

STATE OF INDIANA) IN THE ALLEN COUNTY SUPERIOR COURT
) SS:
COUNTY OF ALLEN) CAUSE NO. 02D01-0206-CT-258

NED BADE and WALTER PUGH, JR.,)
) Plaintiffs,)
) vs.)
) LINCOLN NATIONAL CORPORATION,)
) Defendant.)

**STIPULATED ORDER GRANTING PRELIMINARY APPROVAL
TO CLASS ACTION SETTLEMENT AND CONDITIONAL CLASS CERTIFICATION**

Plaintiffs Ned Bade and Walter Pugh, Jr., on behalf of themselves and a putative class, and Defendant Lincoln National Corp. (“LNC”) (collectively “the parties”) have entered into a settlement agreement. The parties have submitted the Settlement Agreement attached as Exhibit “A” to this Court for preliminary approval. This Court now enters this Order Granting Preliminary Approval to Class Action Settlement (“Preliminary Approval Order”) and FINDS, CONCLUDES, ORDERS, AND ADJUDGES as follows:

I. Preliminary Order Regarding Class Certification and Approving Notice to Members of the Settlement Class

A. Class Certification

This Court grants conditional class certification to the following settlement class and subclasses:

All persons who worked for the reinsurance operations of LNC or its affiliates under the Lincoln Re name in 2001 and who were covered by a 2001 Incentive Compensation Plan and who would have been eligible to receive payment under

such a 2001 Incentive Compensation Plan had it been determined that a 15% Return on Equity had been met.

The Parties further seek approval of two subclasses:

Subclass A: Those who were employed by the reinsurance operations of LNC under the Lincoln Re name on or before December 6, 2001 and would have been eligible to receive payment under a 2001 Incentive Compensation Plan had it been determined that a 15% Return on Equity had been met **AND** who **DID NOT** sign a release which purported to release LNC and Swiss Re from any claim under a 2001 Incentive Compensation Plan; and

Subclass B: Those who were employed by the reinsurance operations of LNC under the Lincoln Re name on or before December 6, 2001 and who would have been eligible to receive payment under a 2001 Incentive Compensation Plan had it been determined that a 15% Return on Equity had been met **AND** who **DID** sign a release which purported to release LNC and Swiss Re from any claim under a 2001 Incentive Compensation Plan.

(“Settlement Class.”) The Court finds and concludes that the Settlement Class appears to satisfy all the requirements of Trial Rule 23(A) and (B)(3). The Court preliminary appoints Ned Bade as class representative of proposed Subclass A and Walter Pugh, Jr. as class representative of proposed Subclass B. The Court conditionally appoints Plaintiffs’ counsel, Henry Price of the law firm of Price Waicukauski & Mellowitz, P.C. and Daniel A. Roby of the Roby Hood & Manges Law Firm, as class counsel for the Settlement Class (“Class Counsel”).

B. Notice

The Court approves (1) the proposed form and content of the Class Notice to be mailed by Class Counsel to members of the Settlement Class to the addresses to which LNC sent 2001 Internal Revenue Service Form W-2s or to any other last known addresses (“Last Known Addresses”); and (2) the form and content of an additional notice to be published at LNC’s request in the Fort Wayne News-Sentinel, the Fort Wayne Journal Gazette, and in a major newspaper of general circulation in Miami, Florida, in Indianapolis, Indiana, and in Toronto, Canada (“Publication Notice”) on three dates beginning at the earliest time on or after

September 10, 2004 allowed by the newspapers' publications schedules. The Class Notice and Publication Notice provide information sufficient to inform members of the Settlement Class of the essential terms of the Settlement Agreement, appropriate means for obtaining additional information about the Settlement Agreement and this litigation, appropriate information about the procedures for becoming eligible for a payment under the Settlement Agreement, and appropriate information about their right, and the procedures, to object to the terms of the Settlement Agreement or exclude themselves from the Settlement, if they should wish to do so. The Class Notice will also fairly and adequately inform members of the Settlement Class that failing to timely return an executed Release and Waiver that was included as an attachment to the Class Notice (the "Release and Waiver") would result in them becoming ineligible for payment under the Settlement Agreement.

Class Counsel shall send the Class Notice and Release and Waiver by first-class United States Mail to members of the Settlement Class at Last Known Addresses and shall file with the Court a declaration evidencing their compliance with these duties. Counsel for LNC shall similarly file a declaration that the Publication Notice has been published in the manner and time required by, and in the newspapers specified by, this Preliminary Approval Order.

The Court hereby finds and concludes that members of the Settlement Class will be provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process and Trial Rule 23.

C. Persons Excluded from the Settlement Class

The parties may receive, from certain members of the Settlement Class, requests for exclusion from the Settlement Class and will file with the Court a list of those persons who have timely elected to be excluded. All persons named in the list filed with the Court as having filed

timely exclusions will be excluded from the Settlement Class and will not be bound by the terms of the Settlement.

II. Preliminary Approval of the Class Action Settlement Agreement

The attached Settlement Agreement appears to be fair, reasonable, and adequate and clearly falls within the appropriate range of possible approval. In essence, the Settlement provides that each member of the Settlement Class who submits a Release and Waiver will receive an amount calculated pursuant to the fair and reasonable formula set forth in the attached Settlement Agreement.

III. Administration of the Settlement Fund

This Preliminary Approval Order requires LNC to internally segregate the amount of \$4,300,000 for the purpose of paying from that sum certain amounts to each Class Member who timely submits an executed Release and Waiver, as well as Court-approved attorney fees for Class Counsel and awards to Class Representatives for their services. That amount has been segregated since July 23, 2004, and has been drawing certain interest which will be added to the Settlement Fund. Class Counsel will request Court approval of attorney fees of 40% of the Settlement Fund (minus amounts attributable to opt-outs), plus litigation expenses and awards of \$10,000 to Ned Bade and \$2,500 to Walter Pugh, Jr. for their services as Class Representatives.

IV. Releases, Covenant Not to Sue, and Effect of Settlement Agreement

A. Releases by Settlement Class Members

The Court preliminarily finds that in consideration of the terms of the Settlement Agreement, all members of the Settlement Class, including Plaintiff, who do not opt out of the Settlement will be found, deemed, and adjudged to have fully, finally, and forever released and discharged all of the following claims they have or may have against LNC, Swiss Re Life and

Health America, Safeco, and each of their past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them (“Released Parties”) as set forth in the Waiver and Release and as set forth below:

Plaintiffs and each Class Member hereby expressly agree that they, and each of them, release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding 2001 Incentive Compensation. As part of this Release, Subclass A Class Representative Ned Bade and Subclass B Representative Walter Pugh, Jr., and each Class Member agree that they release, acquit and forever discharge Released Parties from, and shall not now or hereafter institute, maintain or assert against the Released Parties, either directly or indirectly, derivatively, on their own behalf, on behalf of the Class, or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs Ned Bade and Walter Pugh, Jr., or any Class Member against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body on the basis of, connected with, arising out of, or related to, in whole or in part, 2001 Incentive Compensation.

“2001 Incentive Compensation” means compensation under certain 2001 incentive compensation plans (specifically, the Value Incentive Plan or Individual Value Contributor Plan), for eligible employees who worked for the reinsurance operations of LNC or its affiliates under the Lincoln Re name in 2001.

B. Covenant Not to Sue

The Court preliminarily finds that in consideration of the terms of the Settlement Agreement, all members of the Settlement Class, including Plaintiffs, who do not opt out of the Settlement will be found, deemed, and adjudged to have (1) covenanted and agreed that Plaintiffs

nor any of the Settlement Class Members, nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in the Settlement Agreement, against the Released Parties, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or injury allegedly caused by the Released Parties, or any of them, in connection with the released claims; (2) waived any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by them or on their behalf; and (3) agreed that the Settlement Agreement shall be a complete bar to any such action.

C. Effect of a Final Judicial Determination of Invalidity or Unenforceability

If, after the entry by this Court of this Judgment, a notice of appeal of this Judgment is timely filed by any party, objector, claimant, or other person or entity, and if an appellate court makes a final determination that this Judgment is in any respect invalid, contrary to law, or unenforceable, the Settlement Agreement (including LNC's stipulation to the Settlement Class provided for in the Settlement Agreement, and to the subclasses) shall be null and void, and the parties shall return to their respective positions in the Lawsuit as those positions existed immediately before the execution of the Settlement Agreement unless all parties agree in writing to abide by the judgment as modified. .

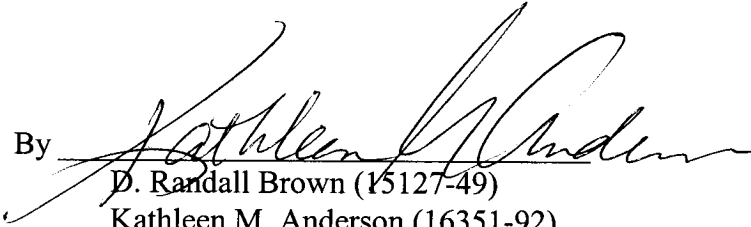
V. No Admission of Liability

The parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Nothing contained in the Settlement Agreement or this Preliminary Approval Order shall be construed, deemed, or offered as an admission by any of the parties for any purpose in any action or proceeding of any kind. In entering this Order with


this provision and other limiting provisions, this Court specifically refers to and invokes the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce each such limiting provision.

Submitted:

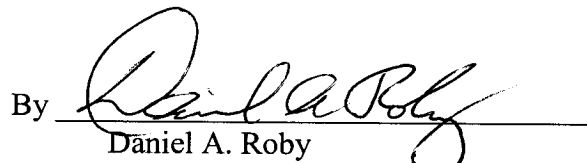
9-10-04
Dated

By 
D. Randall Brown (15127-49)
Kathleen M. Anderson (16351-92)
BARNES & THORNBURG LLP
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9/10/04
Dated

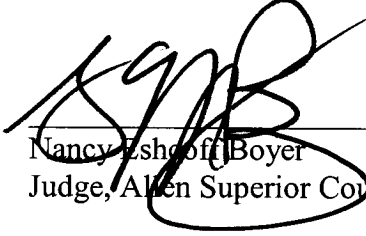
By 
Henry J. Price
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9/10/04
Dated

By 
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APPROVED AND ORDERED

Dated: Sept 10, 2004



Nancy Eshoff Boyer
Judge, Allen Superior Court