

# EXHIBIT 1B



ATHENE HOLDING, LTD., ATHENE LAC AND ATHENE ANNUITY AND LIFE (collectively “Athene”), (all of whom are together denominated as “Defendants”). Plaintiff prosecutes this action pursuant to Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated, for damages and other relief arising from this wrongful conduct. (Collectively, “all others similarly situated” shall be referred to as “the Proposed Class”, and Griffiths and the Proposed Class shall be referred to as “Plaintiffs”.)

2. As alleged below in detail, AVIVA sold certain annuities (“the Guaranteed Annuities”) to the public on the basis of a unique guarantee issued by an entity which AVIVA identified as AVIVA’s indirect parent – Defendant CGU -- which was held out to buyers as a source of great financial strength. The Guaranteed Annuities were sold with the written and binding promise – which AVIVA called a Capital Maintenance Agreement Guarantee, and which will be referred to hereafter as “the CMA Guarantee” or “the CMA” -- that Defendant CGU would stand behind the Guaranteed Annuities and ensure that all payments called for by the Guaranteed Annuities would be made and made timely. The Guaranteed Annuities were issued by AVIVA Life Insurance Company, and assigned to AVIVA LAC, so that payments on these annuities were to be made by AVIVA LAC, and the CMA Guarantee embraced these obligations of AVIVA LAC.

3. The Guaranteed Annuities commanded a higher price than other annuities because the financial strength of the CMA Guarantee, and of Defendant CGU, substantially lowered the risk associated with purchase of the Guaranteed Annuities. Griffiths, and all members of the Proposed Class, paid this higher price, and were (and are) as a result entitled to the benefit of the bargain they made: an annuity backed by the financial strength and guarantee of Defendant CGU, and with a risk profile reflecting the CMA Guarantee.

4. Instead, however, after all of the Guaranteed Annuities were sold to Plaintiff Griffiths and all members of the Proposed Class, the AVIVA Defendants sold the Guaranteed Annuities to what they claim is a new entity – Defendants Athene Holding, Ltd., and Athene Annuity and Life Company, in a transaction pursuant to which Defendant Athene LAC became responsible for satisfaction of the Guaranteed Annuities. As a result, Athene now claims that that the CMA Guarantee is no longer in force.

5. In fact, AVIVA Life Insurance Company, which issued the Guaranteed Annuities to Plaintiff Griffiths and all members of the Proposed Class, became Athene Annuity and Life Company simply by changing its name. Athene Annuity and Life is therefore the successor in interest to AVIVA Life.

6. Because Defendants assert that neither CGU nor any other entity any longer guarantees the performance of the Guaranteed Annuities, the risk of default or late payment is materially higher than the risk profile Plaintiffs purchased and paid for, which reflected the CMA Guarantee.

7. Plaintiffs plead, in the alternative, either (a) that Defendants are correct that the CMA Guarantee is no longer in force, in which case Defendants have breached their promise to Plaintiffs and otherwise violated the legal rights and equitable entitlements of the Plaintiffs; or in the alternative, (b) that Athene LAC is the legal successor in interest to AVIVA LAC, and therefore that the CMA Guarantee initially issued in favor of AVIVA LAC in fact remains in force as to Athene LAC. Because this is so, the CMA Guarantee remains in force as to all of the Guaranteed Annuities even though they are now owned by Athene LAC instead of AVIVA LAC.

8. In addition, and independently, the promise made by AVIVA to the purchasers of the Guaranteed Annuities was that Defendant CGU would guarantee all payments to be made on all of the Guaranteed Annuities. This promise directly to the Plaintiffs, upon which Plaintiffs relied when they purchased the Guaranteed Annuities, is an independent contractual obligation entitling Plaintiffs to the benefit of that bargain.

### **PARTIES**

9. Plaintiff Griffiths is a citizen and resident of the State of Hawaii.

10. Upon information and belief, Defendant AVIVA LIFE, a subsidiary of AVIVA USA Corporation, is an insurance company incorporated in Delaware, and with a registered agent for the service of process at Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801. During the relevant time period in this case, AVIVA LIFE maintained its principal place of business at 108 Myrtle Street, North Quincy, MA 02171. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

11. Upon information and belief, Defendant AVIVA LAC, a subsidiary of AVIVA USA Corporation, is an insurance company incorporated in Delaware. During the relevant time period, AVIVA LAC maintained its principal place of business at 108 Myrtle Street, North Quincy, MA 02171. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply

goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

12. Defendant CGU is a corporation formed under the laws of England and Wales. According to the Annual FSA Insurance Return for the Financial year ended 31 December 2003, CGU had as of that date “guaranteed the commercial paper programme and the related committed borrowing facilities of AVIVA plc” and was, as a result of this guarantee, legally responsible for the obligation to satisfy all annuities issued by AVIVA which were backed by the CMA. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

13. Defendant Athene Holding, Ltd., is the parent of all other Athene entities identified in this Complaint. Defendant Athene Holding, Ltd., purchased all of AVIVA's U.S. business, including all of the annuity contracts at issue in this case, and this transaction provided the basis upon which all Defendants have contended that the CMA Guarantee is no longer in force. Defendant Athene Holding, Ltd., is a corporation incorporated under the laws of Bermuda, with its principal place of business at Chesney House, First Floor, 96 Pitts Bay Road, Pembroke, HM08, Bermuda. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

14. Defendant ATHENE LAC was previously AVIVA LAC, until its name was changed, effective October 2, 2013, to the current name; as a result, ATHENE LAC is the successor in interest to AVIVA LAC. ATHENE LAC is a corporation incorporated under the laws of Delaware and with its statutory office in Wilmington, Delaware, with a registered agent for the service of process at Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

15. Defendant Athene Annuity and Life Company, an Iowa-domiciled company, formerly known as Aviva Life Insurance Company is the current bearer of the obligation to make payments under the Guaranteed Annuities. Athene Annuity and Life is a corporation incorporated under the law of Delaware, with its principal place of business in Des Moines, Iowa. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

#### **JURISDICTION AND VENUE**

16. This Court has jurisdiction over the subject matter of this case by operation of the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) & (6), because the aggregate claims of the putative Class members exceed \$5 million, exclusive of interest and costs, and Plaintiff is a

citizen of a different state than each of the Defendants. *See also*, 28 U.S.C. §1332.

17. This Court has personal jurisdiction over the Defendants by operation of the Massachusetts Long Arm Statute, Mass. Gen. Laws c. 223A §3, inasmuch as each of the Defendants transacted business in this Commonwealth which was specifically related to the transactions and occurrences at issue in this case.

18. Venue lies in this district by operation of 28 U.S.C. § 1391 because a substantial part of the acts at issue in this case took place in this district.

**FACTUAL ALLEGATIONS SPECIFIC TO**  
**THE NAMED PLAINTIFF**

19. In 2001 Plaintiff John Griffiths resolved a personal injury case against the City of Honolulu. To ensure that he and his wife would both receive income for the rest of their lives, the award was utilized to purchase an annuity (“the Griffiths Annuity”).

20. Under the terms of his settlement agreement, Griffiths retained the right to designate the entity from which the City of Honolulu would purchase the Griffiths Annuity.

21. Griffiths was deeply concerned about the reliability of the annuity issuer, and, in exercising his right to determine the identity of the issuer of the Griffiths Annuity, he took extensive care to ensure that the issuer was financially strong.

22. Griffiths worked with Ringler & Associates, a firm of brokers who sell annuities to fund structured settlements. The personnel at Ringler are paid by the issuers of the annuities they sell and are the agents of those issuers.

23. One essential step Griffiths took to ensure the safety of his payment stream was to purchase an annuity issued by AVIVA.

24. Griffiths initially decided to cause the Griffiths Annuity to be purchased from AVIVA because the Ringler agent with whom he was working, Donna L. Hanaïke, informed him

by letter dated October 18, 2001 that “the parent of CGU Life Company, CGU Insurance Company (rated A+ Superior XV) issues a surety bond to guaranty the payments under the annuity. Not all life annuity companies will do this. This affords even better protection than a bank account.”

25. Arrangements for the purchase of the annuity for Griffiths were defined by January 14, 2002, and Griffiths could have executed the relevant documents at that time.

26. Griffiths chose not to complete the arrangements at that time, however, because of what he learned during a telephone conversation he had with Richard Krypta, Senior Vice President and General Counsel of CGU Life Insurance Company, in North Quincy, MA, on January 3, 2002.

27. During that conversation, as Griffiths confirmed in a letter he sent to Krypta dated January 23, 2002, Krypta “explained that CGU Life of America and Norwich Union are in the process of creating a new plan whereby Norwich Union will guarantee the annuities of CGU Life of America. You further explained that this plan is not yet available but that it will be available a month or two from now.”

28. The “new plan” referenced in the conversation between Griffiths and Krypta, and in Griffiths’s letter to Krypta, was the CMA.

29. During this conversation on January 3, 2002, Krypta further explained in that conversation that the span of time required to finalize documentation of the Griffiths Annuity was sufficiently great that by the time the documentation of the Griffiths Annuity was completed, and the Griffiths Annuity was actually issued by AVIVA, the CMA would be in place and would apply to the Griffiths Annuity.

30. As a direct result thereof, Griffiths directed that completion of the documentation for the Griffiths Annuity be delayed until such time that the Griffiths Annuity would, by virtue of the date of its issuance, be covered by the CMA.

31. Ultimately AVIVA did not complete issuance of the contract for the Griffiths Annuity until well into 2003, and Griffiths did not receive the formal contract document for the Griffiths Annuity until June 10, 2003.

32. On May 20, 2003, Jean Miller, an AVIVA Manager, Structured Settlement Administration, wrote to Griffiths. She identified herself as “manager of the administration department that will be issuing the contract for the above mentioned policy number.”

33. In her May 20, 2003, letter, Miller “summarize[d] the benefits you will be receiving with the issued contract” to include “[t]he CMA[, which] provides that the assignment corporation that owns your contract will have the necessary funds to satisfy the obligations assigned to it.”

34. Miller also stated in her letter that “In your [i.e. Griffiths’s] letter [to AVIVA employee Debra Fickett-Wilbar], you also asked for the language that will be included in the CMA (Capital Maintenance Agreement). I have enclosed a sample copy of the letter that you will be receiving with your contract and a flyer, which explains how the CMA works.”

35. The correspondence in Griffiths’s possession between Griffiths, AVIVA, and its agents relating to the formation of the contract for the Griffiths Annuity, and the application to that Annuity of the CMA, is attached hereto as Exhibit A (redacted to remove personal identifying information and privileged communications) and incorporated herein by reference.

36. Griffiths, the City of Honolulu, and two instrumentalities of CGU also executed a Qualified Assignment and Pledge Agreement, which is attached hereto as Exhibit B. This

agreement confirmed that Griffiths maintained certain rights of ownership with respect to the Griffiths Annuity and that, in the event of certain defined events of default, his ownership rights would be even further increased. The Qualified Assignment and Pledge Agreement provides that it is to be governed by the substantive law of the Commonwealth of Massachusetts.

### **CLASS-WIDE FACTUAL ALLEGATIONS**

37. Beginning no later than January 1, 2001, and continuing through 2008, Griffiths and all others similarly situated purchased structured settlement annuities from AVIVA on the strength of promises, set forth in its uniform marketing materials and other documentation from the company stating that these annuity obligations were fully guaranteed under a capital maintenance agreement (“CMA”) with its London affiliate Defendant CGU -- which holds over \$100 billion in assets and has been in existence for centuries -- and that this guarantee was “absolute, unconditional, present and continuing.” AVIVA LIFE issued the Guaranteed Annuities to Plaintiffs, and AVIVA LAC was responsible for making payments on the Guaranteed Annuities.

38. The CMA Guarantee was set forth in correspondence from AVIVA USA Corporation to Plaintiff, sent by AVIVA from its offices at 108 Myrtle Street, North Quincy, MA, 02171.

39. The CMA Guarantee was issued by Defendant CGU with the express purpose and effect of increasing the value of annuities sold within Massachusetts and throughout the United States, including the Griffiths Annuity and all annuities issued for the benefit of all members of the proposed class in this case. On information and belief, the sole purpose of the CMA was to affect the strength, and thereby the price, of annuities issued by Defendants in the United States, including in Massachusetts.

40. Annuities involve a stream of payments that typically extend far into the future. Potential customers for such investments are most concerned with the financial stability and credit of the issuing companies because whether the issuing company is likely to remain solvent, and able to satisfy its obligations under the annuity, for years to come is a material fact bearing on the value of the annuity. To remain relevant and competitive in the market, it is therefore of paramount importance to all annuity issuers that they be able to demonstrate a strong financial position through guarantees and the like.

41. Annuities are priced, in part, on the basis of the level of certainty that the issuing company can present to annuity buyers that the issuer will remain in business, solvent, and able to satisfy its obligations under the annuity throughout the expected duration of the annuity. See, e.g., *In re Estate of Romnes*, 79 N.J. 139, 148 (1979) (purchase price of an annuity would be determined by various factors including “the solvency of the payor”).

42. AVIVA knew the facts alleged in Paragraph 41, *supra*, and was well aware that a CMA guarantee from its multi-billion dollar affiliate that was “absolute, unconditional, present and continuing” would be a material fact bearing on – and materially improving – the risk profile it presented to potential customers, thereby increasing the profitability of the annuity sale for AVIVA.

43. From its office in North Quincy, MA, AVIVA LAC explained the CMA Guarantee with the following language:

This will confirm that AVIVA London Assignment Corporation, a Delaware corporation (AVIVA London Assignment) has entered into a Capital Maintenance Agreement (the ‘Agreement’) with its indirect parent, CGU International Insurance, plc, a company incorporated under the laws of England and Wales (‘CGUII’).

CGUII has, under the terms of the Agreement, agreed:

1. to maintain sufficient capital in AVIVA London Assignment to ensure that it has the necessary funds available to satisfy all structured settlement agreement obligations assigned to and assumed by AVIVA London Assignment during the term of the Agreement and in accordance with Section 130(c) of the Internal Revenue Code as amended; and
2. that the foregoing obligation shall be absolute, unconditional, present and continuing.

44. Under the terms of the Agreement as defined above in paragraph 43, the CMA Guarantee applies to all payment obligations AVIVA LAC assumed during the term of the Agreement. This includes all payments which will ever be due pursuant to any annuity contract issued or assumed by AVIVA LAC during the term of the Agreement, regardless of whether AVIVA LAC or any other entity was the issuer or obligor of that annuity contract at some later time.

45. AVIVA used this guarantee to enhance significantly the sales volume of the Guaranteed Annuities, and to raise the price of these annuities well above the price they would have commanded in the absence of the CMA Guarantee. Purchase options from other companies offered high rates of interest, but did not have a guarantee equivalent to the CMA Guarantee.

46. The upward impact of the CMA on the price of AVIVA annuities was precisely the purpose and intended effect of the defendants' joint action to issue the CMA.

47. The upward impact on the price of AVIVA annuities caused defendants joint action to issue the CMA was an immediate effect of the issuance of the CMA.

48. The persons most immediately and directly affected by the defendants' joint issuance of the CMA are Griffiths, the proposed Named Plaintiff, and all members of the class, because they are the person who paid more for the Annuities as a result of the issuance of the CMA.

49. In breach of its written promise, however, AVIVA has recently taken the position that the CMA Guarantee was *not* absolute, unconditional, or continuing.

50. Griffiths discovered AVIVA's breach of promise when an annuity payment to Griffiths was missed and he wrote to AVIVA to determine the status of his payment. To Griffiths' surprise, he received a response dated October 29, 2014, written on the stationary of a different company, called "Athene." Its Vice President, Christian S. Walker advised Griffiths in that letter that, as of October 2013, "the owner of the annuity funding your periodic payment obligation is now Athene London Assignment Corporation" and that "as a result of Aviva's sale of [AVIVA USA] and its subsidiaries, including [AVIVA LIFE] to Athene Holding Ltd, *the CMA automatically terminated in accordance with its original terms.*" (Emphasis added).

51. This letter represented the first time that Griffiths had heard anything about a corporate sale or purported termination of the CMA.

52. No notice had been given to Griffiths or those similarly situated about these material changes in circumstances when they occurred.

53. Without offering up anything to replace the CMA Guarantee, Athene simply advised that it would now be making the monthly payments on the Guaranteed Annuities.

54. While AVIVA was in operation in this federal judicial district, AVIVA issued billions of dollars in structured settlement annuities to numerous purchasers, including, without limitation, Griffiths, on the strength of its CMA Guarantee and its "absolute, unconditional, present and continuing" term. In breach of the CMA Guarantee, and while AVIVA was in operation in this judicial district, AVIVA then sold its entire AVIVA LIFE annuity business to a different and unrelated company which lacks the financial strength provided by the CMA

Guarantee, and AVIVA now refuses to honor the CMA Guarantee.

55. As a result of the facts set forth above, Griffiths and others similarly situated purchased annuities backed by a unique guarantee which provided an additional measure of security, for which Griffiths and all members of the Proposed Class paid consideration, only to find that the obligation to satisfy their annuity now rests upon a company unbacked by the CMA Guarantee or any effective equivalent.

56. In addition, AVIVA disseminated marketing material to explain the meaning of the CMA Guarantee. In a document captioned “Capital Maintenance Agreement Here’s How it Works,” AVIVA states that “AVIVA’s CMA guarantees that AVIVA London Assignment Corporation will have the funds necessary to satisfy all Structured Settlement contact obligations assigned to it” and that the obligation imposed by this guarantee was “absolute, unconditional, present and continuing.”

57. The Structured Settlement obligations of Griffiths’s annuity, and those of all members of the Proposed Class, were indeed assigned to AVIVA LAC. Therefore, the CMA Guarantee requires that it remain the case that the entity issuing the CMA Guarantee continue to provide the same assurance which was in place when the CMA Guarantee was issued that the obligations of Griffiths’s annuity, and those of all members of the Proposed Class, will be satisfied.

58. Thus, in the absence of Defendants’ compliance with the CMA Guarantee, Griffiths and the Proposed Class have absolutely no guarantee that any of those funds or the promised annuity payments will be secure or will have the degree of security present when Griffiths and the Proposed Class purchased their annuities. Despite the substantial undue – and unbargained for -- risk that has been involuntarily thrust upon Griffiths and others similarly

situated by the collective actions of AVIVA, Defendants have made no attempt whatsoever to honor or replace their “absolute, unconditional, present and continuing” CMA Guarantee, nor have they made any effort to compensate Griffiths and those similarly situated for the increased risk that Defendants caused.

59. Meanwhile, AVIVA profited substantially at two levels at the expense of Griffiths and the Proposed Class -- first, from the boom in Guaranteed Annuity sales that was triggered by its CMA Guarantee and second, from their later sale of all annuity contracts to Athene and by being relieved of the obligations imposed by the CMA. In the latter transaction Athene also profited substantially, also at the expense of Griffiths and all other members of the Proposed Class.

60. Upon information and belief, AVIVA discontinued writing structured settlement annuity policies in 2008.

61. The damage to Griffiths and others similarly situated did not accrue until on or after the date in 2013 when AVIVA LIFE was sold and the CMA Guarantee allegedly terminated.

### **CLASS ACTION ALLEGATIONS**

62. Griffiths brings this action on his own behalf and all others similarly situated pursuant to Fed. R. Civ. P. 23. The Class includes, and is defined as, the following:

All persons who are the beneficial owners of assets which were used to purchase structured settlement annuities that AVIVA and/or its predecessors in interest delivered to purchasers on or after April 1, 2003, which were, at the time of issuance, backed by the CMA Guarantee or its effective equivalent, and with respect to whom such annuities remained in force at the time that AVIVA LIFE was sold and the CMA Guarantee was allegedly terminated with respect to such annuities, and all persons who are the beneficiaries of such Annuities.

63. Excluded from the class are AVIVA, Athene, its/their subsidiaries and affiliates, its/their officers, directors and members of its/their immediate families and any entity in which Defendants have 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.

64. This case is properly brought as a class action under Fed. R. Civ. P. 23(a) and (b)(3), and all requirements therein are met for the reasons set forth in the following paragraphs.

65. Numerosity under Fed. R. Civ. P. 23(a)(1). The members of the Class are, on information and belief, so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to class discovery, the Class consists of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to the records of the Defendants.

66. Commonality under Fed. R. Civ. P. 23(a)(2). There are numerous questions of law and fact common to the Class relating to Defendants' wrongful practices and those common questions predominate over any questions affecting only individual Class members. The common questions include, but are not limited to:

- a) Whether the CMA Guarantee is absolute, unconditional, present and continuing;
- b) Whether Defendants' refusal to honor the CMA Guarantee constitutes a breach of contract;
- c) Whether AVIVA's assignment of the Guaranteed Annuities to Athene, and the acceptance of that assignment by Athene, without notice to or approval by Plaintiff and the members of the Proposed Class, constitutes a

breach of contract;

- d) Whether Defendants breached their fiduciary duties to their annuity customers by making and then breaching the CMA Guarantee, by purporting to transfer to Athene the obligation to satisfy the Guaranteed Annuities; or by other related conduct;
- e) Whether Defendants were unjustly enriched by the sale of Guaranteed Annuities to Griffiths and members of the Proposed Class, and/or by the sale of those annuities to, and their purchase by, Athene;
- f) Whether Defendants must honor the CMA Guarantee, provide a new guarantee of equal value to Class members, and/or otherwise compensate Class members for the increased risk that they caused Class members to incur.

67. Typicality under Fed. R. Civ. P. 23(a)(3). Griffiths's claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practice by Defendants, as described herein.

68. Adequacy of Representation under Fed. R. Civ. P. 23(a)(4). Griffiths is an adequate representative of the Class and his claims and defenses are typical of those of the other Class members. In addition:

- a) Griffiths is committed to the vigorous prosecution of this action on behalf of himself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against insurance companies;
- b) There is no conflict of interest between Griffiths and the unnamed Class

members;

- c) No difficulties are reasonably anticipated in the management of this litigation as a class action; and
- d) Griffiths's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

69. Predominance under Fed. R. Civ. P. 23(b)(3). The questions of law and fact common to the Class as set forth in the "commonality" allegation above predominate over any individual issues. As such, the "commonality" allegations (paragraph 66 and subparts) are restated and incorporated herein by reference.

70. Superiority under Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods and highly desirable for the fair and efficient adjudication of this controversy. The amount of each individual Class member's claim is modest relative to the complexity of the litigation and since the financial resources of the Defendants are enormous, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Defendants' misconduct will proceed without remedy. In addition, given the complex legal and factual issues involved, individual litigation of the claims here at issue would significantly increase the delay and expense to all parties and to the Court. Such individual litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

**COUNT I**  
**BREACH OF CONTRACT**  
**(Against All Defendants)**

71. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 70 as if fully set forth herein.

72. Griffiths and members of the Proposed Class contracted with AVIVA to provide him/them with a guaranteed stream of income for the rest of his life/their lives.

73. Where the terms of a contract are such as to show that reliance was placed on the personal credit of a party, its benefits cannot be assigned absent the express consent of the parties.

74. AVIVA assigned the contract to a third party vendor.

75. Griffiths and members of the Proposed Class had no knowledge of the assignment and indeed did not consent to it.

76. There is no term in the contract allowing AVIVA to make any assignment of the contract without the consent of the purchaser of the contract.

77. Plaintiffs plead the following in the alternative:

A. The CMA Guarantee remains in force and Defendants' collective failure to honor it is a breach of the terms of the CMA Guarantee.

B. The CMA Guarantee does not remain in force because it was vitiated by the transaction pursuant to which Athene acquired the annuity business of AVIVA LIFE. The vitiation of the CMA Guarantee constitutes a breach of the promise made by AVIVA to Plaintiff and to all members of the Proposed Class.

78. As a direct and proximate result of AVIVA's unauthorized assignment, Griffiths and those similarly situated have sustained damages.

79. Separately, Plaintiff Griffiths's contract, and those of all members of the Proposed Class, included the CMA Guarantee, which by its terms is "absolute, unconditional, present and continuing."

80. In addition, AVIVA material disseminated to explain the meaning of the CMA Guarantee provides that "AVIVA's CMA guarantees that AVIVA London Assignment Corporation will have the funds necessary to satisfy all Structured Settlement contract obligations assigned to it."

81. The Structured Settlement obligations of Griffiths's annuity, and those of all members of the Proposed Class, were indeed assigned to AVIVA LAC. Therefore, the CMA Guarantee requires that it remain the case that the entity issuing the CMA Guarantee continue to provide the same assurance which was in place when the CMA Guarantee was issued so that the obligations of the Griffiths annuity, and those of all members of the Proposed Class, will be satisfied.

82. The Defendants also collectively have the duty to comply with the CMA Guarantee because Athene is a successor in interest to AVIVA, inasmuch as AVIVA became Athene with a simple name change effected through the State of Delaware Bureau of Corporations effective October 2, 2013. For that reason, Athene succeeded to AVIVA LIFE's obligations under the CMA Guarantee.

83. The Defendants' failure to continue to honor the CMA Guarantee is an additional and separate breach of the parties' agreement.

**COUNT II**  
**BREACH OF FIDUCIARY DUTY**  
***(Against All Defendants)***

84. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 83 as if set forth fully herein.

85. The business of insurance, which includes the sale of annuities, is a public trust and must serve the best interest of the insuring public. The law governing the business of insurance demands that the interests of policyholders be placed first; that the letter and spirit of all insurance laws and regulations be followed; and that *every* fact essential to a decision to purchase *any* insurance product -- including annuities -- be accurately and completely presented to their customers. As such, insurers bear an elevated level of responsibility to their customers that is fiduciary in nature. All Defendants bear this duty to Griffiths and to all members of the Proposed Class.

86. In addition, AVIVA voluntarily assumed a fiduciary duty to Griffiths and to all members of the Proposed Class by taking significant sums of his/their money and promising in return that all such funds and payouts thereon would be secured by a CMA guarantee that was “absolute, unconditional, present and continuing.”

87. AVIVA breached its fiduciary duty in a variety of ways, including but not limited to:

- a) Failing to notify Griffiths and Proposed Class members in 2013 that AVIVA LIFE was being sold;
- b) Failing to notify Griffiths and Proposed Class members in 2013 that all annuities subject to the CMA Guarantee were being sold to Athene;

- c) Failing to notify Griffiths and Proposed Class members in 2013 that the CMA Guarantee was no longer in force and that the annuity payments were therefore subject to substantially more risk than they had been when priced and purchased;
- d) Failing to honor CMA Guarantee or to replace it with a guarantee of equivalent value; and
- e) Failing to compensate Griffiths and members of the Proposed Class for the increased risk that AVIVA caused.

88. As a direct and proximate result of AVIVA's breach of fiduciary duty, Griffiths and the members of the Proposed Class have sustained damages.

89. By acquiring the assets of AVIVA LIFE and becoming the party responsible for payment of the obligations under the Guaranteed Annuities issued to Plaintiff and to members of the Proposed Class, where the assets Athene acquired included the proceeds paid by Plaintiff and members of the Proposed Class to AVIVA in exchange for the Guaranteed Annuities, and where the acquisition was effected through a transaction which purported to vitiate the CMA Guarantee, Athene participated in AVIVA's breach of fiduciary duty to Plaintiff and members of the Proposed Class.

**COUNT III**  
**PROMISSORY ESTOPPEL**  
***(Against All Defendants)***

90. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 89 as if set forth fully herein.

91. AVIVA promised through its uniform marketing materials, and in the CMA Guarantee itself that all financial obligations of AVIVA LIFE, including all structured settlement annuities, were backed by this guarantee which was "absolute, unconditional, present and

continuing.” AVIVA made these promises in order to maximize the profitability of its annuity sales, and it was successful in accomplishing that goal for itself.

92. Griffiths and those similarly situated relied on the promise of the CMA Guarantee in purchasing structured settlement annuities from AVIVA.

93. By acquiring the assets of AVIVA LIFE and becoming the party responsible for payment of the obligations under the Guaranteed Annuities issued to Plaintiff and to members of the Proposed Class, where the assets Athene acquired included the proceeds paid by Plaintiff and by members of the Proposed Class to AVIVA in exchange for the Guaranteed Annuities, and where the acquisition was effected through a transaction which purported to vitiate the CMA Guarantee, Athene participated in AVIVA’s breach of AVIVA’s representations to Plaintiff and to members of the Proposed Class.

94. Griffiths and those similarly situated have been harmed by Defendants’ failure to comply with the CMA Guarantee because Plaintiff and the Proposed Class are now locked into annuities, there is allegedly no CMA Guarantee or guarantee of equivalent value, and he/they cannot terminate the Guaranteed Annuities without sustaining substantial losses.

95. Injustice can only be avoided by having Defendants fulfill the promise made by the CMA Guarantee, so that the financial resources said to stand behind the CMA Guarantee will in fact continue to do so.

**COUNT IV**  
**UNJUST ENRICHMENT**  
***(Against All Defendants)***

96. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 95, as if set forth fully herein.

97. Griffiths and those similarly situated conferred a substantial benefit on AVIVA

through his/their purchase of the structured settlement annuities that were secured by the CMA Guarantee.

98. AVIVA voluntarily accepted and retained the benefit conferred.

99. By acquiring the assets of AVIVA LIFE and becoming the party responsible for payment of the obligations under the annuities issued to Plaintiff and to members of the Proposed Class, where the assets Athene acquired included the proceeds paid by Plaintiff and by members of the Proposed Class to AVIVA in exchange for the Guaranteed Annuities, and where the acquisition was effected through a transaction which purported to vitiate the CMA Guarantee, Athene participated in AVIVA's wrongful conduct which has injured Plaintiff and members of the Proposed Class.

100. The circumstances described in detail above are such that it would be inequitable for any of the Defendants to retain any of the benefits it/they has/have received as a result of its/their wrongful conduct.

**WHEREFORE** Plaintiff Griffiths demands judgment against Defendants 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, for himself and the Proposed Class members, which certifies this matter as a class action pursuant to Fed. R. Civ. P. 23; designates Griffiths as an appropriate Class representative; awards damages for Defendants' breaches of contract and breaches of fiduciary duty in an amount to be determined at trial; orders all Defendants to disgorge all profits and other financial benefits they have received by virtue of the inequitable conduct described herein; awards all costs and disbursements incurred in

connection with this action, including reasonable attorney's fees, expert witness fees and other costs; and grants such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff Griffiths and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: December 18, 2015

Respectfully submitted,

/s/ Jerome M. Marcus

Jerome M. Marcus

[jmarcus@marcusauerbach.com](mailto:jmarcus@marcusauerbach.com)

Jonathan Auerbach

[auerbach@marcusauerbach.com](mailto:auerbach@marcusauerbach.com)

Marcus & Auerbach LLC

1121 N. Bethlehem Pike, Suite 60-242

Spring House, PA 19477

Telephone: (215) 885-2250

Facsimile: (888) 875-0469

*Admitted Pro Hac Vice*

/s/ Paul J. Klehm

Paul J. Klehm (BBO#561605)

[pklehm@kkf-attorneys.com](mailto:pklehm@kkf-attorneys.com)

James B. Krasnoo (BBO#279300)

[jkrasnoo@kkf-attorneys.com](mailto:jkrasnoo@kkf-attorneys.com)

Benjamin L. Falkner (BBO#667951)

[bfalkner@kkf-attorneys.com](mailto:bfalkner@kkf-attorneys.com)

Krasnoo, Klehm & Falkner LLP

28 Andover Street, Suite 240

Andover, MA 01810

Telephone: (978) 475-9955

Facsimile: (978) 474-9005

*Attorneys for Plaintiff and putative Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2015, a true and correct copy of the foregoing Amended Class Action Complaint was served on counsel of record via the Court's CM/ECF system.

/s/ Paul J. Klehm  
Paul J. Klehm

**EXHIBIT A**

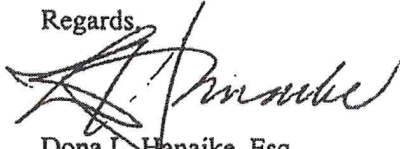
John Griffiths  
October 18, 2001  
Page 2

I have also included a ratings sheet for the four life insurance companies listed above plus a glossary to illustrate the possible ratings you can receive from these various companies. You can also go to [www.ringlerassociates.com](http://www.ringlerassociates.com) to find out more about our life companies and the various national ratings companies via our link system.

There are various methods that secure these tax-free annuities. First, we are dealing with the top layer of quality life insurance companies. Second, every annuity is insured by the Hawaii Insurance Guaranty Fund up to \$100,000 present day value. This is similar to the FDIC protections afforded banks. In the insurance industry, these protections are provided via each state. Lastly, the parent of CGU Life Company, CGU Insurance Company (rated A+SuperiorXV) issues a surety bond to guaranty the payments under the annuity. Not all life annuity companies will do this. This affords even better protection than a bank account. In combination, you have a very secure investment which pays very good, tax-free benefits.

Please give me a call if you have questions regarding the security of the annuity or any other items that raise a question in your mind. If you would like to meet to answer any questions you may have regarding annuities in general, please call me

Regards,



Dona L. Hanaike, Esq.  
Ringler Associates Honolulu

Enclosures

Cc: Tony Aquinaldo, Esq.  
Michael Green, Esq.

NOVEMBER 12, 2001

John Griffiths

REDACTED

Dona L. Hanaike  
Attorney at Law  
Ringler Associates  
1188 Bishop Street  
Suite 2106  
Honolulu, Hawaii 96813  
FAX 808 521-8999

Dear Ms. Hanaike,

Enclosed, please find a copy of my Birth Certificate and Social Security Card which you requested for preparation of the Structured Settlements documents and the Annuity contract with CGU Insurance Company.

My foremost concern is, of course, that the life time monthly payments from CGU Insurance Company to me, continue without interruption or change in dollar amount for as long as I remain alive. You mentioned three different ways that the monthly payments will be guaranteed against any possible financial difficulties that CGU might experience. In your letter of October 18, 2001, you gave me the following information:

1. CGU Life Company is rated by the A.M. Best Company at A+ which is A.M. Best's second best rating.  
Standard & Poors rates CGU Life Company at A+ which is their 6<sup>th</sup> best rating.  
Weiss rates CGU Life Company at B+ which is their 4<sup>th</sup> best rating.
2. "Every annuity is insured by the Hawaii Insurance Guaranty Fund up to \$100,000. present day value. This is similar to the FDIC protections afforded banks.
3. The parent of CGU Life Company, CGU Insurance Company (rated A+SuperiorXV) issues a surety bond to guaranty the payments under the annuity. You also explained that not all life annuity companies will do this.

As for item number one, listed above, the high rating possessed by the Parent Company, only has value if the Parent Company contracts in writing that they guaranty uninterrupted monthly payments for as long as I live. Without this guaranty from the Parent Company, (in this case, the overall CGU group of Insurance Companies, located in the United Kingdom and the United States) the high rating would be useless.

Item number two, listed above, does not give me any confidence. It is my understanding that most of the State Guaranty Funds are inadequate to guaranty consumer loss in connection with annuities. Past performance indicates that most State programs return only a fraction of lost consumer investment dollars at best.

page 1 of 3 (November 12, 2001)

That leaves only item number three listed above, the Surety Bond from the parent of CGU Life Company. Since this Surety Bond is likely to be the only protection I will have, it is very important that the wording of the Surety Bond makes it very clear that the guaranty is being offered by the entire CGU group of Insurance Companies. A Surety Bond that is guaranteed only by some other branch company of CGU will not be enough. Please double check to be sure that the Surety Bond states that the overall Parent Company (CGU Insurance Company of the United Kingdom and the United States) is guarantying the uninterrupted lifetime monthly payments.

The reason the wording of the guaranty is so important is the fact that I must rely on this Surety Bond for perhaps another 45 years or as long as I live.

Regarding the Structured Settlement, please make sure the Structured Settlement papers are worded so that all of the life time monthly payments are non-taxable. In my case, all of the compensatory damages are for personal physical injury and are non-taxable as described on page 23 of Internal Revenue Service Publication 525 "Taxable and Nontaxable Income".

I know you have much experience in this and that I can rely on your professional expertise. I mention this only because extra care taken now in preparation of these documents will protect me for many years to come.

Here are the two quotes I received from CGU. They differ by only about four dollars, depending on when CGU receives the check:

payments starting February 15, 2007	\$3,091.81 /month	deposit = \$225,000.00
payments starting February 15, 2012	1,924.31 /month	deposit = 75,000.00
total monthly payments starting February 15, 2012 = <b>\$5,016.12</b>		
To secure these quotes, CGU must receive the check by December 21, 2001		

payments starting January 1, 2007	\$3,087.00 /month	deposit = \$225,000.00
payments starting January 1, 2012	1,930.00 /month	deposit = 75,000.00
total monthly payments starting January 1, 2007 = <b>\$5,017.00</b>		
To secure these quotes, CGU must receive the check by November 16, 2001		

Since there are still 5 business days before the November 16 deadline, would it be possible to make sure CGU receives the check by Nov. 16, and make arrangements with CGU to start the payments on January 1, 2007?

If payments are started on January 1, I would receive \$4,630 more than with a February 15 starting date.

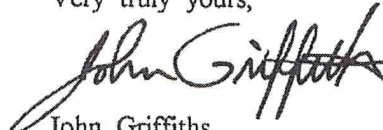
If CGU receives the check by November 16 but does not start payments until Feb. 15, 2007, they should pay interest on the \$300,000. for the time they held the funds between November 16 and December 21.

CGU can make direct deposits into my Cash Management Account at:

Merrill Lynch  
1001 Bishop Street  
Pauahi Tower, Penthouse  
Honolulu, Hawaii 96813  
Account Advisor: Aaron Lau  
TEL 808 525-8330

Thank you very much for your attention to all of these details. It will give me much peace of mind to know everything was done correctly.

Very truly yours,

  
John Griffiths

copies sent to:  
David Gierlach  
Mits Higa

December 3, 2001

John Griffiths

REDACTED

NORWICH UNION  
St. Helens CGNU HEAD OFFICE  
1 Undershaft  
London EC 3P 3DQ

ATTENTION: ANNUITY DEPARTMENT

I am the plaintiff in a structured settlement being handled by one of your brokers: Ringler Associates, 1188 Bishop Street, Honolulu, Hawaii 96813 Broker: Dona Hanaike TEL 808 521-7666.

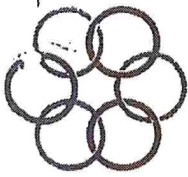
CGU Life Ins. Co. of America was selected for the annuity in this structured settlement because of its high rating in the insurance industry and because of its connection with your company, CGNU of the United Kingdom.

As you are no doubt aware, peace of mind is perhaps foremost among the concerns of consumers shopping for an annuity. The fact that CGU Life of America is connected with a highly respected Insurance Co. that has been in business in England for several hundred years, gives it a competitive advantage over all other insurance cos. in America. There are no American insurance cos. that have been in business anywhere near as long.

My annuity from CGU Life of America is a single premium, fixed, lifetime annuity. I would very much like to have the assurance that my annuity is guaranteed by CGNU of the U.K. I understand that CGNU of U.K. and CGU of America are working on a plan in which the American annuities will be guaranteed by CGNU of U.K. I have been told that this plan has not been completed yet but that it should be in place very soon.

Since the paperwork for my annuity will likely be completed before your plan is in place, would it still be possible for my annuity to be included in the plan? Since having my annuity guaranteed by CGNU of U.K. would offer much peace of mind, I would be willing to pay any fee or costs associated with making the necessary amendments to my paperwork. I think that many of your customers would be willing to pay several hundred or even several thousand dollars for this extra layer of protection.

Please let me know if there is any way I can get my annuity covered under this plan (once it's in place). In the event the paperwork for my annuity is finalized before your guarantee is in place, please let me know the cost, if any, for me to be included



RINGLER ASSOCIATES

(808) 521-7666  
Fax (808) 521-8999

January 14, 2002

David J. Gierlach, Esq.  
Attorney At Law  
345 Queen Street, Flr. 12  
Honolulu, Hawaii 96813

Re: Claimant: John W. Griffiths  
Claim No: REDACTED  
Insured: City and County of Honolulu

Dear David:

Enclosed is the revised original and two copies of the Joint Tortfeasor Release, Indemnification and Settlement Agreement in the above-captioned case for your review and signature. If you have no objections to the form please have Mr. Griffiths and yourself sign the original and two copies in the designated spaces. The documents have been revised to include references to a secured creditor status for Mr. Griffiths.

Also enclosed for your consideration is the Qualified Assignment and Pledge Agreement for Mr. Griffiths which transfers the liability to make the periodic payments to CGU Annuity Service Corporation. After your review please have Mr. Griffiths and yourself sign in the designated areas and return all documents to this office.

We will also need Mr. Griffiths' signature and Bank information on the Direct Deposit Authorization Agreement along with a voided check for the account listed. The previous bank deposit slip from Mr. Griffiths was unacceptable to CGU Life, as they need a Bank Routing Number (ex: ABA ..... ) and Account No.

After all settlement documents have been received by CGU Life, they will complete the processing and will, in about eight weeks, forward the annuity contracts and other related documents to us. We in turn will forward copies to you and all interested parties for your respective records. If there are any questions, please contact me.

Regards,

Dona L. Hana'ike, Esq.  
Ringler Associates Honolulu

REDACTED

enc.

Cc: Tony Aguinaldo, Esq.

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January 23, 2002

TO:  
RICHARD KYPTA  
Senior Vice President  
and General Counsel  
CGU Life Ins. Co. of America  
108 Myrtle Street  
North Quincy, Massachusetts 02171

FROM:  
John Griffiths

REDACTED

Dear Mr. Kypta,

Thank you very much for the phone call I received from you and Debra Fickett-Wilbar on January 3<sup>rd</sup>. I deeply appreciate the extra effort made by you and Ms. Fickett-Wilbar to include the secured creditor language in the amended settlement agreement.

There is, however, one serious consideration remaining. I am very concerned about the possibility that my annuity may not be offered the protection of a guaranty from your parent corporation, Norwich Union of the United Kingdom.

As I explained during our telephone conversation, CGU LIC of America was originally selected as the annuity writer for this structured settlement because of your company's high rating from several rating services. These high ratings were based on the rating service's belief that the financial obligations of your company were backed by your parent company, Norwich Union.

The other reason your company was selected was because your agent assured me in writing that my annuity would be backed by a surety bond. It wasn't until the last minute that I was informed there would be no surety bond. With no surety bond, my annuity was to be protected only by the expected guaranty from Norwich Union.

Weiss Rating Service gives CGU Life of America a B+ rating. This is a very high rating from this particular analyst. Even industry leaders such as AIG and New York Life received only B and B- ratings from Weiss. While we were still in the process of selecting an insurance company, I spoke with one of the Weiss analysts. The Weiss analyst told me that one of the primary reasons they gave CGU a B+ is because CGU (Norwich Union of the United Kingdom) stands behind CGU of America's obligations. The CGU company profile issued by the Fitch Rating Service gave a similar reason for its rating of CGU.

This guaranty from the largest insurance company in the United Kingdom was the most important reason CGU of America was selected. Then, when it was too late to change insurance companies without monetary loss, I was informed that my particular annuity would not be guaranteed by Norwich Union.

Later, you explained that CGU Life of America and Norwich Union are in the process of creating a new plan whereby Norwich Union will guarantee the annuities of CGU Life of America. You further explained that this plan is not yet available but that it will be available a month or two from now.

I selected your company because I was led to believe my annuity would be guaranteed by Norwich Union.

Since your annuities were guaranteed by Norwich Union in the past and will again be guaranteed by Norwich Union in the future, it does not seem reasonable that my annuity will not receive the usual guaranty simply because I was unlucky enough to purchase it a few weeks before your new plan was in place.

There may be a fairly easy solution to this problem. We could delay the final paperwork for my annuity a few weeks until your new guaranty plan with Norwich Union is in place.

Your agent, Dona Hanaike, explained to me that, once you receive the amended settlement agreement, it will probably take 6 to 8 weeks before the paperwork for the annuity is completed by your office. By that time, your new guaranty plan with Norwich Union may be completed. If so, please include my annuity in the plan. Otherwise, please delay the paperwork for my annuity until your new guaranty plan with Norwich Union is completed.

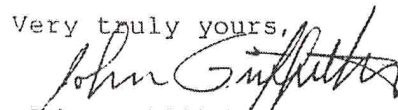
Since monthly payments from my annuity will not begin until January 1, 2007 (5 years from now), it is of no consequence to me how long the paperwork is delayed, as long as everything is completed before 2007. Also, since your company is already in possession of my check (\$300,000.00) and the funds are already earning returns, it does not seem to be material to CGU if the paperwork is delayed.

I hope you can understand my reasons for wanting the guaranty from Norwich Union. During the next five years, I will receive absolutely no payments from the annuity. The structured settlement was set up to begin monthly payments five years from now (Jan. 1, 2007) because that is when my medical condition is expected to worsen. It is essential that the funds be available at that time. I cannot afford to gamble by accepting an annuity that has anything less than full protection.

If at all possible, please delay the final paperwork for my annuity until your new guaranty plan with Norwich Union is in place. I think this would probably be easier than trying to put together a retroactive guaranty.

Thank you very much.

Very truly yours,

  
John Griffiths

February 4, 2002

TO:  
GRAHAM JONES  
Group Secretary and  
Director of Legal Services  
Norwich Union, CGNU Head Office  
St. Helens, 1 Undershaft  
London EC 3P 3DQ  
United Kingdom

FROM:  
John Griffiths

REDACTED

Dear Mr. Jones,

An annuity was recently purchased in my name from CGU Life Insurance Co. of America, your subsidiary in Boston. I was the prevailing party in a personal injury law suit against the City of Honolulu. The annuity was purchased to fund a structured settlement in which I will receive monthly payments beginning in five years time, January 1, 2007. The monthly payments will be used to treat my medical condition. The annuity was set up to begin monthly payments five years from now (Jan. 1, 2007) because that is when my medical condition is expected to worsen. The purchase price of the annuity was \$300,000.00.

Until now, I have received excellent service from CGU of America. The personal attention I received from Mr. Richard Kypta and Ms. Debra Fickett-Wilbar speaks very highly of your company. It seems to show a genuine concern for the needs and protection of your investors. There is, however, one potentially serious problem.

When shopping for the annuity, I was led to believe that Norwich Union of the United Kingdom guaranteed the annuities written by CGU of America. This was the primary reason CGU of America was selected to write the annuity for my structured settlement. Just before the settlement papers were to be signed, when it was too late to change insurance companies without considerable monetary loss, I was informed that my annuity may not receive the usual guaranty from Norwich Union.

The explanation I was given is as follows: Previous annuities written by CGU of America have indeed received a guaranty from Norwich Union of the U.K. At present, Norwich Union and CGU of America are in the process of rewriting the wording of the guaranty. Because the language of the new guaranty has not yet been finalized, my particular annuity may not receive the usual protection from Norwich Union.

Richard Kypta is on CGU's Board of Directors and is head of CGU's legal services. Mr. Kypta explained that the new guaranty plan may not be finalized for several months. He indicated that he would have no objection to including my annuity in the new plan. However, he could not promise to include my annuity because, according to him, final approval would have to come from Norwich Union in the U.K..

I am writing this letter to request your help. I am trying to secure the same high quality protection that you have offered and will again offer for all your annuities. The annuity is all that I have. It is vital that the funds be available as expected so I will be able to receive necessary medical treatment. Since CGU was selected with the expectation of a guaranty from Norwich Union, I feel that I should not be forced to assume the extra risk of an annuity that lacks the high degree of safety you customarily offer.

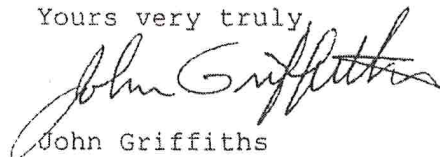
I have asked the Boston office to delay the final paperwork for my annuity until the new guaranty plan with Norwich Union of the U.K. is in place.

Since monthly payments from my annuity will not begin until January 1, 2007 (5 years from now), it is of no consequence to me how long the paperwork is delayed, as long as everything is completed before 2007. Also, since the Boston office is already in possession of my check and the funds are already earning returns, it does not seem to be material to CGU if the paperwork is delayed.

Judging by the superior service I've received so far, I expect that Mr. Kypta and Ms. Fickett-Wilbar will do their best to restore my annuity to the high degree of safety that was expected when CGU was selected. If you have no objection to including my annuity in your new guaranty plan, would it be possible for you to contact Richard Kypta and Debra Fickett-Wilbar to inform them of your approval?

Thank you very much for any efforts you are able to make on my behalf.

Yours very truly,



John Griffiths



RINGLER ASSOCIATES

(808) 521-7666

Fax (808) 521-8999

TELEFACSIMILE TRANSMITTAL

TO: Mr. Rich Kypta DATE: March 11, 2002  
CGU Life Insurance Company

FROM: Dona L. Hanaike, Esq. *[Signature]*  
Ringler Associates Honolulu

TELECOPY NO. (617) 786-2728

TOTAL NO. OF PAGES INCLUDING THIS SHEET: 1

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL AS SOON AS  
POSSIBLE TO: (808) 521-7666.

FILE: Claimant: John Griffith  
Contract No.: *REDACTED*

I have spoken to Mr. John Griffith regarding whether he would like his annuity contract issued immediately along with the Capital Maintenance Agreement (CMA) or wait for the life company to obtain their regulatory approvals to include secured creditor annuitants in their CMA. Mr. Griffith has requested that we wait to issue the annuity contract until the approval is obtained.

Thank you for your assistance in this matter. I will check in periodically to monitor the progress of Mr. Griffith's annuity. If you have any questions, please feel free to contact this office.

Cc: ✓ Tony Aguinaldo, Esq. (fax #523-4583)  
✓ David J. Gierlach, Esq. (fax #566-0347)  
✓ Mr. John Griffith (via mail)

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MAY 7, 2003

TO:  
Debra Fickett-Wilbar  
Assistant Vice President  
Structured Settlements  
CGU Life Insurance Company  
of America  
108 Myrtle Street  
North Quincy, MA 02171

FROM:  
John Griffiths

REDACTED

**RE: Structured Settlement Annuity Contract**

Dear Ms. Fickett-Wilbar,

In April 2003, I received a telephone call from your agent, Ms. Dona Hanaike. She informed me that CGU has finally received the regulatory approvals we have all been waiting for since January 2002. Ms. Hanaike said she will receive the final paperwork from your office in 6-8 weeks.

During the telephone call I received from you and Mr. Richard Kypta, on January 3, 2002, you explained that CGU of America and CGNU Norwich Union (new name: Aviva Insurance Co.) of the United Kingdom, were in the process of creating a new plan (replacing a previous plan) whereby Aviva will "guaranty" or "assure" the annuities of CGU of America.

During that same phone conversation, you explained to me that, because my contract specified me as a "secured creditor", regulatory approval would be required to include this kind of written assurance from your parent corporation. At that time, I informed you, verbally and in writing (letter dated January 23, 2002), that I was willing to delay the final paperwork for my annuity until the required approval had been received and the new assurance plan, described by you, was in place.

In my letter, I further explained that the reason I was willing to wait, was that the expected "assurance" from your parent company in the United Kingdom was the most important reason for my decision to purchase my structured settlement annuity from CGU.

In March 2002, CGU's agent, Dona Hanaike telephoned to inform me that CGU of America was still waiting for regulatory approval for the new assurance plan. I indicated to Ms. Hanaike that I was willing to continue to wait. Later, on October 10, 2002, I telephoned CGU Structured Settlements and spoke with Ms. Jeanie Moscato. Ms. Moscato said that CGU was still waiting for

the approval and had not yet heard anything from the London office (Aviva Insurance Co.). Ms. Moscato said she would ask Richard Kypta (when he returned to his office on October 14) if he had heard anything from Aviva. I told Ms. Moscato that I would continue to wait for the approval to include Aviva's assurance in my secured creditor contract.

Since so much time has passed since my original conversation with you and Mr. Kypta, it would probably be a good idea to confirm the details of the assurance that will be included in my contract. To avoid any unnecessary delays, I would like to confirm the nature of the "assurance" before the paperwork is sent out from your Massachusetts office.

Before sending the final paperwork to your agent, Ms. Hanaïke, would you please send me a note confirming the following: My final annuity contract will indicate that:


I am a "secured creditor". ...and...  
Aviva Insurance Co. will fulfill the terms  
of my annuity contract in the event of default  
by CGU of America; or, alternatively, that  
Aviva will prevent any default on my contract  
by supplying CGU with infusions of cash.

This is the kind of assurance that you described during our telephone conversation on January 3, 2002 and this is also the kind of assurance that I was led to believe I would receive when I originally decided to purchase the annuity from CGU.

Such a note will save time and avoid the need for me to return the paperwork to your office for corrections.

I deeply appreciate the outstanding efforts you and Mr. Kypta have made to provide me with the best possible security for my structured settlement annuity. When shopping for the annuity, I did my homework and talked with several of the better ratings analysts. In a time when some other major companies have lost the public's trust, it is reassuring to find that CGU annuities are protected by a 140 year tradition that puts the safety of its annuity holders above all other considerations. Once again, thank you for your excellent customer service.

Yours very truly,

  
John Griffiths



May 20, 2003

John Griffiths

REDACTED

RE: REDACTED

Dear Mr. Griffiths

Thank you for your letter dated May 7, 2003 addressed to Debra Fickett-Wilbar. I am responding to your letter in my capacity as manager of the administration department that will be issuing the contract for the above mentioned policy number.

The language in our contracts is directed to the Owner of the contract. Any reference to "You" in the contract refers to Aviva London Assignment Corporation, the owner of the annuity contract under which you as the annuitant will be receiving payments. The contract you will receive contains the following language regarding your status as a secured creditor:

The Owner of this annuity contract has placed it in the hands of the Annuitant named herein for the sole purpose of perfecting a security interest that the Annuitant has in the annuity contract. So long as the Owner has not failed to make the payments called for herein due to insolvency or bankruptcy, the Annuitant has no right or power to anticipate, assign, encumber, pledge, sell or otherwise use this contract as any form of collateral and any attempt by the Annuitant to anticipate, assign, encumber, pledge, sell or otherwise use this contract as any form of collateral shall be null and void. Please contact the issuer of this contract for further information.

#### Annuitant's Security Interest in the Annuity

In the Qualified Assignment and Pledge pertaining to the Annuitant, You may grant to the Annuitant a security interest in all of Your right, title and interest in this Annuity Policy and all payments there from, and You may perfect such security interest by delivery of this Annuity Policy to the Annuitant. No security interest that You grant to the Annuitant will be binding on Us until We have received written notice at Our Administrative Office.

If You grant the Annuitant a security interest in this Annuity Policy and/or the payments due under the Policy, the Annuitant does not thereby become the Owner of the Annuity Policy or of this contract, nor does the Annuitant thereby acquire any right to receive payments under the Annuity Policy or this contract. The Annuitant has neither the right nor the power to assign this contract, the Annuitant's security interest in it or the payments due under it, or to grant a security interest in such contract or payments, and any attempt by the Annuitant to make an assignment or to grant a security interest will be void.

Upon the exercise of the Annuitant's rights as a secured-creditor upon any of the Events of Default as defined in the Qualified Assignment and Pledge Agreement,

- a. The Annuitant will become the Owner of this annuity contract and will have all the rights and remedies of a secured party under all applicable laws, however, notwithstanding any other provision of this contract, the Annuitant has no right to accelerate, anticipate, assign, decrease, defer, encumber, increase or pledge any payments called for herein; and
- b. Your rights under the Ownership and Transfer of Ownership provisions shall terminate.

Although this language differs slightly from the language as stated in the Qualified Assignment and Pledge Agreement you signed prior to the approval of the Aviva secured credit contract, in no way changes your status as a secured creditor.

In your letter, you also asked for the language that will be included in the CMA (Capital Maintenance Agreement). I have enclosed a sample copy of the letter that you will be receiving with your contract and a flyer, which explains how the CMA works.

To summarize the benefits you will be receiving with the issued contract, in the event of the insolvency of Aviva Life Insurance Company, your contract lists you as a secured creditor and as such places you above the status of a general creditor. The CMA provides that the assignment corporation that owns your contract will have the necessary funds to satisfy the obligations assigned to it.

If I may be of further assistance, please don't hesitate to call me at 888-285-4332, ext. 6254.

Sincerely,



Jean Miller, CSSC

Manager

Structured Settlement Administration

Cc: Dona Hanaïke

Richard J. Kpyta

Debra Fickett-Wilbar

# Capital Maintenance Agreement



## Here's How It Works

When choosing to structure a settlement – whether as a future lump sum payment or payments made over a period of years – how do you know if the life insurer you choose will be around to meet its commitments? Aviva can provide that assurance.

### An Additional Measure Of Security – Guaranteed!

Aviva Life Insurance Company and Aviva plc have joined together to offer an additional measure of security called a Capital Maintenance Agreement (CMA) for structured settlement cases written through Aviva and assigned to Aviva London Assignment Corporation.

*Aviva's CMA guarantees that Aviva London Assignment Corporation will have the funds necessary to satisfy all Structured Settlement contract obligations assigned to it, regardless of the financial position of the life company through which the "assigned" annuities are purchased. This obligation is absolute, unconditional and continuing!*

#### Aviva plc

##### Parent company of the Aviva group

- › A publicly traded, London-based company and the largest insurance group in the United Kingdom.
- › One of the 10 largest insurance groups in the world and one of the 50 largest companies of any kind in the world.
- › The oldest continuously operating insurance group in the world, with roots dating back to 1696.

#### CGU International Insurance plc (CGUII)

- › London-based, wholly owned subsidiary of Aviva plc.
- › Over \$100 billion in assets and over \$10 billion in capital and surplus.
- › Financial Strength Ratings of AA- by Standard & Poor's (5th of 22 rating categories) and Aa2 by Moody's (3rd of 21 rating categories).

Provides Capital Maintenance Agreement to Aviva LAC.



The product described in this flyer is underwritten and offered exclusively by Aviva Life Insurance Company. Similar products may be available in New York through Aviva Life Insurance Company of New York.  
AL03S123US

Aviva Life Insurance Company  
108 Myrtle Street  
North Quincy, Massachusetts 02171  
www.avivausa.com

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**CGUASC QUALIFIED ASSIGNMENT AND PLEDGE AGREEMENT**

This Qualified Assignment and Pledge Agreement is dated \_\_\_\_\_, 20\_\_\_\_ and will be deemed to be effective from that date. It is made and entered into by and among the parties hereto with reference to the following:

A. The following persons and entities are referred to herein as follows:

Claimant- Secured Party

JOHN W. GRIFFITHS

Assignor

CITY AND COUNTY OF HONOLULU

Assignee-Debtor

CGU Annuity Service Corporation

Annuity Issuer

CGU Life Insurance Company of America

B. Claimant-Secured Party has executed a Settlement Agreement and Release dated 1/17, 2002 (the "Settlement Agreement") which requires Assignor to make certain periodic payments to or for the benefit of Claimant-Secured Party as stated in Addendum No. 1 of this Agreement (the "Periodic Payments").

C. The parties desire to effect a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986, as amended (the "Code").

D. Assignee-Debtor desires to grant to Claimant-Secured Party a security interest to secure the liability being assumed by Assignee-Debtor to make the Periodic Payments.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties agree as follows:

1. The Assignor hereby assigns and Assignee-Debtor hereby assumes all of Assignor's liability to make the Periodic Payments. Assignee-Debtor assumes no liability to make any other payment. Claimant-Secured Party hereby accepts and consents to the assignment by Assignor and the assumption by Assignee-Debtor of the liability to make the Periodic Payments, and upon the Effective Date Claimant-Secured Party releases Assignor from all liability to make the Periodic Payments.
2. The Periodic Payments constitute damages on account of personal injury or sickness in a case involving physical injury or physical sickness within the meaning of Sections 104(a)(2) and 130(c) of the Code.
3. Assignee-Debtor's liability to make the Periodic Payments is no greater than that of Assignor as determined immediately prior to this Agreement. None of the Periodic Payments may be accelerated, deferred, increased or decreased, anticipated, sold, assigned, pledged, or encumbered by Claimant-Secured Party, nor does the Claimant-Secured party have the right or power to sell, mortgage, transfer, encumber, grant a security interest in or anticipate the same or any part thereof, by assignment or otherwise. Any attempt by the Claimant-Secured party to accomplish any of the foregoing shall be void.
4. The obligation assumed by Assignee-Debtor to make each applicable Periodic Payment to the Claimant-Secured

Party shall be fully discharged upon the mailing of a check or electronic transfer of funds on or before the date for such Periodic Payment to the address of record specified by Claimant-Secured Party in the Settlement Agreement.

5. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Massachusetts (without giving effect to the choice-of-law rules thereof).
6. Assignee-Debtor will fund the Periodic Payments by purchasing an annuity from Annuity Issuer to serve as a "qualified funding asset" within the meaning of Section 130(d) of the Code (the "Annuity"). All rights of ownership and control of the Annuity shall be and remain vested in Assignee-Debtor except as provided in paragraphs 9, 11 and 12 of this Agreement. Except for the security interest provided for under paragraphs 11 and 12 of this Agreement, the Claimant-Secured party shall have no rights (including rights as third party beneficiary) and no interest in such Annuity or the payments made thereunder.
7. Assignee-Debtor may instruct the Annuity Issuer to send payments from the Annuity directly to the Claimant-Secured Party. Such direction of payment shall be solely for Assignee-Debtor's convenience and shall not provide Claimant-Secured Party or any payee with any rights of ownership or control over the Annuity or against Annuity Issuers.
8. Assignee-Debtor's liability to make the Periodic Payments shall continue without diminution regardless of any bankruptcy or insolvency of the Assignor.
9. In the event that the Settlement Agreement is declared terminated by a court of competent jurisdiction, the parties shall act in accordance with the orders of the court provided however that nothing in this paragraph shall preclude a party to this Agreement from appealing an order or judgment of a court. In the event that Section 130(c) of the Code has not been satisfied, (i) the assignment by Assignor to Assignee-Debtor of the liability to make the Periodic Payments to Claimant-Secured Party described in paragraph 1 of this Agreement shall be of no force and effect, (ii) the Assignee-Debtor shall be acting in the transaction as the agent of the Assignor and the Annuity shall be owned by Assignor which will continue to have the liability to make the Periodic Payments to

Claimant-Secured Party, (iii) Assignee-Debtor shall have no liability to make any Periodic Payments to Claimant-Secured Party, and (iv) the parties hereto agree to cooperate in taking such actions as are reasonably necessary or appropriate to achieve the foregoing.

10. This Agreement shall be binding upon the respective representatives, heirs, successors, and assigns of the parties hereto and upon any person or entity that may assert any right hereunder or to any of the Periodic Payments. Nothing herein shall be deemed to recognize in the Claimant-Secured Party any right or power to effect an assignment of the Periodic Payments.
11. Assignee-Debtor hereby pledges and grants to Claimant-Secured Party a security interest in all of Assignee-Debtor's right, title, and interest in the Annuity and all payments therefrom in order to secure the obligation of Assignee-Debtor to make the Periodic Payments. Any of the following events will constitute a default ("Events of Default"): dissolution, termination of existence or insolvency of Assignee-Debtor, appointment of a receiver of any part of its property, its assignment for benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency law against the Assignee-Debtor. If any such event of default occurs and is continuing, Claimant-Secured Party shall have all of the rights and remedies of a secured party under all applicable laws. Assignee-Debtor will notify the Annuity Issuer of the security interest created under the Agreement, and Assignee-Debtor shall deliver the Annuity to Claimant-Secured Party upon execution of this Agreement and receipt by Assignee-Debtor of the Annuity from Annuity issuer.
12. Assignee-Debtor shall have all rights of ownership and control in the Annuity, including the right to receive and retain all benefits under the Annuity, that are not inconsistent with the security interest granted under paragraph 11. The Claimant-Secured Party is not the owner of the Annuity and has neither the right nor the power to assign the Annuity, the Claimant-Secured Party's security interest in it or the payments due under it, or to grant a security interest in the same. Any attempt by the Claimant-Secured Party to make an assignment or to grant a security interest will be void.

Assignor: CITY AND COUNTY OF HONOLULU

By: 

[Authorized Representative]

Title: \_\_\_\_\_

Claimant-Secured Party: JOHN W. GRIFFITHS

By: 

Claimant-Secured Party Signature

Upon the exercise of the Claimant-Secured Party's right as a secured creditor upon any of the Events of Default as defined in paragraph 11 herein, the Claimant-Secured Party will become the owner of the Annuity; but as owner of the Annuity, the Claimant-Secured Party will have neither the right nor the power to assign the Annuity or the payments due under it, or to grant a security interest in the same. Any attempt by the Claimant-Secured Party to make an assignment or to grant a security interest will be void.

13. The Annuity will bear the following legend:

*CGU Annuity Service Corp., the owner of this annuity contract, has placed this contract in the hands of the Annuitant named herein for the sole purpose of perfecting a security interest that the Annuitant has in this contract. The Annuitant is not the owner of this contract. The Annuitant has neither the right nor the power to assign this contract, the Annuitant's security interest in it or the payments due under it, or to grant a security interest in the same, and any attempt by Annuitant to make an assignment or to grant a security interest will be void.*

*Upon the exercise of the Annuitant's rights as a secured creditor upon any of the Events of Default as defined in the Qualified Assignment and Pledge Agreement, the Annuitant will become the owner of this annuity contract but as owner of the contract, the Annuitant will have neither the right nor the power to assign this contract or the payments due under it, or to grant a security interest in the same, and any attempt by Annuitant to make an assignment or to grant a security interest will be void.*

14. In entering into this Agreement, Claimant-Secured Party represents that he or she has relied on the advice of his or her attorneys, \_\_\_\_\_ who are the attorneys of his or her choice, concerning the legal and income tax consequences of this Agreement; that the terms of this Agreement have been completely read and explained to Claimant-Secured Party; and that the terms of this Agreement are fully understood and voluntarily accepted by Claimant-Secured Party.
15. Any notice to a party hereunder shall be in writing and shall be deemed to have been given when mailed to the party's address of record, as stated in the Settlement and Release Agreement.

Assignee-Debtor: CGU ANNUITY SERVICE CORPORATION

By: 

[Authorized Representative]

Title: \_\_\_\_\_

Approved as to Form and Content

By: 

Attorney for Claimant-Secured Party  
DAVID J. GIERLACH, ESQ.

## Addendum No. 1 Description of Periodic Payments

Periodic Payment Payee: John W. Griffiths

Lifetime Monthly Income

\$3,150.00 paid monthly for life only, beginning January 1, 2007.

\$1,975.50 paid monthly for life only, beginning January 1, 2012.

Initials

Claimant-Secured Party:

Assignor:

Assignee-Debtor:

Attorney for Claimant-Secured Party:

L34955