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Attorneys for the Insurance Commissioner Of The State Of California in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,

Applicant and Petitioner,

v.

EXECUTIVE LIFE INSURANCE COMPANY, a California corporation, NATIONAL ORGANIZATION OF LIFE AND HEALTH GUARANTY ASSOCIATIONS, and DOES 1 through 1000,

Respondents.

No. BS 006912

NOTICE OF HEARING ON PETITION AND PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] JUDGMENT

Date: June 29, 2007
Time: 8:30 a.m.
Dep't: 36

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

NOTICE OF HEARING ON PETITION TO CONFIRM FINAL ARBITRATION DECISION

PLEASE TAKE NOTICE that at 8:30 a.m. on June 29, 2007, in the Courtroom of the Honorable Gregory Alarcon, Department 36 of the Los Angeles Superior Court, at 111 Hill Street, Los Angeles, California 90012, or as soon thereafter as the matter may be heard, the Insurance Commissioner of the State of California, in his capacity as conservator, liquidator and rehabilitator (the "Commissioner") of Executive Life Insurance Company ("ELIC"), will and hereby does petition the Court (the "Petition"), pursuant to Section 1285 of the Code of Civil Procedure, for entry of an Order confirming the Final Decision in the arbitration between the Commissioner and Respondent National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") (the "Final Arbitration Decision"), which is attached as Exhibit A to the Petition filed concurrently herewith, and for entry of a Judgment in conformity therewith.

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

As described in more detail in the Petition and the accompanying Memorandum of Points and Authorities, on September 15, 2005, NOLHGA filed a Demand for Arbitration with the American Arbitration Association (the "Demand"). The Demand was filed under Section 18.21 of the Amended and Restated Enhancement Agreement (the "Enhancement Agreement") among NOLHGA, the Participating Guaranty Associations ("PGAs") and the Commissioner, and sought to determine the proper distribution of certain funds received by the Commissioner from the Altus Litigation (the "Altus Litigation Funds"). By Order filed October 12, 2005, this Court granted NOLHGA's motion to compel arbitration. By stipulation entered May 16, 2006, the parties stipulated to appoint the Hon. Charles A. Legge (Ret.) as the arbitrator in the matter, and that the arbitration hearing and any pre-arbitration hearings would be conducted at the JAMS Resolution Center in San Francisco, California. The arbitration hearing was held between October 24 and November 9, 2006.

The Arbitrator issued an Interim Decision, a First Amended Interim Decision, and the Final Arbitration Decision, which was served on the parties on April 26, 2007. In the Final Arbitration Decision, the Arbitrator ruled that (i) the Non-Opt Out Percentage of the $730.3

million in Altus Litigation proceeds at issue in the arbitration are not "Securities Proceeds" under Section 2.77A of the Enhancement; (ii) those proceeds are Assigned Assets under Section 2.10 of the Enhancement Agreement, and the PGAs' assignment of their subrogation rights under Article 10 cover and apply to those proceeds; and (iii) those proceeds shall be distributed in accordance with specified terms of the Enhancement Agreement, as set forth in the Final Arbitration Decision. In addition, the Final Arbitration Decision denied NOLHGA's alternative request for equitable relief, and awarded the Commissioner $4.5 million in attorneys' fees and costs as the prevailing party in the arbitration, pursuant to the prevailing party contractual provision in the Enhancement Agreement.

By the Petition, the Commissioner seeks confirmation of the Final Arbitration Decision and entry of judgment thereon. This Petition is made pursuant to the Conservation Order entered by this Court on April 11, 1991, the Order of Liquidation entered December 6, 1991, and the final orders entered in this case approving the ELIC Rehabilitation Plan.[1]

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

This Petition is based on the facts and legal argument set forth in this Notice of Hearing and Petition, the accompanying Memorandum of Points and Authorities, the Declaration of Ethan P. Schulman filed and served herewith, all other pleadings and papers on file in this matter, and such oral argument of counsel or evidence as may be presented at the hearing on the Petition.

[1]Any reference in this Notice to the "ELIC Rehabilitation Plan" or "Rehabilitation Plan" means, collectively, all documents comprising the rehabilitation plan approved by the above-captioned Court in this case, including, most importantly, the Amended and Restated Agreement of Purchase and Sale [etc.] dated August 7, 1991, as amended to date (separately referred to as the "Rehabilitation Agreement," where appropriate), and the Amended and Restated Enhancement Agreement dated as of December 5, 1991, as amended to date (separately referred to as the "Enhancement Agreement," where appropriate).

Any response to the Petition shall be served and filed within 10 days after service of the Petition, unless otherwise agreed by the parties or ordered by the Court.

DATED: May 31, 2007

Respectfully,

JEFFREY L. SCHAFFER
ETHAN P. SCHULMAN
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation

By: _____
JEFFREY L. SCHAFFER

Attorneys for Petitioner INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

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Attorneys for the Insurance Commissioner Of The State Of California in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,

Applicant and Petitioner,

v.

EXECUTIVE LIFE INSURANCE COMPANY, a California corporation, NATIONAL ORGANIZATION OF LIFE AND HEALTH GUARANTY ASSOCIATIONS, and DOES 1 through 1000,

Respondents.

No. BS 006912

PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION

Date: June 29, 2007
Time: 8:30 a.m.
Dep't: 36

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

PETITION TO CONFIRM FINAL ARBITRATION DECISION

Petitioner the Insurance Commissioner of the State of California, in his capacity as conservator, rehabilitator and liquidator (the "Commissioner" or "Petitioner") of Executive Life Insurance Company ("ELIC") respectfully states:

1. On September 15, 2005, Respondent National Organization of Life and Health Guaranty Associations ("NOLHGA") filed a Demand for Arbitration with the American Arbitration Association (the "Demand"). The Demand sought to determine the proper distribution of certain funds received by the Commissioner from the Altus Litigation (the "Altus Litigation Funds").

2. The Demand was filed pursuant to the Amended and Restated Enhancement Agreement (the "Enhancement Agreement") among NOLHGA, the Participating Guaranty Associations ("PGAs") and the Commissioner. Section 18.21 of the Enhancement Agreement states as follows:

> Except as otherwise specifically provided herein, Accounting Issues arising under this Agreement shall be resolved through the Accounting Procedure. All other issues shall be referred to a single arbitrator for determination. The arbitrator shall be appointed by, and the proceedings shall be conducted in accordance with the Commercial Rules of, the American Arbitration Association. The site of the arbitration shall be Los Angeles, California or such other location as the parties may agree. The award of the arbitrator shall be final, binding, and non-appealable, and judgment thereon may be entered in any court of competent jurisdiction. The fees and costs of the arbitrator shall be shared equally by those parties participating in the arbitration proceeding.

3. By Order filed October 12, 2005, this Court granted NOLHGA's motion to compel arbitration.

4. By stipulation entered May 16, 2006, the parties stipulated (i) to appoint the Hon. Charles A. Legge (Ret.) as the arbitrator in the matter, and (ii) that the arbitration hearing and any pre-arbitration hearings would be conducted at the JAMS Resolution Center in San Francisco, California.

5. Between October 24 and November 9, 2006, the Arbitrator conducted a hearing at the JAMS Resolution Center in San Francisco, California. Witnesses were called and evidence was presented by Petitioner and Respondent NOLHGA.

6. Thereafter, the Arbitrator issued an Interim Decision, a First Amended Interim Decision, and the Final Decision (the "Final Arbitration Decision"), a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

7. The Arbitrator's Final Arbitration Decision was made in accordance with the terms and provisions of the parties' written agreement and is in all respects proper.

8. The American Arbitration Association served a signed copy of the Final Arbitration Decision on Petitioner on April 26, 2007.

9. No application has been made to the Arbitrator for correction of the Final Arbitration Decision.

WHEREFORE, Petitioner prays for an order confirming the Arbitrator's Final Arbitration Decision, for entry of judgment in conformity therewith, and for such other relief as the Court may deem just and proper.

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

DATED: May 31, 2007

Respectfully,

JEFFREY L. SCHAFFER
ETHAN P. SCHULMAN
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation

By: _____
JEFFREY L. SCHAFFER

Attorneys for Petitioner INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company

VERIFICATION

I, Jeffrey L. Schaffer, declare:

I am one of the attorneys for Petitioner Insurance Commissioner of the State of California in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company. I have read the foregoing Petition to Confirm Final Arbitration Decision, and affirm that the facts stated therein are true.

Executed this 1st day of June, 2007, in San Francisco, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: _____
JEFFREY L. SCHAFFER

Attorneys for Petitioner INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

By this Petition, the Commissioner seeks to confirm the Final Decision dated April 23, 2007 (the "Final Arbitration Decision") issued by the arbitrator in the Court-ordered arbitration between the Commissioner and the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") and entry of judgment in conformity therewith. Under the California Arbitration Act, such confirmation and entry of judgment is mandatory unless there are grounds for correction or vacatur of the award, which do not apply here. The factual and procedural background to this Petition is set forth in more detail in the accompanying Motion For An Order Approving Distribution Of Specified Altus Litigation Proceeds Consistent With Final Arbitration Decision, which the Commissioner respectfully incorporates herein by reference.

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

ARGUMENT

THE COURT SHOULD CONFIRM THE FINAL ARBITRATION DECISION AND ENTER JUDGMENT IN CONFORMITY THEREWITH.

Under the California Arbitration Act, Code Civ. Proc. §§1280-1294.2 (the "Act"), confirmation of an arbitration award is mandatory unless a petition to correct or vacate the award is timely made:

> If a petition . . . under this chapter is duly served and filed, *the court shall confirm the award as made*, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding. (Code Civ. Proc. §1286 (emphasis added))

See also Weinberg v. Safeco Ins. Co., 114 Cal. App. 4th 1075, 1083-84 (2004) ("'A party who fails to timely file a petition to vacate under section [1286.2] may not thereafter attack that award by other means on grounds which would have supported an order to vacate'" (citation omitted)); *Valsan Partners Ltd. P'ship v. Calcor Space Facility*, 25 Cal. App. 4th 809, 818 (1994) ("The court may not correct an award unless, among others, a petition or response requesting that the award be corrected or vacated was filed" (citation omitted)).

The exclusive grounds for correcting or vacating an award are set forth in the Act. Code Civ. Proc. §§1286.2, 1286.6.

A party who wishes to request that the award be corrected or vacated generally must serve and file such a request within 100 days after the award was served on such party. *Id.* §1288.2. However, if, as here, a petition to confirm is filed within the 100-day period, any party seeking to vacate or correct the award must seek such relief within the period for responses generally (10 days after service of the petition). Code Civ. Proc. §1290.6; *DeMello v. Souza*, 36 Cal. App. 3d 79, 83 (1973) ("When the party petitions the court to confirm the award before the expiration of the 100-day period, respondent may seek vacation or correction of the award by way of response only if he serves and files his response within 10 days after the service of the petition"). These time limitations are jurisdictional. *Id.*

If the award is confirmed, "judgment shall be entered in conformity therewith." Code Civ. Proc. §1287.4. The judgment has the same force as any other civil judgment, and may be enforced accordingly. *Id.*; *see also Ajida Techs., Inc. v. Roos Instruments, Inc.*, 87 Cal. App. 4th 534, 549 (2001) ("a judgment confirming an arbitration award is enforceable in the same manner as any other judgment in a civil action").

Here, the Final Arbitration Decision was served on the parties on April 26, 2007, and the Commissioner has timely filed the accompanying Petition to confirm that award.[2] No petition to confirm or correct the Final Arbitration Decision has been filed, nor does the Commissioner believe that any of the enumerated statutory grounds for correcting or vacating the Final Arbitration Decision is or could be met. Accordingly, this Court should confirm the Final Arbitration Decision and enter judgment in conformity therewith, in the form submitted herewith.

[2]As required, the Petition was filed at least 10 days , and no later than 4 years, after service of the award on the petitioner. Code Civ. Proc. §§1288, 1288.4.

CONCLUSION

Based on the foregoing, the Commissioner respectfully requests that the Court grant his Petition to Confirm the Final Arbitration Decision and enter judgment in the form submitted herewith.

DATED: May 31, 2007

Respectfully,

JEFFREY L. SCHAFFER
ETHAN P. SCHULMAN
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation

By: _____
JEFFREY L. SCHAFFER

Attorneys for Petitioner INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA in his capacity as Conservator, Rehabilitator and Liquidator of Executive Life Insurance Company

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

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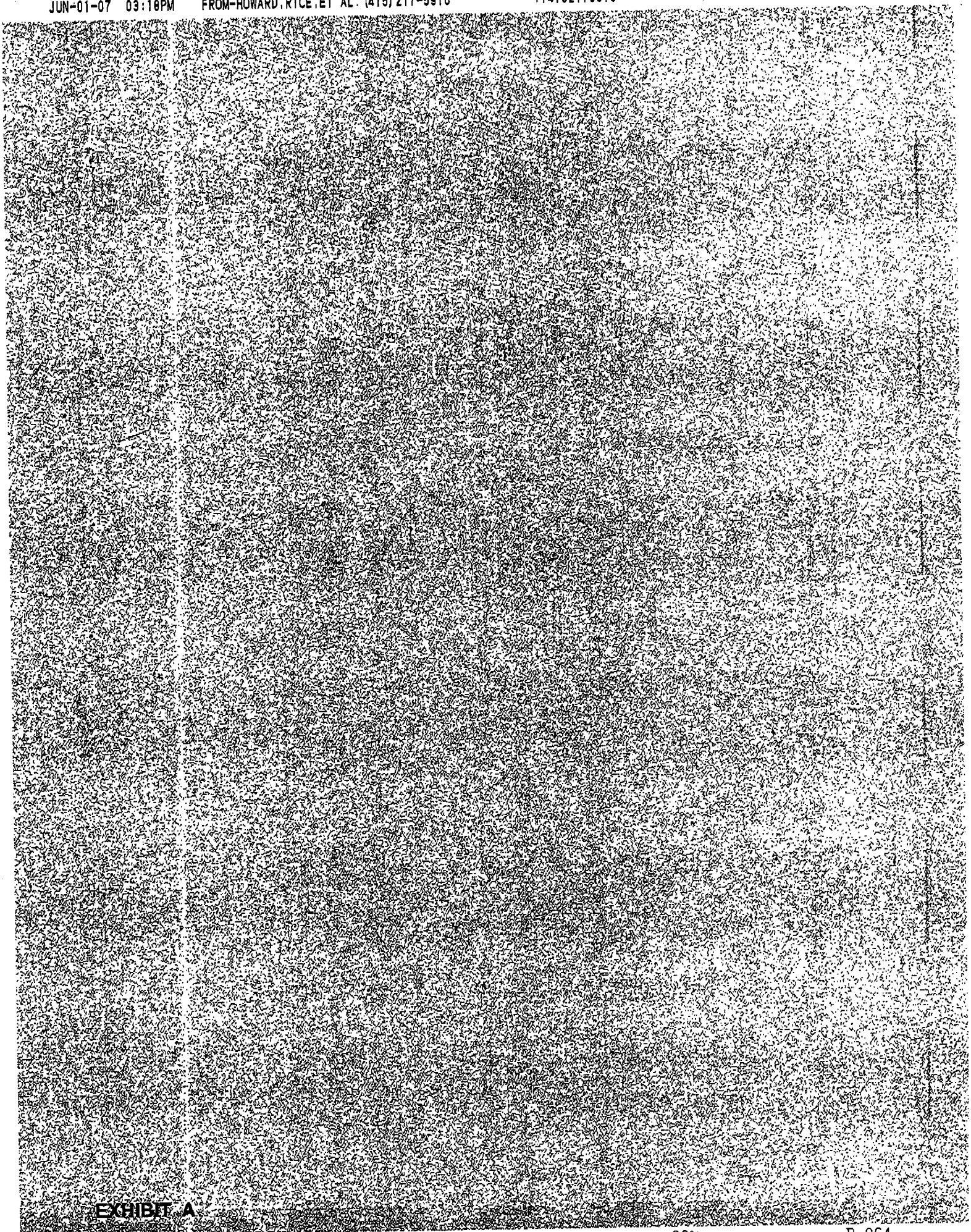

EXHIBIT A

BEFORE THE
AMERICAN ARBITRATION ASSOCIATION
No 72 195 Y 00937 05 MAVI

NATIONAL ORGANIZATION OF LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATIONS,

Petitioner,

and

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,

Respondent.

JAMS ARBITRATION NO. 1100046646

FINAL DECISION

JURISDICTION

The jurisdiction of this arbitration is provided in three documents: (1) Section 18.21 of the Enhancement Agreement, to which NOLHGA, the participating guaranty associations, and the Insurance Commissioner are parties; (2) the order of the Superior Court of the State of California, County of Los Angeles, In Re: Executive Life Litigation, dated October 12, 2005, signed by Hon. Gregory W. Alarcon; and (3) a stipulation signed by the parties on May 16, 2006, naming the undersigned as the arbitrator and providing that the arbitration and pre-arbitration hearings would be conducted at the JAMS Resolution Center in San Francisco, California.

The arbitrator finds and concludes that the issues discussed and resolved in this decision are within the jurisdiction of the arbitration.

SUMMARY OF THE ISSUE

Respondent Insurance Commissioner of California, in his capacity as the conservator, rehabilitator, and liquidator of the Executive Life Insurance Company ("ELIC") is holding the sum of $730,300,000 (plus earned interest and investment income), which funds were paid to the Commissioner as a result of settlements, judgments and fines from certain litigation. Those funds were received from:

CDR Defendants	$516,500,000
Aurora Defendants	$78,750,000
MAAF Defendants	$25,000,000
Mallart Defendants	$50,000
Artemis Defendants (Criminal Action)	$110,000,000
Total	$730,300,000

The litigation which produced those funds was initiated by the Commissioner and by the United States Attorney (and for convenience here is collectively called the "Altus-litigation," and the above-described $730,300,000 is collectively called the "Altus litigation funds"). It was against defendants who had obtained the assets, liabilities and business of ELIC by submitting a bid and being awarded those assets and liabilities by the Commissioner, with the approval of the Conservatorship Court. It was subsequently learned that certain of those defendants had connections with a foreign government, which rendered the transaction in violation of California laws prohibiting a foreign government from having a controlling interest in a California insurance company, and federal laws prohibiting a bank from having a material financial interest in an insurance company.

Some of the litigation is still pending against certain parties (now called the "Artemis litigation"), which could result in additional proceeds being paid to the Commissioner.

The issue is the distribution of a portion of the Altus litigation funds by the Commissioner; i.e., that portion of the Altus litigation funds that have not already been distributed to the Opt Out Trust or are not payable to the opt Out Trust pursuant to the provisions of the ELIC Rehabilitation Plan (such portion of the Altus Litigation funds that is at issue in this arbitration is hereinafter referred to as the "funds"). That is, under the relevant agreements between petitioner and the Commissioner, primarily the Enhancement Agreement (Tab 1 of the Enhancement binder), are the funds to be distributed primarily to the former policy and contract holders of ELIC (for simplicity called the "policy holders"), or also to the participating guaranty associations.

Petitioner NOLHGA is suing on behalf of the participating guaranty associations, which paid money into the estate of ELIC for the purpose of protecting the policy holders of ELIC, and

who thereby acquired subrogation rights against the estate of ELIC. It appears from the evidence presented, and the arbitrator so finds, that NOLHGA is the designated representative of the participating guaranty associations and is the proper party claimant in this proceeding. The individual guaranty associations need not separately appear in this proceeding, and the decisions made here as to NOLHGA are binding upon the individual participating associations. The Commissioner does not dispute that NOLHGA is the proper party.

NOLHGA contends that the funds at issue should be dispersed under "Article 17" of the Enhancement Agreement, which would give the guaranty associations a larger percentage; while the Commissioner contends that the funds should be distributed under "Article 10," giving more of the proceeds to the policy holders. Throughout the testimony, the parties have referred in a shorthand way to "Article 10" or "Article 17" distributions. But in fact that distinction between the Articles is not clear cut. That is, Article 17 also discusses how funds under Article 10 should be distributed. Nevertheless, the issue to be resolved requires a detailed focus on the Enhancement Agreement. That is, what are these funds under the language of that agreement, and with what result as to how they are to be distributed?

The pivotal question in resolving that issue is whether the funds are "Securities Proceeds" under Section 2.77A, resulting in the guaranty associations getting more; or are "Assigned Assets" and "Retained Assets," under Section 2.10 of the Enhancement Agreement and Section 5.4 of the Rehabilitation Agreement, resulting in the policy holders receiving more. Those provisions will be discussed below, and it is primarily on those sections that this arbitration properly focused.

NOLHGA also seeks a determination that if the issue is not resolved by those agreements, it is entitled to equitable relief.

PROCEDURE

The parties stipulated that the arbitration is governed by the law of the State of California.

After discovery, the parties each made several motions in limine, which were heard and ruled upon by the arbitrator. The arbitration hearing was held over a period of three weeks, during which the arbitrator heard the testimony of witnesses, read deposition testimony, observed testimony by video, and reviewed exhibits offered into evidence.

During the hearing, the arbitrator admitted parole evidence on the interpretation of the agreements. The parole evidence offered by each side was in support of interpretations to which

the agreements were, on their face, reasonably susceptible. In addition, the parole evidence was helpful in providing background facts in the aid of interpretation of the agreements.

Extensive documents were offered into evidence. And simultaneously with this decision, the arbitrator is returning copies of the parties' exhibit lists, with notations stating which documents have been admitted into evidence.

The parties also entered into an extensive joint statement of facts, and the parties have called to the arbitrator's attention the statements which they believe are significant.

Following the hearing, the parties presented final arguments, and the case was submitted for decision. The parties stipulated that this decision was timely if completed and filed by December 31, 2006.

The burden of proof is on petitioner, and the measure of that burden of proof is a preponderance of the evidence. The findings of fact and the statements of fact made in this decision are found to be facts by a preponderance of the evidence, with the burden of proof on petitioner.

Since this decision is made primarily for the benefit of petitioner and respondent, rather than third parties, and since these parties are thoroughly familiar with the evidence and the background facts, this decision will not recite all of the facts or all of the evidence and arguments. Rather, the decision will discuss the facts, evidence and interpretations which the arbitrator believes are important to reaching the decisions. The fact that certain evidence or arguments are not discussed in this decision is not an indication that they were not considered.

As will be apparent below, the arbitrator concludes that the decisions reached are compelled by the language of the agreements themselves, with the parole evidence being only tangentially relevant and material. The arbitrator has applied the contract interpretation principles of California law. See e.g. Civil Code Sections 1636, 1638, 1639 and 1641. The arbitrator has determined the mutual intent of the parties; Bank of West v. Superior Court, 2 Cal. 4th 1254 (1992); by an objective standard; Cedars-Sinai v. Shewy, 137 Cal. 4th 964 (2006). In essence, the arbitrator concludes that the agreements answer the issue.

LANGUAGE OF THE AGREEMENTS

The decision about the distribution of the proceeds must first of all be grounded in the language of the agreements between the parties, primarily the Enhancement Agreement and the

Rehabilitation Agreement. Those documents are where the parties defined how the funds received by ELIC's estate should be distributed. So the issue at hand must start with the contractual language.

A.

The analysis begins with Section 2.10 of the Enhancement Agreement. That section defines the term "Assigned Assets," referring to those assets which the associations assigned to the ELIC estate, even though they had obtained subrogation rights to those assets by virtue of their payments.

"Assigned Assets" under Section 2.10 means, first of all, those assets described as "Retained Assets" in Section 5.4 of the Rehabilitation Agreement. Section 5.4 defines "Retained Assets" ("ELIC shall retain...") as including: "(c) claims, suits, rights and choses in action, choate or inchoate, whether now asserted or not previously asserted, with respect to damages or injury to ELIC, its assets or [policy holders]..." And Section 5.4 contains a catchall in subsection (f) "all other assets of ELIC [excluding Transferred Assets and Transferred Bonds]."

For some reason, Section 5.4.1 appears to restate the proposition that Retained Assets consist of those described in Section 5.4, but do not include the Transferred Bonds or Transferred Assets.

Returning to Section 2.10 of the Enhancement Agreement, the term "Assigned Assets" also includes "all assets which are transferred by ELIC to the ELIC Trust, including, without limitation, all recoveries from claims, suits and litigation realized by the ELIC trust.

At this point in the analysis of the agreements, the assets assigned by the guaranty associations to the ELIC estate for the benefit of policy holders specifically include: (1) "claims, suits, rights and choses in action, choate or inchoate, whether now asserted or not previously asserted, with respect to damages or injury to ELIC, its assets or [policy holders];" (2) "all other assets of ELIC;" and (3) "all recoveries from claims, suits, and litigation realized by the ELIC Trust." Those definitions include the funds at issue in this arbitration.

However, in Section 2.10 the Assigned Assets expressly exclude "Securities Proceeds." The term "Securities Proceeds" is defined in Section 2.77A of the Enhancement Agreement. That section defines "Securities Proceeds as "any and all proceeds or other recoveries with respect to any assets of ELIC which are or were to have been Transferred Securities Assets or Transferred

Bonds...." If the funds are within that definition of "Securities Proceeds," they are removed from Section 2.10 as an asset assigned by the participating associations to the ELIC estate for the benefit of policy holders.

In interpreting these sections of the Enhancement Agreement, the arbitrator emphasizes that this arbitration is dealing with sections under which the participating associations expressly assigned some of their subrogation rights to the ELIC estate. It is clear by that assignment that the associations intended and agreed to waive and give up some of their subrogation rights. The language of exclusion in Section 2.77A is an exception to the intended assignment for the benefit of ELIC policy holders. As such, it should be more closely examined than the grants of rights to the ELIC estate.

The arbitrator first notes that the exclusion clause (the definition of Securities Proceeds in Section 2.77A) does not expressly refer to claims, or to lawsuits, or to litigation. But the inclusion clauses (Sections 2.10 and 5.4) do expressly include litigation recoveries. So the inclusion of litigation for the benefit of policy holders is expressly stated in Section 5.4 of the Rehabilitation Agreement and Section 2.10 of the Enhancement Agreement. But the exclusion which NOLHGA seeks, the Securities Proceeds Section 2.77A, does not expressly say litigation. That was true in the original version in 1991 and after the amendments in 1993. One must therefore conclude that with the language clearly including litigation in the Assigned Assets and Retained Assets sections, it is unlikely that the Securities Proceeds section, which makes no express reference to litigation, was meant to exclude litigation from the Assigned Assets and Retained Assets. Petitioner must therefore argue that the clause "any and all proceeds or other recoveries with respect to any assets of ELIC" in the 1993 amendment to Section 2.77A includes litigation, even though it does not expressly say so.

Before returning to the language itself, NOLHGA's contention has a temporal problem. The language in the two agreements which we are discussing was written in 1993. The existence of the facts giving rise to the litigation that produced these funds did not come to light until approximately 1998, and the suits were not filed until February 1999. So this litigation was not even contemplated when the latest versions of the Enhancement Agreement and the Rehabilitation Agreement were amended in 1993. An agreement can of course contain provisions for future

unknowns. But such a provision is not strong evidence of the intended exclusion of specific litigation.

B.

So how can the proceeds of this litigation be interpreted to be "Securities Proceeds" as defined by Section 2.77A, and hence removed from Assigned Assets or Retained Assets? Petitioner contends that the funds are Securities Proceeds because they resulted from litigation with respect to the securities transferred to Altus. The Commissioner counters that the funds were not the result of the transferred securities, but were the result of separate litigation alleging fraud in the inception of the entire transaction by entities controlled by a foreign government, and therefore the funds are not Securities Proceeds and are not excluded from Assigned Assets and Retained Assets.

Petitioner's argument relating these funds to Transferred Assets is focused, virtually exclusively, on the damages theories which were advanced in the litigation against the foreign entities. NOLHGA focuses on the fact that the securities which were transferred to Altus were a potential measure of the damages that the Commissioner was seeking. But if the transaction had been rescinded (which it was not), and if the securities assets had been returned (which they were not), NOLHGA would have a closer argument that the results were "proceeds or other recoveries" with respect to the transferred assets. And there is no doubt that under any damages theory, the value of the securities--- between three and five billion dollars--- was important. But that was not the exclusive focus or even the gravamen of the litigation. The lawsuit also involved the transfer of ELIC's insurance business, assets and liabilities, and they were also important to the policy holders of ELIC. The Commissioner never received from a jury or a court any of the dollar damages for which it contended. The only award which the Commissioner received was one of restitution against Artemis, which is still on appeal.

But in any event, the focus on damages, or the possible measures of damages, is not the proper approach here. One must examine what the subject matter of the litigation really was. That subject matter was not just the transferred securities. No claims were made with respect to the securities themselves, or the transfer of the securities being fraudulent, or there being any imperfections in title, terms, or provisions, or misrepresentations regarding the securities. The basic cause of action--- the gravamen of the case--- was that the defendants had defrauded the

Commissioner. And they did so by doing what? Not by any fraud regarding the securities. But rather by not disclosing, and by hiding, that the parties acquiring the securities and the insurance business of ELIC were controlled by the French government. It is that undisclosed control which was the reason for the action, not the assets transferred.

That nature of the litigation is apparent from the face of the third amended complaint in Commissioner v. Altus, et al., U.S. District Court for the Central District of California, Exhibit N274 in this action, which is the complaint that was pending at the time of the settlements:

The inter-related relationships of the defendants, including their connections with the French government are pleaded on pages 3, 4, and 5.

Paragraph 30 specifically alleges that the defendants were aware that each of them was prohibited from acquiring the insurance business of ELIC, and that under California Insurance Code Section 699.5, a certificate of authority to operate an insurance business in California could not be issued to an insurer that was owned, operated or controlled, directly or indirectly, by a foreign government, agency or subdivision. In addition, that paragraph alleges that under 12 USC Section 1841 et seq., a bank holding company could not, directly or indirectly, have an ownership interest in excess of 25% in any company that was not a bank or other authorized business.

Paragraphs 35-52 specifically allege the concealment of the relationships with the foreign government, and that there were misrepresentations that no foreign governmental entity would direct the management or policies of the parties. There were no allegations of anything wrong with the securities. The vice of the misrepresentations, and what was not disclosed, was the fact that the acquiring parties were controlled by a foreign government. The gravamen of the fraud cause of action, and its illegality which the fraud attempted to hide, was that under governing law a foreign government could not have a controlling interest in an American insurance company. This is summed up in paragraph 79: "The statements made by... [defendants]...were made with the intent to deceive the Federal Reserve Board into withholding objection to the sale of ELIC's insurance business to defendants under United States banking laws which strictly limit a bank's ownership of an insurance company and were made in furtherance of defendants' illegal scheme to secretly gain control of ELIC's bond portfolio and its insurance operation" (emphasis added). The complaint frequently alleges that the plan of the defendants was to acquire control of ELIC's bond portfolio and insurance business.

The claims were stated in terms of fraud and deceit, constructive fraud, conspiracy and other violations of law. And the forms of relief were based upon the allegations of misrepresentation with respect to the fact that a foreign government would be in control. The litigation did not allege there was anything the matter with the securities or their transfer other than concealment of who was going to be in charge.

The District Court similarly described the allegations in 136 F. Supp. 2d 1113 at 1116-1118 (2001). The District Court's decision against Artemis in that litigation also referred to the above-noted statutes as being "the principal basis for the Commissioner's main claims..."; 2005 U.S. LEXIS 39273, at pages 15-18. And stipulation of fact No. 330 states that the verdict against Artemis was for conspiring with the French to defraud the ELIC estate.

The arbitrator therefore concludes that the settlements with the defendants in the Altus litigation do not establish that the funds received were "proceeds or other recoveries with respect to any assets of ELIC which are or were to have been Transferred Securities Assets or Transferred Bonds..." under Section 2.77A of the Enhancement Agreement.

C.

Petitioner has made related arguments with respect to recission. That is, that the Altus litigation really concerned possible recission of the transaction, and hence the return of the transferred assets to ELIC. If that is what had occurred, it would be a closer argument as to whether there were proceeds or other recoveries with respect to transferred assets. However, that is not what occurred. There has been no recission, and no remedy of recission was ever awarded to the Commissioner. In fact, the litigating court expressly disallowed the remedies of bond profits and rescission; Stipulation of Fact No. 287. So, arguments with respect to recission cannot alter the language of Section 2.77A.

At the same time, in 1993 there was concern among all of the participants about the possibility that the transaction could be rescinded on the motion of third parties. That does not directly lead to a conclusion that litigation over possible recission of the securities portion of the agreements was the driving factor. The negotiations were conducted primarily to correct the problems in the rehabilitation plan found by the Court of Appeals, and the litigation which resulted in these proceeds was not even contemplated at the time. But even the rewriting concerning the

possibility of recission, and a return of the securities, does not directly address the issue of what the parties intended to have happen with respect to litigation proceeds.

D.

Returning to the language of the Enhancement Agreement, another section of the agreement supports the conclusion that litigation should not be read into the Section 2.77A definition of Securities Proceeds. That is Section 2.65 of the Enhancement Agreement, defining "Real Estate Assets." That definition expressly includes "all suits, actions, claims, choses in action, whether inchoate or choate, legal or equitable, of any kind or nature arising out of such Assets." As a result, when real estate assets were excluded from the Assigned and Retained Assets under Section 2.10, the exclusion expressly covered litigation concerning those real estate assets. Section 2.77A does not do the same thing with respect to Securities Proceeds. Section 2.65 shows that when the parties wanted litigation to be excluded, they did so expressly.

At this stage in the analysis, the arbitrator finds and concludes that the language of the Enhancement Agreement and the Rehabilitation Agreement clearly provide that the funds received from the Alnus litigation are not "Securities Proceeds," and they are not excluded from the rights of the ELIC policy holders to the Assigned Assets and Retained Assets. That interpretation follows the principles of interpretation under California law, and gives effect to all the clauses of the contracts at issue.

So, can the analysis end here? Why mention the other evidence at the hearing? As stated above, the parties offered evidence that appeared to be in support of constructions of the agreements to which they were reasonably susceptible; although now having heard all of the evidence, the arbitrator reaches a contrary conclusion. In addition, the evidence was helpful in setting the context in which the agreements were prepared and what the objectives were. So the arbitrator will discuss certain parole evidence, which the arbitrator believes was—although not exclusively—in support of the above interpretations of the two key agreements.

CONTEMPORANEOUS DOCUMENTS

That evidence includes documents which were prepared at the time. That is, other agreements, court filings, and public information.

A.

In aid of interpreting the key agreements, the parties have argued about how the proceeds of other litigation was handled. E.g. the so-called Milken, Drexel Burnham litigation and the FEC litigation. Some of that litigation was expressly assigned for the benefit of the policy holders of ELIC. And as the arbitration evidence developed, it is also possible to argue that significant other litigation was also applied for the benefit of the policy holders and not for NOLHGA. However, the arbitrator does not believe that these are very significant points. The reason is that the Milken, Drexel Burnham distribution was separately and specifically negotiated, and was not a part of the contract sections with which we are now concerned. The FEC litigation was in part controlled by a separate trust agreement and by a Bankruptcy Court. And the Altus litigation with which we are concerned was not even contemplated at the time of the allocation of the proceeds of the other litigation.

B.

In addition, the parties have argued for interpretations of the Enhancement Agreement and Rehabilitation Agreement based upon certain most-favored-nation clauses and letters. E.g. Exhibits N120 and N124. However, the arbitrator again attaches little significance to those. First, the evidence does not indicate that any proceeds ever changed hands as a result of those documents. And it appears that those most-favored-nation agreements were not made in light of the key language of the Enhancement Agreement that is now at issue, but were really concerned with the handling of the ELIC estate trusts. In any event, they are too far removed from the contractual language at issue here to have much evidentiary value.

C.

On the other hand, of some significance is what the courts and policy holders were told in the documents that were filed with the courts and distributed in 1993, when the relevant amendments to Enhancement Agreement were made.

The petition to the court for approval for the 1993 Amended Enhancement Agreement (Exhibits CP101 and CP116) did not tell the court that there was any change regarding litigation or the associations' subrogation rights. The matters were simply not discussed. And in the transcript of the hearing (Exhibit CP122), NOLHGA's testimony did not discuss the alleged changes that are

relevant to its present position in this dispute. That silence is in contrast to the very substantive claim now being made in reliance upon those changes.

The election package which went to the policy holders (Exhibit CP 151), contained statements indicating that the remaining assets, including litigation, would be for the benefit of policy holders; pages ALT000543 and 31.

It is not surprising that the court and the policy holders were not told about such changes in the Enhancement Agreement. The reason is that the over-arching purpose of the amended Enhancement Agreement in 1993 was to correct deficiencies which had been found in the rehabilitation plan by the California Court of Appeals. That was the reason for—and the focus of—the extensive negotiations and complicated draftsmanship which went into the 1993 amended Enhancement Agreement. The purpose was not to deal with the subject of possible recoveries in future, unknown litigation, but was primarily to correct the plan deficiencies. That primary objective was accomplished. Any objective of expanding the definition of NOLHGA's subrogation rights at that time was at best a secondary consideration. That is why it may not have received the full attention of the Commissioner's staff, even though NOLHGA may have viewed it as a potential opportunity for increasing its rights.

The amendments and the court presentations were also against the backdrop of the motions which had been made by certain parties in an attempt to rescind the entire rehabilitation transaction. After some considerable staking out of positions, the principal parties (that is, NOLHGA, the Commissioner, and the French interests) all agreed to resist the recission motions.

So, with those direct and immediate concerns before the parties, it is clear that changes in the language of the Enhancement Agreement regarding some unknown potential litigation recoveries was not the focus of the draftsmanship. That background only goes so far in the decision process, but it certainly does not point to a conclusion that the purpose of the amendments was to increase NOLHGA's rights with respect to future and unanticipated litigation.

D.

The arbitrator's discussion of the language of the Enhancement Agreement and certain parole evidence might be misinterpreted as a criticism of the draftsmanship or of the testimony during the hearing. No such negative inferences are intended. The arbitrator is fully sympathetic to the tremendous problems and pressures that the parties faced in 1993. The transactions were

exceedingly complex, requiring agreements of complexity in order to address the problems. All parties involved did an exceptional job in addressing the problems quickly and thoroughly. And the arbitrator finds that all of the witnesses who testified did so in the utmost good faith, and were credible in their sincere beliefs as to what the facts and negotiations were. Nevertheless, the arbitrator must interpret the agreement as it was finally amended.

E.

At the hearing, petitioner examined the numerous drafts of the Enhancement Agreement in 1993, in an attempt to show what NOLHGA's intentions were; and to show that the Commissioner was advised of everything and did not do certain things regarding the draft language when he "could have" or "should have" made some other response. The subject of NOLHGA's intentions will be discussed in the following section. As to what the Commissioner did or did not do, the arbitrator does not find that evidence to be particularly helpful. Whether the Commissioner could have or should have done something depended to a large extent upon what was actually disclosed to the Commissioner about petitioner's intentions. The language of petitioner's amendments to Section 2.77A did not include any express references to litigation. And what could have or should have been done does not offset what the Enhancement Agreement was actually amended to state.

PAROLE TESTIMONY AND RELATED EXHIBITS

From the above discussion of the language of the two key agreements, it is apparent that the arbitrator's conclusions are driven by the language of those agreements. The arbitrator is therefore not discussing all of the parole evidence and related exhibits which were heard and admitted into evidence, but only those which appear to be relevant and material to the principal discussions.

A.

First, in reviewing the testimony, the arbitrator concludes that the NOLHGA witnesses did not testify to any communications in 1993 with the Commissioner's representatives expressly on the subject of how proceeds resulting from future fraud litigation would be divided under the Enhancement Agreement. The arbitrator does not believe that there is any significant evidence directly on that principal issue.

NOLHGA and the Commissioner did discuss NOLHGA's possible future rights in the transferred bonds and the transferred assets if they came back to the ELIC estate, and therefore

"tightened up the securities language." But there was no discussion regarding the possible future proceeds of fraud litigation.

Nor was there any documentation between the parties which expressly agrees, or even discusses, how the proceeds of the Altus litigation would be distributed until this dispute arose.

B.

One of petitioner's principal contentions is that "everybody knew" that in the negotiations NOLHGA was trying to obtain the maximum possible recovery for the associations from the assets available in the ELIC estate, and that was the objective of the drafts in 1993. It is of course quite clear that petitioner was negotiating to maximize the recoveries of the associations. However, the Commissioner was doing the same with respect to protecting the interests of the policy holders. And even to state that both sides knew that NOLHGA wanted the most that it could get from the negotiations does not really answer the issue here. First, the specific issue here is what the parties intended regarding future litigation. Second, petitioner did not convey to the Commissioner its specific intent to receive the proceeds of all future litigation, of whatever type, that may arise but which were unknown at the time the agreements were entered into. Third, the intentions of petitioner had to find expression in the language of the agreements. Fourth, NOLHGA was the primary draftsman of the key language, although the Commissioner certainly had the right to propose changes. But petitioner did not make its intentions in regard to future litigation explicit in the language of the agreements.

The arbitrator concludes that there is not sufficient evidence to establish that the intention to obtain the benefits of all future litigation, including fraud litigation, was conveyed by petitioner to the Commissioner, rather than a generalized intent to "maximize recoveries." And even though NOLHGA desired to "maximize recoveries," it did make assignments to the estate for the benefit of the policy holders.

C.

In the parole testimony, each side attempted to pin upon the other something an attorney or client had said during the course of the Altus litigation. But the arbitrator does not attach much weight to that evidence, even if potentially relevant, since the issue of the division of the proceeds was not focused on until much later, approximately 2004. Nothing that either side did or said since

the 1993 amendments rose to the level of an estoppel, a judicial admission, or an actionable representation regarding the division of these funds.

D.

With respect to other claimed statements made by the Commissioner's representatives, many were made by persons who were not present at the time of the events or the key negotiations in 1993. It was only in 2004 when the Commissioner's staff actually focused on what to do with the funds that might be received from the Altus litigation. Apparently, the first time there was attention to the difference of opinions as to where the proceeds of such litigation should go was at the time of the $110 million from the plea in the criminal proceedings. The Commissioner then asked outside counsel for an opinion on the distribution of those proceeds, and received an opinion. This was the first opinion the Commissioner ever received or reviewed on that issue. Then the Commissioner advised NOLHGA about its opinion. That apparently resulted in meetings and letters back and forth, which were privileged and were not received into evidence.

Nor has the arbitrator given much weight to latter day statements of intentions by people who were not involved at the time of the drafting of the documents and who for the most part were sometimes saying things before these present claims were known.

E.

The arbitrator cannot ignore that Exhibit N94 is perhaps an undisclosed written expression of the intentions of NOLHGA and the French in the 1993 negotiations. That memorandum contains the "obscure provision" comment, and was not sent to the Commissioner. The arbitrator is hesitant to put any significant weight on what could be just a "one-liner." But the comment in Exhibit N94 is apparently what the representatives of the French and NOLHGA said to one another in the draftsmanship. The possible recission that was of concern to the parties never occurred. While the exhibit does not have overwhelming weight against petitioner's position in this case, it clearly points away from any conclusion that the language of the agreement itself is clear and decisively in favor of petitioner.

F.

The arbitrator received considerable evidence, presented by both sides, on what the ELIC trusts did in distributions of certain assets. However, the arbitrator does not consider that evidence of particular weight, since we are dealing here with the language of the Enhancement Agreement

and the Rehabilitation Agreement. The ELIC trusts certainly made distributions of funds, but interpretations of the trust agreements are not the determitive issue here; parallel perhaps, but not controlling. Whether there was or was not total consistency in how the ELIC estate or the ELIC trusts handled or distributed litigation proceeds is of little evidentiary value for purposes of this dispute. By and large those distributions were before this dispute arose, and the numbers were relatively small. And in this case we are primarily concerned with the Enhancement Agreement, and not with the trust agreements.

G.

In summary, the arbitrator concludes that the parole testimony and related documents support the conclusion which the arbitrator has reached from the language of the agreements. That is, that petitioner is unable to sustain its burden of proof that the funds received from the Altus litigation constitute Securities Proceeds under the Enhancement Agreement. Even giving full trustworthiness to petitioner's witnesses, their testimony was not sufficient to carry petitioner's burden of proof on the contract language that controls this dispute.

REMEDIES

The distribution provisions of the Enhancement Agreement are quite complex. Therefore, following the arbitration hearing, the parties jointly submitted proposed alternative forms of order regarding the distribution of the funds. The forms of order distinguished between the various categories of funds received from the Altus litigation, which are itemized above in the Summary of The Issue section. However, neither the evidence nor the arguments of counsel persuade the arbitrator that there is any reason to distinguish among the categories of funds.

Because the arbitrator finds that the issues discussed and resolved in this decision are the subject of and governed by the provisions of the Enhancement Agreement and the Rehabilitation Agreement, the arbitrator denies petitioner's alternative request for equitable relief. Since the disputes are governed by the contractual language, there is no legal basis for the award of an equitable remedy as an alternative.

FINDINGS AND CONCLUSIONS

Based upon the evidence and arguments submitted, and with the burden of proof being on petitioner, the arbitrator finds and concludes as follows:

1. The issues discussed and resolved in this decision are within the jurisdiction of this arbitration.

2. The funds at issue here, defined on pages 1 and 2 above, are Assigned Assets under Section 2.10 of the Enhancement Agreement, and are Retained Assets as described in Section 5.4 of the Rehabilitation Agreement.

3. Those funds are not "Securities Proceeds" under Section 2.77A of the Enhancement Agreement.

4. The Returned Funds, together with the portion of the funds representing recoveries from the Mallart Defendants and the MAAF defendants, shall be distributed in accordance with Articles 10 and 17 of the Enhancement Agreement subject to the right of the Participating Guaranty Associations to receive any applicable "Reduction GA Adjustment," "Proceeds Reduction," "Set-Aside Amount" and "Recovery Increment" (each as defined in the Enhancement Agreement) and the further order of the Conservation Court, except that the Returned Funds shall be distributed only in accordance with those portions of Article 10 and 17 of the Enhancement Agreement that relate to the distribution of the Covered Percentage of each applicable contract's portion of such funds. (The "Returned Funds" refers to the portion of the funds that were returned to the Commissioner pursuant to paragraphs 4 and 6 of the Conservation Court Order dated April 6, 2006 (the "Order") (but expressly excluding the amount distributed to the Participating Guaranty Associations pursuant to paragraph 9 of the Order).)

5. None of the foregoing rulings shall limit the Commissioner's ability to pay, from the various amounts otherwise distributable pursuant to this decision, proper administrative expenses of the ELIC estate consistent with applicable state law and the plan of rehabilitation.

ATTORNEYS' FEES AND EXPENSES

After the Interim Decision on December 29, 2006, the Commissioner moved for an award of his attorneys' fees and expenses. NOLHGA opposed the request, and the final briefing on the motion was concluded on January 25, 2007. In the First Amended Interim Decision on February 16, 2007, the arbitrator found and concluded that the Commissioner is entitled to an award of attorneys' fees and expenses. The arbitrator set procedures and a schedule to establish the amounts. On April 6, 2007, the parties stipulated to the sum $4.5 million for the fees and expenses. Accordingly, the arbitrator awards to the Commissioner $4.5 million for attorneys' fees and costs.

This is the Final Decision of the Arbitrator.

IT IS SO ORDERED.

Dated: December 29, 2006

Charles A. Legge
Hon. Charles A. Legge (Ret.)
Arbitrator

Amended: February 16, 2007

Charles A. Legge
Hon. Charles A. Legge (Ret.)
Arbitrator

Final: April 23, 2007

Hon. Charles A. Legge (Ret.)
Arbitrator

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,

Applicant and Petitioner,

v.

EXECUTIVE LIFE INSURANCE COMPANY, a California corporation, NATIONAL ORGANIZATION OF LIFE AND HEALTH GUARANTY ASSOCIATIONS, and DOES 1 through 1000,

Respondents.

No. BS 006912

[PROPOSED] JUDGMENT IN CONFORMITY WITH FINAL ARBITRATION DECISION

Date: June 29, 2007
Time: 8:30 a.m.
Dep't: 36

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

[PROPOSED] JUDGMENT IN CONFORMITY WITH FINAL ARBITRATION DECISION

On June 29, 2007, the Petition by the Insurance Commissioner of the State of California, in his capacity as conservator, rehabilitator and liquidator (the "Commissioner") of Executive Life Insurance Company ("ELIC") for entry of an Order confirming the Final Decision in the arbitration between the Commissioner and Respondent National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") (the "Final Arbitration Decision"), and for entry of a Judgment in conformity therewith, came on regularly for hearing before the Court. The Petition was duly served and filed, and all interested parties appeared through their counsel of record. The Court finds that there are no grounds for it to correct or vacate the Final Arbitration Decision, or to dismiss the proceeding. Accordingly, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Final Arbitration Decision is hereby confirmed as made, and that judgment is hereby entered in conformity therewith.

DATED: June __, 2007

By: _____
HON. GREGORY W. ALARCON
JUDGE OF THE SUPERIOR COURT

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,

Applicant,

v.

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

Respondents.

No. BS 006912

Date: June 29, 2007
Time: 8:30 a.m.
Dep't: 36

PROOF OF SERVICE REGARDING (1) NOTICE OF MOTION AND MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; (2) DECLARATION OF WILLARD ROBERTS IN SUPPORT OF MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; (3) [PROPOSED] ORDER GRANTING MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION; (4) NOTICE OF HEARING ON PETITION AND PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; (5) PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION; (6) [PROPOSED] JUDGMENT IN CONFORMITY WITH FINAL ARBITRATION DECISION

PROOF OF SERVICE

PROOF OF SERVICE

I, Kathryn A. Sakamoto, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On June 1, 2007, I served the following document(s) described as

NOTICE OF MOTION AND MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES;

DECLARATION OF WILLARD ROBERTS IN SUPPORT OF MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES;

[PROPOSED] ORDER GRANTING MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION;

NOTICE OF HEARING ON PETITION AND PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] JUDGMENT;

PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION;

[PROPOSED] JUDGMENT IN CONFORMITY WITH FINAL ARBITRATION DECISION

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.

☒ for listed parties with a "*By US Mail*" designation by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☒ for listed parties with a "*By E-Mail*" designation by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m. P.S.T.

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN

☒ for listed parties with a "*By Federal Express*" designation by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

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PLEASE SEE ATTACHED LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on June 1, 2007.

Kathryn A. Sakamoto

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