

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

MARTIN FLEISHER, AS TRUSTEE OF THE)
MICHAEL MOSS IRREVOCABLE LIFE) **Civil Action No. 11-cv-8405(CM)**
INSURANCE TRUST II and JONATHAN)
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) **Civil Action No. 14-cv-8714(CM)**
similarly situated,)

Plaintiff,)

vs.)

PHL VARIABLE INSURANCE CO.,)

Defendant.)

**DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF
PLAINTIFFS' MOTION FOR (1) ENTRY OF JUDGMENT, (2) APPROVAL OF
PAYMENTS AND DISTRIBUTION FROM SETTLEMENT FUND, AND (3)
DETERMINATION OF VALIDITY OF CLAIM OF BINDAY TO SHARE IN CLASS
ACTION SETTLEMENT FUNDS**

I, Steven G. Sklaver, declare as follows:

1. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Class Plaintiffs, the Court-appointed Class Counsel for the certified class in Civil Action No. 11-8405(CM), Dkt. 135, and the Court-appointed Class Counsel for the Settlement Class (“Class Counsel”) in Civil Action Nos. 11-cv-8405(CM), Dkt. 303, and 14-cv-8714(CM), Dkt. 37. I have been admitted *pro hac vice* by this Court in both actions and am a member of good standing of the California bar. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

2. Since the time that counsel calculated the expenses for the August 19, 2015 motion for fees and expenses, Class Counsel has advanced total unreimbursed expenses of \$11,606.88 related to this case. Below is a chart summarizing the expenses, by category, that Class Counsel has incurred on this case that were not included in its initial motion for fees and expenses. These categories of expenses are the type of expenses that my firm routinely charges to hourly fee-paying clients. Should the Court request supporting documentation for these amounts, Class Counsel will be pleased to provide it. The expert fees are from Plaintiffs’ damages expert for helping calculate settlement distributions to class members and for helping with analyses relating to final approval.

Expense Categories	Cumulative Expenses
Expert Fees	\$11,606.88
TOTAL EXPENSES	\$11,606.88

3. The Settlement Administrator has reported that it has incurred fees and expenses of \$22,799 to date.

4. Class Counsel, working with the Settlement Administrator and its retained experts, and using data provided directly by Defendants, has determined the amount owed to each Class Member under the terms of the approved Distribution Plan.

5. There is only one unresolved dispute regarding a claim to share in the settlement funds. Michael Bindow recently contacted class counsel asserting that a Phoenix policy insuring the life of his father that is owned by a Rosalyn Bindow, Policy No. 97523619, should be in the class and receive settlement funds.

6. Phoenix informed Class Counsel that it never sent a letter announcing the COI increase to the owner of Policy No. 97523619 because this policy lapsed in July 2011, several months before the applicable 2011 COI increase was announced. Mr. Bindow does not appear to contest that this policy lapsed before the relevant increase was first announced. Mr. Bindow argues that the policy's owner received "notice" of the COI increase because his father later applied for reinstatement of the policy, and when Phoenix approved reinstatement, according to Mr. Bindow, "[t]he premium demanded by them for the reinstatement reflects the COI increase, and as such serves as notice." Mr. Bindow forwarded this reinstatement letter to Class Counsel, who sent it to Phoenix ("Bindow Reinstatement Letter"). Phoenix informed Class Counsel that the Bindow Reinstatement Letter, which was sent on September 6, 2011, and the premium amount stated therein, which would have paid premiums through January 3, 2012, do not reflect the COI increase. If the policy had been in the Class, the new COI rates would not have gone into effect until January 4, 2012, the policy's anniversary. Mr. Bindow never followed through with the requirements necessary to complete reinstatement and the policy remained lapsed from July 2011.

7. In light of these facts, Class Counsel determined that Policy No. 97523619 does not meet the definition of a Class Policy as certified by this Court. Phoenix agrees with this determination. Class Counsel relayed these facts to Mr. Bindow, along with the determination that this was not a Class Policy (made by both Class Counsel and Phoenix). Class Counsel also informed Mr. Bindow that he is free to raise this issue with the Court and told him that Class Counsel would also raise this issue with the Court for it to decide.

8. The Settlement Administrator has confirmed that Policy No. 97523619 is not on the list of Class Policies submitted by Phoenix.

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

Dated: November 10, 2015

/s/ Steven G. Sklaver
Steven G. Sklaver (*pro hac vice*)
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