which brings me to the next point as well.

19 The settlement is the product of good faith,
20 informed, and arm's length negotiation, negotiations by
21 experienced counsel. The parties here extensively negotiated
22 this settlement, engaging with the help of the private
23 mediator, Mr. Max, for multiple mediation sessions that
24 spanned almost six months. And Mr. Max submitted an affidavit
25 in support of the settlement, indicating that the settlement

Brighton v. Genworth - 5/26/2022

1 resulted from lengthy and particularly hard-fought
2 negotiations.

3 The posture of the case also supports preliminary
4 approval as the parties reached an agreement in this case. As
5 I said before, after extensive discovery had been conducted,
6 the parties had fully briefed class certification and the
7 defendant filed a motion for summary judgment. This suggests
8 that there was no, again, no collusion in the settlement.
9 Likewise, the experience of counsel on both sides supports
10 that I should find -- that I should approve this settlement as
11 each party was represented by highly skilled counsel with
12 expertise in this field.

13 Number Three. The settlement provides adequate
14 relief to the class in light of the counterbalancing factors.
15 Here, the class has obtained what we're going to determine as
16 a \$25 million recovery; although, there is some potential for
17 pro rata reduction based upon the number of opt-outs, if any.

18 The settlement also obtains significant nonmonetary
19 relief that was just delineated by plaintiffs' counsel,
20 Mr. Sklaver, including locking in the rates over the next
21 seven years and defendant agreeing not to take legal action to
22 challenge the policies.

23 The plaintiffs face substantial risk in continuing to
24 litigate this case through to trial. Indeed, I believe on
25 previous calls in this case, while I made it clear that it

Brighton v. Genworth - 5/26/2022

1 appeared that certification was appropriate, I also said that
2 I thought summary judgment motions would be a waste of time.
3 I also, I think, made clear that this is a 50/50 case, so
4 there were significant risks that were at issue here for the
5 plaintiffs as to both the breach and the damages that would
6 have been heavily contested. Indeed, they've already been
7 heavily contested throughout the litigation.

8 Number Four. The form and manner of the proposed
9 notice is going to be approved. The Court is satisfied that
10 the notice program is reasonably calculated to apprise the
11 class of the pendency of the action, the proposed settlement,
12 and the class members' rights to opt out of the settlement
13 class or to object. Direct notice will be sent by mail to
14 individual class members using the defendant's address
15 database, which should be current based on the policyholder's
16 updates of their addresses.

17 Additionally, there will be a website and a toll-free
18 number so that anybody can read further about the settlement.

19 I find these procedures constitute the best notice
20 practicable under the circumstances and they comply with due
21 process and Rule 23.

22 I understand the parties have selected JND as the
23 settlement administrator and I'm going to approve JND Legal
24 Administration, then, as the claims administrator for this
25 case.

Brighton v. Genworth - 5/26/2022

1 I'm going to adopt the timeline that's proposed by
2 the parties in their motion for notice objections and final
3 approval. I'll adopt the timeline that calls for a final
4 approval after September 23rd.

5 I'm going to ask the parties first, does the
6 afternoon of Monday, October the 17th work for the
7 plaintiffs?

8 MR. SKLAVER: One moment, Your Honor.

9 Yes, Your Honor.

10 THE COURT: Mr. Gennardo, for the defense, does
11 Monday, October 17, which will be at 3:00 o'clock, work for
12 you-all?

13 MR. GENNARDO: It does.

14 THE COURT: That will be the time and the date, then,
15 for the final approval hearing, Monday, October 17th at
16 3:00 p.m.

17 In terms of attorney's fees and award, I understand
18 that plaintiffs' counsel has agreed to seek no more than
19 one-third of the settlement funds. We'll see how that goes.
20 I'm not telling you I'm going to approve one-third, but it
21 certainly will not be more than one-third.

22 And I think you're requesting incentive awards of up
23 to \$25,000 for each class representative; is that correct,
24 Mr. Sklaver?

25 MR. SKLAVER: Yes, Your Honor.

Brighton v. Genworth - 5/26/2022

1 THE COURT: Is there anything else I need to address
2 from the plaintiffs' side?

3 MR. SKLAVER: No, Your Honor.

4 THE COURT: From the defense side?

5 MR. GENNARDO: Not from our perspective, Your Honor.

6 THE COURT: All right. You guys did a great job
7 settling the case. Again, I'll say I think this is a good
8 outcome for everybody and I look forward to seeing all the
9 paperwork and then having the final hearing on Monday, October
10 the 17th, at 3:00 o'clock. Until then, I hope everybody
11 stays safe and healthy. Have a good day.

12 (Court recessed at 11:14 a.m.)

13

14

15

16

17

18

19

20

CERTIFICATE

21 I, Melissa H. Custis, certify that the foregoing is
22 a correct transcript from the record of proceedings
23 in the above-entitled matter.

24

25 /s/ Melissa H. Custis, RPR

Date: 06/14/2022