

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

FILED ENTERED
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OCT 17 2019

AT BALTIMORE
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY

DEPUTY

RICHARD DICKMAN; KENT)
ALDERSON; LESLEY S. RICH, trustee)
for RICHARD S. WALLBERG)
INSURANCE TRUST; *Individually and*)
on behalf of all those similarly situated,)

Plaintiffs,

v.

BANNER LIFE INSURANCE)
COMPANY; WILLIAM PENN LIFE)
INSURANCE COMPANY OF NEW)
YORK)

Defendants.

Civil Action Nos.

1:16-cv-00192-RDB

1:17-cv-02026-GLR

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter came before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of Proposed Nationwide Class Action and Preliminary Certification of Settlement Class (“the Motion”) [Doc. 250], the terms of which are set forth in the Settlement Agreement [Doc. 250-3] (the “Proposed Settlement”). Unless defined herein or otherwise stated, all defined terms in this Order shall have the meanings ascribed to them in the Settlement Agreement.

The Court held a hearing on the Motion on October 15, 2019. If approved, the Proposed Settlement will on the Final Settlement Date provide settlement benefits to members of a nationwide Settlement Class and resolve all claims alleged and all claims that could have been alleged in both *Dickman v. Banner Life Ins. Co.*, No. 1-16-cv-00192-RDB (D. Md. filed Jan. 19,

2016) and *Rich v. William Penn Life Insurance Co. of New York*, No. 1:17-cv-02026-GLR (D. Md. filed July 20, 2017).

Plaintiffs in the Consolidated Actions allege that Defendants Banner Life Insurance Company (“Banner”) and William Penn Life Insurance Company of New York (“William Penn” and collectively with Banner, “Defendants”) unjustifiably increased the Cost of Insurance (“COI”) rates, which increased the amount of COI charges withdrawn each month from the account values of certain Banner and William Penn universal life insurance policies owned by members of the proposed Settlement Class. Plaintiffs also allege that Defendants misrepresented the performance of the policies to encourage policyholders to continue to fund their universal life policies. The COI rate increases affected approximately 7,631 universal life policies. Additionally, another 4,482 policies were considered for these COI rate increases, and the policyholders that currently own such policies are also included in the proposed Settlement Class. Defendants deny all allegations made by Plaintiffs.

Plaintiffs and Defendants advise that they have reached the Proposed Settlement only after years of vigorous prosecution and defense of the alleged claims, including full discovery, followed by many months of extensive arm’s-length negotiations between Co-Lead Class Counsel and Defendants’ Counsel under the auspices of highly regarded mediator David Geronemus, Esquire with JAMS. Having carefully reviewed the Settlement Agreement and having considered the briefing submitted in support of the unopposed motion and the proffers of counsel thereon, the Court finds that the Proposed Settlement meets all applicable requirements of Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only, and should be and hereby is preliminarily approved as fair, reasonable, and adequate to the Plaintiffs and the Settlement Class, free of collusion or any indicia of unfairness, and that the proposed relief is within the range

warranting potential final judicial approval. The Court therefore hereby GRANTS the motion and ORDERS as follows:

1. For purposes of this settlement, and conditioned upon the Settlement Agreement receiving final approval following the Fairness Hearing, the Court certifies the following opt-out plaintiff Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3):

All persons or entities who own an In-Force Policy or owned a Terminated Policy encompassed by the COI Rate Increases during the Class Period and all persons who currently own a Policy considered for the COI Rate Increases.

Excluded from the Settlement Class are: (a) the Honorable Richard D. Bennett, United States District Court Judge of the District of Maryland (or other Circuit, District, or Magistrate Judge presiding over the Consolidated Actions through which this matter is presented for settlement) and court personnel employed in Judge Bennett's (or other such Judge's) chambers or courtroom; (b) Banner, William Penn, and their parents, affiliates, subsidiaries, successors, predecessors, and any entity in which Banner or William Penn has a controlling interest and their current or former officers and directors (except to the extent Banner, William Penn, or such other entity is the owner of a Policy held for the benefit of an individual who is not otherwise excluded from membership in the Settlement Class); (c) any officer or director of Banner or William Penn reported in their Corporate Reports during the Settlement Class Period, or entity in which Banner or William Penn had a controlling interest at any relevant time, any member of those persons' immediate families and legal affiliates, heirs, controlling persons, agents, successors and predecessors in interest or assigns of any such excluded person or entity; (d) policyholders who properly execute and timely file a Request for Exclusion from the Settlement Class; and (e) the legal representatives, successors, or assigns of any such excluded Policyholders (but only then in their capacity as legal representative, successor, or assignee).

2. With respect to the Settlement Class, the Court finds, solely for purposes of effectuating the Settlement and for no other purpose, that (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the Consolidated Actions would be impracticable, as the Settlement Class comprises thousands of members; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions, including whether Defendants' uniform conduct in increasing the COI rates breached standardized policy language common to the Settlement Class Members, and whether Defendants' misrepresented the performance of the Policies in annual Policy Statements and their financial condition in Corporate Reports; (c) the claims of the representative Plaintiffs are typical of the claims of the Settlement Class, and the representative Plaintiffs have no conflicts of interest with the other Settlement Class Members, as all of their claims arise from Defendants' same conduct, for example in increasing the COI rates and allegedly misrepresenting that each policy was performing as intended, (d) the representative Plaintiffs and Plaintiffs' Counsel are free of conflict with and can fairly and adequately represent and protect the interests of the Settlement Class Members, as shown by their qualifications, experience, investigation, and services performed to date; (e) the actions by Defendants apply generally to the Settlement Class, so that the injunctive relief agreed upon is appropriate respecting the class as a whole; (f) common questions predominate with respect to Plaintiffs' claims because the central questions to be decided are (i) whether Defendants' common course of conduct in implementing the COI Rate Increases breached the standardized policy language contained in each Settlement Class Member's policy, and (ii) whether Defendants uniformly misrepresented the performance of the companies and the Policies through Corporate Reports and annual Policy Statements; and (g) a class action is superior to other available methods for the fair and efficient adjudication of the controversy as it relates to the

proposed Settlement, considering the interests of the Settlement Class Members in individually controlling the prosecution of separate actions and the amount in controversy each individual Settlement Class Member suffered as compared to the high costs of individual suits.

3. The Proposed Settlement, on the terms and conditions set forth in the Settlement Agreement, is hereby preliminarily approved by this Court for settlement purposes only as being fair, reasonable, adequate, and within the range of possible final judicial approval. The Court finds that the Proposed Settlement resulted from non-collusive arm's-length negotiations conducted in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with experienced legal counsel.

4. The Proposed Settlement is sufficient to warrant dissemination of notice thereof to the Settlement Class Members and to conduct a final fairness hearing thereon. The Proposed Settlement provides for substantial cash payments and, importantly, includes valuable future protections to Settlement Class Members concerning any future COI increases by Defendants, extensions to the grace period of certain policies, and limitations on Defendants' claimed right to contest certain death claims. The Court has considered the realistic range of outcomes in the Consolidated Actions, the risks to all parties, including the amount Plaintiffs might receive if they prevailed at trial, the strengths and weaknesses of the cases, the novelty and number of the complex legal issues involved, the risk that Plaintiffs would receive less than the Settlement Relief or take nothing at trial, and the risk of a reversal of any judgment based on a review of the Court's prior orders. The amount of benefits offered by the Proposed Settlement falls within the range of possible final approval based on these factors.

5. For settlement purposes only, the Court finds that Richard Dickman, Kent Alderson, and Lesley S. Rich (as trustee for the Richard S. Wallberg Insurance Trust) are able to

fairly and adequately represent the Settlement Class and appoints them as the Class Representatives for the Settlement Class. Each of these Plaintiffs entered into a contract of insurance with either Banner or William Penn that was subjected to the challenged COI Rate Increases.

6. For settlement purposes only, the Court appoints W. Daniel “Dee” Miles of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. and George W. Walker, III of The Finley Firm, P.C. as Co-Lead Class Counsel for the Settlement Class, finding that each of these attorneys is able to fairly and adequately represent the Settlement Class. Co-Lead Class Counsel are highly experienced trial lawyers with specialized knowledge specifically in insurance litigation and complex class action litigation generally.

7. The plan for giving notice fully complies with the requirements of Rule 23 and due process, and the Court adopts the notice plan set forth in the Settlement Agreement and the form of notice attached as Exhibit A thereto. The Court finds that the Class Notice provides a sufficiently clear and concise description of the Consolidated Actions, the terms of the Proposed Settlement, and the rights and responsibilities of the Settlement Class Members. The Court further finds the dissemination of the Class Notice through direct U.S. Mail and a website as set forth in the Settlement Agreement is the best means practicable under the circumstances, and is reasonably calculated to apprise the Settlement Class Members of the Consolidated Actions and their right to participate in, object to, or exclude themselves from the Proposed Settlement. Accordingly, the Parties are directed to disseminate the Settlement Class Notice pursuant to the terms of the Settlement Agreement.

8. The Court approves KCC, LLC as the Settlement Administrator tasked with disseminating the Class Notice, any required Class Action Fairness Act notices, establishing and

maintaining a case website, handling Settlement Class Member inquiries, processing opt-outs, administering the Settlement, and other such tasks necessary to accomplish these objectives.

9. The Court will conduct a Fairness Hearing, at which it will consider any objections to the Settlement Agreement and determine whether the Settlement Agreement should be finally approved, on February 5, 2020 at 3:00 p.m.

10. Plaintiffs' Counsel shall file their motion for an award of attorneys' fees, litigation expenses, and service awards no later than 14 days prior to the Settlement Fairness Hearing. The Court will rule upon the motion at the Fairness Hearing. As set forth in the Settlement Agreement, all such awards shall be paid from the Common Settlement Fund.

11. Any Settlement Class Member who wishes to be excluded must submit to Co-Lead Class Counsel a written Request for Exclusion by U.S. mail and postmarked no later than forty-five (45) days from the Notice Date. The Request for Exclusion must (a) state the identity of the Policyholder; (b) state one or more of the Policyholder's Class Policy numbers, (c) state that the Policyholder desires to be excluded from the Settlement Class, and (d) be signed by the Policyholder or by a person providing a valid power of attorney to act on behalf of such person or entity. If there are multiple Policyholders with respect to a single Class Policy (such as spouses) all owners must sign unless the signatory holds and submits a copy of a valid power of attorney to act on behalf of all owners of the Class Policy.

12. Any Settlement Class Member who has not filed a timely and proper written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Proposed Settlement must file with the Court a statement of objection, postmarked no later than forty-five (45) days after the Notice Date. Each such statement of objection must set forth: (a) the Settlement Class Member's full name, current address, telephone number, and applicable

Class Policy number(s); (b) whether the Settlement Class Member objects to the Settlement, in whole or in part; (c) a statement of the legal and factual basis for the objection and include copies of any and all documents that the objecting Settlement Class member has and will submit in support of his/her position; (d) the number of times the objector has objected to a class action settlement within the five years preceding the date the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and/or appellate courts in each listed case; and (e) whether the Settlement Class Member and/or a representative for the Settlement Class Member will appear at the Fairness Hearing. A Settlement Class Member who does not submit a timely and proper objection will not be treated as having filed a valid objection to the Settlement. Settlement Class Members may so object either on their own or through an attorney hired at their own expense. If a Settlement Class Member hires an attorney to represent him or her, the attorney must (a) file a notice of appearance with the Clerk of the Court no later than 14 days before the Fairness Hearing, and (b) send a copy of the same to Co-Lead Class Counsel and Banner and William Penn's Counsel by U.S. mail postmarked no later than 14 days before the date of the Fairness Hearing.

13. Any Settlement Class Member who timely files a proper written objection may appear at the Fairness Hearing in support of the objection, provided the notice of the intention to appear is given as specified in this Paragraph. Settlement Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must file a notice of intention to appear with the Court no later than 14 days before the date of the Fairness Hearing. A Settlement Class Member who appears at the Fairness Hearing will be permitted to argue only those matters that were set forth in a written objection filed by such Class Member. No Settlement Class Member

will be permitted to raise matters at the Fairness Hearing that the Settlement Class Member could have raised in a written objection, but failed to do so, and all objections to the Settlement that are not set forth in such a written objection are deemed waived. Any Settlement Class Member who fails to comply with the applicable provisions of the Settlement Agreement and the Class Notice will be barred from appearing at the Fairness Hearing. The Parties may serve and file responses to written objections at least 7 days prior to the Fairness Hearing.

14. Any Settlement Class Member who fails to comply with the provisions of the preceding Paragraphs will waive and forfeit any and all rights he or she may have to appear separately and/or object, and will be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Consolidated Actions.

15. In the event the Court does not finally approve the Proposed Settlement or the Final Approval Order is not entered, any and all rights of the Parties existing prior to the execution of the Settlement Agreement, including but not limited to Plaintiffs' right to seek certification of additional Plaintiff classes in the Consolidated Actions and Defendants' rights to oppose class certification, shall be preserved, and the Consolidated Actions shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered. In such event, none of the terms of the Settlement Agreement shall be admissible in any trial or otherwise used against any Party, except to enforce the terms thereof that relate to the Parties' obligations in the event of termination.

16. The Parties are directed to carry out their obligations under the Settlement Agreement.

17. All Settlement Class Members (directly or indirectly through a representative or otherwise) are hereby preliminarily enjoined and barred from (i) filing, commencing, maintaining,

prosecuting, intervening in or participating in (as a plaintiff, claimant, putative class member, or otherwise) any other lawsuit (including any putative class action) or administrative, regulatory, arbitration or other proceeding in any jurisdiction asserting any claims based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Consolidation Actions and/or the Released Claims; and (ii) filing, commencing, maintaining, participating in or prosecuting (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Consolidation Actions and/or the Released Claims where the putative class would include any Settlement Class Member.


18. In no event shall this Order, the Settlement, or the Settlement Agreement, whether or not consummated, any of its provisions or any negotiations, statements, or court proceeding relating to them in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Consolidated Actions, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an adjudication, admission, or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Defendants or Plaintiffs, or as a waiver by Defendants or Plaintiffs of any applicable claims or defenses.

19. For the benefit of the Settlement Class Members and as provided in the Settlement Agreement, this Court retains continuing jurisdiction over the implementation, interpretation, and enforcement of the Settlement Agreement.

20. The Court adopts and sets as deadlines the following dates proposed by the Parties in the Proposed Scheduling Order [Doc. 255] filed on October 11, 2019:

<u>Event</u>	<u>Proposed Due Date</u>	<u>Date/Deadline</u>
Direct Mail Notice Dissemination Begins	Twenty-three (23) days after the Preliminary Approval Date.	November 7, 2019
Deadline for Settlement Class Members to submit exclusion requests or objections.	Forty-five (45) days after the Notice Date.	December 22, 2019
Deadline for filing papers in support of final approval of Settlement; the request for attorneys' fees and expenses; and class representative service awards.	Fourteen (14) days prior to the Settlement Fairness Hearing.	January 22, 2020
Deadline for Settlement Notice Administrator to file Final Declaration	Fourteen (14) days prior to the Settlement Fairness Hearing.	January 22, 2020
Deadline for Notice of Objector of Intention to Appear at Settlement Fairness Hearing	Fourteen (14) days prior to the Settlement Fairness Hearing	January 22, 2020
Deadline for filing and serving reply papers in further support of the Settlement and the request for attorneys' fees and expenses and/or in response to the objections.	Seven (7) days prior to the Settlement Fairness Hearing	January 29, 2020
Settlement Fairness Hearing	Ninety (90) days after the Notice Date	February 5, 2020 at 3:00 P.M.

SO ORDERED this the 17th day of October, 2019.


 Hon. Richard D. Bennett
 United States District Court Judge