

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MARTIN FLEISHER, AS TRUSTEE OF THE)	Civil Action No.
MICHAEL MOSS IRREVOCABLE LIFE)	11-cv-8405(CM)(JCF)
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.)	
)	
)	
)	

)	
SPRR LLC, on behalf of itself and all others)	Civil Action No. 14-cv-8714 (CM)
similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
PHL VARIABLE INSURANCE CO.,)	
)	
Defendant.)	
)	
)	
)	
)	
)	

**[PROPOSED] ORDER AND FINAL JUDGMENT APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS, Class Plaintiffs 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,

in Civil Action No. 11-cv-8405(CM), and Plaintiff SPRR LLC in Civil Action No. 14-cv-8714 (together, “Class Plaintiffs” or “Named Plaintiffs”), for themselves and on behalf of the proposed Settlement Class, entered into an agreement (the “Settlement”) with Defendants Phoenix Life Insurance Company and PHL Variable Insurance Company (together, “Defendants” or “Phoenix”).

WHEREAS, on June 3, 2015 the Court entered its Order granting preliminary approval of the proposed settlement (“Preliminary Approval Order”) (Dkt. # 303). Among other things, the Preliminary Approval Order authorized Class Plaintiffs to disseminate notice of the Settlement, the fairness hearing, and related matters to the Class. Notice was provided to the Class pursuant to the Preliminary Approval Order on June 17, 2015, and the Court held a fairness hearing on September 9, 2015 at 10 a.m.

Having considered Class Plaintiffs’ Motion for Final Approval of Class Action Settlement, supporting declarations, oral argument presented at the fairness hearing, and the complete records and files in this matter,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The capitalized terms used herein shall have the meanings set forth in the Stipulation of Settlement, Exhibit B to the Declaration of Steven G. Sklaver in Support of Preliminary Approval of Settlement (Docket # 299-1) (the “Settlement”).

2. The Preliminary Approval Order outlined the form and manner by which the Class Plaintiffs would provide the Class with notice of the Settlement, the fairness hearing, and related matters. Proof that mailing and publication complied with the Preliminary Approval Order has been filed with the Court. The Notice given to Class Members complied in all

respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and provided due and adequate notice to the Class.

3. The Court approves, as to form and content, the initial Class Action Fairness Act (“CAFA”) Notice that was served within 10 days after the filing of the Motion for Preliminary Approval of the Settlement (an example of the Notice was attached as Exhibit C to the Settlement Agreement, Dkt. 299). The Court finds that the Attorney General of the United States and the state attorneys general have received notice of the Settlement Agreement in accordance with the terms of CAFA, 28 U.S.C. § 1715(b).

4. The Settlement was attained following an extensive investigation of the facts. It resulted from vigorous arm’s-length negotiations which were undertaken with the assistance of a mediator and in good faith by counsel with significant experience litigating class actions.

5. In the Preliminary Approval Order, pursuant to Federal Rule of Civil Procedure 23 and in light of the proposed Settlement, the Court certified the following class for settlement purposes (the “Settlement Class”):

Owners of PAUL Policies for which Phoenix sent notice that the Policy was subject to the 2010 Adjustment or 2011 Adjustment (the “Class Policies”).

6. Excluded from the Settlement Class are:

- a. Any officers, directors, or employees of any Defendant; the affiliates, legal representatives, attorneys, successors, or assigns of any Defendant; Class Counsel and their employees; and any judge, justice, or judicial official presiding over the Actions and the staff and immediate family of any such judge, justice, or judicial official.
- b. Owners of the following Excluded Policies:

- i. PAUL Policies that received a decrease in their COI rates or whose COI rates were unchanged as part of the 2011 Adjustment.
- ii. The confidentially identified Policies for which Phoenix covenants, represents, and warrants that a prior settlement bars claims.
- iii. The Policies identified in the Settlement Agreement that are subject to separate, ongoing legal proceedings.

7. The Settlement is fully and finally approved because its terms are fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and the Court directs its consummation pursuant to its terms and conditions.

8. In reaching this conclusion, the Court considered the complexity, expense, and likely duration of the litigation, the Class's reaction to the Settlement, and the result achieved.

9. The eight individuals and entities who timely and validly requested exclusion from the Class as identified by name and policy number in the Declaration of Joel Botzet, filed August 19, 2015, are excluded. These individuals and entities are not included in or bound by this Order and Final Judgment, and are not entitled to any recovery from the settlement proceeds obtained through this Settlement.

10. These Actions, including the complaints in Civil Action No. 11-cv-8405(CM) and Civil Action No. 14-cv-8714(CM), are dismissed with prejudice as to Defendants and, except as provided in Section VIII of the Settlement Agreement, without costs to either party.

11. This Order and Final Judgment shall operate as a complete bar order that discharges and releases the Released Claims by the Releasers as to all the Releasees.

12. The institution and prosecution, by Class Plaintiffs and any Class Member, either directly, individually, representatively, derivatively or in any other capacity, by whatever means,

of any other action against the Releasees in any court, or in any agency or other authority or arbitral or other forum wherever located, asserting any of the Released Claims is permanently barred, enjoined and restrained.

13. The Court reserves continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration and enforcement of the Settlement Agreement as well as any supplemental application for reimbursement of costs or expenses incurred by Class Counsel on behalf of the Class.

14. There is no just reason for delay in directing entry of a Final Judgment as to Defendants.

15. The Settlement Fund Escrow Account established by Class Plaintiffs and Defendants, and into which Defendants deposited a total \$5,000,000 seven calendar days after preliminary approval and into which Defendants will deposit \$29,759,820.88, the remainder of the Settlement Fund, seven calendar days after the Final Approval Date, and the Attorneys' Fee Escrow Account, into which Defendants deposited a total of \$6,000,000, are approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

16. Neither the Settlement, nor any act performed or document executed pursuant to the Settlement, may be deemed or used as an admission of wrongdoing in any civil, criminal, administrative, or other proceeding in any jurisdiction.

17. The distribution plan, as set forth in the Notice, is approved because it is fair, reasonable, and adequate.

18. Without affecting the finality of this Order and Final Judgment, the Court retains exclusive jurisdiction over: (a) the enforcement of this Order and Final Judgment; (b) the

enforcement of the Settlement; (c) any application for attorneys' fees and reimbursement made by Plaintiffs' Counsel; (d) any application for notice and administration costs, taxes and tax expenses fees; (e) any application for incentive awards for the Class Plaintiffs; (f) any supplemental application for costs or expenses; and (f) the distribution of the settlement proceeds to the Class Members.

ENTERED this ____ day _____ of 2015.

Colleen McMahon
UNITED STATES DISTRICT JUDGE