

ENDORSED  
FILED IN MY OFFICE THIS

SEP 19 2006

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

*Quanita M. Ruan*  
CLERK 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.

**FINAL ORDER, JUDGMENT OF DISMISSAL  
WITH PREJUDICE AND RELEASE**

Before the Court is the Joint Motion for Final Approval of the terms of the Settlement Agreement between Defendant Zurich Life Insurance Company of America (now known as Chase Insurance Life Company) ("Zurich Life") and Plaintiff, Shawn V. Mills ("Class Representative").

The Class Representative and Zurich Life (collectively the "Settling Parties") executed the Settlement Agreement on April 13, 2006. On April 24, 2006, this Court entered its Order of Preliminary Approval, scheduling a Final Fairness Hearing to determine whether the proposed settlement should be approved as fair, adequate, and reasonable.

The Order of Preliminary Approval directed the Settling Parties to give notice of the proposed Settlement and the Final Fairness Hearing to Class Members. An affidavit from the Settlement Administrator filed with the Court attesting to the publication and mailing of class notice to Class Members demonstrates that this Court's directions with respect to the notice of the Settlement have been met.

The Final Fairness Hearing was held before the Court on September 7, 2006 at which time all interested persons who had complied with the provisions of the Order of Preliminary Approval were given an opportunity to be heard.

The Court concludes that the Settlement Agreement is fair, adequate, and reasonable, and that it should be approved. It is, therefore,

**ORDERED** as follows:

1. The Court has jurisdiction over the subject matter of this suit and all parties to this suit. The Court approves the Settlement Agreement and all its terms and conditions, which are incorporated herein as part of this Order and the terms of which shall be controlling in the event of any inconsistency with the provisions of this Order;
2. The terms used herein shall have the same meaning as defined in the Settlement Agreement and are incorporated herein by reference;
3. The Court finds, for settlement purposes only, that this suit should be, and hereby is, certified as a Class Action and that the Class, in accordance with the Settlement Agreement, shall be defined as:

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.

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

5. In the event there is an appeal and the Final Order is reversed, then the findings made in Paragraphs 3 and 4 above shall be null and void and the issues to which such findings relate shall remain for decision as if the Settlement Agreement had not been entered into and as if this Final Order had not been entered.

6. The Class Notice provided pursuant to the Court's Order of Preliminary Approval: (i) constitutes the best practical notice and notice that is reasonably calculated, under the circumstances, to have apprised the Class Members of the pendency of the Action, the terms of the proposed Settlement, their right to object to or exclude themselves from the proposed Settlement and to appear at the Final Fairness Hearing; (ii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (iii) meets the requirements of due process of the United States Constitution and the New Mexico Constitution, the New Mexico Rules of Civil Procedure, including Rule 1-023 NMRA, and all other applicable rules of the Court.

7. The amount of oral and written discovery, confirmatory discovery and independent investigation by the attorneys and their experienced consultants, and/or experts in this matter to date, and the factual record compiled, suffices to have enabled the Settling Parties to make an informed decision as to the fairness and adequacy of the Proposed Settlement.

8. Those Class Members who have filed timely and valid requests for exclusion from the Settlement ("Opt-Out Claimants") are not bound by this Order. They shall not receive

any benefits under the Settlement Agreement. This Order shall not bar any Opt-Out Claimant from prosecuting any individual claims that he or she may have against Zurich Life in a separate lawsuit. The Settlement Administrator submitted a list of all Class Members who properly and timely requested exclusion from the Class (a copy of which is filed under seal).

9. Those Class Members who have not filed timely and valid requests for exclusion from the Settlement (“Settlement Class Members”) are bound by this Order and by the terms of the Settlement Agreement, regardless of the amount, if any, of payments they will receive pursuant to the Settlement Agreement.

10. The Settlement Agreement is fair, adequate, and reasonable. It is hereby finally approved in all respects, and the Settling Parties are hereby ordered to consummate and perform its terms.

11. The objections made to the Settlement are hereby overruled and found to have been without merit.

12. The approval of the Settlement Agreement and the entry of this Judgment fully releases and discharges the Class Claims (as defined in the Settlement Agreement) belonging to Settlement Class Members (“Class Claims”) against the Released Zurich Life Parties (as defined in the Settlement Agreement).

13. The Court has considered the application of Class Counsel for reasonable attorneys’ fees and reimbursement of litigation expenses. Class Counsel are awarded \$1,786,251.80, plus applicable New Mexico gross receipts taxes thereon in the amount of \$124,818.33, as reasonable attorneys’ fees for the services performed and to be performed by Class Counsel in connection with this Action. Class Counsel are awarded an additional amount of \$29,287.48 as reimbursement for litigation expenses incurred in this matter. The application

of the Class Representative for a fee is hereby granted. Shawn V. Mills is hereby awarded \$30,000.00 as a Class Representative Fee. The attorneys' fees, reimbursement of litigation expenses, and Class Representative's Fee shall be paid from the Qualified Settlement Fund, as set forth and described in the Settlement Agreement upon the Effective Date of the Settlement Agreement. Zurich Life shall not be liable for any taxes, including New Mexico's gross receipts tax, in connection with the awards of this Paragraph.

14. The Settlement Administrator shall not mail checks to the Class Members until such time as both Class Counsel and Counsel for Zurich Life certify in writing that the Effective Date, as defined in the Settlement Agreement, has occurred.

15. The Amended Class Action Complaint in this Action is dismissed on the merits and with prejudice as to all Class Members, their heirs, beneficiaries, executors, administrators, successors, and assigns and any persons or entities they represent, with each party to bear his, her or its own costs, except the Court reserves and retains jurisdiction to enforce all terms and provisions of the Settlement Agreement.

16. A. *Release.* As of the Effective Date, the Class Representative and each of the Settlement Class Members, together with and on behalf of each of their respective spouses, marital communities, beneficiaries, heirs, executors, administrators, predecessors, successors, representatives, assigns and all persons claiming by or through them, or any and all of them, for the exchange of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, shall release and forever discharge the Released Zurich Life Parties from: (i) any and all Class Claims however they may be expressed, which are known or unknown, which they have had, may have had, may have currently, or may have in the future against any of the Released Zurich Life Parties or any combination of them; (ii) any claims arising out of any and

all acts, failures to act, omissions, facts, matters, events, transactions, occurrences, or oral or written statements or representations made or allegedly made in connection with, or directly or indirectly relating to the Settlement Agreement, except that nothing in this release shall preclude any action to enforce the terms of the Settlement; and (iii) any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel, other counsel, or by Plaintiffs or the Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action or the administration of such Settlement;

B. *Effect of Release.* The Settlement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted against any Released Zurich Life Party with respect to any of the Class Claims. Any such proceeding brought in violation of this Release would cause irreparable injury to the party against whom it is brought and this Court or any court of competent jurisdiction may enter an injunction restraining prosecution thereof. The Settlement Agreement may be pleaded as necessary for the purpose of enforcing this Settlement Agreement in court;

C. *Unknown Class Claims Released.* **Notwithstanding any statute or provision of the common law which provides that a general release does not extend to claims which a releasor does not know or suspect to exist at the time of executing the release, the releases provided for in this section are of all Class Claims, known and unknown. The Settlement Class Members are deemed to knowingly and voluntarily waive, to the fullest extent permitted by law, the provisions, rights and benefits of any federal law or the law of any state or territory or common law in the United States that would in any way limit the application of the releases to known or suspected Class Claims. The Court finds that this waiver is an essential and material term of the Settlement Agreement, and**

that, without such waiver, the Settlement Agreement would not have been entered into. The Settlement Class Members through Class Counsel are deemed to acknowledge the existence and effect of Section 1542 of the California Civil Code, and similar provisions in other states, which provides as follows: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.** As to the Class Claims, the Settlement Class Members are deemed to, and Class Counsel on behalf of each Settlement Class Member, expressly waive any and all rights each may have under California Civil Code Section 1542, or any similar statute, regulation or common law principle in any other jurisdiction. In connection with such waiver and relinquishment, the Settlement Class Members and Class Counsel acknowledge that they are aware that they or their attorneys may hereafter discover Class Claims or facts related to Class Claims in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Settlement Agreement, but that it is their intention to hereby fully, finally, and forever settle and release all of the Class Claims, known or unknown, suspected or unsuspected which exist, hereafter may exist or might have existed (whether or not previously or currently asserted in the Action). In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different Class Claims or facts related to Class Claims;

D. If any Class Member brings any claim in any forum against any of the Released Zurich Life Parties that is in violation of the Release or the Covenant Not to Sue set

forth in the Settlement Agreement, and fails to dismiss that claim within fifteen (15) days of notice that such claim is in violation of this Settlement Agreement, then that Class Member will be responsible for all fees and costs incurred by any Released Zurich Life Party in connection with defending against that claim; and

E. The payment of legal fees and expenses to Class Counsel in the full amount awarded by the Court, together with the release by the Class Representative and Settlement Class Members of the Class Claims is effective to release all interests, if any, of Class Counsel, the Class Representative, and the Settlement Class Members against the Released Zurich Life Parties with respect to such claims. Class Counsel represents that no attorneys other than those identified in the Settlement Agreement represent the Class or have any claim for fees or expenses associated with this action. Class Counsel and the Class Representative agree not to file a motion for relief from the judgment under Rule 1-060(B) of the New Mexico Rules of Civil Procedure or otherwise make a collateral attack on the judgment.

17. The Court finds that the Settlement Agreement and any negotiations or proceedings in connection therewith and any orders of the Court relating to it do not constitute and shall not be construed as, or be deemed to be, evidence or an admission or concession on the part of Zurich Life of any liability or wrongdoing whatsoever; or on the part of the Plaintiff or the Class of any lack of merit in the Action. Neither the Settlement Agreement nor each of its provisions, any orders of the Court relating to the Settlement Agreement, nor any other related documents shall be offered or received in evidence in this Action or in any other action or proceeding or otherwise used as an admission or concession as to the merits of the Action, the merits of a class being certified other than for settlement purposes in this action, or the liability



of any nature on the part of Zurich Life, except to enforce the terms of the Settlement Agreement.

18. The Settlement Class Members, which term excludes the Opt-Out Claimants, are permanently enjoined from directly, representatively or in any other capacity, prosecuting, instituting or commencing any Class Claims. The Settlement Class Members are further enjoined from instituting or prosecuting any action in violation of the covenant not to sue as set forth in the Settlement Agreement.

19. Without affecting the finality of this Order, the Court reserves exclusive jurisdiction as to all matters related to administration of the Settlement and the Settlement Agreement.

20. When this Order becomes Final, this Action shall be dismissed in its Entirety, except for the Court's continuing jurisdiction to supervise implementation of, and enforce the Settlement Agreement and the Court's continuing jurisdiction over the Qualified Settlement Fund. Except as expressly granted by this Order and as set forth in the Settlement Agreement, it is adjudged that the Class Representative and all Settlement Class Members take nothing by reason of this suit against Zurich Life, and their claims are hereby dismissed with prejudice.

21. The Class Representative, Settlement Class Members, and Zurich Life are denied all relief not expressly granted by this Order, including the Settlement Agreement incorporated as a part hereof.

22. In the event of any conflict between the terms of the Settlement Agreement and the terms of this Order, the Settlement Agreement controls.

23. The Settling Parties, their agents, employees, and counsel, and the Settlement Administrator shall not be liable for anything done or omitted in connection with these proceedings, the entry of this Order, and/or the administration of any payments made to Class Members as provided in the Settlement Agreement, except for their own willful misconduct.

DATED this 14 day of Sept., 2006.

LINDA M. VANZI

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

SUBMITTED BY:

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