UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAULETTE T. GLOVER and JOHN T. WAREHIME, on behalf of themselves and all others similarly situated, Plaintiffs, v. CONNECTICUT GENERAL LIFE INSURANCE COMPANY; and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, Defendants.	No. 3:16-cv-00827-MPS

CLASS COUNSEL'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSE REIMBURSEMENT, AND SERVICE AWARDS

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I. INTRODUCTION

The $147.5 million non-reversionary cash Settlement[1] secured from Defendants, The Lincoln National Life Insurance Company ("Lincoln") and Connecticut General Life Insurance Company ("Connecticut General"), which will be paid out to Settlement Class Members without the necessity of submitting a claim, is one of the largest cash settlements achieved on claims for an insurance company's improper determination of cost of insurance ("COI") rates at initial pricing and failure to lower the rates in accordance with policy requirements. This is true as to both the gross size of the Settlement Fund and as to the per policy recovery. It also appears to be the largest cash settlement that either Defendant has ever paid in a class action. To obtain this extraordinary result, Class Counsel contended with Defendants' multi-faceted attacks on the pleadings and Lincoln's jurisdictional challenges. They brought to bear their substantial experience to evaluate Plaintiffs' claims and the risks of continued litigation and efficiently targeted the information showing Defendants' liability and the extent to which the COI deductions exceeded the amounts permitted by the terms of the 191,000 policies in the Settlement Class (the "Policies").

This result could not have been achieved without Class Counsel's unmatched expertise developed through litigating cases of this type across the country over many years. While this case was pending, Class Counsel were litigating similar cases against other insurance companies in multiple jurisdictions, substantially advancing the development of the COI litigation landscape, obtaining favorable rulings on policy interpretation, class certification, and damages calculations from state and federal trial and appellate courts, and taking several cases to jury trials where they

[1] Unless noted, capitalized terms are defined in the Settlement Agreement, attached as Exhibit 1 (Doc. 230-1) to Plaintiffs' Memorandum in Support of Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and to Permit Issuance of Notice to Settlement Class. Doc. 230.

achieved verdicts in favor of policyholders. The Settlement represents the culmination of their wholly contingent and considerable work seeking a recovery for policyholders for decades of COI overcharges.

Class Counsel faced substantial risk representing the Settlement Class on a fully contingent basis—with significantly more work to come—and advancing over $150,000 in out-of-pocket costs without any guarantee of success. Indeed, far from any assurance that they would be paid for their work or reimbursed their expenses when they filed this case over eight years ago, Class Counsel faced off against well-funded opponents represented by some of the top defense firms in the country on what were relatively untested theories of liability at the time the case was filed. At that time, the only federal circuit court authority was facially adverse to Glover's claims. Class Counsel performed a significant amount of legal work to create the Settlement, and importantly, unlike many large class-action settlements, Class Counsel did not piggyback on a government investigation or rely on the defendants' public admissions of culpability. To the contrary, Class Counsel, on behalf of Plaintiff and similarly situated policyholders, were the first to challenge Defendants' conduct here and took on that responsibility for the benefit of policyholders across the country without outside assistance.

Under well-established precedent, Class Counsel is entitled to an award of reasonable attorneys' fees and reimbursement of their litigation expenses from the Settlement Fund. As elsewhere, a fee based on a percentage of the fund recovered is the favored approach in the Second Circuit for calculating attorneys' fees in contingent representation, including class actions. Such a fee provides an incentive for attorneys like Class Counsel to represent individuals like those in the Settlement Class whose individual claims might otherwise be too small to justify the costs of litigation. And a percentage-based recovery allows individuals without the means to pay counsel

by the hour to nonetheless assert their claims. A percentage-based recovery also aligns Class Counsel's interests with those of their clients because the greater the recovery Class Counsel obtains, the greater fee to which Class Counsel is entitled.

The reasonableness of the requested fee is measured by a multi-factor analysis (the "*Goldberger* factors") that importantly considers the results achieved against the risks faced, the risk to Class Counsel in taking the case on a contingent-fee basis, and awards in similar cases. These factors support a fee equal to 25% of the Settlement Fund in this case.[2] *First*, 25% is below the customary percentage recovery for a contingency fee in class actions, as well as in individual, private litigation where rules of professional conduct mandate that a fee be reasonable using factors similar to the *Goldberger* factors. *Second*, the risk to Class Counsel was substantial. They were opposed by top defense firms that waged a multifaceted attack on Plaintiff's pleadings, and courts have reached varying results on the merits and meaning of similar policy language, including several adopting the insurance company's interpretation, demonstrating the uncertain and risky nature of the claims. In contrast to the extraordinary Settlement here, many similar cases have produced no recovery. *Third*, the results achieved are excellent, especially in light of the overall size of the Settlement and the risks associated with the claims and proving damages. The Settlement is better than comparable COI overcharge settlements, including exceeding in size a settlement that an earlier court deemed an "excellent" result for the class. *See Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL 4935978, at *6 (W.D. Tex. Aug. 26, 2021).

Finally, Class Counsel also request reimbursement of expenses in the amount of

[2] The Settlement Fund will be reduced on a pro rata basis for those that exclude themselves from the Settlement Class by total face amount of the policies that are excluded divided by the total face amount of the Policies. Agreement, ¶ 5.6. Class Counsel's request is for a percentage of the fund after reduction for any exclusions. Therefore, the precise dollar amount of Class Counsel's fee request will not be set until after the deadline for exclusions.

$154,956.54 (to be potentially updated prior to final approval), support for which is provided below, and for the Court to approve service awards of $25,000 for Plaintiff Glover and $10,000 for Plaintiff Warehime, as provided by the Settlement, to compensate them for their efforts on behalf of the Settlement Class. Plaintiffs were not only victims of the contractual breach, but also provided key support to the litigation, including helping to develop and review the factual allegations, answering discovery, and providing key guidance with respect to the Settlement.

Each of the requested awards is legally and factually warranted; Class Counsel request that they be approved.

II. SUMMARY OF THE LITIGATION

A. History of the Litigation

A detailed history of this litigation and the development of the COI litigation landscape while this case has been pending was set forth in Plaintiffs' memorandum in support of preliminary approval (Doc. 230 at ECF pages 12-25) and the Declarations of Norman E. Siegel (Doc. 230-2) and John J. Schirger (Doc. 267-2) in support thereof, and is further set forth in the Joint Declaration of Class Counsel contemporaneously filed herewith at Exhibit 1 ("Jt. Dec."), which is incorporated by reference here. Highly summarized, this case challenged the calculation of the monthly COI charges deducted from policyholders' accounts. The Policies at issue contain materially identical language and were each issued and/or administered by Lincoln. Plaintiffs alleged that the express language of the Policies providing for how COI rates would be determined did not authorize COI rates determined from non-mortality related factors, like profits or expenses. Non-mortality factors were not listed among the factors identified as the basis for the COI rates, including promising that COI rates would be determined based on expectations as to future mortality experience. Plaintiffs also alleged that the policy language required COI rates to be lowered when expectations of future mortality experience improved over the life of the Policies. Doc. 2.

Soon after the inception of the case, the Parties began a lengthy discovery process, including several rounds of written discovery requests and the production of nearly 20,000 pages of documents. While discovery was underway, Defendants challenged Plaintiff's pleadings in several respects. Both Defendants argued that Glover's Illinois-issued policy must be interpreted as the Seventh Circuit construed a COI rates provision in *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145 (7th Cir. 2013), as not limiting the insurance company to using the policy listed factors in determining COI rates. Lincoln also argued that it was entitled to judgment on the pleadings because it did not issue Glover's policy. Lincoln also argued it should be dismissed from the suit because the Court lacked personal jurisdiction over it. Connecticut General also asserted that Plaintiff's claims were barred by the statute of limitations. Docs. 71, 74. After lengthy and detailed briefing and an in-person hearing, the Court ruled orally that it intended to grant Defendants' motions in part. The Court rejected Lincoln's personal jurisdiction and privity challenges, but it concluded *Norem*'s interpretation controlled. However, it permitted Plaintiff to move for leave to file an amended complaint to assert that even under the *Norem* court's interpretation, the COI rates violated the Policies because the listed factors were not the primary basis for the determination of COI rates, including that the rates should have been lowered as mortality expectations improved. Plaintiff filed a motion for leave to amend, attaching as exhibits several key documents obtained during discovery that supported her amended allegations.

While Plaintiff's motion for leave to file an amended complaint was fully briefed and pending (Docs. 151, 160, 161, 169), Class Counsel was litigating similar cases against other life insurance companies across the country. In those cases, Class Counsel obtained mostly favorable authority from state and federal trial and appellate courts on policy interpretation and the calculation of damages, among other issues, and secured jury verdicts in favor of policyholder

classes, as well as several settlements benefiting policyholder classes. However, the evolving case law generally was mixed, with some courts construing similar policy language like the *Norem* court and rejecting policyholders' claims that they had been overcharged for the COI.

On September 26, 2023, the Court granted Plaintiff leave to amend (Doc. 189), accepting as plausible Glover's claims that the COI rates were in excess of what the Policies permitted at pricing and over time, and ruling that Glover's tolling allegations would be permitted and that, at a minimum, claims for overcharges within the limitations period were timely. That ruling prompted the Parties to explore a potential settlement, first through several phone calls, written correspondence, an in-person meeting amongst counsel, and ending in a formal mediation. The Parties' settlement negotiations included Lincoln's provision of robust policyholder data that allowed Class Counsel to evaluate damages, settlement, and the equitable allocation of settlement funds, and ultimately resulted in the Agreement for a $147.5 million non-reversionary cash Settlement.

B. Preliminary Approval and Issuance of Class Notice.

On March 8, 2024, Class Counsel, on behalf of Plaintiffs, filed Plaintiffs' Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and to Permit Issuance of Notice to Settlement Class and Memorandum in Support. Docs. 229, 230. In conjunction with that motion, Class Counsel, on behalf of Plaintiffs and the putative Settlement Class Members, filed a Third Amended Complaint which added Mr. Warehime as a Plaintiff. Doc. 226. On March 29, 2024, the plaintiffs in Related Actions[3] ("Objectors") filed a motion to intervene and an opposition to Plaintiffs' Motion for Preliminary Approval. Docs. 253, 254, 256. On April 19, 2024, Plaintiffs

[3] The Related Actions are the later filed cases involving subsets of the Settlement Class, *TVPX ARS Inc. v. Lincoln Life Insurance Co.*, No. 2:18-cv-02989-RBS (E.D. Pa.), *Iwanski v. First Penn-Pacific Life Insurance Co.*, No. 2:18-cv-01573-RBS (E.D. Pa.), and *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of New York*, No. 19-CV-06004-ALC-DCF (S.D.N.Y).

filed their Opposition to the motion to intervene and a Reply in Support of their Motion for Preliminary Approval. Docs. 256, 268. Each Defendant also filed replies in support of the Motion for Preliminary Approval and Lincoln filed an opposition to the motion to intervene. Docs. 262, 263, 264. On May 3, 2024, Objectors filed a reply in support of their motion to intervene. Doc. 271. On July 3, 2024, Objectors filed a notice of supplemental authority in support of their opposition to preliminary approval. Doc. 276. On July 9, 2024, Plaintiffs filed their Response thereto. Doc. 278. Also on July 9, 2024, Lincoln notified the Court that the court in the Related Action, *Vida*, had granted the motion to stay the proceedings in that case pending the settlement approval process here. Doc. 277. On July 12, 2024, Lincoln filed a response to the supplemental authority submitted by the Objectors and the affidavit of its expert in *Vida* averring that the *Vida* court's interpretation of the policies eliminated over 99% of the plaintiff's claimed damages in that case. Docs. 279, 280. On July 22, 2024, Objectors filed a reply as to their supplemental authority, Doc. 281, to which Lincoln filed a response on July 26, 2024, Doc. 283.

On July 30, 2024, counsel for the Parties and the Objectors appeared before this Court for a hearing on Plaintiffs' Motion for Preliminary Approval and the motion to intervene.

On September 4, 2024, this Court issued its Ruling on Motion for Preliminary Approval, Motion to Intervene, and Motion to Seal ("Preliminary Approval Ruling"). Doc. 289. The Court denied the Objectors' motion to intervene because intervention is unnecessary to object to the Settlement. Doc. 289 at 2. The Court granted Plaintiffs' Motion for Preliminary Approval, finding it would likely be able to both approve the Settlement as fair, reasonable, and adequate, and certify the Settlement Class for purposes of judgment on the Settlement. The Court rejected Objectors' arguments that Plaintiffs did not have class standing to assert claims on behalf of policyholders whose Policies were issued by LLANY or First Penn because Lincoln administered those Policies

and, like all Policies in the Settlement Class, was responsible for the allegedly improper COI deductions. *Id.* at 3-9. The Court next found that the Rule 23 class certification requirements were satisfied, rejecting Objectors' challenges to Plaintiffs' typicality and adequacy to represent the Settlement Class. *Id.* at 9-16. Finally, the Court concluded that the Settlement appeared to be procedurally and substantively fair, reasonable, and adequate given the results obtained and significant risk of continued litigation. *Id.* at 17-22. The Court therefore ordered that notice of the Settlement be issued to the Settlement Class, appointed Stueve Siegel Hanson LLP and Schirger Feierabend LLC as Class Counsel pursuant to Rule 23(g), and appointed Epiq Class Action and Claims Solutions, Inc. ("Epiq") as the Settlement Administrator.

On October 18, 2024, Epiq mailed the Court-approved Notice to the Settlement Class Members. Ex. 2 (Azari Declaration), ¶ 14.

Pursuant to the Settlement Agreement and their equitable entitlement to be paid for their efforts in recovering a common fund for the Settlement Class, Class Counsel now move for an award of attorneys' fees, expense reimbursement, and service awards for Plaintiffs Glover and Warehime. Class Counsel's motion is made well in advance of the November 23, 2024, deadline for objections and requests for exclusion so that Settlement Class Members have an opportunity to review Class Counsel's requests prior to that deadline.

III. CLASS COUNSEL'S ATTORNEYS' FEE REQUEST SHOULD BE APPROVED.

A. Legal Standard for Awarding Attorneys' Fees

Federal Rule of Civil Procedure 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized . . . by the parties' agreement." Further, "[i]t is well settled that 'a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.'" *Sykes v. Harris*, No. 09 Civ. 8486 (DC), 2016 WL 3030156, at *15

(S.D.N.Y. May 24, 2016) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). "The Court has discretion in determining what attorneys' fees are reasonable in a class action settlement." *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707, at *14 (D. Conn. Nov. 3, 2016) (citing *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 347 (S.D.N.Y. 2014) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000))).

Because Class Counsel's requested fee is to be paid from the cash fund their work generated, "[t]he 'percentage-of-the-fund' method," under which the Court sets a percentage of the recovery as a fee, "is the preferred method for calculating attorney's fees" in this Circuit. *See In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894 (AWT), 2014 WL 12862264, at *3 (D. Conn. Dec. 9, 2014) (citing *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 136 (S.D.N.Y. 2008)); *Goldberger*, 209 F.3d at 49 (noting that "in *Blum v. Stenson*, [465 U.S. 886, 900 n.16 (1984)] the Supreme Court observed that "under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class.'"). The percentage method is preferred because it "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of the litigation.'" *Sykes*, 2016 WL 3030156, at *15 (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)).

Conversely, the other available method for attorney fee calculation, the lodestar method, where a fee is calculated by "multiplying a reasonable hourly rate by the number of hours reasonably expended by counsel," *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 183-84 (W.D.N.Y. 2011), is not preferred where an attorney fee is being sought from a common fund as it can lead to "several perverse results," including incentivizing prolonged litigation and

unnecessary work and misaligning the interests of counsel and plaintiffs because counsel only share the downside risk of "a finding of no liability and therefore no attorney's fee" but "do not necessarily share the potential economic upside." *E.g.*, *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 76 (S.D.N.Y. 2000).

While it is appropriate to perform a "lodestar cross-check" as a back-end check on the reasonableness of a fee determined from the percentage method, "that cross-check is solely a 'rough indicator of the propriety of a fee request,' and a district court 'must be cautious of placing too much weight' on the numbers underlying the lodestar calculation so as not to reintroduce the problems associated with the method." *Sykes*, 2016 WL 3030156, at *16 (quoting *Davis*, 827 F. Supp. 2d at 185). "The crosscheck is performed by dividing the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier." *Davis*, 827 F. Supp. 2d at 184. "Courts have continually recognized that, in instances where a lodestar analysis is employed to calculate attorneys' fees or used as a 'cross check' for a percentage of recovery analysis, counsel may be entitled to a 'multiplier' of their lodestar rate to compensate them for the risk they assumed, the quality of their work and the result achieved for the class." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) (citing cases). That is because, "as the Second Circuit has noted '[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success.'" *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 09-cv-1293 (VLB), 2012 WL 3589610, at *12 (D. Conn. Aug. 20, 2012) (citation omitted). "Courts award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers." *Sukhnandan v. Royal Health Care of Long Island LLC*, No. 12cv4216 (RLE), 2014 WL 3778173, at *14 (S.D.N.Y. July 31, 2014); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738

(RNC), 2014 WL 3778211, at *7 (D. Conn. July 31, 2014) (collecting cases that have approved awards with a lodestar multiplier of up to eight times the lodestar).

"[W]here [the lodestar method is] used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case." *Goldberger*, 209 F.3d at 50; *see also Davis*, 827 F. Supp. 2d at 184 (in performing lodestar cross-check calculation, "'[t]he district courts may rely on summaries submitted by the attorneys and need not review actual billing records'") (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005)).

Regardless of the method used, "[w]hen evaluating whether a proposed attorneys' fees award in the class action settlement context is reasonable, the Court considers the following *Goldberger* factors: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Kemp-DeLisser*, 2016 WL 6542707, at *14 (quoting *Goldberger*, 209 F.3d at 50).

B. Class Counsel's Attorneys' Fee Request Is Reasonable and Should Be Approved.

1. The Percentage of the Fund Requested Is Reasonable and Lower Than the Typical Percentage Awarded in Contingency Litigation.

The Parties agreed that Class Counsel would seek a fee of up to one-third of the Settlement Fund. Agreement, ¶ 8.1. Class Counsel seek an award of 25% of the Settlement Fund. "In using the percentage of the fund approach, the Court must first determine a baseline reasonable fee percentage in relation to the settlement, using common fund settlements of similar magnitude and complexity as guidance." *Edwards v. Mid-Hudson Valley Fed. Credit Union*, No. 1:22-cv-00562-TJM-CFH, 2023 WL 5806409, at *11 (N.D.N.Y. Sept. 7, 2023). Class Counsel's request for a fee

award of 25% of the Settlement Fund is significantly less than the "typical" award of one-third for "class action settlements in the Second Circuit." *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, No. 06 Civ. 4270(PAC), 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009). Indeed, courts in this Circuit have on several occasions awarded fees in the substantially greater percentage of 30 to 33.33% of funds this size or larger.[4] *See In re U.S. Foodservice*, 2014 WL 12862264, at *3 (awarding 33.3% of $297 million fund); *Haddock v. Nationwide Fin'l Servs., Inc.*, No. 01-cv-1552 (SRU), 2015 WL 13942222, at *5 (D. Conn. Apr. 9, 2015) (awarding 35% award of $140 million fund); *Pearlstein v. BlackBerry Ltd.*, No. 13-cv-7060 (CM) (KHP), 2022 WL 4554858, at *10 (S.D.N.Y. Sept. 29, 2022) (awarding 33.3% of $165 million cash settlement fund as "reasonable within this circuit"); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.33% of a $510 million fund); *In re Buspirone Antitrust Litig.*, No. 01-md-1413 (S.D.N.Y. Apr. 17, 2003) (awarding 33.33% of $220 million fund);[5] *Kurzweil v. Philip Morris Co., Inc.*, Nos. 94-2373 (MBM), 94-2546 (BMB), 1999 WL 1076105, at *1

[4] Courts have sometimes stated that for large funds, a "sliding scale" percentage approach is appropriate to use, such that the highest percentage is awarded for the first segment of settlement dollars, with declining percentages awarded for subsequent dollar segments of the fund. For example, in *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014), the court awarded 33% of the first $10 million, 30% of the next $40 million, 25% of the next $50 million, and 20% of the next $400 million, with the percentages declining from there, for the $5.7 billion settlement fund in that case. While some courts have noted that this approach "creates the perverse incentive for the Class Counsel to settle too early for too little," *see, e.g.*, *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006), if the Court were to apply that approach here using the percentages approved in *In re Payment Card*, it would result in a *larger* fee than what Class Counsel has requested here using a flat 25% of the fund, further showing the reasonableness of the percentage Class Counsel seek. *See In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (discussing sliding scale approach for funds larger than $100 million, noting that the "research shows that in cases where the award was between $100 million and $500 million, the average attorneys' fees were 26.89%").

[5] The cited order from *Buspirone* is a text entry and the underlying docket entries are not available. However, the court's findings are available from the transcript of the final approval hearing at pages 40-43, which is attached hereto as Exhibit 3.

(S.D.N.Y. Nov. 30, 1999) (awarding 30% of $123 million fund).[6]

[6] Awards of 30-33% of large funds have also been awarded in many instances outside of this Circuit as well. *See In re Broiler Chicken Antitrust Litig.*, 16 C 8637, 2024 WL 3292794 (N.D. Ill. July 3, 2024) (30% of $181 million); *Peace Officers' Annuity & Benefit Fund of Georgia v. DaVita Inc.*, No. 17-cv-0304, 2021 WL 2981970 (D. Colo. July 15, 2021) (30% of $135 million); *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-md-02472, 2020 WL 4035125 (D.R.I. July 17, 2020) (33.33% of $120 million); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094 (D. Kan. 2018) (33.33% of $1.5 billion); *Hale v. State Farm Mut. Auto Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018) (33.33% of $250 million); *Cabot East Broward 2 LLC v. Cabot*, No. 16-61218-CIV, 2018 WL 5905415 (S.D. Fla. Nov. 9, 2018) (33.33% of $100 million); *In re Domestic Drywall Antitrust Litig.*, MDL No. 2437 (E.D. Pa. July 17, 2018) (Doc. 768) (33.33% of $190 million); *see also id.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018); *Cook v. Rockwell Int'l Corp.*, No. 90–CV-00181-JLK, 2017 WL 5076498 (D. Colo. Apr. 28, 2017) (40% of $375 million); *In re Urethane Antitrust Litig.*, No. 2:04-md-01616-JWL (D. Kan. July 29, 2016) (Doc. 3276) (33.33% of $835 million); *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass. Feb. 2, 2015) (Doc. 1095) (33% of $590.5 million); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572 (N.D. Ill. Oct. 22, 2014) (33% of $164 million); *Tennille v. Western Union Co.*, No. 09-cv-00938, 2014 WL 5394624 (D. Colo. Oct. 15, 2014) (30% of $180 million); *In re Neurontin Antitrust Litig.*, No. 2:02-cv-01830 (D.N.J. July 6, 2014) (Doc. 114) (33.33% of $190 million); *In re (Citizens Bank) Checking Account Overdraft Litig.*, No. 1:09-md-02036 (S.D. Fla. Mar. 12, 2013) (Doc. 3331) (30% of $137.5 million); *In re Titanium Dioxide Antitrust Litig.*, No. 1:10-cv-00318, 2013 WL 6577029 (D. Md. Dec. 13, 2013) (33.33% of $163.5 million); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739 (E.D. Pa. 2013) (33.33% of $150 million); *In re (Chase Bank) Checking Account Overdraft Litig.*, No. 1:09-md-02036 (S.D. Fla. Dec. 19, 2012) (Doc. 3134) (30% of $162 million); *City of Greenville v. Syngenta Crop Prot.*, 904 F. Supp. 2d 902 (S.D. Ill. 2012) (33.33% of $105 million); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012) (33.33% of $145 million); *In re (Bank of America) Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011) (30% of $410 million); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632 (N.D. Tex. Apr. 9, 2010), *as modified* (June 14, 2010) (30% of $110 million); *In re Tricor Direct Purchaser Antitrust Litig.*, 1:05-cv-00340-SLR, 2009 WL 10744518 (D. Del. Apr. 23, 2009) (33.33% of $250 million); *In re OSB Antitrust Litig.*, No. 2:06-cv-00826 (D. Pa. Dec. 9, 2008) (Doc. 947) (33.33% of $120.7 million); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL 1426, 2008 WL 63269 (E.D. Pa. Jan. 3, 2008) (32.7% of $105.7 million); *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (31.33% of $1.06 billion); *In re Linerboard Antitrust Litig.*, MDL 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004) (30% of $202.5 million); *In re Relafen Antitrust Litig.*, No. 1:01-cv-12239-WGY (D. Mass. Apr. 9, 2004) (Doc. 297) (33.33% of $175 million); *DeLoach v. Phillip Morris Co.*, No. 00-CV-1235, 2003 WL 23094907 (M.D.N.C. Dec. 19, 2003) (33.33% of $212 million cash component of settlement); *In re Prison Realty Sec. Litig.*, No. 3:99-cv-00458 (M.D. Tenn. Feb. 9, 2001) (Doc. 108) (30% of $104 million); *In re Vitamins Antitrust Litig.*, MDL 1285, 2001 WL 34312839 (D.D.C. July 16, 2001) (34.06% of $365 million); *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) (40% of $185 million); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000) (30% of $111 million); *In re Informix Corp. Sec. Litig.*,

Class Counsel were awarded 30-33% of the settlement funds in other similar cost of insurance overcharge cases. *See Rogowski v. State Farm Life Ins. Co.*, No. 4:22-cv-00203-RK, 2023 WL 5125113, at *5 (W.D. Mo. Apr. 18, 2023) (awarding 33.3% of $325 million fund); *Niewinski v. State Farm Life Ins. Co.*, No. 23-cv-4159 (W.D. Mo. Apr. 1, 2024) (Doc. 36) (awarding 33.3% of $65 million settlement fund); *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG (W.D. Tex. Aug. 26, 2021) (Doc. 117) (awarding 30% of $90 million fund); *Larson v. John Hancock Life Ins. Co. (U.S.A.)*, No. RG16813803, 2018 WL 8016973, at *6 (Cal. Super. May 08, 2018) (awarding 30% of $59.75 million settlement fund).[7] That is an important consideration in evaluating the reasonableness of Class Counsel's request here because "[a]wards in comparable cases are an appropriate measure of the market value of counsel's time." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557 (CM), 2014 WL 7323417, at *14 (S.D.N.Y. Dec. 19, 2014) (citing *Jones v. Amalgamated Warbasse Houses, Inc.*, 721 F.2d 881, 885 (2d Cir. 1983)); *cf. Colgate-Palmolive*, 36 F. Supp. 3d at 351 (looking to the percentages awarded for attorneys' fees in other ERISA cases to determine "a reasonable baseline fee for an ERISA case"); *Collins v. Olin Corp.*, No. 3:03-cv-945 (CFD), 2010 WL 1677764, at *6 (D. Conn. Apr. 21, 2010) (awarding 33.33% of settlement fund, recognizing that "[a] compensation of one third of the total fund is in line with the percentage fees awarded in similar class action suits") (citing *Silverberg v. People's*

No. 3:97-cv-01289-CRB (N.D. Cal. Nov. 23, 1999) (Doc. 471) (30% of $132.2 million); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (36% of $127 million); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295 (1st Cir. 1995) (30.9% of $220 million).

[7] Class Counsel have also been awarded 33.33% of judgment funds obtained through trial. *See Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021) (approving fee of 33.33% of judgment fund of $38.84 million plus post-judgment interest); *Karr v. Kansas City Life Ins. Co.*, No. 1916-CV26645 (Mo. Cir. Ct. Aug. 24, 2023) (awarding 33.3% of judgment fund of $28.36 million plus interest); *Sheldon v. Kansas City Life Ins. Co.*, No. 1916-CV26689 (Mo. Cir. Ct. Feb. 13, 2024) (awarding 33.33% of judgment fund of $4.1 million plus interest).

Bank, 23 Fed. Appx. 46, 48 (2d Cir. 2001)); *Dixon v. Zabka*, No. 11-982-MPS, 2013 WL 2391473, at *2 (D. Conn. May 23, 2013) (recognizing that an award of slightly more than 30% was "less than the typical fee award of one-third that courts in this Circuit routinely award in wage and hour settlements") (citing *Aros v. United Rentals, Inc.*, No. 10-73 (JCH), 2012 WL 3060470, at *7 (D. Conn. July 26, 2012) and *Willix v. Healthfirst Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (a fee of one-third of the fund is reasonable and "consistent with the norms of class litigation in this circuit")).[8]

Thus, Class Counsel's request for 25% of the Settlement Fund "falls well below the average award for this type of case-on a percentage basis," supporting the reasonableness of the request. *See Velez v. Novartis Pharms. Corp.*, No. 04 Civ. 09194(CM), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (noting "[d]istrict courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater" in finding class counsel's request for a lower percentage reasonable) (collecting authorities).

The Rules of Professional Conduct require that any attorney's fee, including a contingent one, be reasonable under many of the same factors as the *Goldberger* factors. *See, e.g.*, Conn. Rules of Prof'l Conduct 1.5. In that regard, a typical contingent fee arrangement in non-class action cases provides that the attorney representing the plaintiff receives 25 to 50 percent of the plaintiffs'

[8] *See also In re Priceline.com, Inc., Sec. Litig.*, No. 3:00-CV-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (approving attorneys' fee award of 30% of $80 million settlement fund and listing other Second Circuit cases that approved between 25-33.33% of the settlement fund in attorneys' fees); *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ.1262 RWS, 2002 WL 31663577, at *26 (S.D.N.Y. Nov. 26, 2002) ("In this district alone, there are scores of common fund cases where fees alone (*i.e.*, where expenses are awarded in addition to the fee percentage) were awarded in the range of 33-1/3% of the settlement fund."); *Central States Se. & Sw. Areas Health & Welfare Fund v. Merck–Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007) (affirming award of 30% of $42.5 million settlement); *Calibuso v. Bank of Am. Corp.*, 299 F.R.D. 359, 364 (E.D.N.Y. 2014) (awarding 33% of $38.2 million settlement fund); *Davis*, 827 F. Supp. 2d at 178 (awarding 33.33% of $42 million settlement).

recovery, exclusive of costs. Jt. Dec., ¶ 53. Moreover, Class Counsel often represents sophisticated businesses in complex commercial litigation on a contingency basis, where these business clients commonly agree to pay fees amounting to 35 to 50 percent of any recovery. *Id.*; *see also* Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 284–86 (1998) (noting that 33⅓ percent "is the 'standard' contingency fee figure"). And here, Plaintiffs agreed to contingent fee percentages of 40%. Jt. Dec., ¶ 53.

This is likewise relevant to determining the appropriateness of the award here because the Court's ultimate task is to "'approximate the reasonable fee that a competitive market would bear.'" *Johnson v. City of New York*, No. 08 CV 3673(KAM)(LB), 2010 WL 5818290, at *4 (E.D.N.Y. Dec. 13, 2010) (quoting *McDaniel v. County of Schenectady*, 595 F.3d 411, 420 (2d Cir. 2010)); *see also McDaniel*, 595 F.3d at 422 (district court's focus should be "on mimicking a market"); *In re Lloyd's*, 2002 WL 31663577, at *26 ("[T]he percentage approach most closely approximates the manner in which private litigants compensate their attorneys in the marketplace contingency fee model."); *see also Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 623 (S.D.N.Y. 2012) (approving one-third fee request, reasoning in part that clients "typically pay one-third of their recoveries under private retainer agreements").

Because 25% is below the percentage typically awarded in contingency litigation, Class Counsel's request for 25% of the Settlement Fund is reasonable and should be approved. Further, as explained below, the reasonableness of Class Counsel's request is supported by consideration of the *Goldberger* factors and a lodestar cross-check.

2. The *Goldberger* Factors Support the Requested Fee Award.

a. The Risk of the Litigation Supports the Fee Award.

Class Counsel starts with the risks of the litigation because "[t]he Second Circuit has made clear that the risk of success is 'perhaps the foremost factor to be considered in determining' the

reasonableness of an attorneys' fees request." *Sykes*, 2016 WL 3030156, at *16 (quoting *Goldberger*, 209 F.3d at 54); *e.g.*, *Fresno Cnty. Employees' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63, 70 (2d Cir. 2019) ("The plaintiff class is therefore appropriately charged for contingency risk where such risk is appreciable because the class has benefited from class counsel's decision to devote resources to the class's cause at the expense of taking other cases.").

"In considering this factor, the risk should be measured at the outset of the case and not at the time of settlement." *Sykes*, 2016 WL 3030156, at *16. Courts have noted that the *Goldberger* risk analysis overlaps with the risk analysis performed in evaluating the fairness of a settlement. *See In re Priceline.com*, 2007 WL 2115592, at *3-5 (noting that risk analysis concerning attorney fee award is similar to risk analysis with respect to settlement fairness).

In this case, Class Counsel undertook representation of Plaintiffs and the Settlement Class on a contingent basis and Class Counsel's risk of no recovery was high. First, this case involved claims that were by their nature difficult to detect. Plaintiffs alleged Defendants hid the unlawful COI charges for decades. Only Class Counsel's deep understanding of life insurance products, pricing, and access to qualified actuarial experts allowed the case to be filed in the first instance. Jt. Dec., ¶ 54.

Second, establishing Defendants' liability likewise poses substantial risk. As this Court recognized in evaluating the fairness of the Settlement in its Preliminary Approval Ruling:

> [T]here is significant uncertainty both about the meaning of the 'based on' language in the policies, and about how courts and juries will apply that language to the facts of each case. Different courts have reached different conclusions on these issues across the country, and the Court of Appeals for the Second Circuit has not yet weighed in on the policy language at issue in a similar case. Further, decisions by district courts within the Second Circuit, including mine, do not make it easy for the proposed class members to prevail.

Preliminary Approval Ruling at 19-20. The disagreement among jurists over the central issue of

policy interpretation places a clear emphasis on the risks to Class Counsel here. When Class Counsel started the litigation, the meaning of the COI provision had been ostensibly resolved in favor of insurance company defendants by the only precedential federal appellate court decision on the meaning of COI rate provisions. *See Norem*, 737 F.3d at 1150 ("neither the dictionary definitions nor the common understanding of the phrase 'based on' suggest that [the insurer] is prohibited from considering factors beyond sex, issue age, policy year, and payment class when calculating its COI rates.").

As the district court in *Vogt v. State Farm* put it in awarding attorneys' fees in that case, which was filed at the same time as this one: "[T]he only appellate case law construing similar language in an insurance provision undermined the position that Class Counsel adopted in this case" and "the interpretation of the Policy and the calculation of damages" were factually and legally "difficult and novel." *See Vogt*, 2021 WL 247958, at *2; *see also In re Payment Card*, 991 F. Supp. 2d at 441 (finding the risk of litigation factor supported a higher fee award where "[w]hen the litigation began in 2005, only one court had ruled on an antitrust challenge to the manner in which interchange rates are set, and it had found in favor of the defendant"); *In re Beacon Assocs. Litig.*, 2013 WL 2450960, at *13 (S.D.N.Y. May 9, 2013) ("[A]ll of these matters were taken on contingency, so in view of the novelty of the issues there was some possibility that counsel would recover nothing at all."). Despite this Court concluding it was bound to follow *Norem* on Glover's Illinois-issued policy, Class Counsel successfully pled that Defendants violated the Policies even under *Norem*'s interpretation, but that was also a completely novel theory, and one another court had rejected. *See Maxon v. Sentry Life Ins. Co.*, No. 18-cv-254-jdp, 2019 WL 4540057, at *5 (W.D. Wis. Sept. 19, 2019).

Moreover, policy interpretation was far from the only risk that Class Counsel faced. As in

the many cases Class Counsel have litigated beyond the pleadings, Defendants would have levied vigorous challenges at class certification, expert testimony, and the damages calculations. *See In re Global Crossing Sec, & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (finding that a denial of class certification in that case would create an "appreciable risk to the class members' potential for recovery"); *see also* Doc. 280 (Lincoln's expert explaining that under Judge Carter's interpretation of the policy in *Vida*, which is materially the same interpretation reached by this Court (Doc. 289 at 14), over 99% of the plaintiff's claimed damages were eliminated). Nor did Class Counsel have the benefit of tagging along to a previous, similar suit or from any similar government action or investigation. Instead, Class Counsel were the first to challenge Defendants' conduct here and took on this responsibility for the benefit of policyholders across the country without outside assistance.

Thus, the most important factor in evaluating the reasonableness of Class Counsel's fee request, the risk of this contingency litigation, supports Class Counsel's requested fee award.

b. The Quality of the Representation Supports the Fee Award.

"In considering this factor, courts 'review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit.'" *Sykes*, 2016 WL 3030156, at *17 (quoting *Raniere v. Citigroup, Inc.*, 310 F.R.D. 211, 221 (S.D.N.Y. 2015)). First, in common fund cases, the size of the fund itself reflects "the measure of success and represents the benchmark from which a reasonable fee will be awarded." Manual For Complex Litigation 4th § 14:121 (2004) (cleaned up); *see Goldberger*, 209 F.3d at 55 (the quality of representation is "best measured by results"). Here, Class Counsel secured a Settlement of more than $147 million for the Settlement Class Members, which will be distributed without the necessity of making a claim. The average per policy gross allocation is $770 (Doc. 267-8, ¶ 4), an excellent recovery for the 191,000 Settlement Class Members, most of whom are now at a significantly advanced age and had no way

to know their policy accounts were being improperly drained.

The Settlement both in size and per policy average recovery is one of the largest obtained in a case of this type (Jt. Dec., ¶¶ 39, 61), even after the Court interpreted the Policies as permitting some consideration of non-mortality factors, demonstrating the high quality of representation provided by Class Counsel. *See, e.g.*, *In re Payment Card*, 991 F. Supp. 2d at 441 ("In light of that serious risk and the complexity of the case, the quality of representation in this case may be measured in large part by the results that counsel achieved for the classes."). The result is even more significant because "[u]nlike other cases where the class award consisted significantly of injunctive relief, stock, price rollbacks or hard-to-value coupons," Class Counsel negotiated for a cash fund from which settlement checks will be mailed directly to Settlement Class Members. *See In re AOL Time Warner, Inc. Sec. and "ERISA" Litig.*, No. 02 Civ. 5575(SWK), MDL 1500, 2006 WL 3057232, at *17 (S.D.N.Y. Oct. 25, 2006).

Second, as noted above, Class Counsel's depth of knowledge and experience in class actions of this type is unmatched. As this Court recognized, "Plaintiffs' counsel have litigated a large number of cost-of-insurance cases in class actions against insurers throughout the country, and they have achieved several large settlements. They have also tried four such cases to verdicts in the classes' favor." Preliminary Approval Ruling at 11-12 (citations omitted). Class Counsel effectively and efficiently litigated this case to achieve this result, which would not have been possible without Class Counsel's track record of results, including their proven willingness to take cases to trial and through appeal. Further, "[t]he quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work." *In re Global*, 225 F.R.D. at 467. Here, Class Counsel achieved this extraordinary result against parties represented by some of the nation's preeminent law firms. There is no question that the quality of counsel faced by Class Counsel was

high. Thus, the quality of representation factor supports approval of Class Counsel's fee request.

c. The Magnitude and Complexities of the Litigation Support the Fee Award.

The magnitude and complexities of this litigation were substantial. Defendants' practices impacted policyholders across the country and resulted in significant sums being deducted from their policy accounts in alleged violation of the Policies. Class Counsel had to contend with a multi-faceted attack on the pleadings, including a personal jurisdiction challenge by Lincoln. And as explained, numerous challenges stood in the way of the policyholders' recovery, including the hidden nature of the allegedly excessive deductions leading to a challenging statute of limitations defense for deductions taken over decades; strong disputes over policy interpretation resulting in disparate readings of the same or similar policy language by courts across the country; certification of a nationwide litigation class, which would have been sharply contested and likely subject to an interlocutory appeal; and expert and damages challenges given the "based on" standard in the Policies (*see* Preliminary Approval Ruling at 13-14) and actuarial practices at issue. Had Plaintiffs surmounted those complicated hurdles, they would have then had to prevail at a jury trial and on appeal on numerous issues for the policyholders to obtain their due recovery.[9] The magnitude and complex nature of this litigation therefore supports Class Counsel's fee request.

d. The Requested Fee in Relation to the Settlement Supports the Fee Award.

The Settlement provides for a non-reversionary cash fund that will be paid out to

[9] Notably, even in cases in which Class Counsel obtained verdicts in favor of policyholder classes, it took years for policyholders to receive their recovery. In the *Vogt v. State Farm* litigation, the class members who prevailed at trial in June 2018, were not paid until 2022 because State Farm exercised all rights of appeal including seeking *certiorari* to the Supreme Court. Jt. Dec., ¶ 59. And in the trials against Kansas City Life Insurance Company starting in December 2022 in which Class Counsel obtained verdicts in favor of policyholders, those judgments have yet to be paid due to the delay inherent in the appeals process. *Id.*

Settlement Class Members without the need to make a claim. This makes the Settlement's value simple to assess as the amount of the fund. This is in contrast to many settlements providing for (1) settlement relief only if a claim is made (and often where the remainder reverts to the defendant); (2) coupons that only provide value if the class member wants to continue to do business with the defendant; or (3) hard-to-value injunctive relief. *See In re AOL*, 2006 WL 3057232, at *17. Therefore, Class Counsel's request for a fee of 25% of the Settlement Fund is in precise relation to the value of the Settlement, and as set forth in Section III.B.1., above, courts regularly award fees in percentages far greater than what Class Counsel have requested here, supporting the reasonableness of Class Counsel's request. Thus, "the fact that the requested fee is comparable to fees that courts have found reasonable . . . weighs in favor of the fee's reasonableness." *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 244 (E.D.N.Y. 2010).

e. The Time and Labor Expended by Class Counsel, Including a Lodestar Cross-check, Supports the Fee Award.

Class Counsel spent substantial time and labor investigating the claims here, preparing the initial complaint, briefing and arguing Defendants' motions to dismiss and for judgment on the pleadings and Plaintiff's motion to amend the complaint to allege Defendants' breach under the Court's interpretation, engaging in discovery and case management, working with Plaintiffs' actuarial expert, and negotiating and seeking approval of the Settlement. As of October 30, 2024, Class Counsel, along with local counsel, have spent more than 5,320 hours working on this case, and, even after final approval, anticipate spending 875 more hours protecting the Settlement through the promised appeal by the Objectors, and an additional 475 hours on settlement

administration thereafter.[10] Jt. Dec., ¶¶ 64-65.[11] That is time spent and invested on behalf of the Settlement Class that could have been spent on less risky cases, where liability or damages were more certain, or where the claims had been advanced by a government investigation or public admissions—none of which was present here. *Id.* ¶ 58; *see also In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 501 (S.D.N.Y. 2017) (noting that the contingency risk analysis "weigh[ed] in favor of a large award," where lead counsel "worked for two years without compensation on a contingency fee basis, and in that time billed almost 4,000 hours without a guarantee of recovery" and "would reasonably have been aware, in accepting this representation, that it could be involved in protracted motion practice for years prior to receiving any fee").

"While not required," when fees are requested as a percentage-of-the-fund "a lodestar

[10] It is appropriate to consider anticipated future hours that Class Counsel will spend in the litigation in calculating the lodestar for purposes of a cross-check. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar 17, 2017) (in conducting lodestar cross-check, including over 20,000 hours for future reasonably anticipated work); *In re Volkswagen*, 746 F. App'x 655, 659 (9th Cir. 2018) (holding that "[t]he district court did not err in including projected time in its lodestar cross-check; the court reasonably concluded that class counsel would, among other things, defend against appeals and assist in implementing the settlement"); *In re Equifax Inc. Customer Data Security Breach Litig.*, No. 1:17-md-2800-TWT, 2020 WL 256132, at *40 (N.D. Ga. Jan. 13, 2020) ("Excluding such [future] time . . . would misapply the lodestar methodology and needlessly penalize class counsel."); *Velez v. Novartis Pharms. Corp.*, No. 04 Civ. 09194(CM), 2010 WL 4877852, at *23 (S.D.N.Y. Nov. 30, 2010) ("Courts in this Circuit have recognized that where 'class counsel will be required to spend significant additional time on this litigation in connection with implementing and monitoring the settlement, the multiplier will actually be significantly lower.'") (quoting *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 2207(JGK), 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010) and citing *Parker v. Jekyll & Hyde Ent. Holdings, L.L.C.*, No. 08 Civ. 7670(BSJ)(JCF), 2010 WL 532960, at *2 (S.D.N.Y. Feb. 9, 2010) (noting that, "as class counsel is likely to expend significant effort in the future implementing the complex procedure agreed upon for collecting and distributing the settlement funds, the multiplier will diminish over time")); *see also Sykes*, 2016 WL 3030156, at *16; *Thompson v. Cmty. Bank, N.A.*, No. 8:19-CV-919 (MAD/CFH), 2021 WL 4084148, at *11 (N.D.N.Y. Sept. 8, 2021); *Edwards*, 2023 WL 5806409, at *12; *Pearlstein*, 2022 WL 4554858, at *10 (all considering anticipated future hours of work in evaluating lodestar cross-check).

[11] Class Counsel will submit their billing records for the Court's review upon request.

'cross-check' based on a summary of hours" is encouraged to "test[] the reasonableness of the percentage." *Amara v. Cigna Corp.*, No. 3:01-CV-2361 (JBA), 2018 WL 6242496, at *2 (D. Conn. Nov. 29, 2018) (citing *Wal-Mart*, 396 F.3d at 123). At Class Counsel's current hourly rates,[12] the hours reasonably spent and that will continue to be expended result in a lodestar of $5,851,503.00,

[12] "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush*, 2014 WL 7323417, at *15; *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-cv-8405 (CM), 14-cv-8714 (CM), 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2015) (same); *Missouri v. Jenkins ex rel. Agyei*, 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") (cleaned up); *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"). Class Counsel's current hourly rates are based on rate scales, as annually adjusted, submitted to and approved as reasonable by many courts across the country, including by two courts just last month. *See* Jt. Dec., ¶ 66 (citing, *inter alia*, *O'Dell v. Aya Healthcare, Inc.*, No. 22cv1151-CAB-MMP (S.D. Cal. Oct. 15, 2024), Doc. 136 at 8 (approving as reasonable Stueve Siegel Hanson's 2024 hourly rates); *id.* at Doc. 107-2, ¶ 23 (setting forth hourly rates); *Clemens v. ExecuPharm, Inc.*, No. 20-3383 (E.D. Pa. Oct. 1, 2024), Doc. 67 at 8 (same); *id.* at Doc. 64-2, ¶ 26 (setting forth hourly rates)). Further, although Class Counsel infrequently accept non-contingent work, the rates reported here track the rates Class Counsel charge to hourly-paying clients that retain Class Counsel for hourly work. Jt. Dec., ¶ 67. Courts in this District have approved similar rates. *See, e.g.*, *Berryman v. Avantus, LLC*, No. 3:21-CV-1651-VAB, 2024 WL 2108824, at *13 (D. Conn. May 10, 2024); *id.* at Doc. 69-2, ¶ 5 (setting forth hourly rates). Class Counsel's rates also compare favorably to the rates of major defense firms, further demonstrating their reasonableness. *See* Debra Cassens Weiss, *Some top partners in BigLaw will bill nearly $3,000 per hour next year, data says*, ABA JOURNAL, Sept. 26, 2024, https://www.abajournal.com/news/article/some-top-partners-in-biglaw-will-bill-nearly-3000-an-hour-next-year-report-says (reporting nine firms with standard hourly rates for senior partners that range from about $2,400 to $2,875 and expecting rates of $2,100 for senior partners and $1,900 for other partners to the nation's 50 top-grossing firms). Courts have recognized that "[t]he rates charged by the defendant's attorneys provide a useful guide to rates customarily charged in this type of case." *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768 n.18 (7th Cir. 1982) (citation omitted); *see also, e.g.*, *In re Hi-Crush*, 2014 WL 7323417, at *14 n.8 (looking to rates billed by defense counsel in evaluating reasonableness of plaintiffs' counsel's hourly rates); *Ruiz v. Estelle*, 553 F. Supp. 567, 589 (S.D. Tex. 1982) ("In an action for which no adequate parallel can be found, the best example of a fee paid for similar work is that paid by opposing counsel in the same action.").

which equates to an approximate multiplier of 6.3.[13] Jt. Dec., ¶ 68. This is within the range of multipliers found to be reasonable by courts in this Circuit. *See Bozak*, 2014 WL 3778211, at *7 (collecting cases that have approved awards with a lodestar multiplier of up to eight times the lodestar and higher); *Pantelyat v. Bank of Am., N.A.*, No. 16-cv-8964 (AJN), 2019 WL 402854, at *10 (S.D.N.Y. Jan. 31, 2019) ("'Courts regularly award lodestar multiples of up to eight times lodestar.'") (quoting *Yuzary v. HSBC Bank USA, N.A.*, No. 12 Civ. 3693(PGG), 2013 WL 5492998, at *10 (S.D.N.Y. Oct. 2, 2013)); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Sukhnandan*, 2014 WL 3778173, at *14 (same); *In re Buspirone Antitrust Litig.*, No. 01-md-1413 (S.D.N.Y. Apr. 17, 2003) (approving 8.46 multiplier in $220 million settlement (*see* transcript at Ex. 3, pp. 40-43)); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 169, 167 n.1 (S.D.N.Y. 1991) (awarding multiplier of 8.74); *In re Credit Default Swaps Antitrust Litig.*, No. 13md2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (awarding $253 million in fees, in a case that settled before class certification, with a lodestar "multiple of just over 6"); *Fleisher*, 2015 WL 10847814, at *18 (noting that Second Circuit district "[c]ourts regularly award lodestar multipliers from 2 to 6 times lodestar").[14] Even if above average

[13] Because Class Counsel's fee request is for a percentage of the fund as reduced for exclusions (*see* note 2, *supra*), the fee requested, and therefore the multiplier, will be less if the fund size decreases for exclusions.

[14] Multipliers comparable to or well in excess of the multiplier here have been approved in numerous cases outside this Circuit as well. *See, e.g.*, *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ.A. 03-4578, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (approving 15.6 multiplier in case involving $100 million fund); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (approving 8.3 multiplier in case involving $350 million fund); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (approving 6.96 multiplier in case involving $126.6 million fund); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (approving 6 multiplier in case involving $600 million fund).

of commonly awarded multipliers, Class Counsel submit that is only because Class Counsel obtained an extraordinary result efficiently, which is the goal behind a percentage based award. *See Sykes*, 2016 WL 3030156, at *15 (noting the powerful incentive of a percentage-based fee is "'efficient prosecution and early resolution of the litigation'") (quoting *Wal-Mart*, 396 F.3d at 121). Class Counsel thus submits this factor supports approval of Class Counsel's fee request.

f. Public Policy Considerations Support the Fee Award.

Courts routinely recognize "the importance that fair and reasonable fee awards have in encouraging private attorneys to prosecute class actions on a contingent basis . . . on behalf of those who otherwise could not afford to prosecute." *In re Sturm*, 2012 WL 3589610, at *13 (citations omitted); *see also In re AOL*, 2006 WL 3057232, at *18 (remarking that a large attorney fee award would "galvanize the best of the class action bar into action" and simultaneously "have a deterrent effect on errant corporate leaders, [by] signaling that counsel will be well paid for their efforts"); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) ("[T]he Second Circuit and courts in this district also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.") (citations omitted); *In re Frontier Commc'ns Corp.*, No. 3:17-CV-01617-VAB, 2022 WL 4080324, at *16 (D. Conn. May 20, 2022) (finding that "public policy favors this award because it will continue to encourage attorneys to take these types of cases on a contingency basis and further encourage enforcement of" the law).

For this reason, court-awarded fees "must be reasonable, but they must also serve as an inducement for lawyers to make similar efforts in the future." *In re Initial Pub. Offering*, 671 F. Supp. 2d at 511 (footnote and citations omitted); *see also Goldberger*, 209 F.3d at 51 (noting the "commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest") (citations omitted); *Sykes*, 2016 WL 3030156, at *17

(same) (citing *Goldberger*, 209 F.3d at 51).

Public policy supports Class Counsel's fee request here. Class Counsel seek a percentage of the fund below the typical percentages awarded in common fund cases and below what has been awarded in similar cost of insurance litigation, which produces a reasonable fee for the extraordinary result they obtained for the benefit of the Settlement Class. Settlement Class Members would otherwise have had no remedy for the harm they suffered, not only because the amount wrongfully deducted, while material to the policyholder, was too small to bring an individual case, but also because the Settlement Class Members had no way to know their accounts were being improperly depleted.

Class Counsel thus request that an attorneys' fee of 25% of the fund be approved.

IV. CLASS COUNSEL'S REQUEST FOR EXPENSE REIMBURSEMENT SHOULD BE APPROVED.

Under Federal Rule of Civil Procedure 23(h), the court also may award "nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "'Courts may reimburse counsel for expenses reasonably and necessarily incurred in litigating a class action.'" *In re Frontier*, 2022 WL 4080324, at *16 (quoting *Kemp-DeLisser*, 2016 WL 6542707, at *18); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (citations omitted) ("It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advance to a class."); *In re Arakis Energy Corp. Sec. Litig.*, No. 95 CV 3431(ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) (citations omitted) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). So long as the expenses requested are "incurred and customarily charged to their clients" and "incidental and necessary to the representation of those clients," courts award reimbursement of the expenses from the common fund. *In re Veeco*,

2007 WL 4115808, at *10 (citations omitted).

Under the Settlement, Class Counsel may seek reimbursement from the Settlement Fund of all costs and expenses actually incurred. Agreement, ¶ 8.1. As of October 30, 2024, Class Counsel had incurred $154,956.54 in litigation expenses. Jt. Dec., ¶ 69 & Appendix 2. These expenses were reasonably and necessarily incurred for experts, mediation, online legal research, and travel, among other compensable costs. *See In re Global*, 225 F.R.D. at 468 ("The expenses incurred—which include investigative and expert witnesses, filing fees, service of process, travel, legal research, and document production and review—are the type for which 'the paying, arms' length market' reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund."); *Sykes*, 2016 WL 3030156, at *17 (approving expense reimbursement from settlement fund "for filing fees, postage, messenger services, e-discovery vendors, a forensic accountant, a data consultant, and mediation expenses").

Class Counsel kept costs at a reasonable level, particularly in light of the size of the Settlement. The Court should thus approve Class Counsel's expense reimbursement request (to be potentially updated prior to final approval).

V. THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED.

"Case law in this and other circuits fully supports compensating class representatives for their work on behalf of the class, which has benefited from their representation." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Service awards to representative plaintiffs in class action cases "compensate the named plaintiff for any personal risk incurred by the individual or any additional effort expended by the individual for the benefit of the lawsuit." *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001).

Here, Plaintiffs performed important work on the case, including gathering of facts and documents, assisting Class Counsel with the specifics of their policies, and reviewing the

Settlement Agreement. Jt. Dec., ¶ 71. That work materially advanced the litigation and protected the Settlement Class's interests. *Id.* Indeed, their time and effort made this extraordinary Settlement possible.

The requested awards are in line with those awarded in other complex class actions in this Circuit. *See, e.g.*, *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) (approving $50,000 incentive awards to each of two class representatives); *Bd. of Trs. of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09 Civ. 686(SAS), 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (approving $50,000 incentive awards to three class representatives); *Bellifemine*, 2010 WL 3119374, at *7 (approving $75,000 awards to five named plaintiffs and $25,000 to $60,000 awards to four class member witnesses); *Kifafi v. Hilton Hotels Ret. Plan*, 999 F. Supp. 2d 88, 105 (D.D.C. 2013) (awarding $50,000 to lead plaintiff); *Wright v. Stern*, 553 F. Supp. 2d 337, 342, 345 (S.D.N.Y. 2008) (approving awards of $50,000 to each of 11 named plaintiffs); *Pearlstein*, 2022 WL 4554858, at *11 (awarding $100,000 each to two class representatives); *Sykes*, 2016 WL 3030156, at *18 (approving service awards of $30,000 for each of four lead plaintiffs as "comparable to awards made in other cases where the lead plaintiffs were able to effect substantial relief for class members") (citing *McBean v. City of N Y.*, 228 F.R.D. 487, 494-95 (S.D.N.Y. 2005) (approving payments of $25,000 incentive awards to each named plaintiff)).

And, these amounts are comparable to those awarded to the named plaintiffs in other recent COI settlements. *See Niewinski*, No. 23-cv-4159 (W.D. Mo. Apr. 1, 2024), Doc. 36 at 10 (approving service awards of $25,000 each for five named plaintiffs); *Rogowski*, 2023 WL 5125113, at *6 (approving service awards of $25,000 for each of eleven named plaintiffs); *Spegele*, No. 5:17-CV-967-OLG (W.D. Tex. Aug. 26, 2021) (Doc. 117) (approving service award of

$20,000 to named plaintiff); *Larson*, 2018 WL 8016973, at *7 (approving service award of $15,000 for named plaintiff).

Further, the awards amount to only .024% of the total monetary recovery, which is an average of approximately 18 cents per Settlement Class Member, a modest price any rational Settlement Class Member would pay to receive over $700. In this light, the modest awards are appropriate and reasonable. *See Kifafi*, 999 F. Supp. 2d at 105 (approving incentive award in part because it amounted to only .035% of total recovery) (citing *In re Lorazepam & Clorazepate Antitrust Litig.*, No. MDL 1290(TFH), 2003 WL 22037741, at *11 (D.D.C. June 16, 2003) (approving incentive awards that amounted to "only about 0.2%" of the common fund in part because the incentive awards were small in relation to the fund from which they were made)); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at *4 (S.D.N.Y. Nov. 29, 2018) (granting $100,000 each to two class representatives and $50,000 to six others, which amounted to a "minuscule portion" of the total settlement). As a percentage of the fund, the awards requested here are far below what has been deemed reasonable in other cases. *See, e.g.*, *Parker*, 2010 WL 532960, at *2 (stating that service awards totaling 11% of the total recovery were reasonable "given the value of the representatives' participation and the likelihood that class members who submit claims will still receive significant financial awards"); *Reyes v. Altamarea Grp.*, No. 10-CV-6451 (RLE), 2011 WL 4599822, at *9 (S.D.N.Y. Aug. 16, 2011) (approving awards representing approximately 16.6% of the settlement).

Thus, Class Counsel request that service awards of $25,000 for Plaintiff Glover and $10,000 for Plaintiff Warehime, as provided by the Settlement, be approved to compensate them for their efforts on behalf of the Settlement Class, without which this Settlement could not have been achieved.

CONCLUSION

For the foregoing reasons, Class Counsel's motion for 25% of the Settlement Fund as an attorneys' fee, for reimbursement of their litigation expenses, and for service awards for Plaintiffs Glover and Warehime, should be approved.

Dated: November 4, 2024

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

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Attorneys for Plaintiffs and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2024, I filed the foregoing document via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ *Norman E. Siegel*
Attorney for Plaintiffs and the Settlement Class

EXHIBIT 1

Jt. Dec.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAULETTE T. GLOVER and JOHN T. WAREHIME, on behalf of themselves and all others similarly situated, Plaintiffs, v. CONNECTICUT GENERAL LIFE INSURANCE COMPANY; and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, Defendants.	No. 3:16-cv-00827-MPS

CLASS COUNSEL'S DECLARATION IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSE REIMBURSEMENT, AND SERVICE AWARDS

We, Norman E. Siegel and John J. Schirger, declare as follows, pursuant to 28 U.S.C. § 1746:

1. We are partners with our respective law firms and are counsel of record for the Plaintiffs in the above-captioned action. We each have personal knowledge of our own firm's time and expenses, and if called upon, would testify competently thereto. As to the facts set forth herein, we each have personal knowledge of such, and if called upon, would testify competently thereto.

2. We each submitted Declarations in support of Plaintiffs' Motion for Preliminary Approval, Doc. 230-2, Doc. 267-2, including resumes for our law firms listing representative cases, industry recognition, judicial praise, and short biographies of the lawyers principally responsible for working on this case demonstrating their qualifications and experience,[1] which we incorporate herein by reference. We make this Joint Declaration in support of Class Counsel's

[1] Information on the background and experience of each of the attorneys at Stueve Siegel Hanson that have worked on this case can be found at https://www.stuevesiegel.com/about-people, and is incorporated herein by reference.

Motion and Memorandum in Support of Motion for Attorneys' Fees, Expense Reimbursement, and Service Awards ("Fee Motion").

3. Stueve Siegel Hanson and Schirger Feierabend, and the team of attorneys from these firms working on this case, are among the national leaders in representing policyholders who have suffered allegedly improper overcharges through cost of insurance ("COI") charges in their universal life insurance policies. We began filing these cases more than fifteen years ago when the theory of liability was nascent, and developed the legal claims and theories related to improper rate setting. To my knowledge, there has been no government or regulatory investigation into the claims at issue here, and certainly none that is public. And there has been no admission of liability or culpability by Defendants or any other life insurer. All have taken the position that their COI charges are consistent with the terms of their policies and industry standard and custom. As set forth in our prior Declarations and in more detail below, we have previously reached five large settlements, including four all cash settlements, with other life insurance companies. We have also successfully tried four class-action cases to verdict on behalf of policyholders alleging improper COI charges.

History of the Litigation

The Claims

4. Class Counsel initiated this litigation on behalf of Plaintiff Glover and similarly situated policyholders on May 27, 2016, asserting claims against Defendants on Glover's universal life insurance policy and those of the similarly situated policyholders for breach of contract, conversion and statutory theft, and for declaratory and injunctive relief. Doc. 2.

5. Plaintiff Glover purchased her policy from Defendant Connecticut General Life Insurance Company ("Connecticut General") in 1997, and alleged that in 1998, Connecticut

General sold some or all of its individual life insurance business to Defendant The Lincoln National Life Insurance Company ("Lincoln") and that both Defendants administered and were liable insurers of her policy. Doc. 2, ¶¶ 7, 11, 13, 18. Lincoln issued and administered Plaintiff Warehime's universal life insurance policy, which he purchased in 1982. Doc. 226, ¶¶ 11, 18.[2]

6. Plaintiffs' policies, like those of the Settlement Class Members (the "Policies"), provide the policyholder with an investment or interest-bearing account, generally called the "cash value," in addition to a death benefit. *Id.* ¶ 19. The cash value is the sum of premiums received and interest credited under the policy, less withdrawals, fees, charges, and monthly deductions. *Id.* ¶ 20. The Policies permit Defendants to assess against and deduct from a policyholder's premium payments and cash value only certain specified charges. *Id.* ¶ 22. In particular, the Policies authorize Defendants to make a deduction for the COI charge from the policyholder's cash value each month. *Id.* ¶¶ 23-24. COI charges are calculated each month using a COI rate, which is to be determined based on expectations as to future mortality experience. *Id.* ¶ 27.

7. In her original complaint, Plaintiff Glover alleged that even though the policies identify only mortality expectations as the basis of the COI rates, Defendants included unauthorized factors in addition and unrelated to expectations as to future mortality experience, such as expenses and profit, which impermissibly caused the COI rates and charges to be higher than authorized. Doc. 2, ¶¶ 33-34, 51-58. Plaintiff also alleged Defendants breached the COI rates provision by failing to incorporate improving expectations as to future mortality experience into the COI rates, which would have resulted in lower rates for the policies. *Id.* ¶¶ 63-67. Plaintiff further alleged the same conduct made Defendants liable for conversion and statutory theft under Connecticut General Statutes section 52-564 (*id.* ¶¶ 68-75, 76-79), and Plaintiff sought a

[2] The sealed version of the Third Amended Class Action Complaint was filed at Doc. 227.

declaration that the alleged conduct constituted a breach of the policies and requested an injunction preventing Defendants from continuing to deduct inflated charges (*id.* ¶¶ 80-84).

8. After filing an answer denying the legal basis for Plaintiff's contract claims and asserting several defenses (Docs. 61, 67), Defendants each moved for judgment on the pleadings and dismissal of Plaintiff's complaint. Lincoln moved to dismiss under Rule 12(b)(2) for lack of personal jurisdiction, contending Lincoln was an Indiana and Pennsylvania company and Plaintiff was a resident of Illinois, and that none of Lincoln's alleged conduct had any connection with Connecticut, nor did Connecticut's long-arm statute provide for the exercise of personal jurisdiction over Lincoln. Lincoln also moved to dismiss for failure to state a claim, arguing that the law of Illinois, where Plaintiff's policy was issued, applied to Plaintiff's claims and that the Court was therefore bound to follow the Seventh Circuit's reading under Illinois law of a COI rates provision listing factors upon which the COI rates were to be based as permitting the insurer to consider factors in addition to those expressly listed. *See Norem v. Lincoln Ben. Life Co.*, 737 F.3d 1145 (7th Cir. 2013). Separately, Lincoln argued that regardless of whether Plaintiff's policy interpretation was correct, that the contract claims against Lincoln must be dismissed because Lincoln was not a party to Plaintiff's policy, contending it was merely the reinsurer and administrative agent of Connecticut General. Lincoln also sought dismissal of Plaintiff's conversion and statutory theft claims, contending the elements of these claims were not satisfied and were barred by the economic loss doctrine. *See* Doc. 71.

9. Connecticut General also moved for judgment on the pleadings, contending Plaintiff's claims for COI deductions arising outside the applicable statutes of limitations were time barred. Connecticut General also adopted Lincoln's arguments regarding contract interpretation and argued that regardless of whether Plaintiff stated a plausible interpretation of the

policy language, she had waived her claims or ratified Defendants' contract interpretation. *See* Doc. 74.

10. Class Counsel prepared and filed thorough and lengthy oppositions to Defendants' motions (Docs. 79, 80). First, Plaintiff argued that Lincoln was amenable to service of process, and was so served, as a foreign insurance company authorized to do business in Connecticut pursuant to Connecticut General Statutes section 38a-25(a)(1), and that asserting jurisdiction over Lincoln would not violate due process given, *inter alia*, Lincoln's administration of Connecticut General's policy from Connecticut. Second, Plaintiff argued that Connecticut law applied to Plaintiff's claims, contending Connecticut was the place of contracting and place of performance of the policy as it related to Plaintiff's claims regarding improper deductions from her cash value. Third, Plaintiff argued that regardless of the state law that applied, she had alleged a plausible claim that an ordinary policyholder would not understand from the policy language or the context of the policies that Defendants were authorized to inflate the COI rates with factors unrelated to those on which the policies promised the COI rates would be expressly based, nor that Defendants were authorized to leave the COI rates unchanged when expectations as to future mortality experience improved. Plaintiff also argued the elements of her conversion and statutory theft claims were properly stated and not supplanted by her contract claims. Fourth, Plaintiff argued Lincoln was not entitled to judgment for lack of privity where the transactional documents attached to its answer at best created a factual dispute on this issue. Fifth, as to Connecticut General's statute of limitations arguments, Plaintiff argued that because each time Defendants deducted an excessive monthly COI charge a new claim accrued, and because Plaintiff had plausibly alleged Defendants fraudulently concealed each excessive deduction, Connecticut General was not entitled to judgment on the basis of the statute of limitations. Plaintiff also argued Connecticut General's

waiver or ratification arguments must be rejected where she had no way to know Defendants were improperly inflating the COI rates.

11. On February 2, 2017, Plaintiff submitted a notice of supplemental authority identifying the order in *Palumbo v. Nationwide Life Insurance Co.*, No. 3:16-cv-01143-WWE, 2017 WL 80405 (D. Conn. Jan. 9, 2017), as supporting the denial of Defendants' motions. Doc. 89. There, Judge Eginton denied the insurer's motion to dismiss claims for excessive COI rates and resulting charges on very similar policy language. The court also denied the motion on statute of limitations grounds because the company had allegedly engaged in a continuing course of conduct and plaintiffs' fraudulent concealment allegations were plausibly stated.

12. On April 19, 2017, counsel for the Parties appeared before the Court for a hearing on Defendants' motions, where the Court took the motions under advisement. Docs. 95, 102.

13. On January 11, 2019, the Court held another hearing on the motions and orally granted the motions in part. Docs. 137, 141; Jan. 11, 2019 Hr'g Tr. The Court denied Lincoln's challenge to personal jurisdiction. However, the Court ruled that: Illinois substantive law applied to Glover's claims; the Court was bound by the Seventh Circuit's interpretation of the COI rates provision under Illinois law in *Norem*; and under *Norem*, Plaintiff's interpretation of the policies under which Defendants were not authorized to include amounts for unlisted factors in the COI rates must be rejected. The Court ruled, however, that if Plaintiff could allege the listed factors were not the primary basis of the COI rates, that would state a claim under the *Norem* court's interpretation, and the Court permitted her to file a motion to amend the complaint. Doc. 141.

14. On February 26, 2019, Class Counsel, on behalf of Plaintiff, moved for leave to file an amended complaint to allege that Defendants did not determine the COI rates primarily based on expectations as to future mortality experience. Doc. 151.

15. On April 12, 2019, Defendants filed their oppositions, arguing Plaintiff's proposed amendment was precluded by *Norem* and was therefore futile. Docs. 160, 161.

16. On May 28, 2019, Plaintiff filed her reply asserting that her proposed amendment was consistent with *Norem*'s interpretation (as applied by this Court) and that Defendants' failure to use expectations as to future mortality experience as the primary component of the COI rates breached the policies. Doc. 169.

17. On September 24, 2019, Lincoln filed a notice of supplemental authority alerting the Court to a decision in *Maxon v. Sentry Life Insurance Co.*, No. 18-cv-254-jdp, 2019 WL 4540057 (W.D. Wisc. Sept. 19, 2019), where the Western District of Wisconsin denied leave to amend to assert a similar claim as futile. Doc. 171. Plaintiff's motion remained pending until 2023.

18. On May 30, 2023, the case was reassigned from Judge Robert N. Chatginy to Chief Judge Michael P. Shea. Doc. 188. Thereafter, on September 26, 2023, this Court issued an opinion granting in part Plaintiff's motion to amend. Doc. 189. The Court found that Plaintiff plausibly alleged the COI rate determinations were not primarily based on expectations as to future mortality experience in the early years of the policy. *Id.* at 25. In addition, the Court permitted Plaintiff's claim that Defendants failed to adjust COI rates when mortality expectations improved to proceed to further factual development. *Id.* at 29.

19. In accordance with this Court's decision, on October 10, 2023, Class Counsel, on behalf of Plaintiff and similarly situated policyholders, filed the Second Amended Class Action Complaint. Doc. 190.

20. On October 24, 2023, Defendants filed their answers to the amended complaint. Doc. 211, 213.

21. On March 8, 2024, contemporaneously with the Motion for Preliminary Approval, Class Counsel, on behalf of Plaintiffs and the putative Settlement Class Members, filed a Third Amended Complaint which added Mr. Warehime as a Plaintiff. Doc. 226.

Discovery

22. Soon after the inception of the case, the Parties began a lengthy discovery process. On August 12, 2016, the Parties submitted their Rule 26(f) Report of Parties' Planning Meeting. Doc. 52. On September 20, 2016, the Court held a Rule 16(b) scheduling conference, and on September 23, 2016, the Court entered its Scheduling Order Regarding Case Management Plan. Doc. 65.

23. Plaintiff promptly served her first discovery requests shortly after the parties submitted their Rule 26(f) Report. On August 25, 2016, Plaintiff served: 16 interrogatories on each Defendant; 72 document requests on each Defendant; and 15 requests for admission on each Defendant. On October 26, 2016, Defendants served their objections and responses to Plaintiff's written discovery requests, and the Parties each served Rule 26(a)(1) Initial Disclosures. Between January and April 2017, Lincoln produced over 13,500 pages of documents in response to Plaintiff's document requests. On April 14, 2017, Connecticut General made its first production of nearly 425 pages of documents in response to Plaintiff's document requests. In the interim, on March 3, 2017, Plaintiff served a second set of interrogatories on Defendants. On April 3, 2017, Defendants served their objections and responses to Plaintiff's second interrogatories. After several meet-and-confer telephone calls and exchange of written correspondence regarding Lincoln's discovery responses, on May 17, 2017, Lincoln amended its responses to Plaintiff's first interrogatories.

24. On April 26, 2017, Lincoln served 21 requests for production and 15 interrogatories on Plaintiff. On June 9, 2017, Plaintiff served her responses to Lincoln's requests. On May 17, 2017, Connecticut General served 10 requests for production and 14 interrogatories on Plaintiff. On June 16, 2017, Plaintiff served her responses to Connecticut General's discovery requests. On June 9, 2017, Plaintiff produced over 150 pages of documents. On July 19, 2017, Plaintiff served supplemental responses to Lincoln's interrogatories.

25. Because Class Counsel identified discovery deficiencies with Defendants' discovery responses, and in order to have sufficient time to resolve any related disputes, on May 31, 2017, Plaintiff moved the Court to modify the Scheduling Order to bifurcate class certification and merits discovery, including related expert disclosures. Doc. 96. On June 4, 2017, Lincoln filed an opposition brief to Plaintiff's motion, instead requesting the Court stay discovery until the Court ruled on Defendants' motions for judgment on the pleadings. Doc. 97. On June 6, 2017, Connecticut General joined in Lincoln's opposition. Doc. 98. That same day, Plaintiff filed her reply in support of the motion to modify. Doc. 99. On June 7, 2017, the Court referred the motion to modify to Magistrate Judge Donna F. Martinez. Doc. 100. On August 10, 2017, the Parties participated in a hearing before Judge Martinez, who granted the motion in part and denied it in part, staying the case until the Court ruled on Plaintiff's motion to bifurcate discovery. Docs. 109, 110.

26. On August 15, 2017, Plaintiff filed another motion to modify requesting the Court bifurcate the deadlines associated with class certification from merits deadlines. Doc. 112. On September 5, 2017, Defendants filed oppositions to Plaintiff's motion. Docs. 113, 114. On September 19, 2017, Plaintiff filed her reply. Doc. 118.

27. On December 10, 2018, Plaintiff filed a status report[3] and requested to lift the discovery stay due to recently filed related cases involving a subset of the class as pleaded by Plaintiff, *TVPX ARS Inc. v. Lincoln Life Insurance Co.*, No. 2:18-cv-02989-RBS (E.D. Pa.) filed on November 5, 2018, and *Iwanski v. First Penn-Pacific Life Insurance Co.*, No. 2:18-cv-01573-RBS (E.D. Pa.) filed on November 19, 2018.[4] Doc. 130. On December 31, 2018, and January 2, 2019, each Defendant filed an opposition to Plaintiff's request to lift the stay. Docs. 132, 134. On January 3, 2019, Plaintiff filed her reply. Doc. 135. On January 4, 2019, the Parties participated in a telephone conference where the Court took Plaintiff's request under advisement. Doc. 138. Then, at the January 11, 2019, hearing where the Court ruled on Defendants' motions for judgment on the pleadings, the Court stated it would continue to take Plaintiff's motion to modify under advisement but ordered that the "stay will remain in place." Docs. 141, 142.

28. On September 26, 2023, in its Ruling on Motion for Leave to Amend, the Court ordered the Parties to file a revised Rule 26(f) Report. Doc. 189. On October 17, 2023, the Parties submitted an amended Rule 26(f) Report. Doc. 208. The Parties participated in a hearing before the Court on October 27, 2023, where the Court ordered discovery to proceed in phases. Doc. 218. The first phase of discovery was limited to: "(1) whether Lincoln National Life Insurance Company was in privity with Ms. Glover, and (2) whether Ms. Glover's claims are precluded by a statute of limitations or, instead, survive due to the applicability of tolling doctrines." *Id.* The

[3] The Parties typically filed joint quarterly status reports regarding the status of the case. *See, e.g.*, Docs. 86, 92, 104, 119, 120, 121, 124, 127.

[4] Another related case, *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of New York*, No. 19-CV-06004-ALC-DCF (S.D.N.Y), was later filed on June 27, 2019. The *TVPX*, *Iwanski*, and *Vida* cases are referred to as the "Related Actions." Agreement, ¶ 1.30.

Court also set deadlines for the completion of the first phase of discovery and for Defendants to announce their intention to move for summary judgment on these issues. *Id.*

29. In accordance with the Court's parameters on discovery, on November 8, 2023, Plaintiff propounded 24 document requests and 8 interrogatories on each Defendant. On December 8, 2023, Defendants served their objections and responses to Plaintiff's second set of written discovery requests. *Id.* On the same day, Lincoln produced nearly 3,000 pages of documents in response to Plaintiff's second document requests. *Id.* The Parties exchanged correspondence and participated in several meet-and-confer discussions regarding Defendants' discovery responses and reached agreements regarding several potential discovery disputes. *Id.* As a result of those discussions, on February 1, 2024, Lincoln completed productions of nearly 200 additional pages of documents. *Id.* On February 9, 2024, Lincoln produced 3 additional documents. *Id.*

30. On December 18, 2023, Lincoln served 48 requests for admission and 6 interrogatories on Plaintiff. On December 22, 2023, Connecticut General served 26 requests for admission and 4 interrogatories on Plaintiff. *Id.* On January 31, 2024, Plaintiff timely served her objections and responses to Defendants' written discovery requests. *Id.*

31. On December 21, 2023, Lincoln served a deposition notice to depose Plaintiff on January 17, 2024. On February 7, 2024, Plaintiff served depositions notices pursuant to Rule 30(b)(6) on each Defendant, identifying 17 topics of examination for Connecticut General and 18 topics of examination for Lincoln, for depositions scheduled for February 28 and 29, 2024, respectively. Because of the Settlement, the depositions did not proceed.

The Cost of Insurance Litigation Landscape

32. During the pendency of this case, the landscape of COI litigation has evolved significantly, in large part due to the efforts of Class Counsel. A month after this case was initiated,

Class Counsel filed *Vogt v. State Farm Life Insurance Co.*, No. 16-CV-04170-NKL, in the United States District Court for the Western District of Missouri, alleging that a universal life insurance policy providing that the COI "rates for each policy year are based on the Insured's age on the policy anniversary, sex, and applicable rate class" and "can be adjusted for projected changes in mortality" prohibited the insurer from using unlisted, non-mortality factors to determine the COI rates. State Farm moved for summary judgment, contending the phrase "based on" could only reasonably be understood as referencing a non-exclusive list of factors on which the COI rates would be based. The district court rejected that interpretation, disagreeing with *Norem*'s analysis, and also finding the policy in *Norem* distinguishable because it said "nothing about 'mortality experience' as the basis for the COI rate." 2018 WL 1747336, at *5 (W.D. Mo. Apr. 10, 2018) (quoting *Norem*, 737 F.3d at 1154). The court concluded that given the policy language and the context of the policy, "no reasonable lay person would expect that State Farm was permitted to use any factor it wanted to calculate the cost of insurance." *Id.* at *3-5. After certifying a Missouri class (2018 WL 1955425 (W.D. Mo. Apr. 24, 2018)) and granting summary judgment on the issue of liability, the court held a damages trial where the jury found the class had suffered over $34 million in lost account value resulting from the insurer's overcharges. *See Vogt*, Docs. 358, 360.

33. The Eighth Circuit affirmed, "conclud[ing] the phrase 'based on' is at least ambiguous because a person of ordinary intelligence purchasing an insurance policy would not read the provision and understand that where the policy states that the COI fees will be calculated 'based on' listed mortality factors that the insurer would also be free to incorporate other, unlisted factors into this calculation." 963 F.3d 753, 763-64 (8th Cir. 2020). The Eighth Circuit considered *Norem*'s interpretation but concluded the fact "[t]hat several courts have examined the issue in very similar circumstances and have reached differing conclusions supports the conclusion that

the phrase is ambiguous," requiring the insured's interpretation to prevail. *Id.* at 764. The court also affirmed the judgment in other respects, including class certification, which the Supreme Court subsequently declined to review, 141 S. Ct. 2551 (Apr. 19, 2021).

34. While *Vogt* was pending on appeal, Class Counsel filed several additional cases against State Farm on behalf of owners of the same policy form issued in other states. Several courts agreed with *Vogt* that the policy was at least ambiguous as to whether it permitted the insurer to include unlisted factors in the COI rates. *See Page v. State Farm Life Ins. Co.*, No. SA-20-CV-00617-FB, 2022 WL 718789 (W.D. Tex. Mar. 10, 2022); *Jaunich v. State Farm Life Ins. Co.*, No. 20-1567 (PAM/JFD), 2022 WL 2318560 (D. Minn. June 28, 2022); *McClure v. State Farm Life Ins. Co.*, 608 F. Supp. 3d 813 (D. Ariz. 2022). Two disagreed, finding the policy's "applicable rate class" factor permitted consideration of non-mortality factors, and entered class-wide judgment on that claim. *Bally v. State Farm Life Ins. Co.*, 536 F. Supp. 3d 495 (N.D. Cal. 2021); *Whitman v. State Farm Life Ins. Co.*, No. 3:19-cv-06025-BJR, 2022 WL 4081916 (W.D. Wash. Sept. 6, 2022).

35. Class Counsel also filed: *Toms v. State Farm*, No. 8:21-cv-00736-KKM-JSS (M.D. Fla.); *Bauer v. State Farm*, No. 1:21-cv-00464-SDG (N.D. Ga.); *Singh v. State Farm*, No. 3:21-cv-00190-AR (D. Or.); *Rogowski v. State Farm*, No. 4:22-cv-00203-RK (W.D. Mo.); and *Botte v. State Farm*, No. 2:22-cv-02842-JMA-JMW (E.D.N.Y.). The *Toms* court certified a class of Florida policyholders (2022 WL 5238841 (M.D. Fla. Sept. 26, 2022)) but had not interpreted the policy at the time of the nationwide settlement discussed below. The other courts had not yet ruled on class certification or the interpretation of the policy when the cases settled.

36. The COI legal landscape continued to evolve (though not in a case brought by Class Counsel) with the Eleventh Circuit's opinion in *Slam Dunk I, LLC v. Connecticut General Life Ins. Co.*, 853 F. App'x 451 (11th Cir. 2021) (Florida law), adopting *Norem*'s interpretation of a

COI rates provision with two "based on" clauses, concluding neither could be understood as inferring exclusivity without creating an internally inconsistent result. Other courts also followed *Norem*'s analysis in ruling against policyholders on similar claims. *See Maxon*, 2019 WL 4540057; *West v. Wilco Life Ins. Co.*, No. 1:20-cv-2961 RLM-DLP, 2021 WL 5827019 (S.D. Ind. Dec. 8, 2021).

37. However, Class Counsel continued to obtain favorable policy interpretation and class certification rulings on universal life insurance policies, which, like the Policies here, promise that the COI rates will be based on "expectations as to future mortality experience." Six different courts concluded these provisions were at least ambiguous as to whether it permitted another insurer, Kansas City Life Insurance Company, to include unlisted non-mortality factors, including undisclosed expenses, in the COI rates and to leave the COI rates unchanged despite expected improved mortality experience, some finding it unambiguous in prohibiting the insurance company's practice.[5] Class Counsel tried three of these cases against Kansas City Life Insurance Company to jury verdicts in favor of three classes of Missouri and Kansas policyholders totaling nearly $33.5 million in damages for overcharges to the cash values of their universal life insurance

[5] *See Karr v. Kansas City Life Ins. Co.*, No. 1916-CV26645, 2022 WL 633903 (Mo. Cir. Ct. Feb. 22, 2022), *aff'd*, --- S.W.3d ----, 2024 WL 4280503 (Mo. Ct. App. Sept. 24, 2024) (unambiguous); *Fine v. Kansas City Life Ins. Co.*, 627 F. Supp. 3d 1153 (C.D. Cal. 2022) (at least ambiguous); *McMillan v. Kansas City Life Ins. Co.*, No. 1:22-cv-01100-ELH, 2023 WL 2499746 (D. Md. Mar. 14, 2023) (at least ambiguous); *Meek v. Kansas City Life Ins. Co.*, 664 F. Supp. 3d 923 (W.D. Mo. 2023) (at least ambiguous); *Sheldon v. Kansas City Life Ins. Co.*, No. 1916-CV26689, 2023 WL 4423699 (Mo. Cir. Ct. June 27, 2023) (unambiguous). *See also PHT Holding II LLC v. N. Am. Co. for Life & Health Ins.*, 674 F. Supp. 3d 532, 548 (S.D. Iowa 2023) (also Florida law, like *Slam Dunk*) ("It is far from unambiguous that a policyholder of ordinary intelligence would read a policy which provides that the COI rate will be 'based on A, B, and C' with a subsequent clause providing that the COI rate will be 'based on D' means that E, F, and G will also be considered in setting the rate.").

policies.[6] The risk of a jury trial was demonstrated by these cases, however, with two of them resulting in damages verdicts in the full amount the plaintiffs requested, but with one resulting in a verdict of just over a quarter of the amount the plaintiff requested. The policyholders have not received their damages judgments in any of these cases yet due to the delays inherent in the appellate process.

38. Still, the legal landscape continues to shift. In March 2024, the Eleventh Circuit ruled in a case brought by counsel in the Related Actions, that a COI rates provision like that in the Policies here did not require the insurer to lower COI rates when mortality expectations improved after policy issuance, and did not require the redetermination of COI rates using exclusively "expectations as to future mortality experience." *Advance Tr. & Life Escrow Servs., LTA v. Protective Life Ins. Co.*, 93 F.4th 1315 (11th Cir. 2024) (South Carolina law).

39. Because of Class Counsel's track record of obtaining favorable policy interpretations and willingness to take cases to trial, Class Counsel have obtained numerous settlements for COI overcharges during the pendency of this litigation. In the litigation referenced above on the State Farm policy, Class Counsel secured a $325 million settlement on behalf of a nationwide settlement class of approximately 760,000 State Farm policyholders, which was an average gross per policy recovery of $427, and amounted to approximately 30% of the estimated total damages. *See Rogowski v. State Farm Life Ins. Co.*, No. 4:22-cv-00203-RK, 2023 WL 5125113 (W.D. Mo. Apr. 18, 2023). Class Counsel also secured a $65 million nationwide settlement for owners of 445,000 earlier-generation State Farm policies, which received final

[6] *See Karr* (securing $28.36 million verdict in December 2022 in favor of approximately 8,000 Missouri policyholders); *Meek*, No. 4:19-cv-472-BP (securing over $900,000 jury verdict in May 2023 in favor of approximately 2,300 Kansas policyholders); *Sheldon* (securing $4.1 million verdict in September 2023 in favor of over 500 Missouri variable universal life policyholders).

approval on April 1, 2024, which was an average gross per policy recovery of $146, and amounted to approximately 21% of the estimated total damages. *Niewinski v. State Farm Life Ins. Co.*, No. 23-cv-4159 (W.D. Mo.), Doc. 36. In 2021, Class Counsel settled a similar case against USAA Life Insurance Company, obtaining $90 million for a class of approximately 110,000 universal life insurance policyholders, which was an average gross per class member recovery of $818, and amounted to 19% of the estimated total damages. *Spegele v. USAA Life Ins. Co.*, No. 5:17-cv-967-OLG, 2021 WL 4935978 (W.D. Tex. Aug. 26, 2021). In 2018, Class Counsel settled a similar case against John Hancock Life Insurance Company, obtaining $59.75 million for a class of approximately 90,000 variable whole life insurance policyholders, which was an average gross recovery of $661, and amounted to 21% of the estimated total damages. *Larson v. John Hancock Life Ins. Co.*, No. RG16813803, 2018 WL 8016973 (Alameda Cty., Cal. May 8, 2018). In 2016, Class Counsel settled another similar case against Defendant Lincoln National, obtaining $2.25 billion of guaranteed term life insurance with a market value of approximately $171.8 million for a different class of owners of approximately 77,500 universal life policies. *See Bezich v. Lincoln Nat'l Life Ins. Co.*, No. 02C01-0906-PL-73 (Allen Cty., Ind.).

The Proposed Settlement and Preliminary Approval

40. Given the extraordinary development in the case law, settlement benchmarks, and jury trials in COI cases by Class Counsel during the pendency of this case, the Parties agreed to informally engage in settlement discussions beginning in September 2023 after the Court issued its order permitting Plaintiff to file an amended complaint, participating in several phone calls and exchanging correspondence, culminating in an in-person meeting between counsel for Plaintiffs and Lincoln on October 31, 2023. Following the in-person meeting, the Parties discussed an exchange of information for settlement purposes, including robust policyholder data. Lincoln made

several productions of policy data, including productions on November 30, 2023, February 1, 2024, February 9, 2024, March 5, 2024, and March 7, 2024.

41. On February 14, 2024, the Parties attended a mediation overseen by the Honorable Jose L. Linares, retired U.S. Chief District Judge for the District of New Jersey. During the session, the Parties engaged in extensive back-and-forth negotiations ultimately resulting in an agreement on the material terms of the settlement. Throughout the process, the negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. Class Counsel was well informed of the material facts and the negotiations were hard-fought. Guided by their experience in this and other COI litigation described above, Class Counsel analyzed all of the contested legal and factual issues to thoroughly evaluate Defendants' contentions, advocated throughout the process for a fair settlement that serves the best interests of the Settlement Class, and made fair and reasonable settlement demands of Defendants.

42. On March 7, 2024, the Parties agreed to the final terms of the Settlement. The Agreement represents a compromise between Plaintiffs and the Settlement Class and Defendants regarding the claims pleaded in this litigation and provides for the creation of a non-reversionary cash Settlement Fund in the amount of $147,500,000. Under the Court's interpretation of the Policies, the amount of the Settlement likely recovers over 100% of the available damages. *See, e.g.*, Doc. 280 (affidavit of Lincoln's expert comparing the mortality rates with the COI rates for the policies in the Related Actions and averring that most of the COI rates charged in the relevant period were comprised of more than 50% mortality, and therefore arguably in compliance with the Policies under the Court's interpretation).

43. There is no "claims process." Each Settlement Class Member will receive their share of the Net Settlement Fund by settlement check determined pursuant to the distribution plan

developed by Class Counsel as approved by the Court. Agreement (Doc. 230-1), ¶¶ 2.2-2.3. In exchange for these benefits, the Parties will seek the entry of judgment on the asserted claims and Settlement Class Members agree to release all claims arising out of the facts asserted in this case. *Id.* ¶¶ 3.1-3.2. The Agreement allocates the value of the Settlement Fund across the Settlement Class pursuant to an objective distribution plan that is designed to provide each Settlement Class Member a minimum payment of $10 plus an approximate pro rata portion of the Net Settlement Fund according to the amount of COI charges paid by each Settlement Class Member. *See* Doc. 230-3 (Witt Dec.), & Ex. B thereto.

44. The Agreement permits any Settlement Class Member to file an objection to the Settlement terms or opt-out of the Settlement Class within 35 days after the date the Notice was mailed. Agreement, ¶¶ 5.1, 5.4.

45. On March 8, 2024, Class Counsel, on behalf of Plaintiffs, filed Plaintiffs' Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and to Permit Issuance of Notice to Settlement Class and Memorandum in Support. Docs. 229, 230. On March 29, 2024, the plaintiffs in the Related Actions ("Objectors") filed a motion to intervene and an opposition to Plaintiffs' Motion for Preliminary Approval. Docs. 253, 254, 256. On April 19, 2024, Plaintiffs filed their Opposition to the motion to intervene and a Reply in Support of their Motion for Preliminary Approval. Docs. 256, 268. Each Defendant also filed replies in support of the Motion for Preliminary Approval and Lincoln filed an opposition to the motion to intervene. Docs. 262, 263, 264.

46. On July 3, 2024, Objectors filed a notice of supplemental authority in support of their opposition to preliminary approval. Doc. 276. On July 9, 2024, Plaintiffs filed their Response thereto. Doc. 278. Also on July 9, 2024, Lincoln notified the Court that the court in the Related

Action, *Vida*, had granted the motion to stay the proceedings in that case pending the settlement approval process here. Doc. 277. On July 12, 2024, Lincoln filed a response to the supplemental authority submitted by the Objectors and the affidavit of its expert in *Vida* averring that the *Vida* court's interpretation of the policies in that case[7] eliminated over 99% of the plaintiff's claimed damages. Docs. 279, 280. On July 22, 2024, Objectors filed a reply as to their supplemental authority, Doc. 281, to which Lincoln filed a response on July 26, 2024, Doc. 283.

47. On July 30, 2024, counsel for the Parties and the Objectors appeared before this Court for a hearing on Plaintiffs' Motion for Preliminary Approval and the motion to intervene.

48. On September 4, 2024, this Court issued its Ruling on Motion for Preliminary Approval, Motion to Intervene, and Motion to Seal. Doc. 289 ("Preliminary Approval Ruling"). The Court denied the Objectors' motion to intervene because intervention is unnecessary to object to the Settlement. *Id.* at 2. The Court granted Plaintiffs' motion for preliminary approval, finding it would likely be able to both approve the Settlement as fair, reasonable, and adequate, and certify the Settlement Class for purposes of entering judgment on the Settlement. The Court rejected Objectors' arguments that Plaintiffs did not have class standing to assert claims on behalf of policyholders whose Policies were issued by LLANY or First Penn where Lincoln administered those Policies and was responsible for the allegedly improper COI deductions for all Policies. *Id.* at 3-9.

49. The Court next found that the Rule 23 class certification requirements were satisfied, rejecting Objectors' challenges to Plaintiffs' typicality and adequacy to represent the Settlement Class. *Id.* at 9-16.

[7] *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of New York*, No. 19-CV-06004 (ALC), 2024 WL 1349221 (S.D.N.Y. Mar. 29, 2024).

50. Finally, the Court concluded that the Settlement appeared to be procedurally and substantively fair, reasonable, and adequate given the results obtained and significant risk of continued litigation. *Id.* at 17-22. The Court therefore ordered that notice of the Settlement be issued to the Settlement Class, appointed Stueve Siegel Hanson LLP and Schirger Feierabend LLC as Class Counsel pursuant to Rule 23(g), and appointed Epiq Class Action and Claims Solutions, Inc. ("Epiq") as the Settlement Administrator.

51. On October 18, 2024, Epiq mailed the Court-approved Notice to the Settlement Class Members.

52. Class Counsel's Fee Motion is made well in advance of the November 23, 2024, deadline for objections and exclusions so that Settlement Class Members have an opportunity to review Class Counsel's request prior to that deadline.

Class Counsel's Fee, Expenses, and Service Award Requests are Reasonable

53. As set forth in Class Counsel's motion, the percent of the Settlement Fund requested here as an attorneys' fee, 25%, is less than the typical percentage awarded by courts when fees are sought from a common fund in a class action. In addition, a typical contingent fee arrangement in non-class action cases provides that the attorney representing the plaintiff receives 25 to 50 percent of the plaintiffs' recovery, exclusive of costs. Here, each Plaintiff agreed to contingent fee percentages of 40%. Moreover, Class Counsel often represents sophisticated businesses in complex commercial litigation on a contingency basis, where these business clients commonly agree to pay fees amounting to 35 to 50 percent of any recovery.

54. The risk to Class Counsel of no recovery was high. We undertook to represent these policyholders when these cases were not only risky, but legally precarious. As an initial matter, this case involves claims that were by their nature difficult to detect. Plaintiffs alleged

Defendants hid the unlawful COI charges for decades. Only Class Counsel's understanding of life insurance products, pricing, and access to qualified actuarial experts allowed the case to be filed in the first instance.

55. Further, when we filed this case there was no favorable controlling or federal appellate precedent on the issue of policy interpretation. In fact, in 2013, the meaning of a similar COI rates provision had resulted in a federal appellate ruling in favor of the insurance company. *See Norem*, 737 F.3d at 1150 ("neither the dictionary definitions nor the common understanding of the phrase 'based on' suggest that [the insurer] is prohibited from considering factors beyond sex, issue age, policy year, and payment class when calculating its COI rates."). We represented the policyholders in that case, and in another Seventh Circuit case, all on a contingent basis, through class certification, summary judgment, and two full appeals. The Seventh Circuit affirmed summary judgment in both cases and we ultimately recovered nothing despite thousands of hours of work. Many firms might have given up on the policy theory here after such a stinging defeat. We did not. We filed this case and another case against State Farm in *Vogt v. State Farm Life Insurance Co.*, and then continued to file cases against State Farm even before ultimately obtaining a favorable appellate decision in the Eighth Circuit. Even after the Eighth Circuit's ruling in *Vogt*, we faced disagreement among the subsequent courts to consider the issue of policy interpretation.

56. The risk of a total loss initially appeared to be borne out here, with the Court concluding it was bound to follow *Norem* on Glover's Illinois-issued policy. However, Class Counsel successfully pled that Defendants violated the Policies even under *Norem*'s interpretation, which was also a completely novel theory, and one another court had rejected. *See Maxon*, 2019 WL 4540057, at *5. As this Court recognized in its Preliminary Approval

Ruling, the significant uncertainty about the meaning of the policy language here posed substantial risks as to both liability and how a jury would view any damages.

57. Policy interpretation was also far from the only risk we faced. It was critical to prevail on that point but hardly sufficient to obtain a significant recovery. As in the many cases Class Counsel have litigated beyond the pleadings, Defendants would have levied vigorous challenges at class certification, expert testimony, and the damages calculations. For example, as set forth above, one of Lincoln's experts submitted a declaration in this case setting forth his view that under Judge Carter's interpretation of the policy in the Related Action of *Vida*, which is materially the same interpretation reached by this Court (Preliminary Approval Ruling at 14), over 99% of the plaintiff's claimed damages were eliminated.

58. All of these issues created a significant risk for us to take on a purely contingent basis. There were certainly less risky cases we could have devoted our resources to, where either liability or damages or both were more certain or where the claims had been advanced by a government investigation or public admissions. We nonetheless dedicated our resources to these cases because we believed in the claims and representation of these clients.

59. As noted in our prior Declarations, we believe the Settlement is in the best interests of the Settlement Class given the risks and delay of further litigation. Even setting aside the significant risks on the issue of policy interpretation, proving and recovering the entire overcharge was highly uncertain because of the broad range of potential recoveries at trial. If Plaintiffs had gone to trial even with a favorable policy interpretation, they could have recovered nothing or even just a modest amount more than the Settlement provides. And they still would have faced significant appellate risk on key issues of class certification, policy interpretation, and admissibility of expert testimony where any one adverse ruling could have eliminated their

claims entirely. And all this would take years. Notably, even in cases in which Class Counsel obtained verdicts in favor of policyholder classes, it took years for policyholders to receive their recovery. In the *Vogt v. State Farm* litigation, the class members who prevailed at trial in June 2018 were not paid until 2022 because State Farm exercised all rights of appeal including seeking *certiorari* to the Supreme Court. And in the trials against Kansas City Life Insurance Company starting in December 2022 in which Class Counsel obtained verdicts in favor of policyholders, those judgments have yet to be paid due to the delay inherent in the appeals process.

60. The Settlement Fund likely represents more than 100% of the damages under the Court's interpretation of the policy language, and a material portion of the damages even if Plaintiffs were successful on appeal in having the Second Circuit adopt their initially pled interpretation of the Policies. In our experience, it is unusual in any settlement to recover full damages on any claim, much less when full damages requires the defendant to pay over $147 million.

61. The amount of the overcharge recovered here compares favorably to other COI settlements making similar allegations under similar policy language. As set forth above, in *Rogowski v. State Farm*, we estimated that the $325 million settlement represented approximately 30% of the alleged COI overcharges. In *Niewinski v. State Farm*, we estimated that the $65 million settlement represented approximately 21% of the COI overcharges. In *Spegele v. USAA Life Insurance Co.*, we estimated that a $90 million cash settlement represented approximately 19% of the alleged COI overcharges. In *Larson v. John Hancock Life Insurance Co.*, No. RG16813803 (Alameda Co., Cal.), we estimated the $59.75 million settlement represented an average of just over 20% of the estimated overcharges. This Settlement also compares favorably to our prior settlements in terms of the average gross per policy recovery,

with an average here of $770 per policy (*see supra*, ¶ 39), and that is even after the Court interpreted the Policies as permitting some consideration of non-mortality factors, demonstrating the high quality of representation provided by Class Counsel.

62. Notably, the courts overseeing our prior COI settlements awarded fees equal to 30-33.33% of the funds, a significantly higher percentage than what Class Counsel seeks here, supporting the reasonableness of Class Counsel's request.

63. To prepare this Declaration, we reviewed the complete set of time records maintained by our firms in their time and billing systems. Local counsel, William Madsen, performed the same task with respect to the time records maintained by his firm, Madsen Presley & Parenteau, LLC. From the inception of the case Class Counsel utilized the firms' standard billing practices to track and maintain contemporaneous time records for all timekeepers in 6-minute increments. We also collected time and expense summaries from Mr. Madsen's firm for the litigation.

64. Class Counsel spent substantial time and labor investigating the claims here, preparing the initial complaint, briefing and arguing Defendants' motions to dismiss and for judgment on the pleadings and Plaintiff's motion to amend the complaint to allege Defendants' breach under the Court's interpretation, engaging in discovery and case management, working with Plaintiffs' expert to evaluate damages, and negotiating and seeking approval of the Settlement. As of October 30, 2024, Class Counsel, along with local counsel, have spent more than 5,320 hours working on this case. This time was reasonably expended to address the novel and complex issues presented by this litigation and Defendants' vigorous multi-faceted defense and is of the kind and character that we would normally bill to paying clients, as well as time that we normally track and seek to be paid for at the conclusion of successful contingency

litigation. Class Counsel staffed and managed the litigation as efficiently as possible. We did not duplicate responsibilities and assigned work to qualified professional staff as opposed to lawyers where possible. Given we would only receive a fee if we were successful, we were incentivized to be efficient.

65. There is also more work yet to come. Based on the time spent on a recent appeal after final approval of a class action settlement, Class Counsel anticipate spending 875 more hours protecting the Settlement through the promised appeal by the Objectors. Class Counsel also expect to spend an additional 475 hours on settlement administration, including responding to class member questions about the Settlement, supervising the administrator, making updates to the Court, overseeing check reissuances and distribution of benefits to deceased class members' estates, and ensuring that the distribution runs smoothly. To estimate the amount of this anticipated work, we reviewed our post-approval time in two COI settlements of similar size (the USAA and John Hancock cases discussed above). We averaged the amount of post-settlement time spent across the number of policies at issue in those settlements and applied that average to the number of policies at issue here, which produced our estimate of 475 hours.

66. Our firms track and set hourly rates on a non-contingent basis and attest that the rates reflected in Appendix 1 charged by the lawyers and staff in our firms are reasonable, based on each person's position and experience level. We further affirm that the rates submitted with this Declaration are based on rate scales, as annually adjusted, submitted to and approved by many courts across the country. *See O'Dell v. Aya Healthcare, Inc.*, No. 22cv1151-CAB-MMP (S.D. Cal. Oct. 15, 2024), Doc. 136 at 8 (approving as reasonable Stueve Siegel Hanson's 2024 hourly rates); *id.* at Doc. 107-2, ¶ 23 (setting forth hourly rates); *Clemens v. ExecuPharm, Inc.*, No. 20-3383 (E.D. Pa. Oct. 1, 2024), Doc. 67 at 8 (finding Stueve Siegel Hanson's 2024 hourly

rates for Mr. Siegel of $1,325 reasonable, among other billing rates, as part of lodestar analysis); *id.* at Doc. 64-2, ¶ 26 (setting forth hourly rates); *Niewinski*, No. 23-cv-4159 (W.D. Mo. Apr. 1, 2024), Doc. 36 at 9 (approving Class Counsel's 2024 hourly rates of up to $1,325 for partners, $825 for associates, and $350 for paralegals as part of lodestar crosscheck analysis); *id.* at Doc. 29-1 at ¶ 30; *id.* at Doc. 33-2 at ¶ 4; *Armstrong v. Kimberly-Clark Corp.*, No. 3:20-cv-03150-M, 2024 WL 1123034, at *6 (N.D. Tex. Mar. 14, 2024) (approving Stueve Siegel Hanson's 2023 hourly rates of up to $1,225 for partners, $675 for associates, and $350 for paralegals as part of lodestar crosscheck analysis); *id.* at Doc. 123-1 (setting forth hourly rates); *Rogowski*, 2023 WL 5125113, at *5 n.8 (approving Class Counsel's 2023 hourly rates of up to $1,125 for partners, $700 for associates, and $340 for paralegals as part of lodestar crosscheck analysis); *id.* at Doc. 59-1 at Appendix A; *id.* at Doc. 63-2 at ¶ 4; *In re Cap. One Consumer Data Sec. Breach Litig.*, MDL No. 1:19-md-2915 (AJT/JFA), 2022 WL 17176495, at *5 (E.D. Va. Nov. 17, 2022) (finding Stueve Siegel Hanson's 2022 hourly rates of up to $1,025 for partners, $625 for associates, and $315 for paralegals, reasonable as part of lodestar crosscheck analysis); *id.* at Doc. 2231-1 at 35 (setting forth hourly rates); *Hays v. Nissan N. Am. Inc.*, No. 4:17-CV-0353-BCW (W.D. Mo. Sept. 30, 2022), Doc. 138 at ¶ 5 (approving rates of $1,125 for partners, $695 for associates, $340 for paralegals); *id.* at Doc. 135-2, ¶ 8 (setting forth hourly rates); *Jackson County v. Trinity Industries*, No. 1516-CV23684, at *4 (Mo. Cir. Ct. Jackson Cty., Aug. 30, 2022) (approving blended hourly rate of $662 for Class Counsel); *Yellowdog Partners, LP v. CURO Group Holdings Corp.*, No. 18-cv-2662-JWL-KGG (D. Kan. Dec. 18, 2020), Doc. 107, at 1-3 (approving the motion for attorneys' fees); *id.* at Doc. 99-14 at 2 (setting forth Stueve Siegel Hanson's 2020 rates); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (approving, *inter alia*,

partner rates ranging from $935 (for Mr. Siegel) to $1050 per hour), *aff'd in relevant part*, 999 F.3d 1247 (11th Cir. 2021); *Larson*, 2018 WL 8016973, at *6 (approving Class Counsel's then-current hourly rates of up to $895 for partners, $550 for associates, and $275 for paralegals as part of lodestar crosscheck analysis); *Hapka v. Carecentrix, Inc*., No. 2:16-cv-02372-KGG (D. Kan. Feb. 15, 2018), Doc. 103 at 3-4 (approving Stueve Siegel Hanson's then-current hourly rates of up to $865 for partners, $475 for associates, and $275 for paralegals as part of lodestar crosscheck analysis); *id.* at Doc. 95-2 at ¶¶ 22-23; *Criddell v. Premier Healthcare Services, LLC*, No. 16-cv-05842-R-KS (C.D. Cal. Jan. 16, 2018), Doc. 64 (approving Stueve Siegel Hanson's then-current hourly rates for partner of $825, for associate of $395, and for paralegal of $245); *id.* at Doc. 59-2 at ¶ 10; *Spangler v. Nat'l Coll. of Tech. Instruction*, No. 14-cv-03005-DMS (RBB), 2018 WL 846930, at *2 (S.D. Cal. Jan. 5, 2018) (approving Stueve Siegel Hanson's 2016 hourly rates of up to $825 for partners and up to $525 for associates).

67. Further, although we infrequently accept non-contingent work, the rates reported here track the rates we charged to hourly-paying clients that retain us for hourly work. Based on Class Counsel's collective experience and knowledge of the legal market, including the market for hiring lawyers engaged in complex litigation, the rates reflected in the table at Appendix 1 are comparable to the rates charged by other law firms with similar levels of experience, expertise, and reputation, for services in complex litigation in the nation's leading legal markets. Class Counsel's hourly rates reflect their national practices specializing in complex, high-risk class action and large consumer cases, and are the rates we customarily apply in these types of cases. There are no lawyers within this district with the experience and expertise of Class Counsel, which was vital to obtaining the results achieved here.

68. Using these hourly rates, the lodestar for the work performed as of approximately October 30, 2024, and anticipated future work after final approval is $5,851,503.00 (6,670.2 hours). Class Counsel will update this billing data prior to final approval and will provide the underlying billing records for the Court's review if requested to do so.

69. As of October 30, 2024, our firms have advanced $154,956.54 in expenses on behalf of the Settlement Class. These were reasonably and necessarily incurred to prosecute the litigation. Appendix 2 contains a summary of the expenses by category.

70. As discussed above, Class Counsel bore the risk of litigating this action entirely on a contingent basis for the past eight-plus years. There are numerous examples where counsel in contingency fee cases have worked thousands of hours and advanced substantial sums of money, only to receive no compensation. From personal experience, Class Counsel are fully aware that despite the most vigorous and competent of efforts, a law firm's success in contingent litigation on behalf of a class is never guaranteed. Despite this, Class Counsel have ensured that sufficient attorney resources were dedicated to prosecuting the claims. They have also ensured sufficient funds were available to advance the expenses required to pursue and complete such complex litigation. Class Counsel's investment of this amount of hard costs demonstrates the commitment, as well as the risk, we were willing to take in prosecuting the case and advancing the Settlement Class Members' claims. This extraordinary investment of labor and expenses necessarily hampered our ability to take on other significant work.

71. The two Plaintiff class representatives, Ms. Glover and Mr. Warehime, were not only negatively impacted by the contractual breaches here, but also provided key support to the litigation. Ms. Glover helped to develop and review the factual allegations in the initial complaints and responded to discovery requests. Both Plaintiffs provided information and

documents in connection with this litigation, assisting Class Counsel with the specifics of their policies, provided key guidance with respect to the Settlement, and worked with Class Counsel to advance the litigation on behalf of themselves and all members of the Settlement Class. This work materially advanced the litigation and protected the Settlement Class's interests. Without their willingness to represent the Settlement Class, the Settlement could not have been achieved.

72. Based on the significant recovery for the Settlement Class and the substantial risks faced by Class Counsel, Class Counsel respectfully submits that the Court should award attorneys' fees of 25% of the Settlement Fund, approve reimbursement of $154,956.54 in litigation expenses (to be updated prior to final approval), and service awards of $25,000 for Plaintiff Glover and $10,000 for Plaintiff Warehime.

We declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 4th day of November, 2024.

John J. Schirger

Norman E. Siegel

APPENDIX 1

Stueve Siegel Hanson LLP Lodestar
Through October 30, 2024

Timekeeper	Title	Years of Experience	Hours	Rate	Total
Ahal, Stephen	Associate	4	6.30	$575.00	$3,622.50
Barry, Sherry	Paralegal	49	0.50	$275.00	$137.50
Cook Leftridge, Crystal	Associate	11	1.00	$725.00	$725.00
Edwards, Tanner	Associate	9	4.10	$675.00	$2,767.50
Hickey, David	Sr Counsel	15	261.00	$825.00	$215,325.00
Kane, Jordan	Associate	6	37.60	$625.00	$23,500.00
Lange, Ethan	Partner	16	712.50	$950.00	$676,875.00
Merklen, Joy	Associate	4	1.80	$575.00	$1,035.00
Perez, Cheri	Staff	40	2.10	$350.00	$735.00
Perkins, Lindsay	Partner	17	583.10	$975.00	$568,522.50
Phommachanh, Vong	Paralegal	18	19.70	$350.00	$6,895.00
Siegel, Norman	Partner	31	533.00	$1,325.00	$706,225.00
Stueve, Ben	Associate	6	0.60	$650.00	$390.00
Stueve, Patrick	Partner	36	11.90	$1,325.00	$15,767.50
Walsh, Larkin	Sr Counsel	19	22.10	$850.00	$18,785.00
Walters, Stephanie	Associate	17	20.10	$850.00	$17,085.00
Weiner, Adrian	Staff	31	0.60	$350.00	$210.00
Wilders, Bradley	Partner	17	10.50	$1,125.00	$11,812.50
Williams, Sheri	Staff	24	1.30	$225.00	$292.50
		Totals:	**2,229.80**		**$2,270,707.50**

Schirger Feierabend LLC Lodestar
Through October 30, 2024

Timekeeper	Title	Years of Experience	Hours	Rate	Total
Bess-Rhodes, Olivia	Law Clerk	1	123.70	$225.00	$27,832.50
Duryea, Cara	Paralegal	23	94.70	$225.00	$21,307.50
Feierabend, Joseph	Partner	14	1,115.30	$775.00	$864,357.50
Hausner, Toby	Partner	10	2.00	$575.00	$1,150.00
Lytle, Matthew	Partner	20	413.70	$775.00	$320,617.50
Schirger, John	Partner	32	1,105.20	$950.00	$1,049,940.00
Sherman, Sam	Associate	3	0.60	$450.00	$270.00
Stainbrook, Molley	Paralegal	2	10.90	$225.00	$2,452.50
		Totals:	**2,866.10**		**$2,287,927.50**

Madsen Presley & Parenteau, LLC Lodestar
Through October 30, 2024

Timekeeper	Title	Years of Experience	Hours	Rate	Total
Madsen, William	Partner	33	102.90	$525.00	$54,022.50
Messina, Jennifer	Associate	1	2.70	$300.00	$810.00
Steigman, Todd	Partner	19	17.40	$525.00	$9,135.00
Tharpe, Patricia	Sr Paralegal	35	98.50	$210.00	$20,685.00
Torres, Maritza	Paralegal	23	2.80	$195.00	$546.00
		Totals:	**224.3**		**$85,198.50**

APPENDIX 2

Stueve Siegel Hanson LLP Expenses
Through October 30, 2024

Expense Category	Amount
Print and Copy	$324.51
Outside Print and Copy	$2,545.00
Postage	$4.36
Meals	$1,012.01
Court Fees	$59.77
Transcripts	$626.06
Experts/Consultants	$8,431.25
Mediators/Arbitrators	$11,007.50
Pacer	$107.70
Westlaw	$71,934.18
Relativity Hosting	$194.18
Airfare	$4,213.42
Intercall Conferencing	$32.95
Federal Express	$154.78
Ground Transportation	$1,063.98
Lodging	$3,598.30
Total	**$105,309.95**

Schirger Feierabend LLC Expenses
Through October 30, 2024

Expense Category	Amount
Print and Copy	$769.30
Outside Print and Copy	$-
Postage	$11.75
Meals	$963.44
Court Fees	$-
Transcripts	$103.91
Experts/Consultants	$8,431.25
Mediators/Arbitrators	$10,129.80
Pacer	$254.20
Westlaw/Legal Research	$8,030.75
Relativity Hosting	$-
Airfare	$9,894.11
Intercall Conferencing	$-
Federal Express	$124.50
Ground Transportation/Parking	$1,516.90
Lodging	$7,941.18
Total	**$48,171.09**

Madsen, Prestley & Parenteau, LLC Expenses
Through October 30, 2024

Expense Category	Amount
Service of Process	$475.00
Court Fees	$925.00
Courier Fees	$75.50
Total	**$1,475.50**

EXHIBIT 2

Azari Declaration

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAULETTE T. GLOVER and JOHN T. WAREHIME, on behalf of themselves and all others similarly situated, Plaintiffs, v. CONNECTICUT GENERAL LIFE INSURANCE COMPANY; and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, Defendants.	No. 3:16-cv-00827-MPS

DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION OF NOTICE PLAN

I, Cameron R. Azari, declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. ("Epiq") and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq. References to Epiq in this declaration include Hilsoft Notifications.

4. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

OVERVIEW

5. This declaration details the successful implementation of the Class Notice Plan ("Notice Plan") for *Glover v. Connecticut General Life Insurance Company, et al*, Case No. 3:16-

cv-00827-MPS, currently pending in the United States District Court for the District of Connecticut. I previously executed my *Declaration of Cameron R. Azari, Esq. on Notice Plan* on March 8, 2024, in which I described the Notice Plan, detailed Epiq's and Hilsoft's class action notice experience, and attached Hilsoft's *curriculum vitae.* I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs.

CAFA NOTICE

6. On March 18, 2024, Epiq sent 113 CAFA Notice Packages ("CAFA Notice"). The CAFA Notice was mailed via United States Postal Service ("USPS") Certified Mail to 110 officials (the Attorneys General of 48 states, the District of Columbia, the Insurance Commissioners of each of the 50 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General and the Connecticut Attorneys General, the CAFA Notice was sent to the Nevada Attorney General and the Connecticut Attorneys General electronically via email. The CAFA Notice was also sent via United Parcel Service ("UPS") to the Attorney General of the United States. Details regarding the CAFA Notice mailing are provided in the *Declaration of Kyle S. Bingham on Implementation of CAFA Notice*, dated March 18, 2024, which is included as **Attachment 1**.

NOTICE PLAN

7. On September 4, 2024, the Court approved the Notice Plan and appointed Epiq as the Settlement Administrator in its *Ruling on Motion for Preliminary Approval, Motion to Intervene, and Motion to Seal* ("Preliminary Approval Order"). In the Preliminary Approval Order, the Court approved the following Settlement Class:

> All persons who own or owned a life insurance policy, that was active on or after May 27, 2010, and was issued or administered by either Defendant, or their predecessors in interest, the terms of which provide or provided for: 1) a cost of insurance charge calculated using a rate that is determined based on expectations as to future mortality experience; 2) additional but separate policy charges, deductions, or expenses; 3) an investment, interest-bearing, or savings component; and 4) a death benefit.

8. After the Court's Preliminary Approval Order was entered, Epiq implemented the Notice Plan. This declaration details the notice activities undertaken to date and explains how and why the Notice Plan was comprehensive and well-suited to reach the Settlement Class Members. This declaration also discusses the administration activity to date.

9. Rule 23 of the Federal Rules of Civil Procedure directs that the best notice practicable under the circumstances must include "individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means."[1] The Notice Plan satisfied this requirement. The Notice Plan provided for individual notice via USPS first class mail to all Settlement Class Members.

10. The Notice Plan was designed to reach the greatest practicable number of identified Settlement Class Members sent individual notice. The Notice Plan included individual, direct mail notice to all Settlement Class Members. Because of the availability of Settlement Class Member data for virtually the entire Settlement Class, individual notice is expected to reach in excess of 90% of the identified Settlement Class. The Settlement Website further expands the reach of the Notice Plan.

11. In my experience, the reach of the Notice Plan was consistent with other court-approved notice programs, was the best notice practicable under the circumstances, and satisfied the requirements of due process, including its "desire to actually inform" requirement.[2]

Individual Notice

12. On May 24, 2024, Epiq received one initial data file with 194,753 records for identified Settlement Class Members, which included policy numbers, names, and current or last

[1] FRCP 23(c)(2)(B).

[2] *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950) ("But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .").

known addresses. Epiq deduplicated and rolled-up all the records and loaded the unique, identified Settlement Class Member records into its database. These efforts resulted in 191,681 unique policy numbers for identified Settlement Class Members. Of these records, 194,571 summary Mail Notices were sent to Settlement Class Members with an associated mailing address (some policies include multiple owners, and a summary Mail Notice was sent to each policy owner). There were 217 unique policy numbers for identified Settlement Class Members that did not include a mailing address and were not sent notice.

13. Subsequently, on October 1, 2024, Epiq received one supplemental data file with policy numbers and address information for 144 of the 217 unique policy numbers for identified Settlement Class Member without an available mailing address. The supplemental data file also included updated addresses for 28 unique policy numbers included in the initial data file. After receipt of the supplemental data file and sending notice, only 73 unique policy numbers for identified Settlement Class Members did not include a mailing address and were not sent notice.

Individual Notice – Mail

14. On October 18, 2024, Epiq sent 194,571 Class Notices (for all Settlement Class Members with an associated mailing address in the initial data file). Some policy numbers are associated with one or more identified Settlement Class Members. The Class Notices clearly and concisely summarized the case, the Settlement, and the legal rights of the Settlement Class Members and directed Settlement Class Members to the Settlement Website for additional information. Prior to mailing, all mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the USPS.[3] In addition, the addresses were certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This

[3] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and known address.

address updating process is standard for the industry and for the majority of promotional mailings that occur today.

15. Class Notices returned as undeliverable were re-mailed to any new address available through USPS information. For example, to the address provided by the USPS on returned pieces if the forwarding order had expired but is still within the time period in which the USPS returns the piece with a forwarding address indicated, or to better addresses that were found using a third-party lookup service. In addition, the USPS automatically forwarded Class Notices with an available forwarding address order that had not expired ("Postal Forwards"). The return address on the Class Notices is a post office box that Epiq maintains for this case. The Class Notice is included as **Attachment 2**.

Settlement Website, Toll-free Telephone Number, Email Address, and Postal Mailing Address

16. On October 18, 2024, Epiq established a Settlement Website with an easy-to-remember domain name (www.LincolnCOISettlement.com). At the Settlement Website, Settlement Class Members are able to obtain detailed information about the case and review key documents, including the operative Complaint, Class Notice, Settlement Agreement, Preliminary Approval Order, and other important documents. In addition, the Settlement Website includes relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and other case-related information. The Settlement Website address was displayed prominently on all Notice documents. As of October 29, 2024, there have been 1,236 unique visitor sessions to the Settlement Website, and 2,258 web pages have been presented.

17. On October 18, 2024, Epiq established a toll-free telephone number (1-888-874-2143) to allow Settlement Class Members to call for additional information, listen to answers to FAQs, and request that a Class Notice be mailed to them. This automated telephone system is available 24 hours per day, 7 days per week. Live service agents are also available during normal

business hours. The toll-free telephone number was prominently displayed in all Notice documents. As of October 29, 2024, there have been 1,104 calls to the toll-free telephone number representing 9,351 minutes of use, and live service agents have handled 804 incoming calls representing 6,832 minutes of use, and 11 outgoing calls representing 17 minutes of use.

18. An email address for correspondence about the Settlement was established and continues to be available, allowing Settlement Class Members to contact the Settlement Administrator by email with any specific requests or questions. A post office box for correspondence about the Settlement was also established and continues to be available, allowing Settlement Class Members to contact the Settlement Administrator by mail with any specific requests or questions, including requests for exclusion.

Requests for Exclusion and Objections

19. The deadline to request exclusion (opt-out) from the Settlement or to object to the Settlement is November 23, 2024. As of October 29, 2024, Epiq has received no requests for exclusion. As of October 29, 2024, Epiq has received no objections to the Settlement.

PLAIN LANGUAGE NOTICE DESIGN

20. The Class Notice contained all of the information necessary to allow Settlement Class Members to make informed decisions and included all of the information required by Rule 23(c)(2)(B), describing the central elements of Plaintiffs' claims in plain, easily understood language. The Class Notice stated the Settlement Class definition, a brief overview of the case, the options for any Settlement Class Member to opt-out or object and the procedure to do so, a statement that a judgment would be binding on Settlement Class Members who do not opt-out, and the right of any Settlement Class Member who does not opt-out to appear in the case through their own lawyer. Also, should additional information be needed, the Class Notice clearly designated and provided contact information for the Settlement Administrator and Class Counsel.

CONCLUSION

21. In class action notice planning, execution, and analysis, we are guided by due

process considerations under the United States Constitution, by federal rules and statutes, and by case law pertaining to the recognized notice standards under Rule 23. This framework directs that the notice plan be optimized to reach the class and that the notice or notice plan itself not limit knowledge of the availability of options—nor the ability to exercise those options—to class members in any way. All of these requirements were met in this case.

22. The Notice Plan included individual, direct mail notice to all Settlement Class Members who could be identified with reasonable effort. Because of the availability of Settlement Class Member data for virtually the entire Settlement Class, individual notice is expected to reach in excess of 90% of the identified Settlement Class. The Settlement Website expanded the reach of the Notice further. In 2010, the Federal Judicial Center ("FJC") issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%."[4] Here, we have implemented a Notice Plan that will readily achieve a reach within that standard.

23. The Notice Plan provided for the best notice practicable under the circumstances of this case, conforms to all aspects of Rule 23 and Constitutional Due Process, and comported with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth.

24. The Notice Plan schedule affords sufficient time to provide full and proper notice to Settlement Class Members before the opt-out and objection deadlines.

25. I will provide the Court with a supplemental Notice Plan implementation declaration.

[4] FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 30, 2024, at Beaverton, Oregon.

Cameron R. Azari

Attachment 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAULETTE T. GLOVER and JOHN T. WAREHIME, on behalf of themselves and all others similarly situated, Plaintiff, v. CONNECTICUT GENERAL LIFE INSURANCE COMPANY; and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, Defendants.	CIVIL ACTION NO. 3:16-cv-00827- MPS

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

I, KYLE S. BINGHAM, hereby declare and state as follows:

1. My name is KYLE S. BINGHAM. I am over the age of 25 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Noticing for Epiq Class Action & Claims Solutions, Inc. ("Epiq"), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. I have overseen and handled Class Action Fairness Act ("CAFA") notice mailings for more than 400 class action settlements.

3. Epiq is a firm with more than 25 years of experience in claims processing and settlement administration. Epiq's class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service ("USPS"), claims database management, claim adjudication, funds management and distribution services.

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for Defendants Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company and affiliated entities, 113 federal and state officials (the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia, and the United States Territories, as well as the Insurance Commissioners of each of the 50 states, the District of Columbia, and the United States Territories) were identified to receive CAFA notice.

6. Epiq maintains a list of these federal and state officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").[1]

7. On March 18, 2024, Epiq sent 113 CAFA Notice Packages ("Notice"). The Notice was mailed via USPS Priority Mail to 110 officials (the Attorneys General of 48 states, the District of Columbia, and the United States Territories and the Insurance Commissioners of each of the 50 states, the District of Columbia, and the United States Territories). As per the direction of the Offices of the Nevada and the Connecticut Attorneys General, the Notice was sent to the Nevada and Connecticut Attorneys General electronically via email. The Notice was also sent via United Parcel Service ("UPS") to the Attorney General of the United States. The CAFA Notice Service List (USPS Priority Mail, Email, and UPS) is included as **Attachment 1**.

[1] CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

8. The materials sent to the federal and state officials included a Cover Letter, which provided notice of the proposed Settlement of the above-captioned case. The Cover Letter is included as **Attachment 2**.

9. The cover letter was accompanied by a CD, which included the following:

a. **Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:**

- Class Action Complaint (filed May 27, 2016);
- Amended Class Action Complaint (filed May 27, 2016);
- Second Amended Class Action Complaint (filed October 10, 2023); and
- Third Amended Class Action Complaint (filed March 8, 2024).

b. **Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:**

- Class Notice (*Exhibit A to the Settlement Agreement*).

c. **Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents were included:

- Settlement Agreement.

d. **Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members:** A Geographic Analysis of potential Class Members was included on the CD.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 18, 2024.

KYLE S. BINGHAM

Attachment 1

CAFA Notice Service List

USPS Priority Mail

Appropriate Official	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Treg Taylor	1031 W 4th Ave	Suite 200	Anchorage	AK	99501
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Protection Section	455 Golden Gate Ave Suite 11000	San Francisco	CA	94102
Office of the Attorney General	Phil Weiser	Ralph L Carr Colorado Judicial Center	1300 Broadway Fl 10	Denver	CO	80203
Office of the Attorney General	Brian Schwalb	400 6th St NW		Washington	DC	20001
Office of the Attorney General	Kathy Jennings	Carvel State Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Ashley Moody	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Anne E Lopez	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E Walnut St	Des Moines	IA	50319
Office of the Attorney General	Raul Labrador	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Kwame Raoul	100 W Randolph St		Chicago	IL	60601
Office of the Indiana Attorney General	Todd Rokita	Indiana Government Center South	302 W Washington St Rm 5	Indianapolis	IN	46204
Office of the Attorney General	Kris Kobach	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Russell Coleman	700 Capitol Ave Suite 118		Frankfort	KY	40601
Office of the Attorney General	Liz Murrill	PO Box 94005		Baton Rouge	LA	70804
Office of the Attorney General	Andrea Campbell	1 Ashburton Pl 20th Fl		Boston	MA	02108
Office of the Attorney General	Anthony G Brown	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Aaron Frey	6 State House Station		Augusta	ME	04333
Department of Attorney General	Dana Nessel	PO BOX 30212		Lansing	MI	48909
Office of the Attorney General	Keith Ellison	445 Minnesota St Ste 1400		St Paul	MN	55101
Missouri Attorney General's Office	Andrew Bailey	207 West High Street	PO Box 899	Jefferson City	MO	65102
Mississippi Attorney General	Lynn Fitch	PO Box 220		Jackson	MS	39205
Office of the Attorney General	Austin Knudsen	215 N Sanders 3rd Fl	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Drew H Wrigley	600 E Boulevard Ave Dept 125		Bismarck	ND	58505
Nebraska Attorney General	Mike Hilgers	2115 State Capitol	PO Box 98920	Lincoln	NE	68509
Office of the Attorney General	John Formella	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Matthew J Platkin	25 Market Street	PO Box 080	Trenton	NJ	08625
Office of the Attorney General	Raul Torrez	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	CAFA Coordinator	28 Liberty Street 15th Floor		New York	NY	10005
Office of the Attorney General	Dave Yost	30 E Broad St Fl 14		Columbus	OH	43215
Office of the Attorney General	Gentner Drummond	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Michelle A. Henry	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter F Neronha	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	PO Box 11549		Columbia	SC	29211
Office of the Attorney General	Marty Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Jonathan Skrmetti	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	PO Box 12548		Austin	TX	78711
Office of the Attorney General	Sean D Reyes	PO Box 142320		Salt Lake City	UT	84114
Office of the Attorney General	Jason S Miyares	202 N 9th St		Richmond	VA	23219
Office of the Attorney General	Charity R Clark	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 5th Ave Ste 2000		Seattle	WA	98104
Office of the Attorney General	Josh Kaul	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrisey	State Capitol Complex Bldg 1 Room E 26	1900 Kanawha Blvd E	Charleston	WV	25305
Office of the Attorney General	Bridget Hill	109 State Capital		Cheyenne	WY	82002
Department of Legal Affairs	Fainu'ulei Falefatu Ala'ilima-Utu	American Samoa Gov't Exec Ofc Bldg Utulei	Territory of American Samoa	Pago Pago	AS	96799
Attorney General Office of Guam	Douglas Moylan	Administrative Division	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Domingo Emanuelli Hernández	PO Box 9020192		San Juan	PR	00902
Department of Justice	Ariel M. Smith	3438 Kronprindsens Gade Ste 2	GERS BLDG	St Thomas	VI	00802

CAFA Notice Service List

USPS Priority Mail

Appropriate Official	FullName	Address1	Address2	City	State	Zip
Alabama Department of Insurance	MARK FOWLER	PO Box 303351		Montgomery	AL	36130
Alaska Dept Commerce Comm. & Econ. Dev.	LORI K. WING-HEIER	Division of Insurance	550 West 7th Avenue Suite 1560	Anchorage	AK	99501
Arizona Department of Insurance	BARBARA D. RICHARDSON	100 N 15th Ave	Suite 261	Phoenix	AZ	85007
Arkansas Insurance Department	ALAN MCCLAIN	1 Commerce Way Bldg 4	Suite 502	Little Rock	AR	72202
California Department of Insurance	RICARDO LARA	300 Capitol Mall	17th Floor	Sacramento	CA	95814
Colorado Dept of Regulatory Agencies	MICHAEL CONWAY	Division of Insurance	1560 Broadway Suite 850	Denver	CO	80202
Connecticut Insurance Department	ANDREW N. MAIS	PO Box 816		Hartford	CT	06142
Delaware Department of Insurance	TRINIDAD NAVARRO	1351 West North Street	Suite 101	Dover	DE	19904
Government of the District of Columbia	KARIMA WOODS	Department of Insurance Securities & Banking	1050 First Street NE Suite 801	Washington	DC	20002
Office of Insurance Regulation	MICHAEL YAWORSKY	The Larson Building	200 E. Gaines Street Rm 101A	Tallahassee	FL	32399
Office of Ins. & Safety Fire Commissioner	JOHN F. KING	Two Martin Luther King Jr. Dr. SE	West Tower Suite 704 Floyd Bldg.	Atlanta	GA	30334
Dept of Commerce & Consumer Affairs	GORDON I. ITO	Insurance Division	PO Box 3614	Honolulu	HI	96811
Idaho Department of Insurance	DEAN L. CAMERON	PO Box 83720		Boise	ID	83720
Illinois Department of Insurance	DANA POPISH SEVERINGHAUS	320 W. Washington Street	4th Floor	Springfield	IL	62767
Indiana Department of Insurance	AMY L. BEARD	311 W Washington Street	Suite 103	Indianapolis	IN	46204
Iowa Insurance Division	DOUG OMMEN	1963 Bell Avenue	Suite 100	Des Moines	IA	50315
Kansas Insurance Department	VICKI SCHMIDT	1300 SW Arrowhead Rd		Topeka	KS	66604
Kentucky Department of Insurance	SHARON P. CLARK	PO Box 517		Frankfort	KY	40602
Louisiana Department of Insurance	TIMOTHY J. TEMPLE	PO Box 94214		Baton Rouge	LA	70804
Department of Professional & Financial Reg.	ROBERT L. CAREY	Maine Bureau of Insurance	34 State House Station	Augusta	ME	04333
Maryland Insurance Administration	KATHLEEN A. BIRRANE	200 St Paul Place	Suite 2700	Baltimore	MD	21202
Office of Consumer Affairs & Business Reg.	GARY ANDERSON	Massachusetts Division of Insurance	1000 Washington Street 8th Floor	Boston	MA	02118
Dept. of Insurance & Financial Services	ANITA G. FOX	PO Box 30220		Lansing	MI	48909
Minnesota Department of Commerce	GRACE ARNOLD	85 7th Place East	Suite 280	St Paul	MN	55101
Mississippi Insurance Department	MIKE CHANEY	PO Box 79		Jackson	MS	39205
Missouri Dept Ins. Fin. Institutions & Prof. Reg.	CHLORA LINDLEY-MYERS	PO Box 690		Jefferson City	MO	65102
Montana Office Commissioner Securities & Ins.	TROY DOWNING	Montana State Auditor	840 Helena Avenue	Helena	MT	59601
Nebraska Department of Insurance	ERIC DUNNING	PO Box 95087		Lincoln	NE	68509
Nevada Dept. of Business & Industry	SCOTT KIPPER	Division of Insurance	1818 East College Pkwy Suite 103	Carson City	NV	89706
New Hampshire Insurance Department	D.J BETTENCOURT	21 South Fruit Street	Suite 14	Concord	NH	03301
New Jersey Department of Banking & Ins.	JUSTIN ZIMMERMAN	20 West State Street	PO Box 325	Trenton	NJ	08625
Office of Superintendent of Insurance	ALICE T. KANE	PO Box 1689		Santa Fe	NM	87504
New York State Dept. of Financial Services	ADRIENNE A. HARRIS	One State Street		New York	NY	10004
North Carolina Department of Insurance	MIKE CAUSEY	1201 Mail Service Center		Raleigh	NC	27699
North Dakota Insurance Department	JON GODFREAD	State Capitol	600 E. Boulevard Avenue 5th Floor	Bismarck	ND	58505
Ohio Department of Insurance	JUDITH L. FRENCH	50 West Town Street	Suite 300	Columbus	OH	43215
Oklahoma Insurance Department	GLEN MULREADY	400 NE 50th Street		Oklahoma City	OK	73105
Oregon Dept. of Consumer & Bus Srvcs	ANDREW STOLFI	Division of Financial Regulation	PO Box 14480	Salem	OR	97309
Pennsylvania Insurance Department	MICHAEL HUMPHREYS	1326 Strawberry Square		Harrisburg	PA	17120
State of Rhode Island Dept of Business Reg.	ELIZABETH KELLEHER DWYER	Division of Insurance	1511 Pontiac Avenue Building 69-2	Cranston	RI	02920
South Carolina Department of Insurance	MICHAEL WISE	PO Box 100105		Columbia	SC	29202
South Dakota Dept of Labor & Reg. Div. of Ins.	LARRY D. DEITER	South Dakota Division of Insurance	124 South Euclid Avenue 2nd Floor	Pierre	SD	57501
Tennessee Department of Commerce & Ins.	CARTER LAWRENCE	Davy Crockett Tower Twelfth Floor	500 James Robertson Parkway	Nashville	TN	37243
Texas Department of Insurance	CASSIE BROWN	PO Box 12030		Austin	TX	78711
Utah Insurance Department	JON T. PIKE	4315 S. 2700 West	Suite 2300	Taylorsville	UT	84129
Department of Financial Regulation	KEVIN GAFFNEY	89 Main Street		Montpelier	VT	05620
Virginia State Corporation Commission	SCOTT A. WHITE	Bureau of Insurance	PO Box 1157	Richmond	VA	23218
Washington State Office of the Ins. Comm.	MIKE KREIDLER	PO Box 40255		Olympia	WA	98504
West Virginia Offices of the Insurance Comm.	ALLAN L. MCVEY	PO Box 50540		Charleston	WV	25305
State of Wisconsin Office of the Comm. of Ins.	NATHAN HOUDEK	PO Box 7873		Madison	WI	53707
Wyoming Insurance Department	JEFF RUDE	106 East 6th Avenue		Cheyenne	WY	82002
Office of the Governor	PENI 'BEN' ITULA SAPINI TEO	American Samoa Government	A P Lutali Executive Office Building	Pago Pago	AS	96799
Department of Revenue & Taxation	MICHELLE B. SANTOS	Regulatory Division	PO Box 23607	GMF Barrigada	GU	96921
Commonwealth N Mariana Islands Dept Comm.	REMEDIO C. MAFNAS	Office of the Insurance Commissioner	PO Box 5795 CHRB	Saipan	MP	96950
Office of the Commissioner of Insurance	ALEXANDER ADAMS VEGA	361 Calle Calaf	PO Box 195415	San Juan	PR	00919
Office of the Lieutenant Governor	TREGENZA A. ROACH	Division of Banking Insurance & Financial Reg.	5049 Kongens Gade	St Thomas	VI	00820

CAFA Notice Service List

Email

Appropriate Official	Contact Format	State
Office of the Attorney General for Connecticut	All documents sent to CT AG at their dedicated CAFA email inbox.	CT
Office of the Attorney General for Nevada	All documents sent to NV AG at their dedicated CAFA email inbox.	NV

CAFA Notice Service List

UPS

Appropriate Official	FullName	Address1	Address2	City	State	Zip
US Department of Justice	Merrick B. Garland	950 Pennsylvania Ave NW		Washington	DC	20530

Attachment 2

CAFA NOTICE ADMINISTRATOR
HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

March 18, 2024

VIA UPS OR USPS PRIORITY MAIL

Class Action Fairness Act – Notice to Federal and State Officials

Dear Federal and State Officials:

Pursuant to the Class Action Fairness Act of 2005 ("CAFA"), codified at 28 U.S.C. § 1715, please find enclosed information from Defendants Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company and affiliated entities relating to the proposed settlement of a class action lawsuit.

- **Case:** *Glover v. Connecticut General Life Insurance, et al.*, Case No. 3:16-cv-00827-MPS.
- **Court:** United States District Court for the District of Connecticut.
- **Defendants:** Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company and affiliated entities.
- **Documents Enclosed**: In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD:

1. **Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:**
    - Class Action Complaint (filed May 27, 2016);
    - Amended Class Action Complaint (filed May 27, 2016);
    - Second Amended Class Action Complaint (filed October 10, 2023); and
    - Third Amended Class Action Complaint (filed March 8, 2024).
2. **Per 28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** The Court has not scheduled a preliminary approval hearing or a final approval hearing. A telephonic status conference is scheduled for March 27, 2024.
3. **Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:**
    - Class Notice (*Exhibit A to the Settlement Agreement*).
4. **Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents are included:
    - Settlement Agreement.

CAFA NOTICE ADMINISTRATOR
HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

5. **Per 28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreements:** There are no other settlements or agreements between the parties other than those set forth or explicitly referenced in the Settlement Agreement.

6. **Per 28 U.S.C. § 1715(b)(6) – Final Judgment or Notice of Dismissal:** To date, the Court has not issued a final order, judgment or dismissal in the above-referenced action.

7. **Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members:** A Geographic Analysis of potential Class Members is included on the enclosed CD.

8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** To date, the Court has not issued a final order or judgment in the above-referenced action.

If you have questions or concerns about this notice or the enclosed materials, please contact this office.

Sincerely,

CAFA Notice Administrator

Enclosures

Attachment 2

Glover v. Connecticut General
P.O. Box 4169
Portland OR 97208-4169

Class Notice of Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company Cost of Insurance Class Action Settlement

Dear Class Member,

You have been sent this Class Notice of Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company Cost of Insurance Class Action Settlement (the "Class Notice") because you have been identified as a Settlement Class Member in the class action lawsuit, *Glover v. Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company*, pending in the United States District Court for the District of Connecticut, Case No. 3:16-cv-00827-MPS. This Class Notice summarizes a recent Settlement that impacts your rights. A full description of the Settlement is contained in the Settlement Agreement, which includes the precise definitions of capitalized terms used in this Class Notice. The Settlement Agreement is available for you to read at www.lincolnCOIsettlement.com. Please read it and this Class Notice carefully to understand your rights and obligations under the Settlement.

Records provided by The Lincoln National Life Insurance Company indicate that you are currently the owner or were the owner at the time of termination of a flexible premium adjustable life insurance policy issued and/or administered by Connecticut General Life Insurance Company ("Connecticut General") or The Lincoln National Life Insurance Company ("Lincoln National") or their respective predecessors. Throughout this Class Notice, Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company are collectively referred to as "Defendants."

The Settlement involves the Cost of Insurance that was deducted from the Cash Values of these life insurance policies. The Settlement provides that Lincoln National will fund a Settlement Fund in the amount of $147,500,000, which will be used to pay (1) cash to Settlement Class Members; (2) Class Counsel's attorneys' fees, costs, and expenses in an amount to be approved by the Court; (3) any service awards to the plaintiffs named in the lawsuit or the plaintiffs named in the related actions as identified herein in an amount to be approved by the Court; and (4) the expenses incurred in administering the Settlement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

If You Own or Owned a Flexible Premium Adjustable Life Insurance Policy Issued and/or Administered by Connecticut General Life Insurance Company or The Lincoln National Life Insurance Company or their respective predecessors, a Class Action Settlement May Affect Your Rights

A COURT AUTHORIZED THIS CLASS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.
YOU ARE NOT BEING SUED.

- A Settlement has been reached with Defendants in a class action lawsuit about the Cost of Insurance deducted from the Cash Value of these policies. If the Settlement is approved by the Court, you will automatically receive a payment. No further action is required.
- Generally, the Settlement includes current and former flexible premium adjustable life insurance policy owners (*see* Questions 4 & 5 below).
- As part of the Settlement, Settlement Class Members will be eligible to receive a portion of a cash Settlement Fund funded by Lincoln National in the amount of $147.5 million (*see* Question 6 below).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	Automatically receive your share of the Settlement Fund.
ASK TO BE EXCLUDED	Get no benefits from the Settlement and preserve your right to separately sue Defendants, First Penn-Pacific Life Insurance Company, and/or Lincoln Life & Annuity Company of New York about the claims in this case.
OBJECT	Write to the Court if you don't like the Settlement.
GO TO A HEARING	Make a request to speak in Court about the fairness of the Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Class Notice.
- The Court in charge of this case still must decide whether to finally approve the Settlement. Settlement checks will be automatically issued to each Settlement Class Member if the Court approves the Settlement and after any appeals are resolved. **You do not need to take further action to receive payment if you are eligible under the Settlement. Please be patient.**

BASIC INFORMATION

1. Why did I get this Class Notice?

Lincoln National's records show that you own or owned one of the covered life insurance policies (or were identified as the legal representative of such an owner) that was in force on or after May 27, 2010. A Court authorized this Class Notice because you have a right to know about the proposed Settlement and all of your options before the Court decides whether to approve the Settlement. This Class Notice explains the lawsuit, the Settlement, and your legal rights.

Chief United States District Judge Michael P. Shea of the United States District Court for the District of Connecticut is overseeing this case. The case is known as *Glover v. Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company*, Case No. 3:16-cv-00827-MPS. The persons who sued, Paulette T. Glover and John T. Warehime, are called the "Plaintiffs." Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company are collectively called the "Defendants."

The following is only a summary of the Settlement. A full description of the Settlement is in the Settlement Agreement. Nothing in this Class Notice changes the terms of the Settlement Agreement. You can read the Settlement Agreement by visiting www.lincolnCOIsettlement.com.

2. What is this lawsuit about?

This lawsuit is about whether the Cost of Insurance deductions were improper, including, specifically, whether they were consistent with the policy language in the flexible premium adjustable life insurance policies ("Policies"). The Policies have a Cash Value [or Accumulated Value or Account Value, but herein referred to as the "Cash Value"] that earns interest at or above a minimum rate guaranteed under the Policies. The Policies expressly authorize the insurer to take a Monthly Deduction from the Cash Value to cover various charges.

Plaintiffs allege that Defendants took improper deductions from the Cash Values of the Policies. The Policies say that the Cost of Insurance Rates will be determined based on expectations as to future mortality experience. Plaintiffs allege that Defendants breached the Policies in two ways. First, Plaintiffs allege that Defendants impermissibly used unauthorized and undisclosed factors to compute the Cost of Insurance Rates under the Policies, or alternatively, that Defendants impermissibly determined Cost of Insurance Rates primarily based on unauthorized and undisclosed factors. Second, Plaintiffs allege that the Policies require Defendants to reduce Cost of Insurance Rates to reflect their improved mortality expectations but Defendants failed to do so.

Defendants deny all of Plaintiffs' claims, including claims challenging the pricing of the Policies and development and application of the Cost of Insurance Rates, and assert that, at all times, they complied with the plain language of the Policies by deducting charges from the Cash Value, including but not limited to the Cost of Insurance, that are, and always have been, consistent with the language and terms of the Policies.

You can read Plaintiffs' Third Amended Class Action Complaint and other relevant documents at www.lincolnCOIsettlement.com.

3. Why is there a Settlement?

The Parties negotiated the Settlement with an understanding of the factual and legal issues that would affect the outcome of this lawsuit. During the lawsuit, Plaintiffs, through their attorneys, thoroughly examined and investigated the facts and the law relating to the issues in this case.

As with all litigation, the final outcome of the lawsuit is uncertain. A settlement avoids the costs and risks of further litigation if the lawsuit were to proceed through trial and appeals, and provides immediate relief to the Settlement Class Members. Based on their evaluation of the facts and law, Plaintiffs and their attorneys have determined that the proposed Settlement is fair, reasonable, and adequate. They have reached this conclusion based on the substantial benefits the Settlement provides to Settlement Class Members and the risks, uncertainties, and costs inherent in the lawsuit.

There has been no trial and there have been no final appellate determinations on the merits of the claims or defenses. The Settlement does not indicate that Defendants have done anything wrong, or that Plaintiffs and the Settlement Class Members would win or lose if this lawsuit were to go to trial.

4. Who is included in the Settlement Class?

The Settlement Class includes all persons or entities who own or owned one of the approximately 191,000 Policies issued or administered by Connecticut General or Lincoln National, or their respective predecessors. Policies means all life insurance policies, that were active on or after May 27, 2010, and were issued or administered by Connecticut General or Lincoln National, or their respective predecessors, the terms of which provide or provided for: (i) a cost of insurance charge calculated using a rate that is determined based on expectations as to future mortality experience; (ii) additional but separate policy charges, deductions, or expenses; (iii) an investment, interest-bearing, or savings component; and (iv) a death benefit. A Policy includes all applications, schedules, riders, and other forms that were specifically made a part of the Policies at the time of their issue, plus all riders and amendments issued later. Policies include everything that was part of "The Policy," as that term is defined in your Policy or Policies.

You are **not** part of the Settlement Class if you are Defendants; any entity in which Defendants have a controlling interest; any officers or directors of Defendants; the legal representatives, heirs, successors, and assigns of Defendants; anyone employed with Plaintiffs' counsel's law firms; or any Judge to whom this case or the Related Actions is assigned or his or her immediate family. Related Actions means *Iwanski v. First Penn-Pacific Life Insurance Co.,* Case No. 2:18-cv-01573-RBS (E.D. Pa.); *TVPX ARS INC., as securities intermediary for Consolidated Wealth Management, Ltd. and Vida Longevity Fund, L.P. v. Lincoln National Life Insurance Co.*, Case No. 2:18-cv-02989-RBS (E.D. Pa.); and *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*, Case No. 19-CV-06004-ALC-DCF (S.D.N.Y.).

If someone who would otherwise be a Settlement Class Member is deceased, his or her estate is a Settlement Class Member.

5. How can I confirm that I am in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you can get free help at www.lincolnCOIsettlement.com or by calling 1-888-874-2143 or by emailing info@lincolnCOIsettlement.com.

6. What does the Settlement provide?

Lincoln National has agreed to fund a Settlement Fund in the amount of $147.5 million, which will be used to pay (1) all payments to Settlement Class Members; (2) Class Counsel's attorneys' fees, costs, and expenses in an amount to be approved by the Court; (3) any service awards to plaintiffs (the Plaintiffs named in the lawsuit or the plaintiffs named in the Related Actions) in an amount to be approved by the Court; and (4) the expenses incurred in administering the Settlement. The Net Settlement Fund equals $147.5 million less the amounts described in (2) through (4) as approved by the Court.

If the Court approves the Settlement, settlement checks will be mailed to Settlement Class Members in amounts that will vary according to a Distribution Plan. The Distribution Plan is designed to provide each Settlement Class Member an approximate *pro rata* portion of the Net Settlement Fund in proportion to the amount of Cost of Insurance Charges actually paid by each Settlement Class Member. There will also be a minimum cash payment and more paid where a Settlement Class Member's Policy is still in force.

The full Distribution Plan is attached to the Plaintiffs' Motion for Preliminary Approval and is available on the Settlement Website.

You should consult your own tax advisors about the tax consequences of the proposed Settlement, including any benefits you may receive and any tax reporting obligations you may have as a result.

7. How do I participate in the Settlement?

Settlement Class Members do not have to do anything to participate in the Settlement. No claims need to be filed. Upon approval of the Settlement, a settlement check will be sent to every Settlement Class Member in the amount determined by the Settlement Administrator using the method described in Question 6. If someone who would otherwise be a Settlement Class Member is deceased, his or her estate is a Settlement Class Member. If your address changes, you should contact the Settlement Administrator to give them your new address.

8. When will I receive my settlement check?

The settlement checks will be sent to Settlement Class Members within 45 days after the Final Settlement Date, which is the date that the approval process is formally completed. Settlement checks will be automatically mailed without any proof of claim or further action on the part of the Settlement Class Members. It could take several months to complete the Settlement process and depends on factors that cannot be predicted at this time. Updates will be made available to you on the Settlement Website.

9. What happens if I do nothing?

If the Settlement is approved, you will receive a settlement check representing your share of the Settlement.

If the Settlement is approved, you cannot sue Defendants (or certain other released parties included as "Released Parties" in the Settlement Agreement) or be part of any other lawsuit against Defendants concerning the Released Claims, as that term is defined in the Settlement Agreement. For those Settlement Class Members included in the proposed class in *Iwanski v. First Penn-Pacific Life Insurance Co.*, Case No. 2:18-cv-01573-RBS (E.D. Pa.), the proposed class in *TVPX ARS INC., as securities intermediary for Consolidated Wealth Management, Ltd. and Vida Longevity Fund, L.P. v. Lincoln National Life Insurance Co.*, Case No. 2:18-cv-02989-RBS (E.D. Pa.), or the certified class in *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*, Case No. 19-CV-06004-ALC-DCF (S.D.N.Y.), unless you exclude yourself from the Settlement, you will be prevented from participating in any of those lawsuits.

If your Policy is still in force, Defendants may continue to use their current Cost of Insurance Rates.

The Settlement Agreement is available at www.lincolnCOIsettlement.com and describes the claims that you are giving up. If you have any questions, you can talk to the law firms listed in Question 12 for free, or you can hire your own lawyer.

10. Can I exclude myself from the Settlement?

Yes. If you don't want a payment from the Settlement, and/or you want to keep the right to hire your own lawyer and sue Defendants, First Penn-Pacific Life Insurance Company, or Lincoln Life & Annuity Company of New York at your own expense about the issues in this case, then you may request to be excluded from the Settlement Class by sending a written notice to the Settlement Administrator. The notice must include the following information:

- The Settlement Class Member's name (or the name of the entity that owns the Policy), current address, telephone number, and email address;
- Policy number;
- A clear statement that the Settlement Class Member elects to be excluded from the Settlement Class and does not want to participate in the Settlement in *Glover v. Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company*, Case No. 3:16-cv-00827-MPS; and,
- The Settlement Class Member's signature, or the signature of a person providing a valid power of attorney to act on behalf of the Settlement Class Member. If there are multiple owners of a Policy, all owners must sign the notice, unless the signatory submits a copy of a valid power of attorney to act on behalf of all then-current owners of the Policy.

If you want to exclude yourself from the Settlement, your written notice must be served on the Settlement Administrator by mailing it to PO Box 4169, Portland, OR 97208-4169, postmarked no later than November 23, 2024.

11. How do I tell the Court if I do not like the Settlement?

You can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you must serve a written objection in the case, *Glover v. Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company*, Case No. 3:16-cv-00827-MPS. The objection must include the following information:

- The Settlement Class Member's name (or the name of the entity that owns the Policy), current address, telephone number, and email address;
- Policy number;
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A list of all persons who will be called to testify in support of the objection (if any);
- An indication of whether you intend to appear at the Fairness Hearing and the identity of all attorneys (if any) who will appear at the Fairness Hearing on your behalf;
- A statement whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and
- The signature of you or your counsel.

You must serve your objection on the Settlement Administrator by mailing it to PO Box 4169, Portland, OR 97208-4169, postmarked no later than November 23, 2024.

12. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as "Class Counsel" to represent all the members of the Settlement Class:

Norman E. Siegel, Ethan M. Lange Stueve Siegel Hanson LLP 460 Nichols Rd., Suite 200 Kansas City, MO 64112 lincolnCOIsettlement@stuevesiegel.com	John J. Schirger, Joseph M. Feierabend Schirger Feierabend LLC 4520 Main St., Suite 1570 Kansas City, MO 64111 lincolnCOIsettlement@SFlawyers.com

If you have questions, you may contact these lawyers. You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel have not been paid for their work in this case. In addition to thousands of hours of labor spent on this case, Class Counsel have expended substantial expenses prosecuting this case. The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will seek an award for attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of Class Counsel's costs and expenses (no more than $200,000), also to be paid from the Settlement Fund. You will not be responsible for payment of Class Counsel's fees and expenses.

Class Counsel will also request a service award payment of up to $50,000 for each Plaintiff (the Plaintiffs named in the lawsuit or the plaintiffs named in the Related Actions) for their service to the Settlement Class. This payment will also be paid from the Settlement Fund.

The Court must approve any amounts paid to Class Counsel and to Plaintiffs. Class Counsel's motion seeking an award of attorneys' fees, reimbursement of costs and expenses, and service awards for the named plaintiffs will be available at www.lincolnCOIsettlement.com.

14. What if I received a notice in *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*?

If you received a class notice in *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*, Case No. 1:19-cv-06004-ALC-DCF (S.D.N.Y), and are a class member in that case, you still have the same rights and options as set forth in this Class Notice. The Court in *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York* denied, in part, summary judgment (available at www.lincolnCOIsettlement.com) but has stayed the action while this Court decides whether to give final approval to the Settlement. If you are a Settlement Class Member and have questions about *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*, you may contact the following lawyers:

Steven G. Sklaver Susman Godfrey LLP 1900 Avenue of the Stars, Suite 1400 Los Angeles, CA 90067-6029 ssklaver@susmangodfrey.com Telephone: 310-789-3100	Seth Ard, Ryan Kirkpatrick, Nicholas C. Carullo Susman Godfrey LLP One Manhattan West New York, NY 10001-8602 sard@susmangodfrey.com, rkirkpatrick@susmangodfrey.com, ncarullo@susmangodfrey.com Telephone: 212-336-8330

15. What if my policy was issued by First Penn-Pacific Life Insurance Company or Lincoln Life & Annuity Company of New York?

If you are a Settlement Class Member and your policy was issued by First Penn-Pacific Life Insurance Company or Lincoln Life & Annuity Company of New York you have the same rights and options as set forth in this Class Notice.

If you do nothing and the Settlement is approved, you will receive a settlement check representing your share of the Settlement. You cannot sue or continue to sue Defendants, First Penn-Pacific Life Insurance Company, or Lincoln Life & Annuity Company of New York concerning the Released Claims, as that term is defined in the Settlement Agreement. For those Settlement Class Members included in the proposed class in *Iwanski v. First Penn-Pacific Life Insurance Co.,* Case No. 2:18-cv-01573-RBS (E.D. Pa.) or the certified class in *Vida Longevity Fund, LP v. Lincoln Life & Annuity Company of New York*, Case No. 19-CV-06004-ALC-DCF (S.D.N.Y.), unless you exclude yourself from the Settlement, you will be prevented from participating in these lawsuits.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing to decide whether to approve the Settlement and any requests for attorneys' fees, costs and expenses, and service awards to Plaintiffs (the Plaintiffs named in the lawsuit or the plaintiffs named in the Related Actions), and the costs of settlement administration. You may attend and ask to speak, but you do not have to (*see* Question 18 below).

The Court will hold the Fairness Hearing at 10:00 a.m. on December 16, 2024, at the United States District Court for the District of Connecticut, 450 Main Street, Courtroom 3, Hartford, Connecticut 06103. The Fairness Hearing may be moved to a different date or time without additional notice being mailed to you, so it is a good idea to check www.lincolnCOIsettlement.com for any updates. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and in the best interests of Settlement Class Members and whether to award the requested attorneys' fees, costs, expenses, and service awards. If there are objections, the Court will consider them and will listen to people who have asked to speak at the Fairness Hearing. After the Fairness Hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court's decision will take.

17. Do I have to attend the hearing?

No, but you or your own lawyer are welcome to attend the Fairness Hearing at your expense. If you send a timely objection but do not attend the Fairness Hearing, the Court will still consider your objection.

18. May I speak at the hearing?

You may speak at the Fairness Hearing by filing an objection that indicates your intention to do so. If you wish to appear through counsel, your written objection must list the attorneys representing you who will appear at the Fairness Hearing. Unless otherwise ordered by the Court, a Settlement Class Member who does not submit a timely objection with the required information will not be permitted to speak at the Fairness Hearing.

19. How do I get more information?

This Class Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can find a copy of the Settlement Agreement at www.lincolnCOIsettlement.com. You may also send your questions to the Settlement Administrator, in writing, at Glover v. Connecticut General, PO Box 4169, Portland, OR 97208-4169 or call the Settlement Administrator at 1-888-874-2143. You can review the Court's docket in this case at www.pacer.gov.

If your address has changed or will change, please notify the Settlement Administrator by January 2, 2025.

Be sure to regularly visit www.lincolnCOIsettlement.com for any updates, as additional notices will not be mailed to you.

DATE: October 18, 2024

EXHIBIT 3

In re Buspirone Transcript

UNITED STATES DISTRICT COURT

IN RE:	:	01-MD-1410
BUSPIRONE PATENT	:	April 11, 2003
	:	500 Pearl Street
	:	New York, New York

TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT AND ATTORNEY'S FEES
BEFORE THE HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Bristol-Myers:	RICHARD STARK, ESQ. LEE BICKLEY, ESQ.
For Louisiana Wholesalers:	BRUCE GERSTEIN, ESQ. BRETT CEBULASH, ESQ.
For the Plaintiff States:	RICHARD SCHWARTZ, ESQ.
For Direct Purchaser Class:	RICHARD DRUBEL, ESQ. KIMBERLY SCHULTZ, ESQ. ERIC KRAMER, ESQ.
For the Defendants:	RICHARD STARK, ESQ.
Court Transcriber:	SHARI RIEMER TypeWrite Word Processing Service 356 Eltingville Boulevard Staten Island, New York 10312

UNITED STATES DISTRICT COURT

Proceedings recorded by electronic sound recording, transcript produced by transcription service

THE CLERK: In Re: Buspirone. All parties please state who they are for the record.

MR. STARK: Good afternoon, Your Honor. Richard Stark from Cravath, Swaine & Moore representing Bristol-Myers Squibb Company, and with me this afternoon is my associate Lee Bickley.

THE COURT: Good afternoon.

MR. GERSTEIN: Good afternoon, Your Honor. Bruce Gerstein of Garwin, Bronzaft, Gerstein & Fisher and I'm here together with my partner Brett Cebulash, and we represent Louisiana Wholesaler Drug Company, Inc. as class representative for the direct purchaser class.

MR. SCHWARTZ: Richard Schwartz, New York State Attorney General's Office on behalf of the plaintiff states. Good afternoon, Your Honor.

MR. DRUBEL: Good afternoon, Richard Drubel, Boise, Schiller & Flexner, co-lead counsel for the direct purchaser class, and with me today is my associate Kimberly Schultz.

MR. KRAMER: Good afternoon, Your Honor. My name is Eric Kramer for the steering committee for the direct purchaser class and also represent Louisiana Wholesaler.

THE COURT: Anyone else? All right. This is a hearing on the final approval of the settlement and the application for attorney's fees. So I'll

listen to the parties.

MR. GERSTEIN: Your Honor, again for the record, I'm Bruce Gerstein, Garwin, Bronzaft, Gerstein & Fisher. I together with Mr. Drubel, our co-lead counsel on behalf of the direct purchaser class, and I move this Court pursuant to Federal Rules of Civil Procedure 23(e) to approve this settlement as fair, reasonable and adequate.

For the record, we have previously provided to the Court a number of documents, including our motion, specifically with our memorandum of law supporting our application for this Court's approval of the settlement as fair, reasonable and adequate. We've also included therewith affidavits from the administrator who we retained who complied with this Court's order of January 31, 2003 which was at the preliminary approval hearing provided for notice to be provided to the class pursuant to a direct mailing which was on January 24, 2003 as well as publications on two occasions and the pink sheets which was on February 24, 2003 and March 3, 2003.

I believe the notice was sent out February 21, 2003, direct notice, and that's contained in our motion. We've also provided to this Court a joint affidavit by co-lead counsel detailing what we -- the services that we've rendered and the work that we performed in this matter and why we believe is the settlement is fair and reasonable as well as our application for attorney's fees, and we've also provided to

this Court our plan of allocation regarding how we propose that the funds shall be allocated to the various class members.

Your Honor, we divided up our argument into three parts. One is I'm going to handle the application for this Court's approval of the fairness. I have Mr. Kramer available to talk specifically as to the allocation plan and Mr. Drubel will be handling the fee request. Of course we'll all be available to answer any questions that the Court has.

Your Honor, the case law in a small thumbnail sketch really calls for various formulations on what to determine as to a fairness of a settlement, but in reality it comes down to a simple formulation and that is a way of -- the risks of future litigation versus the results obtained. Or, stated another way, is it likely that better results could be obtained with further litigation and at what cost. It's really looking or having this Court determine similarly what a private litigant would do in determining whether or not to accept this settlement. And there are three basic criteria to this settlement that we think really call for this Court to approve the settlement as fair, reasonable and adequate.

The first instance is the settlement amount. The settlement is for $220 million plus interest in an escrow fund which has been accruing, that against what is the potential damages suffered and there are

two basic criteria that we have. One is if measured during what we believe to be the full damage period, which would go out from the beginning of the class period, which is November 1997 through 2006, April 2006, which we believe the future sales are effective on certain purchases generic going forward, we've accomplished based on the work of our expert, Dr. Leitzinger, a settlement of 95 percent of that total damages. If the damages are measured just to the date of generic entry, which would be to the end of March 2001, the settlement is 157 percent of the damages suffered. Of course, there are arguments going both ways, but clearly we believe under any standard this settlement not only is a tremendous result based on the absolute magnitude of the dollars, but measured against the criteria which any litigant would be measuring and that is what's the potential recovery.

THE COURT: That's before the deduction for attorney's fees.

MR. GERSTEIN: Well, even if you take the deduction for attorney's fees, Your Honor --

THE COURT: Then it comes down to 65 percent or so.

MR. GERSTEIN: It depends on how you measure it. I'm sure Mr. Drubel will deal with this. But if it's measured at the time of generic entry, which is a strong argument, it's over 100 percent even after attorney's fees because the amount of damages to that point is about $140

million. So if you add up the additional it's even more at that point. I think that's a significant factor.

But besides the absolute amount and the fairness settlement, consider other factors which the courts look to, one of which is the response of the class members. We think this is particularly critical here. As this Court has recognized, this is a unique class. These are sophisticated businesses. The class, according to our understanding, is approximately 125 members of which three of them have a stake for about 90 percent of the overall sales and a significant part of the damages. There has not been one single objection. We have been in constant communication with the three largest class members. The settlement has been explained to them prior to the mailing of the notice as we told you at the preliminary approval. We sent separate correspondence to them and of course we reviewed in detail the specifics of the settlement. Nobody has objected to the settlement even though those entities were represented by their own counsel who was sophisticated and clearly have the ability to make an assessment and if they were unhappy clearly would have objected, which they didn't. Nobody objected.

In addition, as I've told you the last time, I had communications with counsel for Kaiser Health Plan who basically asked significant questions. They came to my office and asked questions regarding not only the analysis as to how we evaluate the settlement but also the allocation

and the allocation plan and spent considerable time doing that and they also support the settlement. Counsel happens to be in court with us as we speak. Not a single class member has --

THE COURT: Is Kaiser Health Plan one of the members of the class?

MR. GERSTEIN: Yes.

THE COURT: But not one of the big three?

MR. GERSTEIN: Right. Your Honor, it's important to note not a single member of the class has objected to the settlement and we think that that is a very critical factor to be considered by the Court particularly in this case.

Two is, besides no objection, the stage of the litigation is --

THE COURT: Well, before you leave the objectant. There are two opt outs.

MR. GERSTEIN: There's actually -- there are two opt outs. There's actually only one. One of the opt outs didn't have positive sales. We had no idea until we actually communicated with these people as to specifically whether or not everybody on the list that we had was actually a class member. There were numerous people who had products shipped who had greater returns or specifically didn't buy directly, et cetera, but there's actually one opt out who specifically has opted out and we have not been able to get in

touch with.

There's another opt out, Valley Drug Wholesaler, who is revoked. So there's that one opt out for -- I think they have sales of like $1 million over the entire period.

THE COURT: The one footnote indicated that at that time there were two opt outs for about a million. So the one opt out is still only about a million?

MR. GERSTEIN: Right. No, I think that there was -- I think one was more than --

[Pause in proceedings.]

MR. GERSTEIN: I think one was the $3 million. That was Valley. They revoked their opt out. One was for a million.

THE COURT: I thought that the papers -- that when you had submitted the papers and listed the opt outs I thought that you calculated as just about a million point five percent or something.

MR. GERSTEIN: I have to check that, Your Honor. I'm told that the entire amount --

[Pause in proceedings.]

MR. GERSTEIN: It's clearly a relatively small amount in the scheme of things, Your Honor, but I'm being told by Mr. Stark he believes it's around $230,000.00 for the one opt out.

THE COURT: Your motion at Page 12, Footnote 2 only two requests for exclusion total purchases of slightly over $1

million.

MR. GERSTEIN: The reason for that is, Your Honor, is --

THE COURT: Or .05.

MR. GERSTEIN: I understand now what the difference is. I can explain that. There is also the reference to what we consider an untimely opt out which was in addition to that. That was the Valley Drug. Valley Drug did not untimely opt out. We had thought that their opt out was untimely. Nonetheless, they opted back in. So this is still referring to the same two entities. One of them specifically had -- did not have positive purchases. It had basically greater returns than they had purchases. And the other one was that last entity, Bellamy. Our numbers seem to indicate that it's the same $1 million and Mr. Stark says that he thinks it's closer to $230,000.00. Whatever it is it's a relatively small amount.

THE COURT: Okay.

MR. GERSTEIN: But that explains -- the other disclosure happened to deal with the -- what we considered at the time an untimely opt out, but it doesn't matter because it's moot because Valley has opted back in.

THE COURT: Whether it's $230,000.00 or $1 million it's still an exceedingly small fraction of the direct Buspar purchases.

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

In addition to considering the views of the class

members, which as I said I think are critical here, is the other factors that the courts typically look at is the stage of litigation. The lawyers who had negotiated the settlement, where they in the position to make an informed judgment in negotiating settlement. We think you have to make an assessment of what are the risks of future litigation versus how does the -- the numbers achieved relate to the damages that are out there and have to be proven, et cetera.

In this case, as we documented in our affidavit, there has been substantial, substantial, substantial work done before the settlement negotiations at risk in a very, very aggressive litigation posture. Specifically, we've documented the significant depositions that were taken. I think there were approximately thirty. The Court is aware of the extensive motion practice having decided a number of the matters yourself as well as Magistrate Judge Gorenstein who has decided numerous motions before him and I'm sure has also reported to the Court regarding the comment of counsel in those matters. So it's clear that counsel were in a strong position to be able to negotiate the settlement and I believe that as a result of the record obtained in this case it allowed us to press for the highest possible settlement possible.

As we emphasize in our papers, is that the direct purchaser class basically discovered and the Schein claim and developed it and prosecuted it and it clearly -- inure to the class' benefit which was allowing us to prosecute a claim for

damages that went from November '97 instead of a damage period that would have been starting in the year 2001, and that's rather significant -- or at least the end of 2000. That's rather significant and I think clearly inure to the benefit to the class and is reflected in the settlement.

As I said, the last factor is weighing all these matters specifically as to could a larger amount be achieved after litigation. It's our view that not only is it possible that a large amount wouldn't be achieved, but even if successful it's clear that there could be a challenge to our damage analysis, to our damage formulation, to the timing that we rely on for the damage period, et cetera, and we could have actually recovered a lot less.

Taking all that into account, we believe that the $220 million settlement is more than fair, reasonable and adequate and should be approved by the Court. Unless Your Honor has any specific questions for me, I'm going to conclude my presentation and basically if you have any questions regarding the allocation plan, I can hand that over to Mr. Kramer. If not, I will address whatever you'd like and then Mr. Drubel is prepared to speak to the fee.

THE COURT: No, fine. I'll listen to Mr. Kramer, sure.

MR. KRAMER: There are two documents that are relevant to the allocation plan. The first is the allocation plan that was submitted itself and the second is the

declaration that Dr. Leitzinger wrote and submitted. That addresses essentially two things, the aggregate for damages analysis and assumptions and then -- in calculation, and then the allocation plan itself. Dr. Leitzinger, who is a very experienced [inaudible] economist that has a lot of experience in complex litigation developed in conjunction with counsel in order to come up with a plan that would fairly and efficiently and accurately allocate damages to all claimants on a pro rated basis essentially based upon what their damages would be if calculated [inaudible].

The plan and Dr. Leitzinger, those two documents, specifically go into the damages model that Dr. Leitzinger used and employed in this case in the course of settlement discussions and that model was developed over a significant period of time. Dr. Leitzinger has been involved in several of these types of cases. So the model has been refined and developed over time and we have the benefit of this perfected model to use here in this case.

Dr. Leitzinger's affidavit not only discusses the model but then discusses the assumptions that he plugged into the model in order to come up with his aggregate damages analysis for this case. Then the declaration discusses the results of his computations from various different perspectives.

The model is designed to and does capture the total aggregate overcharged damages in the direct purchaser class.

Then with some modifications we propose to use that same model to allocate damages to individual claimants and class members.

I'd like to do here today what is most helpful to the Court. I can go through in some more detail and tell the Court and tell you and help you and help you to understand the models that we used, the assumptions that we employed and the calculation and computation that we did and then show how we modified that model to employ and use and propose an allocation plan. I can summarize that for you here. I can address any specific questions that the Court has.

THE COURT: I actually think I understand it but I'm happy to have you summarize it for me.

MR. KRAMER: That's what I'll do. I'll try to be brief. I'll first explain the aggregate damages calculation so the Court understands how we got to the $230 million number and then show how the allocation plan will be -- use the modified model in some of those assumptions in order to allocate damages to individual claimants.

THE COURT: Did you say 230?

MR. KRAMER: $230 million was the total number from November 1997 through April 2006. That was the total amount of damages throughout the entire damages period and that includes what we call the tail. It includes a period of damages that goes five years after, after generic entry. I think in Dr. Leitzinger's declaration he also gives another number. If you were to cut off damages at the end of last month so that

damages went from November 1997 through March 31, 2003, the total aggregate damages incurred as to that date would be $195 million. I think that -- since that point Dr. Leitzinger refined the analysis a little bit in numbers more like $200 million just so the Court is clear.

THE COURT: Because it's not the same as the total amount of the settlement. Yes?

MR. KRAMER: That is correct. The total amount of the settlement is $220 million and the total amount of damages throughout the entire class period is $230 million. If we were to cut off damages as of March 31st, as I said, the damages would be about $200 million.

THE COURT: Okay.

MR. KRAMER: The model, as I said, was developed not only by Dr. Leitzinger in conjunction with counsel but also involved Dr. Steven Scholermeyer who is one of the country's foremost experts in the field of pharmaceutical economics. The model draws upon governmental studies, including those of the Food and Drug Administration, and the Congressional Budget Office. The government has been substantially involved in trying to determine what the effects are in pharmaceutical markets of generic entry and then what the effects are of delaying or preventing that generic entry. The government has a significant involvement in trying to figure out what that is in conjunction with the Hatch-Waxman Act and other policy efforts to bring generic drugs onto the market. So there is --

the government has designed and developed a model to do that and our model is based in part on what the government has done.

There's also substantial published economic literature that the model is developed from. Dr. Leitzinger cites in a footnote two pieces. One by Vovowski and Vernon [Ph.] and another by Rosen and Berkowitz. Both of pieces address specifically the effects of delaying and preventing generic entry into markets that were formally dominated by a brand name drug. It looks specifically -- if the Court were to read the Rosen and Berkowitz study, it is almost a one-to-one correspondence between analysis done in that published economic literature and type of analysis that we did here. In fact, we refined it further than what's done in that public work. But I just want to give the Court an idea as to the detail and analysis and refinement that has gone into the model that we've used here. Finally --

THE COURT: The model has never been tested at trial I take it?

MR. KRAMER: That is correct, it has never been tested at trial though in past litigation it has been tested under cross-examination of Dr. Leitzinger, but it has not been tested at trial, that's correct.

That's why I think, Your Honor, I'm trying to explain -- trying to show some of the bona fides of the model. This is not something that was just devised out of thin air. It is something that is built upon published work by the

government, published studies by distinguished economists and thirdly, pharmaceutical company, internal documents and analyses. Pharmaceutical companies themselves, Bristol-Myers, generic companies have an interest in trying to determine what the effects on their own profits, sales, volumes, prices of generic entry or delaying generic entry. So, in this case we have seen a number of documents, internal industry -- pharmaceutical company documents which run through a similar type of analysis that we've employed here.

THE COURT: But part of your argument for the approval of the settlement is that the model is not so bullet proof that it would necessarily prevail at trial.

MR. KRAMER: I think what the argument actually is -- and that's true, but I think more specifically our argument is that some of the assumptions that we plugged into the model may not hold up at trial. For example, the five-year period after generic entry. That may be something that would not hold up at trial and other particular aspects of the assumptions that go into the model. I think the model itself would hold up at trial most likely. But I think where some of the real litigation risks might be is what the Court might say or what the jury might say in evaluating some of the assumptions that we plugged into the model because those are based on evidence we've gathered in this case. They're based on constructing a but for world which by its very nature includes a lot of uncertainty. Nobody knows precisely what would have happened

in a world in which there was no shine agreement. It involves hypothesizing about something that would have happened that didn't actually happen. So there are a lot of unknowns in putting that together.

THE COURT: BMS argued to me that -- on the class action motion that the big three would have done better, that they weren't harmed at all.

MR. KRAMER: Well, I think that is a significant factor. In fact, I think that is something that BMS would argue at trial. That is that big chunk -- I think one of their arguments would be that a large portion of the class did not suffer any damages at all. Now, we disagree obviously with that. We think the damages need to be measured as the overcharge and lost sales which was part of BMS' argument does not come into that, but obviously that's a risk. If that argument were to have prevailed at trial, damages would have been reduced to near zero or, in fact, damages would be negative because part of what BMS was arguing was that the big three not only did not -- was not damaged by delayed generic entry but that the big three actually profited by delayed generic entry. That was a big part of their argument.

So I think they could continue to make that argument at trial and at the very least it might have an effect on what a jury might do. So that's something to consider and that is our -- our model is based upon our view of what the overcharge damage is and how it should be measured and that is something

that has not been tested, you're right, and that is something that could have resulted in a pure victory at trial.

THE COURT: Go ahead.

MR. KRAMER: The model is essentially what's called a but for analysis. It compares a world, the actual world or as is world to a but for world, a hypothetical world that we must create using two different sources of information. We use actual volumes of prices that exist after generic entry, the model what would have happened had the generic entry early and then we use benchmarks, other drugs, other areas where there has been a certain type of generic entry and what happened in those particular markets in particular situations. We used the combination of those two things, benchmarks and actual data in order to evaluate what the total value is worth here.

I think I'll -- I think it's explained very well in the papers and I'll skip over for this moment, but Dr. Leitzinger in Paragraphs 8 through 17 of the declaration describes the three different damage elements that are separately calculated in the aggregate damages model and also would be separately calculated in the allocation plan. The brand, generic damages or substitution damages are the main form of damages, the brand brand damages and the generic generic damages, and move to some of the assumptions that we employed in -- plugged into the model for purposes of calculating what the total damages are here and then also for purposes of allocating those damages to class members.

The first assumption and probably the most important assumption is trying to determine what the hypothetical but for world would look like, when would generics enter in that world. What we did was we assumed that absent a Schein agreement, if there was no Schein agreement that Watson or predecessors to Watson would have entered the market on a license from Bristol-Myers Squibb. We assumed that both Watkins and Bristol-Myers would have had an incentive to engage in such a license agreement because it would allow them an alternative to continuing litigation which could have resulted in a validation of the patent and competition, more competition for both BMS and the Watson predecessors.

So a licensing agreement is a way that brand and generic companies often resolve patent disputes. It is an arguably a pro-competitive way to resolve disputes whereas a reverse payment like the Schein agreement is inarguably an anti-competitive way to resolve a patent dispute. So we modelled the world in which Watson would have been able after solving some production and other issues that it had with its product to come onto the market in December 1996.

The second part of the but for world then assumes that as of November 2000 the additional generics would have come on the market. It assumes that Bristol-Myers would not have engaged in investing the time, money and energy in developing and then listing a 365 patent if they already lost a significant share of the Buspirone market. By our calculation,

about 65 percent of the market by that time. So there never would have been a 365 patent. It would not have been listed and then the additional generics would come on the market as they actually did in March 2001. They'd come on five months earlier. So you have a licensing portion of this but for world and then what we've called the unfettered generic entry portion of the but for world.

So those are model -- the licensing portion, a model based on benchmarks of other license situations and then this unfettered generic entry portion of the but for world is a model based on the actual data. We did that because we had no -- there was no actual license. So we had to look elsewhere. We couldn't use the actual data reflecting an unlicensed world to model one-to-one the licensed world. It looked like in some of these benchmarks for that. We used three benchmarks and were able to triangulate those benchmarks and come up with what we think would have happened during that licensing period and then for the unfettered entry period we just shifted what actually happened back five months and then were able to create the but for world that way.

To describe the -- to just give some of the numbers I think Mr. Gerstein went through them. The aggregate calculation was a $230 million total through April 2006. The number was about $200 million through March 2003 and $140 million through March 2001. We point that out to the Court because there is a possibility, we don't think a likely

possibility, but certainly there's a risk at trial in going further that the Court might say that damages test, the time that generics actually were on the market are not the proper form of damages or a jury might conclude that. So we point out to the Court that the $140 million may be all that was possible as a result of carrying this case further. So, there's a risk there.

One thing that Mr. Gerstein pointed out was the additional benefit that the Schein agreement or litigating the Schein agreement and pushing that part of the case forward vis-a-vis merely looking at the 365 claim which was five months of delay as opposed to the Schein agreement which had years of delay. We did a calculation and if we had litigated merely based on the 365 claim alone the total damages would have been somewhere south of $85 million and that includes damages all the way through 2006. And another thing to point out about the 365 claim is that that provides much more heavily on damages after the period that generics were actually on the market. So if the Court or a jury were in the future to determine that those were not a valid form of damages that $85 million number would shrink to about $40 million.

So the direct purchaser class by discovering and prosecuting the Schein agreement added a substantial amount of value to this case over and above the value that was added by prosecuting the 365 claim.

The allocation plan is a modification of the

aggregate damages model. It calls for breaking up the damages, total damages net settlement amount that's available for class members into three pools according to the three forms of damages that are separately calculated under the model and then essentially breaks up the world into three different periods and evaluate what the individual claimant damages would have been in those periods that uses volumes, amount of purchases as a proxy for what -- for damages and asks that claimants put forward -- provides for the plan's administrator to purchase data and that can be used to determine what the actual damages of individual claimants are.

I can go into that in more detail, but I think it's described in detail in both the allocation plan and in Dr. Leitzinger's declaration. I could tell the Court that we're involved right now, and Dr. Leitzinger is specifically involved in allocating damages in the Cardizem case and a similar methodology is being used and we were able to --

THE COURT: I think that's what I -- go ahead.

MR. KRAMER: We were able to use our experience, some of the problems that we had allocating the damages there, not major problems, but issues with getting some of the data from the claimants, and so in Buspar here we narrowed the type and data that we're asking the class they wish to produce and we've learned from some of the -- not mistakes, but some of the issues and concerns that came up in terms of allocating the damages in the Cardizem case. So I think we can assure the

Court that we've learned from what we've done, had experience doing it, and I think we've gone above and beyond what is typically done in large class settlements where the allocation is turned over almost entirely to the settlement administrator and they're asked to follow a somewhat simple formula whereas here we are actually involving and paying Dr. Leitzinger and his staff of economists to compute damages for each individual claimant. I think we needed to do that because we wanted to use our model. We think it's the fairest most efficient and best way to allocate damages and it can't merely be done by a settlement administrator who wasn't involved in designing the model and executing the model. So that's what we've done here.

Ultimately, what the model does is allows us to distribute damages to class members based on their pro rata share of what their overcharges would be if we were to calculate their individual benefits.

THE COURT: This plan really requires that you wait until all of the potential claimants have submitted their claims, all of their information, you make all of the detailed calculations based on the allocation plan and then come up with what each of them get. It's a non-reversion plan. BMS has placed the money in escrow and it will be divided up among the class based on the complicated allocation plan. Is that the way in which it's being done in Cardizem also?

MR. KRAMER: Yes.

THE COURT: Other than Cardizem, is that being done

in other cases? It's different from an individual overcharge based on purchases or an individual difference if it were an alleged stock fraud case, for example.

MR. KRAMER: Yes, it is. It is different than that and that's why we decided that it was important to use -- to involve Dr. Leitzinger and his staff in the allocation process because they are the people who know the model, built the model and are doing it in the Cardizem case.

THE COURT: Other than Cardizem, is it being done in other cases?

MR. KRAMER: We hopefully will do it in other cases but we have not yet.

THE COURT: Is Cardizem the only kind of sort of cap non-reversionary total fund wait for everyone to put in their claims and then based on the allocation -- based upon the complicated allocution formula you decide how much each one -- each claimant will get?

MR. KRAMER: No, I don't think there's anything particularly unusual about non-reversionary plan that waits until all of the information is supplied and then a pro rated share of that -- if you're giving up pro rata shares that requires that you wait for all of the information and all the calculations. So that type of allocation is what is typically done in large complex anti-trust settlements. I think what is -- what we could have done here is what typically happens, which is there is some determination that the overcharge on the

product was ten percent and what the -- ten percent or fifteen percent and then break up among subcategories of the classes and then what the claimants do is submit their purchase data and depending upon their volume and their purchases that gets multiplied by ten percent and then a pro rata number is determined and that is distributed in that fashion.

So the only thing that is different here in Cardizem is that we're trying to be more fair and accurate to individual class members. I think that's in part because the class is of manageable size. This is not a class of thousands of mom and pop stores or hundreds of millions of claimants, individuals. This is a class of 124, 125 sophisticated businesses that have staffs with the ability to put things on computer and submit that into the claims administrator. So I think we designed a plan with a particular class in mind.

I can tell Your Honor that we have been involved, and I personally have been involved in the process of dealing with the allocation in the Cardizem case and I've talked to probably thirty or forty individuals class members about the types of data that we need to reassure them about the dates and other information. So we've been in contact with the same entities that are going to be putting in claims in this case.

THE COURT: The members of the Cardizem class are the direct purchasers in the Cardizem class?

MR. KRAMER: Precisely. There's not a one-to-one correlation between the class here and the class in Cardizem,

but it's very close. The only difference is that Bristol-Myers may have sold to a couple of different entities than dentists, pharmaceuticals sold Cardizem to, but the class of Cardizem is about 80 individual entities. The class here is about 125 individual entities and I would imagine that nearly all of those 80 Cardizem class members are in the -- certainly all of the significant substantial class members are the same, the same counsel and the same people involved in the allocation.

So unless Your Honor has any other questions or issues.

THE COURT: Who are -- if you can say, who are the counsel for the three major participants?

MR. KRAMER: The main counsel that we're dealing with for Cardinal Healthcare is a lawyer named Tom Long. He is with the firm of Baker & Hosteffor. The main counsel that we deal with in Makeser [Ph.] is a man -- a lawyer named Peter Houston from Latham & Watkins in San Francisco, and the counsel for Amerisource Bergen is Howard Scheer at McKenna & Ingersoll in Philadelphia, and we've been in constant contact with them throughout this litigation and the Cardizem litigation in explaining the settlement as Mr. Gerstein said and going through the allocation plan and working with them to try to make sure that they were satisfied with the result. Bruce was correct. They are extremely pleased with the result.

THE COURT: Okay.

MR. KRAMER: Thank you, Your Honor.

MR. DRUBEL: Good afternoon, Your Honor. Richard Drubel. I'd like to address for a minute or two the -- our application for attorney's fees and expenses in this case.

I think based upon what Your Honor has heard this afternoon and is reflected in our papers we believe this settlement is among the top tier of class action recoveries as measured against a percentage of recoverable damages. Your Honor addressed some of the different ways to measure this recovery. I think one of the most relevant ones is one Mr. Gerstein mentioned and Mr. Kramer alluded to in passing and that is the damages calculated by Mr. Leitzinger for the period that generic competition was kept off the market. This is, after all, the essence of this case is a denial, prevention of generic competition.

So the period of recoverable damages measured from November of 1997 through the time in which generic competition first came on the market at the end of March, I think it's March 28, 2001, is a very relevant time period. Now, I will hasten to say and -- I don't want Mr. Kramer to jump out of his chair at me. The damages beyond that time period we certainly have pled and we would argue for and we think we're entitled to, but it is -- I think it would be unrealistic not to recognize that the damages in the so-called tail period after generics come on the market may well be harder to get the jury to award or a court to allow than damages during the period which generics were kept off the market.

One juror or judge might very well ask, as I believe Your Honor did at our preliminary approval hearing, how do you explain how you get damages based upon denial of generic entry after generics had entered. So if one looks at this core damage period of November of 1997 through March of 2001, Dr. Leitzinger estimates that the damages for that period are $140,459,820.00. If you measure the settlement achieved in this case, $220 million in cash with no reversion to the defendants, that represents 156 percent of that -- of those recoverable damages during the period that generics were kept off the market. Net of the requested attorney fees and expenses the settlement fund is $146,920,542.00 which is still over 104 percent of these core overcharged damages.

In other words, class counsel, Your Honor, in this case were sufficiently successful that the entire attorney fee and expenses requested in this case can be paid out of the excess of the overcharge during this core period.

Now, I think there are not many class action recoveries, certainly not by way of settlement which can make that kind of a claim and that is perhaps one of the reasons why in this class, which is comprised of businesses -- we are not talking about widows and orphans here. We're talking about businesses several of which are very large sophisticated businesses. You heard some of the law firms that are representing the big three. They're very -- these folks can afford to and regularly employ lawyers. Not one of them has

objected to the attorney's fees.

Now, we addressed in our moving papers, Your Honor, the role of class counsel in this case and achieved as a result which was no accident. I mean we described that in detail in our fee affidavit, our joint affidavit which is Exhibit 1 of the fee petition. We believe that the settlement here was the result of hard work, creativity and skill of class counsel and was achieved despite the very skilled and determined efforts of one of the best corporate defense firms in the country sitting across the table from you right now, Cravath, Swaine & Moore representing -- defending BMS. It was achieved despite the fact -- despite the lack of any governmental prosecution or proceeding to prepare the way.

As we described in our affidavit, it was direct purchaser class counsel that independently discovered the secret illegal 1994 Schein agreement which opened this case up to a much larger case than had been envisioned when it was originally filed. The direct purchaser class counsel filed the first complaint alleging violations of Section 1 and 2 of the Sherman Act based upon the Schein agreement which was soon followed by others. The purchaser class counsel worked diligently to address both the complexity of the anti-trust patent and FDA law presented in this case which can be horrific. It's one of the, in fact, the complexity, the legal complexity involved in an intersection of patent, anti-trust and FDA law. I think it's one of the most difficult areas of

the law as well as mastering the substantial causation defenses presented by Bristol-Myers Squibb who respect to the Schein agreement certainly had a number of respectable arguments that, in fact, Schein wouldn't' have been able to come on the market, at least not when we said they would. Maybe not at all.

The result of what we believe is our hard work, preparation and skill is the $220 million cash settlement that's before you today. In light of the results obtained, we think, Your Honor, an award of fees and expenses of 33-1/3 percent of the settlement fund is fair and reasonable. The courts in this Circuit have awarded fees ranging between 15 percent and 50 percent of the settlement fund. That's noted in the Mailey [Ph.] case at 186 F.Supp. 370 that we cite in our brief. Last year, of course, this Court awarded 33-1/3 percent fee on a $58 million settlement in the Deutsche Bank case.

The Kirzweil [Ph.] case, another Southern District of New York case, awarded a fee of 30 percent on $123.8 million recovery. That case is also cited in our brief as well as other cases cited at Pages 15 and 16 of our brief.

Courts have awarded comparable percentage fees to what we are requesting on recoveries almost as large or in fact larger than ours. I would just draw to the Court's attention three of those. First, the Rite-Aid case out of the Eastern District of Pennsylvania cited in our brief in which the District Court awarded a 25 percent fee on $193 million recovery plus additional costs. In our case, of course, we are

asking for one-third of the settlement fund to cover both fees and expenses.

In the Vitamin case, Your Honor, a case cited out of the District of Columbia, it's a case that was not cited in our brief but should have been especially since my firm was co-lead counsel in that case and I would appreciate it if you wouldn't mention that to Mr. Boise. In that case, the District Court awarded us 34 percent of $359 million, and the cite on that case is 2001 U.S. District Lexis 25067.

Finally, the In re: Brand Name Prescription Drug litigation out of the Northern District of Illinois. It's a case in which the District Court awarded 25 percent fee on $696 million.

These percentages, the percent of 33-1/3 that we are seeking, Your Honor, are consistent with the studies cited in our brief by the Federal Judicial Center, a 1996 study which found that most of the awards were between 20 to 40 percent of the settlement. Also, the Mirror Study, shareholder class actions which they found the fee awards --

THE COURT: If I averaged out those percentages I would probably come closer to 30 than 33-1/3.

MR. DRUBEL: Well, I guess, Your Honor, it depends on how you weight them. Between 20 and 40 percent and 32 percent --

THE COURT: No, no. You gave me 25 percent on $193 million, 34 percent on $359 million and 25 percent on $696

million. I realize that there's a range. Whether you say it's between 15 and 50 or 20 and 40, there's a range.

MR. DRUBEL: Absolutely. There is a range, Your Honor, and I think what it comes down to in our case is we feel that given the extraordinary result compared to the -- measured against provable damages or recoverable damages given the statute of limitations that we have on us, that this -- that really this is just an extraordinary settlement and deserves an extraordinary fee.

I will also point out to Your Honor that the Rite-Aid Corp. as cited in our brief, 146 F.Supp 2d at 735, 736 mentions that on average, the average percentage fee in settlements between $100 and $200 million is 28.1 percent. We do not think this is an average settlement, Your Honor. We think it is a very much above average settlement.

The requested fee moreover in this case is consistent with what the market would pay for such a result in a comparable non-class case. We've cited a number of cases, Your Honor, in which the courts take that into consideration. There are, of course, Judge Posner, Judge Estabrook's opinion in Sinthroid [Ph.] and Continental. There's also the Mailey case in the Southern District of New York, and also Judge Sweet's opinion in the Lloyd's case all look at as one of the relevant factors what the market would bear -- would pay for a comparable result in a comparable case.

We have put forward to Your Honor evidence showing

that class counsel -- we've submitted affidavits from some of us attesting to the fact that they have made such contracts at 33-1/3, between 33-1/3 and 50 percent even in non-class classes for fees in comparable commercial litigation. I think that Your Honor can also take notice of the fact as we point out at Pages 18 and 19 of our brief that attorneys regularly contract for contingent fees between 30 and 40 percent in non-class commercial litigation.

Importantly also in this case, Your Honor, Exhibit 16 is an affidavit from the class representative client in this case in which -- Louisiana Wholesalers in which they attest to the fact that they would have been willing to enter into a one-third contingent fee contract in this case if the fee had not been set by the Court. They support, as do all the other class members that we're aware of, including all the large ones, they support our request for the fee in this case.

In terms of the Loadstar multiplier, Your Honor, the requested fee represents an 8.46 multiplier which is certainly within the range of multipliers --

THE COURT: Certainly at the high end.

MR. DRUBEL: It certainly is at the high end, Your Honor. We make no apologies for that. We think our settlement is in the high end. In fact, again, as measured against recoverable damages we think it's among the highest. Judge Sweet --

THE COURT: I'm sorry. You say your percentage

recovery is among the highest.

MR. DRUBEL: Yes.

THE COURT: You're not saying that your multiplier is among the highest.

MR. DRUBEL: No, Your Honor.

THE COURT: What does that work out to be for an hourly fee?

MR. DRUBEL: There are so many -- there are different hourly -- there are different hourly rates. We could divide the total by the total number of hours if Your Honor would like us to do that.

THE COURT: You must have done that.

MR. DRUBEL: We've not done that, Your Honor.

THE COURT: $73 million divided by 28,000 hours, isn't it?

MR. DRUBEL: We have 28,727 hours. It looks to be about $2,500.00.

Now, if we compare the multiplier here to some of the multipliers that have been approved including, for example, Judge Sweet in the Lloyds of America Trust Fund litigation, he cited a number of cases in which multipliers of eight or more have been awarded including the Cosgrow case, Your Honor, from the Southern District of New York at 759 F.Supp. 166, a 1991 case in which this Court approved a 8.74 multiplier for plaintiff's counsel.

The Rite-Aid case from the Eastern District of

Pennsylvania approved multipliers ranging from 4.5 to 8.5 in making its percentage fee award in that case, and in RJR Nabisco, another case from the Southern District of New York, the Court approved a percentage award over objections that the amount constituted a multiplier of 6.

So, in each of these cases, Cosgrow, Rite-Aid, we have a situation in which the multipliers in those cases approved by the Court are greater than what we have here.

We address, Your Honor, on Pages 22 and 23 of our brief the Golberger factors relating to the reasonableness of the fee, but as Goldberger notes the quality of representation is best measured by result. We think that the extraordinary result in this case, Your Honor, justifies the award of fee and expenses requested.

MR. GERSTEIN: Your Honor, one further point. We've also sought court approval for a request for the main plaintiff, an incentive award of $25,000.00. I just wanted to bring that to the attention of the Court. We specifically addressed cases on that point from Pages 40 to 41 of our brief and if you want I can address them, but I think it's something routine. The plaintiff here not only stepped forward, but was actively involved from the beginning of the case, was deposed and has clearly executed its role in supervising and doing its role as a class representative. We think that it's appropriate and we ask the Court to also approve that request.

THE COURT: All right. Thank you, Mr. Gerstein. Mr.

Stark.

MR. STARK: Your Honor, I have nothing to add really to what the three gentlemen preceding me said. We certainly commend the settlement with the Court's approval as being imminently fair and adequate and we have no objection to the fees requested.

THE COURT: All right. Does anyone else wish to be heard?

[No response.]

THE COURT: First of all, I'll approve the settlement as fair, reasonable and adequate. I have the proposed order and final judgment which makes the recitations with respect to the fair, reasonable and adequate nature of the settlement as well as the adequacy of the notice that's been submitted and circulated, and all of that is plainly true. Measured against the standards for the approval of a class action settlement, this settlement is plainly fair, reasonable and adequate to the members of class. Applying the variety of factors, it is apparent that the settlement was arrived at in good faith after extensive arm's length negotiations.

It was arrived at after there had been significant discovery, both deposition discovery and documentary discovery, thirty depositions, a million pages of documentary discovery. It was arrived at when there were various issues that had yet to be resolved in discovery, including various attorney-client privilege issues which were being vigorously contested, but

it's plain that there was sufficient discovery in order to be able to arrive at a conclusion with respect to the adequacy and fair and reasonable nature of the settlement.

The lawyers in the case are experienced in this type of litigation. The lawyers on both sides have vigorously contested the litigation and all lawyers asked me to approve the settlement.

The settlement class is a relatively small class of about 125 people. There are no objections. There are many sophisticated members of the class with large stakes involved in the litigation. The fact that no one has objected to the settlement is an important factor in explaining the -- in supporting the fairness and reasonableness and adequacy of the settlement. The fact that there's only one opt out with only about .05 percent of the purchases of Buspar also underlines the fact that the members of the class wish to participate in this settlement even though by participating in the settlement they finally resolve any claims that they have relating to the subject matter of the litigation.

Applying the Grinnell standards this is a very complex litigation with numerous complex issues of fact and law. While the plaintiffs believe that they have a strong case, they similarly understand that there are significant risks of litigation which could substantially reduce their recovery even if they were able to succeed ultimately at trial. As I've noted, the reaction of the class to the settlement

certainly supports the settlement. The stage of the proceedings supports the settlement because there has been sufficient discovery to allow the analysis of the settlement, but there remains a significant amount of work yet to be done in the case if the case were to go forward. There's expert discovery, which has not been completed in the case. There are issues relating to attorney-client privilege with respect to the documents. There would be substantial litigation with respect to dispositive motions. If the case survived dispositive motions, the case would go forward to extensive motions in limine, a joint pretrial order and what would be a lengthy trial.

So settling at this point saves the cost and expenses of the future litigation but at the same time can be based upon a more than adequate record.

With respect to the risks of establishing liability, there are risks involved in the case. There are significant legal issues involved and even though the Court has resolved some of the issues in the way that the Court believed was correct, those are issues which would still be subject to appeal.

With respect to the risks of establishing damages, damages depend upon various expert calculations and expert models and upon some assumptions which have certainly been questioned by BMS experts and whether the plaintiffs' damages models would eventually succeed would certainly be a risk,

which is also one of the risks of maintaining the action through trial although it is unlikely that there would be a decision that the class could not survive as a class through trial.

Another Grinnell factor is the ability of the defendant to withstand a greater judgment which is not a significant factor in this case given the amount of the settlement even though it's plain that the defendant could pay a higher judgment, or at least the papers do not dispute that.

Perhaps most importantly the reasonableness of the settlement against possible recovery and factoring in the risks of litigation the amount of the settlement both absolutely and judged against possible, the possible recovery in the case is very high. There's no question that this is a real settlement with a substantial amount of recovery for the class and that the various damages models suggest that it is a substantial percentage recovery for the class.

So taking all of the factors into account, there's no question that the settlement is fair, reasonable and adequate.

With respect to the issue of attorney's fees, the one-third percentage that is sought in this case satisfies the various criteria that are set out in the cases for approving a reasonable attorney's fee. I've looked at the calculations, studied the calculations, including the Loadstar calculations as a means of checking the percentage fee in terms of hours and rates that went into the Loadstar, and I'll come back to the

Loadstar in a moment.

The fee of one-third falls within the range of rates that have been approved in other class actions. Determining then whether the percentage fee is a reasonable fee in this case applying the traditional standards it's clear for the reasons that I already said in approving the settlement that this is a very large and complex litigation. There is always risk involved in the litigation. The fee that's being sought is a completely contingent fee. The case was taken on plainly on a contingent fee basis and that is entitled to greater weight than simply an hourly rate because the lawyers could have walked away having done substantial work with no recovery. This is not a case where the ground was substantially plowed before. While issues were raised with respect to the 365 patent, they remained to be litigated and there were substantial issues which had to be decided in this case with respect to whether there could be recovery over the allegations relating to the 365 patent, and those were issues which had not even -- have not been tested on appeal.

The Schein agreement was developed -- the arguments with respect to the Schein agreement and recovery with respect to the Schein agreement were developed completely in this case so that the attorneys were able to establish a basis for recovery which benefitted the class. The quality of representation was very high. The case was vigorously litigated on both sides and the quality of the lawyers in the

case was excellent.

The requested award in relationship to the settlement, the plaintiff's counsel are correct that the settlement is a very good settlement for the class. It is a high percentage of possible recovery for the class and the percentage fee is within the range of reasonableness for other contingent fees. There is certainly a public policy favoring the pursuit of anti-trust litigation on the part of consumers.

Looking at the Loadstar as a check on the one-third requested contingent fee suggests that this fee is at the high end because the relationship between the Loadstar and the fee indicates a multiplier of 8.46 and plainly results in a very -- in a high hourly rate. That is mitigated to some degree in the case in my view because the case has settled before a substantial amount of additional work has been done which would have to be done if the case went forward to complete discovery, substantive, motions, pretrial preparations and trial, to say nothing of appeal.

During all of that period the number of hours spent would have significantly increased. So the Loadstar would have gone up and the multiplier would have gone down. Without any reason to believe that the ultimate recovery would have been any greater for the class and the use of the Loadstar has been criticized in some cases as not being a very useful measure because it encourages unproductive work and excessive hours without any assurance that the results will be better for the

class -- I've looked at the rates and the hours and the rates and the hours appear to be reasonable. So that the beginning Loadstar -- the beginning for the Loadstar calculation is a wholly reasonable beginning and given the stage in the litigation and the possibility that hours would have to be substantially increased without any assurance that there would be any additional money for the class leads to me think that the Loadstar is less useful here as a measure of reasonableness than the one-third contingent fee, which is what ultimately is being sought, one-third fee to include expenses.

Ultimately, one of the most important factors in my judgment as to the reasonableness of the fee is the reaction of the class. The defendant doesn't object to the fee, but of course the defendant has no interest in the size of the fee in this case because the settlement is a non-reversionary settlement which has been put up by the defendant and whether that amount of money goes to increase somewhat what the class gets or increase somewhat what the class' lawyers get is of no economic consequence to the defendant. But the members of the class have a significant interest in determining whether this is a reasonable fee because any of the members of the class could have come forward with objections to the size of the fee and raised any of the issues with respect to the Loadstar or the number of hours or the ultimate hourly rates for the lawyers.

The class in this case is a relatively small class, a

sophisticated class represented by sophisticated lawyers who with the best interests of their clients looked at the fee request and made a determination not to object to the fee request even though had there been an objection to the fee request and the Court had to decide that request that amount of money could have only benefitted the class. But having looked at all of the factors that go into account for determining the reasonableness of a fee, the class decided not to raise any objections to the fee. So that is a very important factor in assessing the reasonableness of the fee sought in this case.

So one reason that I go through this is it's a matter of some concern that other fee requests in other cases get cited back without any differentiation for what went on in the fee applications in the individual cases. It makes a difference, for example, whether there is as plaintiff's counsel pointed out a class of very small consumers who may not have the incentive to and the wherewithal to be heard on the issue of fees. The nature of the class makes a difference. In Bucksbaum, which is also cited to me, there were sophisticated investors who also could have been heard on the nature of the fee. That cautions against simply looking at the amounts involved and the ranges involved in other cases in an undifferentiated case in a undifferentiated way.

So looking at all of the factors in this case that I've gone through at the end I will grant the fee request for a one-third contingent fee and expense and the $25,000.00

incentive payment for the individual plaintiff that was sought which is a wholly reasonable amount and perfectly consistent with other cases.

There are only -- I've gone over the proposed judgment. As I've said, I will -- unless anyone wants to be heard before I sign the order and final judgment. No.

I haven't heard anything from the states today. Just watching?

MR. SCHWARTZ: We're just monitoring the proceedings, Your Honor. Thank you.

THE COURT: All right. I've signed the order and final judgment. I will see that it's entered. If you choose to wait a moment, we would probably make a copy for you of what's been signed if you wish. Otherwise it will appear in the normal course.

Anything else? No. All right. Good evening all. It's good to see you all. Have a good weekend. Let my clerk know if you want a copy before you leave.

* * * * *

I certify that the foregoing is a court transcript from an electronic sound recording of the proceedings in the above-entitled matter.

Shari Riemer

Dated: 4/23/03