

EXHIBIT A

Exhibit 2

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

JEROME SKOCHIN, SUSAN SKOCHIN and)
LARRY HUBER, Individually and on Behalf)
of All Others Similarly Situated,)

Plaintiffs,)

vs.)

GENWORTH LIFE INSURANCE)
COMPANY,)

Defendant.)
_____)

Civil Action No. 3:19-cv-00049-REP

CLASS ACTION

DECLARATION OF RODNEY A. MAX

I, RODNEY A. MAX, declare pursuant to 28 U.S.C. §1746 as follows:

1. My name is Rodney A. Max. I am over the age of 18 and I am competent to give testimony. The statements contained herein are based upon my own personal knowledge and are true and correct.

2. I submit this Declaration in my capacity as the mediator in connection with the proposed settlement of this case. While the mediation process is confidential, the parties have authorized me to inform the Court of the procedural and substantive matters set forth herein in support of approval of the Settlement. My statements and those of the parties during the mediation process are subject to a confidentiality agreement and Federal Rule of Evidence 408, and there is no intention on either my part or the parties' part to waive the agreement or the protections of Rule 408. I make this Declaration based on personal knowledge and am competent to so testify.

II. BACKGROUND AND EXPERIENCE

3. I graduated in 1975 *cum laude* from the Cumberland School of Law. Upon graduation, I became licensed to practice law in the state of Alabama (1975) and the state of Florida (1976). I am currently a member of Upchurch, Watson, White & Max Mediation Group, Inc.

4. Since 1992, my practice has focused exclusively on alternative dispute resolution, with an emphasis on mediation.

5. I have national mediation experience and have mediated in 34 states and the District of Columbia. I have been selected to conduct mediations by leading plaintiffs' attorneys, defense counsel, and in-house counsel for national and international manufacturers, distributors, transporters, insurers, and service-provider companies and have been appointed by federal and state judges from coast to coast.

6. I have mediated cases involving alleged consumer fraud, wrongful death and personal injury, breach of contract, bad faith, securities (NASD), antitrust, patent and trademark,

Lanham Act, construction, property, environmental, fraud and suppression, banking, estate, and trusts, stockholder disputes, partnership disputes, and shareholder derivative claims. I have mediated numerous national and statewide class actions as well as numerous mass tort, contract and statutory warranty cases. I have convened parties for mediation before suits have been filed, as well as mediated cases on appeal.

7. Over the course of my career, I have conducted well over 5,000 mediations involving over 10,000 cases.

8. I am a Past-President of the American College of Civil Trial Mediators. Additionally, I am a member of the Alabama Center of Dispute Resolution, the Florida Academy of Professional Mediators, and the Dispute Resolution Section of the American Bar Association.

9. I have played a major role in establishing rules, standards, and ethics for mediators. I initiated the Mediation Process and Practice Program at Cumberland School of Law as an adjunct professor from 1997-2002. Additionally, I have lectured at CLE seminars for attorneys or those who have sought training on mediation at the following courses:

- American College of Attorney Mediators – Multi Party Mediation, The Business of Mediation;
- American Bar Association Dispute Resolution Section – Multi Party Mediation, Ethics of Mediation, The Business of Mediation;
- New Jersey Bar Association – The Practice of Mediation;
- Alabama Bar Association – Multi Party Mediation; Mediation Dissected;
- Florida Academy of Civil Trial Mediators – Opening Statements;
- University of Florida – Designing The Mediation; and
- The International Academy of Mediators – Ethics of Mediation.

10. I have also published a number of articles on alternative dispute resolution. The following abridged list is a sampling: *Mediation Comes of Age*, published in *The American Journal of Trial Advocacy*, Volume 23, Issue 3 (Spring 2000); *Multiparty Mediation*, published in *The American Journal of Trial Advocacy*, Volume 23, Issue 2 (Fall 1999); *Designing The Mediation*, presented at professional seminars; *The Ethical Civil Trial Mediator*, The Letter, The Spirit and The Practice, presented at professional seminars; and *Mediation: The Humanization of the Justice System*, presented at professional seminars.

III. FAMILIARITY WITH THE PRESENT LITIGATION

11. I was first contacted by the parties on August 1, 2019 regarding assisting with discussions concerning a potential resolution of this litigation and agreed to serve as mediator to facilitate such discussions. In my capacity as mediator, I consider myself to be a neutral, representing neither plaintiff nor defendant.

12. In preparing for this mediation, I asked that the parties provide me with a variety of information about the lawsuit. Additionally, I had pre-mediation discussions with all parties to learn more about the facts giving rise to the dispute, the procedural background of the lawsuit, and the positions of the parties. The purpose of these initial conferences was to organize the parties' efforts to fully resolve this matter.

13. Due to the pace of the litigation, as well as time constraints of the parties and myself, we held our first in-person mediation session on Saturday, September 28, 2019, at Dentons' offices in New York City. Prior to the first mediation session, Plaintiffs provided Genworth, and shared with me, their views on a possible framework for a proposed settlement of the case.

14. The parties engaged in additional in-person mediation sessions with me at Dentons' offices in New York City on Thursday, October 17, 2019, and Friday, October 18, 2019. The parties also held several days of additional telephone conferences and email communications directly and indirectly through me before, during, and after each of the in-person sessions.

15. Many of the issues presented by the parties were quite novel and unusual, particularly given the highly regulated-nature of long-term care insurance. The parties' sophistication, skill, dedication, and honest desire to try to reach an amicable resolution enabled them, with my assistance, to work through the difficult issues and, eventually, find common ground.

16. Notwithstanding the parties' desire to try to reach a resolution, it was apparent to me from the first mediation session on Saturday, September 28 that both sides possessed strong, non-frivolous arguments on the merits and the potential for class certification, and that neither side was assured of victory if the case was litigated to final judgment.

17. Because the parties discussed with me their legal and factual arguments in the context of a confidential mediation process pursuant to Rule 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of much hard work, and they were complex and highly adversarial. After reviewing written materials the parties submitted to me, and discussing the same with them separately prior to the first mediation session, I believed that the negotiations would be difficult and adversarial and that all involved would hold strong to their convictions that they had the better legal and substantive arguments, and that a resolution without further litigation or trial was by no means certain.

18. The Saturday, September 28, 2019 mediation session concluded with the parties having made substantial progress on a general framework for a negotiated resolution, but far apart in several respects. Due to the progress made, though, I encouraged the parties to schedule a second mediation session with me, which they agreed to for October 17, 2019.

19. Between September 28, 2019 and October 17, 2019, I was advised on several occasions that Genworth worked extremely hard, with in-house and outside legal counsel, businesspeople, actuaries, and key decision-makers to craft a detailed response to Plaintiffs' initial proposal, which Genworth presented to Plaintiff on October 17, 2019.

20. That day, the parties spent the entire day working extremely hard on their internal deliberations and face-to-face negotiations, which at times were quite difficult, but ultimately were unable to reach a complete resolution of all outstanding issues.

21. The following day, October 18, 2019, the parties came back to mediation and spent the better part of the day trying to negotiate a resolution of the case. Again, however, the parties were not successful in resolving all issues.

22. Over the course of the next several days, the parties corresponded by email and held telephone discussions to try to reach an agreement which were, at times, frustrating for the parties and their counsel. The live sessions involved discussions with all counsel and representatives of those parties who were present, extended sessions with each side, bilateral discussions with counsel, and *ex parte* discussions with the parties concerning their various positions. The discussions allowed the parties to express their respective views of the strengths and weaknesses of the respective positions in the case. I never witnessed or sensed any collusiveness between the parties. To the contrary, at each point during these negotiations, the settlement process was conducted at arm's-length and, while professionally conducted, was quite adversarial.

23. Eventually, on October 29, 2019, the parties executed a Memorandum of Understanding, setting forth the material terms of an agreement-in-principle to be incorporated into a formal Settlement Agreement for the Court's approval.

24. A review of my records shows that, in total, I personally spent in excess of 41 hours coordinating, preparing, pre-mediating and mediating the resolution of this case.

25. Based on my experience as a litigator and a mediator for over 27 years, I came away from the mediation process in this case with two thoughts. *First*, I firmly believe that this settlement represents a reasonable and fair outcome for the Class given the parties' strongly-held positions throughout negotiations. As such, I strongly support the approval of the settlement in all respects. *Second*, the advocacy on both sides of the case was outstanding. Plaintiffs' counsel, Brian Penny and Stuart Davidson, and Genworth's counsel, Reid Ashinoff, Drew Marrocco, Catharine Luo, and Gregg Karawan (General Counsel and Head of Global Litigation at Genworth), represented their clients with tremendous effort, creativity, and zeal. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients and the settlement is the direct result of all counsel's experience, reputation, and ability in complex class actions including the multifaceted field of insurance. To be sure, it was only upon reaching an agreement on the substantive terms of a settlement and Class member relief that further and reasonable consideration was given to a reasonable an appropriate amount of Plaintiffs' counsels' attorneys' fees, Plaintiffs' counsels out-of-pocket costs incurred in prosecuting this case, and the named Plaintiffs' incentive awards, all of which the parties understood were subject to Court approval.

26. Should the Court have any questions of me or require any additional information regarding the parties' negotiations of the proposed Settlement, I am happy to answer and provide the same (subject to the parties' approval of me providing any such information that would otherwise be protected under the settlement or mediation privilege) .

I declare under penalty of perjury under the laws of the United States that the foregoing facts are true and correct and that this declaration was executed this 19th day of November, 2019.



RODNEY A. MAX