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Los Angeles Superior Court

JAN 19 2006
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By R. Arraiga, Deputy
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Attorneys for Creditor
NATIONAL ORGANIZATION OF LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATIONS ("NOLHGA")

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Plaintiff,

vs.

EXECUTIVE LIFE INSURANCE
COMPANY, a California corporation, and
DOES 1 THROUGH 1,000,

Defendants.

No. BS 006912

DECLARATION OF JOHN F. FINSTON 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 SUBROGNEES (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
Judge: Gregory W. Alarcon

1 I, John F. Finston declare:

2 1. I make this declaration in support of the Motion Of Insurance Commissioner Of
3 The State of California For An Order Approving Interim Distribution of Specified Altus
4 Litigation Proceeds To (1) Non-Opt Out Contract Holders And Their Non-PGA Subrogees (If
5 Applicable), Calculated Pursuant To Article 17 Of Enhancement Agreement, And (2) PGAs
6 Pursuant To May 13 Letter Agreement (the "Motion"). The matters stated herein are true and
7 correct and are within my personal knowledge, and if called as a witness, I could and would
8 testify competently thereto.

9 2. I am a partner with the law firm of Sonnenschein Nath & Rosenthal LLP and have
10 been engaged by the National Organization of Life and Health Insurance Guaranty
11 Associations ("NOLHGA") to represent NOLHGA on behalf of the Participating Guaranty
12 Associations ("PGAs") in the captioned matter. The statements set forth in this Declaration
13 include an accurate description of discussions and negotiations between NOLHGA and the
14 Commissioner, do not include any privileged communications between the Declarant and
15 NOLHGA and are not intended to waive any communications protected by the attorney work-
16 product doctrine or other applicable privileges.

17 3. I attended and participated in discussions between representatives of the
18 Commissioner and representatives of NOLHGA during which CDR's demand for full and
19 final releases of the CDR parties by NOLHGA and the PGAs in connection with the settlement
20 negotiated by the Commissioner was discussed.

21 4. At the time of those discussions, the Commissioner had already informed
22 NOLHGA that he believed that the proceeds of the CDR settlement should be distributed
23 under Article 10 of the Enhancement Agreement, which would have deprived NOLHGA and
24 the PGAs of a significant portion of the benefit from the settlement with the CDR parties,
25 instead of under Article 17 of the Enhancement Agreement, as proposed by NOLHGA (the
26 "Article 10/17 Dispute").

27 5. NOLHGA informed the Commissioner's representatives that depending on how the
28 Article 10/17 Dispute was ultimately resolved, the value of the CDR Settlement to NOLHGA

1 and the PGAs could be significantly impacted and could affect their judgment about whether it
2 would be reasonable for NOLHGA and the PGAs to provide the requested releases in order to
3 facilitate finalizing and implementing the CDR Settlement.

4 6. NOLHGA advised the Commissioner that at the time of the settlement negotiations
5 between the Commissioner and CDR and the request for NOLHGA's and the PGAs' releases,
6 NOLHGA believed that it and the PGAs had valuable rights against the CDR parties based on
7 an agreement executed by one of CDR's predecessors in interest in 1993. NOLHGA further
8 informed the Commissioner's representatives that under the terms of that agreement, if the
9 CDR parties were to settle with the Commissioner or other parties concerning disputes
10 regarding various assets and bonds on terms more favorable than terms received by NOLHGA
11 and the PGAs, NOLHGA and the PGAs would have direct rights against the CDR parties.
12 With the Article 10/17 Dispute between the Commissioner and NOLHGA already extant and
13 unresolved, NOLHGA told the Commissioner's representatives that it believed that the
14 proposed CDR Settlement would qualify as a settlement that would trigger NOLHGA's and
15 the PGAs' rights against the CDR parties under that 1993 agreement.

16 7. Accordingly, in light of these potential claims against the CDR parties, NOLHGA
17 expressed concern about the prejudice to NOLHGA and the PGAs if they released all of their
18 rights and claims against the CDR parties. NOLHGA informed the Commissioner's
19 representatives that it was not willing to provide the requested releases gratuitously because
20 NOLHGA and the PGAs maintained that such releases would or could be prejudicial to
21 various of their rights and positions. NOLHGA also advised the Commissioner's
22 representatives that it was unlikely that the 43 affected PGAs would agree to provide such
23 releases unless they received a clear and unambiguous right to compensation in exchange for
24 the requested releases.

25 8. NOLHGA also informed the Commissioner that NOLHGA was not authorized to
26 bind the PGAs with respect to the individual releases requested by the CDR parties and that
27 NOLHGA only could make a recommendation to the PGAs. Accordingly, NOLHGA advised
28 the Commissioner that a meaningful settlement offer would have to be made to ensure that

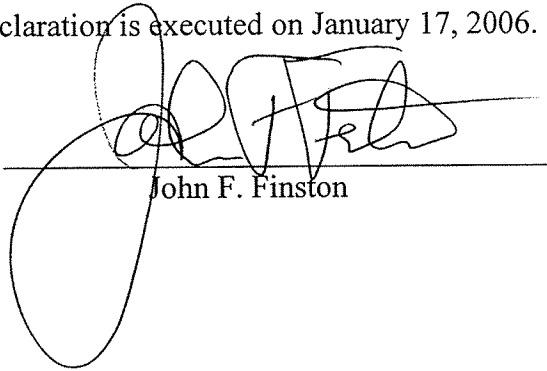
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each of the PGAs would agree to provide the requested releases.

9. Ultimately, the Commissioner and NOLHGA agreed to the compromise reflected in the May 13, 2005 letter executed by Mr. Baum and the Declarant (the "May 13 Letter Agreement"), which confirmed that the PGAs could receive a minimum "floor" distribution from the proceeds of the CDR Settlement based on the formula set forth in the May 13, 2005 Letter Agreement, not to exceed \$50 million, in exchange for providing the releases demanded by the CDR parties. The compromise reflected in the May 13 Letter Agreement was subsequently accepted by each of the PGAs and the requested releases were provided by NOLHGA and the PGAs to the Commissioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration is executed on January 17, 2006.



A handwritten signature in black ink, appearing to read "John F. Finston", is written over a horizontal line. The signature is stylized and somewhat cursive.

John F. Finston