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 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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

1. I submit this declaration in support of Plaintiff Martin Silverstein's motion for preliminary approval of 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. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance actions and settlements thereof. A copy of the firm's class action profile and my profile is attached hereto as **Exhibit 1**.

3. I was among the principal negotiators of the proposed class action settlement. Following extensive negotiations and a mediator's proposal, Magistrate Judge Mark Colombell informed the parties on July 8, 2024 that the proposal had been fully accepted. The final settlement

agreement was executed on August 2, 2024. Attached hereto as **Exhibit 2** is a true and correct copy of the Settlement Agreement. The Settlement provides a cash portion that accounts for 71.5% of the total past COI overcharges alleged in this case through June 2024 and provides significant nonmonetary relief. It is the opinion of Class Counsel that the settlement is fair, adequate, and reasonable.

4. 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. GLIC policyholders were not in the *GLAIC Action* putative class, as no *GLAIC Action* plaintiff owned a GLIC policy and therefore lacked privity with and standing to sue GLIC. During the *GLAIC Action*, GLAIC refused to provide discovery specific to GLIC policies 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, at any time, to GLIC policyholders and never offered to include GLIC policyholders as part of the settlement in the *GLAIC Action.* The Settlement here, for the first time, finally provides relief to GLIC policyholders for the improper COI overcharges imposed on them.

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. 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.*

7. Plaintiff worked with actuarial and damages experts to investigate the issues and develop a record during fact and expert discovery. Plaintiff served 43 requests for production on March 8, 2024. GLIC's productions included the full *GLAIC Action* record and policy-specific data about GLIC policies. Plaintiff also served document subpoenas on four actuarial consulting firms. Plaintiff's document subpoenas included a request to Milliman, Inc. for a license for its MG-ALFA modeling software. On June 14, 2024, Plaintiff served GLIC with five deposition notices. Plaintiff also served a deposition subpoena on Milliman. On July 2, 2024, Plaintiff served 431 requests for admission and 14 interrogatories. At the time the mediator's proposal was accepted, Plaintiff was working with his experts to prepare for depositions, including a Federal Rule of Civil Procedure 30(b)(6) notice to GLIC.

8. Plaintiff's efforts included the investigation of theories 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, Plaintiff issued a document subpoena to Genworth Life Insurance Company of New York ("GLICNY").

9. Plaintiff also worked with his actuarial and damages experts in preparation for the August 12, 2024 deadline for opening expert reports.

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

11. Plaintiff and GLIC met and conferred repeatedly during discovery, including zoom meetings on May 9, May 20, June 21, and July 2.

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

MEDIATION AND SETTLEMENT

13. 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.

14. 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.

15. 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.

16. 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. 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.

17. 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. Pursuant to the Settlement Agreement, the Class will receive the benefit of a Settlement Fund of up to $5.1 million. Ex. 2, ¶ 1. 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." *Id.* ¶ 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.

18. 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. *Id.* ¶ 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.

19. In exchange, the Settlement Class and certain related parties will release GLIC from claims "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." *Id.* ¶¶ 81–83. The Settlement Class, however, will not release "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")." *Id.* ¶ 62. New COI Increase claims are limited to claims and damages that could not have been included in this 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. *Id.*

20. The Settlement Agreement gives Class Members an opportunity to opt-out pursuant to Federal Rule of Civil Procedure 23(e)(4). *Id.* ¶¶ 1–3, 12, 74–75. The $5.1 million Settlement Fund will be reduced on "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%." *Id.* ¶ 2.

21. Class Counsel has actively litigated this case and is well versed in all the factual and legal issues posted by this litigation. Before and after mediation, Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Settlement Class. During mediations and in the settlement discussions that followed, Class Counsel aggressively advocated for the class, while taking into account the strengths and weaknesses of the claims asserted, the risks of continued litigation and trial, and the likelihood of recovery.

22. It is the opinion of Class Counsel that the $5.1 million Settlement Fund by itself represents an excellent monetary recovery for the class. The non-monetary relief adds substantial additional value for the Class. This Settlement represents an especially great result because no part of the Final Settlement Fund (the amount after the pro-rata reductions for any opt-outs during the Federal Rule of Civil Procedure 23(e)(4) opt-out period) will be returned to GLIC. Ex. 2, ¶ 66.

PROPOSED NOTICE PLAN

23. Pursuant to the Settlement Agreement, GLIC will not oppose Plaintiff's proposed form and manner of notice. Ex. 2, ¶ 10.

24. GLIC will provide address information for all potential Class members before the October 10, 2024 preliminary approval hearing.

25. Within 14 days of the Court's order preliminarily approving the Settlement, JND will mail all Class members the short-form notice attached as Exhibit B to the Declaration of Gina Intrepido-Bowden.

26. Also within 14 days of the Court's order preliminarily approving the Settlement, JND will publish a website with the information contained in the Long-Form Notice attached as Exhibit C to the Intrepido-Bowden Declaration.

27. The proposed Plan of Allocation is attached as **Exhibit 4**.

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

Executed this 13th day of September, 2024 in Los Angeles, California.

/s/ Steven G. Sklaver

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