UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN W. GRIFFITHS, on behalf of Himself and all others similarly situated,	:	
Plaintiff,	:	Civil Action No. 15-cv-13022-NMG
v.	:	
AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY,	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF THE CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENTS AND AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD
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INTRODUCTION

Class Representative John Griffiths respectfully submits this Memorandum of law in support of his Motion for Final Approval of the Class Action Settlements and Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award.

After four years of litigation, the parties in this case have reached settlements which provide relief to the Plaintiff class that effectively reverses the challenged action that gave rise to this case. The case was brought because Defendants had cancelled a form of guaranty – a capital maintenance agreement ("CMA") – backing the annuities here at issue. The settlements reinstate that guaranty in the form of a New CMA, now issued by a company that is financially stronger than the one that had stood behind the provision that had been cancelled. The New CMA created as a result of the settlement of this case also imposes additional protections for annuity holders that had not been a part of the CMA that were cancelled. The settlements now before this Court also provide cash relief to the class which, if the Court approves the plan of distribution proposed herein, will fully reimburse each class member for the fee paid by each class member at the time each annuity was purchased, in exchange for coverage by the CMA guaranty. The cash relief will also provide additional monetary relief allocated on the basis of the premiums paid for such annuities, which reflected the magnitude of any increase in the price of the Annuities caused by the initial, but now terminated CMA.

For these reasons, this Court should approve the settlements as eminently fair, reasonable and adequate; it should award the requested attorney's fees; it should allow Plaintiff's counsel to be reimbursed for the expenses they incurred in the prosecution of this case; and it should award the requested Service Award to the Class Representative, who discovered the violation here at issue, located counsel willing and able to prosecute this claim, and worked with counsel

diligently to secure the proposed successful conclusion of the case.

This case has proceeded on behalf of all purchasers of Structured Settlement Annuities ("the Annuities") sold by Aviva Life Insurance Company of North America, or Aviva Life Insurance Company of New York, between 2002 and 2009, when such Annuities were covered by certain Capital Maintenance Agreements issued by CGU International Insurance Company, now known as Aviva International Insurance Company. (*See* Declaration of Jonathan Auerbach in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Approval of Attorneys' Fees and Expenses ("Auerbach Decl.") ¶¶ 3-6) (attached hereto as Exhibit 1).

Marcus & Auerbach was approached regarding this matter in the early fall of 2014 by the Class Representative, John Griffiths (hereinafter "Class Representative" or "Named Plaintiff"). Mr. Griffiths, like all members of the class, had purchased an Annuity, and he did so only because the instrument was covered by the CGU International Insurance plc ("CGU") CMA. But by dint of his own efforts and investigation, Mr. Griffiths had then recently discovered that, around the time Aviva's North American business had been sold to Athene Life Insurance Company in 2013, the CMA had purportedly been terminated. He then researched law firms and determined to call Marcus & Auerbach LLC ("Marcus & Auerbach"), which had served as lead counsel in a previous class action relating to annuities issued by predecessor companies of Aviva. See *In re Am. Investors Life Ins. Co. Mktg & Sales Practices Litig.,* 263 F.R.D. 226 (E.D. Pa. 2009).

After Mr. Griffiths retained Marcus & Auerbach, the firm began to investigate the facts and the law surrounding the issue. The firm conducted extensive research on the specific practices of the defendants, as well as industry-wide; consulted with various economic and industry experts; and conducted independent analyses of regarding guarantees for annuities, their

pricing and valuation, and state regulation of such instruments. They drafted a complaint and determined that the case could be prosecuted most effectively in the District of Massachusetts, where the Aviva entities had been located when the Annuities at issue were sold; and retained as local counsel Paul Klehm of Krasnoo, Klehm & Falkner LLC, a Massachusetts firm with which they had worked on previous litigation in Massachusetts. Auerbach Decl. ¶5.

The terms of the Settlement were presented to the Court on May 1, 2018 (Dkt. 125, and the Court entered preliminary approval on June 29, 2018 (Dkt. 132. As part of the preliminary approval order, the Court appointed Class Counsel and set in motion a series of events designed to give all Class Members a fair opportunity to opt out and/or object to the proposed Settlement. That order was faithfully executed. See Declaration of Josephine Bravata, attached hereto as Exhibit 2. Consistent with the Court's Preliminary Approval Order, the Claims Administrator provided notice to the Settlement Class by direct mail to each of the persons identified, in the records of Defendant Athene, as a beneficiary of one or more of the Annuities at issue. Notice was successfully delivered to 98.6% of the 5073 class members, the beneficiaries of 4551 annuity policies at issue in this case. See Bravata Decl. ¶7.

Since notice was disseminated, the reaction to the proposed Settlements has been extremely positive. As of the date this Motion is submitted, Plaintiff's counsel and/or the Claims Administrator have answered questions from over class members, Auerbach Decl. ¶25, and over 330 persons have viewed the website maintained by the Claims Administrator relating to the settlements. Bravata Decl. ¶7. But there have been no opt outs and no Objections to the settlements. *Id.* ¶¶9, 10. The final date for submission of objections and opt-outs is September 12, 2018.

The Settlement is now before this Court for final approval. As discussed below, the Settlement is eminently fair, reasonable, and adequate and the requirements for final approval are

satisfied. This is an excellent settlement for the Class because it provides virtually complete reversal of the challenged action – cancellation of the Aviva CMA – that sparked the filing of this case as well as providing cash relief on top of the New CMA.

In addition, the Settlement Class satisfies the criteria for class certification under Rule 23, and the notice provided to Class Members comported with due process and Rule 23, both as to its content and as to the method of dissemination.

Plaintiff respectfully requests that the Court:

(a) grant final approval of the proposed Settlement and the method of allocation and distribution of the settlement funds;

(b) certify the Settlement Class pursuant to Rule 23(b)(3);

(c) grant final approval to its appointment of Marcus & Auerbach LLC and Krasnoo, Klehm & Falkner LLP as Class Counsel and its designation and appointment of Jerome M. Marcus and Jonathan Auerbach, and Marcus & Auerbach LLC, as Lead Counsel for the Settlement Class, and its appointment of John W. Griffiths as Settlement Class Representative;

(d) award the requested attorneys' fees and costs and Class Representative Service Award; and

(e) enter final judgment.

Plaintiffs have submitted herewith a proposed Final Approval Order for the Court's consideration as well as a separate Order relating to the award of Attorney's Fees, Reimbursement of Expenses, and payment of a Service Award to the Named Plaintiff.

PROCEDURAL HISTORY AND FACTS

I. Procedural Background

After completion of the factual and legal investigation by Plaintiff's counsel, the initial Complaint in this case was filed on July 27, 2015. It presented a straightforward claim: that Defendants had breached their promise to provide a guaranty in the form of a Capital Maintenance Agreement supporting the financial solvency of the legal entities responsible for paying the

annuities at issue in this case (the "Annuities").

Both sets of Defendants moved to dismiss – the Athene Defendants on the ground that the Complaint failed to state a claim, both because Plaintiff was not a formal party to the CMA and because no payments had been missed on the Annuities, and the Aviva Defendants on those grounds and on the additional theory that, when sued, the Aviva Defendants were all based in England and were therefore not subject to the personal jurisdiction of this Court. Plaintiff addressed each of these attacks on the Complaint by amending his pleading, filing the new, Amended Complaint on December 18, 2015 to plead additional facts that addressed Defendants' arguments. The amendments made clear that Griffiths did in fact have standing and that he had sustained injury at Defendants' hands, and that Aviva had in fact done extensive business, related to the transactions at issue in this case, in this District.

In response to this amendment, the Athene Defendants chose not to move again to dismiss, and instead answered the Amended Complaint. Discovery commenced against Athene at this time.

Aviva renewed its motion to dismiss, but in the face of the amended allegations regarding damages and impact Aviva did so only on the jurisdictional ground. The parties briefed this contention in the Winter of 2016. This Court denied Aviva's motion by opinion dated May 20, 2016. Discovery then commenced from the Aviva Defendants as well.

The Parties then engaged in extensive discovery. Defendants have produced more than one hundred fifty thousand pages of documents (almost 16 gigabytes of data), and responded to multiple sets of interrogatories and requests for production propounded by Plaintiff. The Class Representative, and the broker who handled the purchase of the Class Representative's Annuity, both produced documents, and Plaintiff also responded to Defendants' Interrogatories. Plaintiff's counsel retained the services of US Legal Support to create and maintain a secure searchable document repository to facilitate efficient searching and use of the documents produced in

discovery.

After most of the document production had been completed and Plaintiff's counsel had had the opportunity to review these materials, the parties took depositions throughout the United States and in England. The Class Representative, and the annuity broker who handled the purchase of the Annuity on behalf of the Class Representative, were both deposed in Hawaii, where these two persons reside. Seven more high level current and former executives of the Defendants were also deposed, in Chicago, New York, Charleston, South Carolina, Des Moines, Iowa, Andover, Massachusetts, and London, where the General Counsel of Aviva's parent entity, Aviva plc, was deposed, along with the senior member of the deal team who had shared responsibility for shepherding the sale of Aviva's North American business to Athene. In addition, a representative of the New York law firm of Wilke, Farr & Gallagher, which represented Aviva when the business at issue was sold to Athene, was deposed in New York, after Wilkie, Farr had produced documents in response to Plaintiffs' Rule 45 subpoena.

At the close of discovery Plaintiff moved for class certification. The motion was supported by the reports of two experts.

The first, Stephen Scherff, is a financial expert, who explained that cancellation of the CMA guarantees had a direct, measurable and common economic impact on all class members. He provided the basis for this opinion and explained how that impact could be measured, on a class-wide basis; he also provided his estimation of the range of values for this measure of damages. The second expert was Linda Kaiser Conley, a former Insurance Commissioner of the Commonwealth of Pennsylvania. Ms. Conley explained the context in which the CMAs had operated; why such commitments are entered into and why they provide value to insurance companies and their customers; why the CMA, as originally drafted and described to the public, could not have been terminable.

Plaintiff had also filed a motion for leave to amend the complaint to add a claim for breach of the Massachusetts Consumer Protection Law. That Motion was opposed by both sets of Defendants, and, as of the time the parties reached agreement to settle this litigation, remained pending.

Beginning in early 2017, the Athene Defendants began negotiating with Plaintiff about a potential resolution of the claims against those Defendants. Defendants had each suggested that they wished to negotiate jointly with Plaintiff regarding settlement of this case. Plaintiff's counsel rejected this request, believing that a better result for the class would be attained if the negotiations were carried on separately with the two sets of Defendants. Auerbach Decl. ¶7.

The negotiations with Athene continued throughout the ensuing nine months, culminating in the execution, on September 20, 2017, of a Memorandum of Understanding setting forth the material terms of the Settlement with Athene, which is now before this Court.

Athene had offered to negotiate the payment of an amount of cash specifically designated for attorney's fees. See Auerbach Decl. ¶9. Plaintiff's counsel rejected this offer, however, for two reasons: first, because they refused to discuss attorneys' fees at all until agreement had been reached on all other substantive terms of the settlement; and second, because Plaintiff's counsel sought to negotiate substantive relief that included a cash payment in addition to the primary structural relief, which has come in the form of replacement of the abandoned CMA. Plaintiff's counsel intended that such payment could be used, as approved by the Court, to be disseminated to the class according to a Court-approved plan of allocation as well as to cover attorney's fees and costs. *Id.* at ¶9. Athene acceded to the requested sequencing of the components of relief, and the settlement Plaintiff has reached with the Athene Defendants, like the one reached with Aviva, includes a simple cash payment without any restrictions on its distribution other than those approved by this Court. *Ibid*.

After the Athene negotiations concluded, Plaintiff began negotiations with Aviva. Auerbach Decl., ¶10. Those negotiations continued for three months, included two day-long mediation sessions before Hon. Judith Dein, U.S.M.J., and a number of subsequent follow-on telephone mediation efforts with Magistrate Judge Dein. *Ibid.* As a result of those negotiations and mediation sessions, on December 22, 2017, Plaintiff and Aviva reach a Memorandum of Understanding, which underlies the terms of the Aviva Settlement that is now before the Court. *Ibid*.

THE TERMS OF THE PROPOSED SETTLEMENTS

I. Substantive Terms of the Proposed Settlement Agreements

Two separate Settlement Agreements have been executed in this case – one between the Named Plaintiff, on behalf of the Class, and the Athene Defendants (the "Athene Settlement"), and the other between the Named Plaintiff, on behalf of the Class, and CGU (the "Aviva Settlement"). The Settlements' details are contained in the Settlement Agreements signed, respectively, on behalf of the Named Plaintiff and the Class and the Athene Defendants, and on behalf of the Named Plaintiff and the Class and Aviva. Copies of each Settlement Agreement were attached as Exhibits A and B to Plaintiff's Motion for Preliminary Approval, filed May 1, 2018. (Dkt. 125).

A. The Athene Settlement

The Athene Settlement provides that Athene will cause Athene London Assignment Corporation and Athene Holding Ltd ("AHL"), the ultimate, publicly traded parent of Athene London Assignment Corporation, to enter into a new Capital Maintenance Agreement (the "New CMA") which imposes upon AHL the same obligation as was imposed upon CGU to support the solvency of the entity responsible for making payments under the Annuities. In addition, and also unlike the CMA that had bound CGU, the Settlement Agreement limits the circumstances under which the New CMA can be terminated, including in the event of a sale of the business entity

responsible for payment of the Annuities; makes clear that all class members are intended beneficiaries of the New CMA, by stipulating that breach of the terms of the New CMA constitutes irreparable harm to the Class; and it constitutes an assurance issued by the ultimate, publicly traded parent of the entity responsible for making payments under the Annuities, rather than a wholly owned subsidiary of that entity. Finally, Athene has proffered data demonstrating that the entity that will issue the New CMA is better capitalized than CGU, the entity that had issued the original CMA's at issue in this case. See *infra* at p. 20. Plaintiff's financial expert, Stephen Scherf, has opined that the value of the New CMA to the class, by virtue of the risk protection it affords, is between $27 and $41 million. See Declaration of Stephen Scherf submitted in support of Plaintiff's Motion for Preliminary Approval of the Settlements.[1]

The Athene Settlement further provides that Athene will pay a total of $2.3 million into an escrow fund; and will pay up to an additional $100,000 to fund the costs of notice and settlement administration, and up to an additional $12,500 to be used to pay a Service Award as ordered by this Court.

B. The Aviva Settlement

The Aviva Settlement provides that Aviva will pay: $5,000,000 into an escrow fund; up to an additional $100,000 to fund the costs of notice and settlement administration; and up to an additional $12,500 to be used to pay a Service Award as ordered by this Court. The Aviva Settlement also provides that, should Aviva receive any amounts from Athene in resolution of any claims brought by Aviva against Athene arising out of the facts at issue in this case, Aviva will pay

[1] Mr. Scherf also submitted a Declaration in Support of Plaintiff's Motion for Class Certification, as did Plaintiff's insurance industry expert, former Pennsylvania Insurance Commissioner Kathleen Kaiser Conley. As additional support for the instant motion, Plaintiff relies as well upon, and incorporates by reference, his earlier submissions seeking Class Certification and Preliminary Approval of the Settlements. See Dkt. ## 85 (class certification papers) and 126 (preliminary approval papers).

25% of such amounts, net of Aviva's attorney's fees and costs, to the Class.

II. The Settlement Class

The "Settlement Class" includes all beneficiaries of structured settlement annuities assigned to Athene London Assignment Corporation, Athene Annuity And Life Assurance Company Of New York, Athene Life Insurance Company Of New York, and/or their predecessors in interest, where such annuities remained in force as of October 2, 2013.[2]

III. Value of the Proposed Settlements

The proposed settlements will essentially nullify the impact of the CMA cancellations that were the impetus for this case's filing.

The New CMA issued by Athene is superior to the original, cancelled CMA's, in the following respects, see Auerbach Decl. ¶21:

- It explicitly bars cancellation the New CMA in the event of a sale of the corporate entity responsible for paying the Annuities unless the purchasing entity
    - Takes on the same commitments as those imposed by the New CMA; AND
    - The purchasing entity has an investment grade credit rating.
- Because Defendants took the position in this case that Plaintiffs lacked standing to challenge cancellation of the CMAs because they were not parties to those instruments, the Settlement Agreement includes Athene's acknowledgement that any breach of the New CMA's provisions would cause irreparable harm to all Annuity beneficiaries;
- Whereas the old CMA's were issued by a wholly owned subsidiary of Aviva, whose financial condition, place of operation, and other characteristics could be changed at will by

[2] Named Plaintiff and Class Counsel seek certification of the Settlement Class for settlement purposes only, and agree that, if approved, certification of the Settlement Class is in no way an admission by Defendants that class certification would be proper in this litigation in the absence of the Settlements.

Aviva, the New CMA is issued by the ultimate, publicly traded parent of the Athene entity responsible for making payment on the Annuities.

- Athene has proffered data on the basis of which Plaintiff's financial expert, Stephen Scherf, has opined that the entity issuing the New CMA is financially stronger than the entity that had issued the original CMA's at issue in this case.

As this Court explained when it denied Aviva's Motion to Dismiss, the CMA's at issue in this case "added to the annuit[ies'] value." *Griffiths v. Aviva London Assignment Corp.,* 187 F.Supp. 3d 342, 348 (D. Mass. 2016). The CMA's did so by increasing the security of the annuities – reducing the beneficiaries' exposure to the risk that payments might not ultimately be made as called for by the annuities.

The protections afforded by the New CMA approach a complete replacement of the security provided by the original CMA's, if they do not in fact provide even more protection than the original guaranty.

On the basis of these features, and by reference to the way the market for corporate credit prices exposure to risks of nonpayment, Plaintiff's expert has opined that the New CMA has a value to the class of between $27 million and $41 million. See Declaration of Stephen Scherf attached as Exhibit 4 to Plaintiff's Motion for Preliminary Approval (Dkt 126-4), at ¶11.

In addition to the New CMA, the terms of the settlements create a pool of cash to be distributed to class members, as well as to compensate the class's lawyers. Assuming the Court grants the attorney's fees and expenses as requested, that pool will be $3 million. That sum will be sufficient to:

- Fully reimburse every class member for any amount paid as a fee in connection with purchase of coverage by the original CMA with the total of such payments equaling $500,050; and

- Distribute an additional $2,500,000 to the class members pro rata on the basis of the amount of the annuity premium paid by or on behalf of each class member when the class member's Annuity was purchased.

See Auerbach Decl. ¶22.

In exchange for the above consideration, the settlements provide that members of the Class release Defendants from claims arising out of the subject matter of this case.

IV. Notice

Notice has been provided by direct mail to each of the 5073 class members, through the Settlement Administration firm of Strategic Claims Services. Bravata Decl., ¶¶5-7. Of these, only 71, or 1.4% of the class, have ultimately been returned as undeliverable. In addition, Strategic Claims has created a website which makes available those documents identified for this purpose by the Court's order granting Preliminary Approval to the settlements. As of the date of the submission of this Memorandum, that website has been viewed by 334 individuals. Bravata Decl., ¶6.

ARGUMENT

The Court preliminarily certified the Settlement Class under Rule 23(b)(3), and Plaintiffs now move for final certification and approval.

I. The Court Should Finalize Certification of the Settlement Class

Rule 23(a) requires that a class meet the following four requirements: (*i*) numerosity, meaning "the class is so numerous that joinder of all members would be impracticable,"; (*ii*) commonality, meaning "there are questions of law or fact common to the class"; (*iii*) typicality, meaning "the claims or defenses of the representative parties are typical of the claims or defenses of the class"; and (*iv*) adequacy, meaning "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(1)–(4). "Class certification is proper only

'if the trial court is satisfied, after a rigorous analysis, that the prerequisites' of Rule 23 are met." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 309 (3d Cir. 2008) (internal citations omitted).

A. The Class Is Sufficiently Numerous

The class consists of 5073 individuals, who are the beneficiaries of 4551 Annuity policies. There can be no serious dispute that numerosity, which is clearly present when a case proceeds on behalf of more than 40 people, is satisfied. *Garcia-Rubiera v. Calderon,* 570 F.3d 443, 460 (1st Cir. 2009).

B. The Class Seeks Resolution of Common Questions

Rule 23(a)(2) requires that "questions of law or fact" be "common to the class." Fed. R. Civ. P. 23(a)(2). It has long been recognized that this prerequisite "is not a difficult one to meet." *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 69 (D. Mass. 2005). *See also Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D. 21, 25 (D. Mass. 2003) ("[T]he commonality requirement ordinarily is easily met"). It "does not require that class members' claims be identical," and "[a] *single* common legal or factual issue can suffice." *Payne*, 216 F.R.D. at 25 (emphasis in original). *See also In re Credit Suisse- AOL Secs. Litig.*, 2008 WL 4368935, at *4 (D. Mass. Sep. 26, 2008) ("A single common legal or factual issue can suffice to satisfy the Rule 23(a)(2) requirement").

When claims arise out of a companywide policy or practice, the commonality prerequisite is usually satisfied. *See, e.g., Overka v. American Airlines, Inc.*, 2010 WL 517407, *2 (D.Mass. Feb. 4, 2010) (the "commonality requirement is usually satisfied" where the "implementation of the common scheme is alleged"); *McLaughlin v. Liberty Mut. Ins. Co.*, 224 F.R.D. 304, 309-310 (D. Mass. 2004) (commonality satisfied where plaintiffs "were all employed by the defendant" and their claims arose "out of the same policies and wrongful conduct of the [d]efendant, and [were] based on the same legal theories"); *Wren v. RGIS Inventory Specialists,* 256 F.R.D. 180, 204 (N.D.

Cal. 2009) ("[W]here the employer has a uniform policy that is uniformly applied, the appropriateness of class certification is 'easily established.'") (citation omitted); *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) ("[C]ommonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members").

As emphasized recently by the Supreme Court, commonality requires the identification of an issue that by its nature "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, inc. Dukes*, 564 U.S. 338, 350 (2011). Answers to the following questions, among others, are central to this case and are common to every member of the proposed class:

- Whether the CMAs constituted binding commitments,
- Whether the Annuities' beneficiaries have standing to enforce the terms of the CMAs
- Whether, in the absence of a default in payment, class members have sustained cognizable injury.

The presence in this case of these questions, and their centrality, clearly satisfies the Commonality requirement. Because these questions are present for both the Class representative as they are for all class members, the Typicality requirement is satisfied as well.

For purposes of the claims in this case, the plaintiffs are typical of the putative class. Indeed, in this case, any class member picked at random would be typical, because the challenged practice affected every class member. *See, e.g., McLaughlin*, 224 F.R.D. at 309-310 (typicality satisfied where plaintiffs "were all employed by the defendant" and their claims arose "out of the same policies and wrongful conduct of the [d]efendant, and [were] based on the same legal theories"); *Key v. Gillette Co.*, 90 F.R.D. 606, 609 (D. Mass. 1981) ("'When the named representative's own claim transcends the individual and implicates a discrete [] practice, the . . .

typicality requirements of Fed. R. Civ. P. 23(a) may be satisfied and class treatment may be appropriate.'"), *quoting DeGrace v. Rumsfeld*, 614 F.2d 796, 811 (1st Cir. 1980).

C. The Adequacy Requirement is Satisfied

To satisfy the adequacy requirement, Plaintiffs must show that "the interests of the representative . . . will not conflict with the interests of the class members" and that Class Counsel "is qualified, experienced and able to vigorously conduct the proposed litigation." *In re Sonus Networks, Inc. Sec. Litig.*, 247 F.R.D. 244, 249 (D. Mass. 2007) (quoting *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985)). The Class Representative has no claims that are in conflict with the Class Members. He supports this Settlement and requests that it be finally approved. Auerbach Decl. at ¶11.

With respect to adequacy of representation, Plaintiff's counsel are well-qualified and experienced in class action litigation generally; in class litigation on behalf of the victims of improper conduct by insurance companies. Plaintiff's proposed lead counsel, Marcus & Auerbach LLC, have represented plaintiffs and been appointed as lead counsel for plaintiff classes for over 25 years, and have specific experience in class litigation on behalf of the purchasers of annuities. They served as co-lead counsel in MDL 1712, against the predecessor-in-interest of defendant Aviva plc, which resulted in a settlement which, when approved by the court, was valued at over $500 million. See *In re American Investors Life Ins. Co. Annuity Marketing & Sales Practices Litig.,* 263 F.R.D. 226 (E.D. Pa. 2009), Auerbach Decl. at ¶¶13,14.

D. The Settlement Class Satisfies the Predominance and Superiority Requirements of Rule 23(b)(3)

In addition to satisfying the requirements of Rule 23(a), the Class must also be appropriate under Rule 23(b)(3) for settlement purposes, which provides that common questions of law or fact must "predominate" over questions affecting only individual members of the class; and a class action is a "superior" method for fairly and efficiently resolving the case as compared to other

available methods. Fed. R. Civ. P. 23(b)(3).

Predominance "does not require an entire universe of common issues," only "'a sufficient constellation' of them." *In re Relafen Antitrust Litig.*, 231 F.R.D. at 70, *quoting Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 298 (1st Cir. 2000). Predominance will be found when the class is "sufficiently cohesive to warrant" certification. *Id., quoting Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "A 'single, central issue' as to the defendant's conduct vis-a-vis class members can satisfy the predominance requirement even when other elements of the claim require individualized proof." *Payne*, 216 F.R.D. at 26 (internal citation omitted); *see also Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003) (when there are "issues identical across all the claimants, [or] issues . . . which [are] unlikely to be enhanced by repeated proceedings, then it makes good sense, especially when the class is large, to resolve those issues in one fell swoop").

Defendants took no action at issue in this case that relates to any individual plaintiff: all of defendants' conduct was class wide. The same written commitment was made to the named Plaintiff and to every member of the class, and the legal force of that commitment is, clearly, the central issue in this case. That question is the same for everyone. Any arguments Defendants might make about why the commitment should not apply would also be same for every member of the proposed class.

As the First Circuit recognized in *Smilow v. Southwestern Bell Mobile Sys.,* 323 F.3d 32, 39 (1st Cir. 2003)(internal quotation marks omitted):

> The plaintiffs' claims are based entirely on a standard form contract which the defendant used with every member of the class. The common factual basis is found in the terms of the contract, which are identical for all class members. The common question of law is whether those terms precluded defendant [from engaging in the conduct at issue].

Indeed, *Smilow* is noteworthy because in that case the First Circuit took the significant step of

reversing, as an abuse of discretion, a district court's decision to reject class certification – a decision the trial court had made because it found that common questions did not predominate even though the case was focused on the meaning of a standard form contract applicable to all class members.

Similarly, the *Smilow* court also recognized that in a dispute based on standard form contracts that are the same for all class members, defenses will also present common questions. *Ibid.* There the Court found that waiver defenses were common because they were based on documents drafted by the defendant and disseminated to all class members. Here as well, to the extent that Defendants have arguments to make about their right to terminate the CMA, they will be based on documents that apply with the same force to all members of the class, and they are therefore arguments that are entirely common across the proposed class.

II. The Parties' Settlement Agreement Is Fair, Reasonable, and Adequate

A class action may only be settled with the approval of the Court. Fed. R. Civ. P. 23(e). The Court must examine the settlement to determine whether it is fair, reasonable, and adequate. *Voss v. Rolland,* 592 F.3d 242, 251 (1st Cir. 2010); *National Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009); *City P'ship Co. v. Atl. Acquisition Ltd.*, 100 F.3d 1041, 1043 (1st Cir. 1996).

The factors the Court should consider in determining whether a class action settlement is "fair, reasonable and adequate," are not set out in a specific laundry list of requirements, but rather, is a decision that "involves balancing the advantage and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement." *Drug Stores,* 582 F.3d at 44. "The district court enjoys *considerable* range in approving or disapproving a class settlement, given the generality of the standard and the need to balance [a settlement's] benefits and costs." *Drug Stores,* 582 F.3d at 45 (emphasis added).

It is important that the Court "not substitute [its] own judgment as to optimal settlement terms for the judgment of the litigants and their counsel." *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 315 (7th Cir. 1980) *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) ("The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators."). Nor should the Court base its fairness determination on whether the class members will receive as much from the settlement as they could have recovered had they been successful at trial. *In re Prudential Ins. Co. of Am. Sales Practices Litig*., 962 F.Supp. 450, 534 (D.N.J. 1997). Rather, "the essence of settlement is a compromise," and no settlement—no matter how fair or reasonable—can represent a total win for either side. *Armstrong*, 616 F.2d at 316.

The Court, however, must protect the interests of absent class members by "independently and objectively analyz[ing] the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished." *Newberg on Class Actions* § 11:41 (Alba Conte & Herbert Newberg, eds., 4th ed., 2002). Since such an analysis concerns matters discussed and negotiated in confidence, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties . . . must be limited to the extent necessary to reach a reasoned judgment . . . that the settlement, taken as a whole, is fair, reasonable and adequate to those concerned." *Officers for Justice*, 688 F.2d at 625.

A. The Settlement Is Entitled to a Presumption of Fairness

When the parties negotiate the settlement at arm's length and have conducted significant discovery to allow proper evaluation of the claims, the Court should presume that the settlement is fair. *City P'ship Co.*, 100 F.3d at 1043; *Drug Stores,* 582 F.3d at 44; *Rolland v. Cellucci*, 191

F.R.D. 3, 6 (D. Mass. 2000); *see also In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 93 (D. Mass. 2005). This presumption derives from the "overriding public interest in favor of settlement," particularly in complex class actions, where settlement "minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *Armstrong,* 616 F.2d at 313. Moreover, when adverse parties are fully informed, i.e., have conducted sufficient discovery, and have aggressively evaluated the merits of the case, arm's-length negotiations lead to a proper evaluation and resolution of the controversy. Discovery is sufficient where it "enable[s] counsel to act intelligently" during the negotiations leading to the proposed agreement. *Rolland*, 191 F.R.D. at 6. In other words, the discovery must provide counsel "an informed view of the strengths and weakness[es] of the plaintiffs' case." *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 244 (S.D.W. Va. 2005).

In light of the lengthy and rigorous discovery conducted in this case, and the vigorous negotiations that led to the Settlement, the presumption of reasonableness applies here. The parties exchanged extensive discovery. There is no reason for the Court to be concerned that the Settlement was the product of collusion or a "reverse auction." On the contrary, the Settlements were achieved only after lengthy negotiation; and the Aviva settlement was reached only with the repeated intervention, participation and encouragement of Magistrate Judge Dein. The proposed Class Agreement was the result of "serious, informed, non-collusive negotiations" that lasted well over a year. *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (citing *Manual for Complex Litigation, Third*, § 30.41 (West 1995)). The negotiations involved the exchange of multiple proposals and counter- proposals and the evaluation of data, documentation, and factual and legal arguments. Plaintiff's counsel consulted extensively with experts as part of the negotiations.

In the Athene negotiations the Parties conducted two lengthy in-person meetings, one in

Philadelphia and one in Chicago, and more than a score of negotiations by telephone. The negotiations were intensive and adversarial in nature and took close to a year to complete.

The negotiations with Aviva were at least as contentious. Settlement was first broached while depositions were still being conducted, but negotiations did not begin until fact discovery had closed. Early efforts at negotiation broke down, only to resume months later, when class certification briefing was in progress. Auerbach Decl. ¶10.

Ultimately the parties were not able to reach agreement on their own, requiring the intervention of Magistrate Judge Judith Dein. Magistrate Judge Dein held two all-day negotiation sessions, both of which were attended by Plaintiff's counsel, Aviva's counsel, and by Neil Harrison, the Aviva officer responsible for the sale of Aviva's U.S. annuity operations to Athene. Harrison appeared in person for both sessions, flying from London to Boston on each occasion. See Auerbach Decl. ¶10.

In light of the extensive discovery and hard-fought negotiations that led to the Settlement, the Settlement is entitled to a presumption of fairness. *City P'ship*, 100 F.3d at 1043 ("When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement.").

B. Class Members Will Receive Reasonable, Fair, and Adequate Refunds

The Settlements come very close to providing each Class Member with a full recovery. First and most importantly, the settlements essentially restore the CMA that had been terminated – except that now, the entity providing the guaranty is not a manipulable subsidiary of the corporate parent, but the ultimate, publicly traded parent itself. In addition, the entity committed by the New CMA has a net worth of over $7 billion – while CGU, the entity that had been behind the CMA's initially in place, now has a net worth of less than half that amount. See Athene Settlement Agreement, Exhibit A to Plaintiff's Motion for Preliminary Approval, at ¶5.7(a). The entity

behind the new CMA is therefore stronger than the one that had supported the initial commitment, whose termination led to the filing of this case.

Moreover, the New CMA comes with additional protections not found in the original. The Athene defendants have acknowledged that any failure to comply with the New CMA would cause irreparable harm to each class member – thereby eliminating the risk that in a legal challenge to any breach, the defendants would be able to argue that class members had no right to sue. Further, the New CMA places limits on the identity of any entity to which Athene can sell the corporation responsible for paying the Annuities here at issue. The old CMA's lacked any such restriction.

In addition to replacing the guaranty whose cancellation led to the filing of this case, the settlements create a pool of funds that are to be distributed to class members. That pool, as proposed herein, will be sufficient to fully reimburse each class member for the full amount of any fee paid by the class member in connection with purchase of coverage by the old CMA. This means that class members will have ***both*** coverage under the New CMA ***and*** repayment of any fee they had initially paid to purchase such coverage. Finally, if funds are allocated as proposed herein, the pool of funds to be distributed to class members will be sufficient to allow for an additional payment to each class member, *pro rata*, according to the amount of premium paid for each class member's annuity. This payment will address any increment in the charge for the annuity attributable to Aviva's claim that the annuity was more secure because of the presence of the old CMA.

Creating a settlement "structure for ensuring that reimbursement is tied to the extent of damages incurred" is reasonable and consistent with the federal rules. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 272 (3d Cir. 2009).

C. The Settlement Amount Is Based on Expert Estimation of Damages

Stephen Scherf, Plaintiff's damages expert, has opined that the New CMA alone provides

relief valued at between $27 and $41 million. He bases these figures on his assessment of how U.S. financial markets would price corporate risk backed by the New CMA, and the original CMAs.[3]

D. The Settlement Also Satisfies the *Grinnell* Factors

Although the First Circuit does not apply a specific list of factors to consider in deciding whether a class settlement is reasonable, fair, and adequate, courts within this district have applied the factors listed in *Detroit v. Grinnell Corp.,* 495 F.2d 448 (2d Cir.1974), *overruled on other grounds by Missouri v. Jenkins,* 491 U.S. 274 (1989). *E.g.*, *In re Relafen*, 231 F.R.D. at 72-74; *In re Lupron*, 228 F.R.D. at 95; *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F. Supp. 2d 277, 281 (D. Mass. 2009) *aff'd sub nom. Drug Stores*, 582 F.3d 30. These factors are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463 (citations omitted). These factors weigh in favor of finding this Settlement reasonable, fair, and adequate.

1. Factor (1): The Complexity, Expense and Likely Duration of the Litigation

This case has the potential to impose enormous costs on the parties. Should this Settlement not be approved, Plaintiffs will shortly proceed to trial. Parties will need to complete litigation of the motion for class certification and the motion for leave to amend to add the Consumer Fraud

[3] Scherf's Declaration in support of Plaintiff's Motion for Class Certification (Exhibit 2 thereto, Dkt. 85-2) compares the New CMA with the credit profile of Aviva when the Annuities were being sold. See *id.* at 9-12. At that time the old CMA increased the credit-rating of the relevant Aviva entities from A to A+. *Ibid*.

claim; litigate summary judgment motions; take discovery regarding any expert submissions by Defendants on damages; and address *Daubert* challenges, and motions in *limine*. And only then, would the matter proceed to a substantial and expert-intensive trial. "[W]hile the ultimate result of trial cannot be foreseen, an expensive, complex and time-consuming process is assured." *In re Relafen*, 231 F.R.D. at 72 (citation omitted). No matter which side prevailed, the losing party would surely appeal, once again prolonging the expense and complexity of the case. Thus, the complexity, expense, and likely duration of the litigation weigh in favor of final approval.

2. Factor (2): The Reaction of the Class to the Settlement

Class Members have until September 12, 2018, to opt out of the Settlement and/or issue objections. Preliminary Approval Order at ¶7 (requiring opt-outs and objections to be filed no later than 75 days after issuance of the Preliminary Approval Order, which was dated June 29, 2018 (Dkt. 133).) As of the date this Memorandum is submitted, no Class Members have opted out of the class, and there have been no objections. Thus, "[t]he overall reaction to the settlement has been positive." *In re Relafen*, 231 F.R.D. at 72 (finding the reaction to settlement to be positive where there ten objections were filed). This factor weighs in favor of final approval.

3. Factor (3): Stage of the Proceedings and the Amount of Discovery Completed

As described above, this matter has been pending for four years and has involved numerous two motions to dismiss, class certification briefing, multiple expert declarations on liability and damages and ten depositions. Fact discovery is closed, and class counsel has evaluated more than 150,000 pages of documents produced by Defendants. This factor weighs in favor of final approval.

4. Factors (4, 5, and 6): Risks of Establishing Liability, Damages, and Attaining and Maintaining Class Certification

Although Plaintiffs are confident they would succeed at trial, Defendants have raised serious issues regarding liability, class certification, and damages. With respect to the last of these

three, were the settlements not to be approved, Plaintiff would have to establish the presence and measurability of damages even though (a) no payments have been missed on any of the Annuities at issue; and (b) there would be substantial challenges regarding the kind of market data that could be used to prove both class-wide impact and the propriety of class-wide measures of damages. Although Plaintiff does not believe that the arguments Defendants might make on these issues have merit, they would nonetheless require considerable litigation to resolve, and that alone poses a significant risk.

All of the above means that liability might be difficult to establish, there is a substantial risk that a litigation class might not be certified, and there are significant risks to Plaintiff's case on damages. The Settlement eliminates exposure to the class from all of these risks. These factors, thus, weigh in favor of final approval.

5. Factor (7): Ability of the Defendant to Withstand a Greater Judgment

This "defendant-oriented" consideration, *see In re Lupron,* 228 F.R.D. at 97, is at worst neutral. Both the Aviva and Athene Defendants are solvent entities and there does not seem to be a basis for concern on this score, although, as noted above, the Aviva entity that issued the original CMA now has a substantially lower net worth than the Athene entity which has taken on the obligations of the New CMA as part of these settlements.

6. Factors (8 and 9): Comparison of the Settlement Fund to Best Possible Recovery and Risks of Litigation

"A fine-tuned equation by which to determine the reasonableness of the size of a settlement fund does not exist." *Relafen Antitrust Litig.*, 231 F.R.D. at 73. "[I]n any case there is a *range* of reasonableness with respect to a settlement." *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir. 1972) (emphasis added). This is because a "high degree of precision cannot be expected in valuing a litigation, especially regarding the estimation of the probability of particular outcomes." *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 285 (7th Cir. 2002). Thus, in determining whether the

settlement amount is reasonable, "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement." *In re Lupron*, 228 F.R.D. at 97 (quoting *In re GMC Pick-Up Truck Fuel Tank Prods Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995)).

As described above, the various forms of relief provided by the settlements are based on expert opinion, legal considerations, and common sense. And, while it is possible that taking this matter to trial could conceivably result in a better result for the Class Members, "[t]he evaluating court must ... guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re Gen. Motors,* 55 F.3d at 806. These factors, like all the others, also weigh in favor of final approval.

E. The Settlement Is Reasonable, Fair, and Adequate

In sum, the Settlement reached between the Plaintiffs and Defendants after four years of vigorous litigation and many months of arm's-length negotiations is reasonable, fair, and adequate. The Settlements come close to providing make-whole relief for the class, while eliminating any risk of loss at trial or on appeal. This settlement may not be perfect—no settlement ever is. But, this Settlement guarantees the Class Members a significant amount of remuneration in the context of an ongoing litigation that has several potential pitfalls.

III. The Court Should Award Attorney's Fees, and Allow Class Counsel to be Reimbursed for the Expenses They Incurred in Prosecuting this Case.

The firm of Marcus & Auerbach LLC is composed of two lawyers – Jonathan Auerbach and Jerome M. Marcus, who have worked together on complex litigation since 1993. They have successfully represented plaintiffs in class actions in state and federal courts throughout the United States, with a substantial fraction of their practice devoted to cases regarding different forms insurance – including health insurance, life insurance and annuities, and pension matters.

A. Class Counsel Created Value for the Class Of At Least $34.5 Million

As set forth in the Settlement Agreement, the two settlements reached in this case confer value on the class in two ways. First, and most importantly, this case was brought because a guaranty had been cancelled, and the settlement with Athene restores that guaranty. Now issued by a stronger company than the original commitment, and by the ultimate parent of the entity guaranteed rather than merely a co-subsidiary, the New CMA also comes with several commitments to beneficiaries, and restrictions on the freedom of action of the guaranteeing entity, that had not been in terms of original, now-cancelled, CMA. Unlike the terms of the original CMA, the new CMA eliminates the risk that gave rise to the claims presented in this case: in the event that Athene in the future makes the same decision Aviva had made, i.e., to sell the company that benefits from the guaranty, the New CMA provides that *it will remain in place until all of the guaranteed annuities are paid out unless an identical set of obligations is undertaken by a new obligor with an investment grade rating*. And, to eliminate the possibility that any challenge to action by the guaranty would be dismissed for lack of standing, or that injunctive relief might be foreclosed, the New CMA comes with Athene's stipulation that any breach would cause beneficiaries *irreparable harm*.

Plaintiff's expert Stephen Scherf has opined that this relief provides value to the class of between $27 and $41 million. *See* Declaration of Plaintiff's Counsel Jonathan Auerbach in Support of Motion for Preliminary Approval of Class Action Settlement ¶¶6, 7 (and Exhibit 3, attached thereto). Scherf bases that opinion on his assessment of the way credit markets would value the various commitments at issue in this case. Scherf's valuation is consistent with this Court's recognition, in its opinion denying CGU's Motion to Dismiss, that the guaranty at issue in the case "doubtlessly added to the annuit[ies'] value." 187 F. Supp.3d at 348. Because that is so, the reinstatement of the guaranty also "add[s] * * * value" to the instruments themselves and

so conveys value to the annuities' holders and beneficiaries.

In addition, Plaintiff's expert Linda Kaiser Conley, former Insurance Commissioner of the Commonwealth of Pennsylvania, explains that the New CMA confers significant value upon the Class by providing an additional measure of assurance that the entire amount of each Class Member's annuity payments will be made, rather than the often smaller amount guaranteed by state insurance guaranty funds. See Declaration of Linda Kaiser Conley (attached hereto as Exhibit 4) ¶¶15-17.

The settlements before this Court achieve more than restore the protections offered by the original cancelled guaranty. In addition to providing additional protections from termination and ease of monitoring and enforcement as outlined above, they also provide a cash fund of $7.3 million which can be used to pay attorneys' fees and costs; and for distribution to class members.

As noted above, most members of the class paid a fee in exchange for coverage by the original CMA. That fee was $250 per policy from the beginning of the class period up through June 2, 2003, and $100 per policy thereafter. Auerbach Decl. ¶22a. Plaintiff proposes that each class member receive the amount of the fee applicable at the time that class member's annuity was purchased. Applying these fees to all policies purchased during the relevant time periods, yields a total amount paid for coverage of the original CMA of $505,050.[4] If the Court adopts the plan of allocation proposed above for distribution of funds to class members, and grants the amounts sought herein for attorneys' fees and expenses, the entire amount of fees for the original CMA paid by all class members will be refunded. Auerbach Decl. ¶22.

Finally, if the Court adopts the proposals set forth here for distribution to the class and for attorneys' fees and expenses, an additional $2,500,000.00 will be available for distribution to

[4] In a handful of instances, the fee was waived. No data are readily available to identify those instances with precision. Plaintiff proposes that the possibility of such waiver therefore be ignored.

class members, *pro rata*, on the basis of the size of the premium paid per policy. This distribution will allow additional relief to be provided to class members corresponding to the increase in the value of the annuities at the time of sale attributable to the original CMAs.

The settlements also require each of the two sets of Defendants to bear up to $100,000 in the cost of notice and settlement administration, and to pay half of the $25,000 Service Award requested for the Class Representative.

There are no contingencies to any of these values. There is no reversion of the cash to be paid, and no class member need even submit a claim form to receive the cash. Every class member who does not opt out will simply get a check in the mail. The guaranty provided by the New CMA also comes into force automatically, by operation of the settlement with Athene, without the requirement for any action by any class member. If the Court approves that settlement there is no set of facts under which the New CMA would not apply and no set of facts under which it would not convey value to the class within the range defined by Plaintiff's expert. In total, using the lower bound of Scherf's estimate of the value of the New CMA, these provisions convey hard value to the class of at least $34,500,000.

Accordingly, Plaintiff requests the award of $4,155,123.27 in attorneys' fees to Class Counsel.

B. Class Counsels' Requested Fee is Reasonable Whether The Percentage of Recovery Or Lodestar Method Is used

As this Court has held, the percentage of recovery method normally suggests that fees awarded be between 20% and 30% of the actual value of the amounts recovered. *In re Celexa and Lexapro Mktg & Sales Practices Litig.,* 2014 U.S. Dist. LEXIS 125041 (D. Mass. Sept. 8 2014). Because there is no question here of reversion to the Defendants of any of the recovery obtained, use of this method suggests that the amount requested by Plaintiff's counsel – which is just under 12% of the value of the recovery – is eminently reasonable.

The nature of the claim presented here – that a guaranty was breached – has been addressed by the most important element of the recovery attained – reinstatement of the guaranty. This suggests that the percentage of recovery method is appropriately used, even though the settlement is not purely in cash, because the value of the relief can be ascertained with reasonable precision; is not speculative; because there is no reversion to Defendants of any element of the relief; and because no steps need be taken by any class member in order to receive the benefits of the settlements. Even the cash payments will simply be made, without even the need for any class member to submit a claim form.

Thus, for example in *In re Certainteed Fiber Cement Siding Litig.,* 303 F.R.D. 199 (E.D. Pa. 2014), a class action was brought to remedy the defendants' breach of a product warranty. The settlement provided for new and broader warranty provisions, and created a procedure for the submission of claims under these new warranty terms. In evaluating the request for attorney's fees, the court used the percentage of recovery method, referencing its understanding of the value of the relief that would be provided to class members under the settlement.

Similarly, in class actions focused specifically on annuities, and challenging various marketing practices utilized in the sale of such instruments, the courts have looked to the value of structural relief obtained in settlement to provide the metric for award of attorney's fees. Thus, in *In re Am. Investors Life Ins. Co. Annuity Mktg & Sales Practices Litig.,* 263 F.R.D. 226 (E.D. Pa 2009), the court also assessed the request for attorney's fees under the percentage of recovery method, using the opinion of Plaintiffs' expert on the value of the settlement in that case, which provided both cash and injunctive relief that improved the terms of the annuities at issue in that case.[5] See also *Varacallo v. Mass. Mut. Life Ins. Co.,* 226 F.R.D. 207 (D.N.J. 2005) (awarding fees

[5] More generally, the courts in this Circuit are clear that the percentage of recovery method is appropriately used when the recovery is determinable with precision. *See In re Thirteen Appeals,* 56 F.3d 295, 306-07; *In re Copley Pharm., Inc. Sec. Litig.,* C.A. No. 94–11897–WGY (D. Mass.

using the percentage of recovery method in class action providing various forms of conduct and cash relief for claims arising out of challenge to practices in sale of annuities, after determining the value of the settlement including all forms of relief attained).

The attorney's fee sought here is also appropriate under the lodestar method. The cases hold that that approach to award of attorney's fees in class actions is appropriate as a cross-check when the percentage of recover method is used, and as the primary basis for calculation when the percentage of recovery method cannot be applied. Under this method, the court determines the fee award by "ascertain[ing] the number of hours productively expended and multiply[ing] that time by reasonable hourly rates." *Spooner v. EEN, Inc.,* 644 F.3d 62, 68 (1st Cir. 2011). Then, the court applies a multiplier to the lodestar to account for a variety of contingency factors, including the risk, the result achieved, the quality of representation and the complexity and magnitude of the litigation. *See, e.g., In re TJX Companies Retail Sec Breach Litigation*, 584 F. Supp. 2d 395, 408 (D. Mass. 2008) (applying lodestar multiplier of 1.97); *In re Tyco Int'l, Ltd. Multidistrict Litig*., 535 F. Supp. 2d 249, 271 (D.N.H. 2007) (applying lodestar multiplier of 2.697)); *In re Relafen*, 231 F.R.D. at 82 ("A multiplier of 2.02 is appropriate."). As a result, the lodestar "cross-check" also supports Class Counsel's reasonable attorney fee request.

Here, the lodestar incurred totals $2,091,973.50. Auerbach Decl., ¶24; Klehm Decl., ¶5. This amount is calculated using actual hourly rates paid by other clients of Plaintiff's counsel and by opposing parties who have agreed to pay attorney's fees, and which have been awarded to

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1996) (33.33% of fund); *Wechsler v. Comfed Bancorp, Inc.,* C.A. No. 89–2224–MLW (D. Mass. 1996) (27% of fund); *In re Evergreen Ultra Short Opportunities Securities Fund Litigation,* 2012 WL 6184269, at *1 (D. Mass. Dec. 10, 2012) (24% of fund); *New Eng. Carpenters Health Benefits Fund v. 1st Databank, Inc.,* No. 05–CV– 11148–PBS, 2009 WL 2408560, at *1–2 (D. Mass. Aug. 3, 2009) (20% of fund); *In re Am. Dental Partners, Inc. Sec. Litig.,* No. 08–CV–10119–RGS, 2010 WL 1427404, at *1 (D. Mass. Apr. 9, 2010) (22.5% of fund); *In re Fleet/Norstar Sec. Litig.,* 935 F.Supp. 99, 110 (D.R.I. 1996) (20% of fund); *In re Puerto Rican Cabotage Antitrust Litig.,* 815 F Supp. 2d 448 (D.P.R. 2011) (23% of fund).

Plaintiff's Lead Counsel by other courts in other class actions. See Auerbach Decl. at ¶24; Klehm Decl., ¶5.

From this lodestar Plaintiff's counsel seek a multiplier of 1.98.

Based on these cases, the 12% fee requested by Class Counsel is entirely reasonable. In this case, Class Counsel took and defended multiple depositions, reviewed many tens of thousands of documents, and has spent over four years aggressively litigating this case to a successful conclusion.

C. Class Counsels' Requested Fee Is Reasonable under the *Johnson* Factors

The First Circuit has adopted the factors as set forth in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir. 1974), "for use in sculpting fee awards." *Coutin v. Young & Rubicam P.R.,* 124 F.3d 331, 337 n. 3 (1st Cir. 1997) (citing *Johnson,* 488 F.2d at 717-19 and *Segal v. Gilbert Color Sys., Inc.,* 746 F.2d 78, 86 (1st Cir. 1984).) The *Johnson* factors are: time and labor required; novelty and difficulty of questions; skill requisite to perform legal services properly; preclusion of other employment by attorney due to acceptance of case; customary fee; whether it is fixed or contingent; time limitations imposed by client or circumstances; amount involved and results obtained; experience, reputation, and ability of attorney; undesirability of case; nature and length of professional relationship with client; and size of awards in similar cases. Not all of the individual *Johnson* factors, however, will apply in every case, and the Court has wide discretion as to which factors to apply and the relative weight to assign to each. *In re Xcel Energy, Inc.,* 364 F.Supp.2d 980, 993 (D.Minn.2005). Class Counsel posits that each of the relevant *Johnson* factors supports the reasonableness of the fee award request.

1. Time and Labor Required

As illustrated above, Class Counsel and their staffs expended 3,358.2 hours in the prosecution and settlement of this case. Auerbach Decl., ¶24; Klehm Decl., ¶5. Clearly, this was a significant

effort which resulted in exceptional results for the Class Members.

2. Novelty and Difficulty of Questions Presented

Prosecution of this case required Class Counsel with experience and understanding of complex litigation, the economics and financial aspects of the annuities at issue, as well as the legal issues presented by conduct which affects the creditworthiness of financial devices but that has not, at least as of now, caused a default on any payments. Despite the novel approach and the complexities of the case, Class Counsel succeeded in negotiating a settlement that greatly benefits that class. As a result, this *Johnson* factor supports Class Counsel's fee request.

3. Skill Requisite to Perform Legal Services Properly and Experience, Reputation, and Ability of Attorney

In evaluating the skill and efficiency of the attorneys involved, courts look to "the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Alexander v. Washington Mutual, Inc*., No. 07-4426, 2012 WL 6021103, at *3 (E.D. Pa. Dec. 4, 2012). The result obtained is in large measure a reflection of the skill and tenacity with which Class Counsel prosecuted this litigation.

Here, Class Counsel achieved significant benefits for Class Members. Class Counsel faced significant factual, legal, and financial obstacles in pursuing this litigation, but were still able to produce a substantial result for the Class Members. The quality of Class Counsel, who have established reputations as class action attorneys, cannot seriously be questioned. The skill and efficiency with which they have exercised in this case is beyond reproach. Similarly, the Krasnoo, Klehm & Falkner LLP, firm has served efficiently as local counsel, performing all of the duties required by that role including facilitating mediation and counseling Lead Counsel during the mediation process.

Accordingly, this *Johnson* factor strongly favors the award of the requested fee.

4. Preclusion of Other Employment by Attorney Due to Acceptance of Case

Class Counsel and their staffs have expended over 3,300 hours in the prosecution of this case, which has led to the settlement at issue. Obviously, these hours could and would have been spent pursuing and prosecuting other cases but for the acceptance of this case. While not a factor that weighs heavily in favor of Class Counsel's fee request, it is a factor that does support the request.

5. Customary Fee and Whether the Fee Is Fixed or Contingent

As the courts have frequently observed, the contingent fee that plaintiffs in a free market typically agree to pay for legal representation is one third of the gross recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984); *In re A.H. Robins Co., Inc.*, 86 F.3d 364, 377 (4th Cir. 1996); *Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("[w]e know that in personal- injury suits the usual range for contingent fees is between 33 and 50 percent"). In this case, the fee was completely contingent on the outcome and was not fixed. There is no general rule as to what percentage of the common fund should be awarded as attorney fees; however, as noted and cited above, the First Circuit and courts in this circuit have customarily awarded fees which range from 20% to 30% of the settlement fund. Thus, Class Counsel's requested fee is below the acceptable minimum. Thus, this factor supports the request.

6. Amount Involved and Results Obtained

The amount involved is discussed at length above, in the section of this Memorandum discussing the merits of Final Approval, as well as the results obtained through the settlement. Class Members are significantly and directly benefitted by this settlement in that they will receive the guarantee whose breach was the impetus for the filing of this case as well as cash compensation. These benefits should not be trivialized given the substantial defenses, on the

merits and as to damages, that Defendants have raised in this action. Defendants are represented by seasoned and well-respected defense counsel and had this action not been settled, there is every reason to expect that all Defendants would have mounted a very strong effort to prevent Plaintiff and the class from achieving any recovery at all.

The size and nature of the settlement was driven by the nature of the breach challenged and by the magnitude of the fees each class member paid in exchange for coverage under the original CMAs, and by consideration of both the strengths and weaknesses of the Plaintiffs' claims, the difficulties and risk associated with the class certification process and the appeals thereof, and the calculation of damages. Additionally, no Defendant conceded either liability, or the propriety of class treatment, or the existence or amount of the damages claimed by Plaintiff and the class. Thus, after full consideration of the factors, and after substantial discovery and litigation, Class Counsel entered into a fair and substantial non-reversionary settlement that provides relief to each class member that is at least close to make-whole relief, provided to thousands of class members none of whom could rationally have prosecuted this case on his or her own given the cost of doing so when measured against the gain to be achieved by any one class member. This *Johnson* factor is easily satisfied.

7. Undesirability of Case

The difficulties posed by this case demanded exceptional work if Class Counsel hoped to achieve relief for the Class. The complexity of issues and duration of the case were significant. Class Counsel conducted extensive discovery, reviewed thousands of pages of documents, traveled throughout the United States and to England to conduct multiple depositions, and retained multiple experts to analyze the liability and damages issues. Class Counsel risked all of this time, effort, and expense on an outcome that was uncertain. The fact that no other case was filed by lawyers pursuing the same claims against Defendants is a testament to the undesirability of the

litigation and the commitment of Class Counsel. Clearly, this factor favors the requested fee award.

8. Size of Awards in Similar Cases

Plaintiff submits that the most appropriate cases to be compared with this one are those class actions cited above in Section II relating to annuities and challenges to breach of warranty. See *supra* at 29. In the *Certainteed* case, which dealt with breach of a product warranty, a multiplier of 2.6 was found appropriate. 303 F.R.D. at 225. In *In re American Investors Life Ins. Co.,* the Court awarded a multiplier of 2.3, which it found "safely within the [appropriate] range." 263 F.R.D. at 245. *Varacallo*, also cited above, adopted a multiplier of 2.83. 226 F.R.D. at 256.

9. The *Johnson* Factors Weigh in Favor Allowing Fee Request

In sum, with regard to the *Johnson* factors, the time and labor involved to prosecute this case has been substantial and justifies the level of fees requested. Additionally, Class Counsel faced novel issues and difficult legal obstacles both at the motion to dismiss stage and at class certification. Given the substantial risks of non-recovery and the result obtained for the Class, as discussed above, the amount of fees requested here is appropriate, fair, and reasonable. Awards in similar cases confirm as much. The amount involved and the results obtained suggest that Class Counsel exhibited the necessary skill and ability to bring this portion of the pending MDL to a successful resolution.

D. Reimbursement of Expenses

In addition to attorneys' fees, lawyers who recover a common fund for a class are entitled to reimbursement of out-of-pocket expenses incurred during litigation. *In re Fidelity/Micron Secs. Litig., v. Fidelity Magellan Fund,* 167 F.3d at 737. Reasonableness is the goal, and it is within the Court's discretion to reject or scale back any expenses deemed superfluous or unreasonable. *Id.*

Here, Class Counsel's expenses were reasonably and necessarily incurred in prosecuting

the litigation. In addition to expenditures related to travel for attending hearings, depositions, meetings and court fees, a significant component of Class Counsel's expenses is the cost of experts and consultants who contributed to the successful prosecution and resolution of the litigation. A summary listing of the reasonable costs incurred by Class Counsel is set forth in Auerbach Decl., ¶26 and Klehm Decl., ¶6. As of the filing of this Motion, Class Counsel has incurred $144,826.73 (reflecting $144,497.82 in expenses for Marcus & Auerbach and $328.91in expenses for Krasnoo Klehm & Faulkner LLP) and will incur additional expenses through the Final Fairness Hearing. Class Counsel will limit their request for reimbursement of expenses to the amount incurred to date.

This request for reimbursement of reasonable out-of-pocket expenses was set forth in the Notice disseminated to all Class Members, and a cap on the total amount of fees expenses was set forth there. Class Counsel's request does not exceed this amount, and Class Counsel prays that the Court award them reimbursement of these reasonable expenses from the common fund.

F. Service Award

The Settlement Agreements provide that Class Counsel may request a service award of up to $25,000 for the Class Representative, to be paid directly by Defendants, each of whom will bear half of this amount.

In granting service awards to named plaintiffs in class actions, courts consider not only the efforts of the plaintiffs in pursuing the claims, but also the important public policy of fostering enforcement of laws and rewarding representative plaintiffs for being instrumental in obtaining recoveries for persons other than themselves. *See, e.g., Bussie v. Allamerica Fin. Corp.*, CIV.A. 97-40204-NMG, 1999 WL 342042, *3-4 (D. Mass. May 19, 1999 (*citing Dun & Bradstreet Credit Services Customer Litigation,* 130 F.R.D. 366, 373-74 (S.D. Ohio 1990)). Courts in this district have recognized that a service award of $25,000 is appropriate when the

Class Representatives performed an extensive amount of work on behalf of the class. See *Ark. Teachers Retirement Sys. v. State St. Bank & Trust Co.,* 2018 U.S. Dist. LEXIS 111409 (D. Mass. June 28, 2018)(awarding $25,000 to Class Representative who discovered the claim and rendered extensive assistance to class counsel); *In re Lupron (R) Mktg & Sales Practices Litig.,* 228 F.R.D. 75, 49 (D. Mass. 2005) (awarding $25,000 to those named plaintiffs who were deposed).

Here the efforts of the Class Representative were extensive and absolutely essential. As explained in the declaration of his counsel Mr. Auerbach, John Griffiths was the person who discovered the breach that is at issue in this case. While Defendants disclosed to the holders of the Annuities that Aviva had sold its North American business to Athene, they did not disclose that the original CMAs had been terminated. But, as he testified in his deposition, that grant of extra assurance had been very important to Mr. Griffiths, and when he learned of the sale he immediately became concerned about the status of the CMA guaranties that had induced his purchase of the Aviva Annuity. He undertook a substantial series of telephone calls, emails and letters, with various personnel and officers at Aviva and Athene, until he learned what had actually happened. Auerbach Decl., ¶4.

After discovering this, Griffiths researched lawyers, and determined to contact Marcus & Auerbach LLC because of its experience in class litigation relating to annuities and specifically because of the result the firm had achieved in prior litigation against Aviva and its predecessors in interest. See *In re American Investors Life Ins. Co. Annuity Mktg & Sales Practices Litig.,* 263 F.R.D. 226 (E.D. Pa 2009). Griffiths then worked closely with counsel throughout the case, communicated with counsel on a regular basis, reviewed and provided input with respect to counsel's submissions, provided information, produced documents, provided deposition testimony and monitored settlement discussions. He has fully discharged his obligations as class representative and has provided needed assistance to Class Counsel in the course of the litigation.

Furthermore, Class Counsel's request for this class representative service award was outlined in the Settlement Agreement and in the class notices. No Class Member has objected to the request.

For the reasons discussed above, Class Counsel prays that the requested class representative service award be approved.

The Plaintiff
John W. Griffiths
By His Attorneys,

/s/ Jerome Marcus
Jerome M. Marcus, Esquire, *pro hac vice*
Jonathan Auerbach, *pro hac vice*
MARCUS & AUERBACH LLC
1121 N. Bethlehem Pike, Suite 60-242
Spring House, PA 19477
Telephone: (215) 884-2250
Facsimile: (888) 875-0469
jmarcus@marcusauerbach.com
auerbach@marcusauerbach.com

/s/ Paul J. Klehm
Paul J. Klehm (BBO #561605)
KRASNOO, KLEHM & FALKNER LLP
28 Andover Street, Suite 240
Andover, MA 01810
Telephone: (978) 475-9955
Facsimile: (978) 474-9005
pklehm@kkf-attorneys.com

Dated: August 8, 2018

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants via first class mail, postage prepaid, on August 8, 2018.

/s/ Paul J. Klehm
Paul J. Klehm

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN W. GRIFFITHS, on behalf of himself and all others similarly situated, Plaintiff, v. AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY, Defendants.	)	Civil Action No. 15-cv-13022-NMG JURY TRIAL DEMANDED

DECLARATION OF JONATHAN AUERBACH

I, Jonathan Auerbach, hereby declare as follows:

1. I am an attorney in good standing and duly licensed and admitted to the Bar of the Supreme Court of Pennsylvania, admitted to practice in a number of federal district courts (E.D. Pa., D.N.J., D. Colo., W.D. Tex.), admitted *pro hac vice* in this matter presently pending before this honorable court, and I have been a partner in the law firm of Marcus & Auerbach LLC ("Marcus & Auerbach" or "the firm"), 1121 N. Bethlehem Pike, Suite 60-242, Spring House, PA 19477, since September 1, 2006.

2. I am one of counsel representing Plaintiff in this matter and seeking to represent the putative Settlement Class for which the Named Plaintiff seeks certification and approval.

3. I offer this declaration in support of Class Representative's Motion for Final Approval of the Class Action Settlements and Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award, in connection with services rendered to the Plaintiff Class and the reimbursement of expenses incurred by Marcus & Auerbach in the course of pursuing the claims against Defendants Athene London Assignment Corporation (f/k/a Aviva London Assignment Corporation, f/k/a CGNU London Assignment Corporation), Athene Annuity and Life Company (f/k/a Aviva Life and Annuity Company and successor to Aviva Life Insurance Company, f/k/a CGU Life Insurance Company of America), and Athene Holding Ltd. ("AHL") (collectively, "Athene Defendants"), and Defendant Aviva International Insurance Ltd (f/k/a CGU International Insurance, plc) ("CGU" or "Aviva"). I have personal knowledge of the matters set forth herein, except as to those matters stated on information and belief, and as to those matters, I believe them to be true. If called upon as a witness to testify upon the matters stated herein, I would be competent to do so.

4. In early September of 2014, the firm was contacted by the Class Representative John Griffith regarding potential claims that the Defendants in this action had unlawfully terminated certain Capital Maintenance Agreements ("CMAs") that provided a form of guaranty to the beneficiaries of structured settlement annuities like the ones that were purchased for the benefit of Mr. Griffiths. Mr. Griffiths, like all members of the class, had purchased an Annuity, and he did so only because the instrument was covered by the CGU International Insurance plc ("CGU") CMA. Through independent investigation initiated by Mr. Griffiths involving a lengthy series of telephone calls, letters and emails, Mr. Griffiths had recently discovered that, around the time Aviva's North American business had been sold to Athene Life Insurance Company, the CMAs had purportedly been terminated. (The sale had been publicly disclosed; the termination

of the CMA had not.) Griffiths researched law firms and subsequently called Marcus & Auerbach, which he learned had served as lead counsel in a previous class action relating to annuities issued by predecessor companies of Aviva. See *In re Am. Investors Life Ins. Co. Mktg & Sales Practices Litig.,* 263 F.R.D. 226 (E.D. Pa. 2009).

5. Following the initial contact with Mr. Griffiths, Marcus & Auerbach was retained by Mr. Griffiths and the firm then commenced an investigation of potential claims arising from the alleged improper termination of the CMAs at issue. In the intervening period between our engagement by Mr. Griffiths and the filing of the initial Complaint, counsel conducted extensive research on the specific practices of the defendants, as well as industry-wide. We consulted with various experts and conducted independent analyses of regarding guarantees for annuities, their pricing and valuation, and state regulation of such instruments. We drafted a complaint; determined that the case could be prosecuted most effectively in the District of Massachusetts, where the Aviva entities had been located when the Annuities at issue were sold; and retained as local counsel Paul Klehm of Krasnoo, Klehm & Falkner LLP, a Massachusetts firm with which we had worked closely and successfully on previous complex commercial litigation in Massachusetts.

6. On July 27, 2015, Class Counsel filed on behalf of Plaintiff John Griffith ("Representative Plaintiff") this putative class action lawsuit against Defendants alleging claims for breach of contract, breach of fiduciary duty, promissory estoppel and breach of fiduciary duty. This case has proceeded on behalf of all purchasers of Structured Settlement Annuities ("the Annuities") sold by Aviva Life Insurance Company of North America, or Aviva Life Insurance Company of New York, between 2002 and 2009, when such Annuities were covered by certain

Capital Maintenance Agreements issued by CGU International Insurance Company, now known as Aviva International Insurance Company.

7. Beginning in early 2017, the Athene Defendants began negotiating with Plaintiff about a potential resolution of the claims against those Defendants. Defendants had eachsuggested that they wished to negotiate jointly with Plaintiff regarding settlement of this case. Plaintiff's counsel rejected this request, believing that a better result for the class would be attained if the negotiations were carried on separately with the two sets of Defendants.

8. The negotiations with Athene continued throughout the ensuing nine months, culminating in the execution, on September 20, 2017, of a Memorandum of Understanding setting forth the material terms of the Settlement with Athene, which is now before this Court.

9. Athene had offered to negotiate the payment of an amount of cash specifically designated for attorney's fees. Plaintiff's counsel rejected this offer, however, for two reasons: first, because they refused to discuss attorneys' fees at all until agreement had been reached on all other substantive terms of the settlement; and second, because Plaintiff's counsel sought to negotiate substantive relief that included a cash payment in addition to the primary structural relief, which has come in the form of replacement of the abandoned CMA. Plaintiff's counsel intended that such payment could be used, as approved by the Court, to be disseminated to the class according to a Court-approved plan of allocation as well as to cover attorney's fees and costs. Athene acceded to the requested sequencing of negotiations regarding components of relief, and the settlement Plaintiff has reached with the Athene Defendants, like the one reached with Aviva, includes a simple cash payment without any restrictions on its distribution other than those approved by this Court.

10. After the Athene negotiations concluded, negotiations in earnest began with Aviva. (A previous effort to initiate settlement negotiations, made while fact discovery was still ongoing, had broken down almost at the outset and negotiations had not been renewed until this point.) Those negotiations continued for three months, included two day-long mediation sessions before Hon. Judith Dein, U.S.M.J., which were attended by Aviva's counsel and by Neil Harrison, the Aviva officer who had supervised the transaction pursuant to which Aviva sold its American annuity business to Athene. Harrison traveled from London to attend each of these sessions. The negotiations also included a number of subsequent follow-on telephone mediation efforts with Magistrate Judge Dein. As a result of those negotiations and mediation sessions, and with the encouragement of Magistrate Judge Dein, Plaintiff and Aviva reach a Memorandum of Understanding on December 22, 2017, which sets forth the essential terms of the Aviva Settlement that is now before the Court.

11. The Class Representative was kept apprised of negotiations as they progressed and of the terms of the Settlements before Plaintiff's Counsel assented to them definitively. The Class Representative agrees that this case should be settled according to the terms of the Settlements now before this Court.

12. The enforceability of the Settlement is not contingent on the amount of attorneys' fees or costs or service award to Plaintiff approved by the Court. The parties did not discuss the amount of attorneys' fees and costs or service award to Plaintiff with either the Aviva or Athene Defendants until after reaching agreement on all substantive terms of the Settlement Agreement with each group of Defendants.

13. With respect to adequacy of representation, Plaintiff's counsel are well-qualified and experienced in class action litigation generally, and in particular with respect to class

litigation on behalf of the victims of improper conduct by insurance companies. Plaintiff's proposed lead counsel, Marcus & Auerbach and its principals, have represented plaintiffs, including as appointed lead counsel in class actions for over 25 years, and have specific experience in class litigation on behalf of the purchasers of annuities. They served as co-lead counsel in MDL-1712, against the predecessor-in-interest of defendant Aviva plc, which resulted in a settlement which, when approved by the court, was valued at over $500 million. See Firm Resume of Marcus & Auerbach LLC, attached as Exhibit 1 to Declaration of Plaintiff's Counsel Jonathan Auerbach in Support of Motion for Preliminary Approval of Class Action Settlement ("Auerbach Prelim. Approval Decl.") (Dkt. 126-2), See *In re American Investors Life Ins. Co. Annuity Marketing & Sales Practices Litig.,* 263 F.R.D. 226 (E.D. Pa. 2009).

14. Our co-counsel Paul Klehm provided wise and effective counsel regarding important strategic considerations, especially during mediation, in addition to assisting with the drafting and review of documents, and providing guidance on local rules and practice, as well as attending judicial proceedings. The Firm Resume of Krasnoo, Klehm & Faulkner LLP, was attached as Exhibit 2 to Auerbach Prelim. Approval Decl. (Dkt. 126-3).

15. Pursuant to this Court's Order granting preliminary approval my firm has been appointed (along Paul Klehm of Krasnoo Klehm & Faulkner, our co-counsel) Class Counsel. See Order, dated June 29, 2018. (Dkt. 133). Class Counsel have performed and directed all of the services required of counsel for the Representative Plaintiff and the Class they seek to represent in this matter, including factual investigation and legal research upon which the Complaint was prepared; the drafting of pleadings; the preparation of all briefs and motions, as well as responses to motions to dismiss, and the preparation of motions for class certification and preliminary approval of the proposed settlement; the conduct of discovery, negotiation for the provision of

extensive document production, including e-discovery and establishment of an electronic document repository containing more than 150,000 pages and in excess of 15 gigabytes of data, and review of the material thus obtained; the conduct of depositions of the named plaintiff, the broker involved in the sale of his annuities, and current and former senior executives of the defendants, held over a very intensive five month span in Honolulu, Chicago, Des Moines, Charleston, New York City, Andover, and London, England; the conduct of settlement negotiations, including the preparation of plaintiff's positions on the merits of the settlement; and the preparation of Settlement Agreements and Notice to the Class. All legal services performed by counsel for Named Plaintiff and the Class were performed by my firm or at the direction of my firm and the law firm of our co-counsel.

16. A description of the activities of Class Counsel in the conduct of the prosecution of this litigation on behalf of the class is set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Award of Attorneys' Fee, Reimbursement of Expenses, and Payment of Service Awards to Representative Plaintiffs.

17. The chart below contains a detailed summary indicating the amount of time spent by the attorneys and paralegal personnel of my firm on this litigation, and the lodestar calculation based on the firm's current billing rates. The chart includes the name of each attorney and paralegal who has worked on the matter, and the current hourly billing rate and a breakdown of the hours expended by each. The charts were prepared from contemporaneous time records regularly prepared and maintained by my firm, which are available for submission to the Court at its request. Time spent in preparing this Declaration in support of Class Counsel's application for fees and reimbursement of expenses has not been included in this request.

18. As one of Class Counsel, the attorneys of my firm were involved in all significant aspects of the litigation.

19. Although Defendants deny all liability and believe they have good defenses to the claims asserted against them, the Settlement Agreement provides for significant financial relief to members of the proposed Class. The members of the Class comprise and are estimated to number 5073 individual members, the beneficiaries of 4551 annuity policies at issue in this case. See Declaration of Josephine Bravata, Quality Assurance Manager, Strategic Claims, the Settlement Administrator appointed by the Court to mail notice pursuant to the Court's June 29, 2018 Order granting, *inter alia*, preliminary approval of the Settlement, ("Bravata Declaration"). The Bravata Declaration is being filed contemporaneously herewith as Exhibit 2 to the Memorandum of Law in Support of Representative Plaintiff's Motion for Final Approval of the Class Action Settlements and Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award. Individual direct notices were mailed to the 5073 members of the Class on July 13, 2018. See Bravata Declaration, ¶5.

20. The Settlement takes into account the risks of litigation, including the risks inherent in certifying a national litigation class, the expense of protracted litigation, the necessity of further expensive expert analysis and testimony, and the prospects of appeal. Furthermore, Class Members interested in pursuing an alternate form of relief than that provided under the Settlement have the right to opt out of the Settlement to pursue such relief. Because this Settlement achieves nearly a complete recovery for all members of the class, it is well within the range of reasonableness, and thus merits preliminary approval.

21. The Athene Settlement provides that Athene will cause Athene London Assignment Corporation and Athene Holding Ltd., the ultimate parent of Athene London Assignment

Corporation, to enter into a new Capital Maintenance Agreement (the "New CMA") which imposes upon AHL the same obligation as was imposed upon CGU under the CMA to back the Annuities. In addition, however, and unlike the CMA that had bound CGU, the Athene Settlement limits the circumstances under which the New CMA can be terminated and stipulates that breach of the terms of the New CMA constitutes irreparable harm to the Settlement Class members. The New CMA constitutes an assurance issued by the ultimate, publicly traded parent of the entity responsible for making payments under the Annuities, rather than a wholly owned subsidiary of that entity. Finally, Athene has proffered data upon the basis of which Plaintiff and Plaintiff's financial expert have concluded that the entity that will issue the New CMA is better capitalized than CGU, the entity that had issued the original CMA. Plaintiff's financial expert, Stephen Scherf, has opined that the value of the New CMA to the Settlement Class, by virtue of the risk protection it affords, is between $27 and $41 million. See Declaration of Stephen J. Scherf. (Dkt. 126-4).

22. Plaintiff proposes that the following allocation method be used to allocate funds to class members:

a. For each Annuity it sold, Aviva charged a fee for coverage of that Annuity by the original CMA. The amount of that fee was $250 until June 2, 2003, and $100 thereafter. Accordingly, the total amount of all such fees applicable during the relevant time period was $500,050. Plaintiff, therefore, proposes that each class member receive the amount of the fee applicable at the time each policy was purchased for the benefit of the class member.

b. Plaintiff proposes that all funds remaining in the Settlement Fund be allocated to all class members *pro rata* on the basis of the amount of premium paid for each class member's

annuity. If the Court awards the Attorney's fees and Expenses sought by Plaintiff, the total amount available for such pro rata distribution will be $2.5 million.

23. Class Counsel's compensation for the services rendered on behalf of the Class is wholly contingent. Any fee and reimbursement of expenses to Class Counsel will be limited to such amounts approved by this Court. The material terms of the Settlement Agreement were negotiated and agreed to before the parties reached an agreement on the amount of attorneys' fees, reimbursement of litigation expenses and service awards to which Defendants would not object.

24. The total number of hours spent on this litigation by my firm from September 18, 2014 until August 7, 2018, excluding time spent on counsel's application for an award of fees and reimbursement of expenses is 3,158.50 hours. The total lodestar amount for attorney time based on the firm's current rate is $2,011,843.50. The hourly rates set out in the chart, below are the same rates that Marcus & Auerbach LLC charges its clients paying for its services on a current basis for non-contingent matters; that have been paid by adverse parties who have agreed to pay attorney's fees as part of the resolution of litigation in which the firm served as counsel; and that have been awarded to the firm by courts adjudicating fee petitions in class actions:

SUMMARY LODESTAR ANALYSIS

MARCUS & AUERBACH LLC – LODESTAR

Attorney/Legal Assistant	**Hours**	**Rate**	**Lodestar**
Jonathan Auerbach (P)	1147.80	$675	$ 774,765.00
Jerome M. Marcus (P)	1760.40	$675	$1,188,270.00
Cathy Dodies (L)	250.30	$195	$ 48,808.50
	Total Hours: 3,158.50	**Total Fees:**	**$2,011,843.50**

(P) Partner
(L) Legal Assistant

25. The firm is expected to continue to incur additional time in connection with the preparation and presentation of Plaintiffs' Motion for Final Approval of the Class Action Settlement; as well as efforts to respond to Class members' inquiries regarding the settlement and claims process. (During the four weeks since notice was mailed to the Class, our firm has had more than 30 telephone conferences with Class members, as well as numerous email contacts). That time cannot be included in the papers submitted herewith in support of the request for an award of attorneys' fees.

26. My firm expended a total of $ 144,497.82 in unreimbursed expenses in connection with the prosecution of this litigation broken down as follows:

Category	**Amount**
Court & Filing fees	$600.00
Deposition costs	$10,479.74
Database/Electronic Document Repository	$10,614.29
Expert & consulting fees	$72,643.91
FedEx	$1759.03
Legal Research & Publications	$274.67
Lexis Nexis	$2030.62
Pacer fees	$61.50
Photocopying	$2011.21
Postage	$190.88
Service of Process Fee (Del. Sec. State)	$40.00
Supplies	$6.76
Travel (transport, lodging, meals, fuel)	$43,785.21

Total Expenses Incurred: $ 144,497.82

27. The expenses incurred that pertain to this case are reflected on the books and records of Marcus & Auerbach LLC. These books and records are prepared from expense vouchers and check records and are an accurate recordation of the expenses incurred to date. Time expended in preparing this application for fees and reimbursement of costs and expenses has not been included in this lodestar. Nor have we included time spent exclusively on travel in our lodestar calculation. We anticipate that the firm will continue to incur additional expenses through

the date of the Fairness and Final Approval Hearing currently scheduled in this matter for October 18, 2018, none of which are reflected herein.

28. Finally, Class Counsel will request that the Court provide a service award in the amount of $25,000, to be paid by Defendants and not from the Settlement Fund, to Representative Plaintiff John Griffiths. Class Counsel recommend that such a service award be made in recognition of the assistance, principally in the form of participation in the pre-filing investigation of claims, participation in discovery, both document production and provision of deposition testimony, and ongoing consultation throughout the mediation process held with Magistrate Judge Dein and subsequent settlement agreement, that the Representative Plaintiff has rendered to Class Counsel and the members of the Class.

29. I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct and that this declaration was executed on August 8, 2018 in Philadelphia, Pennsylvania.

/s/ Jonathan Auerbach
JONATHAN AUERBACH

In the United States District Court
For the District of Massachusetts

JOHN W. GRIFFITHS, on behalf of Himself and all others similarly situated, Plaintiff, v. AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY, Defendants.	)	Civil Action No. 15-13022-NMG

DECLARATION OF JOSEPHINE BRAVATA CONCERNING THE MAILING OF CAFA NOTICE, MAILING OF THE NOTICE TO SETTLEMENT CLASS MEMBERS, REQUESTS FOR EXCLUSIONS RECEIVED, AND OBJECTIONS SUBMITTED

I, Josephine Bravata, declare:

1. I submit this declaration in order to provide the Court and the parties to the above-captioned litigation with information regarding (i) the mailing of notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"); (ii) the mailing of the Notice to Settlement Class Members ("Notice"); and (iii) the requests for exclusion and objections received. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein.

2. I am the Quality Assurance Manager of Strategic Claims Services ("SCS"), a nationally recognized class action administration firm. I have over seventeen years of

experience specializing in administration of class action cases. SCS was established in April 1999 and has administered over three-hundred fifty (350) class action cases since its inception.

3. At the request of CGU International Insurance, plc's Counsel, on May 11, 2018, SCS mailed the notice of proposed class action settlement, pursuant to CAFA, to the appropriate federal and state officials, by certified return receipt through the United States Postal Service. The mailing consisted of: (i) a letter regarding the proposed Settlement provided to SCS by Defendants' Counsel describing the mailing (the "CAFA Letter"); and (ii) a CD-ROM containing copies of the Class Action Complaint filed on July 27, 2015, the Amended Class Action Complaint filed December 18, 2015, the Plaintiff's Motion for Leave to File a Second Amended Complaint, Plaintiff's Memorandum in Support of Motion for Leave to File a Second Amended Complaint, CGU's Memorandum of Law in Opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint, Athene Defendants' Opposition to Motion for Leave to File a Second Amended Complaint, Declaration of Hille R. Sheppard, CGU's Answer and Affirmative Defenses, Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, Exhibit A – Settlement Agreement and Release, Exhibit B – Settlement Agreement and Release, Plaintiff's Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, [Proposed] Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, Confidential Letter Agreement, and a table which consists of the estimated number of class members that may reside in each state and the estimated proportionate share of the claim of such members to the entire settlement. Attached hereto as **Exhibit A** is a copy of the CAFA Letters sent to the Attorney Generals and Insurance Commissioners.

4. In connection with the settlement, SCS was approved to provide administrative services as part of the settlement administration process in the above-captioned litigation. Our services include the printing and mailing of the Notice to 5,073 settlement class members;

performing the National Change of Address search prior to the initial mailing; setting up settlement website; tracking returned Notice and remailing them if a forwarding address is provided; performing a skip tracing through Experian and/or Lexis Nexis if no forwarding address was provided on the returned Notice; tracking requests for exclusion and objection submitted; and all other services necessary to administer this class action settlement ("Settlement").

5. To provide actual notice, SCS mailed, by first-class mail, the Notice approved by the Court in its Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement dated June 29, 2018 (the "Court's Order") to 5,073 Settlement Class Members who are beneficiaries of structured settlement annuities assigned to Athene London Assignment Corporation (formerly known as Aviva London Assignment Corporation and as CGU London Annuity Service Corp.), which includes all annuities covered by the Capital Maintenance Agreement between CGU International Insurance plc and CGNU London Annuity Service Corp. dated February 1, 2002, where such annuities remained in force as of October 2, 2013. Please see **Exhibit B** for the Notice. The original list was run through the National Change of Address ("NCOA") search, a service provided through the United Stated Postal Services, to obtain updated address information prior to the initial mailing. The 5,073 Notices were mailed on July 13, 2018, as required by the Court's Order.

6. SCS established the website, www.strategicclaims.net/aviva, on July 10, 2018. The website contains current status, important dates, and case documents such as the Notice; the Court's Order; Endorsed Order on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement; Plaintiff's Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement; Answer of Aviva London Assignment Corporation, Aviva Life Insurance Company, Athene Holding, Ltd., Athene London Assignment Corporation, and Athene Annuity and Life Company to Amended Class Action Complaint; 1B.

Amended Class Action Complaint; 3B. Exhibit A, Settlement Agreement and Release; 3C. Exhibit B, Settlement Agreement and Release; 1A. Class Action Complaint; 1C. Plaintiff's Motion for Leave to File a Second Amended Complaint; 1D. Plaintiff's Memorandum in Support of Motion for Leave to File a Second Amended Complaint; 1E. Defendant Aviva International Insurance LTD's (Formerly CGU International Insurance, plc) Memorandum of Law in Opposition to Plaintiff's Motion to Leave to File a Second Amended Complaint; 1F. Athene Defendants' Opposition to Motion for Leave to File a Second Amended Complaint; 1H. Defendant Aviva International Insurance Limited's (Formerly CGU International Insurance, plc) Answer and Affirmative Defenses; 3A. Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement; Capital Maintenance Agreement April 11, 2003; and Capital Maintenance Agreement February 1, 2002. To date, the webpage has received 779 page views by 334 unique individuals.

7. Out of the 5,073 Notices mailed, 237 were returned. Of these, the post office provided forwarding addresses for 5; SCS immediately mailed another Notice to these Class Members at the updated addresses. The remaining 232 Notices returned as undeliverable were "skip-traced" to obtain updated addresses by using Experian and Lexis Nexis and re-mailed if updated addresses were provided. Through our skip tracing efforts, we mailed another Notice to 161 Settlement Class Members. Therefore, a total of 71 Notices remain undeliverable. Thus, only 1.4% of the 5,073 Notices mailed have been returned and deemed unsuccessfully delivered, with 98.6% of the 5,073 Notices mailed (and not having been returned) being presumed as having been successfully delivered to the Settlement Class Members.

8. The notice procedures described in paragraphs three (3) through seven (7) above are consistent with the procedures SCS has used in each of the class action securities litigation cases in which I have been involved with over the past seventeen years.

9. To date, SCS has received no requests for exclusion. The deadline for the exclusion requests is postmarked no later than September 12, 2018.

10. To date, SCS has not received an objection to the proposed Settlement. The deadline for objections is September 12, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 8th day of August 2018, in Media, Pennsylvania.

Josephine Bravata

EXHIBIT A

Strategic Claims Services

Phone 866.274.4004
610.565.9202
Fax 610.565.7985

strategicclaims.net

May 11, 2018

[redacted]

Re: Griffiths v. Aviva London Assignment Corporation et al.
Civil Action No. 1:15-cv-13022-NMG (D. Mass.)

Dear Sir or Madam:

Strategic Claims Services, settlement administrator, on behalf of Aviva International Insurance Ltd. (f/k/a CGU International Insurance, plc) ("CGU"), a Defendant in the above-referenced action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, to advise you of a proposed class action settlement in the above-referenced action that was filed with the Court on May 1, 2018. Please take notice of the following items of information and enclosed materials, which are provided to you pursuant to 28 U.S.C. § 1715(b), which requires a notice containing information responsive to eight items enumerated in the statute to be served upon appropriate federal and state officials.

Pursuant to those requirements, below please find information for each item. We also have included with this letter a disc containing documents responsive to certain of those eight enumerated items. If you are unable to access any of the documents on the enclosed disc or if you would prefer to receive paper copies, please contact this office.

Item 1: "a copy of the complaint and any materials filed with the complaint and any amended complaints" -- 28 U.S.C. § 1715(b)(1)

Named plaintiff John W. Griffiths filed a "Class Action Complaint" (Docket No. 1) on July 27, 2015; that complaint is included on the enclosed disc as Exhibit 1A.

Named plaintiff John W. Griffiths subsequently filed an "Amended Class Action Complaint" (Docket No. 28) on December 18, 2015; that amended complaint is included on the enclosed disc as Exhibit 1B.

On September 1, 2017, named plaintiff John W. Griffiths subsequently filed "Plaintiff's Motion For Leave To File A Second Amended Complaint" and "Plaintiff's Memorandum In Support Of Motion For Leave To File A Second Amended Complaint," which attached a proposed Second Amended Complaint (Docket Nos. 94-95). The Defendants opposed that motion (Docket Nos.

97-99). That motion was pending at the time of settlement. Although their inclusion is not strictly required by 28 U.S.C. § 1715(b)(1), the Plaintiff's motion and memorandum are included on the enclosed disc as Exhibits 1C and 1D, respectively; the Defendants' oppositions to that motion and a supporting declaration are included on the enclosed disc as Exhibits 1E, 1F and 1G, respectively.

In addition, CGU filed its answer and affirmative defenses on June 3, 2016; although its inclusion is not strictly required by 28 U.S.C. § 1715(b)(1), that answer is included on the enclosed disc as Exhibit 1H.

In addition, the foregoing materials are available on the Court's CM/ECF website (http://ecf.mad.uscourts.gov) under Civil Action No. 1:15-cv-13022-NMG, accessible to users with a valid PACER account.

Item 2: "notice of any scheduled judicial hearing in the class action" -- 28 U.S.C. § 1715(b)(2)

There are no judicial hearings currently scheduled in the above-referenced action.

Item 3: "any proposed or final notification to class members of -- (A)(i) the members' rights to request exclusion from the class action; or (ii) if no right to request exclusion exists, a statement that no such right exists; and (B) a proposed settlement of a class action" -- 28 U.S.C. § 1715(b)(3)

On May 1, 2018, the Plaintiff filed his Unopposed Motion For Preliminary Approval Of Class Action Settlement (Docket No. 125), which attaches two settlement agreements: (i) Exhibit A, the Settlement Agreement And Release (Docket No.125-1) between the Plaintiff and Athene London Assignment Corporation (f/k/a Aviva London Assignment Corporation), Athene Annuity and Life Company (successor to Aviva Life Insurance Company) and Athene Holding Ltd. (collectively, the "Athene Defendants") and exhibits thereto (the "Athene Agreement") and (ii) Exhibit B, the Settlement Agreement And Release (Docket No. 125-2) between the Plaintiff and CGU and exhibits thereto (the "CGU Agreement").

The Athene Agreement and the CGU Agreement attach the proposed notice to the proposed settlement class as Exhibit 2. The proposed notice informs members of the proposed settlement class of their right to request exclusion and of the terms of the proposed settlement of a class action.

The Plaintiff's preliminary approval motion is included on the enclosed disc as Exhibit 3A. The Athene Agreement is included on the enclosed disc as Exhibit 3B. The CGU Agreement is included on the enclosed disc as Exhibit 3C.

Item 4: "any proposed or final class action settlement" -- 28 U.S.C. § 1715(b)(4)

The proposed settlement is reflected in the Athene Agreement and the CGU Agreement, which are included on the enclosed disc as Exhibits 3B and 3C, respectively. A proposed final approval

order and judgment is attached to the Athene Agreement and the CGU Agreement as Exhibit 1. A proposed preliminary approval order is attached to the Athene Agreement and the CGU Agreement as Exhibit 3.

Item 5: "any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants" -- 28 U.S.C. § 1715(b)(5)

On May 1, 2018, the Plaintiff filed his Unopposed Motion For Preliminary Approval Of Class Action Settlement, a supporting memorandum, and a proposed preliminary approval order (Docket Nos. 125-127). That motion and its exhibits are included on the enclosed disc as Exhibits 3A, 3B and 3C. The memorandum and a proposed preliminary approval order (identical to the proposed preliminary approval orders attached as Exhibit 3 to the Athene Agreement and the CGU Agreement) are included on the enclosed disc as Exhibits 5A and 5B, respectively.

On May 1, 2018, the Plaintiff and CGU executed a Confidential Letter Agreement, which sets forth the mutually-agreed upon number of class members who can seek exclusion from the proposed settlement class before CGU may terminate the agreement pursuant to Paragraph 8.1(b) of the CGU Agreement. A copy of the Confidential Letter Agreement is included on the enclosed disc as Exhibit 5C. Exemption from disclosure of this Confidential Letter Agreement and copies of it is claimed under all applicable federal or state statutes, rules and regulations, including but not limited to exemptions under the Freedom of Information Act or any equivalent state law. CGU has provided this Confidential Letter Agreement on the assumption that it will be treated as confidential and in accord with the referenced statutory provisions. It is requested that before any disclosure is permitted of this letter, or any part or copies of it, that timely notice be given to: James R. Carroll, Skadden Arps Slate Meagher & Flom LLP, 500 Boylston Street, Boston, MA 02116, (617) 573-4800, james.carroll@skadden.com.

Item 6: "any final judgment or notice of dismissal" -- 28 U.S.C. § 1715(b)(6)

No final judgment or notice of dismissal has been entered in the above-referenced action.

Item 7: "(A) if feasible, the names of class members who reside in each State and estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement" -- 28 U.S.C. § 1715(b)(7)

CGU does not maintain current business records that identify an estimate of the number of class members residing in each State or the estimated proportionate share of the claims of such members to the entire settlement. One of more of the Athene Defendants currently maintain (or has access to) business records that contain that information.

The Athene Defendants have calculated a reasonable estimate of the number of class members that may reside in each State and the estimated proportionate share of the claims of such members to the entire settlement. Exhibit 7 on the enclosed disc includes this information for the State or territory you represent as attorney general or for which you may have primary regulatory or supervisory responsibility.[1]

Item 8: "any written judicial opinion relating to the materials described under subparagraphs (3) through (6)" -- 28 U.S.C. § 1715(b)(8)

The Court has not entered any judicial opinions related to subparagraphs (3)-(6) above.

* * *

The table below provides an index of the materials that we have included on the disc accompanying this letter.

Exhibit	Description
1A	"Class Action Complaint" (Docket No. 1), filed on July 27, 2015
1B	"Amended Class Action Complaint" (Docket No. 28), filed on December 18, 2015
1C	"Plaintiff's Motion For Leave To File A Second Amended Complaint" (Docket No. 94), filed September 1, 2017
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1E	"Defendant Aviva International Insurance Ltd's (Formerly CGU International Insurance, plc) Memorandum Of Law In Opposition To Plaintiff's Motion For Leave To File A Second Amended Complaint" (Docket No. 97), filed on September 15, 2017
1F	"Athene Defendants' Opposition To Motion For Leave To File A Second Amended Complaint" (Docket No. 98), filed on September 15, 2017
1G	"Declaration Of Hille R. Sheppard In Support Of Athene Defendants' Opposition To Motion For Leave To File A Second Amended Complaint" (Docket No. 99), filed on September 15, 2017
1H	"Defendant Aviva International Insurance Limited's (Formerly CGU International Insurance, plc) Answer And Affirmative Defenses" (Docket No. 47), filed June 3, 2016

[1] For the copy of this letter sent to the U.S. Attorney General, the enclosed disc contains an estimate of all class members and an estimate of the entire settlement.

Exhibit	**Description**
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5B	"[Proposed] Order Granting Plaintiff's Unopposed Motion For Preliminary Approval Of Class Action Settlements" (Docket No. 127), filed May 1, 2018
5C	"Confidential Letter Agreement" between the Plaintiff and CGU, dated May 1, 2018
7	Table: (i) Estimated number of class members that may reside in each State; and (2) estimated proportionate share of the claims of such members to the entire settlement.

If you have questions about this notice, the settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office.

Sincerely,

Paul Mulholland

Enclosure

Strategic Claims Services

Phone 866.274.4004
610.565.9202
Fax 610.565.7985

strategicclaims.net

May 11, 2018

[redacted]

Re: Griffiths v. Aviva London Assignment Corporation et al.
Civil Action No. 1:15-cv-13022-NMG (D. Mass.)

Dear Sir or Madam:

Strategic Claims Services, settlement administrator, on behalf of Aviva International Insurance Ltd. (f/k/a CGU International Insurance, plc) ("CGU"), a Defendant in the above-referenced action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, to advise you of a proposed class action settlement in the above-referenced action that was filed with the Court on May 1, 2018. Please take notice of the following items of information and enclosed materials, which are provided to you pursuant to 28 U.S.C. § 1715(b), which requires a notice containing information responsive to eight items enumerated in the statute to be served upon appropriate federal and state officials.

Pursuant to those requirements, below please find information for each item. We also have included with this letter a disc containing documents responsive to certain of those eight enumerated items. If you are unable to access any of the documents on the enclosed disc or if you would prefer to receive paper copies, please contact this office.

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Amended Complaint (Docket Nos. 94-95). The Defendants opposed that motion (Docket Nos. 97-99). That motion was pending at the time of settlement. Although their inclusion is not strictly required by 28 U.S.C. § 1715(b)(1), the Plaintiff's motion and memorandum are included on the enclosed disc as Exhibits 1C and 1D, respectively; the Defendants' oppositions to that motion and a supporting declaration are included on the enclosed disc as Exhibits 1E, 1F and 1G, respectively.

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In addition, the foregoing materials are available on the Court's CM/ECF website (http://ecf.mad.uscourts.gov) under Civil Action No. 1:15-cv-13022-NMG, accessible to users with a valid PACER account.

Item 2: "notice of any scheduled judicial hearing in the class action" -- 28 U.S.C. § 1715(b)(2)

There are no judicial hearings currently scheduled in the above-referenced action.

Item 3: "any proposed or final notification to class members of -- (A)(i) the members' rights to request exclusion from the class action; or (ii) if no right to request exclusion exists, a statement that no such right exists; and (B) a proposed settlement of a class action" -- 28 U.S.C. § 1715(b)(3)

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On May 1, 2018, the Plaintiff filed his Unopposed Motion For Preliminary Approval Of Class Action Settlement, a supporting memorandum, and a proposed preliminary approval order (Docket Nos. 125-127). That motion and its exhibits are included on the enclosed disc as Exhibits 3A, 3B and 3C. The memorandum and a proposed preliminary approval order (identical to the proposed preliminary approval orders attached as Exhibit 3 to the Athene Agreement and the CGU Agreement) are included on the enclosed disc as Exhibits 5A and 5B, respectively.

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Item 6: "any final judgment or notice of dismissal" -- 28 U.S.C. § 1715(b)(6)

No final judgment or notice of dismissal has been entered in the above-referenced action.

Item 7: "(A) if feasible, the names of class members who reside in each State and estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement" -- 28 U.S.C. § 1715(b)(7)

CGU does not maintain current business records that identify an estimate of the number of class members residing in each State or the estimated proportionate share of the claims of such

members to the entire settlement. One of more of the Athene Defendants currently maintain (or has access to) business records that contain that information.

The Athene Defendants have calculated a reasonable estimate of the number of class members that may reside in each State and the estimated proportionate share of the claims of such members to the entire settlement. Exhibit 7 on the enclosed disc includes this information for the State or territory you represent as attorney general or for which you may have primary regulatory or supervisory responsibility.[1]

Item 8: "any written judicial opinion relating to the materials described under subparagraphs (3) through (6)" -- 28 U.S.C. § 1715(b)(8)

The Court has not entered any judicial opinions related to subparagraphs (3)-(6) above.

* * *

The table below provides an index of the materials that we have included on the disc accompanying this letter.

Exhibit	Description
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7	Table: (i) Estimated number of class members that may reside in each State; and (2) estimated proportionate share of the claims of such members to the entire settlement.

If you have questions about this notice, the settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office.

Sincerely,

Paul Mulholland

Enclosure

EXHIBIT B

United States District Court for the District of Massachusetts

JOHN W. GRIFFITHS, on behalf of Himself and all others similarly situated, Plaintiff, v. AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY, Defendants.	)	Civil Action No. 15-13022-NMG **NOTICE TO SETTLEMENT CLASS MEMBERS**

PLEASE READ THIS NOTICE CAREFULLY.
A COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.

THIS IS TO NOTIFY YOU THAT THE ABOVE-CAPTIONED ACTION HAS BEEN PRELIMINARILY CERTIFIED AS A CLASS ACTION.

YOU HAVE BEEN IDENTIFIED AS A CLASS MEMBER OF A CLASS ACTION LAWSUIT AGAINST AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY

THIS CLASS ACTION HAS BEEN SETTLED AND MAY AFFECT YOUR RIGHTS.

YOU ARE NOT BEING SUED!

YOU MAY BE ENTITLED TO RECEIVE BENEFITS UNDER THE PROPOSED SETTLEMENT.

A class action was brought by Plaintiff John W. Griffiths against Aviva London Assignment Corporation, Aviva Life Insurance Company, Aviva International Insurance Ltd, f/k/a CGU International Insurance, plc ("CGU"), Athene Holding, Ltd, Athene London Assignment Corporation, and Athene Annuity and Life Company (which are referred to collectively as "Defendants" in this Notice), seeking money damages and other relief. The case has been assigned to United States District Judge Nathaniel M. Gorton. The parties have reached a settlement ("Settlement"). Judge Gorton preliminarily certified this matter as a class action for settlement purposes and preliminarily approved the Settlement on June 29, 2018, and directed that this Notice be provided to you to inform you of your rights in the proposed Settlement as a member of the Settlement Class. **You should read the entire Notice carefully because your legal rights are affected whether you act or not**.

- A Settlement has been reached in a class action lawsuit that claims that certain Defendants improperly terminated a capital maintenance agreement under which CGU agreed to provide capital to the entity responsible for making payments on certain annuities if that entity was unable to satisfy its obligations under those annuities, including an annuity of which you may be a beneficiary. All Defendants deny any wrongdoing and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability against Defendants.
- The Settlement includes all beneficiaries of any structured settlement annuity assigned to Athene London Assignment Corporation (formerly known as Aviva London Assignment Corporation and as CGNU London Annuity Service Corp.),

which includes all annuities covered by the Capital Maintenance Agreement between CGU International Insurance plc and CGNU London Annuity Service Corp. dated February 1, 2002, where such annuities remained in force as of October 2, 2013.

- Your legal rights are affected whether or not you act. This Notice includes information on the Settlement with Defendants. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND REMAIN A SETTLEMENT CLASS MEMBER	**You may stay in this lawsuit as a Settlement Class Member and receive monetary benefits of the Settlement.** **If you remain a Settlement Class Member in this case, you give up any rights to sue Defendants separately about the same legal claims in this lawsuit. In other words, you can remain a Settlement Class Member and receive the benefits of the Settlement of this case or you can bring a suit on your own, separately, but you cannot do both.**
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SEPTEMBER 12, 2018	**If you ask to be excluded from (or "opt out" of) the Settlement Class, you receive no monetary benefits from this Settlement. You keep your rights to sue Defendants on your own but have to do so at your own expense. If you ask to be excluded and benefits are later awarded in this case, you won't share in those.**
OBJECT TO THE SETTLEMENT BY SEPTEMBER 12, 2018	**Write to the Court about why you do not like the Settlement. If you wish to object to the Settlement, you should not opt out now. After filing or mailing a written objection, you may also appear at the Fairness Hearing.**

BASIC INFORMATION

1. Why is there a notice?

A Court authorized this Notice because you have a right to know about a proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Court in charge of this case is the United States District Court for the District of Massachusetts. The case is called *Griffiths v. Aviva London Assignment Corporation, Aviva Life Insurance Company, Aviva International Insurance Ltd, f/k/a CGU International Insurance, plc, Athene Holding, Ltd, Athene London Assignment Corporation And Athene Annuity and Life Company*, Civil Action No.: 15-cv-13022-NMG. The person who sued is called the Plaintiff. Defendants are Aviva London Assignment Corporation, Aviva Life Insurance Company, Aviva International Insurance Ltd, f/k/a CGU International Insurance, plc, Athene Holding, Ltd, Athene London Assignment Corporation and Athene Annuity and Life Company.

2. What is this lawsuit about?

The lawsuit claims that between January 1, 2002 and December 31, 2009, Defendants sold certain structured settlement annuities ("the Annuities") which were covered by a Capital Maintenance Agreement pursuant to which CGU agreed to provide capital to the entity responsible for making payments on the Annuities if that entity was unable to satisfy its obligations under those Annuities, including an annuity of which you may be a beneficiary. The lawsuit claims that Defendants breached this commitment by purporting to terminate the Capital Maintenance Agreement in or around October 1, 2013. A more complete description of what the Plaintiff alleges is in the amended putative class complaint, a copy of which may be viewed at the Settlement Website www.strategicclaims.net/aviva.

All Defendants deny any wrongdoing and any liability whatsoever, and the Court has not decided in favor of either side. The Plaintiff and his lawyers believe that the Settlement is in the best interests of the Settlement Class because it provides an appropriate and complete recovery for Class Members now while avoiding the risk, expense and delay of pursuing the case through trial and any appeals. Defendants are settling to avoid the expense, inconvenience, and risk and disruption of litigation.

3. What is a class action and who is involved?

In a class action, one or more people called "Class Representatives" (in this case, John W. Griffiths) sue on behalf of other people who have similar claims. The people together are a "Class" or are "Class Members." The Class Representatives and the Class Members are called Plaintiffs. The companies being sued are called Defendants. In a class action, the Court resolves the issues for all Settlement Class Members – except for those people who ask to be excluded from the Settlement Class by "opting out."

4. Who is included in the Settlement Class?

The Settlement Class includes all beneficiaries of structured settlement annuities assigned to Athene London Assignment Corporation (formerly known as Aviva London Assignment Corporation and as CGNU London Annuity Service Corp.), which includes all annuities covered by the Capital Maintenance Agreement between CGU International Insurance plc and CGNU London Annuity Service Corp. dated February 1, 2002, where such annuities remained in force as of October 2, 2013. Excluded from the proposed class are the officers and directors of any Defendant and members of their immediate families and any entity in which any Defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

5. What Does the Proposed Settlement Provide?

The proposed Settlement provides the following relief to each Settlement Class Member:

- A new Capital Maintenance Agreement ("the New CMA") has been entered into between Athene Holding Ltd. ("AHL"), and Athene London Assignment Corporation ("Athene London"). Athene London is the entity responsible for making all payments called for by the Annuities. Pursuant to the Settlement, the new CMA requires AHL to ensure that Athene London has sufficient assets to make all payments called for by any of the Annuities.
- In addition to other restrictions, the New CMA cannot be terminated unless another entity with an investment grade rating enters into a CMA with the same substantive terms as the New CMA.
- The Settlement establishes that any breach of the New CMA would constitute irreparable harm to each member of the Settlement Class.
- In the estimation of Plaintiff's Expert Witness Stephen Scherf, the New CMA has a value to the Settlement Class of between $27 million and $41 million.
- In addition to the New CMA, the Settlement provides that the Athene Defendants shall pay $2.3 million, and that CGU shall pay $5 million into a fund ("the Cash Fund") for the benefit of Class Members. These monies will be distributed to Class Members using an allocation based, in part, on the proportion of the premiums paid for each annuity policy relative to the total amount of premium paid for all the annuity policies covered by the proposed Settlement, after attorneys' fees and expenses (among other costs), as authorized by the Court, have been paid from the Cash Fund. Please refer to the Settlement Agreements for a further description of how these funds will be allocated between Class Members, copies of which may be viewed at the Settlement Website www.strategicclaims.net/aviva.
- The Athene Defendants and CGU have each agreed to pay up to $100,000 to cover the costs of Notice and settlement administration, as authorized by the Court.
- The Athene Defendants and CGU have each agreed to pay up to $12,500 to cover a Service Award to the Class Representative, subject to approval by the Court.

- An additional payment may be made to Class Members if Aviva plc, CGU's ultimate parent company, receives funds in connection with a dispute with AHL. There is no guarantee any such payment will ever be made. Please refer to the Settlement Agreement between Plaintiff and CGU for a further description, a copy of which may be viewed at the Settlement Website www.strategicclaims.net/aviva.

6. Has the Court decided who is right?

The Court has not decided whether the Plaintiff or Defendants are correct. By preliminarily approving the Settlement and ordering the issuance of this Notice, the Court is not suggesting that the Plaintiff will win or lose this case. The Court will decide whether to approve the proposed Settlement and whether it is fair, reasonable, and adequate.

YOUR RIGHTS AND OPTIONS

You have to decide NOW whether to stay in the Settlement Class, ask to be excluded by opting out, or object.

7. What happens if I do nothing?

You do not have to do anything now if you want to remain a Class Member and receive the benefits of the proposed Settlement. By being a Class Member, you will be legally bound by the Final Judgment the Court makes in this case and will give up your right to sue Defendants for damages or other relief resulting from the claims at issue in this lawsuit.

8. What if I don't want to be a Class Member?

If you want to be excluded from the Settlement Class, you must send an "Exclusion Request" by U.S. Mail stating:

> "I request that I be excluded from the settlement in *Griffiths v. Aviva London Assignment Corporation, et al.,* (Civil Action No. 15-cv-13022-NMG)."

Your letter must be signed by you and must include (i) your name and address and (ii) the policy number of the Annuity of which you are the beneficiary. Your Exclusion Request must be mailed to the Settlement Administrator at Griffiths v. Aviva Settlement, PO Box 230, Media, PA 19063, postmarked no later than September 12, 2018. Exclusion Requests that are not postmarked on or before September 12, 2018 will not be honored. If you are a beneficiary of more than one annuity policy and you request exclusion with respect to at least one such policy, you shall be considered to have made a request to be excluded from the Settlement Class for all policies and purposes.

You cannot exclude yourself by email or telephone. You cannot exclude yourself by mailing an Exclusion Request to any other address or after the September 12, 2018 deadline. You cannot exclude yourself by having an actual or purported agent or lawyer acting on behalf of you or a group of Class Members sign the letter.

If you timely request exclusion from the Settlement Class, you will be excluded from the Settlement Class, you will not be bound by any judgment entered in the lawsuit, and you will not be precluded from prosecuting any timely, individual claim against Defendants based on the conduct complained of in the lawsuit. You will not receive a payment.

9. How do I object to the Settlement?

If you want to object to the proposed Settlement, you must submit your objection in writing. You do not have to object if you do not want to. You can only ask the Court to deny approval of the proposed Settlement. You cannot ask the Court to order a larger settlement. If the Court does not approve the proposed Settlement, the lawsuit will continue. You cannot file an objection if you exclude yourself from the Settlement Class by opting out.

Your objection must state at its top the word "Objection" and must clearly identify the case name and number (*Griffiths v. Aviva London Assignment Corporation., et al.*, Civil Action No. 15-cv-13022-NMG). Your written objection must also

include: (i) your name, address, and telephone number; (ii) the policy number of the Annuity of which you are the beneficiary; and (iii) the reasons you object to the proposed Settlement, including any supporting evidence or documents that you wish the Court to consider. Your objection must also state whether you and/or your lawyer intend to appear at the Fairness Hearing. If you intend to have a lawyer make an appearance on your behalf at the Fairness Hearing, you must identify the name, address and telephone number of any such lawyer who will speak on your behalf. If you appear through your own lawyer, you are responsible for paying that lawyer.

Your objection must be filed on or before September 12, 2018**.** All written objections and supporting papers must be submitted to the Court, Lead Class Counsel and Defendants' counsel either by mailing them to the addresses listed below, or by filing through the Court's CM/ECF system.

COURT	LEAD CLASS COUNSEL	ATHENE DEFENDANTS COUNSEL	CGU COUNSEL
Clerk of Court United States District Court District of Massachusetts John Joseph Moakley U.S. Courthouse One Courthouse Way Suite 2300 Boston, MA 02210	Jonathan Auerbach Jerome M. Marcus MARCUS AND AUERBACH LLC 1121 N. Bethlehem Pike Suite 60-242 Spring House, PA 19477	Joel S. Feldman Hille R. Sheppard Daniel C. Craig SIDLEY AUSTIN LLP One South Dearborn Street Chicago, IL 60603	James R. Carroll Michael S. Hines Christopher G. Clark SKADDEN, ARPS, SLATE MEAGHER & FLOM LLP 500 Boylston Street Boston, MA 02116

If you do not submit an objection in accordance with the above requirements, you will not be treated as having filed a valid objection to the proposed Settlement.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court decided Jonathan Auerbach and Jerome M. Marcus of Marcus & Auerbach LLC and Paul J. Klehm of Krasnoo, Klehm & Falkner LLP are the lawyers appointed as Class Counsel to represent you and all Class Members; Messrs. Auerbach and Marcus, and Marcus & Auerbach LLC, have been appointed Lead Class Counsel. Lead Class Counsel are experienced in handling similar cases and class actions involving consumer law disputes. They can be contacted at the following addresses:

Jonathan Auerbach
Jerome M. Marcus
Marcus & Auerbach LLC
1121 N. Bethlehem Pike, Suite 60-242
Spring House, PA 19477

You can also contact your lawyers at AvivaAtheneSettlement@ConsumerSettlement.org.

11. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But if you want to have your own lawyer, you have the right to do so, at your own expense.

12. How will the lawyers be paid?

Since the investigation of the claims brought in this lawsuit starting in the fall of 2014 and continuing with the filing of a complaint in July of 2015, Class Counsel have devoted substantial resources and expenditures in pursuing claims on behalf of the Settlement Class purely on a contingent basis, meaning that Class Counsel have received no fees or other compensation

for their services or reimbursement of their expenses to date. Class Counsel will ask the Court for an award of fees and expenses, which will be posted on www.strategicclaims.net/aviva when it is filed with the Court. That award will be paid from the Cash Fund. As part of the proposed Settlement, Class Counsel will ask the Court to approve an amount of attorneys' fees and reimbursement of expenses not to exceed four million six hundred thousand Dollars ($4,600,000).

13. Dismissal with Prejudice and Release of Claims

If the Court approves the proposed Settlement, it will enter a judgment that will dismiss the lawsuit with prejudice as to all claims against all Defendants. Defendants will also receive a release and discharge of all claims, demands, suits, petitions, liabilities, causes of action, rights, losses, damages and relief of any kind or type regarding the subject matter of the lawsuit, whether based on state or federal law, statute, regulation, contract, tort, or common law, in any way involving the subject matter of this lawsuit, including claims that were brought or could have been brought, whether known or unknown. The full details of the releases are set forth in the Settlement Agreements, copies of which may be viewed at the Settlement Website www.strategicclaims.net/aviva.

14. The Court's Fairness Hearing

The Court will hold a Fairness Hearing on **October 18, 2018 at 3:00 p.m.** at the John Joseph Moakley U.S. Courthouse, One Courthouse Way, Boston, MA 02210, Courtroom 4, 3rd floor. At the hearing, the Court will decide whether to approve the proposed Settlement and the request for attorneys' fees and reimbursement of expenses. If objections have been timely received, the Court will consider them at this time.

You and/or your own lawyer may attend the Fairness Hearing if you wish, at your own expense. You may also ask the Court for permission to speak at the Fairness Hearing concerning the proposed Settlement or the application of Class Counsel for attorneys' fees and expenses. You do not need to attend or speak at the Fairness Hearing to remain a Class Member. You cannot speak at the Fairness Hearing if you have excluded yourself from the Settlement Class or if you do not object.

The date of the Fairness Hearing may be changed without further notice to you. Accordingly, if you intend to appear at the Fairness Hearing, you should check Judge Gorton's calendar at the Court's website, www.mad.uscourts.gov on **October 18, 2018,** to make sure that the date scheduled for the Fairness Hearing has not been changed. The date of the Fairness Hearing will also be posted on the Settlement Website www.strategicclaims.net/aviva.

ADDITIONAL INFORMATION

This Notice provides only a summary of the matters relating to the Settlement. For more detailed information, you may wish to review the Settlement Agreements. A website was created for this Settlement containing all the important documents for the Settlement. If you wish to view these documents, or if you would like to update your address, please visit www.strategicclaims.net/aviva.

You may also write to the following address:

Settlement Administrator
Griffiths v. Aviva Settlement
PO Box 230
Media, PA 19063

You may also view the complete file of the lawsuit, including the Settlement Agreements, at the Office of the Clerk, United States District Court, District of Massachusetts, One Courthouse Way, Boston, MA 02210, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. The Clerk will tell you how to obtain the file for inspection and copying at your own expense. Documents may also be viewed and printed on the Court's website (pacer.gov) through PACER at a cost per page viewed. You may also contact Lead Class Counsel at AvivaAtheneSettlement@ConsumerSettlement.org.

PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT OR ANY OF THE DEFENDANTS REGARDING THIS ACTION OR PROPOSED SETTLEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN W. GRIFFITHS, on behalf of himself and all others similarly situated, Plaintiff, v. AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY, Defendants.	)	Civil Action No. 15-cv-13022-NMG

DECLARATION OF PAUL KLEHM

I, Paul J. Klehm, Esq., declare as follows:

1. I am a partner of the firm of Krasnoo, Klehm & Falkner LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is local counsel for the Plaintiff in the above-entitled action. In that role, my office assisted with advising lead counsel, Attorneys Jerome Marcus and Jonathan Auerbach, of local rules and practices. Among other things, I participated in numerous strategy discussions, drafted and reviewed documents, attended the court hearing and participated in the mediation.

3. The identification and background of my firm and its partners is set forth in our firm resume. [Doc. No. 126-3]. I note that the firm resume incorrectly states that I was admitted to

practice in the United States District Court for the District of Massachusetts in 1992. I was admitted to practice in this Court in 1993. Also, I no longer serve on the Massachusetts Bar Association's *Amicus Curiae* committee.

4. The following information regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary court of business. I am the partner who oversaw and/or conducted the day-to-day activities in the Litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed to the Litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines and policies regarding certain expenses such as charges for hotels, meals, and transportation. As a result of these reviewed and adjustments, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

5. The total number of billable hours spent on this litigation by my firm is 199.70. The total lodestar amount for attorney/paraprofessional time based on the firm's current rates is $80,130.00. The hourly rates shown below are the usual and customary rates charged for each individual. A breakdown of the lodestar is as follows:

NAME		**HOURS**	**RATE**	**LODESTAR**
Klehm, Paul J.	P	193.20	$400	$77,280.00

Krasnoo, James B.	P	6.00	$450	$2,700.00
Falkner, Benjamin L.	P	.50	$300	$150.00
TOTAL		199.70		$80,130.00

(P) Partner

6. My firm seeks an award of $328.91 in expenses which are reasonably and necessarily committed to the prosecution of the litigation. They are broken down as follows:

EXPENSES

From Inception to May 2, 2018

EXPENSE CATEGORY	**TOTAL**
Photocopies	$56.40
LexisNexis (online research) We changed our online service provider from Westlaw to LexisNexis in and around February, 2017, although there was a brief period in which our office used both services simultaneously.	$11.10
A&A Courier (delivery service)	$59.90
PACER (online research)	$11.10
Parking costs	$38.00
Postage	$15.15
Travel Costs	$75.76
Westlaw (online research)	$61.50
TOTAL	**$328.91**

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of August, 2018, at Andover, Massachusetts.

/s/ Paul J. Klehm
Paul J. Klehm

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN W. GRIFFITHS, on behalf of himself and all others similarly situated, Plaintiff v. AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD, f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD, ATHENE LONDON ASSIGNMENT CORPORATION, and ATHENE ANNUITY AND LIFE COMPANY, Defendants.	)	Civil Action No: 15-13022-NMG

SUPPLEMENTAL EXPERT REPORT OF LINDA KAISER CONLEY

Introduction

1. I have been asked to provide my opinion regarding whether the new Capital Maintenance Agreement (New CMA) entered into between Athene Holding Ltd. ("AHL"), and Athene London Assignment Corporation ("Athene London"), relative to the proposed settlement of this litigation, provides value to the settlement class members under insurance regulatory standards. In my opinion, the New CMA provide significant value to the annuity beneficiaries for the reasons explained below.

2. My opinions are offered to a reasonable degree of professional certainty and are based upon my professional experience, my training, my experience in and knowledge of the insurance industry, and my review of the documents and materials identified in Appendix A to this report. I have attached to this report as Appendix B a copy of my curriculum vitae, which sets forth in detail my educational and professional background. A list of matters in which I have provided testimony as an expert during the past four years is attached as Appendix C. In the past 10 years, I have authored the publications listed in Appendix D. In this matter, I am charging my time at a rate of $325 per hour.

Qualifications of Linda Kaiser Conley

3. I am the founder and sole member of Kaiser Conley Consulting Services LLC ("KCCS"), which was established in 2013. Through KCCS, I provide consulting services to attorneys (plaintiff and defense), insurance companies, insurance producers (agents/brokers), businesses and others to assist in understanding, addressing and resolving insurance and regulatory issues and questions.

4. Before KCCS, I worked as an attorney at Cozen O'Connor and Saul Ewing, where I focused my practice on insurance regulatory and transactional matters. I provided advice on matters involving changes in ownership of insurance companies, guarantees issued by insurance companies, and issues relating to the insolvency of insurance companies, among other assignments.

5. Prior to my consultant and law firm careers, I was the Insurance Commissioner for the Commonwealth of Pennsylvania, which is a cabinet level position in Pennsylvania. During my tenure as Insurance Commissioner, I was responsible for regulating every aspect of insurance under Pennsylvania law. As Insurance Commissioner, I was responsible for enforcing compliance with Pennsylvania's insurance statutes and regulations. My responsibilities included managing the Insurance Department staff who handled the insolvency of insurers domesticated in Pennsylvania, among other duties. At the time I was Insurance Commissioner, the Pennsylvania Insurance Department was handling approximately 31 receiverships.

6. While I was Insurance Commissioner, I served in a leadership role at the National Association of Insurance Commissioners (NAIC). The NAIC, founded in 1871, is comprised of the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators promulgate model laws and regulations and establish uniform standards relating to the solvency, financial condition, financial reporting and market practices of insurers, among other matters. I served on the NAIC Executive Committee and actively participated on a number of NAIC Committees addressing financial and consumer protection issues. I also served on the Board of the Journal of Insurance Regulation, a research publication sponsored by the NAIC which focuses on empirical work, theory and public policy issues relating to insurance.

7. During my career, for approximately seven years, I co-chaired the Insurance Committee for the Pennsylvania Bar Association, Business Law Section. I am routinely invited to speak before groups and organizations, and I have made speeches and presentations to, for example, the NAIC, A.M. Best, National Council of Insurance Legislators, Association of Insurance Compliance Professionals, Pennsylvania Society for Certified Public Accountants, Society of Actuaries, Insurance Society of Pennsylvania, and the Pennsylvania Bar Institute.

8. I am currently a retired attorney, having been previously admitted to practice in Pennsylvania, New York, U.S. District Court, Middle District of Pennsylvania and U.S. District Court, Western District of New York.

Brief Explanation of the Status of this Litigation

9. Herein, I rely upon the facts stated in the Notice to Class Action Members (Notice),[1] which Notice was approved for dissemination by the Court on June 29, 2018. Order dated June 29, 2018, ¶¶1 and 7.[2]

10. A class action was brought by Plaintiff John W. Griffiths against Aviva London Assignment Corporation, Aviva Life Insurance Company, Aviva International Insurance Ltd, f/k/a CGU International Insurance, plc ("CGU"), Athene Holding, Ltd, Athene London Assignment Corporation, and Athene Annuity and Life Company (collectively, the "Defendants"), seeking money damages and other relief. In the litigation, Plaintiff claims that certain Defendants improperly terminated a capital maintenance agreement under which CGU agreed to provide capital to the entity responsible for making payments on certain annuities if that entity was unable to satisfy its obligations under those annuities. All Defendants deny any wrongdoing and any liability, and no court has made any judgment or other determination of any liability against Defendants.

11. The parties have reached a settlement (the Settlement"), and the Court has preliminarily certified this matter as a class action for settlement purposes and preliminarily approved the Settlement. The Settlement Class include all beneficiaries of any structured settlement annuity assigned to Athene London Assignment Corporation (formerly known as Aviva London Assignment Corporation and as CGNU London Annuity Service Corp.), which includes all annuities covered by the capital maintenance agreement between CGU International Insurance plc and CGNU London Annuity Service Corp. dated February 1, 2002, where such annuities remained in force as of October 2, 2013.

12. In part, the Settlement provides the following relief to each Settlement Class member:

(a) A new Capital Maintenance Agreement ("the New CMA") has been entered into between Athene Holding Ltd. ("AHL"), and Athene London Assignment Corporation ("Athene London"). Athene London is the entity responsible for making all payments called for by the Annuities. Pursuant to the Settlement, the New CMA requires AHL to ensure that Athene London has sufficient assets to make all payments called for by any of the Annuities.

(b) In addition to other restrictions, the New CMA cannot be terminated unless another entity with an investment grade rating enters into a CMA with the same substantive terms as the New CMA.

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[1] The Notice is available at https://www.strategicclaims.net/aviva.

[2] The June 29, 2018 Order is available at https://www.strategicclaims.net/aviva.

(c) The Settlement establishes that any breach of the New CMA would constitute irreparable harm to each member of the Settlement Class.

(d) In addition to the New CMA, the Settlement provides that the Athene Defendants shall pay $2.3 million, and that CGU shall pay $5 million into a fund ("the Cash Fund") for the benefit of Class Members.

Notice, p. 3.

Value of the New CMA to the Settlement Class

13. In the estimation of Plaintiff's Expert Witness Stephen Scherf, the New CMA has a value to the Settlement Class of between $27 million and $41 million. Notice, p. 3.

14. In my view, in addition to the monetary value of the New CMA to the Settlement Class, it is important to recognize the benefits provided to the Class Members under insurance regulatory laws.

15. Generally, beneficiaries under annuity contracts must rely on the financial solvency of the insurance company that issued the annuity to obtain the promised annuity payments on an ongoing basis into the future. If the issuing insurance company encounters financial distress and is rendered insolvent, insurance regulatory laws provide a detailed scheme for paying the outstanding liabilities of the issuing company, including amounts the insurance company owes under annuity contracts it has issued.

16. Under the general regulatory scheme applicable to annuity contracts, the claims of annuity beneficiaries against the issuing company would be paid by a guaranty association. In Massachusetts,[3] the Massachusetts Life & Health Insurance Guaranty Association ("Mass. Guaranty Association") is the entity created by statute to pay the claims of beneficiaries against the insolvent company. However, under the statutory standards applicable to the payment of claims by the Mass. Guaranty Association, the amount that can be paid to a structured settlement annuity beneficiary is limited. The Mass. Guaranty Association is limited to paying a maximum of $250,000 to each individual payee under a structured settlement annuity, regardless of how many annuity contracts the now insolvent insurance company issued for the benefit of the structured settlement beneficiary. Mass. General Laws Chap. 175 §146B, para. 4(B)(3)(c).[4] Claims that exceed $250,000 can be brought as policyholder claims against the insurance

[3] I use Massachusetts as the example because I am advised by Plaintiff's counsel that the majority of the Annuities were issued by a Massachusetts-based entity.

[4] The benefit limitation is set by statute in each individual state. Many states have structured settlement benefit limits of $250,000 or $300,000. However, a small number of states have lower benefit limits (Alaska's benefit limit is $100,000) or higher benefit limits (Connecticut's benefit limits is $500,000 and North Carolina's is $1,000,000). See e.g. National Organization of Life and Health Guaranty Associations website, State Laws and Provisions Report, Benefit Limits, (current as of January 1, 2018), available at https://www.nolhga.com/factsandfigures/main.cfm/location/lawdetail/docid/8.

company's estate,[5] but if there are insufficient assets in the estate to satisfy policyholder claims, the beneficiary will receive a maximum of $250,000 in remuneration, irrespective of the amount of payments the annuity owner is entitled to receive under the annuity contract s/he purchased.[6]

17. In this case, the beneficiaries can look to the assets of the issuing company to pay the benefits owed under the structured settlement annuities while also receiving an additional level of protection and security under the New CMA which is available to satisfy the amounts due under the annuity contract, in the event the issuing company becomes unable to fulfill its payment duties. Furthermore, because the New CMA does not have a limitation on the amount that can be paid to each annuity owner (unlike the Massachusetts Guaranty Association's benefit limitation), the Settlement Class is receiving a level of assurance that full payment will be made in the event the issuing company becomes unable to pay its liabilities. In my view, the additional layer of security and the absence of a benefit limitation would be substantial advantages to the structured settlement beneficiaries when the New CMA becomes effective under the Settlement.

CONCLUSION

18. For all of the reasons set forth herein, it is my opinion that the New CMA places the structured settlement beneficiaries in a better position than they would otherwise be under insurance regulatory laws, in the event the issuing company encounters financial distress and the advantage provided to the beneficiaries has significant value. All of my opinions expressed herein are offered to a reasonable degree of professional certainty.

19. I reserve the right to amend or modify the opinions stated in this report if new or additional facts, documents or materials come to light and are brought to my attention.

Respectfully,

Linda Kaiser Conley

Linda Kaiser Conley
Dated: August 7, 2018
Attachments: Appendices A - D

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5 See e.g. Mass. Guaranty Association website, http://www.malifega.org/FAQ, question No. 8.

6 In the largest insolvency of its time, structured settlement beneficiaries suffered great economic loss following the collapse of Executive Life Insurance Company, seeing their payments reduced by 30-60%. See e.g. The Collapse of Executive Life Insurance Co. and its Impact on Policyholders, Hearing before the Committee on Government Reform, U.S. House of Representatives, 107 Congress, Second Session, October 10, 2002, Serial No. 107–142, pp. 3 and 14, available at https://www.gpo.gov/fdsys/pkg/CHRG-107hhrg83976/pdf/CHRG-107hhrg83976.pdf.

John W. Griffiths, on behalf of himself and all others similarly situated v. Aviva London Assignment Corporation, et al.

Documents and Materials Reviewed by Linda Kaiser Conley

Appendix A to Supplemental Expert Report

Notice to Class Action Members (Notice), available at https://www.strategicclaims.net/aviva

Order dated June 29, 2018 issued by Judge Gorton in this case, available at available at https://www.strategicclaims.net/aviva

Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, dated May 1, 2018, with handwritten notation by Judge Gorton dated June 29, 2018 in the margin, available at available at https://www.strategicclaims.net/aviva

Massachusetts General Laws, Chap. 175 §146B

National Organization of Life and Health Guaranty Associations website, State Laws and Provisions Report, Benefit Limits, (current as of January 1, 2018), available at https://www.nolhga.com/factsandfigures/main.cfm/location/lawdetail/docid/8

Massachusetts Life & Health Insurance Guaranty Association website, http://www.malifega.org/FAQ

The Collapse of Executive Life Insurance Co. and its Impact on Policyholders, Hearing before the Committee on Government Reform, U.S. House of Representatives, 107 Congress, Second Session, October 10, 2002, Serial No. 107–142, available at https://www.gpo.gov/fdsys/pkg/CHRG-107hhrg83976/pdf/CHRG-107hhrg83976.pdf

John W. Griffiths, on behalf of himself and all others similarly situated v. Aviva London Assignment Corporation, et al.

Curriculum Vitae of Linda Kaiser Conley

Appendix B to Supplemental Expert Report

EMPLOYMENT

Kaiser Conley Consulting Services LLC (July 2013 to present)
Founder and Principal
7467 Roebelenii Ct.
Sarasota, FL 34241
215-840-4619

Cozen O'Connor, Member, Insurance Regulatory Practice Group (2003 to August 2013)
Philadelphia, Pennsylvania

Saul Ewing LLP, Partner, Insurance and Financial Institutions Practice Group (2000 to 2003)
Philadelphia, Pennsylvania

Reliance Insurance Company, Senior Vice President, General Counsel & Secretary (1997 to 2000)
Philadelphia, Pennsylvania

Insurance Commissioner, Commonwealth of Pennsylvania (1995 to 1997)
Harrisburg, Pennsylvania

Reliance Insurance Company, Assistant General Counsel (1992 to 1995)
Philadelphia, Pennsylvania

Cigna Corp.
Counsel, Property and Casualty Division, Philadelphia, Pennsylvania (1985 to 1987)
Counsel, Law Offices of Joe Ables (captive law firm), Buffalo, New York (1987 to 1989)
Senior Counsel, Property and Casualty Division, Philadelphia, Pennsylvania (1989 to 1992)

Pennsylvania Insurance Department, Assistant Counsel (1981 to 1985)
Harrisburg, Pennsylvania

INSURANCE PROFESSIONAL DESIGNATIONS

Chartered Property Casualty Underwriter (CPCU) (1992-present)

SELECTED BOARD ACTIVITIES

- National Association of Insurance Commissioners (NAIC)
  - Executive Committee, member (1996-1997)
  - Vice Chair of the Northeast Zone (1997)
  - Secretary of the Northeast Zone (1996)
  - Industry Liaison Committee, member (1997-2000)
  - Meeting attendee (1992-2006)

- NAIC Journal of Insurance Regulation, Board Member (1996-1997)
- Subsidiaries of Reliance Insurance Company, Board Member (1992-1995, 1997-2000)
- Pennsylvania Children's Health Insurance Program, Chair (1995-1997)
- Pennsylvania Health Care Cost Containment Council, Member (1995-1997)
- Philadelphia Theatre Company, Board Member (2002-2007)
- Committee of Seventy, Board Member (2002-2007), Vice Chair (2003-2005)

SELECTED PROFESSIONAL ACTIVITIES

- Rutgers School of Law (Camden) - Adjunct Professor, Advanced Insurance (2003)
- Millersville University – Adjunct Professor, Business Law (1984 -1985)
- Franklin and Marshall College – Visiting Professor, Insurance (1985)
- National Association of Insurance Commissioners, speaker (2001, 2003)
- Pennsylvania Bar Association
  - Member (2000-current)
  - Co-chair Business Law Section, Insurance Committee (2005-2011)
  - Speaker, Annual Meeting (2014), Insurance Section (2001, 1998)
- Pennsylvania Bar Institute
  - Co-chair of the PBI Insurance Institute (1997-2012)
  - Speaker (1996-1998, 2001-2005, 2008, 2011)
- American Institute For Chartered Property Casualty Underwriters (formerly Society of CPCU)
  - Philadelphia Chapter, member (1992-current)
  - Regulation and Legislation Interest Section, member (2000-2006)
  - Speaker (2003, 2006, 2017)
  - Speaker, Pennsylvania Dutch Chapter (2018)
- American Bar Association, member (1995-2013)
- Philadelphia Bar Association, Insurance Section
  - Co-Chair (2006-2008)
  - Speaker (2001)
  - Member (2001–2008)
- Insurance Society of Philadelphia
  - Course Planner, (2001-2004)
  - Speaker (2002-2006, 1998)
- LexisNexis, speaker (2011)
- American Conference Institute, speaker (2006)
- International Insurance Foundation, speaker (2005)
- Association of Insurance Compliance Professionals, speaker (2004)
- Mealy's Insurance 101 Conference, speaker (2004)
- National Association of Insurance Commissioners, speaker (2003)
- Society of Actuaries, speaker (2003)
- Philadelphia "I" Day, speaker (2003, 2001)
- Central Pennsylvania "I" Day, speaker (2001, 1995–1996)
- Institute of Home Office Underwriters (2001)

- Pennsylvania Society of Certified Public Accountants, speaker (1999–2000)
- National Conference of Insurance Legislators, speaker (1998)
- A.M. Best, speaker (1997)

SELECTED HONORS AND RECOGNITION

- Super Lawyers, Pennsylvania (2009)
- Who's Who of International Insurance & Reinsurance Lawyers (2009, 2002)
- Insurance Society of Philadelphia Mariellen Whelan Excellence in Education Award (2005)

EDUCATION

University of Pittsburgh School of Law, J.D. (1981)

Pennsylvania State University, B.A., Psychology (1978)

PERSONAL INFORMATION

- Maiden name prior to September 2006 - Linda Susan Kaiser
- Retired Attorney Status, Pennsylvania and New York (2015)

John W. Griffiths, on behalf of himself and all others similarly situated v. Aviva London Assignment Corporation, et al.

Listing of Expert Witness Matters Wherein Linda Kaiser Conley Testified During the Past Four Years (2014 – 2018)

Appendix C to Supplemental Expert Report

Paroda et al. v. Allstate Insurance Company
U.S. District Ct., W.D. Pa.
No. GD 44 of 2013
Expert Report – November 20, 2014
Supplemental Expert Report – April 30, 2015
Testimony – October 23, 2015

General Refractories Company v. First State Insurance Company, et al.
U.S. District Court, E.D. Pa.
No. 04-CV-3509
Expert Report – December 17, 2010
Deposition – March 16, 2011
Testimony – January 14, 2014

John W. Griffiths, on behalf of himself and all others similarly situated v. Aviva London Assignment Corporation, et al.

Published Articles Authored by Linda Kaiser Conley (2008-2018)

Appendix D to Supplemental Expert Report

"Preemption of State Insurance Laws for Risk Retention Groups: Proposals for Regulatory Clarity," cozen.com, August 2011

"Legislative and Regulatory Update: 2010 Enactments and Upcoming Changes," Pennsylvania Bar Institute – Insurance Institute, April 2011 (co-authored with Arthur F. McNulty)

"John Hancock Financial's Settlement with California Highlights the Tension between Compliance with the Law and Evolving Best Practice Standards," cozen.com, April 2011 (co-authored with Robert Tomilson)

"State of Connecticut and Guy Carpenter settle Landmark Antitrust Case of $4.25M; What's Next for the Reinsurance Industry," cozen.com, February 2011 (co-authored with Melissa Maxman, et al.)

"Recent Amendments to the Pennsylvania Insurance Holding Company Act: Changes Affecting Controlling Persons," cozen.com, August 2012 (in collaboration with James Potts)

"Recent Amendments to the Pennsylvania Insurance Holding Company Act: New Enterprise Risk Report," cozen.com, August 2012 (in collaboration with James Potts)

"Recent Amendments to the Pennsylvania Insurance Holding Company Act: Changes Affecting Corporate Governance and Intercompany Transactions and Agreements," cozen.com, August 2012 (in collaboration with James Potts)

"Elusive target: Defining 'home state' has kept a central NRRA goal – uniform premium tax rules – out of reach," Best's Review, February 2013

"Implementing the Affordable Care Act: Countdown to 2014 - The 90-Day Waiting Period Limitation," cozen.com, February 2013