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REC'D
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FILING WINDOW

6 Attorneys for the Insurance Commissioner of the
7 State of California in his capacity as Conservator,
8 Liquidator and Rehabilitator of Executive Life
9 Insurance Company

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11
12 INSURANCE COMMISSIONER OF THE
13 STATE OF CALIFORNIA,

14 Applicant,

15 v.

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

19 Respondents.
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No. BS 006912

[PROPOSED] ORDER GRANTING
MOTION OF INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA FOR AN ORDER
APPROVING INTERIM
DISTRIBUTION OF SPECIFIED ALTUS
LITIGATION PROCEEDS TO (1) NON-
OPT OUT CONTRACT HOLDERS AND
THEIR NON-PGA SUBROGEEES (IF
APPLICABLE) CALCULATED
PURSUANT TO ARTICLE 17 OF
ENHANCEMENT AGREEMENT, AND
(2) PGAS PURSUANT TO MAY 13,
2005 LETTER AGREEMENT

Date: March 3, 2006
Time: 8:30 a.m.
Dep't: 36

1 This matter came before the above-captioned Court (the "Court") on the motion
2 (the "Motion"), dated January 18, 2006, 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 specified Altus Litigation Proceeds to (1) Non-Opt Out Contract Holders and their non-PGA
6 subrogees (if applicable) calculated pursuant to Article 17 of the Enhancement Agreement,
7 and (2) PGAs pursuant to the May 13, 2005 Letter Agreement. Jeffrey L. Schaffer of
8 Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, appeared on
9 behalf of the Commissioner at the hearing on the Motion held by the Court on March 3,
10 2006 at 8:30 a.m. (the "Hearing"). Other appearances at the Hearing were as noted on the
11 record. The Court having considered the papers filed in support of and in opposition or
12 other response to the Motion, the statements and arguments of counsel at the Hearing, and
13 all pertinent pleadings filed with the Court; and all capitalized words or terms not defined
14 herein having the meanings ascribed to them in the Motion; and due and proper notice of the
15 Motion and the Hearing having been given; and after due deliberation and consideration and
16 good and sufficient cause appearing therefor,

17 THE COURT HEREBY ORDERS AND ADJUDGES THAT:

- 18 1. The Motion is hereby granted;
19 2. The Provisional Article 17 Distribution is approved in all respects, as more
20 specifically set forth in paragraphs 3-6 below;

21 Artemis Settlement Fund Distribution Reserve

- 22 3. The Commissioner is authorized to implement the distribution of
23 approximately \$15.1 million of the Artemis Settlement Fund Distribution Reserve to the Opt
24 In Policyholders, and the remaining approximately \$51 million shall continue to be reserved
25 by the Commissioner (on account of the distribution that would go to the PGAs under
26 Article 17 if the PGAs prevail on the Article 10/17 Dispute, and on account of the
27 distribution that would go to the Opt In Policyholders under Article 10 if the Commissioner
28 prevails on the Article 10/17 Dispute) pending further Court order;

1 4. In order to implement this segment of the Provisional Article 17
2 Distribution on terms consistent with the ELIC Rehabilitation Plan, the Commissioner,
3 acting in accordance with Section 12.11.3 of the Rehabilitation Plan, is authorized to
4 distribute to Aurora the entire \$66.1 million of the Artemis Settlement Fund Distribution
5 Reserve. Solely for purposes of the Provisional Article 17 Distribution, such funds shall be
6 treated as “Deemed Securities Proceeds” under Section 17.1.2.2.2(i) of the Enhancement
7 Agreement. Once such funds are received by Aurora from the Commissioner, pursuant to
8 Aurora’s obligations under Article 9 of the Rehabilitation Agreement, Aurora shall make a
9 precise calculation for an Article 17 Distribution, determining the precise dollars
10 distributable to the Opt In Policyholders, and the precise dollars distributable to the PGAs.
11 After making this calculation, Aurora shall then proceed (i) to distribute (subject to the “de
12 minimis” exception described in Part III of the Motion) to the Opt In Policyholders their
13 respective shares as indicated by Aurora’s calculation, (ii) to distribute back to the
14 Commissioner the amount allocable to the PGAs under the Provisional Article 17
15 Distribution as indicated by Aurora’s calculation, to be held by the Commissioner in reserve
16 pending further Court order, and (iii) also to distribute back to the Commissioner any
17 amounts that were not distributed pursuant to clause (i) above solely by virtue of operation
18 of the “de minimis” exception described in Part III of the Motion;

19 CDR Settlement Amount and Aurora Settlement Amount

20 5. The Commissioner is authorized to effect the distribution of the
21 approximately \$45 million Distributable Aurora Settlement Amount and the approximately
22 \$295.5 million Distributable CDR Settlement Amount as follows:

23 a. approximately 22.87% of the approximately \$45 million Distributable
24 Aurora Settlement Amount (or approximately \$10.3 million) and approximately
25 22.87% of the approximately \$295.5 million Distributable CDR Settlement Amount (or
26 approximately \$67.5 million) shall be distributed to Opt In Policyholders, for a total
27 distribution to Opt In Policyholders of approximately \$77.8 million,
28

1 b. approximately 77.13% of the approximately \$45 million Distributable
2 Aurora Settlement Amount (or approximately \$34.75 million) and approximately
3 77.13% of the approximately \$295.5 million Distributable CDR Settlement Amount (or
4 approximately \$228 million), shall be allocated to the PGAs under the Provisional
5 Article 17 Distribution, for a total of approximately \$262.75 million, and

6 c. the approximately \$262.75 million that is allocable to the PGAs under
7 the Provisional Article 17 Distribution shall be reserved by the Commissioner (on
8 account of the distribution that would go to the PGAs under Article 17 if the PGAs
9 prevail on the Article 10/17 Dispute, and on account of the distribution that would go
10 to the Opt In Policyholders under Article 10 if the Commissioner prevails on the
11 Article 10/17 Dispute) pending further Court order (subject only to the distribution of
12 the approximately \$46 million “floor amount” to the PGAs from the \$228 million
13 reserved portion of the Distributable CDR Settlement Amount pursuant to the terms of
14 the May 13 Letter Agreement, as set forth in paragraph 9 below);

15 6. In order to implement the segments of the Provisional Article 17
16 Distribution relating to the Aurora and CDR Settlement Amounts on terms consistent with
17 the ELIC Rehabilitation Plan, the Commissioner, acting in accordance with Section 12.11.3
18 of the Rehabilitation Plan, is authorized to distribute to Aurora the entire approximately
19 \$340 million of the Distributable Aurora Settlement Amount and Distributable CDR
20 Settlement Amount. Solely for purposes of the Provisional Article 17 Distribution, such
21 funds shall be treated as “Deemed Securities Proceeds” under Section 17.1.2.2.2(i) of the
22 Enhancement Agreement. Once such funds are received by Aurora from the Commissioner,
23 pursuant to Aurora’s obligations under Article 9 of the Rehabilitation Agreement, Aurora
24 shall make a precise calculation for an Article 17 Distribution, determining the precise
25 dollars distributable to the Opt In Policyholders, and the precise dollars distributable to the
26 PGAs. After making this calculation, Aurora shall then proceed (i) to distribute (subject to
27 the “de minimis” exception described in Part III of the Motion) to the Opt In Policyholders
28 their respective shares as indicated by Aurora’s calculation, (ii) to distribute back to the

1 Commissioner the amount allocable to the PGAs under the Provisional Article 17
2 Distribution as indicated by Aurora's calculation, to be held by the Commissioner in reserve
3 pending further Court order, and (iii) also to distribute back to the Commissioner any
4 amounts that were not distributed pursuant to clause (i) above solely by virtue of operation
5 of the "de minimis" exception described in Part III of the Motion;

6 Expense Reserve from Remaining Aurora and CDR Settlement Amounts

7 7. The following amounts of the Expense Reserve shall be funded from the
8 Non-Opt Out Percentage of the Aurora Settlement Amount and the CDR Settlement
9 Amount:

10 a. approximately \$7 million from the Remaining Aurora Settlement
11 Amount, and

12 b. approximately \$46 million from the Remaining CDR Settlement
13 Amount,

14 for a total of approximately \$53 million of the Expense Reserve funded from the Non-Opt
15 Out Percentage of the Aurora and CDR Settlement Amounts;

16 8. Before making or effecting any distribution authorized under paragraphs 5
17 and 6 above, the Commissioner shall deduct (i) from the Remaining Aurora Settlement
18 Amount, the sum of approximately \$7 million for the Expense Reserve, and (ii) from the
19 Remaining CDR Settlement Amount, the sum of approximately \$46 million for the Expense
20 Reserve;

21 May 13 Letter Agreement

22 9. The Commissioner is authorized to distribute to the PGAs the
23 approximately \$46 million "floor amount" pursuant to the formula set forth in the May 13
24 Letter Agreement, with such amount to be paid from the \$228 million reserved portion of the
25 Distributable CDR Settlement Amount; and

26 General

27 10. The Commissioner shall make no further distributions of any Altus
28 Litigation Proceeds (including, without limitation, the balance of the Remaining CDR

1 Settlement Amount and the balance of the Remaining Aurora Settlement Amount) without
2 obtaining approval of the Conservation Court after making a motion on appropriate notice.
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4 Dated: _____
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HON. GREGORY ALARCON
JUDGE OF THE SUPERIOR COURT

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13 HOWARD
14 RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
15 A Professional Corporation
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