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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21 JOHN GARAMENDI, as Insurance
Commissioner of the State of
22 California and as Conservator,
Rehabilitator and Liquidator of
23 Executive Life Insurance Company,

24 Plaintiff,

25 v.

26 ALTUS FINANCE S.A., et al.,

27 Defendants.
28

Case No. CV-99-02829 RGK (CWx)
consolidated for trial purposes with
Case No.: CV-01-01339 RGK (CWx)

**DECLARATION OF D. PAUL
REGAN IN SUPPORT OF
RESTITUTION AWARD**

Trial Date: October 17, 2012
Judge: Hon. R. Gary Klausner
Courtroom: 850

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1 I, D. Paul Regan, declare:

2 1. I am a Certified Public Accountant, licensed continuously by the State
3 of California since 1970, and a Certified Fraud Examiner. I have personal
4 knowledge of the matters set forth herein (except for those matters stated on
5 information and belief, which I believe to be true) and, if called as a witness, I
6 could and would testify truthfully and competently thereto under oath.

7 2. I was retained by the Commissioner to calculate the benefits received
8 by the defendants in the above-referenced action from their conspiracy to obtain the
9 assets of Executive Life Insurance Company (“ELIC”) by fraud. I testified as an
10 expert witness on behalf of the Commissioner at the 2005 trial of this case about the
11 economic benefits that Artemis received as the result of its transactions with Altus
12 and the MAAF Group relating to ELIC’s junk bonds and insurance business. I also
13 submitted declarations to Judge Matz regarding these benefits received by Artemis
14 for his consideration in determining the Commissioner’s equitable claim for
15 restitution in 2005. During the second trial of this case in 2012, I testified about the
16 net proceeds received by the conspirators from the junk bonds acquired from ELIC
17 but did not separately quantify the benefits received by Artemis alone.

18 **Qualifications**

19 3. I have been a Certified Public Accountant for over 40 years and am the
20 Chairman of Hemming Morse LLP, CPAs. We are an audit and forensic
21 accounting firm with around 100 employees. I have focused my work within
22 Hemming Morse’s litigation and forensic practice since 1975.

23 4. I am a member of the American Institute of Certified Public
24 Accountants (“AICPA”), which is a 480,000 member national organization. I
25 recently served a three-year term on AICPA’s nine-person standards setting
26 committee for CPAs performing forensic and valuation services. I am also a
27 member and former Chairman of the California Society of Certified Public
28 Accountants (“CSCPA”), which is a 40,000 member organization similar to the

1 AICPA for the State of California.

2 5. I frequently prepare and teach courses on the determination of
3 damages for the FBI, the AICPA and the CSCPA. For example, I wrote and taught
4 a course for the FBI National Training Center in Quantico, Virginia, about
5 determining the economic benefit obtained from stolen property.

6 6. I have been retained on many occasions as an expert by government
7 agencies responsible for investigating and prosecuting financial misconduct,
8 including but not limited to the Securities and Exchange Commission, the United
9 States Department of Justice, the Federal Deposit Insurance Corporation, state-level
10 Departments of Justice and county-level District Attorney's Offices.

11 7. Over the past 25 years, I have created a number of databases that
12 analyze the performance of bonds that are similar to the database that I created in
13 this case for the ELIC junk bonds. For example, I compiled a database for the SEC
14 analyzing approximately \$25 billion of trades made by Drexel Burnham Lambert
15 that involved some of the same junk bonds held by ELIC. I also created similar
16 databases and performed similar analyses for the State of California (analyzing \$60
17 billion in bonds mismanaged by Bank of America), the City of San Jose (analyzing
18 \$13 billion in rogue trades made by the City Treasurer), the State of Washington
19 (analyzing \$4 billion of WPPSS nuclear power bonds) and the State of Alaska
20 (analyzing \$15 billion of bonds administered by Security Pacific Mutual Bank).

21 8. In rendering my opinions in this matter I used the same principles and
22 methodology that I have consistently used over the past 40 years to determine the
23 economic benefits received by persons and entities as a result of their wrongdoing.

24 **Evidence Relied Upon**

25 9. In performing my calculations, I relied upon information from a
26 variety of sources that are typically and reasonably relied upon by Certified Public
27 Accountants and Certified Fraud Examiners. Those sources include (1) the
28 financial statements of Aurora National Life Assurance Company ("Aurora"), the

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1 new insurance company that re-insured ELIC’s policies, and New California Life
2 Holdings (“NCLH”), the holding company whose sole asset was all of the stock of
3 Aurora; and (2) the records maintained by Artemis’s junk bond manager that reflect
4 every transaction related to the ELIC junk bonds that Artemis acquired from Altus.
5 (Aurora and NCLH are collectively referred to herein as “NCLH/Aurora.”)

6 **Calculation of Artemis’s Profits Received from the Conspiracy**

7 10. Artemis received economic benefits from its transactions with its co-
8 conspirators (*i.e.*, Altus and the MAAF Group) from two sources: (1) the ELIC junk
9 bonds that Artemis acquired from Altus, and (2) NCLH/Aurora.

10 **Profits from Insurance Assets**

11 11. Artemis acquired a 67% interest in NCLH in 1994 and 1995, and it
12 received dividends from NCLH from 1995 through 1999 and proceeds from its sale
13 of this interest in NCLH to a third party in 2012.¹

14 12. I calculated the total dividends that Artemis received from NCLH by
15 reviewing Aurora’s and NCLH’s financial statements and Artemis’s interrogatory
16 responses in this case. Based on the numbers I submitted, Judge Matz concluded
17 that Artemis had received total dividends of \$227,727,280 from NCLH, not
18 including money received by Artemis pursuant to a “dividend swap” agreement
19 with MAAF. *See Garamendi v. Altus Fin. S.A.*, 2005 U.S. Dist. LEXIS 39273 at
20 *42-43 (C.D. Cal. Nov. 21, 2005).²

21 ¹ Artemis owned some of the assets at issue through subsidiaries such as
22 Artemis America or Aurora S.A. Consistent with generally accepted accounting
23 practices, where Artemis held an asset through a wholly-owned or near wholly-
owned subsidiary, I have treated these assets and proceeds from these assets as
owned by Artemis.

24 ² As Judge Matz found, Artemis also received approximately \$13 million as
25 the result of a “dividend swap” agreement with MAAF. *Id.* I am informed and
26 believe that Judge Matz concluded that that amount should not be included in
calculating the restitution award against Artemis because it was included in
27 calculating the restitution award against the MAAF Defendants. *Id.* at *49; *Dkt.*
No. 3966-2: Rulings on Commissioner’s Request for Order re Default Judgment
28 *Against MAAF Defendants, para. 3(b) and n. 1.* Accordingly, I have not included
this amount in the economic benefits received by Artemis that are set forth in this
Declaration.

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1 13. I am informed and believe that the sale of NCLH to a third party
2 closed on August 28, 2012, and Artemis's share of the sales proceeds was
3 \$367,209,520, as shown by a schedule that was attached to an Officer's Certificate
4 submitted to the California Department of Insurance by the purchaser of NCLH in
5 August 2012.³ After deducting the \$75,920,578 that Artemis paid to acquire its
6 interest in NCLH/Aurora, Artemis received net sales proceeds of \$291,288,942
7 from its ownership of NCLH/Aurora.

8 14. As a result of the foregoing dividends and net sales proceeds, Artemis
9 received total net profits of \$519,016,222 from its ownership of NCLH/Aurora.⁴

10 Profits from Junk Bonds

11 15. In December 1992, using a \$2 billion loan from Altus, Artemis
12 purchased certain junk bonds from Altus that Altus had acquired from ELIC.
13 Artemis bought some bonds directly and some bonds indirectly by acquiring
14 interests in partnerships that held and managed these junk bonds.

15 16. To calculate the performance of the ELIC junk bonds directly acquired
16 by Artemis, I created a database that tracked each of these bonds from the date it
17 was acquired by Artemis until it was sold. I then calculated the net proceeds
18 received by Artemis by adding the interest payments and sales proceeds received by
19 Artemis and deducting the purchase price paid by Artemis.

20 17. For the indirectly held bonds, I determined the income from the

21 _____
22 ³ I testified at the 2005 trial that there was a signed contract to sell NCLH to a
23 third party that had not yet closed at that time, that that contract provided for an
24 increase in the sales price over time until the closing date, and that I calculated that
25 Artemis would receive approximately \$151.8 million if the sale closed in August
26 2005. *See 7/13/05 Trial Transcript at 99-100 and 127-29.* I also testified that the
27 proceeds received by Artemis would be greater if the sale closed after August 2005.
Id. at 129-30. I am informed and believe that Judge Matz used my calculation of
the estimated sales proceeds to Artemis in determining his restitution award. *See*
Garamendi, 2005 U.S. Dist. LEXIS 39273 at *43 & 49. Now that the sale of
NCLH has closed, as described above, I have used the actual net realized value that
Artemis received in calculating the total economic benefits received by Artemis in
the text above.

28 ⁴ *See Para. 12*, \$227,727,280, plus *Para. 13*, \$291,288,942.

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1 partnership that held the bonds using the partnership tax returns that were filed
2 annually by those partnerships. I then identified the portion of that income that
3 resulted from the ELIC junk bonds and deducted the cost that Artemis had paid to
4 acquire that portion of its interests in the partnerships.

5 18. Including both the directly and indirectly held bonds, I determined that
6 Artemis received net profits of \$459,008,378 from the ELIC junk bonds that it
7 acquired from Altus. Judge Matz accepted my calculations and found that “Artemis
8 obtained at least \$459,008,378 in profit attributable to the bonds that it acquired
9 from Altus.” *See Garamendi*, 2005 U.S. Dist. LEXIS 39273 at *42.

10 *Time Value of Money*

11 19. The foregoing calculations show that Artemis received total economic
12 benefits of \$978,024,600⁵ from the ELIC junk bonds and NCLH/Aurora, but that
13 number does not account for the time value of money. Artemis received most of
14 these benefits many years ago, and some benefits were received as early as 1993.
15 To account for the time value of money, I added 7% simple interest to the various
16 economic benefits received by Artemis from the date that each such benefit was
17 received in order to determine the present value of Artemis’s profits. Attached
18 hereto as Exhibit 1 is a chart showing my calculation of interest. After deducting
19 the present value of the \$110 million payment made by Artemis in May 2004, again
20 using 7% simple interest, I calculated that the present value of the net profits that
21 Artemis received as a direct result of its participation in the conspiracy is
22 \$1,582,318,416 as of December 13, 2012. If judgment is entered after that date,
23 simple 7% interest on that amount of \$166,357 should be added for each day
24 thereafter until judgment is entered.

25 **Update of Prior Restitution Award**

26 20. I also have been asked to calculate the adjustments to the prior
27

28 ⁵ *See Para. 14*, \$519,016,222, plus *Para. 18*, \$459,008,378.

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1 restitution award that would be necessary to reflect two subsequent developments:
2 the passage of time since the date of that award and the actual net realized value of
3 Artemis's interest in Aurora (instead of the estimated net sales price as of 2005 that
4 I testified about at the first trial and that Judge Matz used in calculating the prior
5 restitution award).

6 21. In his Order dated February 13, 2006, Judge Matz awarded restitution
7 as follows. Using numbers that I had calculated and testified about, Judge Matz
8 ordered that Artemis pay restitution of half of the benefits that it had received as a
9 result of its ownership of NCLH/Aurora, plus prejudgment interest of 7% from the
10 dates that such benefits were received, for a total of \$241,092,020. *Garamendi*,
11 2005 U.S. Dist. LEXIS 39273 at *49-50; *Dkt. No. 3573: Judgment, para. 1*. This
12 amount was reduced by the \$110 million that the Commissioner had received from
13 Artemis pursuant to the latter's settlement with the United States Attorney, leaving
14 a "Net Artemis Judgment Obligation" of \$131,092,020. *Id., para 6*.

15 Updated Interest and Actual Aurora Sale Price

16 22. Judge Matz required Artemis to disgorge half of the net "Capital Value
17 of its Ownership Interest in NCLH," using the amount that I had testified that
18 "Artemis will be entitled to receive ... upon the closing of an agreement to sell
19 NCLH to REALIC, a subsidiary of Swiss Reinsurance." *See Garamendi, 2005*
20 *U.S. Dist. LEXIS 39273 at *43 and 49-50; 7/13/05 Trial Transcript at 99-100 and*
21 *127-29*. As described above, Artemis's sale of its interest in NCLH closed earlier
22 this year, and Artemis's share of the final sales price is \$367,209,520. (Under the
23 sales contract, the price to be received by Artemis increased with compound interest
24 from the date the contract was signed in 2001 to the date the sale closed in 2012.)

25 23. Consistent with Judge Matz's conclusion that Artemis should be
26 required to disgorge half of the "Capital Value of its Ownership Interest in NCLH,"
27 I have adjusted his prior restitution calculation to include half of the actual net
28 realized sales proceeds that Artemis received for that interest. Attached hereto as

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1 Exhibit 2 is a calculation showing how I substituted the actual net sales proceeds
2 for the estimated capital value. Doing so – and adding 7% simple interest to all net
3 proceeds received by Artemis and to the offset for the \$110 million previously paid
4 to the Commissioner by Artemis – would result in a total restitution award of
5 \$230,151,036 as of December 13, 2012, plus interest on that amount of \$28,653 for
6 each day thereafter until judgment is entered.

7 Updated Interest Only

8 24. I have also calculated interest solely on the “Net Artemis Judgment
9 Obligation” of \$131,092,020 from the date of the award (*i.e.*, February 13, 2006).
10 Using the simple 7% interest rate ordered by Judge Matz, the interest that has
11 accrued on the prior restitution award through December 13, 2012, is \$62,683,700.
12 Accordingly, if the prior “Net Artemis Judgment Obligation” awarded by Judge
13 Matz is updated solely to reflect subsequently accrued interest, the new final
14 restitution award would be \$193,775,720 as of December 13, 2012, plus interest on
15 that amount of \$25,124 for each day thereafter until judgment is entered.

16 I declare under penalty of perjury under the laws of the State of California
17 and the United States of America that the foregoing is true and correct. Executed in
18 San Francisco, California, on November 30, 2012.

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20 /s/D. Paul Regan
21 D. PAUL REGAN

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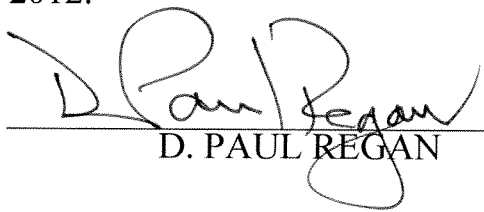
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9 Obligation” of \$131,092,020 from the date of the award (*i.e.*, February 13, 2006).
10 Using the simple 7% interest rate ordered by Judge Matz, the interest that has
11 accrued on the prior restitution award through December 13, 2012, is \$62,683,700.
12 Accordingly, if the prior “Net Artemis Judgment Obligation” awarded by Judge
13 Matz is updated solely to reflect subsequently accrued interest, the new final
14 restitution award would be \$193,775,720 as of December 13, 2012, plus interest on
15 that amount of \$25,124 for each day thereafter until judgment is entered.

16 I declare under penalty of perjury under the laws of the State of California
17 and the United States of America that the foregoing is true and correct. Executed in
18 San Francisco, California, on November 30, 2012.

19 
20 _____
21 D. PAUL REGAN

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Exhibit 1

Prejudgment Interest Calculation

Transaction Date	Net Proceeds Received By Artemis	Prejudgment Interest (1)	Total Restitution and Interest
1992	\$ (1,564,338)	\$ (2,186,172)	\$ (3,750,510)
1993	196,390,971	260,710,359	457,101,330
1994	38,398,118	48,285,896	86,684,014
1995	99,333,010 (2)	117,958,629	217,291,639
1996	101,064,539	112,920,932	213,985,472
1997	(23,675,489)	(24,795,697)	(48,471,186)
1998	113,191,584	110,623,841	223,815,425
1999	189,153,446	171,621,771	360,775,217
2000	(18,808,899)	(15,745,367)	(34,554,266)
2001	(6,064,447)	(4,652,178)	(10,716,625)
2002	(1,340,325)	(934,372)	(2,274,697)
2003	657,487	412,325	1,069,812
5/25/2004	(110,000,000) (3)	(65,903,562)	(175,903,562)
2005	-	-	-
2006	-	-	-
2007	-	-	-
2008	-	-	-
2009	-	-	-
2010	-	-	-
2011	-	-	-
8/28/2012	291,288,942	5,977,409	297,266,351
Subtotal			\$ 1,582,318,416

Daily Interest Rate = \$ 166,357

NOTES:

- (1) Calculated at 7% annually from the end of the year through December 13, 2012, unless specifically noted otherwise.
- (2) Excludes the MAAF dividend swap.
- (3) Amount paid to Commissioner by Artemis.

Exhibit 2

**ADJUSTED RESTITUTION AWARD
REFLECTING SUBSEQUENT DEVELOPMENTS**

PRIOR NET RESTITUTION AWARD (Judgment entered on February 13, 2006) ¹	
Dividends received by Artemis (excluding “dividend swap” with MAAF)	\$227,727,280
Net capital value of Artemis’s interest in NCLH	<u>151,885,297</u>
SUBTOTAL (Artemis’s net benefits from NCLH)	<u>\$379,612,577</u>
Half of Artemis’s net benefits from NCLH (above subtotal divided by 2)	\$189,806,288
Pre-judgment interest awarded by Court	51,285,732
Offset for money previously paid by Artemis (Artemis settlement with U.S. Attorney)	<u>(110,000,000)</u>
 TOTAL NET RESTITUTION AWARD	 <u>\$131,092,020</u>

ADJUSTED NET RESTITUTION AWARD (assuming judgment will be entered on December 13, 2012)

Prior Net Restitution Award	\$131,092,020
Subtract half of prior estimate of Artemis’s net interest in NCLH	<u>(75,942,648)</u>
SUBTOTAL	\$ 55,149,372
 Add half of net sales proceeds for Artemis’s interest in NCLH	 145,644,471
Prejudgment interest from 2/13/06 to 12/13/12 ²	<u>29,357,193</u>
 ADJUSTED NET RESTITUTION AWARD	 <u>\$230,151,036</u>

¹ Judge Matz’s calculations are set forth in *Garamendi v. Altus Fin. S.A.*, 2005 U.S. Dist. LEXIS 39273 at *49-50 (C.D. Cal. Nov. 21, 2005) and Dkt. No. 3573: 2/13/06 Judgment, paras. 1 and 6.

² This line item is the total of (1) seven percent simple interest on \$55,149,372 (*i.e.*, the prior net restitution award minus the prior estimate of Artemis’s interest in NCLH) from the date of the prior judgment (*i.e.*, February 13, 2006) to December 13, 2006; and (2) seven percent simple interest on \$145,644,471 (*i.e.*, the actual realized value of Artemis’s interest in NCLH) from the closing date of Artemis’s sale of that interest (*i.e.*, August 28, 2012) to December 13, 2006.