

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN FLEISHER, AS TRUSTEE OF THE)	
MICHAEL MOSS IRREVOCABLE LIFE)	
INSURANCE TRUST II and JONATHAN)	
BERCK, AS TRUSTEE OF THE JOHN L. LOEB,)	
JR. INSURANCE TRUST, on behalf of)	
themselves and all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
PHOENIX LIFE INSURANCE COMPANY,)	
)	
Defendant.)	
)	
)	
)	

Civil Action No. 11-cv-8405(CM)

SPRR LLC, on behalf of itself and all others)	
similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
PHL Variable Insurance Company,)	
)	
Defendant.)	
)	
)	
)	

Civil Action No. 14-cv-8714(CM)

DECLARATION OF MARTIN FLEISHER IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND CLASS COUNSEL'S MOTION FOR ATTORNEY'S FEES AND PAYMENT OF
LITIGATION EXPENSES

I, Martin Fleisher, declare as follows:

1. I am a citizen and resident of the State of New York.

2. I make this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Class Counsel's Motion for Attorneys' Fees and Payment of Litigation Expenses. I have personal knowledge of the facts stated herein, and if called upon as a witness, I would and could testify competently as to the matters set forth herein.

3. I am a named plaintiff in the action titled *Martin Fleisher, as Trustee of the Michael Moss Irrevocable Life Insurance Trust II and Jonathan Berck, as Trustee of the John L. Loeb, Jr. Insurance Trust vs. Phoenix Life Insurance Co.*, Case No. 11-cv-8405(CM), which was filed on November 18, 2011. The Court designated me as a class representative in its Order Granting Plaintiffs' Motion to Certify this Action as a Class Action on July 12, 2013. Dkt. 135. In its Order Preliminarily Approving Class Action Settlement, Dkt. 303, the Court also appointed me as a representative of the Settlement Class¹ for purposes of the settlement reached in Case No. 11-cv-8405 along with the Case No. 14-cv-8714, *SPRR LLC v. PHL Variable Insurance Co.*

4. I am the current and only trustee of the Michael Moss Irrevocable Life Insurance Trust II ("Moss Trust") and have been since the trust was established on August 15, 2007. The Moss Trust's situs is New York, New York.

5. The Moss Trust is the current owner of the universal life insurance policy insuring the life of Michael Moss, issued by Phoenix Life Insurance Company ("Phoenix") on October 12, 2007, with a face value of \$6 million ("Moss Policy"). The Moss Policy is in force and has not been surrendered. The Moss Policy was subject to the cost of insurance rate adjustment announced by Phoenix in 2011.

¹ All capitalized terms herein, unless otherwise defined, have the same meanings as in the Stipulation of Settlement.

6. I am a graduate of Swarthmore College and New York University School of Law. I have over 15 years of experience as an investment advisor and manager of investments in life insurance policies. In my many years of experience, I have managed over 200 policies representing a combined approximately two billion dollars in face amount. I consider myself knowledgeable about the life insurance industry and a sophisticated investor.

7. As a named Plaintiff, and in consultation with my counsel, I am knowledgeable about the nature of this case and have actively monitored the progression of the case. I understand that the case is pending in federal district court in the Southern District of New York and that the Court is supervising it. I also know that approval or disapproval of the proposed Settlement are matters that the Court will be addressing.

8. I understand that my role as a representative of members of the Class involves duties beyond those I would have if this case were brought solely for me. For instance, I understand that I should keep informed about important events in the case and have done so. Another responsibility I have as a Class representative, which I believe I have fulfilled, is to make sure that the Class has adequate legal representation. I have assured myself that the lawyers at Susman Godfrey L.L.P. that represent me in this action are experienced in litigating class action and life insurance cases.

9. I have been actively working with the law firm Susman Godfrey L.L.P. on this litigation, and I have already spent considerable time pursuing this case. Among other things, I reviewed the Complaint before it was filed, and I also reviewed the memorandum of law in support of Plaintiffs' motion for class certification before it was filed. I have searched for and produced documents responsive to requests by Phoenix, assisted counsel in handling discovery meet and confers with Phoenix, reviewed pleadings and orders in the case, was deposed for a full

day, and attended and actively participated in three in-person mediation sessions in Boston with Professor Eric Green, for which I travelled to Boston from my home in New York City. I also was willing and made myself available to attend and testify live at trial scheduled in June 2015.

10. I also understand that part of my duty as a Class representative is to review the terms of the proposed settlement and to determine whether, in my view, those terms, including the consideration to be paid to Class members, are fair to the Class. Based on my involvement throughout the prosecution and resolution of this matter, I believe that the proposed Settlement is fair, reasonable, and adequate to the Class. The Settlement provides for substantial monetary relief to eligible Class members, as well as valuable promises by Phoenix not to challenge policy validity and not to raise COI rates again during the next five years. In my experience in the life insurance industry, these promises substantially increase the value of any Class policy on the secondary and tertiary markets. The proposed Settlement represents a substantial recovery for the Class, particularly in light of the substantial risks of continuing to litigate this case. I strongly endorse approval of the Settlement by the Court.

11. I was actively involved in the negotiations with respect to the proposed Settlement in this case. I attended three in-person mediation sessions in Boston, during which I participated in the discussions with Professor Green as well as face-to-face conversations with Phoenix. I thoroughly reviewed the terms of the Settlement before signing. I also discussed the settlement terms at length with my counsel, Steven G. Sklaver, Seth Ard, and Frances S. Lewis, and former counsel Ryan Kirkpatrick, on multiple occasions, and have reviewed the advantages and disadvantages of the Settlement compared to continued litigation.

12. I believe that the proposed Settlement is fair, adequate, and reasonable and is in the best interest of the Class. Therefore, I approve of and support the proposed Settlement and agree with my counsel's recommendations that the Settlement be accepted.

13. I understand that Phoenix has agreed that the named Plaintiffs may seek payment of an incentive award from the common fund in an amount of up to \$25,000 to me and up to \$5,000 each to Jonathan Berck and SPRR LLC, the other appointed Class representatives, for our time expended in the furtherance of the litigation, if approved by the Court. I estimate that I have spent at least 88 hours working on the prosecution of this case, including tasks such as reviewing the complaint, conferring with counsel, reviewing communications from counsel, responding to document requests and interrogatories, preparing for and attending my deposition, reviewing my deposition transcript, preparing for trial, and preparing for and attending the three in-person mediation sessions in this case. This was time that I did not spend conducting my usual business. My hourly rate for other business matters generally ranges from between \$550 at the low end and \$715 at the high end. Therefore, I respectfully request compensation in the amount of \$25,000. At the low end of my billing rate, the time I spent on this case represents \$48,400 in time devoted to the Class.

14. I also believe that Class Counsel's request for an award of attorneys' fees in the amount of \$13.5 million is fair, adequate, and reasonable. I have evaluated Class Counsel's fee request in light of the work performed by Class Counsel as well as the substantial recovery obtained for the Class. I think the requested fee in this case is fair and reasonable in light of the excellent results achieved in this case through Class Counsel's vigorous efforts. I further believe that the litigation expenses that Class Counsel requests for reimbursement are reasonable, and represent the costs and expenses necessary for the successful prosecution and resolution of this

case. Based on foregoing, and consistent with its obligation to obtain the best result at the most efficient cost on behalf of the Class, I fully support Class Counsel's Motion for Attorneys' Fees and Expenses.

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

Dated: August 19, 2015

A handwritten signature in black ink, appearing to read 'Martin Fleisher', written over a horizontal line.

Martin Fleisher, as Trustee of the Michael
Moss Irrevocable Life Insurance Trust II