

EXHIBIT 5A

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I. Introduction

John Griffiths, (“Plaintiff”), through Class Counsel, and 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”), through their respective counsel, (collectively “the Parties”), have negotiated two proposed settlement agreements (“Settlement” or “Agreement”) that provide substantial benefits to a proposed nationwide class of beneficiaries of certain structured settlement annuities backed by a Capital Maintenance Agreement dated February 1, 2002 (the “CMA”), which was purportedly terminated. *See* Motion for Preliminary Approval of Class Action Settlement (“Motion”), filed contemporaneously herewith, Exhibits A & B.¹ The Settlement includes the following forms of relief:

1. It requires the Athene Defendants to create a new Capital Maintenance Agreement which replicates, and then improves upon, the terms of the CMA whose purported cancellation is at issue in this case. This new CMA will be backed by Athene Holding Ltd., the ultimate, publicly traded, corporate parent of all other Athene Defendants.
2. It provides cash relief in amounts totaling at least \$7.3 million;

¹ Capitalized terms in this motion correspond with the definitions of such terms set forth in the Agreement.

3. It requires Defendants to pay the costs of notice and settlement administration up to a total of \$200,000 (up to \$100,000 for each of the Athene and Aviva Defendants), as well as up to an additional \$12,500 from each Defendant group for a service award, if approved by this Court, to be paid to the named Plaintiff;
4. It provides for an additional payment by Aviva of 25% of any amount it obtains in resolution of any claim it files against the Athene Defendants for indemnification in connection with the acts at issue in the Amended Complaint in this Action.

Plaintiff respectfully submits that the terms of the Settlement are fair, adequate, and reasonable for the settlement class (“Settlement Class”) and that the requirements for Final Approval will ultimately be satisfied. It bears noting, however, that for Preliminary Approval the Court need only assess whether the Settlement Agreement is within the range of what may be found to be fair, adequate, and reasonable, so that Settlement Class Members can be notified of the proposed Settlement and a Fairness Hearing can be scheduled. Only after Settlement Class Members and others have had an opportunity to receive notice and present evidence at the Fairness Hearing will the Court need to render final judgment regarding the fairness of the proposed Settlement.

At this preliminary stage of the settlement process, Plaintiff respectfully requests that the Court enter an order: (1) granting Preliminary Approval of the Settlement Agreement; (2) approving the proposed Notice program; (3) directing Notice to Settlement Class Members; and (4) scheduling a Fairness Hearing. Plaintiff also requests that the Court conditionally certify the proposed Settlement Class for purposes of Settlement.

II. Factual Background

Extensive fact and expert discovery has been taken in this case. The following briefly describes the Parties' respective positions based on what they believe the evidence would show if this case were to go to trial.

This case is brought on behalf of several thousand persons who between 2002 and 2009 became the beneficiaries of Structured Settlement Annuities ("SSAs" or "the Annuities") issued by what was then Aviva Life Insurance Company (or its predecessor) and Aviva Life Insurance Company of New York (or its predecessor), both of which were during that period subsidiaries of Aviva plc (or its predecessor), a British corporation based in London, England. The Annuities were backed by the CMA issued by CGU, which was at that time also an Aviva plc subsidiary. The CMA required CGU to ensure that the entity responsible for making payments under the Annuities had sufficient assets to do so. Aviva ceased selling SSA's in 2009.

In 2012 Aviva agreed to sell its entire North American business to Athene Holding Ltd. Shortly before that transaction closed on October 2, 2013, the parties to the CMA (which at that time were both subsidiaries of Aviva plc) agreed to modify it to permit its termination, and then to terminate it effective upon the closing.

Aviva asserts that it acted within its rights, and pursuant to the terms of the CMA and applicable law, by taking these steps to terminate the CMA with AHL's knowledge in connection with the sale of Aviva's US operations to AHL. The Athene Defendants assert that they did not know that Aviva had modified and terminated the CMA until after the October 2, 2013 closing, and that they did not agree to Aviva's modification and termination. Defendants contend further that, in light of various steps they took to ensure

the solvency of the Athene entity that would be responsible for making payments on the Annuities after October 2, 2013, the Plaintiff and putative class was not damaged by the modification and termination. Plaintiff denies both of these propositions. Plaintiff maintains that the termination of the CMA was improper and that no actions taken by Defendants prior to the institution of this Action adequately protected Plaintiff, and members of the putative class, from the negative impact of the termination of the CMA.

Procedural Background

After the Complaint was filed in this case in on July 27, 2015, both sets of Defendants moved to dismiss – the Athene Defendants on the ground that the Complaint failed to state a claim, and Aviva on that ground that Aviva was not subject to the personal jurisdiction of this Court. Plaintiff amended his Complaint, and the Athene Defendants then answered. Aviva renewed its motion. This Court denied that motion.

The parties then engaged in extensive discovery. Defendants produced hundreds of thousands of pages of documents, and responded to multiple sets of interrogatories and requests for production propounded by Plaintiff. Plaintiff has been deposed by Defendants, as has the insurance broker who was involved in the purchase of the structured settlement annuity here at issue. In addition, Plaintiff conducted eight depositions, of current and former employees of both sets of Defendants, which were conducted throughout the United States and in London, England.

At the close of discovery Plaintiff moved for class certification, and that motion was supported by two expert opinions: one by Stephen Scherf, a financial expert who opined on the financial impact of the CMA and on its purported cancellation; and one by Linda Kaiser Conley, a former Insurance Commissioner of the Commonwealth of

Pennsylvania, who opined on various standard practices in the insurance industry and on the meaning of certain insurance terms of art. Both sets of Defendants planned to file papers in opposition to class certification. However, no opposition papers were filed because settlement was achieved. Plaintiff has 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 is currently pending.

Beginning in early 2017, the Athene Defendants began negotiating with Plaintiff about a potential resolution of the claims against those Defendants. Those negotiations continued throughout the year, culminating in the execution, on September 20, 2017, of a Memorandum of Understanding setting forth the material terms of the Settlement with the Athene Defendants, which is now before this Court.

After these negotiations concluded, Plaintiff began negotiations with Aviva. Those negotiations continued for three months, and included two mediation sessions before Hon. Judith Dein, U.S.M.J. As a result of those negotiations and mediation sessions, on December 22, 2017 Plaintiff and Aviva reached a Memorandum of Understanding, which underlies the terms of the Aviva Settlement that is now before the Court.

III. The Proposed Settlement

The Settlement details are contained in the Settlement Agreement signed, respectively, on behalf of the Named Plaintiff and the Settlement Class and the Athene Defendants, and on behalf of the Named Plaintiff and the Settlement Class and Aviva. Copies of each Settlement Agreement are attached as Exhibits A (the “Athene Agreement”) and B (the “Aviva Agreement”) to the accompanying Motion. The proposed Settlements offer a substantial recovery to Settlement Class Members.

Two separate Settlement Agreements have been executed in this case – one between the Named Plaintiff, on behalf of the Settlement Class, and the Athene Defendants (the “Athene Settlement”), and the other between the Named Plaintiff, on behalf of the Settlement Class, and CGU (the “Aviva Settlement”).

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 support the solvency of the entity responsible for making payments under 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 which will issue the New CMA is better capitalized than CGU, the entity which 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 Plaintiff’s Counsel Jonathan Auerbach in Support of Motion for Preliminary Approval of Class Action Settlement (“Auerbach Decl.”), ¶¶6, 7 (and Exhibit 3, attached thereto) attached as Exhibit A, hereto).

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.

The Aviva Settlement provides that Aviva will pay: \$5 million 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 25% of the net amount of such payment minus Aviva's costs to the Settlement Class.

Class Counsel are all experienced in class action litigation as well as the settlement and claims process and believe that the proposed Settlement is a fair, adequate and reasonable settlement and highly beneficial to the Settlement Class.

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.²

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

Attorneys' Fees and Costs and Incentive Awards to Named Plaintiff

Attorneys' fees and costs for Class Counsel and incentive awards to Plaintiff are subject to approval by the Court, to be paid out of the monetary relief provided by the Settlements. Defendants have agreed that Class Counsel may apply to the Court for an entry of an award of attorneys' fees in an amount that shall not exceed 30% of the value of the relief obtained, as well as out-of-pocket costs; in addition to the other monetary relief, Defendants have also agreed to pay a Service Award to the Named Plaintiff in the total amount of \$25,000.00, to be borne in two equal shares by the two groups of Defendants. Class Counsel will file a separate fee petition that sets for the basis for the fees, expenses and Service Awards to be sought.

The enforceability of the Agreement is not contingent on the amount of attorneys' fees or costs or incentive award to Plaintiff awarded. The parties did not discuss the amount of attorneys' fees and costs or incentive award to Plaintiff until after reaching agreement on the total amounts to be paid by Defendants pursuant to the Settlements. (*See* "Auerbach Decl." ¶4.)

Settlement Administration and Notice

As set forth in the Agreements, all costs of notice and claims administration shall be paid by Defendants up to a maximum of \$200,000. (Motion, Ex. A, ¶4.5, and Ex. B, ¶4.7). No claims process will be required before monetary relief is distributed, but the Settlement Administrator will be responsible for preparing and distributing the monetary relief and for establishing, and maintaining the necessary accounts and for preparing and filing all required tax returns related thereto. (Motion, Ex. A, ¶4.1 – 4.3, and Ex. B, ¶4.3-4.5).

of the Settlements.

Any funds payable to Settlement Class Members shall be divided among the Annuities on a proportionate basis corresponding with the proportion of the premium paid for each Annuity divided by the total premium paid for all Annuities. For Annuities with multiple beneficiaries, the funds payable for each such Annuity shall be divided equally among the beneficiaries to that Annuity who do not exclude themselves from the Settlement Class.

Upon Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice as provided in the Agreements. (Motion, Ex. A, ¶3.1, 3.3 and Exhibits 2 (proposed Notice), and 4, thereto (Declaration of Paul Mulholland), and Ex. B, ¶3.1, 3.3 and Exhibits 2 (proposed Notice), and 4 (Declaration of Paul Mulholland), thereto). Notice to Settlement Class Members will include mailed notice to potential Settlement Class Members identified by the Athene Defendants through reasonable efforts and establishment of a Settlement Website. *Id.*

Opt Out Rights

Any Settlement Class Member wishing to do so may opt out of the Settlement may do so. (Motion, Ex. A, ¶3.4, and Ex. B, ¶3.4). Settlement Class Members who wish to opt out must send a signed letter to the Settlement Administrator 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)” and including their name and address and the policy number of the Annuity of which the Settlement Class Member is a beneficiary. (*Id.*) All opt out requests must be postmarked no later than the date set forth in the Preliminary Approval Order.

Objection Rights

Any Settlement Class Member wishing to do so may object to the Settlement. (Motion, Ex. A, ¶3.5, and Ex. B, ¶3.5). Settlement Class Members who wish to object must provide written notice of the objection via first class mail or by filing on CM/ECF to the Court, Class Counsel, and Defendants' counsel. (*Id.*) For an objection to be considered by the Court, the objection must be postmarked or filed no later than the date set forth in the Preliminary Approval Order. (*Id.*) The objection must also set forth: the name of the litigation; the objector's full name, address and telephone number; the policy number of the Annuity of which the objector is a beneficiary; the reasons for the objection, including any supporting evidence or documents for the Court to consider; the identity of all counsel representing the objector who will appear at the Fairness Hearing; and a statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing.

IV. Argument

A. Preliminary Approval of the Proposed Settlement is Appropriate.

It is well established that the law favors class action settlements. *See In re Relafen Antitrust Litig.*, 231 F.R.D. 52 (D. Mass. 2005); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75 (D. Mass. 2005). Pursuant to Rule 23(e), “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). A settlement must be fair, reasonable, and adequate. *Id.* “When approving a settlement:

[T]he judge is required to scrutinize the proposed settlement to ensure that it is fair to the persons whose interests the court is to protect. Those affected may be entitled to notice and an opportunity to be heard. This usually involves a two- stage procedure. First, the judge reviews the proposal

preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing.

Hochstadt v. Boston Scientific Corp., 708 F.Supp.2d. 95, 106-107 (D. Mass. 2010) (citing MANUAL FOR COMPLEX LITIGATION (FOURTH) § 13.14 (2004)) Thus, before making a final decision on the ‘approval’ of a settlement, a court must first make a “preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.” *Id.* at 107. “Ultimately, the more fully informed examination required for final approval will occur in connection with the [final fairness hearing].” *In re M3 Power Razor System Mktg. & Sales Practice Litig.*, 270 F.R.D. 45, 62 (D. Mass. 2010).

A presumption of fairness attaches to a proposed settlement agreement “when the court finds that: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Lupron Mktg. & Sales Practices Litig.*, 345 F.Supp.2d 135, 137 (D. Mass. 2004) (citing *In re Gen. Motors Corp. Pick-up Truck Fuel Tanks Products Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995)). Here, all of these factors are met and preliminary approval of the settlement is favored.

1. The Negotiations Occurred at Arm’s Length

Class Counsel and each group of Defendants engaged in good faith, arm’s length negotiations after a lengthy pre-filing investigation and protracted litigation. These negotiations were wide-ranging and adversarial, involving numerous in-person meetings and countless telephone conferences taking place over a period of approximately nine months, with respect to the Athene Defendants, and over three more months with respect to Aviva. During the period when these negotiations were conducted and concluded, the

parties were intimately aware of the strengths and weaknesses of the Action and had thoroughly considered the merits of the Plaintiff's claims and the defenses of the two Defendant groups.

Moreover, experienced and knowledgeable counsel, who had the benefit of the wealth of fact discovery and expert opinions, conducted these negotiations. As a result of the extensive, arm's length bargaining, there was no collusion involved and the terms of the Settlement Agreement are fair, reasonable and adequate. Settlement discussions with Aviva were facilitated by Magistrate Judge Judith Dein, a well-respected mediator who is experienced in mediating cases of this nature.

2. There was Sufficient Discovery Conducted Over the Course of Three Years

The parties have engaged in substantial discovery over the past three years, in an effort to facilitate settlement. Specifically, Class Counsel thoroughly investigated and examined hundreds of thousands of pages of documents reflecting the reasons why the CMA here at issue was created; what its impact was on sales and profitability of the annuities here at issue; on the reasons why such sales were discontinued; on the circumstances surrounding the purported modification and termination of the CMA; and on the impact of those acts and the identity and responsibility of the relevant actors in that termination. In addition, Class Counsel have retained financial and insurance industry experts, and worked with them to prepare Plaintiff's Motion for Class Certification and to assess both the magnitude of the damages here at issue and the value of the relief obtained in settlement. Given the thorough investigation of the facts, Class Counsel have been able to sufficiently evaluate the merits of the claims in this Action.

3. The Proponents of the Settlement are Experienced in Similar

Class Action Litigation

Class Counsel are qualified attorneys with extensive experience prosecuting complex class action cases, and in particular, those involving insurance products and specifically annuities. (*See* Auerbach Decl. ¶5, and Exhibits 1 & 2, thereto.)

4. There Have Been No Class Objections

Notice to the Settlement Class has not been disseminated and therefore Settlement Class Members have not had the opportunity to review the Settlement Agreement. Nonetheless, Class Counsel is unaware of any objections to the Settlement Agreement by either the Named Plaintiff or Settlement Class Members. To the contrary, the Plaintiff has expressed his approval and support of the Settlement. Finally, each Settlement Class Member will have the chance to opt out or voice objections, should he/she have any, prior to or at the Fairness Hearing. For the foregoing reasons, the standards for preliminary approval are met in this case and the Court should grant the present motion.

B. The Court Should Direct Notice to the Settlement Class

According to Rule 23, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the “best notice practicable.” *See* Fed.R.Civ.P. 23(c)(2)(B). “[B]est notice practicable” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The Notice provided for in the Agreement has been developed with the thought of providing the most comprehensive notice possible, with a reach that more than satisfies federal guidelines.

The proposed Notice provides clear and accurate information as to: (1) the nature

and principal terms of the Agreement, including the monetary and other relief the Settlement will provide Settlement Class Members; (2) the procedures and deadlines for submitting opt out requests and objections; (3) the date, time and place of the Fairness Hearing; (4) the maximum amount of attorneys' fees and costs that may be sought by Class Counsel, pursuant to Fed.R.Civ.P. 23(h); and (5) the identities and contact information for Class Counsel, counsel for Defendants, and the Court.

In this case, the Athene Defendants maintain a database containing address information for virtually all of the members of the Settlement Class. Notice will therefore be effected by first class mail, and will also utilize the most reliable and modern technologies to identify addresses for those Settlement Class Members, if any, for whom the Athene Defendants do not currently maintain an accurate mailing address.

Notice will also meet all legal requirements and provide a comprehensive explanation of the Settlements in layman's terms. Specifically, Notice to Settlement Class Members shall include: mailed notice to those potential Settlement Class Members who can be identified by the Athene Defendants through reasonable efforts; and establishment of a Settlement Website. The Notice Program complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court. *See, e.g.*, MANUAL FOR COMPLEX LITIGATION, FOURTH (2008) § 21.311-21.312. As a result, Plaintiff respectfully request the Court direct Notice to all Settlement Class Members.

C. A Fairness Hearing Should Be Scheduled

The Court should schedule a Fairness Hearing to obtain all required information to determine that class certification is proper for settlement purposes and the settlement

should be approved. *See* MANUAL FOR COMPLEX LITIGATION, Fourth § 21.633 (2008). The Fairness Hearing will provide a forum for proponents and opponents to explain, describe or challenge the terms and conditions of the class certification and settlement, including the fairness, adequacy and reasonableness of the settlement.

Accordingly, the Plaintiff requests that the Court schedule the Fairness Hearing for a date no earlier than 100 days after an order is entered preliminarily approving the Settlement.

V. The Court Should Approve The Following Schedule

Plaintiff proposes the following schedule to complete the process of final approval:

- DATE 0 Preliminary Approval;
- DATE + 15 Settlement Class Notice of Proposed Settlement sent to all Settlement Class Members;
- DATE + 40 Plaintiff to file Motion for Final Approval of the Settlement and for Award of Attorney's Fees and Expenses, and Service Award
- DATE + 75 Date by which Opt-Outs and Objections must be postmarked or filed;
- DATE + 80 Settlement Administrator to provide Opt-Out list and copies of Exclusion Requests to Court and parties;
- DATE + 90 Parties file any responses to objections;
- DATE + 100 Hearing on Final Approval and Plaintiff's Application for Attorneys' Fees and Costs

VI. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order (1) conditionally certifying the Settlement Class pursuant to Fed. R. Civ. P. 23 for settlement purposes only; (2) preliminarily approving the terms of the Settlement as within the range of fair, adequate and reasonable terms; (3) approving the notice program set forth

in the Agreement and approving the form and content of the Notices of the Settlement; (4) approving the procedures for Settlement Class Members to opt out and object to the Settlement; (5) preliminarily designate Class Counsel as counsel for the Settlement Class and Plaintiff as Class Representative ; and (6) scheduling a Fairness Hearing for a time and date no earlier than 100 days after issuance of the Court's order granting preliminary approval.

Dated: May 1, 2018
Boston, Massachusetts

Respectfully submitted,

/s/ Jerome M. Marcus

Jerome M. Marcus (*pro hac vice*)
Jonathan Auerbach (*pro hac vice*)
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/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 on May 1, 2018.

Dated: May 1, 2018 /s/ Jerome M. Marcus
Jerome M. Marcus

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Counsel for Plaintiff
John W. Griffiths and the Proposed Class

IN THE 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,)	
)	JURY TRIAL DEMANDED
Defendants.)	
)	

DECLARATION OF JONATHAN AUERBACH

I, Jonathan Auerbach, hereby declare as follows:

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

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

3. I offer this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. 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. The enforceability of the Settlement is not contingent on the amount of attorneys' fees or costs or incentive award to Plaintiff awarded. The parties did not discuss the amount of attorneys' fees and costs or incentive award to Plaintiff until after reaching agreement on the total amounts to be paid by Defendants pursuant to the Settlements.

5. 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 LLC 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 hereto as Exhibit 1, and Firm Resume of Krasnoo, Klehm & Faulkner LLP, attached hereto as Exhibit 2. See *In re American Investors Life Ins. Co. Annuity Marketing & Sales Practices Litig.*, 263 F.R.D. 226 (E.D. Pa. 2009).

6. 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.

7. 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, attached hereto as Exhibit 3.

8. 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 May 1, 2018 in Philadelphia, Pennsylvania.

/s/ Jonathan Auerbach

JONATHAN AUERBACH

Marcus & Auerbach LLC

About the Firm

Marcus & Auerbach LLC is a law firm that concentrates on complex commercial litigation, including many matters directly challenging insurance industry practices, as well as cases involving complex scientific and technical issues. Marcus & Auerbach's litigators have represented a wide variety of clients ranging from small internet companies to Fortune 500 companies, professional organizations, including medical societies, as well as individual investors and consumers. Although based in the Philadelphia area, the firm's practice is national in scope. The principals of Marcus & Auerbach LLC have long experience that predates the relative youth of their firm, both having spent many years in practice together as partners at one of the nations' leading class action boutiques, where they established that firm's Healthcare Litigation Practice Group and served as class counsel in a number of major national and regional class actions.

Messrs. Marcus and Auerbach have served as co-lead counsel in a number of cases involving allegations of fraud and deceptive practices in the sale of complex financial products and consumer services. They have been appointed class counsel and lead counsel in a multi-district federal action to recover losses from the sale of equity-indexed annuities and other fixed annuities with excessive deferral periods that were fraudulently sold to the elderly (*In Re: American Investors Life Insurance Co. Annuity Marketing And Sales Practices Litigation, MDL-1712*). They have also been involved in a number of pathbreaking class actions on behalf of healthcare providers that challenged reimbursement practices of a number of national and regional insurers. One such class action was brought on behalf of all Pennsylvania physicians and other healthcare providers against the largest health insurance company in Southeastern Pennsylvania. *See Pennsylvania Orthopaedic Society v. IBC*, Case No. 021200002 (C.P. Phila. County, 2002). In another, they were appointed co-lead counsel on behalf of a Pennsylvania class of healthcare providers in connection with the settlement of claims against a Third Party Administrator of Medicare dental insurance plans, relating to the computation of payments to dental providers. *See Goldstein, et al. v. Doral Dental Services of Pennsylvania, Inc.*, Case No. 1649 (C.P. Phila. County, 2004). They have also served as lead counsel in cross-border litigation on behalf of clients with significant interests in natural resource development in Central Asia, including a dispute over oil and gas exploration and development rights to a 460 square-mile block in western Kazakhstan. They have also served as lead counsel in a number of certified class action settlements, including class actions relating to billing procedures of North Carolina Blue Cross, Blue Shield; cancellation of a long term care insurance program by the State of North Carolina affecting several thousand current and retired state employees; a series of cases challenging the level of surplus assets maintained by the four non-profit Blue Cross/Blue Shield health insurance companies in Pennsylvania. Marcus & Auerbach also served as co-lead counsel in a nationwide consumer class action concerning the unlawful deactivation of several hundred thousand gift cards, resolved by a settlement resulting in relief representing 100% of damages to the class, exclusive of attorney's fees and costs. *See Fafard v. Apple, Inc.*, No. 4:12-CV-05125-

CW (U.S.D.C. N.D.Ca. 2014). Soon thereafter, the firm served as co-lead counsel in a consumer class action where, again, it was able to secure relief approximating nearly 100% of damages net of attorneys' fee and litigation costs, in *Cortez, et al. v. United Water New Jersey, Inc. and HomeServ USA Corp.*, Civil Action BER-L-11374-10 (N.J. Super., Bergen County, 2015) alleging improper charges for certain service contracts to residential consumers.

Attorney Profiles

Jonathan Auerbach

Mr. Auerbach graduated from the University of Pennsylvania (B.A. 1983) and Temple University School of Law (J.D. 1991), where he was a William R. Spofford Scholar. Since 1991, Mr. Auerbach has concentrated much of his practice on matters involving complex scientific and biomedical issues. His primary practice areas have included environmental, toxic tort, antitrust, ERISA, civil rights and consumer fraud litigation. He has served as lead counsel in numerous complex litigations, including both class and non-class matters, on behalf of plaintiffs and defendants.

Mr. Auerbach has served as co-lead counsel in a nationwide class action settlement on behalf of a class of more than 400,000 purchasers of long-term deferred annuities in the multidistrict litigation *In Re: American Investors Life Insurance Co. Annuity Marketing And Sales Practices Litigation*, MDL-1712, where the relief to the class was valued at more than \$500 million. He has also served as class counsel in the *Pennsylvania Diet Drug Litigation* and the *New Jersey Diet Drug Litigation*, where he also served on the plaintiffs' medical monitoring class action trial team. The trial of that class action led to a nationwide global settlement valued in excess of \$3 billion in medical monitoring and personal injury claim relief. He has also been appointed co-lead counsel in the *New Jersey Hormone Replacement Therapy Litigation*. He has also served as class counsel in a number of class actions on behalf of professional medical societies and healthcare providers, including *Pennsylvania Orthopaedic Society v. IBC*, Case No. 021200002 (C.P. Phila. County, 2002), in which a settlement produced equitable relief in the form of unprecedented disclosures of a dominant health insurer's reimbursement practices to healthcare providers and produced prospective relief of increased reimbursements in excess of \$50 million. Mr. Auerbach has served as co-lead counsel in a settlement reached in *Goldstein, et al. v. Doral Dental Services of Pennsylvania, Inc.*, Case No. 1649 (C.P. Phila. County, 2004), on behalf of a class of dental care providers who alleged that Doral had failed to properly compensate them for services provided to Medicaid-enrolled patients in the Philadelphia-area.

Mr. Auerbach has litigated a number of cases involving radiation health effects, including *In re Hanford Nuclear Reservation*, (U.S.D.C. E.D. Wash.) and *Cook, et al. v. Rockwell International, et al.*, (U.S.D.C. D.Colo.), involving the former operators of the Rocky Flats Nuclear Weapons

Plant in Golden, Colorado. He is currently lead counsel in federal litigation in the Western District of Texas, *Norwood, et al. v. Raytheon, et al.*, (U.S.D.C. W.D.Tex.) involving the claims of hundreds of U.S. and NATO veterans for injuries sustained during their military service from exposure to ionizing radiation while operating certain missile defense systems manufactured by the defendants during the Cold War. Mr. Auerbach has also represented clients in a number of civil rights actions involving religious freedom and racial discrimination claims.

From 1983 to 1988, Mr. Auerbach was a research associate and teaching fellow in the Department of Epidemiology at the University of Pittsburgh's School of Public Health. During law school, Mr. Auerbach was a judicial intern for the Hon. John T. J. Kelly, Jr. of the Pennsylvania Superior Court. He also served as a policy analyst with the Philadelphia Mayor's Office of Drug Control Policy. He has been a member of the Society for Epidemiologic Research. Mr. Auerbach is admitted to the bar in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania, New Jersey, Colorado, Western District of Texas and the United States Court of Appeals for the Third Circuit and Tenth Circuit. Mr. Auerbach has been a guest lecturer on civil rights and constitutional law at Arcadia University. Mr. Auerbach has served on a *pro bono* basis as a court-appointed Child Advocate and guardian *ad litem* on behalf of abused and neglected children through the Philadelphia Support Center for Child Advocates. He has also served as a member of the Investigative Division of the Philadelphia Bar Association's Commission on Judicial Selection and Retention. Mr. Auerbach has been a Barrister in the Temple American Inn of Court. He has been named a Pennsylvania Super Lawyer (2005-2009). Mr. Auerbach is AV rated by Martindale-Hubbell. He currently serves as President of the Board of Governors of the Racquet Club of Philadelphia.

Jerome M. Marcus

Jerome M. Marcus attended the University of Chicago, from which he received his B.A. in 1980, his M.B.A. in 1981 and his J.D. in 1986. He was Associate Editor of the *University of Chicago Law Review*, and Executive Editor of the *Legal Forum of the University of Chicago*. He then served as Law Clerk for the Hon. Edward R. Becker, U.S. Court of Appeals for the Third Circuit in 1986-1987. He was Special Assistant to the Legal Advisor, U.S. Department of State in 1987-1988; Assistant U.S. Attorney in the Eastern District of Pennsylvania in 1991-1993. He served as a Consultant to the National Commission on Judicial Discipline and Removal, 1992-1993. Mr. Marcus was appointed and previously served as Chairman of the Lawyers' Advisory Committee to the Judicial Council of the Third Circuit Court of Appeals.

For more than the past twenty years, he has practiced primarily in the area of antitrust, healthcare and employee benefits, and appellate litigation. Mr. Marcus is admitted to the bar in Pennsylvania and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania, and the United States Courts of Appeals for the Second Circuit, Third Circuit, and Sixth Circuit. Mr. Marcus has been a guest lecturer for the National Constitution Center Lecture Series on the Law of War, held at the University of Pennsylvania School of Law. He is an adjunct faculty member at the Stern Hebrew High School in

Philadelphia, where he teaches a course on American Political Thought. Mr. Marcus has been elected a member of the American Law Institute.

Mr. Marcus has served as lead counsel in numerous complex litigations, including both class and non-class matters, on behalf of plaintiffs and defendants, including: as class counsel in a number of class actions on behalf of professional medical societies and healthcare providers, including *Pennsylvania Orthopaedic Society v. IBC*, Case No. 021200002 (C.P. Phila. County, 2002), in which a settlement produced equitable relief in the form of unprecedented disclosures of a dominant health insurer's reimbursement practices to healthcare providers and produced prospective relief of increased reimbursements in excess of \$50 million. Mr. Marcus has served as co-lead counsel in a settlement reached in *Goldstein, et al. v. Doral Dental Services of Pennsylvania, Inc.*, Case No. 1649 (C.P. Phila. County, 2004), on behalf of a class of dental care providers who alleged that Doral had failed to properly compensate them for services provided to Medicaid-enrolled patients in the Philadelphia-area. Mr. Marcus has been named a Pennsylvania Super Lawyer (2004-2009).

Krasnoo, Klehm & Falkner LLP

About the Firm

Krasnoo, Klehm & Falkner LLP is a law firm that concentrates in civil and criminal litigation in the state and federal courts of Massachusetts. The law firm includes three experienced attorneys, all of whom have substantial jury trial experience at both the state and federal levels.

On the civil side, the law firm represents a wide variety of clients, ranging from individuals to small businesses, and focuses on business litigation, §1983 civil rights matters, employment, fraud, personal injury and administrative matters.

Attorneys Klehm and Falkner try the civil cases together, sharing various trial tasks, such as preparing and arguing motions and examining and cross-examining witnesses. Attorney Klehm, who has practiced law in the Commonwealth for more than twenty years, serves as lead counsel, and Attorney Krasnoo, drawing upon his more than fifty years of experience, provides strategic and legal guidance, and reviews and edits documents. Notable cases handled by the firm include *International Floor Crafts, Inc. v. Adams et al*, 05-cv-11654-NMG, in which Attorneys Klehm and Falkner won a multimillion dollar federal jury verdict in favor of their business client in a case brought under the Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.). Earlier this year, the firm secured a jury verdict in favor of their client in *Bochart v. Wayne*, 13-cv-11753-FDS, a federal civil rights trial.

Attorney Profiles

Attorney James B. Krasnoo

Attorney James B. Krasnoo attended Harvard University, from which he received a B.A. in Government in 1961. He was graduated from the University of Chicago Law School, from which he received a Juris Doctor, in 1964. He also has a Masters of Arts in English Literature which he received from Northeastern University in 1966. Krasnoo has practiced law in the Commonwealth of Massachusetts since 1964, and he was admitted to practice in the United States District Court for the District of Massachusetts in 1965. He is one of the most seasoned and respected criminal trial lawyers in the Commonwealth of Massachusetts. Krasnoo has conducted hundreds of jury trials – most of them criminal trials, and he has conducted many civil trials as well. He has argued a total of more than 100 cases in the United States Court of Appeals for the First Circuit, the Supreme Judicial Court and the Massachusetts Appeals Court. He is a former Special Assistant Attorney General for the Commonwealth of Massachusetts and a former Assistant United States Attorney. Krasnoo has served as the President of the Boston Chapter of the Federal Bar Association (1981) and of the Lawrence Bar Association (2013). Over a forty year period, he taught criminal law courses at several law schools, and he has been the

author of various publications on issues relating to criminal defense. He is the recipient of various awards and recognitions for his legal work.

Attorney Paul J. Klehm

Attorney Paul J. Klehm was graduated from Wesleyan University in 1989 with a B.A. in Government. He went on to receive his Juris Doctor from Suffolk University Law School, *cum laude*, in 1992. Klehm has practiced law in the Commonwealth of Massachusetts since 1992, and in the United States District Court for the District of Massachusetts since 1993. Klehm concentrates his practice on civil litigation – mainly business litigation, §1983 civil rights actions, employment, fraud and personal injury matters. He has argued appeals before the United States Court of Appeals for the First Circuit, the Supreme Judicial Court and the Massachusetts Appeals Court. He is the Vice-Chair of the Civil Litigation Council of the Massachusetts Bar Association for 2017-18, and he has served on that council since 2014. He also serves on the MBA's *Amicus Curiae* Committee (2015 to present) and the MBA's Committee on Civility and Professionalism (2016 to present). Klehm served as the President of the Lawrence Bar Association in 2013, and he has served on its Executive Committee since 2007. Klehm has substantial federal court experience, and has successfully tried a number of federal cases to verdict.

Attorney Benjamin L. Falkner

Attorney Benjamin L. Falkner was graduated from The Ohio State University, *magna cum laude*, with a B.A. in Journalism, in 2002. He was graduated from Suffolk University Law School, *magna cum laude*, with a Juris Doctor in 2006. Falkner has practiced law in the Commonwealth of Massachusetts since 2006, and in the United States District Court for the District of Massachusetts since 2007. He has worked as an attorney at Krasnoo, Klehm & Falkner LLP (formerly Krasnoo/Klehm LLP and Law Offices of James B. Krasnoo) since 2006. Falkner focuses his practice primarily in adult and juvenile criminal defense. He serves on the Federal Criminal Justice Act Panels of the United States District Court for the District of New Hampshire, and he serves on the Federal Criminal Justice Act Panel for the United States Court of Appeals for the First Circuit. He serves on various panels representing indigent criminal defendants on behalf of the Committee Public Counsel Services, including, District Court, juvenile delinquency, youthful offender and post-conviction panels. He handles matters at various administrative boards, including, without limitation, the Sex Offender Registry Board and the Merit Systems Protection Board. He also provides assistance on various civil cases in the law firm.

Falkner has argued before the United States Court of Appeals for the First Circuit, the Supreme Judicial Court and the Appeals Court of Massachusetts. He has tried various trials, including, without limitation, four civil trials in the United States District Court for the District of Massachusetts.

IN THE 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.)

DECLARATION OF STEPHEN J. SCHERF

I, Stephen J. Scherf, of Asterion, Inc., 215 S. Broad Street, Philadelphia, PA 19107,

hereby state and swear as follows:

1. I am a graduate of Temple University where I obtained my Bachelors of Business Administration degree with a major in Accounting.

2. I am a graduate of Drexel University where I obtained my Masters of Science degree with a major in Finance. I also possess an Advanced Professional Certificate with a major in Taxation from Drexel University.

3. I am licensed as a Certified Public Accountant in the Commonwealth of Pennsylvania and the State of Delaware. I have been a Certified Public Accountant since 1983.

4. I hold various other professional certifications including designations in forensic accounting and business valuation.

5. My professional time is spent primarily in the area of forensic accounting, damages analyses and business valuation. I routinely provide analysis of damages and testify at trial regarding those damages. Attached as Exhibit A is my CV and Federal Rule 26 Disclosures.

6. I have no financial interest in the outcome of the within case except for my firm earning professional fees at its standard hourly rates.

7. I issued an Expert Report on damages dated August 4, 2017. Damages in that report were calculated based upon the fundamental economic principal of risk versus return. That report was issued prior to this pending settlement and prior to the Defendants requirement to issue their rebuttal report.

8. The pending settlement includes certain structural relief.

9. I have been requested to estimate the financial impact of the structural relief contained in the pending settlement. As noted in my August 4, 2017 Expert Report, the Defendants took the position that the CMA Guarantee could have been withdrawn at any time. As a result, the Guaranteed Annuities were never actually protected by the CMA Guarantee, because in Defendants' view the CMA Guarantee could be eliminated at any time. The structural relief resolves that issue.

10. My estimate of the financial impact of the structural relief is consistent with the methodology used in my August 4, 2017 Expert Report in that I use the same Rating Agency based methodology to determine the value of the structural relief.

11. Based upon my analysis, the structural relief provided eliminates all but 15 to 25 basis points of risk. Using the same methodology as contained in my August 4, 2017 Expert Report, (determining the present value of a 15 to 25 basis point difference over the expected future

payment stream of the annuities) the value of the structural relief is between \$27 million and \$41 million.

12. I understand that in addition to the structural relief, the settlement agreement provides for a distribution of any cash remaining in the settlement fund after payment of expenses.

13. You have requested that I provide an opinion regarding the appropriate basis for allocating settlement fund among the class members.

14. As noted in my August 4, 2017 Expert Report, the Guaranteed Annuities were represented to the public as having a particular risk profile which commanded a certain price – paid as premium for the annuities -- when in fact, the risk was greater. Accordingly, in my professional opinion, the proper method for allocating any cash remaining in the settlement fund after payment of fees and expenses would be to prorate based upon the price paid for the annuities. This allocation would properly allocate settlement funds among class members.

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



Stephen J. Scherf
May 1, 2018

Appendix A

PHILADELPHIA

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 Philadelphia, PA 19107 f 215 893 9903

NEW YORK

575 Lexington Avenue, 4th Floor t 646 495 9340
 New York, NY 10022

Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CGMA, CICA, CIRA, CTP, CVA Principal

sscherf@asterion-consulting.com

Biography

Mr. Scherf has provided a wide array of accounting and consulting services to clients with an emphasis on business valuations, fraud investigations, bankruptcy, and litigation matters. Mr. Scherf has testified on numerous occasions in arbitrations, depositions and Federal Court. Mr. Scherf has taught for the American Institute of Certified Public Accountants, The National Association of Certified Valuators & Analysts and other professional organizations.

Mr. Scherf's employment experience includes "Big Four," regional and a "boutique" accounting firm. In the private sector, Mr. Scherf held officer positions at a \$2.5 billion financial institution, a major real estate developer and an investment firm.

Professional Memberships

- FINRA Public Arbitrator
- American Institute of Certified Public Accountants
- Pennsylvania Institute of Certified Public Accountants
- Turnaround Management Association
- National Association of Certified Valuators & Analysts
- American Bankruptcy Institute
- American College Board of Forensic Examiners
- Association of Certified Fraud Examiners
- Association of Insolvency and Restructuring Advisors
- Institute for Internal Controls

Education

Mr. Scherf has a B.B.A. in Accounting from Temple University (1980) and a Master of Science in Finance (1986) and an Advanced Professional Certificate in Taxation (1987) from Drexel University. His education has been supplemented by various continuing education courses offered by a variety of professional organizations. He has spoken before professional and educational groups on various aspects of business valuation, litigation consulting, fraud investigations and economic damages.



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Testimony

<u>Date</u>	<u>Jurisdiction</u>	<u>Type</u>	<u>Matter</u>
2018	Superior Court of New Jersey Gloucester County, NJ	Trial	Tony Luke, Inc. v. TR Worldwide Phillyfood, LLC
2017	American Arbitration Association Clarks Summit, PA	Arbitration	Paul Murray v. Valor Federal Credit Union
2017	Court of Common Pleas Luzerne County, PA	Trial	William Seltzer. v. Butler Enterprises, Inc. et al.
2017	Court of Chancery State of Delaware	Trial	Triple H Family Limited Partnership v. Jerry Neal
2017	United States Bankruptcy Court Eastern District of Pennsylvania	Deposition	In Re: Image Masters. Lynn Feldman, Trustee v. ABN AMRO Mortgage Group, Inc. et al.
2017	Court of Chancery State of Delaware	Deposition	Triple H Family Limited Partnership v. Jerry Neal
2017	JAMS Arbitration Philadelphia, PA	Arbitration	Gary Barbera et al. Thomas Hessert et al.
2017	United States Bankruptcy Court District of New Jersey (Camden)	Trial	Customers Bank v. Roman Osadchuk.
2017	Superior Court of New Jersey Mercer County	Deposition	Mitchell L. Sussman v. Gold Gerstein Group, LLC et al.



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Testimony

<u>Date</u>	<u>Jurisdiction</u>	<u>Type</u>	<u>Matter</u>
2017	Court of Common Pleas Philadelphia, PA	Trial	Neil Chesen et al. v. Sonya Bright
2017	Superior Court of New Jersey Cape May County, NJ	Deposition	Michael McDonald et al. v. City of Wildwood
2017	United States District Court Eastern District of Pennsylvania	Trial	Dalmatia Import Group, Inc. et al. v. FoodMatch, Inc. et al.
2017	United States District Court Eastern District of Pennsylvania	Deposition	New Spring Mezzanine Capital II, LP v. Baxter McClindon Hayes et al.
2017	Court of Common Pleas Bucks County, PA	Trial	Dawn Meadows v. Kevin Meadows
2016	United States District Court Eastern District of Pennsylvania	Deposition	Dalmatia Import Group, Inc. et al. v. FoodMatch, Inc. et al.
2016	Court of Common Pleas Northampton County, PA	Trial	Thomas B. Walden, M.D. v. Northampton Hospital Corporation d/b/a Eastion Hospital et al.
2016	Superior Court of New Jersey Burlington County	Deposition	Assigned Credit Solutions, Inc. v. AmeriGas Propane, L.P.
2016	United States District Court District of Delaware	Trial	Air Products and Chemicals, Inc. v. Eric P. Wiesemann et al.



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Testimony

<u>Date</u>	<u>Jurisdiction</u>	<u>Type</u>	<u>Matter</u>
2016	Superior Court of New Jersey Camden County	Deposition	Customers Bank v. Capital Financial Management Corp. et al.
2015	United States District Court District of New Jersey	Deposition	Sam Younes et al. v. 7-Eleven, Inc.
2015	Court of Common Pleas Philadelphia County, PA	Trial	Sandra Snitow v. Howard Snitow et al.
2015	United States District Court Eastern District of Pennsylvania	Deposition	Gratz College v. Synergis Education, Inc.
2015	United States District Court District of Utah	Deposition	N8 Medical, Inc. et al. v. Colgate Palmolive Company
2015	Court of Chancery State of Delaware	Trial	Currency, Inc. et al. v. API Technologies, Corp. et al.
2015	Court of Common Pleas Montgomery County, PA	Hearing	Joel Rosenwasser and Engraving Technologies, Inc. v. C.J.D., Inc. et al.
2015	Court of Common Pleas Luzerne County, PA	Hearing	Natalie Gunnshannon et al. v. Albert/Carol Mueller t/a McDonalds et al.
2014	Court of Common Pleas Northampton County, PA	Trial	John Cancelliere et al. v. Buckno Lipsicky & Company et al.



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Testimony

<u>Date</u>	<u>Jurisdiction</u>	<u>Type</u>	<u>Matter</u>
2014	United States District Court Eastern District of Pennsylvania	Trial	David's Bridal, Inc. v. CELS Enterprises, Inc.
2014	Court of Common Pleas Delaware County, PA	Hearing	Joseph F. Delaney, III v. F. Sean Bonner and Carne Capital, LLC
2014	United States District Court Eastern District of Pennsylvania	Deposition	David's Bridal, Inc. v. CELS Enterprises, Inc.
2014	United States District Court District of New Jersey	Hearing	United States of America v. Ashokkummar R. Babaria
2014	Court of Chancery State of Delaware	Trial	Kathryn Mennen et al. v. Wilmington Trust Company et al.
2014	Court of Chancery State of Delaware	Deposition	Kathryn Mennen et al. v. Wilmington Trust Company et al.
2014	United States District Court Eastern District of Pennsylvania	Trial	Pure Earth, Inc. v. Gregory Call v. Pure Earth Inc., et al.



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Publications

<u>Date</u>	<u>Publication</u>	<u>Title</u>
2016	Law360	<i>Using a Commercial Success Declaration in an IPR</i>
2011	National Litigation Consultant's Review	<i>Fair Value Accounting's Impact on Damages</i>
2010	National Litigation Consultant's Review	<i>Business Valuation in the "But For" World</i>



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Speaking Engagements

<u>Date</u>	<u>Description</u>	<u>Location</u>
2016	Pennsylvania Bar Institute Advanced Piercing the Corporate Veil	Philadelphia, PA
2015	Pennsylvania Bar Institute Tales from the Shareholder Wars	Philadelphia, PA Mechanicsburg, PA
2015	Pennsylvania Bar Institute Minority Shareholder Freezeout Litigation	Philadelphia, PA
2015	Pennsylvania Bar Institute Commercial Litigation Institute – Damages and Remedies	Philadelphia, PA
2015	National Business Institute Handling the Sale of a Business	Philadelphia, PA
2014	National Association of Certified Valuation Analysts Solvency and Insolvency Testing	Webinar
2014	National Association of Certified Valuation Analysts Advanced Valuation Applications and Models	New Orleans, LA
2014	Pennsylvania Institute of Certified Public Accountants AICPA Testing for Goodwill Impairment Guide	Philadelphia, PA
2014	Montgomery County Bar Association Intersection of Forensic Accounting and Bankruptcy	Norristown, PA



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Speaking Engagements

<u>Date</u>	<u>Description</u>	<u>Location</u>
2013	Rutgers School of Law Business Divorce	Camden, NJ
2013	National Association of Certified Valuation Analysts Advanced Valuation Applications and Models	Chicago, IL
2013	Pennsylvania Bar Institute Advanced Piercing the Corporate Veil	Philadelphia, PA
2013	Accounting for Lawyers Schnader Harrison Segal & Lewis LLP	Philadelphia, PA
2013	Pennsylvania Bar Institute Business Divorce	Mechanicsburg, PA
2012	National Association of Certified Valuation Analysts Advanced Valuation Applications and Models	Philadelphia, PA
2011	Pennsylvania Institute of Certified Public Accountants Ethics and Other Issues – An Update	Valley Forge, PA
2011	Pennsylvania Institute of Certified Public Accountants Impairment Testing for Financial Reporting	Harrisburg, PA
2011	National Association of Certified Valuation Analysts Advanced Valuation Applications and Models	Orlando, FL



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Speaking Engagements

<u>Date</u>	<u>Description</u>	<u>Location</u>
2011	National Business Institute Accounting 101 for Attorneys	Allentown, PA
2010	National Association of Certified Valuation Analysts Advanced Valuation Applications and Models	Chicago, IL
2010	Pennsylvania Institute of Certified Public Accountants Fair Value Measurements	Harrisburg, PA
2010	American Society of Appraisers - Southern New Jersey Chapter Lost Profits and Business Destruction Damage Claims	Cherry Hill, NJ
2010	Office of Auditor Accounts – State of DE The Expert’s Role and Testimony	Dover, DE
2009	National Association of Certified Valuation Analysts Advanced Valuation Applications and Models	Jersey City, NJ
2009	Pennsylvania Institute of Certified Public Accountants Financial Institutions Conference Valuation and SFAS 141R	Hershey, PA
2009	Montgomery County Bar Association and the Greater Philadelphia Chapter of the PICPA – Strategies for Clients in the Current Economic Crisis	Norristown, PA Philadelphia, PA



Stephen J. Scherf, CPA/ABV/CFF, CDBV, CFE, CICA, CIRA, CTP, CVA
Rule 26 Disclosure – Speaking Engagements

<u>Date</u>	<u>Description</u>	<u>Location</u>
2008	National Association of Certified Valuation Analysts Advanced Valuation and Case Study Workshop	San Diego, CA
2008	Pennsylvania Institute of Certified Public Accountants Business Valuation Conference FASB Valuation Issues	Harrisburg, PA
2008	Association of Government Accountants Ponzi Schemes	Philadelphia, PA