

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

MARTIN FLEISHER, AS TRUSTEE OF THE)	
MICHAEL MOSS IRREVOCABLE LIFE)	Civil Action No.
INSURANCE TRUST II and JONATHAN)	11-cv-8405(CM)(JCF)
BERCK, AS TRUSTEE OF THE JOHN L. LOEB,)	
JR. INSURANCE TRUST, on behalf of)	
themselves and all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
PHOENIX LIFE INSURANCE COMPANY,)	
)	
Defendant.)	
)	
)	
)	

SPRR LLC, on behalf of itself and all others)	
similarly situated,)	Civil Action No. 14-cv-8714 (CM)
)	
Plaintiff,)	
)	
vs.)	
)	
PHL VARIABLE INSURANCE CO.,)	
)	
Defendant.)	
)	
)	
)	
)	

I, Jarrett E. Ganer, declare as follows:

1. I am a partner with the law firm of EDISON, MCDOWELL & HETHERINGTON LLP and counsel for defendants Phoenix Life Insurance Company and PHL Variable Insurance

Company (collectively, “Phoenix”) in the above-captioned actions. I am a member in good standing of the Texas bar. I am over the age of 18 and familiar with the facts set forth herein. I submit this declaration in support of Phoenix’s Response in Opposition to Submission by Non-Class Member Rosalyn Bindow.

2. Phoenix’s mailing list in connection with the 2011 notice for policies affected by the 2011 COI Adjustment is voluminous and contains personal identifying information on over 1,000 insureds.

3. I have personally reviewed the mailing list, and Ronald Bindow’s Phoenix policy—policy number 97523619—does not appear on the list of policies mailed notice of the 2011 COI Adjustment.

4. Attached as Exhibit A is a true and correct copy of grace period, policy termination, and reinstatement provisions of a Florida version of the 05 PAUL policy form.

5. Attached as Exhibit B is a true and correct copy of e-mail communications between Elba Perez, Phoenix Life Insurance Company’s Contract Services/Case Manager, and Michael Bindow concerning the reinstatement of Ronald Bindow’s Phoenix policy.

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

Signed this 1st day of December, 2015, in Houston, TX.



Jarrett E. Ganer

EXHIBIT A

Subject to these limitations, you may pay additional premiums at any time prior to the Age 100 Anniversary and while this policy is in force. Unless we agree otherwise, maximum premium payments are subject to the Maximum Annual Premium shown in Section 1. If, however, you have exercised Overloan Protection, no further premiums may be paid once Overloan Protection goes into effect. All premiums are payable at our Main Administrative Office or to an authorized agent. You may request a receipt signed by one of our executive officers.

If any premium payment results in an increase in the Death Benefit by more than it would increase the Policy Value, then we will either refund the premium or require evidence of insurability satisfactory to us. To the extent of such evidence, the Incontestability and Suicide Exclusion provisions will apply. We may limit the number and amount of premium payments in any Policy Year. The minimum premium payment that we will accept is \$25.

SECTION 11: Grace Period

During the first 5 Policy Years - If the Total Cumulative Premium Test is satisfied, as described in Section 7, then the Basic Face Amount, any Supplemental Face Amount, and any rider benefits will remain in effect during the Guaranteed Death Benefit Period. If, however, the Total Cumulative Premium Test is not satisfied, then this policy and any riders will go into default if, on any Monthly Calculation Date the Net Policy Value is equal to zero or less. A grace period of 31 days from the date the policy goes into default will be allowed for the payment of additional premiums. Such additional premium payments must be sufficient to increase the Net Policy Value on that Monthly Calculation Date to cover three Monthly Deductions or, if less, the amount necessary to pass the Total Cumulative Premium Test for the next three Policy Months.

During Policy Years 6 through 9 - This policy and any riders will go into default if, on any Monthly Calculation Date the Net Policy Value is equal to zero or less. A grace period of 31 days from the date the policy goes into default will be allowed for the payment of additional premiums. Such additional premium payments must be sufficient to increase the Net Policy Value on that Monthly Calculation Date to cover three Monthly Deductions.

After the 9th Policy Year - This policy and any riders will go into default if, on any Monthly Calculation Date the Net Surrender Value is equal to zero or less. A grace period of 31 days from the date the policy goes into default will be allowed for the payment of additional premiums. Such additional premium payments must be sufficient to increase the Net Surrender Value on that Monthly Calculation Date to cover three Monthly Deductions.

At least 30 days prior to termination of coverage, we will send notice to your last known address, specifying the amount you must pay to bring the policy out of default. If we have notice of a policy assignment on file at our Main Administrative Office, we will also mail a copy of the notice of the amount due to the assignee on record. When payment is received, any Policy Charges which are past due and unpaid will be immediately deducted from the Policy Value. If the necessary additional premium payments have not been received by the end of the grace period, the policy will terminate. Upon termination of the policy, the remaining Net Surrender Value, if any, will be paid to the Owner. If the Insured dies while the policy is in default, then we will deduct from the proceeds all Monthly Deductions due and unpaid as of the date of the Insured's death. Unless a rider provides otherwise, no riders will be in effect after the policy terminates.

Reduced Paid-Up Benefit

Upon your written request, after this policy has been in force for at least one full year, this policy can be lapsed to a reduced paid-up Death Benefit as of the date of your written request. The amount of Death Benefit will be calculated based on the Net Surrender Value of the contract, the Guaranteed Minimum Interest Rate shown in Section 1 and the Maximum Monthly Cost of Insurance Rates as shown in Section 2. Upon such election, all riders attached to this policy will terminate.

SECTION 12: Policy Termination

This policy will terminate automatically on the earliest of:

- (1) the date the Insured dies;
- (2) the date the grace period expires without the payment of sufficient premium as provided Section 11; or
- (3) the date the policy is surrendered for its Net Surrender Value.

SECTION 13: Reinstatement

If this policy terminates in accordance with the Grace Period provision, you may reinstate this policy while the Insured is alive within five years from the date the policy goes into default, as specified in Section 11. The policy cannot be reinstated if it has been surrendered for its Net Surrender Value. It also cannot be reinstated if the date of reinstatement is on or after the Age 100 Anniversary. We will not approve a request for reinstatement until we receive at our Main Administrative Office all of the following:

- (1) a written request for reinstatement;
- (2) evidence of insurability satisfactory to us;
- (3) payment or reinstatement of any Policy Debt as of the date of termination, if applicable; and
- (4) payment of the Reinstatement Premium. The Reinstatement Premium equals the amount that was required to bring the policy out of default immediately prior to termination, plus three Monthly Deductions.

Requirements (2) through (4) must be satisfied within 60 days after the date we receive a written request for reinstatement.

If we approve your request,

- (1) the reinstatement date will be the date we receive the required payment at our Main Administrative Office;
- (2) any Surrender Charge will be reinstated to the amount it was at the date of default;
- (3) the remaining Surrender Charge Schedule, if any, will be the same as on the date of default;
- (4) the Policy Value on the date of reinstatement, prior to the crediting of any Net Premium paid on the reinstatement, will be equal to the Policy Value on the date the policy terminated.

SECTION 14: Loans and Overloan Protection

While this policy is in force, and sufficient loan value is available, a loan may be obtained by written request. A loan may not be taken after you have exercised Overloan Protection. To obtain a loan, we may require a loan agreement from you, since the policy is the only security for the loan. We may defer loans as provided by law or as provided in Section 25. Loans may not be made if the policy is in the grace period as described in Section 11.

Maximum Loan Value

The Maximum Loan Value on any date is equal to the lesser of (a) or (b), where:

- (a) = the Policy Value, projected (with interest and monthly charges) to the next Policy Anniversary, less any applicable Surrender Charge, discounted for interest at the policy loan interest rate; and
- (b) = the current Surrender Value of this policy.

The Maximum Loan Value, however, will not be less than the Preferred Loan Amount plus accrued interest on such amount, but in no event greater than the current Policy Value.

EXHIBIT B



RE: Ronald Bindow 97523619 
ELBA PEREZ to: Michael Bindow

01/06/2012 02:44 PM

Michael

Please have Ronald call Kayleigh Whitmore at (800) 898-3926 X304, referencing order # 1894101, and advise her that he is in Florida, give her an address & a phone number and she can contact an examiner from Florida to get in touch with him there.

Thanks

Elba Perez
Phoenix Life Insurance Company
Contract Services/Case Manager
Phone: (518) 479-8241
Fax: (816) 502-4920
Email: elba.perez@phoenixwm.com

"Michael Bindow"

He's back in Florida. And wants to take the exam...

01/06/2012 02:21:02 PM

From: "Michael Bindow" <mbindow@advbc.com>
To: <ELBA.PEREZ@phoenixwm.com>
Date: 01/06/2012 02:21 PM
Subject: RE: Ronald Bindow 97523619

He's back in Florida. And wants to take the exam. How do we arrange?

Michael

-----Original Message-----

From: ELBA.PEREZ@phoenixwm.com [mailto:ELBA.PEREZ@phoenixwm.com]
Sent: Thursday, January 05, 2012 6:25 PM
To: Michael Bindow
Subject: Ronald Bindow 97523619

Mr. Bindow

Ronald has not scheduled his appointment to complete the medical requirements. Please advise if he is still interested in reinstating his policy so we can continue or close out request.

Thanks

Elba Perez
Phoenix Life Insurance Company
Contract Services/Case Manager
Phone: (518) 479-8241

Fax: (816) 502-4920
Email: elba.perez@phoenixwm.com

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