

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

---

MARTIN FLEISHER, AS TRUSTEE OF THE )  
MICHAEL MOSS IRREVOCABLE LIFE ) **Civil Action No. 11-cv-8405(CM)**  
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 )  
similarly situated, ) **Civil Action No. 14-cv-8714(CM)**

Plaintiff, )

vs. )

PHL VARIABLE INSURANCE CO., )

Defendant. )

---

**DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Steven G. Sklaver, declare as follows:

1. I submit this declaration in support of preliminary approval of the proposed class action settlement between the 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, and Defendants Phoenix Life Insurance Company and PHL Variable Insurance Company (together, “Defendants” or “Phoenix”).

2. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Class Plaintiffs and the Court-appointed Class Counsel for the certified class in Civil Action No. 11-8405(CM), Dkt. 135. I have been admitted *pro hac vice* by this Court in both actions and am a member of good standing of the California bar. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey has significant experience with insurance litigation and class actions, including settlements thereof. A copy of the firm’s class action profile and my profile is attached hereto as Exhibit A.

4. I was among the principal negotiators of the proposed class action settlement with Defendants. The parties signed a memorandum of understanding on April 30, 2015, and the final Settlement Agreement was signed on May 29, 2015. I attach a true and correct copy of the Settlement Agreement as Exhibit B. It is the opinion of Class Counsel that this settlement with Defendants is fair, adequate, and reasonable. All three lead Plaintiffs also support this settlement and believe it to be fair, adequate, and reasonable.

5. The Settlement Agreement is the result of extensive and protracted negotiations between the parties with the assistance of an experienced mediator, Professor Eric D. Green of Resolutions LLC. The mediation process began in April 2014 and did not conclude until the Settlement Agreement was signed.

6. The parties conducted three in-person mediation sessions with Professor Green that I personally attended and actively participated in. These in-person mediations took place on April 1, 2014, May 9, 2014, and June 25, 2014, in Professor Green's offices in Boston, Massachusetts, and lasted all day. All three mediation sessions were attended by counsel for Phoenix, counsel for Plaintiffs, as well as Mr. Fleisher, one of the named Plaintiffs and appointed representative of the class in Civil Action No. 11-cv-8405(CM). The parties were scheduled to participate in a fourth in-person mediation session with Professor Green on September 17, 2014, but the session was canceled two days before because of a lack of common ground between the parties' respective positions.

7. The memorandum of understanding was negotiated in-person at Susman Godfrey's offices in New York City on April 30, 2015. The meeting was attended by counsel for Class Plaintiffs, including myself, as well as counsel for Phoenix. Professor Green participated by phone.

8. The terms of the settlement were negotiated through extensive mediation briefing, teleconference and email discussions, and in-person meetings. In addition to the substantial evidentiary materials produced by Phoenix in discovery, Phoenix informally provided financial and other information to Class Counsel as part of the settlement negotiations. The settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length beginning in April 2014. The settlement negotiations lasted over a year. Plaintiffs'

attorneys were well informed of material facts and the negotiations were hard-fought and non-collusive.

9. Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the settlement class.

10. Class Counsel analyzed over a million pages of documents including extensive actuarial tables, attended over 20 depositions of 17 witnesses, and engaged in substantial other discovery, including issuing over six subpoenas to Defendants' reinsurers and actuarial and financial advisors. Class Counsel took the depositions of multiple of Defendants' current and former employees, officers, and corporate designee as well as Defendants' third-party outside actuarial consulting firm, Towers Watson. Class Counsel also defended the depositions of Mr. Fleisher and Mr. Berck, as well as Plaintiffs' actuarial expert, Larry N. Stern, and Plaintiffs' economic expert, Robert Mills, among others. Class Counsel engaged in substantial motions practice during discovery, including successfully moving to compel the production of documents against Defendants and the production of certain Towers Watson material, for which Defendants sought reconsideration in seven subsequent motions that Class Counsel successfully defended.

11. Class Counsel also analyzed all of the contested legal and factual issues posted by the litigation, as required to accurately evaluate Defendants' positions, advocate for a fair settlement that serves the best interests of the class, and make accurate demands of Defendants. Class Counsel briefed multiple substantive issues, including successfully defending against Defendant's motions to dismiss, motion for judgment on the pleadings, and motion for summary judgment. Class Counsel also affirmatively sought summary judgment on behalf of Plaintiff

Fleisher, which was denied. Class Counsel also conducted jury research and testing in preparation for trial, which was scheduled for June 2015.

12. The specific terms and conditions of the settlement are set forth in the Settlement Agreement. To summarize, the settlement provides as follows:

- a. Defendants will pay \$42,500,000 in cash for the benefit of the Settlement Class, which will be reduced proportionally for any opt-outs, but after which will not be returned to Defendants.
- b. Defendants covenant not to seek to void, rescind, cancel or otherwise challenge the validity of or deny a death claim for policies within the Settlement Class based on (1) an alleged lack of a valid insurable interest, or (2) any misrepresentation allegedly made on an application, with certain exclusions.
- c. Defendants covenant not to implement a new COI rate increase on the Settlement Classes through and including December 31, 2020.

13. In my opinion, the \$42.5 million in cash payments to the Class plus the guarantee not to challenge the validity of the policies owned by class members on the grounds that they lack an insurable interest or contain misrepresentations and the guarantee to impose a cost of insurance (“COI”) rate freeze through December 31, 2020, adequately compensates the members of the proposed Settlement Class for their damages in view of the risks of litigation. Class members nationwide have paid through March 2015 approximately \$61 million more than they would have had the 2010 and 2011 increases not been implemented. A cash payment by Phoenix of \$42.5 million therefore represents 70% of those charges through that period. This settlement represents an especially good result for the proposed Class because, after reducing the settlement fund *pro rata* for opt-outs, none of the cash in the settlement fund will be returned to Defendants.

14. Class Counsel recommends the proposed distribution plan described in the Notice attached as Exhibit A to the Settlement Agreement. After reduction for fees, costs, incentive awards, and opt-outs, the cash payment will be allocated as follows: (1) \$2 million will be distributed to those whose policies lapsed after receiving notice of a COI increase but before ever paying an overcharge (these policyholders represent around 10% of the Class), and (2) the remainder will be distributed among those who paid a COI overcharge. The Settlement Administrator will directly mail checks to individuals at their last known address from the database of policies kept by Phoenix. The Settlement Administrator will take steps to research and attempt re-delivery of any Notices returned as undeliverable. After expiration of any returned or uncashed check (including the time to request reissuance for a lost check), an escheatment process will follow consistent with applicable law. Class Counsel finds this distribution plan to be fair, adequate, and reasonable, especially in light of Counsel's detailed assessments of the strengths and weaknesses of the claims asserted, the applicable damages, and the likelihood of recovery.

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

Dated: May 29, 2015

/s/ Steven G. Sklaver  
Steven G. Sklaver (*pro hac vice*)  
Frances S. Lewis  
SUSMAN GODFREY LLP  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067-6029  
Tel: 310-789-3100  
Fax: 310-789-3150  
ssklaver@susmangodfrey.com

flewis@susmangodfrey.com

Seth Ard  
SUSMAN GODFREY LLP  
560 Lexington Avenue, 15th Floor  
New York, NY 10022  
Tel.: 212-336-8330  
Fax: 212-336-8340  
sard@susmangodfrey.com

*Attorneys for Plaintiffs and the Class*