

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

JEROME SKOCHIN, SUSAN SKOCHIN and)	Civil Action No. 3:19-cv-00049-REP
LARRY HUBER, Individually and on Behalf)	
of All Others Similarly Situated,)	<u>CLASS ACTION</u>
)	
Plaintiffs,)	
)	
vs.)	
)	
GENWORTH LIFE INSURANCE)	
COMPANY and GENWORTH LIFE)	
INSURANCE COMPANY OF NEW YORK,)	
)	
Defendants.)	
)	

DECLARATION OF BRIAN D. PENNY IN SUPPORT OF (1) PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND (2) CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND SERVICE AWARDS TO THE NAMED PLAINTIFFS

I, Brian D. Penny, declare as follows:

1. I am a partner in the law firm of Goldman Scarlato & Penny, P.C., one of four firms the Court appointed Class Counsel in the above-captioned action (the “Action”).¹ I have been actively involved in the prosecution and resolution of this Action, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this matter and supervision of and communication with other lawyers and staff assigned to this matter.

¹ Capitalized terms not otherwise defined herein have the same meanings as that ascribed to them in the Joint Stipulation of Class Action Settlement and Release (“Stipulation”), as amended by the Amendment to Joint Stipulation of Class Action Settlement and Release. ECF Nos. 93-1 and 102-2 (collectively, the “Settlement”).

2. I submit this declaration in support of (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and (2) Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Service Awards to the Named Plaintiffs.

3. For the Court's convenience attached hereto are the following documents previously filed with the Court:

- Declaration of Rodney A. Max (ECF No. 93-2), **Exhibit A**;
- Joint Stipulation of Class Action Settlement and Release (ECF No 93-1), **Exhibit B**;
- Amendment to Joint Stipulation of Class Action Settlement and Release (ECF No. 102-2), **Exhibit C**.

I. THE SETTLEMENT

4. The relevant facts and allegations are set forth in Plaintiffs' concurrently filed (i) Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Final Approval Brief"), and (ii) Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Service Award to the Named Plaintiffs ("Fee Brief"), as well as in this Court's prior ruling on Defendants' motions to dismiss.

5. The case was hard fought by both sides as reflected by the numerous hearings and briefs on the docket, as well months of fast-paced discovery practice. While the Parties and their Counsel litigated the case with appropriate levels of respect and decorum, both sides vigorously asserted their positions. The litigation also faced considerable risks for the Plaintiffs, who nimbly navigated a legal landscape littered with prior cases against other long-term care insurers that had tried (unsuccessfully) to obtain some relief for policyholders in the face of considerable rate increases. This case represents one of (if not the only) case that obtained any relief.

6. Considering these obstacles, the Settlement obtained here is a testament to the skill and hard work of Class Counsel and the Named Plaintiffs. They succeeded in obtaining

comprehensive Disclosures regarding Genworth's current financial condition, its plans to request future rate increases, and its reliance on obtaining those increases to pay future claims.

7. The Settlement also affords Class members the opportunity, if they so choose, to select from various Special Election Options to restructure their policies in light of the additional Disclosures that Plaintiffs sought and achieved. Those Special Election Options provide electing Class members with considerable cash payments or enhanced paid-up benefits.

8. The cash damages payments to the Class will likely be substantial. There are more than 207,000 Class members and the financial relief available to those Class members is uncapped. In recent years, approximately 30% of Genworth's policyholders have elected some form of non-forfeiture or reduced benefit options to revise their coverage and premiums when given the opportunity following rate increases. Using a conservative estimate, if only half as many (15%) Class members elect the Special Election Options available under the Settlement, and assuming that Class members elect those Options in equal parts (*i.e.*, 3% chose each of the five Special Election Options), Plaintiffs project that this would result in aggregate cash damage payments approaching or in excess of \$100 million. This cash damages payment amount, of course, does not even include the substantial value to those Class members that elect the *double* Paid-Up Benefit available under that Special Election Option, or the value of obtaining the additional Disclosures. While this is of course just a projection, and Plaintiffs simply do not (and cannot) know what Special Election Option any Class member may or may not elect given the novelty of the Special Election Options, there is no question that the Settlement includes substantial relief, and each Class member gets to choose what relief they prefer.

9. For many Class members, this financial relief will approximate complete relief for the alleged lack of adequate disclosures in this case.

II. REACTION OF THE CLASS

10. The fairness and adequacy of the Settlement is further evidenced by the favorable reaction of the Class.

11. The Notice has been mailed to at least 207,195 Class Members. As of May 25, 2020, Class Counsel is aware of 84 policyholders that have opted-out of the Settlement and 15 objections to it. Three of those fifteen objections have since been withdrawn by the policyholders, which helps underscore their approval of the Settlement. Thus far, the response from the Class has been overwhelmingly positive. Class Counsel have spoken to more than 3,500 Class members, the vast majority of whom expressed their strong approval of the Settlement.

12. In addition to hundreds of Class members that have thanked Class Counsel over the phone, several Class members have written emails, notes, and letters thanking Class Counsel and the Plaintiffs for their work in this case. Class Members still have until June 13, 2020 to opt-out or object to the Settlement. Plaintiffs will update these numbers and address all objections to the Settlement in their reply brief to be filed on or before June 26, 2020.

III. CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES

13. Class Counsel respectfully request that the Court award fees of \$2,000,000.00 relating to the injunctive relief that is substantially in the form of the Disclosures (“Injunctive Relief Fee”); and an additional contingent payment of 15% of certain amounts related to Special Election Options selected by the Settlement Class, which shall be no less than \$10,000,000.00 and no greater than \$24,500,000.00 (“Contingent Fee”).

14. Class Counsel believes such a fee is reasonable and appropriate. Class Counsel further requests an award of \$65,567.06 in litigation expenses and charges in connection with the prosecution of this Action. The arguments and authorities supporting the requested fees and expenses are set forth in the Fee Brief.

15. The time and resources in the research, investigation, and prosecution of this Action are set forth in the Declarations of Brian D. Penny filed on behalf of Goldman Scarlato & Penny, P.C.; Stuart A. Davidson Filed on Behalf of Robbins Geller Rudman & Dowd LLP; Glen L. Abramson Filed on Behalf of Berger Montague P.C.; and Jonathan M. Petty Filed on Behalf of Phelan Petty LLC, submitted herewith. Included with these Declarations are schedules that summarize Class Counsels' lodestar, as well as expenses incurred by category.

16. As set forth in the Fee Brief, Class Counsel worked diligently to obtain an excellent result for the Class. The Named Plaintiffs also worked tirelessly on behalf of the Class, producing documents, responding to discovery, preparing and sitting for depositions, regularly communicating with counsel, and overseeing the litigation (including through the mediation process). *See* the Declarations of Jerome Skochin, Susan Skochin and Larry Huber in Support of Final Approval of Proposed Settlement and Request for Service Payment, submitted herewith. The recovery obtained for the Class is the direct result of the significant efforts of attorneys who possess substantial experience in the prosecution of complex consumer class actions and diligent and responsible class representatives.

17. On the other side, Defendants were represented by experienced lawyers from two of the largest and most well-known defense firms: Dentons and McGuire Woods. Genworth itself is a large corporation that was a well-financed and a formidable adversary. Class Counsel was fully aware that the case would be vigorously defended, and it was. The result was obtained, and the requested fee was earned, only through preparation, long hours, and hard work. The ability of Class Counsel to obtain a favorable settlement in the face of such opposition confirms the quality of their representation.

18. When Class Counsel undertook to represent the Plaintiffs and the Class, it was with the expectation that their attorneys and paraprofessionals would have to devote a significant

amount of time and effort to the prosecution, and Class Counsel would have to make a substantial commitment to this Action. The time spent by Class Counsel on this case was at the expense of the time that they could have devoted to other matters. Class Counsel undertook this case solely on a contingent fee basis, assuming a risk that the case would yield no recovery and leave Class Counsel uncompensated.

19. Unlike counsel for Defendants, who are generally paid an hourly rate and paid for their expenses on a regular basis, Class Counsel have not been compensated for any time or expenses since this case began. To date, Class Counsel have litigated the Action without any payment, during which time they:

- researched Genworth rate action filings with insurance commissioners in at least 20 states;
- surveyed and charted Choice 1 rate action approvals in all 50 states;
- reviewed the past ten years of Genworth's SEC filings, public statements, and financial statements filed with the Delaware Department of Insurance;
- reviewed all correspondence between Genworth and the Plaintiffs, including their policies and all rate action letters the Plaintiffs received;
- drafted detailed complaints incorporating this information;
- successfully opposed two motions to dismiss filed by Genworth;
- reviewed and analyzed over 205,000 pages of documents produced by Genworth in this litigation;
- deposed Genworth's Senior Project Leader for In-Force Management who was responsible for developing rate increase notification letters sent to the Settlement Class, as well as for providing support for the customer service team following state regulatory decisions on Genworth's rate increase requests;
- deposed Genworth's Vice President for LTC Insurance Product Management who was responsible for development of rate increase action plans, new LTC products, and helping to oversee the state regulatory approval process of LTC rate increase requests;
- deposed Genworth's expert, Ted Nickel, who was the past President of the National Association of Insurance Commissioners and the Wisconsin Commissioner of Insurance from 2011-2019;

- prepared for and defended the depositions of each Plaintiff;
- researched and drafted a motion for class certification;
- served Genworth with a set of interrogatories and over 200 requests for admission; and
- drafted mediation statements and other documents and conducted three in-person mediation sessions with Genworth and Rodney Max, and participated in several phone sessions mediated by Mr. Max.

20. Identifying and analyzing the most favorable evidence from a massive volume of documents that relate to highly technical insurance and actuarial matters is a time consuming and challenging process. Class Counsel applied its substantial experience and undertook considerable time and effort to select the best exhibits to use in mediations, with witnesses, and for eventual use at class certification and trial.

21. Class Counsel's experience and advocacy was required in presenting the strengths of this case at the pleading stage, during the hard-fought discovery in this Action, in preparing their brief on class certification, and during mediations in an effort to achieve the best possible settlement.

22. To that end, Class Counsel assembled a litigation team that included attorneys with significant trial and consumer class action experience that could detail how Plaintiffs would prove their claims before a jury.

23. As detailed in the Fee Brief, in light of the substantial recovery obtained, the complexity of the issues presented, the effort and skill exhibited by Class Counsel, the time expended by Class Counsel and its paraprofessionals, the fee awards in comparable class actions, the contingent nature of Class Counsel's representation, and the Plaintiffs' endorsement of the requested fee, Class Counsel believes the requested fee and litigation expense awards are reasonable and appropriate.

IV. CONCLUSION

24. As described above and in the Final Approval Brief and the Fee Brief, Class Counsel respectfully submits that the Settlement should be approved as fair and reasonable, and that the Court should award Class Counsels' requested fees and expenses and the service awards to the Named Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of May, 2020, at Conshohocken, Pennsylvania.

/s/ Brian D. Penny

BRIAN D. PENNY

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2020, I filed the foregoing pleading or paper through the Court's CM/ECF system, which sent a notice of electronic filing to all registered users.

/s/ Jonathan M. Petty

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