

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

MARTIN SILVERSTEIN,
Plaintiff,

v.

GENWORTH LIFE INSURANCE COMPANY,
Defendant.

Civil No. 3:23-cv-00684 (DJN)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

TABLE OF CONTENTS

I. INTRODUCTION1

II. BACKGROUND6

 A. Class Counsel Investigates and Files a Lawsuit for GLIC Policyholders6

 B. Class Counsel Performs Significant Work Prior to Settlement6

 C. Class Counsel Successfully Settles the Case After Extensive Negotiations.....8

 D. The Court Preliminarily Approves the Settlement and Certifies a Class.....10

III. ARGUMENT11

 A. Class Counsel’s Fee Request is Reasonable.11

 1. Class Counsel is Entitled to Fees from the Common Fund.11

 2. The Requested Fee is Reasonable under the Percentage Method.12

 a. The Percentage Approach is Favored.12

 b. The Requested Percentage Fee Is Reasonable13

 c. A Lodestar Cross-Check Confirms Reasonableness.....14

 d. The *Barber* Factors Support Class Counsel’s Fee Request16

 (1) Class Counsel’s Time and Labor (*Barber* Factor 1)17

 (2) The Novelty and Difficulty of the Issues (*Barber* Factor 2)17

 (3) The Skill Required to Perform the Work Properly (*Barber* Factor 3)18

 (4) Class Counsel’s Opportunity Costs (*Barber* Factor 4)19

 (5) The Customary Fee (*Barber* Factor 5).....19

 (6) The Contingent Nature of the Class Counsel’s Representation (*Barber* Factor 6)19

(7)	Time Limitations Imposed by the Action (<i>Barber</i> Factor 7)	21
(8)	The Results Obtained (<i>Barber</i> Factor 8).....	21
(9)	The Experience, Reputation, and Ability of Class Counsel (<i>Barber</i> Factor 9)	22
(10)	The Undesirability of the Case (<i>Barber</i> Factor 10)	23
(11)	The Nature and Length of the Attorney-Client Relationship (<i>Barber</i> Factor 11)	24
(12)	Fee Awards in Similar Cases (<i>Barber</i> Factor 12).....	25
e.	The Class’s Reaction Confirms that Class Counsel’s Request is Reasonable.	25
B.	Class Counsel Should Be Reimbursed for the Expenses They Incurred.	26
C.	The Court Should Grant Plaintiff’s Request for a Case Contribution Award.	26
IV.	CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>37 Besen Parkway, LLC v. John Hancock Life Insurance Co.</i> , 15-cv-9924 (PGG), (S.D.N.Y. Mar. 18, 2019)	5
<i>1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.</i> , 28 F.4th 513, 525 (4th Cir. 2022)	17
<i>Barber v. Kimbrell’s, Inc.</i> , 577 F.2d 216 (4th Cir. 1978)	<i>passim</i>
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	11
<i>Brach Family Fund, Inc. v. AXA Equitable Life Ins. Co.</i> , No. 16-cv-740-JMF, (S.D.N.Y. Nov. 13, 2017)	22
<i>Brighton Trustees, LLC, et al. v. Genworth Life and Annuity Ins. Co.</i> , Case No. 3:20-cv-00240-DJN (E.D. Va.)	<i>passim</i>
<i>Brown v. Charles Schwab & Co., Inc.</i> , 2011 WL 13199227 (D.S.C. July 26, 2011)	23
<i>Brown v. Transurban USA, Inc.</i> , 318 F.R.D. 560 (E.D. Va. 2016)	12
<i>Brundle ex. rel. Constellis Employee Stock Ownership Plan v. Wilmington Tr.</i> , <i>N.A.</i> , 919 F.3d 763 (4th Cir. 2019)	12
<i>Bruner v. Sprint/United Mgmt. Co.</i> , Nos. 08-2133-KHV, 08-2149-KHV, 2009 WL 2058762 (D. Kan. July 14, 2009)	24
<i>Burke v. Shapiro, Brown & Alt, LLP</i> , Civ. 2016 WL 2894914 (E.D. Va. May 17, 2016).....	26
<i>Clark v. Duke Univ.</i> , <i>No. 16-1044, 2019 WL 2579201</i> , (M.D.N.C. June 24, 2019).....	25
<i>Comer v. Life Ins. Co. of Alabama</i> , 2011 WL 13196297 (D.S.C. Mar. 31, 2011)	20
<i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998)	27

Dickman v. Banner Life Ins. Co.,
 Case No. 1:16-cv-00192-RDB, 2020 WL 13094954 (D. Md. May 20, 2020),
aff'd 28 F.4th 513 (4th Cir. 2022).....6, 13, 19

Doe v. Chao,
 435 F.3d 492 (4th Cir. 2006)5

Fleisher v. Phoenix Life Ins. Co.,
 No. 11-cv-8405 (CM), 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015) *passim*

Galloway v. Williams,
 2020 WL 7482191 (E.D. Va. Dec. 18, 2020)14

George v. Duke Energy Retirement Cash Balance Plan,
 2011 WL 13218031 (D.S.C. May 16, 2011).....9, 20, 22, 26

Gierlinger v. Gleason,
 160 F.3d 858 (2d Cir. 1998).....15

Hooker v. Sirius XM Radio, Inc.,
 2017 WL 4484258 (E.D. Va. May 11, 2017)13, 22

In re Abbott Labs. Sec. Litig.,
 1995 WL 792083 (N.D. Ill. July 3, 1995).....20

In re Abrams & Abrams, P.A.,
 605 F.3d 238 (4th Cir. 2010)5, 21

In re Auto. Parts Antitrust Litig.,
 2017 WL 3525415 (E.D. Mich. July 10, 2017)15

In re LandAmerica 1031 Exch. Serv. Inc. IRS 1031 Tax Deferred Exch. Litig.,
 2012 WL 5430841 (D.S.C. Nov. 7, 2012).....12, 19, 23, 24

In re Lorazepam & Clorazepate Antitrust Litig.,
 205 F.R.D. 369 (D.D.C. 2002).....27

In re Microstrategy, Inc. Securities Litig.,
 148 F. Supp. 2d 654 (E.D. Va. 2001)20, 25

In re The Mills Corp. Sec. Litig.,
 265 F.R.D. 246 (E.D. Va. 2009)13, 20

In re Titanium Dioxide Antitrust Litig.,
 2013 WL 6577029 (D. Md. Dec. 13, 2013).....13

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.,
 724 F. Supp. 160 (S.D.N.Y. 1989)15

Jernigan v. Protas, Spivok & Collins, LLC,
 2017 WL 4176217 (D. Md. Sept. 20, 2017)13

Kelly v. Johns Hopkins Univ.,
 2020 WL 434473 (D. Md. Jan. 28, 2020).....11, 25, 26

Kruger v. Novant Health, Inc.,
 No. 1:14-cv-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016)16, 25

LeBlanc-Sternberg v. Fletcher,
 143 F.3d 748 (2d Cir. 1998).....15

Loudermilk Servs., Inc. v. Marathon Petroleum Co. LLC,
 623 F. Supp. 2d 713 (S.D. W. Va. 2009).....27

Mahon v. Ticor Title Ins. Co.,
 683 F.3d 59 (2d Cir. 2012).....1

Manuel v. Wells Fargo Bank, N.A.,
 2016 WL 1070819 (E.D. Va. Mar. 15, 2016)27

McClaran v. Carolina Ale Operating Co., LLC,
 2015 WL 5037836 (D.S.C. Aug. 26, 2015).....12

McCurley v. Flowers Foods, Inc.,
 No. 16-cv-00194, 2018 WL 6650138 (D.S.C. Sept. 10, 2018)27

Millsap v. McDonnell Douglas Corp.,
 No. 94-cv-633, 2003 WL 21277124 (N.D. Okla. May 28, 2003)24

Missouri v. Jenkins,
 491 U.S. 274 (1989).....15

Phillips v. Triad Guaranty, Inc.,
 2016 WL 2636289 (M.D.N.C. May 9, 2016)18

Pryce v. Progressive Corp.,
 2022 WL 1085489, (E.D.N.Y. Feb. 17, 2022).....2

Savani v. URS Prof'l Sols. LLC,
 121 F. Supp. 3d 564 (D.S.C. 2015).....26

Schwartz v. TXU Corp.,
 2005 WL 3148350 (N.D. Tex. Nov. 8, 2005).....23

Sims v. BB&T Corp.,
 2019 WL 1993519 (M.D.N.C. May 6, 2019)13, 25

Skochin v. Genworth Financial,
2020 WL 6536140 (E.D. Va. Nov. 5, 2020).....12, 16

Thomas v. FTS USA, LLC,
2017 WL 1147460 (E.D. Va. Mar. 27, 2017)12

Thomas v. FTS USA, LLC,
2017 WL 1148283 (E.D. Va. Jan. 9, 2017)12

Turner v. ZestFinance, Inc.,
No. 3:19-cv-293 (E.D. Va. Aug. 4, 2020).....13, 14, 16

Veiga v. Suntrust Bank,
2011 WL 9362390 (D. Md. Feb. 23, 2011), *aff'd*, 450 F. App'x 269 (4th Cir.
2011)13

Rules

Federal Rule of Civil Procedure 23(e)(4)9

Federal Rule of Civil Procedure 30(b)(6)8

Federal Rules of Civil Procedure Rules 23(a) and 23(b)(3)10

Other Authorities

William B. Rubenstein, *Newberg on Class Actions* § 14:6 (4th ed.).....19

I. INTRODUCTION

After heavily contested and hard-fought litigation, Class Counsel obtained an outstanding result for the class: a \$5.1 million cash settlement (reduced pro rata for any opt-outs) and prospective relief that (a) prohibits GLIC from raising COI rates for Class Policies until October 25, 2029, and (b) prohibits GLIC from challenging the validity and enforceability of any eligible policies owned by participating Class members on the grounds of lack of an insurable interest or misrepresentations in the application for such policies. The cash fund alone equals 71.5% of past COI overcharges through June 2024. That cash will be sent directly to class members, using their mailing addresses in GLIC's files, without any need to fill out claim forms, and no money will revert to GLIC. In view of this exceptional result, Class Counsel requests a fee award of \$1,700,000, equal to 20.7% of the gross settlement benefit (or using a less-accepted and more conservative methodology, 1/3 of the cash component of the settlement viewed in isolation). Class Counsel also requests reimbursement of litigation expenses in the amount of \$168,992.28, and an incentive award of \$25,000 for Plaintiff Martin Silverstein.

This excellent result for the Class was driven by the efforts and success of Class Counsel in this litigation. Class Counsel previously litigated a related case against GLIC's affiliate Genworth Life & Annuity Insurance Company ("GLAIC"), *Brighton Trustees, LLC, et al. v. Genworth Life and Annuity Ins. Co.*, Case No. 3:20-cv-00240-DJN (E.D. Va.) ("GLAIC Action"), but:

- the plaintiffs in the GLAIC Action only had contracts with GLAIC, and therefore lacked privity with and had no standing to sue GLIC;¹

¹ See, e.g., *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 64 (2d Cir. 2012) (holding that plaintiff lacked Article III standing to represent borrowers injured by affiliated title insurers, even though they were "wholly-owned subsidiaries of the same parent company, share resources in

- GLAIC *refused* to provide discovery on the GLIC policies;² and
- GLAIC *refused* to offer a single dollar to GLIC policyholders.

As a result, the complaint, class certification motion, and settlement class in the GLAIC Action included only owners of GLAIC policies—not owners of GLIC policies. And, to make extra sure that no Genworth entity could in the future try to use the GLAIC settlement to wipe out the rights of the GLIC owners that GLAIC refused to compensate, the settlement agreement expressly excluded GLIC policies as well. *See* Declaration of Steven Sklaver (“Sklaver Decl.”), Exhibit 1 at ¶ 51 (“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.”). By refusing to offer a single dollar to settle the claims of GLIC policyholders, Genworth was apparently willing to make a financial bet that no GLIC policyholder would ever come forward and challenge GLIC’s COI increase.

The GLIC COI overcharges thus continued without relief until Plaintiff Martin Silverstein came forward and engaged Class Counsel to litigate this case. Filing this case brought considerable risk: the money at stake was relatively small, meaning Class Counsel could spend significant time and money with little promise of a reward. The best testament to the riskiness of this case is that *no other law firm in the country* filed a case against GLIC concerning the COI increase, even years after the COI increase was implemented and after the successful result in GLAIC (in which multiple different law firms did file).

Connecticut, coordinated in drafting their premium rate schedules, and operate in the same manner with respect to overcharging Connecticut borrowers in refinance transactions”); *Pryce v. Progressive Corporation*, 2022 WL 1085489, at *4 (E.D.N.Y. Feb. 17, 2022) (dismissing claims against Progressive Direct and Progressive Corporation because the named plaintiff lacked Article III standing to sue the affiliates with whom she had no direct dealings).

² Sklaver Decl., Ex. 4 (September 25, 2020 email from GLAIC’s counsel).

At the initial scheduling conference, this Court expressed frustration with the fact that the GLIC claims had not been resolved in connection with the GLAIC Action. Class Counsel shares that frustration; it would have also been in its financial interest to have settled both sets of claims together had GLAIC paid for it, because the Court ultimately awarded attorneys' fees using the favored percentage of the fund method. But, again, GLAIC refused to pay any money to settle the GLIC claims or even provide discovery about GLIC.

Despite the Court's admonishments at the initial scheduling conference, which GLIC frequently invoked to try to short-change compensation owed to the proposed settlement class here, Class Counsel immediately began to vigorously prosecute this action, including the following:

- On March 8, 2024, Class Counsel served its First Set of Requests for Production, totaling 43 requests.
- Class Counsel worked closely with its experts to analyze documents produced to develop and investigate GLIC-specific theories of liability and damages. Plaintiff's discovery efforts included investigating theories not developed in the GLAIC Action.
- As part of this additional investigation, Plaintiff subpoenaed documents from Genworth Life Insurance Company of New York ("GLICNY") on May 30, 2024, which had not been done in the GLAIC Action.
- Class Counsel served additional third-party document subpoenas on May 7, May 14, and June 25. These subpoenas included a request for MG-ALFA actuarial modeling software from Milliman.

- Class Counsel served five deposition notices on GLIC on June 14, 2024. Class Counsel served deposition subpoenas on third-parties Milliman and Willis Towers Watson on July 2, 2024. Also on July 2, Class Counsel served 14 interrogatories and 431 requests for admission.
- At the time of settlement on July 8, Class Counsel was actively working to schedule and prepare for depositions, and working with its liability and damages experts to prepare expert reports, which were due less than 6 weeks later, on August 13.

Sklaver Decl. ¶¶ 11–17.

This work required a substantial commitment of time and money that some plaintiffs’ lawyers may not have made in the face of the Court’s comments at the initial scheduling conference. These persistent efforts paid off. *See* Dkt. 64 at ¶ 12 (Preliminary Approval Order stating that Class Counsel “has expended a great deal of time, effort, and expense investigating Genworth’s COI increase prior to and since filing this action”).

In parallel with the litigation, the parties engaged in extended mediation efforts. The parties mediated with Rodney Max on March 4 and April 9, 2024, the first time in person in Miami. Sklaver Decl. ¶ 20. When those mediations were unsuccessful, and in part due to unproductive developments in those mediations, Class Counsel requested that the Court oversee continued settlement negotiations with GLIC, Dkt. 38 (Pltf’s Pre-Hearing Status Report), which the Court so ordered by referring the matter to Magistrate Judge Colombell for assistance. On June 26, 2024, the parties mediated in person with Magistrate Judge Colombell in Richmond, Virginia. Sklaver Decl. ¶ 23. In conjunction with these mediations, Class Counsel worked with its expert to analyze GLIC policy-level data to model damages. *Id.* ¶ 21. Plaintiff (and his wife) travelled from Ohio to

personally attend that mediation. *Id.* ¶ 23. Judge Colombell made a mediator’s proposal at the conclusion of the mediation of the June 26 mediation, which the parties thereafter accepted.

This Settlement is outstanding by any measure, not least under the “most critical factor” courts consider in awarding fees: the results obtained for the Class. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 247 (4th Cir. 2010) (quoting *Doe v. Chao*, 435 F.3d 492, 506 (4th Cir. 2006)). The settlement-to-historical-damages ratio for the cash component alone far exceeds the results in other COI litigation that were deemed “extraordinary” by other courts. For example, the Settlement Fund here, equal to 71.5% of the COI overcharge, bests what Judge McMahon called, in a prior COI overcharge case where the cash fund equaled 68.5% of the overcharges, “one of the most remunerative settlements this court has ever been asked to approve.” *Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405 (CM), 2015 WL 10847814, at *11, *13 (S.D.N.Y. Sept. 9, 2015) (“*Phoenix COI*”) (awarding a fee of 33-1/3% of the cash fund). *Id.* And in a COI case against John Hancock, the Court remarked that a settlement providing for 42% of the COI overcharges was “quite extraordinary.” *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, 15-cv-9924 (PGG), Dkt. 164 (S.D.N.Y. Mar. 18, 2019) (“*Hancock COI*”) (approving the requested fee equal to 30% of the monetary fund, with a lodestar cross-check multiplier of 6.92). And the substantial nonmonetary relief is a significant additional benefit to the class, and one that could not have been obtained even with a complete trial victory. This result is even better considering that this case had substantial risks, whereby the Class could have recovered nothing, as the Court indicated at preliminary approval. *See Sklaver Decl., Ex. 6* (Preliminary Approval Hearing Trans.) at 8:24–9:3 (“There’s obviously significant risk in this kind of litigation. In fact, I’ve repeated that risk during my calls, giving Mr. Sklaver a hard time. So, obviously, getting this kind of recovery in the face of a potential tough row to hoe here is significant.”).

For these reasons, Class Counsel respectfully moves this Court for an award of attorneys' fees, reimbursement of litigation expenses, and an incentive award. The attorneys' fee, equaling 20.7% of the total benefits made available to the Class (or a third of the cash settlement fund considered in isolation from all the other non-cash benefits including the COI freeze), is well within the range approved by Courts in this Circuit. *See, e.g., Dickman v. Banner Life Ins. Co.*, Case No. 1:16-cv-00192-RDB, 2020 WL 13094954, at *5 (D. Md. May 20, 2020) (approving fee award equal to 39.5% of the common settlement fund after reduction of opt outs and 20.6% of the total value of the relief obtained for the class), *aff'd* 28 F.4th 513 (4th Cir. 2022). The requested award is warranted by the outstanding results achieved for the Class through the efforts of Class Counsel, and the risks taken and overcome in litigation brought entirely on a contingency fee basis.

II. BACKGROUND

A. Class Counsel Investigates and Files a Lawsuit for GLIC Policyholders

The Settlement Class consists of owners of approximately 3,000 universal life policies ("Class Policies"), insured by GLIC and issued on GE Gold I and GE Gold II policy forms, that were subject to a 2019 COI increase. Dkt. 64 (Preliminary Approval Order); Sklaver Decl. ¶ 5. Plaintiff Martin Silverstein hired Class Counsel long after the GLAIC Action was settled and approved. Class Counsel diligently investigated and filed this lawsuit after determining that Plaintiff Martin Silverstein had privity with GLIC because his policy was insured by GLIC and issued on a GE Gold policy form. Sklaver Decl. ¶ 8. This lawsuit—and the resulting Settlement—means that GLIC policyholders will finally, for the first time, receive relief for the improper COI overcharges leveled against their policies.

B. Class Counsel Performs Significant Work Prior to Settlement

Class Counsel filed the complaint on October 20, 2023. Dkt. 1. GLIC filed its answer on December 22, 2023. Dkt. 4, 26. Class Counsel immediately initiated discussions with GLIC

regarding the case schedule and discovery, including the negotiation of a protective order to allow production of documents. Sklaver Decl. ¶ 9.

The Court held an initial status conference on January 9, 2024. Dkt. 35. The Court proposed a “fast settlement conference.” Dkt. 36 at 7. The parties scheduled a mediation for March 4, 2024. Sklaver Decl. ¶ 20. On February 7, 2024, GLIC produced detailed policy-level data for the approximately 3,000 GLIC policies. *Id.* ¶ 21. Class Counsel then worked diligently with its expert to process and analyze the data and create damages models in advance of the mediation. *Id.*

Because the mediation did not result in a settlement, the Court held a scheduling conference on March 7, 2024. Dkt. 35. Class Counsel filed a status report in advance of the conference. Dkt. 38. The Court’s March 8, 2024 Scheduling Order set a fast schedule—opening expert disclosures were due August 13, 2024; the close of fact discovery was set for September 12, 2024; and trial was set for January 10, 2025. Dkt. 41. Class Counsel immediately went to work. Class Counsel served its First Set of Requests for Production on March 8, totaling 43 requests. Sklaver Decl. ¶ 11. On March 19, Class Counsel filed a protective order to allow the production of documents, which the Court granted the next day. Dkts. 42–43. Class Counsel served initial disclosures on April 8, 2024. Sklaver Decl. ¶ 11.

Over the ensuing months, Class Counsel continued to vigorously prosecute this action. See Dkt. 64 at ¶ 14 (Preliminary Approval Order stating that the “Settlement was reached after significant work was performed”). The parties agreed to the reproduction in this action of the documents and discovery produced in the GLAIC Action (with an exception for GLAIC-specific policy-level data). Sklaver Decl. ¶ 11. Class Counsel worked closely with its experts to analyze these documents to develop and investigate GLIC-specific theories of liability and damages. *Id.* ¶ 14. Plaintiff’s discovery efforts included investigating theories not developed in the GLAIC

Action. *Id.* As part of this additional investigation, Plaintiff subpoenaed documents from GLICNY in support of its uniformity theory on May 30, 2024, which had not been done in the GLAIC Action. *Id.* Class Counsel served additional third-party document subpoenas on May 7, May 14, and June 25. *Id.* ¶ 12. These subpoenas included a request for MG-ALFA actuarial modeling software from Milliman. *Id.*

Class Counsel served five deposition notices on GLIC on June 14, 2024. Sklaver Decl. ¶ 13. Class Counsel served deposition subpoenas on third-parties Milliman and Willis Towers Watson on July 2, 2024. *Id.* Also on July 2, Class Counsel served 14 interrogatories and 431 requests for admission. *Id.* At the time of settlement on July 8, Class Counsel was actively working to schedule and prepare for depositions and was finalizing its Federal Rule of Civil Procedure 30(b)(6) deposition notice. Class Counsel was also actively working with its liability and damages experts to prepare expert reports, which were due on August 13. Dkt. 41.

Class Counsel met and conferred repeatedly with GLIC's counsel via email and teleconference about discovery issues, including zoom meetings on May 9, May 20, June 21, and July 2. Sklaver Decl. ¶ 14. GLIC also served 14 requests for production and 13 interrogatories on March 28, 2024. *Id.* ¶ 15. Class Counsel and Plaintiff Silverstein collected, reviewed, and produced documents and responded to the interrogatories. *Id.*

C. Class Counsel Successfully Settles the Case After Extensive Negotiations

The parties simultaneously engaged in repeated efforts to settle the case. *See* Dkt. 64 at ¶ 15 (Preliminary Approval Order stating: “the negotiations in this case appear to be the result of extensive, arm’s length negotiations between the parties after Class Counsel and Genworth investigated the claims”).

The parties first mediated with Mr. Max in person Miami, Florida on March 4, 2024. Sklaver Decl. ¶ 20. Class Counsel worked with a damages expert to analyze GLIC-specific policy

data, produced in advance of the mediation, to model damages and served a five-page mediation statement. *Id.* ¶ 21. The parties also mediated with Mr. Max via videoconference on April 9, 2024. Sklaver Decl. ¶ 20. Although these mediations were unsuccessful, the parties continued meeting and conferring regarding settlement. *Id.* GLIC was emboldened in its litigation position given the Court's comments at the initial scheduling conference and no settlement was occurring, so Class Counsel requested that the Court oversee settlement discussion. Dkt. 38. The Court agreed and referred the matter to a magistrate to assist, Dkt. 39, and on June 26, 2024, the parties mediated in person with Magistrate Judge Colombell in Richmond, Virginia. Sklaver Decl. ¶ 23. In advance of the mediation, GLIC refreshed its policy-level data on May 24. *Id.* Class Counsel worked with its expert to analyze this data as well. *Id.* Class Counsel also served a 18-page mediation statement. Plaintiff and his wife travelled from Ohio to personally attend that mediation. *Id.* ¶ 23. Judge Colombell made a mediator's proposal at the conclusion of the mediation of the June 26 mediation. *Id.* ¶ 24. On July 8, 2024, Judge Colombell informed the parties that the mediator's proposal had been accepted. *Id.* The parties then drafted a long-form settlement agreement and executed it on August 5, 2024. *Id.* ¶ 25, Ex. 2.

Class Counsel negotiated an outstanding settlement for the class. The Settlement confers the following monetary and non-monetary benefits:

- **CASH**: A cash Settlement Fund of up to \$5,100,000.
 - The cash fund is equal to 71.5% of the total past COI overcharges, through June 2024, alleged in this case. *See* Sklaver Decl. ¶ 26.
 - 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.*, \$5,100,000) by a fraction where (i) the numerator is the combined Specified Amount, as of June 30, 2024 (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 June 30, 2024, of all Policies owned by members of the Class. Sklaver Decl. ¶ 26, Ex. 1 at 2. As of November 14,

2024, there were no opt outs. *Id.* ¶ 26. No portion of the Settlement Fund will revert back to GLIC, 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 increase for Class Policies for October 25, 2029. Sklaver Decl., Ex. 1 at 3. Thus, even if GLIC has a future change in enumerated factors that would otherwise permit a COI rate increase under the terms of the Class Policies, GLIC will not increase COI rates until October 25, 2029. Policyholders now have the ability to predict, with certainty, what their COI obligations will be for a substantial period of time.
- **VALIDITY STIPULATION & STOLI WAIVER**. As part of the Settlement, GLIC 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. Sklaver Decl., Ex. 1 at 4. Class members now have the assurance that a death benefit will be paid if an otherwise valid claim for the policy proceeds is submitted.

The non-monetary forms of relief are estimated to be worth approximately \$3,097,438 to members of the Settlement Class, with the vast majority of that amount resulting from the enormous benefits created by the COI freeze. Sklaver Decl. ¶ 27.

D. The Court Preliminarily Approves the Settlement and Certifies a Class

Class Counsel filed “Plaintiff’s Motion for Preliminary Approval of Class Action Settlement” on September 13, 2024. Dkts. 55–56. The Court held a preliminary approval hearing on October 10, 2024. Sklaver Decl., Ex. 6 (Preliminary Approval Hearing Trans.)

The Court issued its Order preliminarily approving the Settlement and certifying a Settlement Class on October 11. Dkt. 64. The Court found “that the prerequisites for certifying the Action as a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied, and that the Court will likely certify at the final approval stage a Settlement Class.” Dkt. 64 at ¶¶ 3–10. The Court held that Plaintiff Martin Silverstein and Class Counsel will “fairly and adequately protect the interests of the class” because “Plaintiff has vigorously pursued the Action so far and appears to be capable of continuing to do so” and “Class Counsel appears

qualified, competent, and experienced in class action lawsuits.” Dkt. 64 at ¶ 7; *see also id.* ¶ 11–12 (naming Plaintiff as Class Representative and appointing Susman Godfrey as Class Counsel). The Court preliminary approved the Settlement “as being fair, reasonable, and adequate, and in the best interest of the named plaintiff and the Settlement Class.” Dkt. 64 at ¶¶ 13–22.

Pursuant to the Preliminary Approval Order, the Class Administrator, JND Legal Administration LLC, sent out Class Notice on October 25, 2024. Dkt. 65. The opt out deadline is December 10, 2024, the motion for final approval is due on December 13, and the Final Fairness Hearing is set for January 3, 2025 at 2:00 pm. Dkt. 64. Class Counsel will update the Court with final numbers after those deadlines expire, but as of November 14, 2024, there are no opt-outs or objections. Sklaver Decl. ¶ 26.

III. ARGUMENT

A. Class Counsel’s Fee Request is Reasonable.

1. **Class Counsel is Entitled to Fees from the Common Fund.**

The Settlement creates a \$5.1 million common fund. As is customary when class counsel aids in the creation of a common fund, Class Counsel is entitled to a reasonable fee from the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Kelly v. Johns Hopkins Univ.*, 2020 WL 434473, at *6 (D. Md. Jan. 28, 2020) (awarding counsel a percentage of the total value of the settlement, including future tax deferral and fee savings that would benefit the class).

Courts also consider the value of prospective relief in assessing the reasonableness of a percentage fee award. For example, in *Phoenix COI*, 2015 WL 10847814, class counsel reached a settlement in a COI case that included a 5-year COI freeze and a non-contestability benefit comparable to the COI freeze and non-contestability Benefit provided by the Settlement here. The *Phoenix COI* court noted that, based on expert reports, “[t]he non-monetary relief provided by the Settlement is also substantial and has an estimated value of over \$93.4 million.” *Id.* at *10. The

court concluded that it is appropriate to take the value of prospective relief into account when determining a settlement's value for the purpose of calculating attorney's fees. *Id.* at *15 (“In calculating the overall settlement value for purposes of the ‘percentage of the recovery’ approach, Courts include the value of the both the monetary and non-monetary benefits conferred on the Class.” (citing cases)).

2. The Requested Fee is Reasonable under the Percentage Method.

a. The Percentage Approach is Favored.

“[B]oth in the Fourth Circuit and across the country . . . the favored method of calculating attorneys’ fees in common fund cases is the percentage of the fund method.” *Skochin v. Genworth Financial*, 2020 WL 6536140, at *4 (E.D. Va. Nov. 5, 2020) (citing *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 575 (E.D. Va. 2016)); *see also Thomas v. FTS USA, LLC*, 2017 WL 1148283, at *3 (E.D. Va. Jan. 9, 2017) (“District Courts within this Circuit have also favored the percentage of the fund method.”), *adopted*, 2017 WL 1147460 (E.D. Va. Mar. 27, 2017). The percentage of the fund method “is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation[.]” *In re LandAmerica 1031 Exch. Serv. Inc. IRS 1031 Tax Deferred Exch. Litig.*, 2012 WL 5430841, at *2 (D.S.C. Nov. 7, 2012).

By rewarding counsel for the result achieved, rather than hours billed, the percentage method is “advantageous because it ties the attorneys’ award to the overall result achieved rather than the number of hours worked.” *McClaran v. Carolina Ale Operating Co., LLC*, 2015 WL 5037836, at *3 (D.S.C. Aug. 26, 2015). This is especially true where, like here, counsel prosecuted the case on a contingency fee basis. *See, e.g., Brundle ex. rel. Constellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 785-86 (4th Cir. 2019) (explaining that awarding fees as a percentage of the common fund “hold[s] the beneficiaries of judgment responsible for compensating the counsel who obtained the judgment or settlement for them”).

Use of the percentage method also facilitates comparing Class Counsel's request to awards in other cases. See *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260–61 (E.D. Va. 2009).

b. The Requested Percentage Fee Is Reasonable

As detailed further in the Declaration of Kristi Cahoon Kelly, who regularly opines as an expert on fees in this Circuit, Class Counsel's requested fee, equaling 20.7% of the total benefits and a third of the monetary fund considered in isolation, is reasonable. Kelly Decl. ¶ 16. The requested percentage fee is fully consistent with the 25-to-40 percent range that Courts within the Fourth Circuit have routinely held appropriate. See, e.g., *GLAIC Action*, Dkt. 147 (Order Awarding Fees, Costs, and Incentive Award) (approving fee award equal to 33 1/3% of the common settlement fund after opt-outs and 18.6% of the total benefits); *Dickman.*, 2020 WL 13094954, at *5 (approving fee award equal to 39.5% of the common settlement fund after reduction of opt outs and 20.6% of the total value of the relief obtained for the class), *aff'd 1988 Trust for Allen Children Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513 (4th Cir. 2022) ("*Banner Life COF*"); *Hooker v. Sirius XM Radio, Inc.*, 2017 WL 4484258 (E.D. Va. May 11, 2017) (awarding 35 percent of the \$35 million cash fund); *Sims v. BB&T Corp.*, 2019 WL 1993519, at *1 (M.D.N.C. May 6, 2019) (awarding 33 percent of \$24 million common fund); *In re Titanium Dioxide Antitrust Litig.*, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding 33.3% in reasonable attorneys' fees from a \$163.5 million in settlement funds); *Jernigan v. Protas, Spivok & Collins, LLC*, 2017 WL 4176217, at *5 (D. Md. Sept. 20, 2017) (awarding 40% of a common fund); *Veiga v. Suntrust Bank*, 2011 WL 9362390, at *4 (D. Md. Feb. 23, 2011), *aff'd*, 450 F. App'x 269 (4th Cir. 2011) (awarding 40% of a \$703,000 common fund).

Moreover, as this Court recognized in a different class action case, *Turner v. ZestFinance, Inc.*, Class Counsel must continue to work on behalf of the Class post-approval, so Plaintiffs' request for attorney's fees as a percentage of the common fund will continue to fall as Class

Counsel continues to work with the Settlement Administrator to give effect to the Settlement Agreement. No. 3:19-cv-293, Dkt. 116 at 16:1-5 (E.D. Va. Aug. 4, 2020) (“I am going to approve that. It represents 33 percent of the monetary value. The lodestar multiple is 3.86, but believing that number is going to fall for the reasons you just said about the continuing work.”).

c. A Lodestar Cross-Check Confirms Reasonableness.

When Courts award a percentage of the fee, they may perform a “lodestar crosscheck” to determine whether the proposed fee is reasonable. Manual for Complex Litigation (Fourth) § 21.724. “[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.” *Galloway v. Williams*, 2020 WL 7482191, at *11 (E.D. Va. Dec. 18, 2020). For the cross-check, the lodestar multiplier here is 2.92, which is well within the cross-check range approved by courts in this District and Circuit. *See, e.g., ZestFinance, Inc.*, No. 3:19-cv-293-DJN, ECF No. 116 at 16:1-5 (E.D. Va. Aug. 4, 2020) (approving fee of 33%, with lodestar cross-check multiple of 3.86).

In this entirely contingent action, Class Counsel spent 796.9 hours, representing a lodestar of \$583,100 and advanced \$168,992.28 in expenses. *See* Sklaver Decl. ¶¶ 43; Holmes Decl. ¶¶ 10, 12. As required by the Court, Class Counsel retained an expert, Ms. Kelly, who reviewed Class Counsel’s hourly rates, detailed time records, and work product generated in this case. *See* Kelly Decl. ¶ 18. Ms. Kelly concluded that Class Counsel’s hourly rates and hours worked are reasonable. Kelly Decl. ¶¶ 18-19.

The rates for Class Counsel and its staff who billed significant amounts of time to this case are comparable to peer law firms litigating matters of similar magnitude. *See* Kelly Decl. ¶¶ 19-21. Although it is reasonable and appropriate to calculate attorneys’ fees using Susman Godfrey’s

higher current hourly rates,³ in calculating its lodestar Susman Godfrey has used rates for partners and associates that are at or below the 2022 rates that this Court approved in the GLAIC Action. In a 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 and for associates was \$819. Kelly Decl. ¶ 20. Here, all of the partners working on this matter are equity partners who have billing rates under the median rate for equity partners. *See id.* The associate working on this matter billed below even the 3rd quartile standard billing rate of \$709. Sklaver Decl. ¶ 37. Further, these hourly rates are within the range for rates charged by attorneys with similar levels of experience and credentials in the Eastern District of Virginia. Kelly Decl. ¶¶ 19-21. Courts routinely find Susman Godfrey's rates reasonable. *See, e.g., Hancock COI*, Dkt. 164 at 19:6-13 (S.D.N.Y. Mar. 18, 2019) (accepting Susman Godfrey's rates as reasonable, including rates of Steven Sklaver and Seth Ard); *Phoenix COI*, 2015 WL 10847814, at *18 (finding Susman Godfrey's rates "reasonable" and "comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude"); *In re Auto. Parts Antitrust Litig.*, 2017 WL 3525415, at *4 (E.D. Mich. July 10, 2017) (finding Susman Godfrey's rates "justified" and "well in line with market").

The hours Class Counsel spent prosecuting this case are also reasonable. *See* Kelly Decl. ¶ 18 Counsel coordinated their work to prevent duplication of effort, as well as assigned work to associates and paralegals whenever possible and appropriate. When no agreement was reached

³ *See, e.g., Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing "an appropriate adjustment for delay in payment" by applying "current" rate); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (rates "should be 'current rather than historic'" (citation and internal quotations omitted)); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (current rates "should be applied in order to compensate for the delay in payment"); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989) (citation omitted) (using current rates helps "compensate for the delay in receiving compensation, inflationary losses, and the loss of interest" (quotation omitted)).

after the first mediation session, Counsel continued to engage with the mediator and opposing counsel. The hours that Class Counsel spent litigating this action reflect the effort required to achieve a satisfactory result.

There have been no opt outs as of November 14, 2024, so 33 1/3% of the Final Settlement Fund's monetary value is \$1.7 million, which is equal to a multiplier of 2.92. *See* Sklaver Decl. ¶ 42. This cross-check confirms the reasonableness of the award requested and is well within the range of crosscheck multipliers approved by courts in this Circuit. *See, e.g., Skochin*, 2020 WL 6708388 at *10 (finding 9.05 multiplier not unreasonable in lodestar cross-check analysis); *ZestFinance*, No. 3:19-cv-293-DJN, ECF Nos. 115, 116 at 16:1-5 (E.D. Va. Aug. 4, 2020) (approving fee request with a multiplier of 3.86); *Kruger v. Novant Health, Inc.*, No. 1:14-cv-208, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (observing that “courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney’s fee”). Recent COI class settlements in other districts further confirm the reasonableness of this crosscheck multiplier. *See, e.g., Hancock COI*, Dkt. No. 164 at 19:14-20:11 (approving lodestar multiplier of 6.92); *Phoenix COI*, 2015 WL 10847814, at *18 (approving lodestar multiplier of 4.87).

d. The *Barber* Factors Support Class Counsel’s Fee Request

In the Fourth Circuit, the *Barber* factors determine the reasonableness of a common fund attorney’s fee. *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216 (4th Cir. 1978). The *Barber* factors, which the Court weighs in its discretion, are:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to the acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the undesirability of the case;
- (11) the

nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. As described below, the *Barber* factors support Class Counsel’s requested fee of 33 1/3 percent of the Settlement Fund.

(1) Class Counsel’s Time and Labor (*Barber* Factor 1)

Class Counsel have spent 796.9 hours prosecuting this Action, so far.⁴ As detailed in the attached declarations, this included time spent: drafting and serving discovery requests and responses; issuing subpoenas and deposition notices; reviewing and analyzing the extensive document productions that were reproduced from the GLAIC Action; and working with experts to develop liability and damages theories, including new theories not at issue in the GLAIC Action and analysis of GLIC-specific policy-level data in order to develop a comprehensive damages model. *See* Sklaver Decl. ¶¶ 11-17, 33; Holmes Decl. ¶ 11. In its Preliminary Approval Order, the Court stated that “Plaintiff vigorously pursued the Action so far” and that “Settlement was reached after significant work was performed.” Dkt. 64 ¶¶ 7, 14. The time and labor will also increase as Class Counsel prepared for final-approval proceedings and administers the Settlement.

(2) The Novelty and Difficulty of the Issues (*Barber* Factor 2)

The second *Barber* factor, which addresses “the novelty and difficulty of the issues” also supports approval of the requested fee. *Barber*, 577 F.2d at 226. To call this litigation complex would be an understatement. In *Banner Life COI*, recently decided by the Fourth Circuit, the panel opined that COI litigation, like this one, is “chock-full of the most esoteric principles of life insurance accounting imaginable[.]” 28 F.4th at 525. The Fourth Circuit is not alone in making

⁴ This figure is through October 31, 2024. Class Counsel will need to spend additional hours through the conclusion of this case to respond to any objections to the Settlement, prepare for and attend the final approval hearing, respond to Class Members’ questions about the Settlement, and to administer the settlement. *See* Sklaver Decl. ¶ 33.

this observation. In *Phoenix COI*, Judge McMahon of the Southern District of New York found another similar COI case “indisputably complex,” including because “the resolution” of the allegations in the complaint “would require conflicting testimony by experts as to actuarial standards, the original and revised pricing assumptions used by Phoenix for the PAUL insurance products at issue, and what it means to ‘recoup past losses’ or ‘discriminate unfairly’ within a ‘class’ of insured.” 2015 WL 10847814, at *6 (granting final approval of a COI class action settlement).

Here, the complaint includes similar allegations relating to actuarial assumptions and characteristics, recouping past losses, and uniformity, *see generally* Dkt. 1 (Complaint), the resolution of which would require conflicting expert testimony. Class Counsel worked closely with their actuarial expert to develop theories of liability and with their damages expert to develop damages modeling that required the analysis of GLIC-specific policy level data. Sklaver Decl. ¶ 11.

(3) The Skill Required to Perform the Work Properly (*Barber* Factor 3)

The third *Barber* factor, the “skill required to perform the work properly,” strongly supports Class Counsel’s fee request. As courts in this Circuit have recognized, the “[p]rosecuting and managing a complex national class action requires unique legal skills and abilities.” *Phillips v. Triad Guaranty, Inc.*, 2016 WL 2636289, at *5 (M.D.N.C. May 9, 2016).

Few law firms have the knowledge, experience, and resources to litigate such a complex case and negotiate such a lucrative Settlement for the Class. In this case, Class Counsel not only navigated the difficulties of pursuing this class action involving thousands of policyholders from across the country, but also mastered highly technical actuarial principles and methodologies. In its Preliminary Approval Order, the Court stated that Susman Godfrey: “has expended a great deal

of time, effort, and expense investigating Genworth's COI Increase prior to and since filing this action. It is clear from their track-record of success, as outlined in their resumes, Class Counsel are highly skilled and knowledgeable concerning class-action practice." Dkt. 64 ¶ 12. The skill required to reach such a successful result for the Class merits a substantial fee award.

(4) Class Counsel's Opportunity Costs (*Barber* Factor 4)

Class Counsel spent 796.9 hours and \$168,992.28 in expenses prosecuting this case. *See* Sklaver Decl. ¶¶ 33, 43; Holmes Decl. ¶¶ 10, 12. These investments of time and resources impact Class Counsel's work on their existing cases and their ability to pursue new cases. And by insisting on the best settlement possible for the class, Class Counsel risked obtaining nothing and losing its entire investment. Accordingly, this factor strongly supports Class Counsel's fee request. *See, e.g., In re LandAmerica 1031*, 2012 WL 5430841, at *4.

(5) The Customary Fee (*Barber* Factor 5)

The fifth *Barber* factor, which addresses the "customary fee for like work," also strongly supports approval of the requested fee. As discussed above, Class Counsel's fee request equaling 20.7% of the total benefits (or 33 1/3 % of the common fund viewed in isolation) is well within the 25-to-40 percent range that Courts within the Fourth Circuit have held appropriate.⁵ *See, e.g., Dickman*, 2020 WL 13094954, at *5 (approving fee award equal to 39.5% of the common settlement fund after reduction of opt outs and 20.6% of the total value of the relief obtained for the class),.

(6) The Contingent Nature of the Class Counsel's Representation (*Barber* Factor 6)

⁵ "[E]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." 4 Newberg on Class Actions § 14:6 (4th ed.).

The Fourth Circuit has recognized that the “contingent nature” of Class Counsel’s representation is a relevant circumstance that supports “substantial attorneys’ fees.” *George v. Duke Energy Retirement Cash Balance Plan*, 2011 WL 13218031, at *6 (D.S.C. May 16, 2011); *see also Comer v. Life Ins. Co. of Alabama*, 2011 WL 13196297, at *5 (D.S.C. Mar. 31, 2011). Here, Class Counsel represented the Class on a contingency basis, working without payment and spending \$583,645 in fees and expenses to prosecute this action. Sklaver Decl. ¶¶ 33; Holmes Decl. ¶ 10, 12. In doing so, Class Counsel risked “walking away with no payment at all” for their work and not being reimbursed for the expenses they incurred. *George*, 2011 WL 13218031, at *6. This contingent nature of Class Counsel’s work strongly supports this fee request.

The risks that Plaintiffs and Class Counsel faced here were high, especially where Plaintiffs would have faced a “battle of the experts”—a battle in which no party is ever assured to prevail. *See Mills Corp. Securities Litig.*, 265 F.R.D. at 256 (describing “battle of experts at trial, with no guarantee of the outcome in the eyes of the jury”); *In re Microstrategy, Inc. Securities Litig.*, 148 F. Supp. 2d 654, 667 (E.D. Va. 2001) (“These risks, inherent in the divergent expert testimony reasonably anticipated in a case of this sort, further support the adequacy of the partial settlement.”). In its Preliminary Approval order, the Court noted that “numerous fact and legal issues remain in dispute.” Dkt. 64 ¶ 19. Victory on liability issues was far from guaranteed.

Class Counsel undertook enormous risk in taking on this case—all of which could have resulted in a write-off and no compensation had the case been lost. The risk was also high because Class Counsel sought damages against a deep-pocketed insurance company with essentially limitless resources, which hired two of the country’s best-known law firms to defend it. *See In re Abbott Labs. Sec. Litig.*, 1995 WL 792083, at *10 (N.D. Ill. July 3, 1995) (explaining that given “the formidable and nearly limitless resources of the opposition’s nationally prominent law firms,

and the amount of economic and personnel investment required to sustain the momentum of massive litigation, it is difficult to conceive of a more undesirable piece of litigation for any attorneys considering undertaking contingent fee litigation”). The only certainty from the outset of this litigation was that there would be no fee or expense award if the case were lost.

(7) Time Limitations Imposed by the Action (*Barber* Factor 7)

The seventh *Barber* factor is the time limitations imposed by the action. The Court’s March 8, 2024 Scheduling Order set opening expert disclosures for August 13, 2024, the close of fact discovery for September 12, 2024 and trial for January 10, 2025. Dkt. 41. By the time Settlement was reached on July 8, 2024, Class Counsel had worked quickly and vigorously to issue 43 requests for production, 14 interrogatories, 431 requests for admission, and 5 depositions on GLIC; to serve 6 subpoenas requesting documents from third parties, including MG-ALFA actuarial modeling software from Milliman, and a deposition subpoena on Milliman; and to work with experts to develop liability and damages theories. The Court’s Preliminary Approval Order noted the “significant work” Class Counsel performed. Dkt. 64 ¶ 14. Accordingly, this factor supports Class Counsel’s fee request.

(8) The Results Obtained (*Barber* Factor 8)

“[T]he most critical factor in determining the reasonableness of the fee award is the degree of success obtained.” *Abrams & Abrams*, 605 F.3d at 247 (quotation omitted). This factor strongly supports Class Counsel’s requested fee because the Settlement is truly an excellent result for the class. The cash portion of the Settlement alone accounts for 71.5% of the total past COI overcharges, through June 2024, alleged in this case. *See Sklaver Decl.* ¶ 26. The Settlement Agreement also provides two forms of significant non-cash relief, with an estimated value of more than \$3,097,438 (for a combined monetary and non-monetary settlement value of \$8,197,438). *Id.* ¶ 27. This recovery compares very favorably to the monetary relief in other COI settlements,

including the settlement in the GLAIC Action. *See* Sklaver Decl. ¶ 6 (GLAIC Action cash settlement represents 70.3% of past overcharges when projected through June 2024); *Phoenix COI*, 2015 WL 10847814, at *11, *18 (approving settlement that provided the class with 68.5% of COI overcharges plus non-monetary benefits); *Hancock COI*, Dkt. No. 164, at 20:10 (approving settlement that provided the class with 42% of COI overcharges). It also compares favorably to the average recovery in class action litigation. *See George*, 2011 WL 13218031, at *7 (noting that the “typical recovery in most class actions generally is three to six cents on the dollar”). The high percentage of recovery for the Class in this case strongly supports the fee request.

(9) The Experience, Reputation, and Ability of Class Counsel
(*Barber* Factor 9)

The ninth *Barber* factor is the “experience, reputation, and ability of Class Counsel.” Here, the skill that Class Counsel demonstrated in this Action supports their requested fee. *See Hooker v. Sirius XM Radio, Inc.*, No. 13-cv-3, 2017 WL 4484258, at *6 (E.D. Va. May 11, 2017).

Class Counsel are highly experienced attorneys with substantial background in COI litigation. Lead counsel Susman Godfrey have national reputations for enforcing consumer rights, particularly in nationwide COI class actions. *See* Sklaver Decl., Ex. 2 (Susman Godfrey firm resume). As noted above, the Court stated in its Preliminary Approval Order that “[i]t is clear from their track-record of success, as outlined in their resumes, Class Counsel are highly skilled and knowledgeable concerning class-action practice.” Dkt. 64 ¶ 12. Lead counsel at Susman Godfrey have been appointed to represent plaintiffs in numerous significant COI class actions. *See, e.g., Brach Family Fund, Inc. v. AXA Equitable Life Ins. Co.*, No. 16-cv-740-JMF, Dkt. 145 (S.D.N.Y. Nov. 13, 2017); *Phoenix COI*, 2013 WL 12224042, at *12 (appointing Susman Godfrey as class counsel and noting that “[c]ounsel for plaintiffs is more than capable of representing the interests of the proposed Classes in this case, and defendant does not contend otherwise”).

Lead Counsel also affiliated the law firm of Holmes, Costin & Marcus, LLC as local counsel, which represents clients in complex business litigation in federal and state courts in the greater Washington, D.C. area and jurisdictions nationwide. *See* Holmes Decl. ¶ 3.

Class Counsel were uniquely qualified to prosecute this case, as they had the technical understanding and relationships with industry experts, to decipher the actuarial models and memoranda developed by GLIC's actuaries and third-party consultants. Throughout the case, Class Counsel demonstrated their skill, moving quickly and efficiently to issue discovery, review documents, work with experts, and prepare for depositions. Accordingly, this factor strongly supports Class Counsel's fee request.

The quality of opposing counsel can also be important when evaluating the quality of plaintiffs' counsel's work. *See Brown v. Charles Schwab & Co., Inc.*, 2011 WL 13199227, at *4 (D.S.C. July 26, 2011) (quoting *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *30 (N.D. Tex. Nov. 8, 2005) (weighing standing of opposing counsel when determining attorneys' fees "because such standing reflects the challenges faced by plaintiffs' attorneys")). Defendants were represented by Alston & Bird and McGuireWoods, large firms with extensive experience in complex litigation matters. The ability of Class Counsel to obtain a favorable settlement for the Class Members in the face of such significant opposition confirms the quality of its representation. *See In re LandAmerica 1031*, 2012 WL 5430841, at *3 (counsel demonstrated their ability by effectively litigating against "experienced, capable, and relentless counsel from highly reputable law firms, who zealously defended the matter.").

(10) The Undesirability of the Case (Barber Factor 10)

The risks that class counsel faces of "receiving little or no recovery is a major factor in awarding attorney fees." *In re LandAmerica 1031*, 2012 WL 5430841, at *4. The risk of not being paid is "not merely hypothetical" because "[p]recedent is replete with situations in which attorneys

representing a class have devoted substantial resources in terms of time and costs advanced, but lost the case despite their advocacy.” *Id.*; see also *Millsap v. McDonnell Douglas Corp.*, No. 94-cv-633, 2003 WL 21277124, at *12 (N.D. Okla. May 28, 2003) (“This case is . . . undesirable, in the way that all contingent fee cases are undesirable, because it produced no income, but has required significant expenditures . . .”). As more fully explained under *Barber* Factor 6 above, this case presented several challenges that Class Counsel was only able to overcome because of their ample COI and class action litigation experience and dedication, and faced a unique challenge given the Court’s comments at the initial scheduling conference. Class Counsel’s ability to take on these significant risks, and overcome them, supports their request to receive 20.7% of the total benefits (or 33 1/3% of the settlement fund alone) as compensation for their work. That no other law firm had filed a case against GLIC in the years since the COI increase was first announced is a further testament to the risk that Class Counsel undertook and the undesirability of the case.

(11) The Nature and Length of the Attorney-Client Relationship
(Barber Factor 11)

The eleventh *Barber* factor is the “nature and length of the attorney-client relationship.” “The meaning of this factor, however, and its effect on the calculation of a reasonable fee has always been unclear . . . Courts applying the [*Barber*] factors typically state that this particular standard is irrelevant or immaterial.” *Bruner v. Sprint/United Mgmt. Co.*, Nos. 08-2133-KHV, 08-2149-KHV, 2009 WL 2058762, at *9 (D. Kan. July 14, 2009). Class Counsel represented Plaintiff Martin Silverstein on a contingency basis. Class Counsel had not previously represented Mr. Silverstein before this action. If this factor is considered at all, it weighs slightly in favor of Class Counsel’s request for a fee award because it suggests that Class Counsel performed high-quality work for a new client with no guarantee of monetary recovery.

(12) Fee Awards in Similar Cases (*Barber* Factor 12)

Class Counsel's request for a fee of 20.7% of the gross benefits (or 33 1/3% of the cash fund viewed in isolation of all the other benefits achieved) is consistent with the attorneys' fees awarded in COI class actions and other complex litigation. The *Kelly* and *Kruger* decisions in the Fourth Circuit recently found that "a one-third fee is the market rate," while the courts in *Clark* and *Sims* stated that attorneys' fees of 33.3% were "customary" in class actions. *Kelly*, 2020 WL 434473, at *3; *Kruger*, 2016 WL 6775855; *Clark*, 2019 WL 2579201, at *3; *Sims*, 2019 WL 1993519, at *2. In the *GLAIC Action*, this Court awarded approved a fee award equal to 33 1/3% of the common settlement fund after opt-outs and 18.6% of the total benefits. *GLAIC Action*, Dkt. 147 (Order Awarding Fees, Costs, and Incentive Award). This Court Class Counsel's fee request is in line with these recent decisions.

e. The Class's Reaction Confirms that Class Counsel's Request is Reasonable.

The Class Notice informed Class Members that Class Counsel would move the Court for an award of attorneys' fees of up to 33 1/3% of the Settlement and that Class Members could object to this request. *See* Dkt. 65-2. The Short-Form Notice (Exhibit A) was mailed on October 25, 2024, and the Long-Form Notice was posted on the Class Website on the same day. Dkt. 65. As of November 14, 2024, no Class Member has told Class Counsel or the Notice Administrator that they oppose a 33 1/3% fee award or filed an objection to Class Counsel's fees. *See* Sklaver Decl. ¶ 39. The lack of objections, at least to date, weighs in favor of the requested award. *See, e.g., In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 668 (E.D. Va. 2021) (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975)). Class Counsel will update the Court as to any objections, if filed.

B. Class Counsel Should Be Reimbursed for the Expenses They Incurred.

Attorneys whose work creates a common fund are routinely reimbursed for the reasonable expenses they incurred to bring the case. *Savani v. URS Prof'l Sols. LLC*, 121 F. Supp. 3d 564, 576 (D.S.C. 2015). “Reimbursable expenses include court costs, transcripts, travel, contractual personnel, document duplication, [and] expert witness fees.” *Kelly*, 2020 WL 434473, at *7. Counsel is reimbursed for these expenses “in addition to the fee percentage.” *Id.*

Here, Class Counsel incurred \$168,992.28 in expenses to prosecute this case. Sklaver Decl. ¶ 43; Holmes Decl. ¶ 12. Most of these expenses were expert fees, but Class Counsel also incurred various other expenses necessary for successful prosecution of this case. *See* Sklaver Decl. ¶ 43; Holmes Decl. ¶ 12. Each expense was actually incurred, and was both reasonable and necessary to prosecute this action. They are the sort of expenses that attorneys in non-contingency cases generally charge to their paying clients. Moreover, as with attorneys’ fees, no Class Member to date has objected to reimbursement of these litigation expenses. *See* Sklaver Decl. ¶ 39. Accordingly, these expenses should be reimbursed.

C. The Court Should Grant Plaintiff’s Request for a Case Contribution Award.

The intent of “case contribution awards” is to “reimburse and compensate Named Plaintiffs and/or Class Representatives for their time and efforts expended on behalf of the Class.” *George*, 2011 WL 13218031, at *10; *see also Savani*, 121 F. Supp. 3d at 577 (“Serving as a class representative is a burdensome task and it is true that without class representatives, the entire class would receive nothing.”). Although the Fourth Circuit has not provided “clear guidance on the factors to use when assessing the reasonableness of the size of an incentive award,” “several district courts,” including this Court, “have adopted the test used by the Seventh Circuit that instructs courts to examine ‘the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff

expended in pursuing the litigation.” *Burke v. Shapiro, Brown & Alt, LLP*, Civ. 2016 WL 2894914, at *6 (E.D. Va. May 17, 2016) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) and collecting cases)); *see also Manuel v. Wells Fargo Bank, N.A.*, 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016).

Plaintiff Martin Silverstein requests a Case Contribution Award of \$25,000. Mr. Silverstein communicated regularly with Class Counsel about the case, gathered and reviewing documents to respond to Defendant’s discovery requests, and participated in the settlement process, including travelling from Ohio with his wife to personally attend the mediation with Judge Colombell in Richmond. *See Sklaver Decl.* ¶ 23. These actions required significant time and effort, and Mr. Silverstein was prepared to expend even more time and effort, including a deposition and attendance at trial, if the case had proceeded. *See id.* The Class benefitted substantially from these actions, as they are now receiving compensation, both monetary and non-monetary, that they would not have otherwise received had Mr. Silverstein, as the Class Representative, not pursued this case on their behalf. No class member has objected to a Case Contribution Award to Mr. Silverstein. *See Sklaver Decl.* ¶ 37.

Plaintiff’s request is also within the range of awards approved by courts in the Fourth Circuit. *See, e.g., McCurley v. Flowers Foods, Inc.*, No. 16-cv-00194, 2018 WL 6650138, at *8 (D.S.C. Sept. 10, 2018) (approving a \$25,000 service award); *Loudermilk Servs., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 727 (S.D. W. Va. 2009) (awarding each of the five class representatives a \$25,000 service award); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (approving a service award of \$25,000 to each of the three class representatives). Accordingly, the Court should grant Plaintiff’s request for a \$25,000 Case Contribution Award.

IV. CONCLUSION

For the foregoing reasons, the Court should award Class Counsel \$1,700,000, which is 20.7% of the total settlement benefits provided (or 33 1/3% of the Settlement Fund viewed in isolation of the COI freeze and non-contestability benefits achieved), as attorneys' fees, reimburse Class Counsel for the \$168,992.28 in expenses they incurred to prosecute this case, and grant Plaintiff Martin Silverstein's request for a \$25,000 Case Contribution Award.

Dated: November 15, 2024

Respectfully submitted,

/s/ Kathleen J.L. Holmes

Ellen D. Marcus (Virginia Bar No. 44314)
Kathleen J.L. Holmes (Virginia Bar No. 35219)
HOLMES COSTIN & MARCUS PLLC
908 King Street, Suite 330
Alexandria, VA 22314
Tel: 703-260-6401
Fax: 703-439-1873
emarcus@hcmlawva.com
kholmes@hcmlawva.com

Steven G. Sklaver (*pro hac vice*)
Glenn C. Bridgman (*pro hac vice*)
Nicholas N. Spear (*pro hac vice*)
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
gbridgman@susmangodfrey.com
nspear@susmangodfrey.com

Seth Ard (*pro hac vice*)
Ryan Kirkpatrick (*pro hac vice*)
Zachary B. Savage (*pro hac vice*)
William J. Melsheimer (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel.: 212-336-8330

Fax: 212-336-8340
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
zsavage@susmangodfrey.com
jmelsheimer@susmangodfrey.com

Attorneys for Plaintiff Martin Silverstein

CERTIFICATE OF SERVICE

I certify that on this 15th day of November 2024, 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

908 King Street, Suite 330F

Alexandria, VA 22314

Tel: 703-260-6401

Fax: 703-439-1873

kholmes@hcmlawva.com

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

MARTIN SILVERSTEIN,
Plaintiff,

v.

GENWORTH LIFE INSURANCE COMPANY,
Defendant.

Civil No. 3:23-cv-00684 (DJN)

**DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF PLAINTIFF’S MOTION
FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD**

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

1. I submit this declaration in support of Plaintiff Martin Silverstein’s motion for attorneys’ fees, costs, and service award in connection with the proposed class action settlement between Plaintiff, individually and on behalf of the Class, and Defendant Genworth Life Insurance Company (“GLIC”).

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

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Joint Stipulation and Settlement Agreement, which was fully executed on August 2, 2024.

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, 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**.

THE LITIGATION

5. Plaintiff filed this case on October 20, 2023. Dkt. 1. The complaint brings a claim for breach of contract against GLIC in relation to a September 2019 adjustment of cost-of-insurance ("COI") rates for approximately 3,000 geographically dispersed universal life insurance policies insured by GLIC and issued on GE Gold I and GE Gold II forms. *Id.* Attached as **Exhibit 3** is a true and correct copy of Plaintiff's life insurance policy (with personal, health, and financial information redacted).

6. I was also Class Counsel in *Brighton Trustees, LLC, et al. v. Genworth Life and Annuity Insurance Company*, Case No. 3:20-cv-00240-DJN (the "GLAIC Action"). There, the Court certified a settlement class and approved a settlement providing monetary and non-monetary relief to GLAIC policyholders for an increase in COI rates on GLAIC-insured policies. *Id.*, Dkt. 148. GLAIC and GLIC are separate corporate entities. The GLAIC Action settlement included a cash portion representing 163% of past overcharges through March 31, 2022, and 70.3% of past overcharges when projected through June 2024.

7. GLIC policyholders were not in the GLAIC Action putative class, as no GLAIC Action plaintiff owned a GLIC policy and therefore all lacked privity with and standing to sue

GLIC. During the *GLAIC Action*, GLAIC refused to provide discovery specific to GLIC policies¹ and GLIC policies were explicitly excluded from the GLAIC Action settlement. *See* GLAIC Action, Case No. 3:20-cv-00240-DJN, Dkt. 143-3 (Settlement Agreement) ¶¶ 51, 62, 79. GLIC policyholders did not receive any relief and did not release any claims as part of the *GLAIC Action* settlement. GLAIC never offered any money to GLIC policyholders and never offered to include GLIC policyholders as part of the settlement in the GLAIC Action. Attached as **Exhibit 5** is the hearing transcript from the GLAIC Action Final Approval Hearing.

8. Plaintiff hired Class Counsel long after the GLAIC Action settled. Class Counsel diligently investigated, filed, and litigated this lawsuit after determining that Plaintiff had privity with CLIF because his policy was insured by GLIC and issued on a GE Gold policy form. The Settlement here, for the first time, finally provides relief to GLIC policyholders for the improper COI overcharges imposed on them.

9. After GLIC filed its answer on December 22, 2023, Class Counsel immediately initiated discussions with GLIC regarding the protective order to allow the production of documents and other case schedule and discovery issues.

10. The Court issued a scheduling order on March 8, 2024. Dkt. 41. The deadline for serving opening expert reports was August 12, 2024. *Id.* The close of fact discovery was September 12, 2024. *Id.* Trial was set for January 10, 2025. *Id.*

11. Class Counsel worked with actuarial and damages experts to investigate the issues and develop a record during fact and expert discovery. Class Counsel served 43 requests for production on March 8, 2024. On March 19, Class Counsel filed the Protective Order to allow for

¹ Attached as **Exhibit 4** is a true and correct copy of a September 25, 2020 email from GLAIC's counsel concerning GLAIC's refusal to provide GLIC-related discovery unless and until a GLIC policyholder was added as a plaintiff and GLIC named as a defendant.

the production of documents. GLIC's productions included the full GLAIC Action record and policy-specific data about GLIC policies. On April 8, Class Counsel served initial disclosures.

12. Class Counsel served third-party document subpoenas on May 7, May 14, May 30, and June 25. These subpoenas included a May 30 subpoena to Genworth Life Insurance Company of New York (GLICNY), which had not been done in the GLAIC Action, and a subpoena for MG-ALFA actuarial modeling software from Milliman.

13. On June 14, 2024, Class Counsel served GLIC with five deposition notices. Class Counsel also served deposition subpoenas on Milliman and Willis Towers Watson on July 2. Also on July 2, Class Counsel served 431 requests for admission and 14 interrogatories. At the time the mediator's proposal was accepted, Class Counsel was working with their experts to prepare for depositions, including a Federal Rule of Civil Procedure 30(b)(6) notice to GLIC. Class Counsel also worked with their actuarial and damages experts in preparation for the August 12, 2024 deadline for opening expert reports.

14. Class Counsel worked closely with liability and damages experts throughout this case, including to analyze documents to develop and investigate GLIC-specific theories of liability and damages that were not developed in the GLAIC Action, including that GLIC's 2019 COI rate adjustment violated the policy requirement that 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." As part of this investigation, Class Counsel issued the document subpoena to GLICNY.

15. GLIC served 14 requests for production and 13 interrogatories on March 28, 2024. Plaintiff and Class Counsel collected, reviewed, and produced documents and responded to the interrogatories.

16. Class Counsel and GLIC met and conferred repeatedly during discovery via email and teleconference, including zoom meetings on May 9, May 20, June 21, and July 2.

17. The parties also briefed a motion to modify the scheduling order. Dkts. 48–52.

MEDIATION, SETTLEMENT, AND PRELIMINARY APPROVAL

18. As stated above, I was one of the principal negotiators of the proposed class action settlement. Following extensive, arms-length, adversarial negotiations over multiple months between experienced and knowledgeable counsel on all sides and two different experienced neutrals, the Parties entered into the Settlement Agreement (Exhibit 2) on August 2, 2024. It is the opinion of Class Counsel that this settlement is fair, adequate, and reasonable.

19. The parties have mediated and exchanged numerous offers and counter-offers throughout the life of the case. In advance of the mediations, GLIC provided policy-specific data which allowed Plaintiff and Class Counsel to assess the estimated damages as a result of the alleged COI overcharges.

20. The parties first mediated at the order of the Court on March 4, 2024 with Rodney Max, a distinguished fellow and past president of the American College of Civil Trial Mediators, in person in Miami, Florida. The parties mediated again with Mr. Max via videoconference on April 9, 2024. These mediations were unsuccessful, but the parties continued meet and conferring over the next several months.

21. In advance of these mediations, on February 7, 2024, GLIC produced policy-level data for the approximately 3,000 GLIC policies. Class Counsel worked closely with their damages expert to process, analyze, and create damages models in advance of the March 4 mediation. The policy data included 79 data fields (i.e., columns) and 700,000 rows of data.

22. After the March 4 mediation, Class Counsel requested that the Court oversee continued settlement negotiations with GLIC, Dkt. 38 (Pltf's Pre-Hearing Status Report), which the Court so ordered by referring the matter to Magistrate Judge Colombell for assistance, Dkt. 39.

23. On June 26, 2024, the parties mediated in person with Magistrate Judge Mark Colombell in Richmond, Virginia. Plaintiff and his wife travelled from their home in Ohio to attend the mediation in person. In advance of this mediation, on May 24, GLIC refreshed its policy level data. Class Counsel again worked diligently with its damages expert to analyze and model damages in advance of the mediation with Judge Colombell.

24. After the negotiations remained unsuccessful, Judge Colombell made a mediator's proposal of \$5.1 million plus nonmonetary terms. Judge Colombell informed the parties that the terms were accepted by both sides on July 8, 2024. The parties then worked to negotiate a long-form settlement agreement, which was ultimately executed on August 2, 2024. By the time the settlement was reached, Class Counsel were well informed of material facts, and the negotiations were hard-fought and non-collusive.

25. The specific terms and conditions of the settlement are set forth in the Settlement Agreement (Exhibit 2). The Settlement Agreement includes significant cash and non-cash relief.

26. Pursuant to the Settlement Agreement, the Class will receive the benefit of a Settlement Fund of up to \$5.1 million. Ex. 1, ¶ 1. 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.*, \$5,100,000) by a fraction where (i) the numerator is the combined Specified Amount, as of June 30, 2024 (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 June 30, 2024, of all Policies owned by members

of the Class. *Id.*. As of November 14, 2024, there were no opt outs or objections to the proposed settlement. No portion of the Settlement Fund will revert back to GLIC, and checks will be mailed directly to Class Members without having to fill out claim forms. The Settlement Fund accounts for 71.5% of the total past COI overcharges alleged in this case through June 2024.

27. GLIC also agreed that “COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 COI Rate Adjustment until after October 25, 2029.” Ex. 1, ¶ 7. GLIC also agreed “to not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy.” *Id.* ¶ 9. In the GLAIC Action, an expert valued these non-monetary benefits at \$19,506,664 and \$382,453, respectively. GLAIC Action, Dkt. 140-12. Adjusting those valuations using the GLIC in-force policy face amounts as a percentage of GLAIC in-force policy face amounts, the valuations are \$3,037,877 and \$59,561, for a total non-monetary valuation of \$3,097,438.

28. The combined monetary and non-monetary valuation of the proposed settlement is \$8,197,438,

29. The Settlement Agreement provides that Class Counsel may move for an award of attorneys’ fees in an amount not to exceed 33 1/3% of the Final Settlement Fund, in addition to reimbursement for all expenses incurred or to be incurred. Ex. 1, ¶ 17. If approved, this amount will be deducted from the \$5.1 million in the Settlement Fund after any reduction for Class members who opt out. If there are opt outs and the \$5.1 million payment is reduced (say, for

example to \$4 million), Class Counsel will only seek attorneys' fees in an amount not to exceed 33 1/3% of the Final Settlement Fund (in this example, 33 1/3% of \$4 million). In addition, Class Counsel will seek reimbursement for expenses incurred or to be incurred, as well as an incentive award up to \$25,000 for Plaintiff for his service as the representatives on behalf of the Settlement Class, to be paid from the Final Settlement Fund. *Id.* ¶¶ 16, 66.

30. The Court held a preliminary approval hearing on October 10, 2024. Attached as **Exhibit 6** is the transcript from that hearing. The Court issued its order preliminarily approving the settlement and certifying the class on October 11, 2024. Dkt. 64. Pursuant to the Preliminary Approval Order, the Class Administrator, JND Legal Administration LLC, sent out Class Notice on October 25, 2024. Dkt. 65. The opt out deadline is December 10, 2024, the motion for final approval is due on December 13, and the Final Fairness Hearing is set for January 3, 2025 at 2:00 pm. Dkt. 64.

31. It is the opinion of Class Counsel that the Settlement with GLIC is fair and reasonable, especially in view of the cash payment by GLIC, 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.

ATTORNEYS FEES, COSTS, AND SERVICE AWARD

32. Class Counsel has expended significant time and effort litigating this case. 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.

33. The schedule below is a summary reflecting the amount of time spent, through October 31, 2024, 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	Rate	Hours	Value
Ard, Seth (Partner)	\$975	47.60	\$46,410
Bridgman, Glenn (Partner)	\$850	9.60	\$8,160
Josephs, Halley (Partner)	\$850	1.60	\$1,360
Kirkpatrick, Ryan (Partner)	\$900	44.00	\$39,600
Savage, Zachary (Partner)	\$850	7.00	\$5,950
Sklaver, Steven (Partner)	\$1200	85.40	\$102,480
Spear, Nicholas (Partner)	\$850	118.20	\$100,470
Melsheimer, W. Jeffrey (Associate)	\$625	321.40	\$200,875
O'Brien, Mary (Staff Attorney)	\$350	7.90	\$2,765
Paralegals	Rate	Hours	Value
Abalos, Jianna	\$300	100.80	\$30,240
Siegel, Sarah	\$250	1.00	\$250
Totals		744.50	\$538,560

34. Although it is reasonable and appropriate to calculate attorneys' fees using Susman Godfrey's current hourly rates, *see, e.g., Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing “an appropriate adjustment for delay in payment” by applying “current” rate); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (rates “should be ‘current rather than historic’” (citation and internal quotations omitted)); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (current rates “should be applied in order to compensate for the delay in payment”), the rates used to calculate attorneys' fees above are the same as the rates approved by the Court for any attorney or paralegal who participated in the GLAIC Action, and at or below the previously approved Susman Godfrey partner, associate, staff attorney, and paralegal rates for any attorney or paralegal who did not participate in the GLAIC Action.

35. The hourly rates used here for Class Counsel's attorneys are \$350 for a staff attorney, \$625 for an associate, and \$850-\$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. The hourly rate used here for paralegals ranges from \$250–300.

36. 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. Partners Ard, Bridgman, Joseph, Kirkpatrick, Savage, and Spear have billing rates here below the 3rd quartile standard billing rate; Mr. Sklaver has a billing rate here below the median billing rate.

37. 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. Mr. Melsheimer's billing rate here of \$625 is below the 3rd quartile standard billing rate.

38. The total number of hours expended on this litigation by Susman Godfrey's attorneys and paralegals is 744.5 hours through October 31, 2024. The total lodestar value of Susman Godfrey's professional services, derived by multiplying each professional's hours by rates that are at or below the rates this Court approved in the GLAIC Action, is \$538,560. 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.

39. 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., \$5,100,000) by a fraction where (i) the numerator is the combined Specified Amount, as of June 30, 2024 (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 June 30, 2024, of all Policies owned by members of the Class. *See* Exhibit 1, ¶ 2. As of November 14, 2024, there have been no opt outs. Thus, the amount Class Counsel is currently seeking in attorney's fees is \$1,700,000 (33 1/3% of the \$5,100,00 Settlement Fund, assuming no opt outs). This represents 20.7% of the gross settlement value (monetary and nonmonetary) available to Class Members. As of November 14, 2024, 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.

40. 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.

41. 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 20.6% 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.

42. As described above, the total lodestar value of Susman Godfrey's professional services is \$538,560. The total lodestar value of the Holmes Costin & Marcus firm is \$44,540. Therefore, the total combined lodestar value for all professional services is \$583,100. The requested attorney's fee as of October 31, 2024—\$1,700,000—is a lodestar multiplier of 2.92.

43. As detailed and categorized in the below schedule, Susman Godfrey has advanced a total of \$166,286.58 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
Data Storage	\$15,298.03
Experts/Consultants	\$120,427.50
Mediation	\$16,225.00
Research/Court Alerts/Transcripts	\$1,328.14
Service/Document Reproduction	\$3,424.46
Travels/Meals/Transportation	\$9,583.45
Total	\$166,286.58

44. The amount of Settlement Administration Expenses incurred by Settlement Administrator JND through October 31, 2024 is \$29,976.50. Pursuant to the Court's Order Preliminarily Approving Class Action Settlement, Class Counsel seeks permission to reimburse the foregoing Settlement Administration Expenses pursuant to the Settlement Agreement, and such additional expenses as may be incurred by the Settlement Administrator. Class Counsel will update this information in conjunction with its Reply in Support of the Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Award.

45. Plaintiff Martin Silverstein has contributed his time and efforts to the benefit of the Class. Plaintiff has reviewed documents and filings, collected and reviewed documents in response to GLIC's discovery requests, communicated frequently with Class Counsel regarding the status of the litigation, and actively participated in mediation, including traveling from Ohio with his

wife to Richmond, Virginia to attend the in-person mediation with Judge Colombell on June 26, 2024. In the opinion of Class Counsel, Plaintiff Silverstein is deserving of the requested service award 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 15th day of November, 2024 in Los Angeles, California.

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

EXHIBIT 1

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

MARTIN SILVERSTEIN, on behalf of himself
and all others similarly situated,

Civil Action No. 3:23cv684

Plaintiff,

v.

GENWORTH LIFE INSURANCE COMPANY,

Defendant.

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) Plaintiff Martin Silverstein (“Plaintiff”), individually and on behalf of the Class; and (ii) Defendant Genworth Life Insurance Company (“GLIC”), that the causes of action and matters raised by and related to this lawsuit, as captioned above, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement.

This Agreement is made and entered into by and between Plaintiff and GLIC 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. GLIC agrees to fund the Settlement Fund in the amount of \$5,100,000. GLIC shall deposit the Settlement Fund into the Settlement Fund Account no later than seven (7) business

EXECUTION COPY

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.*, \$5,100,000) by a fraction where (i) the numerator is the combined Specified Amount, as of June 30, 2024, (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 June 30, 2024, 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 Magistrate Judge Colombell 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 GLIC.

4. Simultaneously herewith, Plaintiff and GLIC are executing a “Supplemental Agreement” setting forth certain conditions under which this Agreement may be withdrawn or terminated at GLIC’s sole discretion if Owners who meet certain criteria exclude themselves from

EXECUTION COPY

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, Plaintiff and GLIC 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. GLIC will not oppose any such proposed plan of allocation.

6. Under no circumstances shall GLIC 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 GLIC's total and maximum contribution to this Settlement, inclusive of all relief to the Settlement Class, Class Counsel's Fees and Expenses, Incentive Award, and Settlement Administration Fees.

B. Non-Cash Consideration to the Settlement Class

7. GLIC agrees that COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 COI Rate Adjustment until after October 25, 2029. Subject to and without waiving the provision provided for in the preceding sentence, nothing in this Agreement shall otherwise restrict GLIC from making adjustments or recommending adjustments to the COI Rates that comply with the terms of any Class Policy.

8. Plaintiff and the Settlement Class agree that GLIC 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

EXECUTION COPY

Adjustment or (ii) GLIC'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. GLIC 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 GLIC in the past. With the exception of the foregoing, nothing contained in this Agreement shall otherwise restrict GLIC 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 GLIC; 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 GLIC.

II. PRELIMINARY APPROVAL AND CLASS NOTICE

10. The Parties agree that Plaintiff shall move for an order seeking preliminary approval of the Settlement, 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. Plaintiff 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 Plaintiff's Incentive Award and Class Counsel's Fees and Expenses) with GLIC 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). GLIC 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 Magistrate Judge Colombell and endeavor to resolve the issue(s) to the satisfaction of the Court.

11. Plaintiff's form of Class Notice will include direct mailing on a short-form postcard sent to Owners using address information that is available from GLIC'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.

EXECUTION COPY

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

15. Within ten (10) calendar days following the filing of this Agreement with the Court, GLIC 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. Plaintiff may move for the payment of an Incentive Award from the Final Settlement Fund in an amount up to but not more than \$25,000. GLIC will not oppose Plaintiff’s

EXECUTION COPY

motion. An Incentive Award shall be made to Plaintiff in addition to, and shall not diminish or prejudice in any way, any settlement relief which he may be eligible to receive.

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. GLIC agrees not to oppose Class Counsel's motion for Class Counsel's Fees and Expenses to the extent Plaintiff's request does not exceed the amounts set forth above.

18. Neither Plaintiff nor GLIC 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 an 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 GLIC 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.

EXECUTION COPY

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

EXECUTION COPY

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 GLIC from paying any future death benefits that may be owed.

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 and Magistrate Judge Colombell, following mediation sessions before the Mediator on March 4, 2024, March 7,

EXECUTION COPY

2024 and April 9, 2024 and a settlement conference before Magistrate Judge Colombell on June 26, 2024, 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, GLIC'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. GLIC 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 GLIC 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. GLIC 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

EXECUTION COPY

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 Protective Order entered in the Action on March 20, 2024 (Dkt. No. 43) 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

EXECUTION COPY

or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiff and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on the 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.

EXECUTION COPY

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 Plaintiff, 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, the settlement conference before Magistrate Judge Colombell, 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.

EXECUTION COPY

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 GLIC, then to:

Brian E. Pumphrey
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Phone: 804-775-1000
Fax: 804-775-1061
bpumphrey@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 Plaintiff or the Class, then to:

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

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

EXECUTION COPY

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 *Martin Silverstein v. Genworth Life Insurance Company*, Case No. 3:23-cv-684, 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 GLIC, 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, GLIC, its officers and directors and their immediate family

EXECUTION COPY

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 June 30, 2024, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured.

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

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.

EXECUTION COPY

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 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 July 8, 2024 (“New COI Increase Claims”). 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.

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)

EXECUTION COPY

Settlement Administration Expenses; (ii) any Incentive Award; (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 GLIC. 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. "GLIC" means Genworth Life Insurance Company and its predecessor and successor entities.

68. "Incentive Award" means the award approved by the Court to be paid to Plaintiff from the Final Settlement Fund, in addition to any settlement relief he may be eligible to receive, to compensate Plaintiff for his 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. "Magistrate Judge Colombell" means the Honorable Mark R. Colombell, United States Magistrate Judge for the Eastern District of Virginia.

71. "Mediator" means Rodney A. Max, Esq.

72. "Net Settlement Fund" means the Final Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Award; (iii) any Class Counsel's Fees and Expenses

EXECUTION COPY

awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

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

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

75. “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.

76. “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.

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

78. “Parties” means, collectively, Plaintiff and GLIC. The singular term “Party” means either Plaintiff or GLIC, as appropriate.

79. “Plaintiff” means Martin Silverstein, individually and as representative of the Settlement Class, and his assigns, successors-in-interest, and representatives.

80. “Policy” or “Policies” means any Gold and Gold II universal life insurance policy issued, insured, or assumed by GLIC, or its predecessors or successors, for which the applicable COI Rate Scales were changed by the 2019 COI Rate Adjustment.

EXECUTION COPY

81. “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.

82. “Released Parties” means GLIC 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.

83. “Releasing Parties” means Plaintiff 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.

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

85. “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.

86. “Settlement Administrator” means the third-party settlement administrator of the Settlement who is selected and approved by the Parties. Plaintiff shall be responsible for selecting the Settlement Administrator and consent from GLIC will not be unreasonably withheld. The

EXECUTION COPY

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.

87. "Settlement Class" means the Class, excluding any Opt-Outs.

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

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

90. "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.

91. "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

EXECUTION COPY

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.


92. 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.

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

AGREED TO BY:

Plaintiff

Defendant



Genworth Life Insurance Company

Martin Silverstein

By: _____

Date: 08.02.2024

Title: _____

Date: _____

EXECUTION COPY

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.

92. 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.

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

AGREED TO BY:

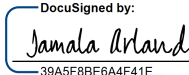
Plaintiff

Martin Silverstein

Date: _____

Defendant

Genworth Life Insurance Company

By:  _____
39A5F8BE6A4F41E...

Title: _____

Date: _____

EXECUTION COPY

APPROVED ONLY AS TO FORM:

DocuSigned by:

CD47E5EE127440A
Patrick J. Gennardo
ALSTON & BIRD LLP
90 Park Avenue New York,
Phone: 212-210-9400
Fax: 212-210-9444
patrick.gennardo@alston.com

Counsel for Defendant Genworth Life 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

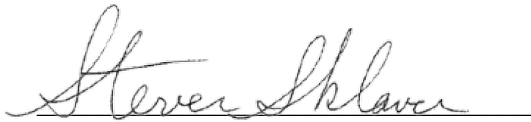
Class Counsel and Counsel for Plaintiff

EXECUTION COPY

APPROVED ONLY AS TO FORM:

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

Counsel for Defendant Genworth Life 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 Counsel for Plaintiff

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



Steven G. Sklaver

Partner

Los Angeles

(310) 789-3100

ssklaver@susmangodfrey.com

Overview

Named one of *Lawdragon's* 500 Leading Lawyers since 2020, a recipient of the California Lawyer Attorneys of the Year award in 2017 and selected as "Top Plaintiff Lawyers in all of California" in 2016 and 2017 by *The Daily Journal*; Steven Sklaver has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Sklaver was lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." You can read the Court's statement in full [here](#). You can also read more about the case in The Deal's profile on the litigation [here](#). Sklaver was also lead trial and appellate counsel for investors against an insurance company that resulted in a complete victory and full payout 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. Sklaver was also previously selected as a Ninth Circuit Judicial Conference Lawyer Representative.

Notable Representations

Class Actions

- **Copyright Infringement:** Sklaver serves as co-lead counsel with the Gradstein & Marzano firm representing Flo & Eddie (the founding members of 70's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. The day before trial was to commence before a California jury in federal court in late 2016, Flo & Eddie reached a landmark settlement with Sirius XM on behalf of the class in a deal potentially worth \$99 million. The Court granted [final approval of the settlement](#) in May 2017. Click [here](#) for more. Sklaver with his co-leads were recently named

“California Lawyer Attorneys of the Year” by *The Daily Journal* for their outstanding legal work on this case.

- In May 2017, Sklaver, as co-lead counsel with Gradstein Marzano, secured a deal valued at \$112 million to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners. The suit alleged that Spotify made music available online without securing mechanical rights from the tracks’ composers. Under the terms of the deal, Spotify will pay songwriters \$43.45 million for past royalties, as well as commit to pay ongoing royalties that are valued at \$63 million. Read more about the case [here](#) and see Billboards coverage of it [here](#).
- **Insurance:** In a seminal insurance class action filed in the Southern District of New York, resolved in September 2015, Mr. Sklaver served as lead counsel in a case that challenged Phoenix Life Insurance Company’s and PHL Variable Insurance Company’s decision to raise the cost of insurance (“COI”) nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference — less than two months before trial. Settlement terms included: \$48.5 million cash fund (\$34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded, **“I want to say publicly that I think this is an excellent settlement. I think this is a superb – this may be the best settlement pound for pound for the class that I’ve ever seen.”** You can read the statement in full on page 3 [here](#). You can also read more about the case in *The Deal*’s feature on the matter [here](#).
- **Antitrust:** *In re Automotive Parts Antitrust Litigation*. In the largest price-fixing cartel ever brought to light, Mr. Sklaver and a team of Susman Godfrey lawyers run a massive MDL litigation in which the firm serves as co-lead counsel for a class of consumer plaintiffs in multidistrict price-fixing cases pending in a Detroit, Michigan federal court. The actions, alleging anti-competitive conduct, were brought by indirect purchasers of component parts included in over 20 million automobiles, and involve parts such as wire harnesses, instrument panel clusters, fuel senders, heater control panels and alternators. The Department of Justice has imposed fines exceeding \$2.6 billion pursuant to guilty plea agreements with some of the defendants, and its investigation is still ongoing. The Susman Godfrey team together with its co-lead counsel has defeated multiple motions to dismiss. Settlements have been reached with a certain defendants for a combined \$620 million thus far. Final settlement (after fees and expenses) has not yet been determined. The case remains ongoing against the remaining defendants.

Life Settlements

- Represented Jonathan Berck, as Trustee of the Rosamond Janis Insurance Trust in a \$5 million rescission claim brought by the Lincoln Life and Annuity Company of New York for alleged violations of New York's insurable interest laws and other "STOLI" (stranger originated life insurance) related claims. RESULT: Summary judgment granted in favor of my client. A copy of the summary judgment order is available [here](#).
- Won reversal in a \$20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York. Lincoln's lawsuit was based on allegations that the insurance policies lacked an insurable interest because they were procured by third-parties for investment purposes and because there were net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust. The appellate court also affirmed our trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The case is *Lincoln Life & Annuity Co. of New York v. Jonathan Berck, as Trustee of the Jack Teren Insurance Trust*, Court of Appeal Case No. D056373 (Cal. Ct. App. May 17, 2011). A copy of the appellate court decision is available [here](#). 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)
- *Lawdragon* 500 Leading Litigator ([2022](#), [2023](#))

Honors & Distinctions

- Firm Representative for Elite Trial Lawyers – Insurance Litigation, *National Law Journal* ([2023](#), ALM)
- *Litigation Star*, Benchmark Litigation (2022, Euromoney)
- Recommended Lawyer – Litigation – Labor and Employment, Best Lawyers in American (2020 – 2025, Woodward White, Inc.)
- Southern California California Super Lawyer (2010 – 2023, Thomson Reuters)
- *Lawdragon* 500 Leading Lawyers in America ([2020](#), [2021](#), [2022](#), [2023](#), [2024](#))
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers ([2019](#), [2020](#), [2021](#), [2022](#), [2023](#), [2024](#))
- 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

Clerkships

Honorable David M. Ebel, United States Court of Appeals for the Tenth Circuit

Education

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

- Order of the Coif

Dartmouth College (B.A., cum laude)

Admissions

Bar Admissions

- Colorado
- California
- Illinois

Court Admissions

- United States Supreme Court
 - U.S. Court of Appeals for the Ninth Circuit
 - U.S. Court of Appeals for the Tenth Circuit
 - U.S. District Court for the Central District of Colorado
 - U.S. District Court for the Eastern District of Colorado
 - U.S. District Court for the Northern District of Colorado
 - U.S. District Court for the Southern District of Colorado
 - U.S. District Court for the Western District of Colorado
-
- Board of Directors, Western Center on Law & Poverty

*Leadership &
Professional
Memberships*



Seth Ard

Partner

New York

(212) 336-8330

sard@susmangodfrey.com

Overview

Seth Ard secures substantial legal victories for plaintiffs and defendants across the nation. Ard is a seasoned litigator who is often tapped to handle intricate, multi-party cases because of his ability to quickly understand large volumes of complex information and translate it all into compelling arguments to judges, juries and arbitration panels.

Ard has litigated cases across a myriad of practices areas including antitrust, securities, intellectual property, bankruptcy and employment. Likewise, Ard's client roster has spanned from some of the leading companies in the nation to smaller businesses and individuals. In recent years, Ard has focused a significant portion of his practice in the insurance space – frequently securing major wins for plaintiffs in class actions against insurance companies who have acted fraudulently.

LANDMARK WINS

Ard has secured nearly \$1 billion dollars in relief for plaintiffs in insurance class actions who allege their insurance companies fraudulently increased COI rates. For example, he previously represented 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.”** (Read the Court’s statement in full [here](#) and more in *The Deal*’s profile on the litigation [here](#)). Also, in *37 Besen Parkway, LLC v. John Hancock Life Insurance Company*, Ard secured a \$91.25 million settlement (before fees and expenses) for insurance policy owners against John Hancock Life Insurance Company. The Honorable Paul Gardephe described the settlement as a **“quite extraordinary . . . result achieved on behalf of the class.”** Ard most recently secured a \$307.5 million deal for a putative class of plaintiffs who challenged AXA’s 2016 hike of cost on insurance rates on hundreds of elderly insureds.

Serving as court-appointed lead counsel to a certified class of plaintiffs in *In Re: NFL Sunday Ticket Antitrust Litigation*, Ard and a team from Susman

Godfrey obtained a victory after 3 weeks of trial with a jury finding the NFL engaged in a conspiracy and violated the antitrust laws through its Sunday Ticket offering. During trial, Ard cross examined the former head of CBS Sports, Sean McManus, as well as the defense's lead expert (Read about his cross of McManus on [NBC Sports](#)). The jury awarded \$4.7 billion damages, which the trial court vacated on a post-trial motion, while leaving untouched the jury's determination that the NFL violated two different provisions of the Sherman Act. Proceedings in the matter are ongoing.

In *In re LIBOR-Based Financial Instruments Litigation*, Ard has secured, to date, \$781 million in settlements for plaintiffs who allege several major investment banks were involved in setting LIBOR and manipulating it to their advantage. Since that time, a multitude of lawsuits have been consolidated as part of a multidistrict litigation proceeding in which Ard is playing a leading role.

On the defense side, in *Jefferies v. NASDAQ*, Ard successfully defended NASDAQ and its affiliate IDCG in an arbitration where the plaintiff 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, at which Ard put on NASDAQ's expert and crossed Jefferies' expert, the Panel issued a decision denying all of Jefferies' claims and awarding no damages.

Ard also obtained a complete defense victory on summary judgment in trademark infringement dispute, *GMA v. Dorfman*. Prior to hiring Ard, Dorfman had suffered significant discovery sanctions that threatened to undermine his defense. Once hired, Ard and his team overturned those sanctions, reopened discovery and obtained key admissions, and later won the case on summary judgment.

BACKGROUND

Before joining the firm, 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.

Since 2019, Ard has been named one of the country's Leading Plaintiff Financial Lawyers by Lawdragon. He has also repeatedly been recognized as a "Rising Star" in New York by *Super Lawyers* magazine.

Notable Representations

Insurance

- ***In re AXA Equitable Life Insurance Company COI Litigation (S.D.N.Y)***
Secured a \$307.5 million deal for a putative class of plaintiffs who challenged AXA's 2016 hike of cost on insurance rates on hundreds of

elderly insureds, claiming AXA unfairly increased the cost of insurance for certain flexible-premium universal life insurance policies.

- ***Leonard et al. v. John Hancock Life Insurance Co. of New York et al.* (S.D.N.Y.)** Secured a settlement valued at \$143 million, before fees and expenses, including a cash fund of over \$93 million and an agreement with John Hancock Life Insurance Company not to impose a higher cost of insurance rate scale for 5 years (even in the face of a worldwide pandemic), on behalf of a class of approximately 1,200 policyholders who alleged that Hancock breached the terms of their respective life insurance policies and overcharged them for life insurance. When granting final approval, the Court held that the settlement provided an “**absolutely extraordinary**” recovery rate for the class, and lauded Susman Godfrey’s “**extraordinary work.**”
- ***Helen Hanks v. Voya Retirement Insurance and Annuity Company* (S.D.N.Y.)** Negotiated settlement worth \$118 million, before fees and expenses, including a cash fund of over \$92 million and an agreement by Voya not to impose a higher rate scale for 5 years, on behalf of a certified class of 46,000+ policyholders over allegations that Voya improperly raised cost-of-insurance charges. Over the course of litigation, the team from Susman Godfrey secured certification of the nationwide class and defeated summary judgment. The Court recognized the quality of the work, stating: “**I want to commend you all for the work done on the pretrial order and motions in limine . . . I’m very happy to have you as lawyers appearing before me.**”
- ***37 Bensen Parkway v. John Hancock Life Insurance Company* (S.D.N.Y.)** Secured a \$91.25 million settlement all-cash, non-reversionary settlement (before fees and expenses) for insurance policy owners against John Hancock Life Insurance Company. The Honorable Paul Gardephe described the settlement as a “**quite extraordinary . . . result achieved on behalf of the class.**”
- ***PHT Holdings II LLC v. North American Company for Life and Health Insurance* (S.D. Iowa).** Secured a settlement of \$59 million for plaintiffs in an insurance breach of contract class action against North American Insurance Company.
- ***Fleisher et al. v. Phoenix Life Insurance Company* (S.D.N.Y.)** Served as lead counsel to plaintiffs in a case that challenged Phoenix Life Insurance Company’s and PHL Variable Insurance Company’s decision to raise the cost of insurance (“COI”) nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final pretrial conference: a \$48.5 million cash fund (\$34 million after fees and expenses), a COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval

hearing, the Court concluded: “I want to say publicly that I think this is an excellent settlement. I think this is a superb—this may be the best settlement pound for pound for the class that I’ve ever seen.”

- **Advance Trust & Life Escrow Services, LTA v. ReliaStar Life Insurance Co. (D. Minn.)** Represented a class of universal life insurance policyholders against ReliaStar Life Insurance Company stemming from ReliaStar’s failure to charge cost of insurance rates in accordance with the terms of its policies. Ard and his team secured a \$39 million non-reversionary settlement fund, plus additional non-monetary benefits for the class.
- **PHT Holding I LLC v. Security Life of Denver Insurance Company (D. Colo.)** Represented a class of life insurance policyholders in a breach-of-contract suit against Security Life of Denver challenging increases to cost-of-insurance charges. Ard’s team secured class certification of a 31-state class on a state law breach-of-contract claim. On the eve of trial, the parties settled for \$30 million (before fees and expenses), a settlement the Court subsequently approved.
- **Brighton Trustees, LLC et al., v. Genworth Life and Annuity Insurance Company (E.D. Va.)** Secured class certification, a settlement valued at \$25 million, before fees and expenses, and a promise by Genworth not to adopt an increase rate scale for 7 years, even in the face of a worldwide pandemic or any new one to come.
- **Lincoln Life v. LPC Holdings (Supreme Court Onandaga, New York)** 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.

Intellectual Property

- **Globus Medical v. Bonutti Skeletal (E.D. Pa.)** Represents Globus Medical in patent litigation against Bonutti Skeletal. Ard successfully argued a partial motion to dismiss the patent complaint, defeating claims of indirect infringement, vicarious liability and punitive damages.
- **Sentius v. Microsoft (N.D. Cal.)** Represented Sentius against Microsoft in a patent infringement suit involving automated database technology. Pachman handled the Daubert motions in this matter. The case settled on highly favorable terms within 24 hours of the court issuing orders on those motions.
- **Dorfman Pacific (S.D.N.Y.)** Obtained a complete defense victory on summary judgment in a trademark infringement dispute before Judge Forrest. Ard was hired after the close of discovery and after our client had suffered significant discovery sanctions that threatened to undermine its defense. His team was 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).

Securities

- ***In re Municipal Derivatives Litigation (S.D.N.Y.)*** Served as co-lead counsel to a class of municipalities suing 10 large banks and broker for rigging municipal auctions. A total of over \$220 million dollars in settlements were achieved on behalf of the class (net fees and expenses not yet determined).
 - ***Jefferies v. NASDAQ Arbitration (New York)*** Defended NASDAQ and its affiliate IDCG in an arbitration where the plaintiff 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, at which Ard put on NASDAQ's expert and crossed Jefferies' expert, the Panel issued a decision 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.
-

Other High Stakes Commercial Litigation

- ***In re: National Football League's Sunday Ticket Antitrust Litigation (C.D. Cal.)*** Serving as trial counsel to a certified class of plaintiffs, obtained a victory after 3 weeks of trial with a jury finding the NFL engaged in a conspiracy and violated the antitrust laws through its Sunday Ticket offering. The jury awarded \$4.7 billion damages, which the trial court vacated on a post-trial motion, while leaving untouched the jury's determination that the NFL violated two different provisions of the Sherman Act. Proceedings in the matter are ongoing. During trial, Ard cross examined the former head of CBS Sports, Sean McManus, as well as the defense's lead expert. Read about his cross of McManus on [NBC Sports](#).
- ***City of Baltimore Opioid Litigation***. Representing the Mayor and City Council of Baltimore in fraud and public tort litigation against the manufacturers and distributors of opioids, whose conduct has devastated cities, counties, and states nationwide. So far Ard's team has secured a historic \$322.5 million in settlement collectively from with [Allergan Finance, LLC](#), [Walgreens](#), [Cardinal Health](#), and [CVS](#) to resolve the City's claims. [Read more](#).
- ***Washington Mutual Bankruptcy (Bkrcty. Del.)*** Retained to represent the Equity Committee in the Washington Mutual bankruptcy. In two multi-week plan-confirmation hearings, Ard opposed plans that would have wiped out shareholders. Although both plans were supported by the debtor and by all major creditors, the Court rejected both plans after the trials (both in which Ard examined and cross-examined key witnesses). Ard and his team then negotiated terms of a new plan that distributed over

\$100 million in value to shareholders, including 90% ownership of the reorganized debtor.

- **Audet v. Garza (D. Ct)** Serving as lead counsel for a certified class of thousands of investors in GAW Mining LLC who allege that the cryptocurrency mining venture in which they invested was in fact a Ponzi scheme.

Honors & Distinctions

- *Lawdragon* 500 Leading Litigator (2022, 2023)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers (2019, 2020, 2021 2022, 2023, 2024)
- New York Super Lawyer (2022, 2023, Thomson Reuters)
- New York Rising Star (2013-2018, Thomson Reuters)
- Teaching and Research Assistant for Professor Arthur Miller (Harvard Law School)
- Teaching Assistant for Professor Jon Hanson (Harvard Law School)
- Editorial Board, Harvard Civil Rights/Civil Liberties Law Review

Clerkships

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

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

Education

Harvard Law School (J.D., magna cum laude, 2007)

Northwestern University (M.A., A.B.D., Philosophy, , 2003)

Michigan State University (B.A., Philosophy & French Literature, first in class, Highest Honors, 1997)

Admissions

Bar Admissions

- New York

Court Admissions

- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the District of Colorado

SUSMAN GODFREY

- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- United States National Court, Judicial Panel on Multidistrict Litigation

Languages

French



Ryan Kirkpatrick

Partner

New York

(212) 336-8330

rkirkpatrick@susmangodfrey.com

Overview

Ryan Kirkpatrick has a proven track record of successfully managing and directing a wide variety of multinational, complex legal matters. Ryan has obtained or negotiated billions of dollars in judgments, settlements, and transactions. Given his work on both the plaintiff and defense sides, Ryan possesses 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 mitigating the financial and operational costs of litigation to a business.

Ryan has been interviewed and quoted by numerous media outlets, including the *Wall Street Journal*, *Bloomberg News*, *Vanity Fair*, the *Los Angeles Times*, ESPN, the *National Law Journal*, the *Associated Press*, KABC, and KTLA.

LANDMARK LITIGATION

Ryan focuses his work on large-scale complex class actions and professional negligence and fiduciary claims litigation.

Insurance Class Actions

Ryan has is at the forefront of litigation that actively protects life insurance policy holders in breach of contract litigation against some of the country's largest insurers. **He has secured over \$700 million in relief for plaintiffs in class actions against leading insurance companies** including PHL Variable Life Insurance Company, Genworth, Voya, Lincoln, ReliaStar, Security Life of Denver, American General, North American, and John Hancock Life Insurance Company. Ryan is currently representing policyholders in a new wave of cost of insurance ("COI") litigation arising from the Tax Cuts & Jobs Act of 2017.

Professional Negligence and Malpractice

Ryan served as lead counsel for John Fish, the Chairman and CEO of Suffolk Construction, in a case the Superior Court of Massachusetts against the law firm of Goulston & Storrs over allegations of legal malpractice, breach of fiduciary duty, and willful violations of Massachusetts General Laws Chapter 93A, arising out of a failed billion-dollar real estate development project in Boston's Back Bay. Ryan obtained a highly favorable settlement after prevailing on motions to compel discovery and obtaining critical liability evidence. [Read more.](#)

Ryan also served as counsel in a confidential legal malpractice matter that settled before a complaint was ever filed for an amount that was at the time one of the highest legal malpractice payouts in United States history.

Ryan is now serving as counsel to the Special Litigation Committee (SLC) for the Trust for Advised Portfolios in investigating professional negligence claims relating to the Infinity Q Diversified Alpha Fund.

BACKGROUND

Ryan rejoined Susman Godfrey in 2017 after spending four years as General Counsel and Senior Managing Director of McCourt Global, an alternative asset management firm. 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 owned the LA Marathon and the French football club Olympique de Marseille, and co-owned Global Champions Tour and Global Champions League), and MG Capital (owner of a private direct lender and registered investment adviser).

While serving as Director of Global Champions League, Ryan initiated an EU competition law action against Fédération Equestre Internationale (FEI), 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 negotiated a highly favorable settlement with the FEI. 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 \$1 billion joint venture with affiliates of

Guggenheim Partners. Shortly following the sale, Mr. McCourt asked Ryan to help lead McCourt Global.

Since returning to the firm, Ryan has remained active in sports-related legal matters. Most recently, he represented John Bowlen, then-minority owner of the Denver Broncos, in connection with the \$4.65 million sale of the Denver Broncos.

Notable Representations

Insurance Class Actions

- ***Fleisher v. Phoenix Life Insurance (S.D.N.Y.)*** Served as counsel to plaintiffs in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final pretrial conference—less than two months before trial with terms that included: a \$48.5 million cash fund (\$34 million after fees and expenses), a COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded: "I want to say publicly that I think this is an excellent settlement. I think this is a superb—this may be the best settlement pound for pound for the class that I've ever seen."
- ***Helen Hanks v. Voya Retirement Insurance and Annuity Company (S.D.N.Y.)*** Negotiated settlement worth \$118 million, before fees and expenses, including a cash fund of over \$92 million and an agreement by Voya not to impose a higher rate scale for 5 years, on behalf of a certified class of 46,000+ policyholders over allegations that Voya improperly raised cost-of-insurance charges. Over the course of litigation, Ryan's team secured class certification and defeated summary judgment. The Court recognized the quality of the work, stating: "I want to commend you all for the work done on the pretrial order and motions in limine . . . I'm very happy to have you as lawyers appearing before me."
- ***PHT Holdings I v. Security Life Insurance Company of Denver (D. Colorado)*** Secured a \$30 million settlement for a class of insurance policy holders in a case that challenged Security Life of Denver's decision to raise cost of insurance rates on Strategic Accumulator policyholders. Net award after fees and expenses to be determined.
- ***Leonard v. John Hancock (S.D.N.Y.)*** Secured a \$92.5 million cash settlement (before fees and expenses), plus an additional \$50 million in non-monetary benefits, for Performance UL policyholders that were subjected to a rate increase in 2017. The cash amount, by itself, represented 91.25% of the alleged overcharges as of the date of the

settlement, and the settlement was praised by the Court as an “outstanding result” for the class.

- **North American COI (S.D. Iowa)** Secured a settlement on the eve of trial for benefits totaling \$61.3 million, including \$59 million in monetary payments to class members (before fees and expenses), in an insurance breach of contract class action on behalf of a class of policy holders against North American Life and Health Insurance Company.
- **Brighton Trustees et al. v. Genworth Life and Annuity Insurance Company (E.D. Va.)** Secured \$25 million settlement between Genworth Life & Annuity Insurance Company and a class of more than 13,400 plaintiffs alleging that policyholders of the company’s Gold and Gold II universal life insurance policies were subject to unlawful cost of insurance (COI) increases. This amount represented 163% of the alleged damages at the time of the settlement.
- **Advance Trust & Life Escrow Services, LTA v. ReliaStar Life Insurance Co. (D. Minn.)** After prevailing on motions for class certification and summary judgment, secured a \$47.7 million settlement, including a \$39 million cash fund (before fees and expenses), for a class of universal life insurance policyholders who alleged that ReliaStar failed to reduce COI rates to reflect mortality improvement.
- **LSIMC LLC v. American General Life Insurance Co.(C.D. Cal.)** Settled class action against American General for relief valued at \$55 million for a class of policy holders who alleged that American General was under-paying interest on their universal life policies.
- **James Kenney v. PHL Variable Insurance Company (S.D.N.Y.)** Secured \$43.5 million in settlement benefits, including a \$17.4 million cash fund (before fees and expenses), for a class of insurance policyholders who allege that PHL unlawfully raised insurance rates.

Professional Negligence and Malpractice

- **Fish v. Goulston & Storrs PC (Suffolk County Superior Court of Massachusetts)** Served as lead counsel to real estate developer John Fish in an action against Goulston & Storrs PC alleging legal malpractice, breach of fiduciary duty, and willful violations of Massachusetts General Laws Chapter 93A, arising out of a failed billion-dollar real estate development project in Boston’s Back Bay. Obtained a highly favorable settlement after prevailing on motions to compel discovery and obtaining critical liability evidence.
- **Securities Professional Negligence Litigation.** Currently serving as counsel to the Special Litigation Committee (SLC) for the Trust for Advised Portfolios in investigating professional negligence claims relating to the Infinity Q Diversified Alpha Fund.

- **Litigation on Behalf of Visium Asset Management.** Serve as lead counsel for Visium Asset Management in a case alleging that brokers aided and abetted a breach of fiduciary duties.
 - **Confidential Legal Malpractice Litigation.** Confidentially represented a prominent California family in legal malpractice claims related to trust and estates and tax structuring.
-

General Commercial Litigation

- **McCourt v. McCourt.** Represented Los Angeles Dodgers' owner, Frank McCourt and the Los Angeles Dodgers in divorce and bankruptcy proceeding that involved a dispute over ownership and control of the team. The case resulted in a favorable settlement of the divorce, sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount paid for a professional sports franchise—and the formation of a new joint venture with Guggenheim Partners affiliates.
- **PSI v. IBM (S.D.N.Y.).** Represented startup mainframe computer manufacturer Platform Solutions Inc. (PSI), in prosecuting multi-hundred-million-dollar antitrust claims against IBM and defending against patent infringement, copyright, and trade secrets claims brought by IBM. Ryan also coordinated PSI's prosecution of competition claims against IBM in the EU. The case settled on confidential terms. As part of the settlement, PSI was acquired by IBM.
- **Masimo v. Tyco (C.D. Cal.)** Obtained a \$45 million damages judgment on behalf of Masimo Corporation in an antitrust case against Tyco Healthcare involving pulse oximetry products. The judgment was upheld by the Ninth Circuit on appeal, with the client receiving a net recovery of approximately \$27 million.
- **McGuire v. Dendreon Corp. (W.D. Wash.)** Represented plaintiffs in a consolidated securities fraud class action cases filed in Seattle federal court. Plaintiffs alleged that defendants had made false and misleading statements about a new drug that the company planned to sell. The case was settled for \$16.5 million, with the class receiving approximately \$12 million.
- **Hedge Fund Litigation.** Successfully represented various hedge funds investing in "stranger-owned life insurance." Obtained a 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. Initiated a class action against an insurer relating to cost of insurance increases that resulted in a settlement valued at \$134 million.

Honors & Distinctions

- Top 500 Plaintiff Financial Lawyers, *Lawdragon* (2024)
- 500 Leading Litigators in America, *Lawdragon* (2022, 2023)

Clerkships

Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit, 2005-2006

Education

UCLA School of Law (J.D., Order of the Coif, 2005)

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

Admissions

Bar Admissions

- New York
 - California
 - District of Columbia
-

Court Admissions

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



Glenn Bridgman

Partner

Los Angeles

(310) 789-3100

gbridgman@susmangodfrey.com

Overview

Glenn Bridgman is a trusted resource, valued trial lawyer, and relied upon legal counsel to his clients and colleagues. Glenn, who has recovered over one billion dollars for his clients, represents both plaintiffs and defendants in high stakes commercial litigation, trying cases successfully across practice areas and industries such as insurance, antitrust, intellectual property, securities, malpractice and breach of contract.

Glenn has been recognized as a California Lawyer Attorney of the Year by *The Daily Journal*, a California Trailblazer by *The Recorder*, and a Rising Star in Insurance Litigation by *Law360*. He is also recognized as a Rising Star in General Commercial Litigation by *The Legal 500*.

WINS

In the insurance sector alone, Glenn has secured over \$500 million for policy holders in class actions against some of the country's largest insurers. In a six-month time span Glenn secured three settlements totaling in the hundreds of millions for plaintiffs in breach of contract class actions against insurance industry titans AXA, North American and American General Life Insurance Company. In *37 Besen Parkway v. John Hancock Life Insurance Co.*, Glenn helped secure a \$91.25 million settlement for insurance policy owners who alleged breach of contract against John Hancock Life Insurance Company. Judge Paul Gardephe described the settlement as a "*quite extraordinary*." Glenn was quoted about the case and the enormous result in an article by *Law360*. In addition, in *TVPX ARS, Inc. v. Genworth Life and Annuity Insurance Company*, Glenn took over the case when it was on appeal and persuaded the Eleventh Circuit Court of Appeals to vacate a district court's injunction restraining a breach of contract action against Genworth. The opinion can be read [here](#) and you can listen to Glenn's argument before the court [here](#) (start at 3:15).

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

- Defeated preliminary injunction and secured dismissal while defending Pzena LLC in a breach of contract action alleging breach of LLC agreement. [Read more](#) (subscription required);
- Successfully represented Jasmin Solar Pty Ltd. in its breach of contract action against a Chinese equipment supplier. After the solar company suffered defeats with prior counsel, Glenn took over the appeal at the Second Circuit. His briefing persuaded the appellate court to not only overturn the district court's previous order confirming the arbitration award, but also to vacate entire judgment against Jasmin;
- Defeated a trademark-infringement preliminary injunction sought against one of the world's largest technology companies;
- Litigated the LIBOR OTC class action currently pending in the Southern District of New York, which has already produced almost \$700 million in settlements (fees and expenses not yet determined) and a certified class against additional defendants;
- Secured favorable settlements on behalf of, among other clients, a large telecommunications company, lease-financing companies, and defrauded individual entrepreneurs in both federal and state court; and
- Represented automotive dealership software company in defense of antitrust claim seeking hundreds of millions of dollars of damages.

PRO BONO AND BACKGROUND

Glenn maintains an active pro bono practice. He currently represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The *Daily Journal* and *Law360* profiled Glenn and his colleagues for their work in this area. He was also awarded *Daily Journal's* prestigious California Lawyer Attorney of the Year award for his work on these timely and significant matters.

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

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

Notable Representations

Insurance Litigation

- ***In re AXA Equitable Life Insurance Company COI Litigation (S.D.N.Y.)*** Secured a \$307.5 million deal for a putative class of plaintiffs who challenged AXA's 2016 hike of cost on insurance rates on hundreds of elderly insureds, claiming AXA unfairly increased the cost of insurance for certain flexible-premium universal life insurance policies.
- ***37 Besen Parkway LLC v. John Hancock Life Insurance Co. (S.D.N.Y.)***. Secured a \$91.25 million all-cash, non-reversionary settlement for insurance policy owners in this certified class action against John Hancock Life Insurance Co. Glenn's efforts over the course of two and a half years led to a successful settlement at mediation before Judge Theodore H. Katz (Ret.). Glenn was quoted about the case and the enormous result for the Class in [this article](#) by *Law360*.
- ***PHT Holdings II LLC v. North American Company for Life and Health Insurance (S.D. Iowa)***. Resolved major insurance breach of contract class action on behalf of a class of policy holders against North American Insurance Company. The case was settled on the eve of trial.
- ***LSIMC LLC v. American General Life Insurance Co.*** Settled class action against Amgen for relief valued at \$55 million for a class of policy holders who alleged that Amgen increased their insurance rates against contractual terms (net amount after fees and expenses not yet determined).
- ***TVPX ARS, Inc., v. Genworth Life and Annuity Insurance Company (E.D. Va.)*** Represented life settlement fund, TVPX, in their breach of contract action against Genworth Insurance Company. After Genworth secured an injunction based on a 2004 settlement of a prior case, Glenn took over the appellate argument before the Eleventh Circuit Court of Appeals and persuaded the Eleventh Circuit to vacate the district court's injunction. The opinion can be read [here](#) and you can listen to Glenn's argument before the court [here](#) (start at 3:15).
- ***Helen Hanks on behalf of herself and all others similarly situated, vs. The Lincoln Life & Annuity Company of New York; Voya Retirement Insurance and Annuity Company (S.D.N.Y.)***. Litigated an insurance matter against Voya Life Insurance Company, which successfully resolved for relief valued at over \$92.5 million.

Business Disputes

- ***Rama Krishna et al. v. Pzena Investment Management Inc. (Delaware Court of Chancery)***. Defeated preliminary injunction and secured dismissal while defending Pzena LLC in a breach of contract action alleging breach of LLC agreement. [Read more](#) (subscription required).

- **Winthrop Resources v. Prospect ECHN.** Secured affirmative summary judgment in breach of a lease contract on behalf of longterm Susman Godfrey client Winthrop Resources Corporation. The Court rejected Prospect's motion for summary judgment seeking return of previously paid rent, and awarded Winthrop every penny it sought.
- **Jasmin Solar Pty Ltd. V. Chinese Equipment Supplier (2nd).** Represented Australian solar energy company, Jasmin Solar Pty Ltd., in their breach of contract action against a Chinese equipment supplier. After suffering defeats with prior counsel before both an arbitrator and the district court, Glenn and a team from Susman Godfrey took over the case at the Second Circuit Court of Appeals, and persuaded the Second Circuit to not only overturn the district court's previous order confirming arbitration award, but also to vacate entire judgment against Jasmin.
- **Malpractice Action.** Represented major construction entrepreneur in successfully-resolved malpractice action against his conflicted former law firm.
- **In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent.** Achieved a successful verdict invalidating a will on grounds of both undue influence and incapacity in this trust and estates case in Los Angeles Superior Court. At trial, Glenn examined witnesses and delivered closing argument on the successful undue influence claim.
- Currently representing chemical manufacturing company in confidential arbitration alleging that our customer breached their exclusive supply agreement.

Intellectual Property

- **Confidential Patent Infringement Matter on Behalf of Bitdefender.** Defended cybersecurity company, Bitdefender, in patent action filed by a well-known non-practicing entity. Glenn took the lead on the damages portion of the case and handled Daubert briefing seeking to exclude plaintiffs' entire damages case, briefing which shortly preceded a favorable settlement of the entire matter.
- **Confidential Trademark Dispute on behalf of Amazon.** Defended online retail giant, Amazon, in a complex trademark dispute. After defeating plaintiff's request for a preliminary injunction, the case settled confidentially on favorable terms.

Antitrust

- **In Re: LIBOR-Based Financial Instruments Antitrust Litigation (S.D.N.Y.).** Served as co-lead counsel to a certified class of 16 plaintiffs, including cities, pension funds and others known as the "OTC" investors, who sued a number of investment banks for conspiring with rivals to rig

LIBOR. The team has helped nearly \$700 million in settlements for the class against defendant banks. The class was certified in 2018 by the court, the only class in the coordinated LIBOR litigation to receive class certification.

- **Confidential Auto Dealership Antitrust Matter.** Represented automotive dealership software company in defense of antitrust claim seeking hundreds of millions of dollars of damages.

Honors & Distinctions

- Lawdragon 500X – The Next Generation of Leading Lawyers ([2023](#), [2024](#))
- [California Lawyer Attorney of the Year](#), *Daily Journal* (2023)
- Rising Star, Southern California ([2023](#), Thomson Reuters)
- [Rising Star in General Commercial Litigation](#), *The Legal 500* (2020)
- [Rising Star – Insurance](#), *Law360* (2019)
- [California Trailblazer](#), *The Recorder* (ALM, 2019)

Clerkships

Chief Judge Robert A. Katzmann, United States Court of Appeals for the Second Circuit, 2014-2015

Honorable Christina A. Snyder, United States District Court for the Central District of California, 2013-2014

Education

Dartmouth College (B.A., Physics & Philosophy, minor in Mathematics, magna cum laude, 2008)

Yale Law School (J.D., , 2013)

Admissions

Bar Admissions

- California

Leadership & Professional Memberships

- Fellow of the American Bar Association
- Los Angeles County Bar Association
- Association of Business Trial Lawyers Los Angeles



Zach Savage

Partner

New York

(212) 336-8330

zsavage@susmangodfrey.com

Overview

A former law clerk on the Supreme Court of the United States, Zach Savage is a sophisticated trial and appellate lawyer who represents clients in complex business disputes. Zach has practiced in a broad array of litigation areas including breach of contract, class actions, defamation, intellectual property, employment, and insurance litigation. His clients range from industry leaders such as General Electric and Walmart to smaller businesses and individuals in the financial, technology, and media sectors.

Several of his matters have attracted substantial media attention, including his representation of Dominion Voting Systems in its historic defamation suits against Fox News and others, as well as his representation of the former shareholders of Yukos Oil against the Russian Federation seeking to confirm \$50 billion in arbitral awards. Zach was named to Benchmark Litigation's 40 and Under Hot List in 2022 and 2023, and was identified as a Next Generation Leading Lawyer by *Lawdragon* in 2023

Some of Zach's notable results and representations are:

- ***Dominion Voting Systems Defamation Suits.*** Zach represented Dominion Voting Systems in its suit against Fox News (Del. Super.), which resulted in a historic \$787.5 million settlement. He also represents Dominion in other defamation suits, including one against Mike Lindell (D.D.C.). In the Lindell suit, Zach secured complete dismissal of Lindell's counterclaims against Dominion; you can read Zach's winning briefs here and here.
- ***Wren v. Transamerica Life Insurance Company (9th Circuit)*** Zach represents a putative class of life insurance policyholders in a breach-of-contract case against Transamerica Life Insurance Company, challenging its failure to pay certain policy benefits. After the district court dismissed the claims on summary judgment, Zach briefed and argued the case at

the Ninth Circuit, obtaining a [full reversal](#). You can read Zach's winning briefs [here](#) and [here](#), and you can watch Zach's argument [here](#).

- ***Hulley Enterprises v. Russian Federation (D.D.C.)*** Zach represents the former investors in Russian oil and gas company Yukos, seeking confirmation of a \$50 billion arbitral award against the Russian Federation. Zach played a key role in briefing the Russian Federation's sovereign immunity motion to dismiss, which the District Court denied.
- ***PHT Holding I LLC v. Security Life of Denver Insurance Company (D. Colo.)*** Zach represented a class of life insurance policyholders in a breach-of-contract suit against Security Life of Denver challenging increases to cost-of-insurance charges. Zach secured class certification of a 31-state class on a state law breach-of-contract claim. On the eve of trial, the parties settled for \$30 million, a settlement the Court subsequently approved.
- ***GE v. Nebraska Investment Finance Authority (S.D.N.Y.)*** Won breach-of-contract jury verdict for General Electric, obtaining relief valued at over \$100 million. The suit, against the Nebraska Investment Finance Authority, concerned above-market interest payments under the parties' investment contracts. On appeal, the Second Circuit affirmed the verdict.. See *GE Funding Capital Markets Services, Inc. v. Nebraska Investment Finance Authority*, 767 Fed. App'x 110 (2d Cir. 2019).
- ***Avi Dorfman v. Compass (New York Supreme Court, New York County)*** Represented Avi Dorfman in a co-founder dispute against real estate brokerage Compass. After seven years of litigation, the parties settled on confidential terms, with Compass acknowledging Dorfman's role as a founding team member.

Notable Representations

Business Disputes

- ***GE v. Nebraska Investment Finance Authority (S.D.N.Y.)*** Won breach-of-contract jury verdict for General Electric, obtaining relief valued at over \$100 million. The suit, against the Nebraska Investment Finance Authority, concerned above-market interest payments under the parties' investment contracts. On appeal, the Second Circuit affirmed the verdict.. See *GE Funding Capital Markets Services, Inc. v. Nebraska Investment Finance Authority*, 767 Fed. App'x 110 (2d Cir. 2019).
- ***Confidential Family Office Arbitration.*** Representing former employees of family office in dispute concerning alleged breaches restrictive covenants and fiduciary duties.
- ***Synergy Global Outsourcing LLC v. Hinduja Global Solutions, Inc.*** Defended U.S. subsidiary of publicly traded Indian company, Hinduja Global Solutions, Inc in breach-of-contract and fiduciary duty litigation in Texas state court.

- **Confidential Sports Agency Arbitration.** Representing sports agency in confidential arbitration concerning departure of agents to competing agency.
 - ***Innovius v. Sharp Corporation (Texas State Court, Dallas County)*** Represented patent licensing business, Innovius, in a lawsuit against Sharp Corporation concerning the breach of a multi-million dollar patent licensing agreement. The parties settled on confidential terms.
 - **Confidential Investment Fund Arbitration.** Represented individual against former investment fund employer in confidential arbitration concerning multi-million dollar partnership dispute. The parties settled on confidential terms.
-

Mass Actions

- ***Wren v. Transamerica Life Insurance Company (9th Circuit)*** Zach represents a putative class of life insurance policyholders in a breach-of-contract case against Transamerica Life Insurance Company, challenging its failure to pay certain policy benefits. After the district court dismissed the claims on summary judgment, Zach briefed and argued the case at the Ninth Circuit, obtaining a [full reversal](#). You can read Zach's winning briefs [here](#) and [here](#), and you can watch Zach's argument [here](#).
 - ***Leonard v. John Hancock (S.D.N.Y.)*** Secured final approval of a \$123 million settlement on behalf of a class of life insurance policyholders in breach-of-contract suit against John Hancock who challenged its increases to cost-of-insurance charges. [Read more](#)(subscription required).
 - ***Farneth v. Walmart (W.D. Pa.)*** Represented Walmart in a certified class action in Allegheny County, Pennsylvania challenging Walmart's collection of sales tax on certain in-store transactions.
 - ***PHT Holding I LLC v. Security Life of Denver (D. Colo.)*** Represented a class of life insurance policyholders in a breach-of-contract suit against Security Life of Denver challenging increases to cost-of-insurance charges. Zach secured class certification of a 31-state class on a state law breach-of-contract claim. On the eve of trial, the parties settled for \$30 million, a settlement the Court subsequently approved.
-

International Disputes

- ***Vertical Aviation v. Government of Trinidad & Tobago (S.D.N.Y.)*** Represented international aviation financing and leasing company Vertical Aviation in a breach-of-contract action against the Government of Trinidad & Tobago. The parties settled on confidential terms.
- ***U.S. v. Prevezon Holdings Ltd (2nd Cir.)*** Secured writ of mandamus from the Second Circuit on behalf of third-party hedge fund client

Hermitage Capital, disqualifying its former counsel from representing the defendant in a forfeiture action brought by the United States

Honors & Distinctions

- Lawdragon 500X – The Next Generation of Leading Lawyers ([2023](#), [2024](#))
- New York Rising Star, Super Lawyers ([2023](#), Thomson Reuters)
- 40 and Under Hot List, *Benchmark Litigation* ([2022](#), [2023](#), [2024](#), Euromoney)
- Managing Editor, *NYU Law Review*
- Order of the Coif
- Pomeroy Scholar
- Weinfeld Prize for Scholarship in Procedure and Courts
- Furman Academic Scholarship

Clerkships

Honorable Elena Kagan, Supreme Court of the United States

Honorable Anthony J. Scirica, United States Court of Appeals for the Third Circuit

Honorable Jesse M. Furman, United States District Court for the Southern District of New York

Education

NYU School of Law (J.D., magna cum laude, 2013)

Princeton University (A.B., summa cum laude, 2008)

Admissions

Bar Admissions

- New York
-

Court Admissions

- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Eastern District of Michigan
- U.S. District Court for the District of Columbia
- U.S. District Court for the District of Colorado
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Ninth Circuit

SUSMAN GODFREY

- U.S. Court of Appeals for the Tenth Circuit
- U.S. Court of Appeals for the District of Columbia Circuit



Nick Spear

Partner

Los Angeles

(310) 789-3100

nspear@susmangodfrey.com

Overview

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

Spear's successes have garnered significant recognition, including Lawdragon's 500 X – The Next Generation in 2023 and 2024, Southern California Super Lawyers Rising Star (Thomson Reuters) from 2021–2024, Rising Stars of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers and Litigation Trailblazers by *National Law Journal* (ALM). Due to his active pro bono practice, Spear was also named a California Lawyer Attorney of the Year by *The Daily Journal* in 2023 for his work on behalf of a tenants' rights organization.

LANDMARK LITIGATION

Spear is at the forefront of protecting policyholders from improper insurance charges by the nation's largest insurers and has secured nearly \$300 million to date in recoveries after taking on insurance companies such as Voya, North American, Genworth, Phoenix, Midland, Wilton Re, and John Hancock. For example, in *PHT Holding II LLC v. North American Company for Life and Health Insurance* (S.D. Iowa), Spear secured a settlement valued at \$59 million (before fees and expenses) in a certified class action lawsuit alleging that North American overcharged policy holders for their universal life insurance. Likewise, in *Helen Hanks v. Voya Retirement Insurance and Annuity Co.* (S.D.N.Y.), Spear secured a deal valued at over \$118 million

(before fees and expenses), which included a \$92.5 million non-reversionary cash settlement fund, for thousands of insurance policy owners against Voya Retirement Insurance and Annuity Company over allegations that Voya improperly raised policyholders' cost-of-insurance charges. In *37 Besen Parkway LLC v. John Hancock Life Insurance Co.* (S.D.N.Y.), Spear helped secure a \$91.25 million all-cash, non-reversionary settlement for insurance policy owners against John Hancock Life Insurance Co over allegations that Hancock breached the life insurance contracts of the class (before fees and expenses). Read more [here](#) (subscription required). Spear also argued on behalf of the appellee in *TVPX Ars, Inc. v. Genworth Life and Annuity Insurance Co.*, which is pending in the United States Court of Appeals for the Eleventh Circuit. That argument is available [here](#).

In *State of California v. Cellco Partnership* (Sac. Super. Ct.), Spear served as co-lead counsel to some of the largest government entities in California—including the University of California system, the California State University System, and the County of Los Angeles—in a ground-breaking California False Claims Act lawsuit against several major wireless carriers. The carriers were alleged to have fraudulently overbilled their government customers for wireless services by failing to provide contractually required “lowest cost available” service. Spear played a key role in the matter, leading efforts to pursue the offensive case against AT&T. In total, the four telecommunications giants—AT&T, Verizon, Sprint, and T-Mobile—agreed pay \$175 million to the government plaintiffs in California and Nevada, including over \$50 million from AT&T alone (net settlement after fees and expenses not yet determined). These record-setting settlements are among the largest of their kind in California. Read more in the [Los Angeles Times'](#) coverage.

Spear also tries cases at the cutting edges of law, technology, and science. In *Jane Doe v. MindGeek USA Inc.* (C.D. Cal.), Spear represents a certified class of plaintiffs bringing sex trafficking and child pornography claims against one of the world's largest pornography companies. Spear is also active in digital assets and cryptocurrency litigation, representing a certified class bringing unregistered securities claims in *In re Ripple Labs* (N.D. Cal.) and being appointed counsel for Lead Plaintiff in *Houghton v. Leshner, et al.* (N.D. Cal.), a putative unregistered securities class action. Spear also represents a major research university in trade secret litigation relating to protein degradation

PRO BONO & COMMUNITY LEADERSHIP

Spear maintains an robust pro bono practice. He represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The *Daily Journal* profiled Spear and his colleagues for their work in this area and named them a [California Lawyer Attorney of the Year](#) in 2023 for their critical work. Read more in the [San Francisco Chronicle](#) and [Law360](#) (subscription required).

Spear is also actively involved in his legal community. He served as President of the Barristers/Young Attorneys section of the Los Angeles County Bar Association (LACBA) from 2023–2024, representing the interests of thousands of early-career attorneys across Los Angeles County. Spear also served on LACBA’s Executive Committee and Board of Trustees from 2022–2024. He will serve as Past President of the Barristers/Young Attorneys section in 2024–2025 and will Co-Chair LACBA’s New Attorneys Reception. Spear is also actively involved in the Judge Paul R. Michel Intellectual Property American Inn of Court and previously served on the Advisory Board of the Western Center on Law and Poverty where he has helped raise thousands of dollars to support Western Center’s mission to protect California’s most vulnerable citizens.

Spear has spent more than a decade as a counselor for the American Legion California Boys & Girls State program, one of the nation’s premier governmental education programs for high school students, and currently serves as one of the program’s Legal and Elections counselors. Spear also sits on the Board of Directors of the California Boys & Girls State Foundation.

BACKGROUND

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

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

Honors & Distinctions

- Lawyer on the Fast Track, *The Recorder* (2024, ALM)
- Lawdragon 500X – The Next Generation of Leading Lawyers (2023, 2024)
- California Lawyer Attorney of the Year, *Daily Journal* (2023)
- Recommended Lawyer, Energy Litigation: Oil & Gas, The Legal 500 (2022, Legalease)
- Litigation Trailblazer, *National Law Journal’s Elite Trial Lawyers* (2021, ALM)
- Rising Star of the Plaintiffs Bar, *National Law Journal’s Elite Trial Lawyers* (2021, ALM)
- Southern California Rising Star, Super Lawyers (2021, 2022, 2023 Thomson Reuters)
- Comments Editor, *The University of Chicago Law Review*
- Order of the Coif, University of Chicago Law School

- Kirkland & Ellis Scholar, University of Chicago Law School
- The Ann Watson Barber Outstanding Service Award, University of Chicago Law School
- The Thomas R. Mulroy Prize for Excellence in Appellate Advocacy and Oral Argument, University of Chicago Law School
- Phi Beta Kappa, UCLA

Clerkships

Honorable Andrew D. Hurwitz, United States Court of Appeals for the Ninth Circuit

Honorable Philip S. Gutierrez, United States District Court for the Central District of California

Education

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

- Order of the Coif

The University of California, Los Angeles (A.B., Political Science, cum laude, 2009)

- College Honors, Phi Beta Kappa
-

Admissions

Bar Admissions

- California
-

Court Admissions

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

Leadership & Professional Memberships

- American Bar Association
- American Bar Foundation, Fellow
- Association of Business Trial Lawyers
- California Lawyers Association

SUSMAN GODFREY

- Federal Bar Association
- Judge Paul R. Michel Intellectual Property American Inn of Court
- Los Angeles County Bar Association, Executive Committee



Jeff Melsheimer

Associate

New York

(212) 336-8330

jmelsheimer@susmangodfrey.com

Overview

Jeff Melsheimer litigates high stakes legal matters across a variety of practice areas including intellectual property, qui tam, defamation, oil & gas, and complex contract and business disputes.

Jeff plays an integral role on every team he is on. He takes the lead on writing briefs, complaints, and Federal Circuit appeals. He took a patent case to trial in Texas Federal Court where he cross examined a witness and led efforts on the infringement portion of the case.

Jeff joined Susman Godfrey after clerking for the Honorable Alan D Albright of the U.S. District Court for the Western District of Texas. Jeff is a member of Judge Albright's Working Group, which collaborates to provide input on rules governing patent proceedings in Waco, Texas.

Jeff graduated *cum laude* and Order of the Coif from the University of Texas School of Law, where he served as an associate editor of the *Texas Law Review*. While in law school, Jeff was an active member of the Children's Rights Clinic, where he sat first chair as an attorney ad litem for children in termination of parental rights cases. During this time Jeff took one case to trial, delivering the opening statement and examining two witnesses. Before law school, Jeff graduated *cum laude* from the University of Notre Dame, where he majored in Political Science and minored in Business Economics.

Clerkships

Honorable Alan Albright, United States District Court for the Western District Of Texas

Education

susmangodfrey.com

The University of Texas School of Law (J.D., with Honors)

- Order of the Coif;
- Associate Editor, *Texas Law Review*

The University of Notre Dame (B.A., cum laude)

Admissions

Bar Admissions

- New York
 - Texas
-

Court Admissions

- U.S. District Court for the Western District of Texas

EXHIBIT 3



General Electric Capital Assurance
A GE Financial Assurance Company

Home Office
6610 West Broad Street
Richmond, VA 23230

A Stock Company

State of Domicile: Delaware
Service Center Address: P. O. Box 513, Lynchburg, VA 24505-0513

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

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

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

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

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

This Policy was signed on the Date of Issue.

President

Secretary

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable Through Age 99
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating – No Dividends

Insured	MARTIN B SILVERSTEIN	Policy Number	0001008660
Initial Specified Amount	\$200,000	Policy Date	OCTOBER 06, 2003
Initial Premium	\$1,194.00	Date of Issue	OCTOBER 23, 2003

43004900411505001008660102403



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

READ YOUR POLICY CAREFULLY.

TABLE OF CONTENTS

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

Pol No 0001008660

SCHEDULE *CONTINUED*

Surrender Charge

Policy Year	Surrender Charge
1	\$ 4,128.00
2	8,256.00
3	10,640.00
4	10,172.00
5	9,696.00
6	9,212.00
7	8,720.00
8	8,216.00
9	7,698.00
10	7,166.00
11	6,624.00
12	6,060.00
13	5,476.00
14	4,864.00
15	4,220.00
16	3,532.00
17	2,786.00
18	1,964.00
19	1,046.00
20 & later	0.00

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

S C H E D U L E *CONTINUED*

Table of Guaranteed
Maximum Monthly Risk Rates

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

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

43000000412105000/008660102403...



Pol No 0001008660

S C H E D U L E *CONTINUED*

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

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

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

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

GENERAL DEFINITIONS

Other specific definitions are included throughout this Policy.

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

Company - General Electric Capital Assurance 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.

43100262041220501008650102403...



POLICY DATE

The Policy Date is the date from which:

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

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

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

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

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

OWNER AND BENEFICIARY

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

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

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

CHANGE OF OWNER AND BENEFICIARY

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

ASSIGNMENT

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

MISSTATEMENT

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

SUICIDE

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

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

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

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

The Assumed Death Benefit is equal to:

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

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

INCONTESTABILITY

With respect to statements made in the application, this Policy is not contestable, except for nonpayment of premiums, 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.

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.

CONTINUATION OF INSURANCE

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

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

NONPARTICIPATING

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

PREMIUM PROVISIONS

PREMIUM PAYMENTS

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

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

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

GRACE PERIOD

Except as stated in the **Minimum Monthly Premium Guarantee** and **Designated Monthly Premium Guarantee** sections, if the net cash surrender value is not sufficient to cover the monthly deduction at the beginning of a policy month:

- the Company will deplete the net cash surrender value;
- coverage will continue until the beginning of the next policy month.

If the net cash surrender value is less than or equal to zero as of the beginning of the next policy month, a grace period of 31 days will be provided.

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. This policy will terminate without value if an amount sufficient to cover past due and current monthly deductions is not received during the grace period.

MINIMUM MONTHLY PREMIUM GUARANTEE

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

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

DESIGNATED MONTHLY PREMIUM GUARANTEE

This guarantee applies only if:

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

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

MINIMUM MONTHLY PREMIUMS AND DESIGNATED MONTHLY PREMIUMS

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

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

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

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

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

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

REFUND OF PREMIUM

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

REINSTATEMENT

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

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

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

(Continued)

4300020004124050001008660102403...



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

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

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

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

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

The Reinstatement Minimum Premium is an amount equal to:

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

The Reinstatement Designated Premium is an amount equal to:

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

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

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

INSURANCE PROVISIONS

DEATH BENEFIT

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

OPTION 1

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

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

OPTION 2

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

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

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

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

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

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

CHANGES IN DEATH BENEFIT OPTION

The Owner may file a Request for a change in the death benefit option. 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.

Interest will be paid on death proceeds not paid within 30 days after all of the items specified in the first paragraph on the face page of the Policy are received at the Service Center. Interest will be paid at the rate of 8% a year unless otherwise provided by settlement option.

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.

(Continued)

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.

The Designated Monthly Premium Balance is an amount equal to:

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

CHANGES IN SPECIFIED AMOUNT

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

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

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

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

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

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

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

NONFORFEITURE PROVISIONS

POLICY VALUE

The policy value on the Policy Date is equal to:

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

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

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

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

The policy value on any other day equals:

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

MONTHLY DEDUCTION

The monthly deduction for a policy month includes:

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

COST OF INSURANCE

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

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

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

The monthly cost of insurance rate per thousand equals:

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

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

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

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

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

MONTHLY RISK RATES

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

INTEREST RATE

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

CHANGES IN RATES, CHARGES AND FEES

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

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

CASH SURRENDER VALUE

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

SURRENDER CHARGE

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

SURRENDER AND NET CASH SURRENDER VALUE

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

The date of surrender will be one of the following:

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

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

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

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

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

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

PARTIAL WITHDRAWAL

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

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

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

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

Payment to the Owner may be deferred up to six months after Notice is received.

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.

On the policy anniversary when the Insured reaches attained age 100, this Policy will automatically be continued as a level amount of paid-up insurance provided that this Policy is in force and has a positive net cash surrender value.

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.

4300020041270500100550102402



BASIS OF COMPUTATIONS

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

POLICY LOANS

CASH LOAN

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

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

The loan value is equal to:

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

The loan balance at any time is equal to:

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

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

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

This amount will not be less than zero.

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

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

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

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

DEFERRAL

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

LOAN INTEREST AND REPAYMENT

The Schedule shows the Guaranteed Policy Loan Interest Rate(s) Charged.

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

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

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

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

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

4300020004128050001008660102403...



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. The Option 2 Table is based on the Annuity 2000 Table with interest at 2 ½%. 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.

SETTLEMENT OPTIONS (Continued)

OPTION 1 TABLE -- Fixed Period Installments

Installments for fixed number of years for each \$1,000 of proceeds

Terms of Installment Payments	Annual	Semi-Annual	Quarterly	Monthly	Terms of Installment Payments	Annual	Semi-Annual	Quarterly	Monthly
Years					Years				
5	\$210.00	\$105.65	\$52.99	\$17.70	10	\$111.48	\$56.09	\$28.13	\$9.40
6	177.13	89.11	44.70	14.93	15	78.80	39.65	19.89	6.65
7	153.66	77.31	38.77	12.95	20	62.59	31.49	15.80	5.28
8	136.07	68.46	34.34	11.47	25	52.96	26.64	13.37	4.47
9	122.40	61.58	30.89	10.32	30	46.62	23.46	11.77	3.93

OPTION 2 TABLE -- Life Income with Installments Certain

Monthly installments are shown for each \$1,000 of proceeds.

Age is age nearest birthday when the first installment is payable.

Age	No. of Months Certain				Age	No. of Months Certain				Age	No. of Months Certain			
Male	60	120	180	240	Male	60	120	180	240	Male	60	120	180	240
10*	\$2.52	\$2.52	\$2.52	\$2.52	36	\$3.09	\$3.09	\$3.08	\$3.07	62	\$4.93	\$4.84	\$4.67	\$4.44
11	2.53	2.53	2.53	2.53	37	3.13	3.12	3.12	3.10	63	5.06	4.96	4.77	4.50
12	2.55	2.55	2.55	2.54	38	3.17	3.16	3.15	3.14	64	5.21	5.09	4.87	4.57
13	2.56	2.56	2.56	2.56	39	3.21	3.20	3.19	3.17	65	5.36	5.22	4.97	4.63
14	2.58	2.58	2.57	2.57	40	3.25	3.24	3.23	3.21	66	5.53	5.36	5.07	4.70
15	2.59	2.59	2.59	2.59	41	3.29	3.29	3.27	3.25	67	5.70	5.50	5.18	4.76
16	2.61	2.61	2.61	2.60	42	3.34	3.33	3.32	3.29	68	5.88	5.65	5.28	4.82
17	2.62	2.62	2.62	2.62	43	3.39	3.38	3.36	3.33	69	6.08	5.81	5.38	4.87
18	2.64	2.64	2.64	2.64	44	3.44	3.43	3.41	3.38	70	6.28	5.97	5.49	4.92
19	2.66	2.66	2.66	2.65	45	3.49	3.48	3.46	3.42	71	6.50	6.14	5.59	4.97
20	2.68	2.68	2.67	2.67	46	3.54	3.53	3.51	3.47	72	6.73	6.30	5.69	5.02
21	2.70	2.69	2.69	2.69	47	3.60	3.59	3.56	3.52	73	6.97	6.48	5.78	5.06
22	2.72	2.71	2.71	2.71	48	3.66	3.65	3.62	3.57	74	7.23	6.65	5.87	5.09
23	2.74	2.73	2.73	2.73	49	3.72	3.71	3.67	3.62	75	7.49	6.83	5.96	5.12
24	2.76	2.76	2.75	2.75	50	3.79	3.77	3.73	3.68	76	7.78	7.01	6.04	5.15
25	2.78	2.78	2.77	2.77	51	3.86	3.84	3.80	3.73	77	8.07	7.19	6.12	5.18
26	2.80	2.80	2.80	2.79	52	3.93	3.91	3.86	3.79	78	8.38	7.36	6.19	5.20
27	2.82	2.82	2.82	2.82	53	4.01	3.98	3.93	3.85	79	8.71	7.54	6.26	5.21
28	2.85	2.85	2.84	2.84	54	4.09	4.06	4.00	3.91	80	9.04	7.71	6.32	5.23
29	2.88	2.87	2.87	2.86	55	4.17	4.14	4.07	3.97	81	9.39	7.87	6.37	5.24
30	2.90	2.90	2.90	2.89	56	4.26	4.22	4.15	4.04	82	9.76	8.03	6.42	5.25
31	2.93	2.93	2.92	2.92	57	4.36	4.31	4.23	4.10	83	10.13	8.19	6.46	5.26
32	2.96	2.96	2.95	2.94	58	4.46	4.41	4.31	4.17	84	10.51	8.33	6.50	5.27
33	2.99	2.99	2.98	2.97	59	4.57	4.51	4.40	4.23	85	10.90	8.46	6.53	5.27
34	3.02	3.02	3.01	3.00	60	4.68	4.61	4.49	4.30	and				
35	3.05	3.05	3.05	3.04	61	4.80	4.72	4.58	4.37	over				

Age	No. of Months Certain				Age	No. of Months Certain				Age	No. of Months Certain			
Female	60	120	180	240	Female	60	120	180	240	Female	60	120	180	240
10*	\$2.46	\$2.46	\$2.46	\$2.46	36	\$2.95	\$2.95	\$2.95	\$2.94	62	\$4.52	\$4.47	\$4.38	\$4.24
11	2.47	2.47	2.47	2.47	37	2.98	2.98	2.98	2.97	63	4.63	4.58	4.47	4.31
12	2.49	2.49	2.48	2.48	38	3.02	3.01	3.01	3.00	64	4.75	4.69	4.57	4.38
13	2.50	2.50	2.50	2.50	39	3.05	3.05	3.04	3.03	65	4.88	4.81	4.67	4.46
14	2.51	2.51	2.51	2.51	40	3.09	3.08	3.08	3.07	66	5.02	4.94	4.78	4.53
15	2.52	2.52	2.52	2.52	41	3.12	3.12	3.11	3.10	67	5.17	5.07	4.88	4.60
16	2.54	2.54	2.54	2.54	42	3.16	3.16	3.15	3.14	68	5.33	5.21	4.99	4.68
17	2.55	2.55	2.55	2.55	43	3.20	3.20	3.19	3.18	69	5.50	5.36	5.11	4.74
18	2.57	2.57	2.57	2.56	44	3.24	3.24	3.23	3.22	70	5.69	5.52	5.22	4.81
19	2.58	2.58	2.58	2.58	45	3.29	3.28	3.27	3.26	71	5.88	5.68	5.34	4.87
20	2.60	2.60	2.60	2.60	46	3.33	3.33	3.32	3.30	72	6.09	5.86	5.45	4.93
21	2.62	2.61	2.61	2.61	47	3.38	3.38	3.36	3.34	73	6.32	6.04	5.57	4.98
22	2.63	2.63	2.63	2.63	48	3.43	3.43	3.41	3.39	74	6.56	6.22	5.68	5.03
23	2.65	2.65	2.65	2.65	49	3.49	3.48	3.46	3.44	75	6.82	6.42	5.79	5.07
24	2.67	2.67	2.67	2.66	50	3.54	3.53	3.52	3.49	76	7.09	6.61	5.89	5.11
25	2.69	2.69	2.68	2.68	51	3.60	3.59	3.57	3.54	77	7.39	6.81	5.99	5.14
26	2.71	2.71	2.70	2.70	52	3.67	3.65	3.63	3.59	78	7.70	7.02	6.08	5.17
27	2.73	2.73	2.72	2.72	53	3.73	3.72	3.69	3.65	79	8.03	7.22	6.16	5.19
28	2.75	2.75	2.75	2.74	54	3.80	3.78	3.75	3.70	80	8.38	7.42	6.24	5.21
29	2.77	2.77	2.77	2.76	55	3.87	3.85	3.82	3.76	81	8.76	7.62	6.31	5.23
30	2.79	2.79	2.79	2.79	56	3.95	3.93	3.89	3.83	82	9.15	7.81	6.37	5.24
31	2.82	2.82	2.81	2.81	57	4.03	4.01	3.96	3.89	83	9.55	7.99	6.42	5.25
32	2.84	2.84	2.84	2.83	58	4.12	4.09	4.04	3.96	84	9.98	8.17	6.46	5.26
33	2.87	2.87	2.86	2.86	59	4.21	4.18	4.12	4.02	85	10.41	8.33	6.50	5.27
34	2.90	2.89	2.89	2.89	60	4.30	4.27	4.20	4.09	and				
35	2.92	2.92	2.92	2.91	61	4.41	4.36	4.29	4.16	over				

* Applies to younger ages

FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE POLICY
Adjustable Death Benefit
Flexible Premiums Payable Through Age 99
Benefits Vary with Current Risk Rates and Current Interest Rates
Nonparticipating – No Dividends



General Electric Capital Assurance Company

A GE Financial Assurance Company
Home Office: 6610 West Broad Street Richmond, VA 23230
Service Center: P O Box 461 Lynchburg, VA 24505-0461
A Stock Company

NOTICE TO POLICYHOLDERS

If you need to contact someone about this life insurance contract, please contact your insurance agent. If you need further information or have a dispute about a premium, claim or other aspect of your coverage, you may contact the company at the following address and telephone number.

General Electric Capital Assurance Company
Policy Services Department
P.O. Box 513
Lynchburg, Virginia 24505-0513
Telephone: 1-800-221-9543

If you need further assistance, the Florida Insurance Department has an insurance consumer hotline which you may contact. The toll-free number is: 1-800-342-2762.

Secretary

430002004129050001008865102403





ACCELERATED DEATH BENEFIT RIDER

General Electric Capital Assurance Company
Administrative Office
Lynchburg, Virginia
A Stock Company

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 administrative 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.

4300020004130050001008650102403...



ELIGIBILITY

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

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

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

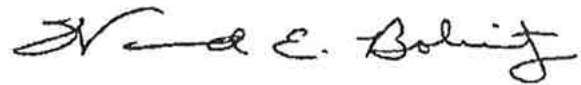
This Rider will terminate on the earliest of the following dates:

- 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 administrative office.

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



President



Secretary

43002004:13105000-008680 102403





FRAUD WARNINGS

First Colony Life Insurance Company (FCL) • General Electric Capital Assurance Company (GECA) • GE Life and Annuity Assurance Company (GE Life & Annuity)
Administrative Office
700 Main Street • P.O. Box 461 • Lynchburg, VA 24505-0461

ARKANSAS and LOUISIANA

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information on an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

COLORADO

It is unlawful to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or insurance agent who knowingly provides false, incomplete, or misleading information for the purpose of defrauding or attempting to defraud a policyholder or claimant with regard to an insurance settlement or award shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

DISTRICT OF COLUMBIA

It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

FLORIDA

Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

KENTUCKY

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

MAINE

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

NEW JERSEY

Any person who includes any false or misleading information on an application for an insurance policy, is subject to criminal and civil penalties.

NEW MEXICO

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information on an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

OHIO

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

PENNSYLVANIA

Any person who, knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

430002004132650001008660102403...





General Electric Capital Assurance Company

A GE Financial Assurance Company
Home Office: 6610 West Broad Street • Richmond, VA 23230
Service Center: P. O. Box 461 • Lynchburg, VA 24505-0461
A Stock Company

ENDORSEMENT

Insured MARTIN B SILVERSTEIN

POLICY NUMBER 0001008660

Incontestability

Date OCTOBER 06, 2003

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

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

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

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

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

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

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

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

The Assumed Death Benefit is equal to:

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

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

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

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

Secretary

FIRST COLONY LIFE INSURANCE COMPANY

Lynchburg, Virginia



POLICY CHANGE FORM – PART II (Supplement to Application)

INSURED: Name Martin B Silverstein Date of Birth [REDACTED] Soc. Sec. No. [REDACTED]
 (Print)

OWNER: Name Martin B Silverstein Date of Birth _____ Policy Number 2092586
 (Print)

Address [REDACTED] Daytime Phone _____

I ELECT THE FOLLOWING POLICY CHANGES:

1. CONVERSION/EXCHANGE

Convert or exchange All \$ 200,000.00 of attached basic policy term rider.
 Issue a new policy or rider as follows:
 Plan and amount: GE Gold - option 1
 Automatic Premium Loan Provision: If available on the new policy, provision will be effective unless "No" is checked. No Yes
 The balance of the original policy/rider is to be: continued discontinued
 The original policy was lost or destroyed. Issue a new policy or rider as specified above.

2. CHANGE in OPTION (if available)

Change the death benefit option to Option 1
 Change the death benefit option to Option 2

3. CHANGE in AMOUNT

Decrease Specified Amount or Amount of Insurance to \$ _____
 Increase Specified Amount or Amount of Insurance to \$ _____

4. DELETION or ADDITION of BENEFITS

Delete <input type="checkbox"/> Waiver	Add <input type="checkbox"/> Waiver
<input type="checkbox"/> Accidental Death Benefit	(if available) <input type="checkbox"/> Accidental Death Benefit
<input type="checkbox"/> Children's Level Term Rider	<input type="checkbox"/> Children's Level Term Rider

5. REINSTATEMENT

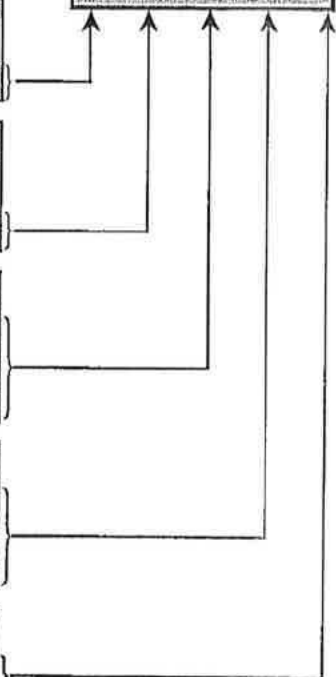
Reinstate the policy. I understand that, with regard to answers to Item 7 Evidence of Insurability, the policy is not contestable after it has been in force during the insured's lifetime for 2 years from the date of reinstatement.

6. REISSUE and OTHER REQUESTS*

*Other requests such as for rate reduction.

2092586

For these changes the Insured must complete Item 7 (Evidence of Insurability) and sign the Authorization.



REPLACEMENT OF EXISTING INSURANCE

Will you, or are you likely to, replace or change existing insurance or annuity in any company or society with this change to your policy? Yes No
 (If "Yes," added forms may be required for your review and signature.)

Signed at _____ Date _____
 City and State (month, day, year)

Owner X _____ SSN/Tax I.D. # _____
 (Signature)

Insured X _____ Other Required Signature X _____
 (Signature) (If applicable)



First Colony Life Insurance Company

No. 40020415
2092586

RECEIVED FEB 15 1994

APPLICATION - PART I
PLEASE PRINT

P.O. Box 320
Lynchburg, Virginia 24505-0320

P.O. Box 4114
Woodland Hills, California 91365-4114

SECTION A PROPOSED INSURED

1. Full Name (Include maiden name in parentheses.) <input checked="" type="checkbox"/> M <input type="checkbox"/> F		2. Date of Birth Mo. Day Yr.	3. State of Birth	4. Social Security Number
MARTIN B. SILVERSTEIN				
5. Home Address: Give No., Street, City, State, and Zip Code.				How Long? 6 MO
6. Previous Addresses within past 5 years			7. Driver's License No. and State of Issue	
8. Phone Numbers Home () Work	9. Marital Status	10. Citizenship	11. Occupation (Include duties.) ORTHOPEDIC SURGEON	
12. Employer's Name and Address				How Long? 15 YRS

SECTION B OWNER

(Complete only if the Owner is to be other than the Proposed Insured.)

13. Owner is <input type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Trust				
14. Full Name (If trust, give full name of trust and date of trust agreement.)			15. Date of Birth Mo. Day Yr.	16. SSN or Tax ID No.
17. Address: Give No., Street, City, State, and Zip Code.			18. Relationship to Proposed Insured	

SECTION C INSURANCE APPLIED FOR

19. Amount and Plan of Insurance Amount \$ 500,000 Plan Select 10		20. Death Benefit Option (if available with Plan) <input type="checkbox"/> Option 1: Spec. Amt. (SA) includes value <input type="checkbox"/> Option 2: SA plus value <input type="checkbox"/> Level <input type="checkbox"/> Programmed Increases (if available) <input type="checkbox"/> Simple ___% <input type="checkbox"/> Compound ___%	
21. If a policy is issued, in which state is it to be delivered? FL		22. If our underwriting indicates that we cannot give you the lowest rate for the Plan of Insurance, will you consider a higher rate? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Additional Benefits (if available)			
23. <input type="checkbox"/> Waiver Rider <input type="checkbox"/> Child Rider (Complete supplemental application.) <input type="checkbox"/> Other (description and amount)		Units (up to 5 units)	
Premiums			
24. Amount Remitted with Conditional Receipt (with same number as the Application - Part I) \$ None		25. Frequency of Premium Payment: <input type="checkbox"/> Single <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/> Quarterly <input type="checkbox"/> Pre-Arranged Withdrawal (PAW) (Complete attached PAW Authorization.)	
26. Automatic Premium Loan: <input type="checkbox"/> Yes <input type="checkbox"/> No (If available, APL will be effective unless "No" is checked.)			
27. If premium notices are to be sent to someone other than the Owner, give full name, address, and relationship to Owner below.			

PAW



FLAB3

SECTION D BENEFICIARY

28. Primary: (Full name)	Address	Birthdate	SSN or TIN	Rel. to Prop. Ins.	% Share
Molly McCabe Silvrstein	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	100

29. Contingent: (Full name)	Address	Birthdate	SSN or TIN	Rel. to Prop. Ins.	% Share

If percentage shares are not given, they will be equal. Give loan number(s) if applicable: [REDACTED]

SECTION E OTHER INSURANCE

30. List all of the Proposed Insured's existing life and disability insurance. If None, state NONE.

Full Name of Company	Amount	ADB	Waiver	Issue Yr.	Name of Beneficiary
Mutual Life N.Y.	\$ 1,000,000	\$	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1986	Estate of Molly Silvrstein
	\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No		

- 31. Will you, or are you likely to, replace, end, or change existing insurance or annuity in any company or society with the insurance for which you are applying? (If "Yes," the broker may be required to provide additional forms for your review and signature.) Yes No
- 32. Have you ever applied for life, health, or disability insurance and been turned down, asked to pay a higher premium, or issued a reduced face amount? (If "Yes," explain in the Remarks section.) Yes No
- 33. Do you have an application or informal inquiry for life, health, or disability insurance pending in any other company or society, or have you ever withdrawn such application or informal inquiry? (If "Yes," explain in the Remarks section.) Yes No

SECTION F TOBACCO USE

- 34. a. Have you ever used any kind of tobacco or any other product containing nicotine? [REDACTED]
- b. If "Yes," has use been discontinued? If use has been discontinued, give date it was discontinued and reason(s) below.
[REDACTED]

SECTION G GENERAL QUESTIONS

(Explain all "Yes" answers in the Remarks section.)

- 35. Have you ever requested or received a Worker's Compensation, Social Security, or disability income payment? [REDACTED]
- 36. Have you ever been convicted of a misdemeanor (other than a minor traffic violation) or a felony? [REDACTED]
- 37. In the past 5 years, have you had your driver's license suspended or had 3 or more moving violations or accidents? [REDACTED]
- 38. In the past 5 years, have you been convicted of, or plead guilty or no contest to, driving under the influence of alcohol or drugs? [REDACTED]
- 39. Are you a member, or do you intend to become a member, of the armed forces, including the reserves? [REDACTED]

SECTION H FINANCIAL INFORMATION

If applying for business insurance, complete both parts of this Section. If applying for personal insurance, complete the PERSONAL section only if applying for \$300,000 or more or if the Proposed Insured's total amount of existing insurance exceeds \$500,000; do not complete the BUSINESS section. Explain the answer to Question 47 and a "Yes" answer to Questions 42 and 48 in the Remarks section.

PERSONAL	40. Purpose: <input type="checkbox"/> Survivor Needs <input type="checkbox"/> Estate Planning <input type="checkbox"/> Mortgage Protection <input checked="" type="checkbox"/> Other [REDACTED]
	41. Personal finances: Approximate Yearly Income [REDACTED] Estimated Net Worth [REDACTED]
	42. Within the past 5 years have you filed for bankruptcy or had any liens or judgements filed against you? [REDACTED]

BUSINESS	43. Purpose: <input type="checkbox"/> Buy-Sell <input type="checkbox"/> Split Dollar <input type="checkbox"/> Deferred Comp. <input type="checkbox"/> Keyman <input type="checkbox"/> Other [REDACTED]
	44. Business finances: Total assets \$ [REDACTED] Total liabilities \$ [REDACTED] Net Worth \$ [REDACTED]
	45. Percentage of business you own [REDACTED] % 46. Amount of business insurance in force on your life \$ [REDACTED]
	47. Is business insurance applied for or in force on other key members of the business? <input type="checkbox"/> Yes <input type="checkbox"/> No
	48. Within the past 5 years has the business filed for bankruptcy or had any liens or judgements filed against it? <input type="checkbox"/> Yes <input type="checkbox"/> No



SECTION I OTHER ACTIVITIES

- 49. Have you in the past 5 years flown, or do you intend to fly, other than as a passenger? (If "Yes," complete Aviation Supplement.)
- 50. Have you in the past 2 years engaged in, or do you expect to engage in, any hazardous activities or sports such as hang gliding, hot-air ballooning, ultra-light flying, mountain or rock climbing, motor vehicle or boat racing, or scuba or sky diving? (If "Yes," complete Hazardous Activities Supplement.)
- 51. Have you in the past 5 years traveled or resided, or do you intend to travel or reside, outside of the continental United States for more than 6 consecutive weeks? (If "Yes," explain in the Remarks section.)

REMARKS

(Use this section for explanations and special requests. Identify applicable Question numbers.)

33. also applying for 1,000,000 1st Colony Life policy to replace existing policy with Mutual of NY



AUTHORIZATION TO COLLECT AND DISCLOSE INFORMATION

Source Each of the following may be a source of information: care provider; treatment facility; insurer; reinsurer; MIB; consumer reporting agency; financial source; and employer. **Care provider** includes: physicians; chiropractors; physical therapists; psychologists; and drug, alcohol, or mental health counselors. **Treatment facility** includes: hospitals; clinics; drug or alcohol treatment or consultation facilities; nursing homes; mental health facilities; ambulatory care centers; and those facilities or offices staffed or run by care providers.

Information Information means facts about my: mental or physical health; other insurance coverage; hazardous activities; character; general reputation; mode of living; finances; vocation; and other personal traits.

I understand that the following parties may need to collect information in regard to proposed coverage: First Colony Life Insurance Company (the Company) and its reinsurers; the Medical Information Bureau, Inc. (MIB); a consumer reporting agency; and all persons authorized to represent these parties. I therefore authorize each source to give information when this Authorization to Collect and Disclose Information (Authorization) is presented. A copy of this Authorization will be as valid as the original. The Company will use the information to decide if I am insurable. The broker may use it to help update and improve my insurance program. Those parties that may need to collect information may disclose the information they collect to: other insurers to which I have applied or may apply; reinsurers; MIB; or those persons who perform business, professional, or insurance tasks for them. They may disclose the information as allowed by law. MIB and consumer reporting agencies may disclose the information only as set forth in a contract with a member company or organization.

This Authorization will be valid for two years after the date I sign the Application - Part I. I understand that I or my authorized representative may ask to receive a copy of this Authorization. I have received the Notice to Proposed Insured.

These statements are made by the Proposed Insured or the person authorized to act on behalf of the Proposed Insured.

The application includes the Application - Parts I and II, as well as any forms the Company designates to be part of the application, that are attached to any policy delivered to the Owner. No broker is authorized to: (a) make or modify contracts; (b) waive any Company rights or requirements; or (c) waive any information the Company requests.

By signing below, I: (1) apply to the Company for coverage as indicated in this Application - Part I; (2) represent that the statements and answers given in this Application - Part I are true, complete, and correctly recorded to the best of my knowledge and belief; (3) agree to notify the Company of any changes to the statements and answers given in any part of the application before accepting delivery of any policy; and (4) agree that, except as provided in the Conditional Receipt, insurance will not begin unless a policy is delivered to the Owner and the first modal premium is paid while all persons proposed for insurance are living and are insurable as described in each part of the application.

x J. P. [Signature] Signed at Ft. Lauderdale, FL on 11/14/19
Signature of Proposed Insured City/State

Owner (If other than Proposed Insured) Signed at _____ on _____
City/State

By _____
Signature and Title (if applicable)
 Jeffrey Jones Signed at Ft. Lauderdale, FL on 11/14/19
Signature of Broker City/State

430002000-113405000 (08/26/2012) 102403





RECEIVED FEB 11 1994

APPLICATION - PART II MEDICAL HISTORY
PLEASE PRINT

P.O. Box 320
Lynchburg, Virginia 24505-0320

P.O. Box 4114
Woodland Hills, California 91365-4114

Full Name of Proposed Insured <i>MARTIN B. SILVERSTEIN</i>		Social Security No.
---	--	-------------------------

INSTRUCTIONS

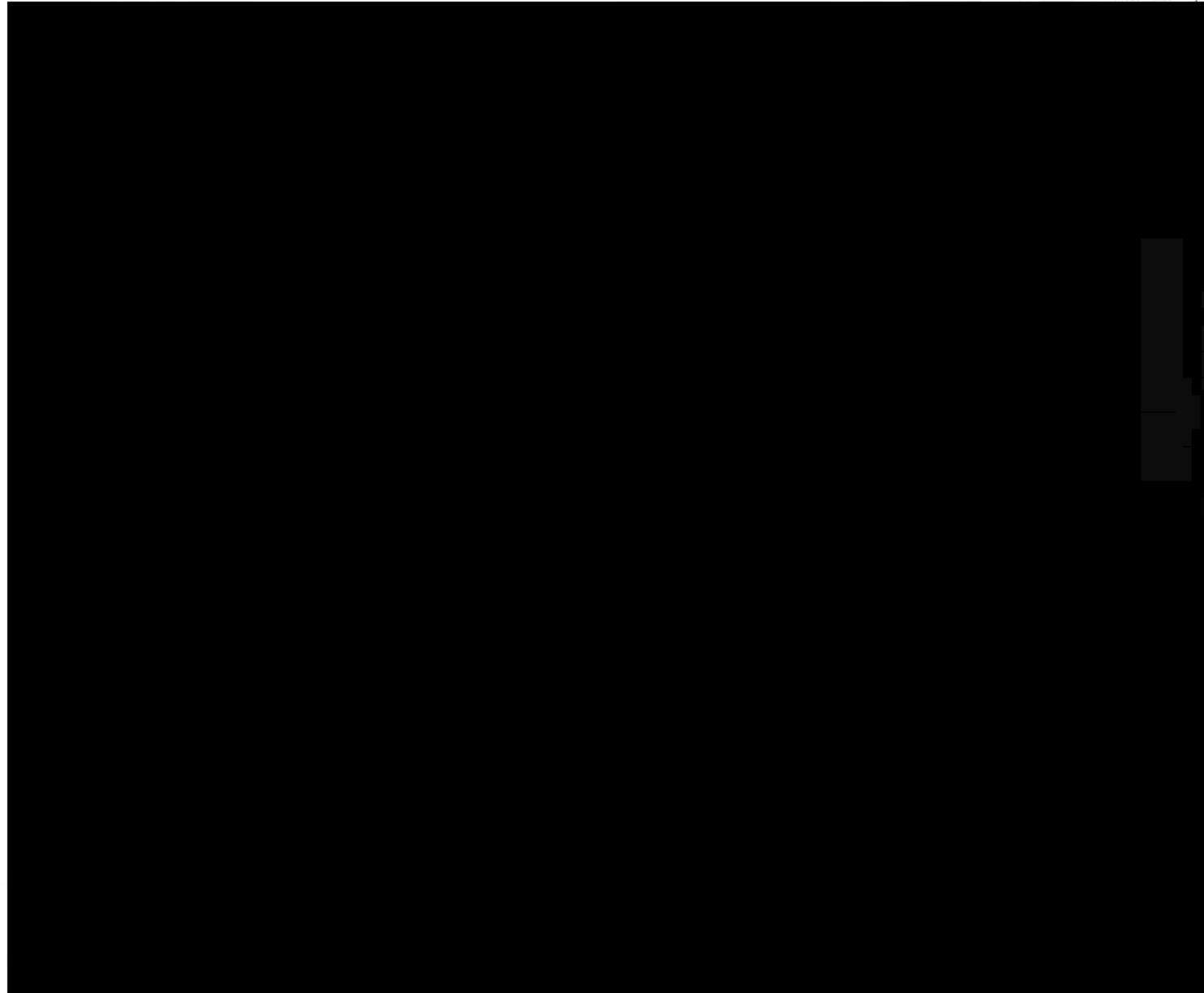
Answer all questions. If a question is not applicable, please indicate by marking it "N/A." The Proposed Insured must explain all "Yes" answers in the space provided. Each question number and applicable item must be identified.

DEFINITIONS

Professional health care provider (care provider) includes, but is not limited to, persons licensed as any of the following: physicians; chiropractors; physical therapists; psychologists; and drug, alcohol, or mental health counselors.

Professional health care treatment facility (treatment facility) includes but is not limited to: hospitals; clinics; drug or alcohol treatment or consultation facilities; nursing homes; mental health facilities; ambulatory care centers; and those facilities or offices staffed or run by care providers.

MEDICAL QUESTIONS



43000200-11305000100660 102403





FLP83

Yes No

8.

9.

10.

11.

12.

13.

14.

15.

16.

represent that the statements and answers given in this Application - Part II are true, complete, and correctly recorded to the best of my knowledge and belief.

[Signature]
Signature of Proposed Insured

Signed at Ft Lauderdale, FL on 2, 9, 94
City/State

[Signature]
Signature of Executive

Signed at Ft Lauderdale, FL on 2, 9, 94

EXHIBIT 4

From: [Gennardo, Patrick](#)
To: [Andy Friedman](#)
Cc: [Lora Krsulich](#); [Steven Sklaver](#); [Jonathan Ross](#); [Seth Ard](#); [Ellen Marcus](#); [Kathleen Holmes](#); [Ryan Kirkpatrick](#); [Frank Balint](#); [Evans, Tom](#); [Higgins, William](#); [Huang, Kathy](#); [Tuck, Andy](#); [Brian E. Pumphrey](#); [Steven G. Poppo](#)
Subject: Re: Brighton: Genworth's Proposed Discovery "Milestone" Schedule
Date: Friday, September 25, 2020 6:30:28 AM

Andy,

Very nice to meet you as well. As I am sure you are aware (and I suspect the reason behind your question), GLIC is not a defendant to the action and none of the purported class representatives own policies issued by GLIC. As such, we do not consider GLIC policies to be "in scope."

Having said that, and on plaintiffs' representation that they intend to (1) add GLIC as a party and (2) name a purported class representative owning a GLIC issued policy, we will commit to substantially producing GLIC related policy information within our proposed discovery milestones, if, and when, Plaintiffs so amend their complaint so as to bring GLIC within scope.

In other words, we will gather GLIC policy information when gathering information that is otherwise in scope so that the GLIC information can be produced promptly once GLIC is properly in scope, but will not produce such information until that time under our current proposed discovery milestones schedule.

Best,

Patrick

Sent from my iPhone

On Sep 24, 2020, at 2:57 PM, Andy Friedman <afriedman@bffb.com> wrote:

EXTERNAL SENDER – Proceed with caution

Thank you.

Patrick, nice to meet you (so to speak). Can you confirm that the in-scope policies include FC Gold I & II (issued by First Colony & ultimately assumed by GLAIC) and GE Gold I & II (issued by GE & ultimately assumed by GLIC, GLAIC's parent company) and that the responsive documents will be produced for each of these products?

Thanks
Andy

Andrew S. Friedman

(602) 274-1100 (Office)
(602) 776-5902 (Direct)
(602) 274-1199 (Fax)
afriedman@bffb.com<<mailto:afriedman@bffb.com>>

On 9/24/20, 11:46 AM, "Lora Krsulich" <LKrsulich@susmangodfrey.com> wrote:

Counsel,

Please find attached Plaintiffs' proposed revisions to GLAIC's proposed case and discovery milestone schedule.

Best,
Lora

-----Original Message-----

From: Gennardo, Patrick <Patrick.Gennardo@alston.com>

Sent: Wednesday, September 23, 2020 10:40 AM

To: Steven Sklaver <ssklaver@SusmanGodfrey.com>; Jonathan Ross <JROSS@SusmanGodfrey.com>; Seth Ard <sard@susmangodfrey.com>; Ellen Marcus <emarcus@hcmlawva.com>; Kathleen Holmes <KHolmes@hcmlawva.com>; Lora Krsulich <LKrsulich@susmangodfrey.com>; Ryan Kirkpatrick <RKirkpatrick@susmangodfrey.com>; Andy Friedman <afriedman@bffb.com>; Frank Balint <fbalint@bffb.com>

Cc: Evans, Tom <Tom.Evans@alston.com>; Higgins, William <William.Higgins@alston.com>; Huang, Kathy <Kathy.Huang@alston.com>; Tuck, Andy <Andy.Tuck@alston.com>; Brian E. Pumphrey <bpumphrey@mcguirewoods.com>; Steven G. Popps <SPopps@mcguirewoods.com>

Subject: Brighton: Genworth's Proposed Discovery "Milestone" Schedule

Counsel:

We have considered the categories of "priority" documents, as we understand them, based on the categories of documents that you identified during our conference call last week. We understand the concept to be that those are the documents plaintiffs will need sooner rather than later to facilitate the filing of a motion for class certification, subject to the deadlines the parties anticipate being imposed by the Court in this matter.

The following table indicates the dates by which GLAIC anticipates being able to produce the documents within each such category. Any production by GLAIC is subject to the Court's prior entry of a protective order and ESI protocol.

Document Category Requested by Plaintiffs

GLAIC's Proposed Substantial Completion Deadline

1. Policy forms on which Gold policies were issued

GLAIC will produce its submissions of the Gold product policy forms to state regulators as found in its hard copy files by October 16, 2020. To the extent applicable riders and endorsements are not captured in the files, GLAIC will produce those documents at a later date.

2. Policy counts

GLAIC will provide policy counts as evidenced by extracts from its systems as of the date policy data were collected for purposes of the rate redetermination analysis by October 16, 2020.

3. Communications to state regulators regarding the COI rate adjustment

October 16, 2020

4. ALFA models used to determine the adjusted scales of COI rates

October 16, 2020, subject to consent from Milliman to provide the ALFA models we understand were used and allow each party to use its software.

5. Determination policy

GLAIC will produce its responses to interrogatories regarding non-guaranteed elements as submitted to regulators for the past six years by November 6, 2020.

6. COI rates

By November 13, 2020, GLAIC will produce information sufficient to determine the pre- and post-adjustment COI rates for each insured under a Subject Policy.

7. Gold product memoranda

By November 13, 2020, GLAIC will produce memoranda prepared in connection with the approval and launch of the Gold product that set out product features and assumptions, that GLAIC is able to locate by that date. To the extent GLAIC is not able to locate, by that date, all documents responsive to this request, GLAIC will supplement its production with any additional materials it locates following additional searches and would expect to complete that production by January 15, 2021.

8. Rate adjustment analysis

By November 20, 2020, GLAIC will make a production of such memoranda/communications relating to the COI rate adjustment as it is able to locate by November 13, 2020. The search will not include electronic searches of emails and attachments. Thereafter, GLAIC will produce such documents on a rolling basis and expects the production of such documents, excluding emails and attachments, to be substantially completed by January 15, 2021.

9. Reinsurance documents

GLAIC will produce requested communications with its reinsurers regarding the rate adjustment by November 20, 2020.

10. Mortality assumptions and changes

It is expected that the pricing assumptions and those used in the determination of adjusted scales in 2019 will be contained in the product memoranda and ALFA models referenced above. Other documents containing assumptions applied with respect to the products at issue that can be located through a proportional search will be produced by January 29, 2021.

11. Policy Data

GLAIC has some flexibility on this date and believes you will want the data as of a date after January 1, 2021. If that is correct, GLAIC would propose providing policy data as of September 30, 2017, the baseline for the rate adjustment analysis, until the end of 2020, including the basic information like issue date, insured's rate class, specified amount, account value as of September 30, 2017, and death benefit option, as well as transactional data such as premiums received, interest added to the account, deductions from the account, and loan accounting (everything needed to bring the account value forward to 12/31/2020), as well as about deaths, surrenders, and lapses. GLAIC proposes providing that data by February 1, 2021.

Please note that the table does not include any dates relating to the production of email communications and other electronically stored information that may fall within such categories that may be located through an electronic search.

We only just received plaintiffs' list of proposed search terms, and the schedule for production of emails and other ESI will depend heavily on cooperation from plaintiffs in narrowing the set of emails, attachments and other ESI to be reviewed and produced to a reasonable number.

GLAIC will be in a better position to provide a reasonable timeframe for the production of emails and other ESI after the parties agree on search terms and the size of the potential review set can be determined.

I look forward to your thoughts concerning the same.

Best,

Patrick Gennardo

Sent from my iPhone

NOTICE: This e-mail message and all attachments may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that you may not read, copy, distribute or otherwise use this message or its attachments. If you have received this message in error, please notify the sender by email and delete all copies of the message immediately.

EXHIBIT 5

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

* * * * *

BRIGHTON TRUSTEES, LLC, ET AL., * CIVIL ACTION 3:20-CV-00240
 * OCTOBER 17, 2022 3:02 P.M.
 Plaintiffs, * FINAL APPROVAL HEARING
 * VOLUME I OF I

vs. *

GENWORTH LIFE AND ANNUITY *
 INSURANCE COMPANY, ET AL., * Before:
 * HONORABLE DAVID J. NOVAK
 Defendants. * UNITED STATES DISTRICT JUDGE
 * EASTERN DISTRICT OF VIRGINIA

* * * * *

APPEARANCES:

For the Plaintiffs: STEVEN G. SKLAVER, ESQUIRE
 Susman Godfrey, LLP
 1901 Avenue of the Stars
 Suite 950
 Los Angeles, CA 90067-6029

KATHLEEN J. L. HOLMES, ESQUIRE
 Holmes Costin & Marcus PLLC
 301 N. Fairfax Street
 Suite 202
 Alexandria, VA 22314

For the Defendants: PATRICK GENNARDO, ESQUIRE
 Alston & Bird LLP
 90 Park Avenue
 New York, NY 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 - 10/17/2022

1 APPEARANCES (Continued):

2 BRIAN E. PUMPHREY, ESQUIRE
3 ELIZABETH F. TYLER, ESQUIRE
4 McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Brighton v. Genworth - 10/17/2022

1 (Court convened at 3:02 p.m.)

2 THE CLERK: Civil Action 3:20-CV-240, *Brighton*
3 *Trustees, LLC, et al. v. Genworth Life and Annuity.*

4 Representing the plaintiff is Steven G. Sklaver and
5 Kathleen J. L. Holmes.

6 Representing the defendant is Patrick Gennardo, Brian
7 Pumphrey, and Elizabeth F. Tyler.

8 Counsel, are we ready to proceed?

9 THE COURT: Everybody is ready?

10 MR. PUMPHREY: Yes, Your Honor.

11 THE COURT: All right. We're here on the unopposed
12 motion for final approval of the settlement, class action
13 settlement in this case.

14 Who's speaking for the plaintiff?

15 Mr. Sklaver, is that you or Ms. Holmes?

16 MS. HOLMES: Mr. Sklaver will address the Court, Your
17 Honor.

18 THE COURT: Do you want to come on up to the lectern
19 and just want to put on the basic terms of the agreement on
20 the record?

21 MR. SKLAVER: Good afternoon, Your Honor.

22 Sure. The basic terms of the agreement are an
23 approximate \$25 million cash fund. It has been reduced to the
24 two opt-outs so that the total now is \$24,997,961.25. That
25 money has been paid and is in an escrow account that's earned

Brighton v. Genworth - 10/17/2022

1 interest, and it's now exceeding \$25 million due to that
2 interest.

3 The money will be distributed on a pro rata basis
4 with a \$100 minimum payment tied to the amount of overcharges
5 incurred by each class member through a date fixed of March of
6 2022, of this year.

7 And then there are two components of nonmonetary
8 benefits. The first is a COI rates schedule freeze for seven
9 years. So even if the contract otherwise permits a rate raise
10 of cost of insurance charges or there's been a spike in
11 mortality due to a worldwide pandemic, like we've seen and is
12 accounted for, Genworth will not raise the scale again for up
13 to seven years. If there is a rate increase in seven years,
14 the release carves that out and no release is provided and
15 there could be new litigation over a new rate increase.

16 THE COURT: As I understand it, you're asking -- go
17 ahead. I'll let you finish the second thing. Go ahead.

18 MR. SKLAVER: The second nonmonetary benefit is
19 what's called an insurable interest or Stranger-Originated
20 Life Insurance Waiver. Genworth has agreed not to contest a
21 policy for being void due to lack of insurable interest, which
22 many states allow for a challenge to occur through the life --
23 forever. There's no statute of limitations in many states.
24 And that helps ensure that the death benefits are paid if a
25 claim is otherwise proper and timely made by an owner.

Brighton v. Genworth - 10/17/2022

1 THE COURT: As I understand it, you estimate the
2 value of the nonmonetary release to be roughly \$19.5 million
3 as well; is that right?

4 MR. SKLAVER: That's correct. It was 19.9 million in
5 total.

6 THE COURT: All right. And then your fee request?

7 MR. SKLAVER: The request is limited to the -- you
8 can look at it two ways. One is if you look at it at the
9 overall benefits of -- benefits conferred to the class, which
10 is appropriate under the case law. It's about 18.6 percent.
11 But if you look at it in isolation, viewed just for the cash
12 component, which is what we're asking, is one-third of the
13 cash component. And that total is \$8,332,653.75, and that
14 accounts for two opt-outs of the over 13,000 class members.

15 THE COURT: I'm unaware of any objectors; is that
16 correct?

17 MR. SKLAVER: There are no objectors. There are no
18 objectors here in the courtroom. And we even checked with the
19 claims administrator one more time, and even out of time,
20 there are no objections noted through today.

21 THE COURT: And I'll add that we gave notice that if
22 there was anybody that wanted to object, they needed to be
23 here today, I believe.

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

25 THE COURT: So with only the two opt-outs, I think

Brighton v. Genworth - 10/17/2022

1 that's all we have then; is that right?

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

3 THE COURT: Anything else from the defense?

4 MR. GENNARDO: No, Your Honor.

5 THE COURT: Well, I'm going to approve the class
6 action settlement, finding that it meets the standards laid
7 out in Rule 23(e). I find that the settlement agreement is
8 fair, reasonable, and adequate in light of the Rule 23(e) (2)
9 factors and the factors that the Fourth Circuit has spelled
10 out in *Jiffy Lube*.

11 One: The plaintiffs and class counsel have
12 adequately represented the class. I find that both the class
13 representatives and the class counsel have appropriately
14 served the class as adequate representatives.

15 The class representatives adequately represent the
16 class where they don't have any interests that are
17 antagonistic to those of the class, and I find here that the
18 class representatives continue to be aligned with the entirety
19 of the class as a whole. Again, the class representatives
20 suffered the same injury and they seek the same recovery.

21 As to class counsel, I find that they have adequately
22 represented the class. As I said at the preliminary approval
23 hearing, Susman Godfrey's conduct over the course of this
24 litigation has cemented their adequacy as the class counsel.
25 They undertook a deep and thorough investigation of the claims

Brighton v. Genworth - 10/17/2022

1 in this case. They conducted extensive discovery, including
2 through copious document review as well as numerous
3 depositions, and they provided thorough briefing on class
4 certification and in oppositions to exclude their expert
5 witnesses, and they vigorously engaged in settlement
6 negotiations with defense counsel.

7 Number Two: The settlement is the product of good
8 faith, informed, and arm's length negotiations by experienced
9 counsel. That's the second factor under 23(e)(2).

10 The parties here negotiated this settlement through
11 multiple mediation sessions with the help of a private
12 mediator, Rodney Max. The negotiation period spanned nearly
13 six months.

14 Both the declaration that Mr. Max submitted in
15 support of the settlement at the preliminary approval stage
16 and the affidavit that Mr. Sklaver submitted to accompany the
17 plaintiffs' motion detail the extensive efforts that class
18 counsel undertook to prosecute this class action and the arm's
19 length nature of the negotiations between the parties.

20 The advanced posture of the case also supports final
21 approval as well. The parties conducted substantial
22 discovery, fully briefed multiple contested motions before
23 they reached a settlement agreement. I think I had to give
24 them some guidance on that to get you moving in the right
25 direction. The parties had conducted over a dozen fact and

Brighton v. Genworth - 10/17/2022

1 expert depositions as well. There is no question that there
2 is -- this was at arm's length. There was no collusion here
3 at all. In fact, it was heavily litigated until both sides
4 saw the light.

5 Finally, class counsel's wealth of experience in
6 litigating cost of insurance class actions weighs in favor of
7 this approval as well.

8 Number Three: The settlement provides adequate
9 relief to the class in light of the counterbalancing factors.
10 That's the third factor here under 23(e)(2). The settlement
11 affords a substantial monetary recovery to the class, roughly
12 \$25 million. Now, with interest, I guess it's over that. I
13 find it significant that the monetary recovery represents
14 163 percent of the COI overcharges that the settlement class
15 members suffered.

16 The settlement also provides significant nonmonetary
17 relief that Mr. Sklaver just outlined. One, by locking in the
18 COI rates for seven years; and, two, precluding the defendant
19 from using two specific legal arguments to deny claims by
20 class members. That value is, I guess, estimated to be
21 19.9 million.

22 I find that the method of distributing the relief to
23 the class also weighs in favor of finding that the settlement
24 provides adequate relief as well. The proposed allocation and
25 disbursement methods, which I already preliminarily approved,

Brighton v. Genworth - 10/17/2022

1 automatically distribute the funds to the class members
2 without a claims process. This method should streamline the
3 process of getting the funds into the hands of the class
4 members.

5 On the other side of the equation, the plaintiffs
6 faced substantial costs, risks, and delays had they litigated
7 this action through trial. The defendant was poised to
8 meaningfully contest both breach and damages on summary
9 judgment and at trial. In fact, we saw the litigation early
10 on in this case. So the expense associated with further
11 litigation looms large as well.

12 So on balance, I find that the settlement provides
13 adequate relief in light of countervailing factors.

14 Number Four: The settlement treats class members
15 equitably relative to each other, the final 23(e)(2) factor.
16 Every class member here is going to receive his or her pro
17 rata share of the settlement fund based on the amount that the
18 class member was overcharged.

19 The settlement also provides for a minimum payment
20 that applies equally across the class. And the releases that
21 the class members provide to GLAIC were identical.

22 Five: The *Jiffy Lube* factors also suggest that the
23 Court should look to the reaction of the class to the proposed
24 settlement. Here we have no objectors and only two opt-outs,
25 which I think speak to it.

Brighton v. Genworth - 10/17/2022

1 As to the allocation plan, I want to turn briefly to
2 that. The Court preliminarily approved this allocation plan
3 in June, and I'm going to give the plan the final approval
4 now.

5 As I discussed just a minute ago, the plan provides
6 for a minimum payment floor and a pro rata distribution of the
7 settlement funds remaining after the class members receive
8 their minimum payment. The plan requires no class claim forms
9 or claims processes, which should streamline the distribution
10 significantly.

11 As to notice, the Court already approved the notice
12 plan at the preliminary approval stage as the best notice
13 practicable under the circumstances. Now, on the back end, I
14 continue to believe that that is true.

15 The notice contained all the information required to
16 be included by Rule 23(c) (2) (B), and I find that the notice
17 fairly apprised the prospective members of the class of the
18 terms of the proposed settlement and of the options that are
19 open to them in connection with the proceedings.

20 As to fees, I see that, as we originally anticipated,
21 class counsel requests fees in the amount of \$8,333,139.08.
22 That equals a third of the monetary recovery. I'm going to
23 approve this fee amount, finding it's fair and reasonable in
24 light of the proposed settlement and consistent with prior fee
25 awards in this Circuit.

Brighton v. Genworth - 10/17/2022

1 As the Court has already addressed, the recovery that
2 class counsel secured on behalf of the class is more than
3 adequate, and it certainly helps justify their requested fee
4 here. They secured a monetary recovery that exceeds the COI
5 overcharges that the members of the settlement class suffered.
6 Class counsel also secured prospective relief that I spoke of
7 before.

8 They've invested \$3.5 million of time and money into
9 prosecuting this class action, which was not a given at all
10 going into this case, which needs to be noted here, and their
11 efforts produced a substantial -- required a substantial
12 volume of factual and expert discovery. They also
13 successfully opposed two motions to exclude their experts,
14 which might have been decisive as to the case.

15 In addition, class counsel engaged in protracted
16 settlement negotiations over a period of nearly six months.
17 Rather than settle the case early for a lower recovery, they
18 put more time and money into it to secure the best outcome for
19 the class, and I do believe it was a good outcome for the
20 class.

21 Comparing their fee request to prior fee awards in
22 this Circuit, I find the fee is fair and reasonable, a fee
23 equal to one-third of the recovery. And that's only the
24 monetary value. It excludes the other nonmonetary relief
25 here. Normally, the range is between 25 to 40 percent in this

Brighton v. Genworth - 10/17/2022

1 Circuit, and, therefore, I'm going to find it's appropriate.
2 And the lodestar, similarly, with a multiple 3.04, also falls
3 within the appropriate range.

4 So I find that the *Barber* factors weigh in favor of
5 finding the requested relief reasonable. I'm not going to go
6 through all of them because it's clear that those factors are
7 met here. I think I've already gone over all of them already,
8 to be honest with you.

9 So, in summary, I find that class counsels' requested
10 fee is fair and reasonable in light of the substantial work
11 that they performed. I'm going to approve also their
12 reimbursement of expenses in the amount of \$800,981.03.

13 As to the case contribution award, the named
14 plaintiffs request a \$25,000 award for each of those. I'm
15 going to approve those as well. Class counsel represents that
16 the named plaintiffs communicated regularly with class
17 counsel, gathered and reviewed documents to respond to the
18 defendant's discovery requests, prepared for and appeared at
19 depositions, and participated in the settlement negotiation
20 process. Because the class substantially benefited from the
21 efforts of each named plaintiff, the Court is going to approve
22 the \$25,000 contribution award for each of the named
23 plaintiffs.

24 So I'll just reaffirm the class settlement as the
25 final settlement class pursuant to Rule 23. And for the

Brighton v. Genworth - 10/17/2022

1 reasons I previously set forth in the preliminary approval
2 order, I find that the action, for purposes of this
3 settlement, may be maintained as a class action on behalf of
4 the class settlement.

5 So I'm going to approve everything you've asked for.
6 Is there anything else I need to do?

7 MR. SKLAVER: No, Your Honor. Thank you. Two items.

8 THE COURT: Ms. Holmes is a regular here so she knows
9 you have to stand up.

10 MR. SKLAVER: Thank you, Your Honor. She gave me
11 some sage advice, which is if my lips are moving, you're
12 losing. So I'll keep it brief.

13 THE COURT: That's the way it rolls around here.

14 MR. SKLAVER: The first is we owe you a final
15 judgment to enable the case to be closed.

16 THE COURT: Right.

17 MR. SKLAVER: And the parties, I believe, had agreed
18 that we will submit one within one week or possibly even
19 quicker.

20 THE COURT: That's fine. When you send that in, also
21 send it in Word format to my law clerk in case we have to
22 tweak it at all.

23 MR. SKLAVER: Okay. And I think that's it.

24 I just wanted to say we've been litigating for two
25 years, more than two years, and this is our first time in the

Brighton v. Genworth - 10/17/2022

1 courtroom. So we wanted to thank the entire court and the
2 entire staff for the help over the years. It's been a long
3 haul, both remotely and now here in person, and I just wanted
4 to thank the Court for its use of time and resources.

5 THE COURT: This is a good settlement. You've done a
6 good job here. This is not an easy case for either side. I
7 can tell you that right now, it's a good outcome.

8 Anything else from you guys?

9 MR. PUMPHREY: No, Your Honor. Thank you very much.

10 (Court recessed at 3:18 p.m.)

11 CERTIFICATE

12 I, Melissa H. Custis, certify that the foregoing is
13 a correct transcript from the record of proceedings
14 in the above-entitled matter.

15

16 /s/ Melissa H. Custis, RPR

Date: 10/27/2022

17

18

19

20

21

22

23

24

25

EXHIBIT 6

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

* * * * *

MARTIN SILVERSTEIN,	* CIVIL ACTION 3:23-CV-00684
	* OCTOBER 10, 2024 1:54 P.M.
Plaintiff,	* PRELIMINARY APPROVAL HEARING
	* VOLUME I OF I
vs.	*
	*
GENWORTH LIFE INSURANCE	*
COMPANY,	* Before:
	* HONORABLE DAVID J. NOVAK
Defendant.	* UNITED STATES DISTRICT JUDGE
* * * * *	* EASTERN DISTRICT OF VIRGINIA

APPEARANCES:

For the Plaintiff:	STEVEN G. SKLAVER, ESQUIRE Susman Godfrey LLP 1901 Avenue of the Stars Suite 950 Los Angeles, CA 90067-6029
	KATHLEEN J. L. HOLMES, ESQUIRE Holmes Costin & Marcus PLLC 908 King Street Suite 330 Alexandria, VA 22314

For the Defendant:	PATRICK GENNARDO, ESQUIRE Alston & Bird LLP 90 Park Avenue 15th Floor New York, NY 10016-1387
--------------------	---

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.

Silverstein v. Genworth - 10/10/2024

1 APPEARANCES (Continued):

2 For the Defendant: BRIAN E. PUMPHREY, ESQUIRE
3 FRANK TALBOTT, V, ESQUIRE
4 McGuireWoods LLP
5 Gateway Plaza
6 800 East Canal Street
7 Richmond, VA 23219

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Silverstein v. Genworth - 10/10/2024

1 (Court convened at 1:54 p.m.)

2 THE CLERK: Civil action 3:23-CV-684, Martin
3 Silverstein on behalf of himself and all others similarly
4 situated versus Genworth Life Insurance Company.

5 Representing the plaintiff is Steven Sklaver and
6 Kathleen Holmes.

7 On behalf of the defendant, Patrick Gennardo, Brian
8 E. Pumphrey, and Frank Talbott.

9 Counsel, are we all ready to proceed?

10 MS. HOLMES: Yes.

11 THE COURT: All right. We're here for the
12 preliminary approval hearing.

13 Mr. Sklaver, do you want to put on the basic terms of
14 the agreement? I mean, I've obviously read it, but why don't
15 you put on the basic terms.

16 MR. SKLAVER: Good afternoon, Your Honor. Steven
17 Sklaver for the plaintiff.

18 The basic terms of the proposed settlement are
19 threefold. First is a \$5.1 million cash fund. It is a
20 nonreversionary cash fund. Claim forms are not required.
21 Checks will be mailed to all class members whose records are
22 last known at Genworth, the defendants' files. And the number
23 of 5.1 million can be reduced depending on the number of
24 opt-outs, which we will know if the Court preliminarily
25 approves the settlement, at final approval at a pro rata

Silverstein v. Genworth - 10/10/2024

1 amount that's provided for in the settlement.

2 THE COURT: But with no reversion; is that right?

3 MR. SKLAVER: There's no reversion of the final fund
4 once that's determined.

5 The second is there's a COI rate freeze, meaning that
6 the current COI rate scale in effect will not increase even if
7 there's an adverse change of mortality or for any other
8 reason, and that is through October 25th, 2029, which is
9 coextensive of the COI freeze that the Court approved in the
10 last settlement in the GLAIC action.

11 And the third is what's called STOLI waiver,
12 S-T-O-L-I. That stands for Stranger-Originated Life
13 Insurance, which means that the insurance company cannot seek
14 to void or null any life insurance policy as being void for
15 lack of insurable interest, which help insures class members
16 will get their death benefits paid upon maturity and a proper
17 claim submitted.

18 THE COURT: And your administrator is going to be?

19 MR. SKLAVER: The administrator will be JND, who was
20 the administrator on the GLAIC settlement as well.

21 THE COURT: All right. That's fine.

22 Okay. Mr. Gennardo, do you have anything to add?

23 MR. GENNARDO: No, Your Honor. I agree with
24 Mr. Sklaver's summary.

25 THE COURT: All right. Well, I'm going to

Silverstein v. Genworth - 10/10/2024

1 conditionally certify the class for settlement purposes as
2 defined in the manner that's in the papers that have been
3 submitted to the Court. The class is defined to include all
4 owners of Gold and Gold II universal life insurance policies
5 issued, insured, or assumed by Genworth Life Insurance
6 Company, its predecessors or successors, whose cost of
7 insurance rate scales were changed as a result of the 2019
8 cost of insurance rate adjustment.

9 The class consists of approximately 3,000 universal
10 life insurance policyholders. I find that the class meets the
11 Rule 23(a) requirements of numerosity, commonality,
12 typicality, and adequacy.

13 I also find that the settlement class meets the
14 demands of Rule 23(b)(3) in that questions of law or fact that
15 are common to class members predominate over questions
16 affecting individual members.

17 Also, the class action is the superior method for
18 fairly and efficiently adjudicating this controversy.

19 Next, I'm going to appoint plaintiff's counsel as
20 class counsel under Rule 23(g).

21 I find that both the effort that plaintiff's counsel
22 has undertaken thus far and their experience in class actions
23 of this nature demonstrate their ability to represent the
24 interests of the class fairly and adequately. Therefore, I
25 appoint Susman Godfrey LLP as class counsel.

Silverstein v. Genworth - 10/10/2024

1 I think, Ms. Holmes, you're local counsel for them.
2 Am I right about that?

3 MS. HOLMES: Correct.

4 THE COURT: I also appoint Plaintiff Martin
5 Silverstein as class representative.

6 I did want to say this: Mr. Sklaver, I mentioned
7 before in our calls about my concerns about attorneys' fees in
8 this case. So while I'm appointing you and I know you're
9 looking for a third of the fees here, while you've done a fine
10 job so far, I'm not committing to approving that. You're
11 going to have to make a submission to me with sufficient
12 lodestar documentation, and I'll take a look at that.

13 So I'm not saying I'm not going to appoint
14 your third -- confirm your -- a third request. I'm not saying
15 I'm going to reject it. I'm going to say you're going to have
16 to do some work to convince me.

17 Now, you already started it with your declaration
18 about why they're different and all this because I think you
19 knew I was already hesitant on that, but you're going to have
20 to do some work. I'm not -- by me appointing you do not
21 assume that means I'm going to approve your fee request at a
22 third. Do you understand that?

23 MR. SKLAVER: I understand, Your Honor.

24 THE COURT: I'll give you a full chance to be heard.
25 You know I've had some reluctance on this case, but I don't

Silverstein v. Genworth - 10/10/2024

1 predetermine anything. I'll take a look at it, and we'll kind
2 of go from there.

3 MR. SKLAVER: I appreciate the opportunity to be
4 heard. Thank you, Your Honor.

5 THE COURT: All right. I'm also going to
6 preliminarily approve the class settlement. In doing so, I'm
7 going to approve it as fair, reasonable, and adequate, using
8 the factors in Rule 23 and the *Jiffy Lube* case. I'll address
9 each of those factors now.

10 Plaintiffs and lead counsel have adequately
11 represented the class -- excuse me -- and their conduct has
12 confirmed this.

13 Class counsel undertook a thorough investigation of
14 the claims. They've engaged in extensive discovery and expert
15 work concerning the defendant's liability, including the
16 investigation of various liability theories that had not been
17 previously fully explored and an analysis of policy level data
18 to develop a comprehensive damages model. They've clearly
19 expended significant time, resources, and effort engaging in
20 difficult mediations. Plus, I've given them a hard time on
21 this case, and they know that. So let's just be honest about
22 that.

23 Two: The settlement is the product of good faith,
24 informed, and arm's-length negotiations by experienced
25 counsel. They've been at this since March of 2024. Again,

Silverstein v. Genworth - 10/10/2024

1 I've had some calls giving plaintiffs a hard time for the
2 reasons that were discussed during those calls. They've had
3 exchanges with Rodney Max, a distinguished fellow and past
4 president of the American College of Civil Trial Mediators, as
5 well as our outstanding magistrate judge, Judge Colombell.

6 So the history of this case supports preliminary
7 approval. The parties were unsuccessful in their first two
8 mediations, but Judge Colombell did his magic, got it home
9 with a mediator's proposal; all of which suggests there's no
10 collusion here.

11 Number Three: The settlement provides adequate
12 relief to the class in light of the counterbalancing factors.
13 The Court finds the proposed settlement affords significant
14 relief. Mr. Sklaver just went over it so I'm not going to
15 repeat that.

16 It is notable, though, that there's a direct payment
17 except for opt-outs, no reversion, and the accounts, according
18 to the papers, represent 71.5 percent of potential recovery at
19 least as to the total past -- I think -- was it overage? Is
20 that what it was?

21 MR. SKLAVER: Past alleged COI overcharges.

22 THE COURT: Overcharges. I'm sorry. I couldn't read
23 my own writing here.

24 There's obviously significant risk in this kind of
25 litigation. In fact, I've repeated that risk during my calls,

Silverstein v. Genworth - 10/10/2024

1 giving Mr. Sklaver a hard time. So, obviously, getting this
2 kind of recovery in the face of a potential tough row to hoe
3 here is significant.

4 Four: The form and the manner of the proposed notice
5 is going to be approved. I'm satisfied that the notice
6 program is reasonably calculated to apprise the class of the
7 pendency of the action, the proposed settlement, and their
8 rights to opt out of the settlement class or to object.

9 The proposed notice will provide individual direct
10 notice. The settlement administrator, who I'm going to
11 approve, will mail notice to the class members at their last
12 known address using Genworth's address database. This is a
13 particularly effective manner because in-force policyholders
14 are expected to maintain their current addresses with
15 Genworth. Where the policy is no longer enforced, the last
16 known address is already on file and the administrator will
17 have to use their database to direct mail prospective class
18 members.

19 A website and toll-free number will also be
20 maintained so anyone can read about the settlement and easily
21 find all documents pertaining to the settlement. I find these
22 procedures constitute the best notice practicable under the
23 circumstances and comply with due process, Rule 23, and the
24 Private Securities Litigation Reform Act of 1995.

25 I'm also approving JND Legal Administration LLC as

Silverstein v. Genworth - 10/10/2024

1 the settlement administrator or the claims administrator.

2 I'm going to adopt the timeline that's been proposed
3 here and we'll set a final approval hearing for January 3rd
4 at 2:00 o'clock. I think that all worked for you-all. Am I
5 right about that?

6 MR. SKLAVER: Yes, Your Honor.

7 THE COURT: That was good for everybody?

8 Anything else I need to do, Mr. Sklaver?

9 MR. SKLAVER: Not here, Your Honor, no.

10 THE COURT: Mr. Gennardo?

11 MR. GENNARDO: Nothing, Your Honor.

12 THE COURT: All right. Everybody have a good day.

13 Thank you.

14 (Court adjourned at 2:04 p.m.)

15 CERTIFICATE

16 I, Melissa H. Custis, certify that the foregoing is
17 a correct transcript from the record of proceedings
18 in the above-entitled matter.

19

20 /s/ Melissa H. Custis, RPR

Date: 11/11/2024

21

22

23

24

25

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MARTIN SILVERSTEIN, on behalf of
himself and all others similarly situated

Plaintiff,

v.

Case No: 3:23-cv-684-DJN

GENWORTH LIFE
INSURANCE COMPANY,

Defendant.

DECLARATION OF KRISTI C. KELLY

I, Kristi C. Kelly declare:

1. My name is Kristi C. Kelly. I am over 21 years of age, of sound mind, capable of executing this declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

BACKGROUND AND QUALIFICATIONS

2. I am a founder and a partner of Kelly Guzzo, PLC, a law firm located at 3925 Chain Bridge Road, Suite 202, Fairfax, Virginia 22030. Prior to January 15, 2014, I was an attorney and equity partner at Surovell Isaacs Petersen & Levy, PLC, a nineteen-attorney law firm with offices in Fairfax, Virginia. My primary office was 4010 University Drive, Suite 200, Fairfax, Virginia 22030. I also worked for Legal Services of Northern Virginia, focusing exclusively on housing and consumer law for approximately three years prior to Surovell Isaacs Petersen & Levy, PLC.

3. Since 2006, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Since 2007, I have been and presently am a member in good standing of the Bar of the highest courts of the

District of Columbia and since 2014 of Maryland. I am also admitted in the United States District Courts for the District of Columbia and Maryland.

4. I have taught numerous Continuing Legal Education programs for other attorneys and for various legal aid organizations, state and local bar associations, and other groups focused on consumer law, such as the National Consumer Law Center, the Consumer Federation of America, the National Council of Higher Education, and the National Association of Consumer Advocates. I have taught courses about mortgage servicing abuses, landlord tenant defense, dealing with debt collectors, credit reporting, defenses to foreclosure, discovery in federal court, resolving cases, and internet lending. I also served as a panelist for the Consumer Financial Protection Bureau and Federal Trade Commission on the issue of credit reporting. I have also served as an adjunct professor at George Mason University's Antonin Scalia School of Law, teaching a course on consumer rights litigation.

5. My peers have recognized me as a Super Lawyer and Rising Star consistently for the past twelve years, and I was selected as a Top 50 Women's Virginia Super Lawyer in 2023. Additionally, I was selected to be a member of the Virginia Lawyers Weekly "Leader in the Law," class of 2014, and Influential Women in the Law, class of 2020. I serve on the Board of Directors for the Legal Aid Justice Center and Virginia Poverty Law Center. I am a former State Chair for Virginia of the National Association of Consumer Advocates and am currently a member of the Partners' Council for the National Consumer Law Center and Board of Directors of the National Association of Consumer Advocates.

6. I have also been appointed to the Merit Selection Panel for recommendations for the Magistrate Judge vacancies by the United States District Court for the Eastern District of Virginia, in both the Richmond and Alexandria Divisions.

7. My firm has litigated hundreds of consumer protection lawsuits in courts across the country. Several courts have recognized Kelly Guzzo's skill in prosecuting class actions for various consumer protection violations. *See, e.g., Campos-Carranza v. Credit Plus, Inc.*, Case No. 16-cv-120, Final Approval Hr'g Trans. at 5:37 (E.D. Va. Feb. 17, 2017) ("I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims – and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order."); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 2016 WL 5107202, at *6 (D.D.C. Aug. 29, 2016) ("Given these qualifications, and in light of Class Counsel's conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously."); *Dreher v. Experian Info. Sols., Inc.*, No. 11-00624, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) ("Dreher's counsel is well- experienced in the arena of FCRA class action litigation."); *Burke v. Seterus, Inc.*, No. 16-cv-785, Fairness Hr'g Tr. at 9:1922 (E.D. Va. 2017) ("Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them.").

8. I have experience litigating class actions on behalf of consumers and have been found to be adequate class counsel in numerous cases. *See Tsvetovat v. Segan, Mason, & Mason, PC*, No. 1:12-cv-510 (E.D. Va.); *Conley v. First Tennessee Bank*, No. 1:10-cv-1247 (E.D. Va.); *Dreher v. Experian Information Solutions, Inc.*, No. 3:11-cv-624 (E.D. Va.); *Shami v. Middle East Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Friedman & MacFadyen*, No. 3:11-cv-20 (E.D. Va.); *Kelly v. Nationstar*, No. 3:13-cv-311 (E.D. Va.); *Thomas v. Wittstadt*, No. 3:12-cv-450 (E.D. Va.); *Fariasantos v. Rosenberg & Associates, LLC*, No. 3:13-cv-543 (E.D. Va.); *Morgan v. McCabe Weisberg & Conway, LLC*, No. 3:14-cv-695 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (E.D. Va.); *Bartlow v Medical Facilities of America, Inc.*, No.

3:16-cv-573 (E.D. Va.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv-1940 (D.D.C.); *Ceccone v. Equifax Info. Servs., LLC*, Case No. 1:13-cv-1314 (D.D.C.); *Jenkins v. Equifax Info. Servs., LLC*, No. 1:15-cv-443 (E.D. Va.); *Ridenour v. Multi-Color Corporation*, No. 2:15-cv-00041 (E.D. Va.); *Hayes v. Delbert Services Corp.*, No. 3:14-cv-258 (E.D. Va.); *Campos-Carranza v. Credit Plus, Inc.*, No. 1:16-cv-120 (E.D. Va.); *Jenkins v. Realpage, Inc.*, No. 2:15-cv-1520 (E.D. Pa.); *Kelly v. First Advantage Background Services, Corp.*, No. 3:15-cv-5813 (D.N.J.); *Burke v. Seterus, Inc.*, No. 3:16-cv-785 (E.D. Va.); *Williams v. Corelogic Rental Property Solutions, LLC*, No. 8:16-cv-58 (D. Md.); *Clark v. Trans Union, LLC*, No. 3:15-cv-391 (E.D. Va.); *Clark v. Experian Information Solutions, Inc.*, No. 3:16-cv-32 (E.D. Va.); *Thomas v. Equifax Info. Servs., LLC*, No. 3:18-cv-684 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.); *Turner v. ZestFinance, Inc.*, No. 3:19-cv-293 (E.D. Va.); *Galloway v. Williams*, No. 3:19-cv-470 (E.D. Va.); *Gibbs v. TCV V, LP*, No. 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, No. 3:20-cv-717 (E.D. Va.); *Pang v. Credit Plus, Inc.*, No. 1:20-cv-122 (D. Md.); *Brown v. RP On-Site, LLC*, No. 1:20-cv-482 (E.D. Va.); *Brown v. Corelogic Rental Property Solutions, LLC*, No. 3:20-dv-363 (E.D. Va.); *Hengle v. Asner*, No. 3:19-cv-250 (E.D. Va.); *Gibbs v. Stinson*, No. 3:18-cv-676 (E.D. Va.); *Stewart v. LexisNexis Risk Data Retrieval Services, LLC*, No. 3:20-cv-903 (E.D. Va.); *Hill-Green v. Experian Information Solutions, Inc.*, No. 3:19-cv-708 (E.D. Va.); *Blackburn v. A.C. Israel Enterprises*, No.3:22-cv-146 (E.D. Va.); *Hernandez v. Dyck-O'Neal, Inc.*, No. 1:23-cv-827 (E.D. Va.); *Perrucci v. Hunter Warfield, Inc.*, No. 1:23-cv-872 (E.D. Va.); *Meeks v. Equifax Info. Servs., LLC*, No. 3:21-cv-7727 (N.D. Ca.); *McAfee v. CIC Mortgage Credit, Inc.*, No. 3:22-cv-0772 (E.D. Va.); *Meehan v. Capital One, N.A.*, No. 1:22-cv-1073 (E.D. Va.); *Steinberg v. CoreLogic Credco, LLC*, No. 3:22-cv-498 (S.D. Ca.); and *Meeks v. Consumer Adjustment Co., Inc.*, No. 3:21-cv-3266 (N.D. Ca.).

9. I have also previously opined on the reasonableness of the fees of other practitioners in individual cases in the Eastern District of Virginia, including in *Brighton Trustees, LLC, as Trustee, et al., v. Genworth Life and Annuity Insurance Company*, No. 3:20-cv-240 (E.D. Va.). I have provided a declaration to support the fee request in Arlington Circuit Court in *Powell v Prime Motors, LLC*, No. CL20001773-00 and in support of the Legal Aid Justice Center in *Martinez Garcia v. Mega Auto Outlet*, No. 1:20-cv-945 (E.D. Va.).

10. My fee for this Declaration is \$15,000.00, all of which will be paid by donation directly to Restoration Immigration Legal Aid.

DOCUMENTS REVIEWED

11. In order to perform this evaluation, I reviewed and considered the following materials:

Entire Docket History on PACER

Class Action Complaint

Joint Stipulation and Settlement Agreement

Plan of Allocation

Plaintiff's Motion for Preliminary Approval of Class Action Settlement

Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement

Order Preliminarily Approving Class Action Settlement

Declaration of Steven G. Sklaver in Support of Plaintiff's Motion for Preliminary of Class Action Settlement

Short Form Notice

Long Form Notice

Time and Expense Entries

Biographies of Plaintiffs' Counsel

Declaration of Steven G. Sklaver in Support Of Plaintiff's Motion for Attorneys' Fees, Costs, and Service Award

Declaration of Kathleen J.L. Holmes in Support Of Plaintiff's Motion for Attorneys' Fees, Costs, and Service Award

12. This was a complex case requiring special expertise at the risk of nonpayment. It is comparable to the more complex consumer class actions that I have been involved with.

13. I have extensive experience in class action cases brought in this Court, and in the Eastern District of Virginia. I routinely represent plaintiffs in cases concerning various consumer protection statutes. I have been involved in many cases involving requests for attorneys' fees under different statutes and am familiar with the rates charged by both plaintiffs' and defense attorneys in this region. My knowledge of the attorneys' fee recoveries, and rates in the Eastern District of Virginia and this region comes from a variety of sources, including my own personal experience requesting, or opposing requests for attorneys' fees, research and discussions with other attorneys, advertised rates, case decisions and other publications.

14. Given the specific knowledge I have as to attorneys' fees awarded and charged in class actions in the Eastern District of Virginia, I am able to testify as to the reasonable and expected ranges of fees in class action settlements and the reasonableness of the time expended and hourly rates charged by attorneys that practice in this District and Division as part of any lodestar crosscheck.

15. I am familiar with the fees charged by other attorneys and approved by this Court for class action litigation. Attorneys' fees in most class settlements are calculated as a percentage of the settlement fund unless a fee amount is separately negotiated at the settlement, usually with the assistance of a mediator or Magistrate Judge. Most percentage fees in class settlements that I am aware of are generally between 30 and 35%.

16. In this case, Plaintiff has recovered a gross settlement common fund of \$5,100,000.00 (which may be reduced on a *pro rata* basis depending on the number opt-outs). In addition, Plaintiff has secured substantial prospective nonmonetary relief, including a cost of insurance rate scale freeze until October 25, 2029 and a permanent non-contestability benefit. The one-third fee sought by Plaintiffs' counsel here solely from the cash fund, viewed in isolation of the other benefits achieved, is a reasonable percentage that is not an outlier, but rather, it is consistent with my expectations for awards made for a fund of this size. I believe that an attorneys' fee award of one-third of the cash fund in this instance is fair and appropriate.

17. I strongly believe that attorneys should be paid in class action common fund settlements based on the results, *i.e.*: cash-recovered and other non-cash benefits earned on behalf of the class. This aligns the interests of the class and class counsel and it promotes sound public policy to encourage thoughtful, efficient and strategic litigation, such as this, making this settlement possible.

18. I have reviewed the time entries and biographies of the lawyers representing Plaintiff in this litigation, and although I have not observed or worked with the firms, I have reviewed the time records and work product, and I believe the time records reflect reasonable time expended for a case of this magnitude and complexity. Further, the results of this litigation speak for themselves in terms of skill, experience, and diligence in approach to this litigation.

19. Given the specific knowledge I have as to hourly rates charged and approved in the Eastern District of Virginia, I am comfortable stating that Class Counsel's hourly rates are within the range of hourly rates for federal litigation attorneys in the Eastern District of Virginia range. This is further supported by the Laffey Matrix.¹ See <http://www.laffeymatrix.com/see.html>. I

¹ The Laffey Matrix was originally developed by the U.S. Department of Justice and is adjusted by the nationwide legal services component of the Consumer Price Index produced by the U.S.

believe the rates here are reasonable for the specialized attorneys prosecuting this case which involved complex actuarial and technical insurance modelling and issues. Here, Plaintiff's counsel expended over 737.7 hours to prosecute this complex action, and I believe this to be reasonable for a case of this magnitude and complexity.

20. I have also reviewed a survey of AmLaw 50 law firms performed by PwC Product Sales, LLC issued in October 2021. That survey states that the median standard billing rate for an equity partner was \$1,253 and for associates was \$819. The rates for Class Counsel and its staff who billed significant amounts of time to this case (ranging from \$250 to \$1200) per hour are comparable to similar law firms litigating matters of similar magnitude.

21. It is my understanding that these are the rates routinely charged by these law firms in the national practices of each. Ordinary hourly rates in Richmond, Virginia are typically lower than some larger venues. However, the field and expertise necessary in a national class action against well-funded nationally defended opponents is the same here as in any venue. Accordingly, I am comfortable stating that the rates contained in the Steven Sklaver and Kathleen Holmes declarations are all within the range of approvable hourly charges appropriate in a federal and national class action settlement.

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

Signed this 15th day of November, 2024.



Kristi C. Kelly

Bureau of Labor Statistics. *See, e.g., DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (discussing the history and basis of the Laffey matrix); *Baker v. D.C. Pub. Schs.*, 815 F. Supp. 2d 102, 113 (D.D.C. 2011).

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

MARTIN SILVERSTEIN,
Plaintiff,

v.

GENWORTH LIFE INSURANCE COMPANY,
Defendant.

Civil No. 3:23-cv-00684 (DJN)

DECLARATION OF KATHLEEN J.L. HOLMES

I, Kathleen J.L. Holmes, do hereby declare and state as follows:

1. I am a partner in the law firm Holmes Costin & Marcus, PLLC (“HCM”). HCM was engaged to serve as local counsel with the firm Sussman Godfrey, LP (“Lead Counsel”) to represent Martin Silverstein (“Plaintiff”) in the above-captioned action. I make this declaration in support of Class Counsel’s request for an award of the attorneys’ fees and costs from the Settlement Fund preliminary approved by the Court on October 11, 2024 (ECF 64).

2. I am an attorney licensed to practice law in Virginia and the District of Columbia. I am a member of the bars of the United States District Court for the Eastern District of Virginia, United States District Court for the Western District of Virginia, the United States District Court for the District of Columbia, the United States Court of Appeals for the Fourth Circuit, the United States Court of Appeals for the District of Columbia, and the United States Court of International Trade.

3. I am a founding member of Holmes Costin & Marcus PLLC (“HCM”), a law firm located in Alexandria, Virginia. HCM represents clients in complex business litigation in federal and state courts in the greater Washington, D.C. area, including in the United States District

Courts for the District of Columbia and Eastern District of Virginia, and in mediations and arbitrations throughout the country.

4. I have been representing individual and corporate clients in complex business disputes in federal and state courts across the country for over 30 years. After obtaining a M.S. degree from the University of Chicago, I graduated from the George Mason University School of Law (now Antonin Scalia School of Law) in 1992, working full time at the U.S. Department of Commerce within the Office of the Administrative Law Judge. Upon graduating, I served as a law clerk for Judge Leonie M. Brinkema of the United States District Court for the Eastern District of Virginia. I then worked as an associate, rising to partner, at Richards McGettigan Reilly & West, P.C. in Alexandria, Virginia, and as a partner at Williams Mullen in Tysons, Virginia. I co-founded Holmes & Costin in 2010.

5. My law partner Ellen D. Marcus assisted in representing Plaintiffs. Ms. Marcus is licensed to practice law in Virginia and the District of Columbia. She is a member of the bars of the United States District Court for the Eastern District of Virginia, the United States District Court for the District of Columbia, the U.S. Court of Appeals for the Fourth Circuit, the U.S. Court of Appeals for the District of Columbia, the U.S. Court of Appeals for the Second Circuit, the U.S. Court of Appeals for the Federal Circuit, and a number of other federal district and appellate courts.

6. Ms. Marcus has been representing individual and corporate clients in complex business disputes in federal and state courts across the country for over 25 years. She graduated from Columbia Law School in 1999, where she was a senior editor of the *Columbia Law Review* and a Harlan Fiske Stone Scholar. Upon graduating, she served as a law clerk for Judge Leonie M. Brinkema of the United States District Court for the Eastern District of Virginia. She then worked as an associate at Debevoise & Plimpton in Washington, D.C., and at Zuckerman

Spaeder LLP in Washington, D.C. Before co-founding HCM in 2014, she was for seven years a partner at Zuckerman Spaeder LLP.

7. HCM attorneys have served as counsel in significant complex business disputes in the Eastern District of Virginia and in Virginia state courts, and are recognized by the federal and state courts in Northern Virginia as regular practitioners and well-respected members of the bar. The HCM firm has represented litigants in a wide variety of business disputes in the federal court, including disputes of trademarks, patents, trade secrets, securities fraud, and partnership rights.

8. The adjusted Laffey Matrix for attorneys with similar experience to Ms. Marcus and myself who are practicing civil law in the Washington, D.C. metropolitan area with more than 20 years of experience for the period June 1, 2023 to June 1, 2024 indicates a hourly rate of \$1057. See <http://www.laffeymatrix.com/see.html>.

9. Ms. Marcus and I undertook the representation acting as local counsel for Lead Counsel pursuant to Local Rule 83.1. Accordingly, we undertook the obligation to review all pleadings prior to their being filed with the Court, to appear with Lead Counsel at all hearings, and to provide guidance to Lead Counsel on local rules, practices and customs. This work necessitated the review of complicated insurance contracts and complex damages calculations, as well as familiarity with Fed.R.Civ.P. 23.

10. The table below is a summary reflecting the amount of time spent, through October 30, 2024, by my law partner, Ms. Marcus, and me, and the lodestar calculation using HCM's 2022 billing rates. HCM elected to use the same rate as that previously reviewed by the Court in *Brighton Trustees, LLC et al. v. Genworth Life and Annuity Insurance Company*, Case No. 3:20-cv-00240-DJN, Dkt. 147, in making its determination to award fees and expenses to Class

Counsel. Brighton Trustees, Dkt. 142, 147. The following table was prepared from daily time records regularly prepared and maintained by HCM, 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
Kathleen Holmes (Partner)	\$850.00	50.7	\$43,095.00
Ellen Marcus (Partner)	\$850.00	1.7	\$1,445.00
Totals		52.4	\$44,540.00

10. Through October 31, 2024, the total hours of work performed by me in this litigation is 52.4 hours; the total hours of work performed by Ms. Marcus in this litigation is 1.7 hours; Our work has continued beyond October 31, 2024. In my professional judgment, the time expended, services rendered and overall fees charged are fair, reasonable and necessary in light of the legal and factual issues in this litigation.

11. Ms. Marcus and I worked with Lead Counsel to complete filings, to issue subpoenas duces tecum and monitor responses, to advise on matters of procedure under the Local Rules, to attend hearings and to discuss strategy on various aspects of the litigation. We reviewed all filed pleadings and tracked the progress of the litigation. Throughout the litigation, we reviewed discovery responses monitored discovery disputes and their resolution, and attended the mediation session before Magistrate Judge Colombell.

12. Through October 31, 2024, the expenses incurred by HCM in this litigation total \$2,705.70 for filing fees, courier expenses and travel expenses.

13. HCM may submit a supplemental declaration on the fees and expenses incurred since October 31, 2024.

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

Executed this 15th day of November 2024.

/s/ Kathleen J.L. Holmes

Kathleen J.L. Holmes (Virginia Bar No. 35219)

HOLMES COSTIN & MARCUS PLLC

908 King Street, Suite 330

Alexandria, VA 22314

Tel: 703-260-6401

Fax: 703-439-1873

emarcus@hcmlawva.com

kholmes@hcmlawva.com