

of premium paid for all the annuity policies covered by the proposed Settlement, after attorneys' fees and expenses (among other costs), as authorized by the Court, have been paid from the Cash Fund. Please refer to the Settlement Agreements for a further description of how these funds will be allocated between Class Members" (Notice (*see* Docket No. 125-4) at ¶ 5.) The monetary allocation methodology is set forth in both Settlement Agreements. (*See* Docket Nos. 125-1 and 125-2.) We refer in this submission to that allocation formula as "the Premium Ratio Formula."

In the Motion For Final Approval and related papers, Plaintiff proposed that the monetary relief be allocated based, *in part*, on the Premium Ratio Formula, and, *in part*, on the return of a fee for coverage by the Capital Maintenance Agreement ("CMA") at issue in this case.¹ That CMA fee generally was a flat-fee of either \$250 or \$100, depending upon the time period of the purchase of the subject annuity; the total amount returned to Class Members if this element had been included in the allocation formula would have been \$500,050. Even if this element had been included in the allocation formula, the majority of the monetary relief would have been allocated in accordance with the Premium Ratio Formula.

Defendants have expressed concern that including this second, CMA fee-based element in the allocation formula potentially might cause confusion among the Class or affect individual Class Members' assessment of the Settlements. Defendants have explained that their concern is based on the fact that the Class Notice described only the Premium Ratio Formula and referred

¹ *See* Corrected Memorandum In Support Of The Class Representative's Motion For Final Approval Of The Class Action Settlements And Award Of Attorneys' Fees, Reimbursement Of Litigation Expenses, And Class Representative Service Award (Docket No. 147); [Proposed] Order Granting Plaintiff's Motion For Final Approval Of Class Action Settlement (Docket No. 143).

Class Members interested in more detail on the allocation formula to the Settlement Agreements, which themselves only include the Premium Ratio Formula.²

To eliminate this potential confusion, Plaintiff wishes to clarify the relief requested in his Motion For Final Approval so that the monetary relief will be allocated solely in accordance with the Premium Ratio Formula as set forth in the Settlement Agreements and the Class Notice, and without including the CMA fee-based element that also had been included in the allocation formula proposed in Plaintiff's Motion For Final Approval and related papers.

A new proposed final approval order is attached hereto as Exhibit A.

LOCAL RULE 7.1(a)(2) CERTIFICATION

Undersigned counsel certify that they have conferred with counsel for Defendants in connection with this filing and there is no opposition.

Dated: August 29, 2018

Respectfully submitted,

The Plaintiff
John W. Griffiths
By His Attorneys,

/s/ Jerome Marcus

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² See, e.g., *In re Cendant Corp. Sec. Litig.*, 109 F. Supp.2d 235 (D.N.J. 2000) ("a court considering settlement may modify a plan of allocation without re-noticing the class. See *Beecher v. Able*, 575 F.2d 1010 (2d Cir. 1978).").

/s/ Paul J. Klehm

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants via first class mail, postage prepaid, on August 29, 2018.

/s/ Paul J. Klehm

Paul J. Klehm

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN W. GRIFFITHS, on behalf of himself and)
all others similarly situated,)
Plaintiff,)

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.)

**I. [Proposed] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

On _____, 2018 at _____m., (the "Fairness Hearing") the Court heard Plaintiff's Motion For Final Approval Of The Settlements And For Award Of Attorney's Fees And Expenses And Service Award To The Class Representative ("Final Approval Motion") (ECF No. 140). The Final Approval Motion was preceded by a Motion for Preliminary Approval, which was granted by the Court on June 29, 2018 (ECF No. 132).

After considering Plaintiff's Final Approval Motion, the Settlement Agreements, and the record and proceedings herein, the Court finds, concludes, and hereby orders as follows:

1. For the purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreements entered into with the Defendants and previously filed with this Court on May 1, 2018.

2. The Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the parties thereto and the Settlement Class Members.
3. Having preliminarily certified a Settlement Class for settlement purposes only and appointed class counsel by Order dated June 29, 2018 (ECF No. 132) (the "Preliminary Approval Order"), the Court now grants final approval to the Settlement Class as defined below.
4. The Court finds that that the distribution of Notice of the Settlements as provided by the Settlement Agreements, and as ordered by this Court upon preliminary approval, constituted the best notice practicable under the circumstances and fully meets the requirements of due process under the United States Constitution and Federal Rule of Civil Procedure 23. The Court finds that the distribution of the Notice has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreements. The Court further finds that the Notice was adequate and reasonable, and that it apprised the Settlement Class Members of the nature and pendency of this Action and the terms of the Settlement Agreements as well as their rights to request exclusion, object, and/or appear at the Fairness Hearing.
5. The Court finds that the Settlement Class Representative is similarly situated to absent Settlement Class Members, is typical of the class, and that Class Counsel and the Settlement Class Representative have fairly and adequately represented the Settlement Class. The Court grants final approval to its appointment of Marcus & Auerbach LLC and Krasnoo, Klehm & Falkner LLP as Class Counsel and its designation and appointment of Jerome M. Marcus and Jonathan Auerbach, and Marcus & Auerbach

LLC, as Lead Counsel for the Settlement Class, and its appointment of John W. Griffiths as Settlement Class Representative.

6. The Court certifies the following Settlement Class under Fed. R. Civ. P. 23(a) and 23(b)(3):

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.

7. Also excluded from the Settlement Class are those persons identified in Exhibit _ to the Declaration of [Strategic Claims Services], who submitted timely and valid requests for exclusion from the Settlement Class. Such persons shall not receive any monetary benefits of the Settlement Agreements and shall not be bound by this Final Judgment.
8. The Court finds that the Settlements defined above satisfy the requirement of Fed. R. Civ. P. 23(a) and (b)(3) in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Settlement Class Representative are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representative and Class Counsel have fairly and adequately protected the interests of the Settlement Class, as the Settlement Class Representative has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent

counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members (*see Amchem v. Windsor Products*, 521 U.S. 591 (1997) (manageability prong of predominance not a consideration when approving settlement class); and (f) a class action and class settlement are superior to other methods available for a fair and efficient resolution of this controversy.

9. The Court finds that the Settlements provide substantial relief to the Settlement Class, and orders Defendants to pay for the capped costs of Class Notice and Settlement Administration, all as set forth in greater detail in the Settlement Agreements.
10. The Court finds that the Settlements are in all respects fair, reasonable, and adequate and are in the best interests of the Settlement Class Members. The Court also finds that Settlements were the product of a lengthy period of arms-length negotiations conducted in good faith among the parties and their experienced counsel and is not the product of fraud or overreaching by, or collusion between the parties to this litigation. The Court further finds that the parties face significant risks, expenses, delays, and uncertainties, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreements are fair, reasonable, adequate, and in the best interests of the Settlement Class Members.
11. [The Court has reviewed all objections to the Settlement Agreements or the Final Approval Motion. Those objections are hereby found to be without merit and are overruled [for the reasons set forth below/for the reasons stated at the Fairness Hearing]].
12. Distribution of Funds.

(a) Any money remaining from the Settlement Amount and any Contingent Settlement Payment, including any accrued interest thereon, after the payments for administration costs, taxes, service award, attorneys' fees and expenses are made, shall be distributed as follows to Class Members who have not excluded themselves from the Settlement Class, provided that the payment to each such Class Member would be equal to or greater than \$10.00:

(1) The "Annuity Proportion" shall be calculated for each annuity by dividing the premium paid for each annuity by the total premium paid for all annuities assigned to Athene London Assignment Corporation where such annuities remained in force as of October 2, 2013.

(2) The "Annuity Recovery" shall be calculated for each annuity by multiplying the Annuity Proportion by the Settlement Amount and any Contingent Settlement Payment.

(3) The "Individual Recovery" shall be calculated for each beneficiary of each annuity by dividing the Annuity Recovery by the number of beneficiaries of that annuity remaining in the Settlement Class.

13. The Settlement Administrator shall make a distribution to each Class Member who has not served an Exclusion Request in the amount of that Class Member's Individual Recovery, as defined above.

14. The Court finds that the interests of Greater Boston Legal Services is reasonably approximate to the interests of the Settlement Class. Therefore, the Court designates Greater Boston Legal Services as a *cy pres* recipient and directs that it receive any funds remaining after payments are made as set forth in the Settlement Agreements.

15. Accordingly, the Court hereby grants final approval of the Settlements and all of the terms of the Settlement Agreements. Plaintiff, Defendants, and the Settlement Administrator are ordered to carry out the Settlements according to the terms of the Settlement Agreements, the exhibits attached thereto, and the orders of this Court. Furthermore, the Settlement Administrator is authorized to resolve questions regarding the allocation of settlement payments among multiple beneficiaries of the same annuity policy.
16. As provided in greater detail in the Settlement Agreements, the Settlement Agreements, their terms, and any agreement, exhibit, or order relating thereto are not a concession or admission, and shall not be offered by any party to be received in evidence in any proceeding, or utilized in any manner as a presumption, concession, or admission of any fault, wrongdoing, or liability on behalf of the Defendants. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order in a proceeding to consummate or enforce the Settlement Agreements or this Order, or to defend against the assertion of any claims released under the Settlement Agreements or this Order in any other proceeding, or as otherwise required by law.
17. The Settlement Agreements include releases and waivers of settled claims. The releases and waivers set forth in the Settlement Agreements are valid and binding and are specifically adopted and made a part of this Order as if fully set forth herein. All such releases and waivers shall enter into effect upon the Effective Dates set forth in the Settlement Agreements. As of the Effective Dates, all members of the Settlement Class who did not timely and adequately exclude themselves from the Settlements shall be

permanently barred from prosecuting against any of the Defendant Released Parties claims that are released pursuant to the release provisions in the Settlement Agreements.

18. Other than as set forth in this Order, the parties shall bear their own attorneys' fees and costs.
19. This Action is dismissed with prejudice.
20. Consistent with the Settlement Agreements, if the Effective Dates do not occur, or if for any other reason the Settlement Agreements are terminated, disapproved, or fail to become effective, then the parties shall be deemed to have reverted to their respective status in the Action as of September 19, 2017 and December 22, 2017, which shall then resume proceedings in this Court, and, except as otherwise provided in the Settlement Agreements, the parties shall proceed in all respects as if the Settlement Agreements, the Preliminary Approval Order, this Order, and any other related orders had not been entered.

IT IS SO ORDERED.

Dated: _____, 2018

BY THE COURT:

HON. NATHANIEL M. GORTON, J.