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10 Attorneys for the Insurance Commissioner of the
11 State of California in his capacity as Conservator,
12 Liquidator and Rehabilitator of Executive Life
13 Insurance Company

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 19 2006

John A. Clarke, Executive Officer/Clerk
By R. Arraiga, Deputy
R. Arraiga

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11
12 INSURANCE COMMISSIONER OF THE
13 STATE OF CALIFORNIA,

14 Applicant,

15 v.

16 EXECUTIVE LIFE INSURANCE
17 COMPANY, a California corporation, and
18 DOES 1 through 1000,

19 Respondents.
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No. BS 006912

DECLARATION OF RICHARD BAUM
IN SUPPORT OF MOTION OF
INSURANCE COMMISSIONER OF
THE STATE OF CALIFORNIA FOR AN
ORDER APPROVING INTERIM
DISTRIBUTION OF SPECIFIED ALTUS
LITIGATION PROCEEDS TO (1) NON-
OPT OUT CONTRACT HOLDERS AND
THEIR NON-PGA SUBROGEEES (IF
APPLICABLE) CALCULATED
PURSUANT TO ARTICLE 17 OF
ENHANCEMENT AGREEMENT, AND
(2) PGAS PURSUANT TO MAY 13,
2005 LETTER AGREEMENT

Date: March 3, 2006
Time: 8:30 a.m.
Dep't: 36

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 I, Richard Baum, declare as follows:

2 1. I am the Chief Deputy Insurance Commissioner of the California
3 Department of Insurance, a position I have held since July 2003 (and also previously held for
4 a period during the 1990s). I make this declaration in support of the Motion Of Insurance
5 Commissioner Of The State of California For An Order Approving Interim Distribution of
6 Specified Altus Litigation Proceeds To (1) Non-Opt Out Contract Holders And Their Non-
7 PGA Subrogees (If Applicable), Calculated Pursuant To Article 17 Of Enhancement
8 Agreement, And (2) PGAs Pursuant To May 13 Letter Agreement (the "Motion"). I know
9 the following of my own knowledge (except as to any matters stated on information and
10 belief, and as to such matters, I am informed and believe they are true), and could and would
11 testify competently thereto if called upon to do so. I have reviewed and am familiar with
12 the Motion, and except as otherwise expressly stated herein, capitalized words or terms used
13 in this declaration have the meanings ascribed to them in the Motion.

14 2. I was the representative of the Commissioner who was most directly
15 involved in the negotiation of the CDR Settlement with the CDR parties and NOLHGA
16 (acting as the representative of the PGAs).

17 3. The CDR Settlement was intensively negotiated and reached on the eve of
18 trial of the Altus Litigation, after years of hard-fought litigation between the Commissioner
19 and the CDR parties, among others.

20 4. In deciding to enter into the CDR Settlement, the Commissioner determined
21 that the CDR Settlement was a fair and significant settlement in the best interests of the
22 ELIC estate and the beneficiaries of the ELIC Rehabilitation Plan, and the District Court
23 with jurisdiction over the Altus Litigation approved the CDR Settlement as a good faith
24 settlement.

25 5. In the intensive settlement negotiations leading directly to the CDR
26 Settlement, the CDR parties made an immutable condition of settlement that the
27 Commissioner not only provide a release of the CDR parties on behalf of the ELIC estate,
28 but also that the Commissioner procure and deliver full and final releases of the CDR parties

1 by NOLHGA and the 43 PGAs represented by NOLHGA.

2 6. NOLHGA and the PGAs were under no obligation to provide any releases
3 of the CDR parties, and upon the Commissioner's request to provide such releases, were
4 reluctant to provide them (and not willing to provide them gratuitously) because NOLHGA
5 and the PGAs maintained that such releases would or could be prejudicial to various of their
6 rights and positions.

7 7. In order to avoid losing what the Commissioner perceived to be a very
8 favorable settlement to the ELIC estate with the CDR parties, and to avoid unnecessary and
9 costly litigation and complications, the Commissioner, pursuant to his statutory authority set
10 forth in Sections 1037 and 1057 of the California Insurance Code, reached an agreement
11 with NOLHGA (on behalf of itself and the 43 PGAs) reflected in the May 13 Letter
12 Agreement, a true and correct copy of which is attached hereto as Exhibit A.

13 8. Pursuant to the May 13 Letter Agreement, NOLHGA and the 43 PGAs in
14 fact signed and delivered full and final releases in favor of the CDR parties in a form
15 acceptable to both the Commissioner and the CDR parties and in a timely fashion, allowing
16 the CDR Settlement to be finalized and consummated. To the best of my knowledge,
17 information and belief, without the releases from NOLHGA and the PGAs, the CDR
18 Settlement — and the CDR parties' payment of \$516.5 million for the benefit of the ELIC
19 estate and \$8.5 million for the benefit of the California Attorney General as part of that
20 settlement — would not have occurred.

21 9. In connection with the May 13 Letter Agreement, NOLHGA and the PGAs
22 further strengthened the Commissioner's position by their agreeing to provide, at the
23 Commissioner's request at any time in the future, similar full and final releases in favor of
24 Artemis in connection with any potential future settlement negotiated by the Commissioner
25 with Artemis of the Commissioner's claims against Artemis in the Altus Litigation.

26 10. In exchange for these valuable undertakings by NOLHGA and the PGAs,
27 including most importantly their execution and delivery of full releases that made the
28 consummation of the CDR Settlement possible, the Commissioner by the May 13 Letter

1 Agreement agreed to a “floor” distribution to the PGAs from the CDR Settlement Amount
2 based on a formula applied to the CDR Settlement Amount after reduction for various
3 expenses. While this “floor” recovery in favor of the PGAs cannot under any circumstance
4 exceed \$50 million, the Commissioner estimates that the “floor” recovery distributable to the
5 PGAs pursuant to the formula in the May 13 Letter Agreement is approximately \$46 million.

6 11. Accordingly, as part of the Motion, the Commissioner seeks authority to
7 distribute approximately \$46 million to the PGAs as the “floor” distribution he committed to
8 make to the PGAs from the CDR Settlement Amount pursuant to the May 13 Letter
9 Agreement.

10 12. The effect of the requested “floor” distribution is straightforward. It
11 presently does not affect any amount that any other interested parties would otherwise
12 receive, inasmuch as the “floor” distribution will be made from the \$228 million reserved
13 portion of the Distributable CDR Settlement Amount described in Part II.B. of the Motion
14 (*i.e.*, from the portion that in any event would be reserved pending the outcome of the
15 Article 10/17 Dispute).

16 13. If NOLHGA prevails on the Article 10/17 Dispute, the “floor” distribution
17 will have had no practical meaning or affect, inasmuch as the PGAs would be entitled to
18 receive the entire \$228 million reserved portion of the Distributable CDR Settlement
19 Amount, and the approximately \$46 million “floor amount” paid therefrom would simply
20 have been an advance payment of a portion of what the PGAs were ultimately entitled to
21 receive. If, on the other hand, the Commissioner prevails on the Article 10/17 Dispute, then
22 the effect of the “floor” distribution to the PGAs will be to have reduced by approximately
23 \$46 million the \$228 million reserved portion of the Distributable CDR Settlement Amount,
24 leaving approximately \$182 million (rather than \$228 million) of the Distributable CDR
25 Settlement Amount, together with the full approximately \$51 million of the Artemis
26 Settlement Fund Distribution Reserve and the full approximately \$34.75 million of the
27 reserved Distributable Aurora Settlement Amount, to be distributed after a recalculation
28 under Article 10 of the Enhancement Agreement.

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May 13, 2005

VIA HAND DELIVERY

Richard D. Baum, Esq.
Chief Deputy Commissioner
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105

Re: Process for Resolution of Distribution Issues and
PGA Floor Recovery

Dear Mr. Baum:

The Commissioner in his capacity as conservator of the ELIC estate ("Conservator") and NOLHGA acknowledge that the quarterly in-person meeting of the guaranty associations, including the 43 Participating Guaranty Associations in the ELIC insolvency ("PGAs") is scheduled for next week, May 18, 2005, in Austin, Texas. In order to secure the participation of NOLHGA and the 43 PGAs in the settlement agreement and the related releases between the Commissioner, NOLHGA, the CDR Parties, Artemis and Aurora in the Garamendi vs. Altus Action, Civil Action No. 99-02829 AHM and related actions ("Garamendi Action"), as well as future settlements and recoveries related thereto, the Conservator and NOLHGA, subject to the authorization from the 43 PGAs, have agreed to the following provisions.

(1) Time-table and structure for the resolution process of the distribution issue.

In order to address the pending dispute between NOLHGA and the Conservator with respect to the distribution of recoveries in the Garamendi Action from the defendants, the Commissioner and NOLHGA agree that either party may trigger the dispute resolution process, whether that be appropriate in the Conservation Court or by arbitration pursuant to the Enhancement Agreement, by providing the other party 30 days written notice. Both parties will then cooperate to prepare and present their case to the Court or Arbitrator as appropriate in an expedited fashion. The parties currently estimate that each side will need approximately three days to present their case.

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(2) Floor distribution rights.

The Conservator and NOLHGA agree that a floor is established with respect to the PGA's recovery from the dispute resolution process set out above calculated as follows:

With respect to the proceeds from the CDR settlement of \$525 million, NOLHGA on behalf of the PGAs asserts entitlement to approximately 50% of the net recovery to the Conservator based on the Enhancement Agreement. The Conservator estimates such net recovery and distribution floor as follows:

Gross CDR Recovery:	\$600 million
(minus) Sierra Share:	(\$75 million)
(equals)	\$525 million
(minus) TRP and other legal fees and expenses allocable to CDR (approximately)	(\$32 million)
(equals)	\$493 million
50% (approximately)	\$246.5 million
PGA distribution Floor of 20%	\$49.3 million (approximately)

Actual numbers based on the governing documents will replace those numbers above which have been approximated. In no event will the 20% floor recovery by the PGAs from the CDR proceeds exceed \$50 million.

In the Court or Arbitration hearing, the PGAs will be entitled to pursue their claims for their asserted full pro rata distribution of all proceeds from recoveries by the Commissioner against any and all defendants in the Garamendi Action (including the \$110 million paid by Artemis through the United States), offset by the floor distribution paid to the PGAs pursuant to this letter agreement. Likewise, the Conservator reserves all rights to oppose NOLHGA's assertions with respect to the amount of NOLHGA's pro rata distribution rights.

The \$50 million floor will be paid by the Conservator to NOLHGA on behalf of the 43 PGAs contemporaneously with the first distribution of proceeds to the Non Opt Out claimants from any of the litigation recoveries in the Garamendi Action.

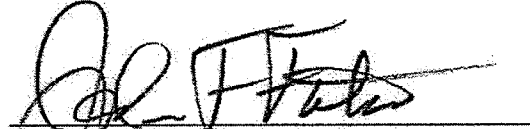
Any written notice contemplated by this letter agreement shall be submitted to the signatories hereof.

Mr. Richard Baum, Esq
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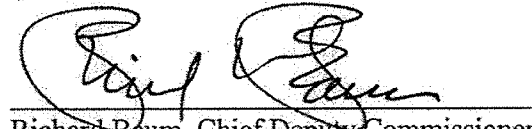
It is further understood that this letter is agreed to pursuant to settlement negotiations and therefore may not be used against either party in any proceeding other than one to enforce the terms herein.

Acknowledged and agreed to by:

SONNENSCHN NATH & ROSENTHAL, LLP



John F. Finston, on behalf of
National Organization of Life and Health
Insurance Guaranty Associations



Richard Baum, Chief Deputy Commissioner,
on behalf of the Insurance Commissioner of the State of
California in his capacity as Conservator, Liquidator and
Rehabilitator of the ELIC estate