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11 State of California in his capacity as Conservator,
12 Liquidator and Rehabilitator of Executive Life
13 Insurance Company

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 INSURANCE COMMISSIONER OF THE
17 STATE OF CALIFORNIA,

18 Applicant,

19 v.

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

23 Respondents.

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

OCT 12 2005

John A. Clarke, Executive Officer/Clerk
By B. Gregg, Deputy

No. BS 006912

~~PROPOSED~~ ORDER PARTIALLY
GRANTING MOTION OF INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA FOR AN ORDER
APPROVING DISTRIBUTION OF \$100
MILLION OF ALTUS LITIGATION
PROCEEDS PURSUANT TO ELIC
REHABILITATION PLAN

Date: October 12, 2005
Time: 8:30 a.m.
Dep't: 36

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

1 This matter came before the above-captioned Court (the "Court") on the motion
2 (the "Motion"), dated August 30, 2005, of the Insurance Commissioner of the State of
3 California, in his capacity as conservator, liquidator and rehabilitator (the "Commissioner")
4 of Executive Life Insurance Company ("ELIC"), for an order approving the distribution of
5 \$100 million of Altus Litigation Proceeds pursuant to the ELIC Rehabilitation Plan. Jeffrey
6 L. Schaffer and Ethan P. Schulman of Howard Rice Nemerovski Canady Falk & Rabkin, A
7 Professional Corporation, appeared on behalf of the Commissioner at the hearing on the
8 Motion held by the Court on October 12, 2005 at 8:30 a.m. (the "Hearing"). John F. Finston
9 of Sonnenschein, Nath & Rosenthal LLP appeared on behalf of the National Organization of
10 Life and Health Insurance Guaranty Associations ("NOLHGA") at the Hearing. Other
11 appearances at the Hearing were as noted on the record. The Court having considered the
12 papers filed in support of and in opposition or other response to the Motion (including,
13 without limitation, supplemental pleading filed by the Commissioner on September 28, 2005
14 requesting approval of a partial distribution (the "Response And Request For Approval Of
15 Partial Distribution")), the statements and arguments of counsel at the Hearing, and all
16 pertinent pleadings filed with the Court; and all capitalized words or terms not defined
17 herein having the meanings ascribed to them in the Motion or the Response And Request
18 For Approval Of Partial Distribution, as the case may be; and due and proper notice of the
19 Motion and the Hearing having been given; and after due deliberation and consideration and
20 good and sufficient cause appearing therefor,

21 **THE COURT HEREBY ORDERS AND ADJUDGES THAT:**

- 22 1. The Motion is hereby granted only to the limited extent provided herein.
- 23 2. The Commissioner shall distribute to the Opt Out Trust (subject to the "de
24 minimis exception described in Part IV of the Motion) the portion of the Subject \$100
25 Million that is allocable to the Opt Out Trust pursuant to the ELIC Rehabilitation Plan,
26 which is estimated to be approximately \$33.9 million; and such approximately \$33.9
27 million, once so distributed to the Opt Out Trust, shall be distributed by the Opt Out Trust
28 pro rata based on relative claim values to the Opt Out Contract Holders that are the

1 beneficiaries of the Opt Out Trust.

2 3. The Commissioner shall make no further distributions of any Altus
3 Litigation Proceeds without obtaining the approval of the Court after making a motion on
4 appropriate notice. Without limiting the generality of the foregoing sentence, the
5 Commissioner shall continue to reserve and maintain the Reserved Amount and the
6 Undisputed Non-Opt Out Amount pending further order of the Court.

7 4. The Commissioner and NOLHGA reserve all of their respective rights with
8 respect to any dispute they may have regarding ^{all other} ~~the~~ amounts that are to be distributed by the
9 Commissioner, including, without limitation, their rights with respect to the Reserved
10 Amount and the May 13 Letter.

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13 OCT 12 2005

Gregory W. Alarcon

14 _____
15 HON. GREGORY ALARCON
16 JUDGE OF THE SUPERIOR COURT

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HOWARD
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a professional corporation