

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ADVANCE TRUST & LIFE ESCROW)	
SERVICES, LTA, AS NOMINEE OF LIFE)	Civil Action No. 18-cv-03444-MKV
PARTNERS POSITION HOLDER TRUST, and)	
JAMES KENNEY on behalf of themselves and)	
all others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
PHL VARIABLE INSURANCE COMPANY,)	
)	
Defendant.)	
)	
)	

JOINT STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, subject to approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, by and between: (i) Plaintiffs Advance Trust & Life Escrow Services, LTA and the party proposed to be substitute in its stead, PHT Holding I, LLC, and James Kenney (“Plaintiffs”), individually and on behalf of the Settlement Class; (ii) Defendant PHL Variable Insurance Company (“PHL”), that the causes of action and matters (the “Released Claims”) raised by, related to, and/or interrelated with this lawsuit (the “Action”), as captioned above and defined below, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement.

This Agreement is made and entered into by and between Plaintiffs and PHL, and is intended to fully, finally, and forever resolve, discharge, and settle the Action and Released Claims upon and subject to the terms and conditions hereof.

I. DEFINITIONS AND CONSTRUCTION

Capitalized terms in this Agreement shall have the meaning set forth below:

1. “2017 Adjustment” means the adjustment to the COI rate scales for Phoenix Accumulator Universal Life (“PAUL”) and Phoenix Estate Legacy (“PEL”) policies, specifically in series PAUL 1, PAUL 2, PAUL 2C, PAUL 3, PAUL 3A, PAUL 3B, PAUL 3C, PAUL 4, PAUL 4A, PEL 2, PEL 3, and PEL 3A, effective beginning on each policy’s first policy anniversary date falling on or about November 5, 2017 and ceasing with the onset of the 2021 Adjustment, as defined below.

2. “2021 Adjustment” means the adjustment to the COI rate scales for PAUL and PEL policies, specifically in series PAUL 1, PAUL 2, PAUL 2C, PAUL 3, PAUL 3A, PAUL 3B, PAUL 3C, PAUL 4, PAUL 4A, PEL 2, PEL 3, and PEL 3A, effective beginning on each policy’s first policy anniversary date falling on or after January 1, 2021, and which is currently at issue in the Connecticut Action. For the avoidance of doubt, the adjustment to COI rate scales resulting from the 2021 Adjustment is the difference between (i) the COI rate scales in effect following the 2021 Adjustment and (ii) the COI rate scales in effect prior to the 2017 Adjustment.

3. “Action” means this lawsuit, captioned *Advance Trust & Life Escrow Services, LTA et al. v. PHL Variable Insurance Company*, Case No. 18-CV-3444 (MKV), currently pending in the United States District Court for the Southern District of New York, filed April 19, 2018.

4. “Advance Trust” means Advance Trust & Life Escrow Services, LTA and its respective agents, heirs, relatives, representatives, attorneys, successors, trustees, subrogees, executors, and assignees, including PHT Holding I, LLC and all other persons or entities acting by, through, under, as successor-in-interest to, or in concert with Advance Trust.

5. “Agreement” means this Joint Stipulation and Settlement Agreement.

6. “Claims” means all suits, claims, cross-claims, counter-claims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), including Unknown Claims, of any nature, character, or description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, present or contingent, for any injury, damage, obligation, or loss whatsoever, including but not limited to compensatory damages, statutory damages, liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys’ fees.

7. “Class” means all owners of PAUL and PEL policies issued by PHL whose policies experienced an increase to the COI rate scales between (i) November 5, 2017 and (ii) the monthly deduction immediately preceding the policy’s first policy anniversary date falling on or after January 1, 2021. Specifically excluded from the Class are the Excluded Policies; Class Counsel and their employees; PHL, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; and the Court, the Court’s staff, and their immediate families.

8. “Class Counsel” means Susman Godfrey L.L.P., which was appointed interim lead class counsel in this Action. *See* Dkts. 92–93.

9. “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Final Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses.

10. “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Class.

11. “Class Policies” means all Policies in the Class.

12. “COI” means cost of insurance.

13. “Confidential Information” means material designated as “Confidential” in accordance with the terms of the Protective Order (Dkt. 64).

14. “Connecticut Action” means the action entitled *Kenney v. PHL Variable Insurance Company*, Case No.3:22-cv-00552 (OAW), currently pending in the United States District Court for the District of Connecticut.

15. “Court” means The United States District Court for the Southern District of New York, Hon. Mary Kay Vyskocil.

16. “Effective Date” means February 17, 2023.

17. “Excluded Claims” means all claims related to (a) the 2021 Adjustment or (b) any future COI rate scale increases, or changes to any other policy charges and credits, imposed after December 31, 2020. For the avoidance of doubt: all of the claims raised in the Connecticut Action are Excluded Claims and are expressly not being released herein. In addition, in reaching this Settlement and releasing claims related to the 2017 Adjustment, the Parties acknowledge that the COI charges assessed as a result of the 2021 Adjustment are not related to, or interrelated with, and did not arise out of the 2017 Adjustment, that the 2021 Adjustment and the 2017 Adjustment are separate and independent COI adjustments, and that no aspect related to the 2021 Adjustment is in any way herein released (including but not limited to any claims that the 2021 Adjustment was allegedly calculated using an improper baseline), and that the fact and amount of this Settlement may not be used to defend against any claims or offset any damages for any claims raised in the Connecticut Action. Nothing in this paragraph with regard to the relationship, if any, between the 2021 Adjustment and 2017 Adjustment can be used as a defense by PHL in the Connecticut Action.

18. “Excluded Policies” means (a) Policy Nos. 97523677 and 97523828, which are owned by Conestoga Trust and Conestoga Trust Services, LLC and subject to separate litigation against PHL; and (b) the policies listed in Exhibit A, which are subject to prior settlement agreements. To the extent an Owner owns both Class Policy(ies) and Excluded Policy(ies), the Owner is included in the Class with respect to the Class Policy(ies) but not with respect to any Excluded Policy(ies).

19. “Fairness Hearing” means the Court approval hearing referenced in Federal Rule of Civil Procedure 23(e)(2).

20. “Final Approval Date” means the date on which the Court enters its Order and Judgment approving the Settlement.

21. “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and Judgment, meaning the date when no further appeal or motion for rehearing is permitted; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment.

22. “Final Settlement Fund” means an \$18,500,000 cash fund, reduced proportionally by policy face amount for any Opt-Outs as described in paragraph 52 below and increased to account for any interest as described in paragraph 51 below.

23. “Government Regulators” means the Connecticut Insurance Department (“CID”), any other government entity (or their duly appointed delegate) with regulatory authority over PHL or its successors in interest, or any court appointed administrator or receiver.

24. “Incentive Award” means the amount of an award approved by the Court to be paid to Plaintiffs from the Final Settlement Fund, in addition to any settlement relief they may be eligible to receive, to compensate Plaintiffs for efforts undertaken by them on behalf of the Settlement Class.

25. “Mediator” means Eric Green, Esq., with Resolutions, LLC.

26. “Net Settlement Fund” means the Final Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Award; (iii) any Class Counsel’s Fees and Expenses awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

27. “Opt-Out Period” means the period of time that begins the day after the earliest date on which the Class Notice is first mailed, published, or appears online, and that ends no later than 30 days prior to the Fairness Hearing. The deadline for the Opt-Out Period will be specified in the Class Notice.

28. “Opt-Out Policy(ies)” means the Policy or Policies that are validly excluded from the Settlement Class during the Opt-Out Period.

29. “Order and Judgment” means the Court’s order approving the Settlement and entering final judgment. The judgment will include a provision for the retention of the Court’s jurisdiction over the Parties to enforce the terms of the judgment.

30. “Owner” or “Owners” means a Policy’s owner, whether person or entity, as recorded on PHL’s books (or the books of its third-party administrator) as of January 1, 2023. For Policies that have lapsed, surrendered, matured, or otherwise terminated, Owner means a Policy’s owner as recorded on PHL’s books (or the books of its third-party administrator) as of the date the Policy lapsed, surrendered, matured, or otherwise terminated.

31. “Parties” means, collectively, Plaintiffs and PHL. The singular term “Party” means either of Plaintiffs or PHL, as appropriate.

32. “PAUL” means universal life insurance policies and certificates marketed as Phoenix Accumulator Universal Life.

33. “PEL” means universal life insurance policies and certificates marketed as Phoenix Estate Legacy.

34. “PHL” means PHL Variable Insurance Company.

35. “Plaintiffs” means Advance Trust and James Kenney, as representatives of the putative class, and their heirs, assigns, and successors-in-interest.

36. “Policy” or “Policies” means any PAUL or PEL policies that were subjected to the 2017 Adjustment.

37. “Released Claims” means all Claims that were alleged or could have been alleged in the Action arising out of the same factual predicate relating to and/or arising out of the 2017 Adjustment as alleged in the Action, including all Claims that were alleged or could have been alleged by Advance Trust and its respective agents, heirs, relatives, representatives, attorneys, successors, trustees, subrogees, executors, and assignees, including PHT Holding I, LLC, and all other persons or entities acting by, through, under, as successor-in-interest to, or in concert with Advance Trust, as well as all claims that were alleged or could have been alleged by James Kenney, as representatives of the putative class, and his heirs, assigns, and successors-in-interest. Released Claims do not include Excluded Claims.

38. “Released Parties” means PHL, PHL Holdings, LLC, Nassau Financial Group, L.P., and each of their past, present, and future parent companies, direct and indirect subsidiaries, affiliates, predecessors, successors, and assigns, together with each of their respective past,

present, and future officers, directors, shareholders, employees, representatives, insurers, attorneys, and agents (including but not limited to, those acting on behalf of PHL and within the scope of their agency). To the extent a Settlement Class Member is an Owner (as defined herein) of both an Excluded Policy and a Class Policy, any release by that Class Member will only be applicable for the Class Policy and not for the Excluded Policy.

39. “Releasing Parties” means Plaintiffs Advance Trust, James Kenney, and each Settlement Class Member, as defined in this Agreement and on behalf of themselves and their respective agents, heirs, relatives, representatives, attorneys, successors, trustees, subrogees, executors, and assignees, including PHT Holding I, LLC, and all other persons or entities acting by, through, under, as successor-in-interest to, or in concert with any of them.

40. “Settlement” means the settlement set forth in this Agreement.

41. “Settlement Administration Expenses” means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including those fees incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Final Settlement Fund.

42. “Settlement Administrator” means the third-party settlement administrator of the Settlement who is selected by the Plaintiffs. The Settlement Administrator’s fees shall be paid from the Final Settlement Fund.

43. “Settlement Class” means the Class excluding the Opt-Out Policies.

44. “Settlement Class Member(s)” means all persons and entities that are included in the Settlement Class.

45. “Settlement Class Policy” means any policy in the Settlement Class.

46. “Settlement Fund” means a cash fund consisting of the consideration paid for the

benefit of the Settlement Class.

47. “Settlement Fund Account” means the account designated and controlled by Class Counsel at one or more national banking institutions into which the Final Settlement Fund will be deposited for the benefit of the Class pursuant to this Agreement.

48. “Unknown Claims” means any claims asserted, that might have been asserted or that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action with respect to the Released Claims that the Releasing Parties do not know or suspect to exist in his or her favor at the Final Approval Date, and which if known by him or her might have affected his or her decision to opt-out of or object to the Settlement.

49. The terms “he or she” and “his or her” include “it” or “its,” where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

50. All references herein to sections and paragraphs refer to sections and paragraphs of this Agreement, unless otherwise expressly stated in the reference.

II. SETTLEMENT RELIEF

1. Cash Consideration to the Settlement Class

51. Within thirty (30) calendar days after the Final Settlement Date, PHL will fund or will cause to be funded the Final Settlement Fund into the Settlement Fund Account. If there is an appeal of the Order and Judgment, PHL will either (1) fund or will cause to be funded the Final Settlement Fund into the Settlement Fund Account within forty-five (45) calendar days of the date of the Order and Judgment or (2) include interest on the Final Settlement Fund calculated as 4% annualized simple interest from the date of the Order and Judgment through the date of payment.

52. Approval of the Settlement shall provide for Opt-Outs pursuant to Federal Rule of Civil Procedure 23(e)(4). The Settlement Fund shall be proportionately reduced, on a pro-rata basis measured by the total face amount of all Opt-Out Policies as compared with the total face amount of all Class Policies.

53. Any disputes regarding the reduction of the Settlement Fund shall first be presented to the Court for a determination. The Settlement Fund, after any proportionate reduction pursuant to paragraph 52, is referred to herein as the Final Settlement Fund. The Class Policies that do not timely and validly opt-out during the Opt-Out Period provided in Paragraph 27 constitute the Settlement Class. An Owner of multiple Class Policies cannot exclude less than all Class Policies owned. For the avoidance of doubt, an Owner who owns multiple Class Policies in a representative or agency capacity (such as a trustee, securities intermediary, or other similar agency) for more than one principal, may request to exclude Class Policies from the Settlement held on behalf of one principal while participating in the Settlement with respect to Class Policies held by other principals. A representative Owner may not request to exclude less than all policies held on behalf of any single principal; in other words, the party holding the ultimate economic interest in multiple Class Policies must choose to be a part of the Settlement Class or excluded from the Settlement Class for all such Class Policies. The Parties agree that the opt-out reduction methodology set forth in paragraph 52 is proposed solely for settlement purposes and may not be used as an admission or evidence of the validity of any damages model regarding any alleged wrongdoing by PHL.

54. Notwithstanding anything in this Agreement, if the total percentage of the Settlement Class (as measured by the face amount of the Policy) that submits timely and valid requests for exclusion from the Settlement Class, or on whose behalf timely and valid requests for such exclusion are submitted, exceeds the number set forth in the confidential agreement between

the Parties, PHL shall have the option, but not the obligation, to terminate this Agreement no later than fourteen (14) business days after the Opt-Out Period expires.

55. The Final Settlement Fund will be a single qualified settlement fund pursuant to 26 U.S.C. § 468B that will be used to pay: (i) Settlement Administration Expenses; (ii) any Incentive Award; (iii) any Class Counsel's Fees and Expenses awarded by the Court; (iv) all payments to the Settlement Class; and (v) any other payments provided for under this Settlement or the Order and Judgment. All funds held in the Final Settlement Fund and all earnings thereon, shall be deemed to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall have been disbursed pursuant to the terms of this Agreement or further order of the Court.

56. Following the occurrence of both (1) the Final Settlement Date and (2) PHL's funding of the Final Settlement Fund into the Settlement Fund Account, PHL shall no longer have any right, title, or interest in the sums held in the Settlement Fund Account. The Parties agree that this is a non-reversionary settlement, and that there shall be no reversion of the Final Settlement Fund to PHL. Class Counsel will petition the Court for approval of the proposed manner in which any unclaimed or unpayable distributions of the Settlement Fund will be further distributed or paid.

57. Class Counsel shall have full discretion over the allocation of the Final Settlement Fund to the Settlement Class, including the formula and manner that will be used to pay claims to the Settlement Class Members, subject to Court approval. Any disputes with respect to allocation shall be separate and severable from this Agreement. Class Counsel may enlist the services of the Mediator, Settlement Administrator, or others to assist with development of a plan of allocation of the Final Settlement Fund.

58. PHL shall not be required make any payments in connection with this Action other than the Final Settlement Fund amount.

2. Additional Consideration to the Settlement Class

59. For a period of two (2) years following the Effective Date of this Agreement, PHL agrees that COI rate scales for the Class Policies will not be increased above the current rate scales for PAUL 1, PAUL 2, PAUL 2C, PAUL 3, PAUL 3A, PAUL 3B, PAUL 3C, PAUL 4, PAUL 4A, PEL 2, PEL 3, and PEL 3A that became effective on each policy's first policy anniversary date falling on or after January 1, 2021, unless requested to do so by any Government Regulators. This obligation is referred to as the "COI Increase Moratorium."

60. If, within two years of the Effective Date of this Agreement, PHL reaches an agreement concerning any of the Opt-Out Policies whereby PHL has agreed to not increase the COI rate scales on such policies for a period longer than two (2) years following the Effective Date of this Agreement PHL will extend the duration of the COI Increase Moratorium on the Final Settlement Class Policies to be as long as the duration afforded to the subsequently settling Opt-Out Policies. For the avoidance of doubt: (i) any agreement that would exempt any Opt-Out Policies from an additional COI rate scale increase, including any type of rebate, refund, or discount of an additional COI rate scale increase, shall be treated as triggering this provision extending the COI Increase Moratorium; and (ii) no party shall have any rights under this provision until such time as PHL actually implements an additional COI rate scale increase on the Settlement Class Policies.

61. PHL agrees to not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy

based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy. If PHL breaches this covenant, it shall also be liable for reasonable attorneys' fees and costs in connection with any such attempted rescission, cancellation, claim, or suit. The covenant set forth in this paragraph is solely prospective and does not apply to any actions taken by PHL in the past. The covenant set forth in this paragraph does not apply to applications for reinstatement of lapsed policies. Nothing contained in this Agreement shall otherwise restrict PHL from: (i) following its normal procedures and any applicable legal requirements regarding claims processing, including but not limited to confirming the death of the insured; determining the proper beneficiary to whom payment should be made in accordance with applicable laws, the terms of the policy and policy specific documents filed with PHL; making timely payments into insureds' accounts, where applicable; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age or gender of the insured; or (iii) complying with any court order, law, or regulatory requirements or requests, including but not limited to, compliance with regulations relating to the Office of Foreign Asset Control, Financial Industry Regulatory Authority, and Financial Crimes Enforcement Network.

III. PRELIMINARY APPROVAL AND CLASS NOTICE

62. The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of the Settlement by March 7, 2023, which shall include a request to notify the Class of the Settlement and provide a period during which Class Members can request exclusion from the settlement. Plaintiffs will share a draft of the motion seeking preliminary approval of the Settlement with PHL no less than five (5) calendar days before it is filed. To the extent the Court

finds that the Settlement does not meet the standard for preliminary approval, the Parties will negotiate in good faith to modify the Settlement directly or with the assistance of the Mediator and endeavor to resolve the issue(s) to the satisfaction of the Court. For the avoidance of doubt, PHL is not required to agree to alter the terms of the Settlement to its detriment.

63. Plaintiffs' form of Class Notice will be direct mailing to the address of the last known Owner, as recorded in PHL's or its third party administrator's administration system, as well as publication notice through a settlement website.

64. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) no later than 45 calendar days after the Notice Date, or as otherwise determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member; (2) Policy number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (4) copies of any papers, briefs, or other documents upon which the objection is based; (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (6) the signature of the Settlement Class Member or his/her counsel. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing the objecting Settlement Class Member who will appear at the Settlement Hearing. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections as provided in this Paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. The Class Notice shall advise Settlement Class Members of their right to object and the manner required to do so.

65. Within ten (10) calendar days following the filing of this Agreement with the Court, PHL shall serve notices at its own expense of the proposed Settlement upon appropriate officials in compliance with the requirements of the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715.

IV. INCENTIVE AWARD AND FEES AND EXPENSES

66. Plaintiffs will move for an Incentive Award from the Final Settlement Fund in an amount up to but not more than \$25,000 for each named Plaintiff as representative of the putative class. PHL will not oppose Plaintiffs’ motion. The purposes of such an award shall be to compensate Plaintiffs for efforts undertaken on behalf of the Class. The Incentive Award shall be made to Plaintiffs in addition to, and shall not diminish or prejudice in any way, any settlement relief which they may be eligible to receive.

67. Plaintiffs will move for attorneys’ fees not to exceed 33 1/3% of the gross benefits provided to the Settlement Class (as described in ¶¶ 51–61 above), and reimbursement for all expenses incurred or to be incurred, payable only from the Final Settlement Fund. Class Counsel’s Fees and Expenses, as awarded by the Court shall be paid from the Final Settlement Fund within five (5) business days after the funding of the Final Settlement Fund pursuant to paragraph 51. PHL agrees not to oppose Plaintiffs’ motion for Class Counsel’s Fees and Expenses to the extent Plaintiff’s request does not exceed the amounts set forth above.

68. Neither Plaintiffs nor PHL shall be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, this Agreement, or the Settlement, other than those expressly provided in this Agreement.

69. The Parties agree that the Settlement is not conditioned on the Court’s approval of the Incentive Award or Class Counsel’s Fees and Expenses.

V. TAX REPORTING AND NO PREVAILING PARTY

70. Any person or entity receiving any payment or consideration pursuant to this Agreement shall alone be responsible for the reporting and payment of any federal, state and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement, and PHL shall not have any obligation to report or pay any federal, state and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement.

71. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely out of the Final Settlement Fund.

72. No Party shall be deemed the prevailing party for any purposes of this Action.

VI. RELEASES AND WAIVERS

73. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims. The Released Claims do not include any Excluded Claims.

74. The Releasing Parties hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Parties asserting Released Claims.

75. With respect to any Released Claims under this Agreement, the Parties stipulate and agree that, upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Releasing Parties shall upon the Final Settlement Date be deemed to have, and by operation of the Order and Judgment shall have, waived any and all provisions, rights, or benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties upon the Final Settlement Date, shall be deemed to have, and by operation of the Order and Judgment shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, Released Claims that are negligent, intentional, with or without malice, or any breach of any duty, law, or rule without regard to subsequent discovery or existence of such different or additional facts.

76. Nothing in this Release shall preclude any action to enforce the terms of this Agreement.

77. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

VI. OTHER PROVISIONS

78. The Parties: (i) acknowledge that it is their intent to consummate this Agreement, (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their reasonable best efforts to fulfill the foregoing terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in good faith, and at arm's length by the Parties, with the assistance of the Mediator, following two mediations on January 20, 2022 and November 8, 2022, and additional follow-on communications, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

79. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, PHL's counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

80. PHL specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the Claims in the Action and make no concessions or admissions of liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or communications related thereto, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties, or any of them, in any civil, criminal or

administrative proceeding in any court, administrative agency, or other tribunal, including without limitation in the Connecticut Action. Nothing in this paragraph shall prevent PHL and/or any of the Released Parties from using this Agreement and Settlement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

81. PHL agrees to provide, or cause to be provided, all data reasonably necessary for Class Counsel to effectuate the distribution of Class Notice, allocation, valuation, and payments to the Settlement Class.

82. The Parties agree that if this Agreement or the Settlement fails to be approved, fails to become effective, otherwise fails to be consummated, is declared void, if there is no Final Settlement Date, or in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Final Settlement Fund by or on behalf of PHL to be a preference, voidable transfer, fraudulent conveyance, or similar transaction that is required to be returned, then the Parties will be returned to *status quo ante*, as if this Agreement had never been negotiated or executed. Each Party will be restored to the place it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense that was available to it at that time. The Parties may move the Court for any relief necessary to affect this outcome.

83. Nothing in this Agreement shall change the terms of any Policy. Nothing in this Agreement shall preclude any action to enforce the terms of this Agreement.

84. The Parties agree, to the extent permitted by law, that all agreements made and orders entered during the course of the Action relating to confidentiality of information shall

survive this Agreement. To the extent Class Counsel or the Settlement Administrator requires Confidential Information to effectuate the terms of this Agreement, the terms of the Protective Order shall apply to any information necessary to effectuate the terms of this Agreement.

85. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiff and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on the website as described in paragraph 63.

86. Each person executing the Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

87. The Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, electronically signed PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as the original. A complete set of executed counterparts shall be filed with the Court.

88. The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties hereto. This Agreement is not designed to and does not create any third-party beneficiaries either express or implied, except as to the Settlement Class Members.

89. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any Party.

90. Other than necessary disclosures made to the Court or the Settlement Administrator, this Agreement and all related information and communication shall be held strictly confidential by Plaintiff, Class Counsel, and their agents until such time as the Parties file this Agreement with the Court.

91. The Parties and their counsel further agree that their discussions, in addition to information and drafts exchanged by the Parties, over the course of negotiating this Settlement are confidential under the terms of the mediation agreement signed by the Parties in connection with the mediation session with the Mediator and any follow-up negotiations between the Parties' counsel. Such exchanged information was made available on the condition that neither the Parties nor their counsel may disclose it to third parties (other than experts or consultants retained by the Parties in connection with the Action and subject to confidentiality restrictions), that it not be the subject of public comment, and that it not be publicly disclosed or used by the Parties or their counsel in any way in the Action should it not settle, or in any other proceeding; provided however, that nothing contained herein shall prohibit the Parties from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of the Action.

92. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without reference to its choice-of-law or conflict-of-laws rules.

93. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement and any discovery sought from or concerning objectors to this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

94. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and Sunday) express delivery service as follows:

(a) If to PHL, then to:

Thomas A. Hetherington
Jarrett E. Ganer
McDowell Hetherington LLP
1001 Fannin Street
Suite 2400
Houston, TX 77002
tom.hetherington@mhlhp.com
jarrett.ganer@mhlhp.com

(b) If to Plaintiffs or the Class, then to:

Seth Ard
Ryan C. Kirkpatrick
Komal Patel
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
Fax: 212-336-8340
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
kpatel@susmangodfrey.com


Steven G. Sklaver
Michael Adamson
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150
ssklaver@susmangodfrey.com
madamson@susmangodfrey.com

95. The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

96. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Each other day of the period to be computed shall be included, including the last day thereof, unless such last day is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court on a day in which the court is closed during regular business hours. In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the court is closed. When a time period is less than seven business days, intermediate Saturdays, Sundays, legal holidays, and days on which the court is closed shall be excluded from the computation. As used in this Paragraph, legal holidays include New Year's Day, Dr. Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by Federal law or New York Law.

AGREED TO BY:

PHL Variable Insurance Company


By: 

Eric Marhoun

Title: Secretary

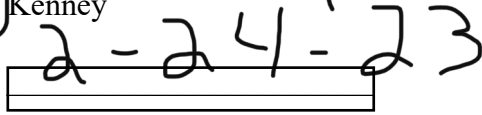
Date: 2/24/23

AGREED TO BY:

A handwritten signature in black ink, appearing to read "James Kenney", is written over a rectangular box. The signature is cursive and somewhat stylized.

James Kenney

Date:

A handwritten date "2-24-23" is written in black ink over a rectangular box. The numbers are written in a simple, slightly cursive style.

AGREED TO BY:
PHT Holding I, LLC

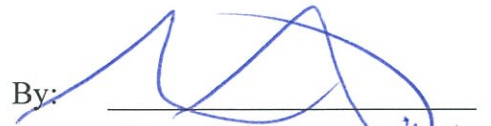
By: Andrew Pless

Title: Authorized Signer

Date: Feb 22, 2023

AGREED TO BY:

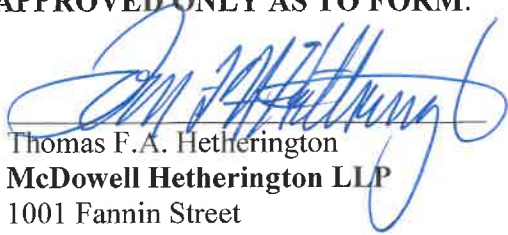
Advance Trust Life & Escrow Services, LTA, as Securities Intermediary for the Life Partners Position Holder Trust

By: 

Title: Brandon Gillin
President

Date: 2/22/2023

APPROVED ONLY AS TO FORM:



Thomas F.A. Hetherington
McDowell Hetherington LLP
1001 Fannin Street
Suite 2400
Houston, TX 77002

Counsel for Defendant PHL Variable Insurance Company



Steven G. Sklaver
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029

Interim Class Counsel and Attorneys for Plaintiffs

EXHIBIT A:
LIST OF EXCLUDED POLICIES

97513181	97519674	97522776	97523386	97524036	97525814
97513826	97519675	97522782	97523390	97524059	97525852
97513947	97519891	97522819	97523469	97524150	97525862
97513959	97520932	97522833	97523489	97524158	97525904
97513963	97521005	97522848	97523508	97524176	97525915
97514213	97521006	97522861	97523512	97524192	97525918
97514277	97521087	97522875	97523560	97524223	97525937
97514279	97521156	97522877	97523610	97524242	97525940
97514311	97521205	97522908	97523617	97524370	97525983
97514670	97521259	97522922	97523623	97524424	97525997
97514671	97521493	97522947	97523624	97524479	97526021
97515078	97521613	97522948	97523628	97524555	97526032
97515342	97521638	97522956	97523630	97524574	97526057
97515502	97521650	97522990	97523631	97524593	97526073
97515559	97521706	97522997	97523645	97524621	97526090
97515596	97521739	97523000	97523650	97524634	97526091
97515597	97521857	97523022	97523654	97524683	97526106
97515662	97521909	97523064	97523661	97524728	97526119
97515667	97522011	97523078	97523700	97524751	97526139
97515743	97522017	97523083	97523707	97524873	97526152
97515745	97522086	97523084	97523731	97524884	97526176
97515795	97522087	97523090	97523741	97524887	97526195
97516060	97522088	97523098	97523743	97524893	97526202
97516106	97522171	97523104	97523748	97524921	97526205
97516138	97522243	97523106	97523759	97524949	97526227
97516269	97522284	97523111	97523766	97525010	97526290
97516307	97522289	97523115	97523773	97525063	97526310
97516324	97522292	97523117	97523778	97525113	97526313
97516375	97522302	97523118	97523810	97525145	97526362
97516376	97522310	97523119	97523811	97525207	97526366
97516379	97522374	97523140	97523812	97525236	97526370
97516389	97522375	97523156	97523829	97525330	97526373
97516394	97522400	97523172	97523833	97525402	97526383
97518600	97522440	97523187	97523846	97525404	97526387
97518606	97522558	97523223	97523859	97525455	97526402
97518647	97522571	97523224	97523861	97525472	97526421
97518723	97522605	97523242	97523874	97525504	97526431
97518725	97522622	97523257	97523882	97525536	97526442
97519064	97522640	97523281	97523888	97525538	97526463
97519065	97522689	97523313	97523889	97525591	97526465
97519083	97522692	97523340	97523891	97525621	97526474
97519088	97522694	97523352	97523903	97525714	97526491
97519155	97522696	97523363	97523935	97525779	97526504
97519664	97522723	97523385	97524032	97525795	97526508

EXHIBIT A:
LIST OF EXCLUDED POLICIES

97526519	97527787
97526541	97527808
97526555	97527896
97526557	97527899
97526585	97527954
97526594	97528010
97526664	97528066
97526665	97528079
97526668	97528151
97526682	97528165
97526702	97528188
97526806	97528285
97526816	97528331
97526879	97528337
97526926	97528496
97526954	97528497
97526996	97528539
97527003	97528566
97527024	97528675
97527059	97528754
97527083	97528914
97527126	97529272
97527127	97529410
97527141	97529456
97527152	97529483
97527178	97529581
97527218	97529738
97527235	97530026
97527273	97530105
97527294	97530137
97527315	97530152
97527355	97530197
97527412	97530310
97527447	97530323
97527498	97530369
97527523	97530396
97527571	97530453
97527592	97530460
97527610	97530470
97527637	97530633
97527645	97530843
97527702	97531778
97527720	97535603
97527751	