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APR 24 2006

Quanita M. Duran
CLERK DISTRICT COURT

LORENZO D. RENTERIA

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

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

Plaintiff,

Case No. CV 2003-01471

v.

ZURICH LIFE INSURANCE COMPANY
OF AMERICA,

Defendant.

**ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT AND
APPROVING THE FORM AND MANNER OF NOTICE**

A. WHEREAS, this action (the "Action") was originally filed on February 28, 2003, seeking relief on behalf of certain owners of insurance policies sold by Zurich Life Insurance Company of America (now known as Chase Insurance Life Company) ["Zurich Life"] who have paid the premiums for such insurance on a semi-annual, quarterly, or monthly basis;

B. WHEREAS, this Court has jurisdiction over the parties and subject matter herein;

C. WHEREAS, the parties designated The Honorable Daniel Weinstein ("Mediator") to conduct a settlement mediation;

D. WHEREAS, the parties participated in an extended mediation with the Mediator during the period August to October, 2005 and, as a result of such mediation, the parties reached a settlement agreement in principal which they have now documented and are recommending to the Court for approval;

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E. WHEREAS, on April 11, 2006 the parties executed a Settlement Agreement, subject to this Court's approval, after extensive litigation and negotiations, including the mediation described herein;

F. WHEREAS, as a result of the foregoing settlement negotiations, the parties have filed in this Action, *inter alia*, their proposed Settlement Agreement with exhibits attached as follows:

Exhibit A, proposed Notice of Class Action and Proposed Settlement;

Exhibit B, proposed Order of Preliminary Approval;

Exhibit C, proposed Final Order; and

Exhibit D, Summary Notice of Class Action Settlement (for publication).

G. WHEREAS, the Court has carefully considered the settlement terms, including the Settlement Agreement and the exhibits thereto, the Supplemental Exhibit filed under seal setting forth certain of the terms under which Zurich Life may terminate the Settlement Agreement, all of the other pleadings, papers, and filings herein, and the presentation of counsel for both sides regarding the Settlement terms;

H. WHEREAS, the Court preliminarily determines that the settlement terms are fair, reasonable and adequate and in the best interests of the Settlement Class, considering possible benefits to the Class that could be achieved by further litigation, the expenses of further litigation, and the risk of achieving a less favorable outcome, and the Court has determined that it would be in the best interests of the parties and the ends of justice for this Court to conduct a final approval hearing regarding the proposed settlement; and

I. WHEREAS, good cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. The terms used herein shall have the same meaning as defined in the Settlement Agreement, which is incorporated herein by reference.

2. The Court preliminarily and provisionally finds, for settlement purposes only, that this Action should be certified as a Class Action and defines the Class ("Class" or "Class Members") as follows:

All persons (1) who reside in the United States (including the District of Columbia and Puerto Rico); and (2) who have owned individual life insurance policies that were issued by Zurich Life Insurance Company of America on or after January 1, 1961 and on or before August 31, 2005; and (3) who, at any time between March 1, 1997 and August 31, 2005, have made premium payments to Zurich Life on a monthly, quarterly, or semi-annual basis and who paid a Dollar Difference in connection with such premium payments.

3. The Court further provisionally finds that the Class is adequately represented by the named Plaintiff, Shawn V. Mills, and by attorneys McCary, Wilson & Pryor, Eaves & Mendenhall, P.A. (formerly known as Eaves, Bardacke, Baugh, Kierst & Larson, P.A.), Alan Konrad, Peifer, Hanson & Mullins, P.A. and Freedman, Boyd, Daniels, Hollander & Goldberg, P.A. (collectively "Class Counsel").

4. The Court hereby preliminarily approves the proposed settlement set forth in the Settlement Agreement as fair, reasonable, and adequate to the Class, free of collusion to the detriment of Class Members, and within the range of possible final judicial approval. The Court specifically finds that the proposed settlement resulted from extensive arms-length negotiations and is sufficient to warrant notice thereof to Class Members.

5. If this Court ultimately determines not to approve this proposed Settlement Agreement, or should any decision of this Court approving the proposed Settlement Agreement be reversed on appeal, then the provisional findings made in Paragraphs 2 and 3 above shall

become null and void and the issues to which those findings relate shall remain for decision by this Court as if the proposed Settlement Agreement had not been entered into.

6. Pending resolution of the settlement proceedings, the Court hereby asserts jurisdiction over the Class Members for purposes of effecting this settlement and releasing their claims.

7. Pending resolution of these settlement proceedings, no Class Member shall commence or prosecute, either directly or through another person or entity, any action or proceeding in any court or tribunal asserting any of the Class Claims (as defined in the Settlement Agreement) against the Released Zurich Life Parties.

8. The Settlement Agreement does not constitute an admission, concession, or indication by the Settling Parties of the validity of any claims or defenses in this Action; or of any wrongdoing, liability, or violation of law by Zurich Life.

9. The Court hereby approves the proposed form of Notice of Class Action and Proposed Settlement and Summary Notice of Class Action Settlement, substantially in the form submitted to the Court by the Settling Parties (said Notices being attached as Exhibits A and D to the Settlement Agreement).

10. The Settlement Agreement is conditioned upon: (a) the entry of a Final Order (regardless of any appeal thereof) by the First Judicial District Court in *Berry v. Federal Kemper Life Assurance Company*, No. D-0101-CV-2000-2602 approving the proposed Settlement Agreement in that case; and (b) satisfaction of the condition precedent set forth in Section 7.1A of the Settlement Agreement. When both said conditions are satisfied, the Settlement Administrator is hereby directed to mail, or cause to be mailed, by first class mail to each Class Member, the Notice of Class Action and Proposed Settlement in the form attached as Exhibit A

to Settlement Agreement (the "Class Notice"). Said Notice shall be mailed in accordance with the provisions and requirements of the Settlement Agreement no later than sixty (60) days prior to the Final Fairness Hearing, to each Class Member, at his or her last known address, as such address is determined from Zurich Life's current policyholder database, as updated pursuant to use of the National Change of Address Database. The Settlement Administrator shall not be required to mail an additional Class Notice or to re-mail any returned Class Notices unless such returned Class Notices include a forwarding address and/or the Settlement Administrator identifies a new address for Class Members whose Class Notices are returned without a forwarding address, using a Social Security Number Search (when the Social Security Number is available) or a Name and Last-Known Address search (when the Social Security Number is unavailable). The Court hereby approves the proposed form of Publication Notice (Exhibit D to the Settlement Agreement) and directs that the Publication Notice shall be published one time in the national edition of the USA Today newspaper no later than forty-five (45) days prior to the Final Fairness Hearing.

11. Unless Class Counsel and Zurich Life's Counsel shall mutually agree to a different settlement administrator and its projected costs and proposal, the Court approves and appoints Rust Consulting, Inc., 625 Marquette Avenue, Suite 880, Minneapolis, Minnesota 55402, as the Settlement Administrator to administer the settlement and perform all duties required by the Settlement Agreement.

12. Pursuant to Rule 1-023 NMRA, this Court hereby finds and concludes that the form and manner of giving notice by first-class mail as required by this Order is, under the circumstances, the best practicable notice to all Class Members and is reasonably calculated, under the circumstances, to apprise all Class Members of the pendency of the Action and their

right to participate in, object to or exclude themselves from the proposed Settlement. The Court further finds that such notice is due and sufficient notice of the Final Fairness Hearing, Settlement Agreement, application for fees and expenses, and other matters set forth therein, and that such notice fully satisfies the requirements of Rule 1-023(C)(2) and (3) and 1-023(E) NMRA, and the requirements of constitutional due process.

13. Prior to or at the Final Fairness Hearing, the Settlement Administrator shall provide an affidavit to the Court, with a copy to Zurich Life's Counsel and Class Counsel, attesting that the Publication Notice was published and the Class Notice was mailed to Class Members in accordance with this Order and the specific provisions of the Settlement Agreement.

14. Zurich Life shall, within twenty-one (21) days after entry of this Order, deposit the sum of \$7,145,007.25 into a Qualified Settlement Fund within the meaning of Sections 1.468B-1, *et seq.* of the Treasury Regulations, and, as defined in the Settlement Agreement. Subject to Court approval, Class Counsel is authorized to direct the investment of the Qualified Settlement Fund. If the Final Order approving the Settlement Agreement is not entered or does not become Final, as more particularly provided in the Settlement Agreement, all remaining funds in the Qualified Settlement Fund shall be remitted to Zurich Life, including interest or other income earned thereon, after deduction of Class Action Notice Costs and any fees then due the Settlement Administrator.

15. On September 7, 2006, at 9:00 a.m. at the Bernalillo County District Court, 400 Lomas, NW, Albuquerque, New Mexico 87103, a hearing shall be held by the Second Judicial District Court for the State of New Mexico (the "Final Fairness Hearing") to determine: (a) whether the Court should approve the fairness, reasonableness, and adequacy of the terms and conditions of the proposed settlement set forth in the Settlement Agreement and enter a Final

Order thereon; (b) the amount of attorneys' fees and reimbursement of litigation expenses to be awarded to Class Counsel in this action; (c) the reasonableness of a request for an award to the Class Representative of a Class Representative's Fee; and (d) such other matters as may reasonably come before the Court in connection with the proposed Settlement.

16. Any Class Member may enter an appearance through counsel of such member's own choosing and at such member's own expense. Any such Class Member who does not enter an appearance or appear on his or her own will be represented by Class Counsel.

17. Class Members may request exclusion from the Class no later than twenty (20) days prior to the Final Fairness Hearing, in the manner specified in the Class Notice. If a request for exclusion does not comply with the requirements of and include the information and documentation specified in the Class Notice and/or is not executed or timely submitted to an address established by the Settlement Administrator, it shall not be a valid request for exclusion. Any person who tenders an invalid request for exclusion shall be a Class Member. Persons who timely and validly request exclusion from the Class shall not participate in and shall not be bound by the Settlement Agreement. All Class Members who have not timely and properly submitted a written exclusion from the Class shall be enjoined from filing, commencing, prosecuting, intervening in, or participating in (as Class Members or otherwise), any lawsuit in any jurisdiction based on or relating to any Class Claims, and all such Class Members shall be enjoined from filing, commencing or prosecuting a lawsuit as a class action on behalf of Class Members who have not timely excluded themselves, based on or relating to any Class Claims. Furthermore, such Class Members who have not timely excluded themselves shall be bound by the Settlement Agreement if it is approved by the Court at the Final Fairness Hearing.

18. Any Class Member who wishes to object to the Settlement on any grounds must serve that objection by first-class mail on: (i) Class Counsel at Eaves & Mendenhall, P.A., Attention: Karen S. Mendenhall, Esq., P.O. Box 35670, Albuquerque, New Mexico 87176-5670; and (ii) Jenner & Block LLP, Attention: J. Kevin McCall, Esq. and Suzanne J. Prysak, Esq., at One IBM Plaza, Chicago, IL 60611, postmarked on or before twenty (20) days prior to the Final Fairness Hearing. In order to be considered by the District Court, any objection must be legible and must contain the following information: (i) the objector's name, address and daytime telephone number; (ii) the objector's Social Security number; (iii) the Subject Insurance Policy number; (iv) a statement that the objector did not opt out of the Class; (v) a detailed statement of grounds for the objection to the Settlement; (vi) a summary of any legal and/or factual support the objector intends the Court to consider; and (vii) a detailed description of any documents or other evidence the objector intends the Court to consider. If the objector intends the Court to consider the opinion or testimony of any witnesses, the objection shall include each such witness's name, address and telephone number and a summary of the witness's anticipated opinion or testimony. The objection must be signed personally by the objector. Any objection which is not timely mailed, or which fails to satisfy all the foregoing requirements, shall be forever barred. A Class Member, whether or not represented by separate legal counsel, who does not opt-out and who fails to timely mail an objection shall be bound by all terms of the Release and by all proceedings, orders and judgments by this Court in the Action. A Class Member may object either on his or her own or through any counsel retained at that Class Member's expense. Class Counsel and Zurich Life's Counsel shall submit all such objections to the Court five (5) days prior to the Final Fairness Hearing.

19. If a Class Member retains an attorney, the attorney must: (i) file a notice of appearance with the Clerk of the Court no later than twenty (20) days before the Final Fairness Hearing or as the Court may otherwise direct; and (ii) serve by first-class mail copies of same on Class Counsel and Zurich Life's Counsel as directed in the Class Notice, postmarked no later than twenty (20) days before the Final Fairness Hearing.

20. Settlement Class Members who are not represented by an attorney and who have properly and timely filed objections, and are not Opt-Out Claimants, may appear at the Final Fairness Hearing if they file with the Court a notice of intention to appear at the Final Fairness Hearing, serving by first-class mail Class Counsel and Zurich Life's Counsel at the addresses set forth in Paragraph 18, above, postmarked no later than twenty (20) days prior to the Final Fairness Hearing. Settlement Class Members who are represented by an attorney and who have properly and timely filed objections and are not Opt-Out Claimants, may appear at the Final Fairness Hearing if they file with the Court a notice of intention to appear at the Final Fairness Hearing and the attorney's entry of appearance, serving by first-class mail Class Counsel and Zurich Life's Counsel at the addresses set forth in Paragraph 18, above, postmarked no later than twenty (20) days prior to the Final Fairness Hearing. Any Settlement Class Member, either individually or through his or her attorney, who intends to enter an appearance and address the Court at the Final Fairness Hearing is required to comply with all applicable Court Rules.

21. The notice of intention to appear must attach a copy of the written objection required by Paragraph 18 above and must be timely filed and served as required by Paragraph 19 above. Any Class Member who does not timely file and deliver a proper written objection and file and serve a notice of intention to appear no later than twenty (20) days prior to the Final Fairness Hearing, and any witness not identified in the written objection, shall not be permitted

to object or appear at the Final Fairness Hearing and shall be deemed to have waived and forfeited any right to appear at the Final Fairness Hearing. Any Class Member who is represented by an attorney shall be deemed to have waived and forfeited any right to appear in person or through counsel at the Final Fairness Hearing, unless the Class Member and/or such attorney timely files and serves a proper written objection and the attorney timely files and serves a notice of intent to appear as required by Paragraph 19 and this Paragraph.

22. Class Counsel are authorized to act on behalf of Class Members in this Action with respect to all acts or consents required by, or which may be given pursuant to, the Settlement Agreement, or such other acts which are reasonably necessary to consummate the proposed Settlement.

23. Class Counsel and Zurich Life are authorized: (i) to establish the means necessary to administer the Settlement relief; and (ii) to retain a Settlement Administrator that the parties deem necessary to help administer the Settlement, including the notice provisions. Zurich Life's Counsel and Class Counsel shall promptly furnish each other with copies of any and all written objections or written requests for exclusion that might come into their possession.

24. Zurich Life, including its producers, agents, brokers, employees, attorneys or other representatives and any other retained personnel, may communicate with Class Members about the terms of the Settlement Agreement and engage in any other communications within the normal course of Defendant's business, but Zurich Life shall not encourage Class Members to opt-out of or object to the Settlement.

25. Ten (10) calendar days prior to the Final Fairness Hearing, Class Counsel shall file with this Court, and serve on Zurich Life's Counsel, copies of all submissions in support of the proposed Settlement Agreement, the Class Counsel's application for attorneys' fees and

reimbursement of litigation expenses and the Class Representative's application for a fee, unless such calendar day falls on a weekend or a court holiday in which case copies of all such submissions shall be served and filed on the next available court business day. Final determination of Class Counsel's fee and litigation expense application, and of the Class Representative's application for a fee, shall be made at the Final Fairness Hearing.

26. The Final Fairness Hearing and all dates provided for herein, may from time to time, and without further notice to the Class, be continued or adjourned by order of the Court. If any deadline set forth in this Order falls on a Saturday, Sunday or state or federal holiday, then such deadline shall be extended to the next business day.

27. In the event the proposed Settlement Agreement is not approved by the Court, or for any reason the parties fail to obtain a Final Order that becomes Final as described in the Settlement Agreement, then, in either of such events, the Settlement Agreement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto, who, in accordance with the provisions of Paragraph 8.1 of the Settlement Agreement, shall be restored to their respective positions existing immediately prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all related orders and papers had not been executed or otherwise agreed to. In such event, the parties shall cooperate in scheduling matters so that no party is prejudiced as a result of the need to recommence this litigation.

28. The Court reserves the right to approve the Settlement Agreement with such modifications as may be agreed to by the parties to the Settlement Agreement and without requiring further notice to the Class Members.

DATED this 24th day of April, 2006.

BY THE COURT:

LINDA M. VANZI

The Honorable Linda M. Vanzi, Judge
Second Judicial District Court, Bernalillo County,
Albuquerque, New Mexico

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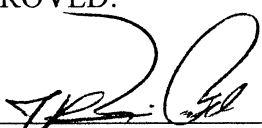
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