

**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)(JCF)

SPRR LLC, on behalf of itself and all others  
similarly situated,

Plaintiff,

vs.

PHL VARIABLE INSURANCE CO.,

Defendant.

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

**DECLARATION OF TIFFANEY JANOWICZ FROM RUST CONSULTING, INC.  
IN SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT**

I, Tiffany Janowicz, am over the age of 18 and hereby declare as follows:

1. I am a Senior Vice President of Rust Consulting, Inc. ("Rust"). I make this declaration based upon my own personal knowledge and, if called as a witness in this action, I would be able to competently testify as to the facts set forth herein.

2. With 35 years of class action settlement administration experience, Rust is among the industry's leaders. Rust has administered more than 4,500 class action settlements and judgments, 2,000 of which were in the past five years alone. Rust employs a permanent staff of approximately 550 people working in offices nationwide. Rust also has a subsidiary, Kinsella Media, LLC, that specializes in the design and implementation of class notice programs. Rust and Kinsella Media frequently work together to provide complete class action administration services.

3. Rust handles the claims administration process for class actions of all sizes and types, including consumer, antitrust, securities, insurance, healthcare, labor and employment, property, finance, telecom, and products liability class actions. In the past, Rust has handled claims administration in, among many other matters, the \$65 million settlement in *In re Lawn Mower Engine Horsepower Marketing and Sales Practices Litig.*, No. 2:08-md-1999, MDL No. 1999 (E.D. Wisc.); the \$624 million settlement in *In re Countrywide Financial Corp. Securities Litig.*, No. CV 07-05295 (C.D. Cal.); the \$150 million settlement in *SEC v. Bank of America Corp.*, No. 09-cv-6829 & No. 10-cv-0215 (S.D.N.Y.); the \$90 million settlement in *In re Wal-Mart Wage and Hour Employment Practices Litig.*, No. 2:06-cv-00225, MDL No. 1735 (D. Nev.); and the \$125 million settlement in *In re Pharmaceutical Industry Average Wholesale Price Litigation (All Class Actions Relating to Track Two Defendants)*, No. 01-CV-12257-PBS, MDL No. 1456. Rust has considerable experience in administering class action settlements of all types and sizes and will use this experience to develop a settlement administration process for this action.

4. I submit this declaration in connection with the above-captioned civil action at the request of Plaintiff's counsel to describe an approach for settlement administration.

### **Overview**

5. Rust Consulting was engaged to consult and discuss options for notice and settlement administration. If the settlement is approved, Rust will mail the Class Notice and provide settlement administration services in accordance with the settlement agreement or the Court's direction, and at the direction of counsel. This work will include noticing, designing and programming systems, toll-free IVR telephone support, website administration, exclusion and objection tracking, claimant correspondence, and distribution.

### **Data**

6. Plaintiff's counsel provided Rust with a list of Class Members. Rust obtained several files from Plaintiff's counsel reflecting approximately 1,728 policy records. The data included, among other things, policy owner name, address, policy number, policy status, and the insured name on the policy. There are a total of 757 records based on unique owner and address. Based on unique address alone, there 480 unique records. Of the 1,728 policies owned by Class Members, 1,070 have the status of active. Of the non-active policies, there are only 62 owners who are individuals (rather than entities).

7. Prior to mailing the Class Notice, Rust Consulting will apply pre-scrubbing and basic skip tracing to all last known addresses in the Class List, as may be updated by current records, including the National Change of Address database.

8. Because there was a chance that the owners of the inactive policies may be deceased, Rust Consulting performed manual searches on the 62 individuals using Thomson Reuters' CLEAR to identify which if any are deceased. Through our research, we did not find that any of the 62 individuals are deceased, and we identified updated addresses for 24 individuals.

### **Notice**

9. Rust Consulting will create and maintain a website containing information about the case. Class Notice will direct customers to the website where potentially eligible consumers will be able to obtain general information regarding the case. The website will include court



documents, long form notice, answers to commonly asked questions, toll-free number, and other settlement related documents and important dates.

10. Rust Consulting will establish and maintain a toll-free hotline to support the class notice and administration process. The hotline will provide information using an automated, interactive voice recording system and will allow callers the ability to listen to commonly asked questions and answers related to the case with an option to speak to a live agent or leave a voicemail message. The hotline will also allow callers to request a long form notice. In addition to the mailing of the notice described below, Rust will mail long form notices upon request to potential claimants.

11. Rust Consulting will provide the Class Notice via First Class direct mail to potential Class members using the data previously described herein.

12. For any Class Notices returned as undeliverable, Rust Consulting will (1) re-mail any Class Notice to the forwarding address if provided by the Post Office, and (2) make reasonable efforts to attempt to find an address for any returned Class Notice that does not include a forwarding address through research, including the use of a commercial address verification service such as Lexis Nexis. Rust will re-mail the Class Notice using the addresses obtained.

13. For uncashed or returned checks, after the expiration of the checks and the expiration of the time to request reissuance for any lost checks, Rust Consulting will follow the necessary steps to pursue escheatment to the state of the policy owner as unclaimed property consistent with applicable state law.

14. I am generally familiar with this action and believe that the planned approach to notice and administration herein is typical to programs that Rust Consulting has provided in similar settlements. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of May, 2015.

  
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Tiffany Janowicz