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Attorneys for Intervenors NOLHGA and CLHIGA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

ALTUS FINANCE S.A., et al.,

Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES RE [PROPOSED]
JUDGMENT**

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

1 The Commissioner and NOLHGA submit this Memorandum of Points and
 2 Authorities to explain the [Proposed] Judgment submitted herewith pursuant to the
 3 Court's Order Re: Restitution Award dated February 26, 2013 (Dkt. No. 4330) (the
 4 "Order"). The Order stated that the Court "hereby reinstates the award" of
 5 restitution by Judge Matz that was vacated with leave to reinstate by the Ninth
 6 Circuit and ordered the Commissioner to file a "Proposed Judgment consistent with
 7 this Order no later than March 5, 2013." *Order at 1-2.*¹

8 The Commissioner and NOLHGA's [Proposed] Judgment closely tracks the
 9 operative language of the prior Judgment awarding restitution (Dkt. No. 3573),
 10 which is attached hereto as Exhibit A, and expressly provides that the prior
 11 Judgment is "reinstated *nunc pro tunc* as of the date that Judgment was originally
 12 entered, *i.e.*, February 13, 2006." *See [Proposed] Judgment, para. 1.* "Reinstate"
 13 means "[t]o place again in a former state or position; to restore." *Black's Law*
 14 *Dictionary* (9th ed. 2009). *See also Baltimore and Ohio Chicago Terminal*
 15 *Railroad Co. v. Wisconsin Central Ltd.*, 154 F.3d 404, 408 (7th Cir. 1998)
 16 (construing "reinstate" to mean "reactivate"). To reinstate the prior award of
 17 restitution, the parties should be placed in the same position that they would be in if
 18 the prior award had never been vacated. Accordingly, the [Proposed] Judgment
 19 restores or reactivates the prior Judgment as of the date that it was originally
 20 entered.

21 In addition, the [Proposed] Judgment provides that "[p]ost-judgment interest
 22 shall accrue on the Net Artemis Judgment Obligation, pursuant to 28 U.S.C.
 23 § 1961, from the date of the prior Judgment of restitution, *i.e.*, February 13, 2006."
 24 *See [Proposed] Judgment, para. 3.* The Ninth Circuit has held repeatedly that,
 25 when a prior award is reinstated by a district court after being vacated, post-

26
 27 ¹ In complying with the Court's Order and submitting the [Proposed]
 28 Judgment, the Commissioner and NOLHGA do not waive their arguments
 regarding restitution that were previously submitted to the Court, and those
 arguments are expressly reserved.

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1 judgment interest under Section 1961 should run from the date of the original
2 judgment. *See Guam Society of Obstetricians and Gynecologists v. Ada*, 100 F.3d
3 691, 702-03 (9th Cir. 1996); *Northrop Corp. v. Triad International Marketing S.A.*,
4 842 F.2d 1154, 1156-57 (9th Cir. 1988). *Accord, Ministry of Defense v. Cubic*
5 *Defense Systems, Inc.*, 2013 U.S. Dist. LEXIS 1625 at *12 (S.D. Cal. Jan. 3, 2013).

6 “Post-judgment interest must run from the date of a [prior] judgment when
7 the damages were ‘supported by the evidence’ and meaningfully ‘ascertained’ [in
8 the prior judgment]. ... When the legal and evidentiary basis of an award is
9 preserved, post-judgment interest is ordinarily computed from the date of [the
10 judgment’s] initial entry.” *Planned Parenthood of the Columbia/Willamette Inc. v.*
11 *American Coalition of Life Activists*, 518 F.3d 1013, 1017-18 (9th Cir. 2008)
12 (holding that post-judgment interest on punitive damages award in a later judgment
13 ran from the date of prior judgment because award was meaningfully ascertained as
14 of that date). *See also Handgards, Inc. v. Ethicon, Inc.*, 743 F.2d 1282, 1299 (9th
15 Cir. 1984) (holding that post-judgment interest ran from the prior judgment, which
16 had been vacated, because the later judgment “remains the same – in the same
17 amount, for the same damages incurred during the same period” – as the prior
18 judgment); *Twin City Sportservice, Inc.*, 676 F.2d 1291, 1311 (9th Cir. 1982)
19 (same). Accordingly, under the foregoing authorities and as provided in the
20 [Proposed] Judgment, post-judgment interest should run from the prior Judgment
21 here because that Judgment is being reinstated, the amount of restitution was
22 meaningfully ascertained in that prior Judgment, and the new Judgment is for the
23 same amount and based on the same claim as the prior Judgment.

24 The Commissioner and NOLHGA have provided Artemis with a copy of the
25 [Proposed] Judgment and request an opportunity to respond if Artemis objects to
26 this [Proposed] Judgment in any respect.

1 DATED: March 5, 2013

SHARTSIS FRIESE LLP

2
3 By: /s/Charles R. Rice
CHARLES R. RICE

4 Attorneys for Plaintiff
5 INSURANCE COMMISSIONER

6 DATED: March 5, 2013

ROTHGERBER, JOHNSON & LYONS
LLP

7
8 By: /s/Franklin D. O'Loughlin
FRANKLIN D. O'LOUGHLIN

9
10 Attorneys for Intervenor
NOLHGA and CLHIGA

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1 DATED: March 5, 2013

SHARTSIS FRIESE LLP

2
3 By: _____
CHARLES R. RICE

4 Attorneys for Plaintiff
5 INSURANCE COMMISSIONER

6 DATED: March 5, 2013

ROTHGERBER, JOHNSON & LYONS
7 LLP

8 By: 
9 FRANKLIN D. O'LOUGHLIN

10 Attorneys for Intervenor
11 NOLHGA and CLHGA

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Exhibit A

ORIGINAL

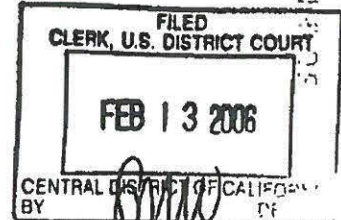
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CENTRAL DIST. OF CALIF.
LOS ANGELES

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA



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

Plaintiff,

v.

ALTUS FINANCE S.A., a French
corporation, et al.,

Defendants.

Case No. CV-99-02829 AHM (CWx) ✓

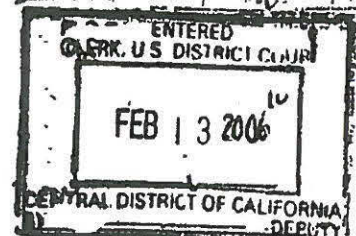
Consolidated for trial with

Case No.: CV-01-01339 AHM (CWx)

[PROPOSED] JUDGMENT

TRIAL DATE: February 15, 2005

JUDGE: The Hon. A. Howard Matz



THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY ECRP RULE 77(d)

3573

1 1. It is ORDERED and ADJUDGED that judgment is entered for the
2 Plaintiff, Insurance Commissioner John Garamendi, as Conservator, Liquidator, and
3 Rehabilitator of the Estate of Executive Life Insurance Company, and against
4 defendant Artemis S.A. in the amount of \$189,806,288, plus prejudgment interest in
5 the amount of \$51,285,732, for a total judgment of \$241,092,020.

6 2. It is further ORDERED and ADJUDGED that the Plaintiff, Insurance
7 Commissioner John Garamendi, as Conservator, Liquidator, and Rehabilitator of the
8 Estate of Executive Life Insurance Company, take nothing on his claims against
9 defendants Artemis Finance S.N.C., Artemis America, and Francois Pinault, and that
10 the action be dismissed against said defendants on the merits.

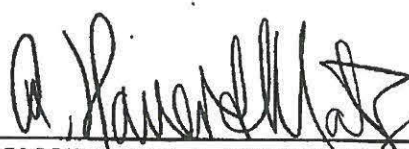
11 3. It is further ORDERED and ADJUDGED that Counterclaimants Artemis
12 S.A., Artemis Finance S.N.C., Artemis America, and Francois Pinault take nothing on
13 their counterclaims against the Plaintiff, Insurance Commissioner John Garamendi, as
14 Conservator, Liquidator, and Rehabilitator of the Estate of Executive Life Insurance
15 Company, and that their counterclaims be dismissed on the merits.

16 4. It is further ORDERED and ADJUDGED that given the unusual history
17 of this case, especially the verdicts ^{returned} returned by the jury, neither Artemis S.A. nor the
18 Insurance Commissioner John Garamendi, as Conservator, Liquidator, and
19 Rehabilitator of the Estate of Executive Life Insurance Company, shall be deemed the
20 "prevailing party" as to the claims between them, and neither such party shall be
21 awarded costs against the other.

22 5. It is further ORDERED and ADJUDGED that defendants Artemis
23 Finance S.N.C., Artemis America, and Francois Pinault are prevailing parties and that
24 said defendants recover from the Plaintiff, Insurance Commissioner John Garamendi,
25 as Conservator, Liquidator, and Rehabilitator of the Estate of Executive Life
26 Insurance Company, the precise costs of this action incurred by each of them and
27 which would not have been necessarily incurred by Artemis S.A. anyway, in an
28 amount to be taxed by the Clerk.

6. It is further ORDERED and ADJUDGED that, as of the date of this Judgment, Artemis S.A. is responsible to pay to the Insurance Commissioner, John Garamendi, as Conservator, Liquidator, and Rehabilitator of the Estate of Executive Life Insurance Company (the sole "Net Artemis Judgment Obligation Party") the sum of \$131,092,020 (the "Net Artemis Judgment Obligation"), which is equal to the Judgment of \$241,092,020 entered above less a credit of \$110,000,000 reflecting the payment to the Commissioner made pursuant to the Court's "Amended Order Approving Payment Instructions for Transfer to the California Insurance Commissioner, in his Capacity as Conservator, Rehabilitator, and Liquidator of Executive Life Insurance Company of California Contributed by Defendant Artemis S.A. Pursuant to Its Final Settlement Agreement with the United States," dated May 5, 2004. At such time as this Judgment becomes final and not subject to further appeal, any portion of this Judgment that remains unsatisfied may be satisfied, to the extent necessary or possible, with the funds then in the USAO/Artemis Settlement Account, in accordance with the terms of the Final Settlement Agreement Between the United States Attorney's Office and Artemis S.A., Francois Pinault, Patricia Barbizet, Marie-Christine de Percin, and Emmanuel Cueff, dated December 15, 2003 (the "USAO/Artemis Settlement Agreement"). Nothing in this Judgment shall be deemed to modify or abrogate any of the terms of the USAO/Artemis Settlement Agreement.

Dated: 2/13/2006


THE HONORABLE A. HOWARD MATZ
UNITED STATES DISTRICT JUDGE

1 Respectfully submitted by:

2 GIBSON, DUNN & CRUTCHER LLP

3
4
5 By: 

6 JAMES P. CLARK

7 Attorneys for ARTEMIS S.A.,
8 ARTEMIS FINANCE S.N.C.,
9 ARTEMIS AMERICA, and
10 FRANCOIS PINAULT

11 THELEN REID & PRIEST LLP

12
13
14 By: _____

15 GARY L. FONTANA

16 Attorneys for the INSURANCE
17 COMMISSIONER

18 Dated: February 10, 2006

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SCANNED

1 Respectfully submitted by:

2 GIBSON, DUNN & CRUTCHER LLP

3
4
5 By: _____

JAMES P. CLARK

6
7 Attorneys for ARTEMIS S.A.,
8 ARTEMIS FINANCE S.N.C.,
9 ARTEMIS AMERICA, and
10 FRANCOIS PINAULT

11 THELEN REID & PRIEST LLP

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14 By:  _____

GARY L. FONTANA

15
16 Attorneys for the INSURANCE
17 COMMISSIONER

18 Dated: February 10, 2006

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