

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

SHAWN V. MILLS, for himself
and all others similarly situated,

Plaintiffs,

v.

No. CV 2003-01471

ZURICH LIFE INSURANCE
COMPANY OF AMERICA,

Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES
TO AMENDED CLASS ACTION COMPLAINT**

Defendant Zurich Life Insurance Company of America (“Defendant”) answers Plaintiff’s (“Mills”) Amended Class Action Complaint as follows:

GENERAL ALLEGATIONS

1. Plaintiff Shawn V. Mills (“Mills”) is a resident of Bernalillo County, New Mexico and brings this case for himself and on behalf of all others similarly situated.

ANSWER: On information and belief, Defendant admits that Mills is a resident of Bernalillo County, New Mexico. Defendant admits that Mills brings this suit as a putative class action, but denies that this action is maintainable as a class action.

2. Defendant Zurich Life Insurance Company of America (“Zurich Life”) is an insurance company incorporated under the laws of Illinois.

ANSWER: Defendant admits the allegations of paragraph 2.

3. Zurich Life’s principal place of business is located in Long Grove, Illinois.

ANSWER: Defendant denies the allegations of paragraph 3. Answering further, Defendant states that its principal place of business is located in Elgin, Illinois.

4. Zurich Life is authorized to, and does, transact an insurance business in New Mexico and the remaining forty-nine (49) United States, the District of Columbia and Puerto Rico (collectively “the Covered Territories”).

ANSWER: Defendant denies the allegations of paragraph 4. Answering further, Defendant states that it is licensed to do business in the District of Columbia and in every state in the United States except New York.

5. On or about April 1, 2001, Zurich Life issued to Mills, its Life Insurance Policy No. ZL9542658 in the face amount of \$250,000.00 (“the Mills Policy”).

ANSWER: Defendant admits the allegations of paragraph 5.

6. A true and complete copy of the Mills Policy is attached hereto as Exhibit A and incorporated herein by reference.

ANSWER: Defendant admits that Exhibit A to the Amended Complaint is a true and complete copy of the Mills Policy.

7. The Mills Policy is of a type commonly referred to in the insurance industry as term insurance, having no cash value.

ANSWER: Defendant admits the allegations of paragraph 7.

8. The Mills Policy remains in effect.

ANSWER: Defendant admits the allegations of paragraph 8.

9. The Mills Policy’s General Section contains the following provision (the “Entire Contract Clause”):

CONTRACT

This policy, with any proper changes, is the entire contract between you and us. Only our President, vice-president, secretary, or assistant secretary can change, modify, or waive any provisions of this policy.

This policy includes: 1. the Policy Specifications, 2. the attached application, and 3. any supplemental applications, riders, amendments or endorsements made a part of this policy.

ANSWER: Defendant admits that the allegations of paragraph 9 are an accurate quotation from the Mills Policy. Defendant refers to the Mills Policy for a full and accurate account of its contents.

10. The Policy Specifications of the Mills Policy include a table titled: "Guaranteed Maximum Annual Premiums after the First Policy Year." That table includes a column titled: "Total Annual Premiums" for each policy year beginning with the second policy year and continuing with each policy year through the insured's age of 94. The dollar amount inserted in the "Total Annual Premium" column is the premium amount charged when the insured pays the premium for one (1) year in advance.

ANSWER: Defendant denies the allegations of the first sentence of paragraph 10. Answering further, Defendant admits that the Mills Policy contains, among other things, a "POLICY SPECIFICATIONS" section, and that this section includes a table titled "GUARANTEED MAXIMUM PREMIUMS AFTER THE FIRST POLICY YEAR." Defendant admits that this table includes a column titled "TOTAL ANNUAL PREMIUMS" for each policy year beginning with the second policy year and continuing with each policy year through the insured's age of 94. Defendant admits that the dollar amount inserted in the "TOTAL ANNUAL PREMIUMS" column is the premium amount charged when the insured pays the premium for one year in advance. Defendant denies that Mills accurately alleges the complete contents of the Mills Policy, and refers to the Mills Policy for a full and accurate account of its contents.

11. The Mills Policy contains a CHANGE OF PREMIUM SECTION which includes the following provision:

We can never raise premiums above the respective 'Guaranteed Maximum Premiums After First Policy Year.'

ANSWER: Defendant admits that the Mills Policy contains, among other things, a "CHANGE OF PREMIUM SECTION" which states, in part, "We can never raise premiums above the respective 'Guaranteed Maximum Premiums After First Policy Year.'" Defendant denies that Mills accurately alleges the complete contents of the Mills Policy, and refers to the Mills Policy for a full and accurate account of its contents.

12. Plaintiff Mills has been paying for the Mills Policy in monthly premiums and has been charged \$20.66 per month, which total \$247.92 on an annual basis.

ANSWER: Defendant admits that Mills tendered \$20.66 monthly for a portion of the time his policy has been in effect, and that the sum of 12 monthly payments of \$20.66 is \$247.92.

13. The annual premiums of \$247.92 being charged Plaintiff Mills for the Mills Policy exceed the Total Annual Premium of \$237.50 set forth in the "Guaranteed Maximum Premiums after First Policy Year" table of the Policy Specifications of the Mills Policy.

ANSWER: Defendant admits that Mills tendered \$20.66 monthly during certain policy periods, that the sum of 12 monthly payments of \$20.66 is \$247.92, and that \$247.92 is greater than \$237.50. Defendant denies that Mills was charged annual premiums of \$247.92. Defendant refers to the Mills Policy for a full and accurate account of its contents, and denies the remaining allegations of paragraph 13.

14. The dollar difference being charged Plaintiff Mills on an annual basis, in excess of that permitted under the Mills Policy, is \$10.42.

ANSWER: Defendant denies the allegations of paragraph 14.

15. The ratio of the monthly premiums being charged to Plaintiff Mills as compared

to the "Total Annual Premium" specified by the Mills Policy is .087 (herein "the modal factor"), which represents an additional annual cost, expressed as an annual percentage rate, of approximately 9.5% per annum.

ANSWER: Defendant admits that the modal factor it uses to determine the dollar amount of monthly premiums under the Mills Policy is .087. Defendant denies the remaining allegations of paragraph 15.

16. The modal factor used by Defendant to determine the dollar amount of quarterly premiums under the Mills Policy is .30, which represents an additional annual cost, expressed as an annual percentage rate, of approximately 54.8% per annum.

ANSWER: Defendant admits that the modal factor applicable to quarterly premiums under the Mills Policy is .30. Defendant denies that Mills paid his premiums on a quarterly basis, and denies the remaining allegations of paragraph 16.

17. The modal factor used by Defendant to determine the dollar amount of semi-annual premiums under the Mills Policy is .52, which represents an additional annual cost, expressed as an annual percentage rate, of approximately 16.67% per annum.

ANSWER: Defendant admits that the modal factor applicable to semi-annual premiums under the Mills Policy is .52. Defendant denies that Mills paid his premiums on a semi-annual basis, and denies the remaining allegations of paragraph 17.

18. The Mills Policy does not disclose the annual percentage rate associated with paying premiums monthly, quarterly, or semi-annually rather than yearly in advance.

ANSWER: Defendant denies that insurance premiums, including premiums paid pursuant to any premium payment option, are debts, and therefore denies that an annual percentage rate (as the term is used here by Mills) is "associated" with the payment of premiums.

19. The Mills Policy does not disclose the annual percentage rates applicable to the several available premium payment modes or options which Plaintiff Mills could have selected.

ANSWER: Defendant denies that insurance premiums, including premiums paid pursuant to any premium payment option, are debts, and therefore denies that an annual percentage rate (as the term is used here by Mills) is “associated” with the payment of premiums.

20. The Mills Policy includes a “Frequency” clause under its PREMIUM PAYMENT SECTION which gives the insured the valuable contract right and benefit of changing premium payment modes after the issuance of the Mills Policy.

ANSWER: Defendant admits that the Mills Policy contains a “Frequency” section and that this section states that policyholders may opt to pay premiums on monthly, quarterly, semi-annually, and annual bases. Defendant refers to the Mills Policy for a full and accurate account of its contents, and denies any remaining allegations of paragraph 20.

21. The annual percentage rate implicit in and associated with paying premiums in installments, rather than annually, is material information which a reasonable insured might initially consider in deciding how to pay for his or her insurance policy.

ANSWER: Defendant denies the allegations of paragraph 21.

22. The annual percentage rate implicit in and associated with paying premiums in installments, rather than annually, is material information which a reasonable insured might consider in deciding whether to change premium payment modes after issuance of the policy.

ANSWER: Defendant denies the allegations of paragraph 22.

23. Mills relied on Zurich Life’s material failure and omission to disclose the annual percentage rate implicit in the monthly premium payment he chose and the quarterly and semi-annual premium payments he could have chosen.

ANSWER: Defendant denies the allegations of paragraph 23.

24. Reliance should be presumed or inferred in favor of Mills, as well as other policyholders of Zurich Life who selected installment premium payments, based on Zurich Life's failure or omission to disclose material information, including the annual percentage rates implicit in and associated with such installment premium payments.

ANSWER: Defendant denies the allegations of paragraph 24.

25. During the six (6) year period immediately preceding the filing of this Complaint, Defendant has issued thousands of individual life insurance policies to individual insureds throughout the Covered Territories (collectively, the "Other Policies", which term includes the policy, insurance application, policy specification and endorsements, defined to be a part of such policies under the Entire Contract Provisions thereof).

ANSWER: With regard to the definition of the term "Covered Territories," Defendant incorporates by reference its answer to the allegations of paragraph 4 above. Defendant admits that it issued thousands of individual life insurance policies during the time period indicated in paragraph 25.

26. The Other Policies include an Entire Contract Clause which is identical, or substantially similar, to that set forth in the Mills Policy and which is described in Paragraph 9 above.

ANSWER: Defendant admits the allegations of paragraph 26.

27. The Policy Specifications of the Other Policies include a table titled "Guaranteed Maximum Premiums after First Policy Year", which includes a "Total Annual Premium" column reflecting the dollar amount of the premium payable annually or yearly in advance.

ANSWER: Defendant admits that its Other Policies contain a table as described in paragraph 27, but states further that not all of its more recent policy forms include such a table.

28. The Other Policies contain language identical or substantially similar to the following language in the Mills Policy:

We can never raise premiums above the respective
'Guaranteed Maximum Premiums After First Policy Year.'

ANSWER: Defendant admits that the Other Policies contain provisions concerning change of premiums, but denies the allegations of paragraph 28. Defendant refers to the specific policy forms for their precise language.

29. The Other Policies include a provision giving the insured a right or option to change premium payment modes after policy issuance.

ANSWER: Defendant admits the allegations of paragraph 29.

30. None of the Other Policies disclose the additional cost of paying premiums monthly, quarterly, or semi-annually, rather than annually in advance, in terms of an annual interest rate or annual percentage rate.

ANSWER: Defendant states that insurance premiums, including premiums paid pursuant to any premium payment option, are not debts, and that the term "annual percentage rate" as used by Mills is therefore not applicable to premium payments. Defendant admits that the Other Policies do not disclose premium payments in terms of an annual percentage rate.

31. None of the Other Policies, excepting only those issued by the Defendant in the State of Pennsylvania, state the modal factors associated with the calculation of monthly, quarterly, or semi-annual premium payment modes. Policies issued by Defendant for use in Pennsylvania do not explain or otherwise tell a policyholder what use to make of such modal factors.

ANSWER: Defendant admits the allegations of the first sentence of paragraph 31. Defendant denies that the second sentence of paragraph 31 accurately characterizes its Pennsylvania policies, and refers to said policies for full and accurate accounts of their contents.

32. Defendant drafted the Mills Policy and the Other Policies, which are then presented to its insureds as standardized and uniform printed contracts.

ANSWER: Defendant admits that it drafts and issues a number of different policy forms as approved by various state regulatory authorities. Only policy forms approved by state regulators are used. Each policy also includes the application of the insured as part of the policy. The approved policy form and application are delivered to the insured upon issuance. Defendant denies the remaining allegations of paragraph 32.

COUNT I
BREACH OF CONTRACT

33. Mills realleges and incorporates by reference Paragraphs 1 through 32, inclusive, of the General Allegations as part of this Count I.

ANSWER: Defendant reasserts its answers to paragraphs 1-32 as though set forth fully here.

34. Defendant Zurich Life had a contractual duty to Mills and its other policyholders not to charge them premiums in excess of the Total Annual Premiums shown in the Guaranteed Maximum Premium table of those policies.

ANSWER: Defendant denies that Mills accurately describes Defendant's contractual duties, refers to the Mills Policy for a full and accurate account of its contents, and denies the remaining allegations of paragraph 34 as applied to Mills, who paid a monthly premium, not an annual premium.

35. Defendant Zurich Life breached its contractual duty under the Mills Policy and

the Other Policies by charging those of its policyholders who have been paid premiums more frequently than annually, (including those who have paid premiums monthly, quarterly and semi-annually) more than the Total Annual Premium stated in the Guaranteed Maximum Premium table of those policies.

ANSWER: Defendant denies the allegations of paragraph 35.

36. In reliance on the policy, Mills and Zurich Life's other policyholders who have paid premiums in installments, have paid premiums in excess of what they were legally required to pay under the belief they were required to do so, such as to be entitled to restitution as to such excess.

ANSWER: Defendant denies the allegations of paragraph 36.

37. Mills and the other policyholders of Zurich Life who paid their premiums in installments, rather than annually, are entitled to restitution of the excess they paid over the Total Annual Premium by reason of their part performance.

ANSWER: Defendant denies the allegations of paragraph 37.

38. As a result of Defendant Zurich Life's breach of the policy, Mills and its other policyholders have been damaged in the sum equal to the additional amounts charged by said Defendant in excess of the Total Annual Premium amounts stated in the Guaranteed Maximum Premium tables of the policies.

ANSWER: Defendant denies the allegations of paragraph 38.

39. Mills and Defendant Zurich Life's other policyholders who have paid their premiums more frequently than annually (including those who have paid premiums monthly, quarterly and semi-annually) are entitled to recover prejudgment interest on the damages they have sustained due to Defendant's breach of contract.

ANSWER: Defendant denies the allegations of paragraph 39.

COUNT II
UNJUST ENRICHMENT

40. Mills realleges and incorporates by reference Paragraphs 1 through 39, inclusive, above as part of this Count II.

ANSWER: Defendant reasserts its answers to paragraphs 1-39 as though set forth fully here.

41. Defendant Zurich Life, by knowingly charging Mills, and its other policyholders who have paid premiums more frequently than annually, additional premiums without disclosure of material information, has wrongfully obtained a benefit in a manner such that allowing said Defendant to retain the benefit would be unjust.

ANSWER: Defendant denies the allegations of paragraph 41.

42. Mills relied on Zurich Life's material omission in failing to disclose the annual percentage rates implicit in and associated with the monthly premium payment he chose and the quarterly and semi-annual premiums he could have chosen.

ANSWER: Defendant denies the allegations of paragraph 42.

43. Reliance should be presumed or inferred in favor of Mills and Zurich Life's other policyholders who paid premiums in installments, rather than annually, based on Zurich Life's failure to disclose material information, including its failure to disclose the annual percentage rates implicit in and associated with such installment premium payments.

ANSWER: Defendant denies the allegations of paragraph 43.

44. Mills, and the other Zurich Life policyholders who paid premiums in installments, rather than annually, paid such premiums in excess of the Total Annual Premium specified by

the policy in the belief that they were required to in reliance on the policy, such as to be entitled to restitution of such excess amounts.

ANSWER: Defendant denies the allegations of paragraph 44.

45. Mills, and the other Zurich Life policy holders who paid their premiums in installments, rather than annually, are entitled to restitution of the amounts they paid in excess of the Total Annual Premiums specified in their policy due to their partial performance under the policy.

ANSWER: Defendant denies the allegations of paragraph 45.

46. In addition to restitution of premium payments in excess of the Total Annual Premiums specified by their policies, Mills and Zurich Life's other policyholders who have paid premiums in installments, rather than annually, are entitled to recover prejudgment interest on such excess payments.

ANSWER: Defendant denies the allegations of paragraph 46.

COUNT III
BREACH OF COMMON LAW
DUTY TO DISCLOSE MATERIAL FACTS

47. Mills realleges and incorporates by reference Paragraphs 1 through 32, inclusive, of the General Allegations as part of this Count III.

ANSWER: Defendant reasserts its answers to paragraphs 1-32 as though set forth fully here.

48. At all times material hereto, including prior to issuance of its policies and during its marketing of those policies, Defendant Zurich Life had a common law duty to disclose material facts to Mills and its other policyholders, including facts relating to the true cost of the insurance as affected by its frequency or mode of payment.

ANSWER: Defendant admits that it has certain contractual and common law duties, as defined by law, but denies that Mills has accurately stated those duties, and further states that it has fulfilled all such duties.

49. Defendant Zurich Life is, and at all material times was, a member of the Insurance Marketing Standards Association, (“IMSA”).

ANSWER: Defendant admits that it is currently a member of IMSA and has been a member of IMSA during certain periods, but states that it was not an IMSA member during all material times, and therefore otherwise denies the allegations of paragraph 49.

50. As a condition of its membership in IMSA, Defendant Zurich Life agreed to conduct itself, during its pre-contract sales and marketing activities, in accordance with IMSA’s “Principles and Codes of Ethical Market Conduct with Commentary” (the “IMSA Principles”).

ANSWER: Defendant admits that, during the periods during which it was an IMSA member, Defendant adhered to certain principles as set forth in the applicable IMSA materials. Defendant denies any remaining allegations of paragraph 50.

51. Among the IMSA Principles to which Defendant Zurich Life purports to ascribe is Code A under Principle 4 stating in pertinent part that: “All . . . sales or solicitation communications should be based upon the principles of fair dealing and good faith, and will have a sound basis in fact.”

ANSWER: Defendant admits that the allegations of paragraph 51 are a partial quotation from one section of the IMSA Principles. Defendant refers to the entire IMSA Principles for their context, and denies the remainder of paragraph 51.

52. Defendant Zurich Life, by reason of its voluntary assumption of the IMSA Principles, is estopped to deny its duty of fair dealing and good faith owed to Mills and its other policyholders prior to policy issuance and during its marketing and sales activities.

ANSWER: Defendant admits that it has certain contractual and common law duties, as defined by law, but denies that Mills has accurately stated those duties, and further states that it has fulfilled all duties to policyholders. Defendant denies the remainder of paragraph 52.

53. Defendant Zurich Life breached both its common law duty to disclose material facts, as well as its duty under the IMSA Principles, to Mills and its other policy holders who have paid premiums more frequently than annually (including those who paid premiums monthly, quarterly, and semi-annually) by its failure to state or disclose the annual percentage rate they have been required to pay as a result of their election to pay premiums other than annually.

ANSWER: Defendant denies the allegations of paragraph 53.

54. To the extent required for the claim stated under this Count III, reliance should be presumed or inferred from Zurich Life's failure to disclose material information, including the annual percentage rates implicit in and associated with installment premium payments.

ANSWER: Defendant denies the allegations of paragraph 54.

55. The excess payments made by Mills and Zurich Life's other policyholders who paid more frequently than annually, were paid in reliance on their policies in the belief that such excess payments were legally required by the policies.

ANSWER: Defendant denies the allegations of paragraph 55.

56. Part performance is an alternative to any reliance requirement with respect to the claim stated under this Count III. Mills and Zurich Life's other policyholders who paid more frequently than annually have rendered part performance under their policies.

ANSWER: Defendant denies the allegations of paragraph 56.

COUNT IV
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING

57. Mills realleges and incorporates by reference Paragraphs 1 through 32, inclusive, of the General Allegations as part of this Count IV.

ANSWER: Defendant reasserts its answers to paragraphs 1-32 as though set forth fully here.

58. At all times material hereto, Defendant had a duty to perform its obligations under the Mills Policy and its Other Policies with the utmost good faith and fair dealing. Such duty included the obligation not to engage in conduct which would injure the rights of Defendant's policyholders under such policies or which would interfere with their enjoyment of the contractual benefits afforded by such policies.

ANSWER: Defendant admits that it has certain contractual and common law duties, as defined by law, but denies that Mills has accurately stated those duties, and further states that it has fulfilled all such duties and has at all times acted fairly and in good faith.

59. The Mills Policy and the Other Policies issued by Defendant Zurich Life included a provision giving the insured an option to change premium payment modes after issuance and during the term of such policies. This contract right and benefit was valuable in that the insureds could save premium cost depending on the premium payment mode selected.

ANSWER: Defendant answers by stating that the Mills Policy and the Other Policies contain many written provisions, including provisions which relate to the ability of insureds to change premium payment modes. Certain policyholders change premium modes and others do not. Defendant denies the remaining allegations of paragraph 59.

60. Defendant Zurich Life breached its covenant of good faith and fair dealing owed to Mills and its other policyholders when it denied them the material information they needed to make an informed decision with respect to the exercise of their valuable contract right to select among the various premium payment modes available. Specifically, the material information withheld and concealed was the annual percentage rates implicit in and associated with each of the premium payment modes which could have been selected.

ANSWER: Defendant denies the allegations of paragraph 60.

61. To the extent required for the claim stated under this Count IV, reliance should be presumed or inferred from Zurich Life's failure to disclose material information, including the annual percentage rates implicit in and associated with installment premium payments.

ANSWER: Defendant denies the allegations of paragraph 61.

62. Any reliance requirement is satisfied by excess payments having been made in reliance on the policy and in the belief that such excess payment [sic] were legally required under the policy or, alternatively, by part performance of the policies.

ANSWER: Defendant denies the allegations of paragraph 62.

63. As a result of is [sic] aforesaid breach of its covenant of good faith and fair dealing, Defendant Zurich Life has realized an unlawful monetary gain in the sum of additional premiums collected in excess of what Mills and its other policyholders would have paid had they selected the annual premium, which was the least expensive premium payment mode. Mills and

the other policyholders are entitled to recover restitution for said excess premiums, together with prejudgment interest thereon.

ANSWER: Defendant denies the allegations of paragraph 63.

COUNT V
UNFAIR PRACTICE CLAIM

64. Mills realleges and incorporates by reference Paragraphs 1 through 22, inclusive, and 25 through 32, inclusive, of the General Allegations as part of this Count V.

ANSWER: Defendant reasserts its answers to paragraphs 1-22 and 25-32 as though set forth fully here.

65. Zurich Life knowingly failed to disclose to Mills, and its other policyholders who elected to pay their premiums monthly, quarterly and semi-annually, rather than annually, the annual percentage rate implicit in, and associated with, the modal premiums they paid, which withheld information was material and its nondisclosure has a tendency to deceive. Zurich Life's said failures to disclose annual percentage rates constitute unfair or deceptive trade practices in violation of the New Mexico Unfair Practices Act, NMSA 1978, §57-12-1 (1967) *et seq.* (herein "the New Mexico UPA").

ANSWER: Defendant denies the allegations of paragraph 65.

66. As a result of Zurich Life's violations of the New Mexico UPA, as described in Paragraph 64 above, Mills and Zurich Life's other policyholders who have paid premiums monthly, quarterly or semi-annually, are entitled to injunctive relief and restitutionary damages equal to the additional premiums collected by Zurich Life in excess of the annual premiums payable on such policies, together with prejudgment interest thereon, their costs and reasonable attorney fees.

ANSWER: Defendant denies the allegations of paragraph 66.

CLASS ALLEGATIONS

67. Defendant Zurich Life has, as with Plaintiff Mills, committed substantially the same breaches of contract, breaches of common law duties, breaches of its covenant of good faith and fair dealing and, has been unjustly enriched, with respect to its other policyholders who have paid their premiums more frequently than annually (including those who have paid their premiums monthly, quarterly and semi-annually) such that the claims asserted in Counts I through IV of this Complaint are properly maintainable as a nationwide class action pursuant to Rule 1-023 NMRA 2003, with respect to the following persons (herein “the Nationwide Class”):

All persons who reside in the fifty (50) United States, the District of Columbia and Puerto Rico (herein the Covered Territories”), who have owned individual life insurance policies issued by Defendant Zurich Life Insurance Company of America during the period January 1, 1985 through the date of class certification (herein “the Policies”); who have made premium payments on the Policies more frequently than annually (including those who have paid premiums on a monthly, quarterly or semi-annual basis); and whose policies were in force on or after March 1, 1997, excluding however, Defendant’s directors, officers, executives, agents, brokers, legal counsel and their dependants.

ANSWER: Defendant denies the allegations of paragraph 67 and further states that this action is not properly maintainable as a class action.

68. The unfair practices and consumer fraud statutes in the following states are materially comparable to New Mexico’s UPA: Arizona, California, Colorado, Connecticut, Illinois, Kentucky, Nebraska, North Carolina, Oklahoma, Pennsylvania, Tennessee, Washington and Wyoming (New Mexico and the foregoing 13 states being collectively hereinafter called “the Multi-State Area”).

ANSWER: Defendant denies the allegations of paragraph 68.

69. The statutory claims alleged in Count V above are properly maintainable on a multi-state subclass action under Rule 1-023 NMRA 1999 (the "Multi-State Class") with respect to the following persons:

All persons who reside in the Multi-State Area, who have owed individual life insurance policies issued by Defendant Zurich Life Insurance Company of America during the period January 1, 1985 through the date of class certification (herein "the Policies"); who have made premium payments on the Policies more frequently than annually (including those who have paid premiums on a monthly, quarterly or semi-annual basis); and whose policies were in force on or after March 1, 1997, excluding however, Defendant's directors, officers, executives, agents, brokers, legal counsel and their dependents.

ANSWER: Defendant denies the allegations of paragraph 69 and further states that this action is not properly maintainable as a class action.

70. There are many thousands of class members in both the Nationwide Class and the Multistate-State Class, such that their joinder is impracticable.

ANSWER: Defendant denies the allegations of paragraph 70 and further states that this action is not properly maintainable as a class action.

71. There are facts common to all members of the Nationwide Class and the Multi-State Class. These include, without limitation:

(A) Zurich Life has issued thousands of standardized individual term life insurance policies to class members which are identical or substantially identical to the Mills Policy;

(B) Zurich Life engages in the common practice of charging class members like Mills, who pay premiums more frequently than annually or

on a monthly, quarterly, or semi-annual basis, more than the Guaranteed Maximum Annual Premium as stated in their policies; and

(C) Zurich Life fails to disclose to class members the annual percentage rate implicit in and associated with the additional premiums they have been required to pay by paying premiums more frequently than annually or on a monthly, quarterly or semi-annual basis.

ANSWER: Defendant denies the allegations of paragraph 71 and further states that this action is not properly maintainable as a class action.

72. There are questions of law common to all members of the class. These include, without limitation:

(A) Whether Zurich Life has contractually breached its policies with class members?

(B) Whether Zurich Life's failure to state or disclose the annual percentage rate which class members have been required to pay constitutes a breach of its common law duty to disclose material facts?

(C) Whether Zurich Life's failure to state or disclose the annual percentage rate which class members have been required to pay constitutes a breach of the implied covenant of good faith and fair dealing?

(D) Whether Zurich Life has been unjustly enriched by its practices as described in this Complaint?

(E) Whether Zurich Life's failure to disclose the annual percentage rate members of the Multi-State Class have been required to pay constitutes a violation of the New Mexico UPA and the similar unfair

practices acts and consumer fraud statutes enacted in the Multi-State Area?

ANSWER: Defendant denies the allegations of paragraph 72 and further states that this action is not properly maintainable as a class action.

73. The claims of the representative Plaintiff Mills are typical of the claims of the class members whom he seeks to represent.

ANSWER: Defendant denies the allegations of paragraph 73 and further states that this action is not properly maintainable as a class action.

74. Mills will fairly and adequately protect the interests of the class which he seeks to represent. There is no conflict between the interests of Mills and of other class members, and he is cognizant of his duties and responsibilities to the entire Nationwide Class and Multi-State Class. Plaintiff's attorneys are qualified, experienced and able to conduct the proposed class action litigation.

ANSWER: Defendant denies the allegations of paragraph 74 and further states that this action is not properly maintainable as a class action.

75. This action should proceed as a class action under Rule 1-023 B (1) NMRA 2003, as to both the Nationwide Class with respect to Counts I through IV and as to the Multi-State Class under Count V, since the prosecution of separate actions by the individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for them and/or Zurich Life; or (B) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

ANSWER: Defendant denies the allegations of paragraph 75 and further states that this action is not properly maintainable as a class action.

76. This action should also proceed as a class action under Rule 1-023 B (2) NMRA 2003, as to both the Nationwide Class with respect to Counts I through IV and as to the Multi-State Class under Count V, because Zurich Life has acted or refused to act on grounds generally applicable to the class, thereby making appropriate declaratory relief with respect to the class as a whole.

ANSWER: Defendant denies the allegations of paragraph 76 and further states that this action is not properly maintainable as a class action.

77. This action should proceed as a class action under Rule 1-023 B (3) NMRA 2003, as to both the Nationwide Class with respect to Counts I through IV and as to the Multi-State Class under Count V, because the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Additionally:

(A) No class member has a substantial interest in individually controlling the prosecution of a separate action, but, if any such class member or members wish to do so, they may exclude themselves from this class upon the receipt of notice under Rule 1-023 C (2) NMRA 2003;

(B) Upon information and belief, there are no pending lawsuits of class members who may be similarly situated and which may potentially affect the matters raised in this action;

(C) It is desirable to concentrate the litigation of these claims in this forum. The determination of the claims of all class members in a single forum, and in a single proceeding, would be a fair and efficient means of resolving the issues raised in this litigation as between Zurich Life and its policyholders;

(D) The difficulties likely to encountered in the management of a class action in this litigation are reasonably manageable, especially when weighed against the virtual impossibility of affording adequate relief to the members of the class through numerous separate actions; and

(E) New Mexico law, which is not in material conflict with the law of other jurisdictions in the Covered Territory, may be constitutionally applied to resolve the claims of the Nationwide Class under Counts I-IV.

(F) New Mexico law, which is not in material conflict with the law of the other jurisdictions in the Multi-State Area, may be constitutionally applied to resolve the claims of the Multi-State Class under Count V.

ANSWER: Defendant denies the allegations of paragraph 77 and further states that this action is not properly maintainable as a class action.

GENERAL DENIAL

Except and unless expressly admitted to herein, Defendant denies all of the allegations in the Amended Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following defenses against Mills and members of the putative class, but denies that Defendant bears any burden of proof with respect to them:

1. This action is precluded by the primary jurisdiction doctrine.

2. The amended complaint is barred because Defendant's conduct was permitted by and was in compliance with New Mexico statutes and statutes of the other relevant jurisdictions, including but not limited to the provisions of the New Mexico Insurance Code and the insurance codes of the other relevant jurisdictions.

3. The amended complaint and each of its counts is barred by the applicable statute of limitations. The individual claims of some or all class members are barred by the applicable statute of limitations.

4. The amended complaint and each of its counts fails to state a claim upon which relief can be granted.

5. Defendant had no duty to calculate or disclose the information concerning premium payments in the form which Mills alleges the information should have been calculated and disclosed.

6. Some or all of the claims of Mills and of individual class members are barred by the voluntary payment doctrine.

7. Some or all of the claims of Mills and of individual class members are barred by the doctrine of laches.

8. Some or all of the claims of Mills and of individual class members are barred by the doctrine of ratification.

9. Some or all of the claims of Mills and of individual class members are barred by the doctrine of waiver.

10. Some or all of the claims of Mills and of individual class members are barred by the doctrine of estoppel.

11. Some or all of the claims are barred because of the failure to mitigate damages. Relatedly, some of the claims must be reduced as a result of offsets, which apply to all class members who received benefits but who would have had to incur costs in order to take advantage of lower annual premiums.

12. Some or all of the claims of Mills and of individual class members are barred because Mills and each class member shared Defendant's understanding of what their policies required.

13. The claims of Mills and some or all class members are barred or reduced by the doctrine of comparative fault.

14. The claims of Mills and some or all class members are barred by the doctrine of unclean hands.

15. Mills lacks standing to maintain some or all the claims asserted and/or some or all of the claims of Mills and of individual class members are moot.

16. Mills has failed to join indispensable parties, including: (a) the Public Regulatory Commission and the New Mexico Department of Insurance; and (b) the chief insurance regulators of other states, to the extent that Mills asks this Court to adjudicate the duties, rights, and liabilities of policyholders under the laws of other states.

17. Certification of any class in this action would violate certain due process provisions of the United States Constitution, the New Mexico Constitution, and the constitutions of the other relevant jurisdictions, which ensure that a defendant has the opportunity to present defenses to individual claims.

18. Any award of punitive or exemplary damages against Defendant would violate certain provisions of the United States Constitution, including but not limited to the Fifth and

Fourteenth Amendments, as well as similar and related provisions of the New Mexico Constitution and the constitutions of the other relevant jurisdictions.

19. Application of New Mexico law to the transactions of class members occurring wholly outside New Mexico would violate the due process, full faith and credit, and interstate commerce clauses of the United States Constitution.

20. The McCarran-Ferguson Act (15 U.S.C. § 1011 *et. seq.*) delegates regulatory power over insurance business practices to each state. As a result, New Mexico may not assume jurisdiction over any other state's insurance regulations or over any class members in states other than New Mexico.

21. The issues in this case have been exclusively reserved for the Legislative and Executive Branches of the jurisdictions in which Defendant does business under the separation of powers doctrine.

22. To the extent that Mills or any class members purport to assert a claim of deceptive trade practices against Defendant, that claim is groundless, and pursuant to NMSA 1978, § 57-12-10(C), Defendant is entitled to its attorneys' fees and costs.

23. This forum is an improper venue or *forum non conveniens* for the adjudication of the duties, rights, and liabilities of persons other than the individual named plaintiff.

Dated: April 18, 2005

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing document, Zurich Life's Answer and Affirmative Defenses to Amended Class Action Complaint, to be mailed via first class mail, postage prepaid, on this 18th day of April, 2005 to:

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Paul M. for David Conroy