

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.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Plaintiff Ned Bade (“Bade”) and Walter Pugh, Jr. (“Pugh”), on behalf of themselves and the Settlement Class, as defined below, and Lincoln National Corporation (“LNC”), to fully and finally settle all of the claims that have been or could have been brought relating to 2001 incentive compensation plans, as defined below, which covered those persons who worked for the reinsurance operations of LNC or its affiliates under the Lincoln Re name in 2001 and were participants in these programs.

I. DEFINITIONS.

As used throughout this Agreement, in addition to any definitions elsewhere in the Agreement, the following terms shall have the meanings set forth below:

A. The “Litigation” shall mean and include the lawsuit entitled *Bade and Pugh v. Lincoln National Corporation*, pending in the Allen Superior Court as Cause No. 02D01-0206-CT-258, and all claims that were brought or that could have been brought by Bade, Pugh, or any Settlement Class Member in this Court, in any other Indiana state or federal court, or in the Second Amended Complaint, or in or before any Indiana administrative agency, or in any other

proceeding, whether brought in an individual or representative capacity regarding 2001 incentive compensation.

B. “Settlement Class” or “Class Member” shall mean and include all persons within the description of the Settlement Class quoted below in Section II.D.

C. “Class Counsel” shall mean and include Henry J. Price, Esquire, Price Waicukauski & Mellowitz, P.C., and Daniel A. Roby of the Roby Hood & Manges Law Firm.

D. “LNC” means Lincoln National Corporation and its past, present, and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of its past, present, and future officers, directors, employees, attorneys, and representatives, and any of them, including any person or entity acting on behalf or at the direction of any of them.

E. “Effective Date” shall mean and include the day on which the Final Order and Judgment described in Section III.J below becomes final. For purposes of this Agreement, the Final Order and Judgment shall be deemed to become final on the later of (a) the day following the date on which the Final Order and Judgment is no longer subject to review by appeal if no notice of appeal, motion to correct errors, or similar motion or notice is filed; or (b) if any such notices or motions are filed, on the day following the date on which the Final Order is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort or by lapse of time or otherwise.

F. “2001 Incentive Compensation Plan” means the Value Incentive Plan or Individual Value Contributor Plan in effect for eligible employees who worked for the reinsurance operations of LNC or its affiliates operating under the Lincoln Re name in 2001.

G. “2001 Incentive Compensation” means compensation under certain incentive compensation plans (Value Incentive Plan or Individual Value Contributor Plan), for the period of January 1, 2001 to December 31, 2001, or any part thereof, for eligible employees who worked for the reinsurance operations of LNC or its affiliates under the Lincoln Re name in 2001.

H. “Swiss Re” means Swiss Re Life & Health America Inc. and its past, present, and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of its past, present, and future officers, directors, employees, attorneys, and representatives, and any of them, including any person or entity acting on behalf or at the direction of any of them.

I. “Safeco” means Safeco Life Insurance Company.

J. “Parties” mean, collectively, Bade, Class Members, and LNC.

K. “Plaintiffs” means Bade and Pugh.

L. “Released Parties” means 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.

K. “Release and Waiver” means the Appendix A to the Notice of Class Action, Proposed Settlement, and Fairness Hearing, which is attached as Exhibit A.

II. BACKGROUND FACTS.

A. On June 24, 2002, Ned Bade (“Bade”), J. David Burgoon, Jr. (“Burgoon”), and Dinah Wright (“Wright”) filed the Litigation, claiming that they and putative class members were entitled to payments under a 2001 Incentive Compensation Plan. On November 25, 2002,

these plaintiffs filed a Second Amended Class Action Complaint. They filed a Motion for Class Certification on October 15, 2002, on which an evidentiary hearing was held on January 10, 2003. Class certification was denied by the Court on February 7, 2003. Burgoon, Wright, and Swiss Re were subsequently dismissed from the Litigation. On June 10, 2004, Bade filed a renewed motion for class certification. This proposed settlement was thereafter negotiated. Pugh was added as a named plaintiff and class representative of Subclass B for settlement purposes.

B. LNC denies that it has breached any agreement with or obligation to Plaintiffs or to the Settlement Class and denies any liability to Plaintiffs or the Settlement Class for any claims, causes of action, costs, expenses, attorneys' fees, or damages of any kind.

C. The Parties have engaged in substantial investigation and discovery to evaluate the merits of the claims of the Plaintiffs and the Settlement Classes and LNC's defenses thereto. The Parties have obtained substantial information, reviewed thousands of LNC and Swiss Re documents and taken numerous depositions of LNC and Swiss Re employees and officers and have thoroughly analyzed the factual and legal issues surrounding the Plaintiffs' claims and LNC's defenses.

D. The Parties seek certification of a class pursuant to Indiana Trial Rule 23 and defined as follows:

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 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 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.

E. The Court appointed as Representative of Subclass A Plaintiff Ned Bade and as Representative of Subclass B Plaintiff Walter Pugh, Jr. The Court appointed as Class Counsel Henry Price of the law firm of Price Waicukauski & Mellowitz, P.C. and Daniel A. Roby of the Roby Hood & Manges Law Firm.

F. Plaintiffs and their counsel have concluded that, in light of the costs, risks, and delays inherent in litigation, it is in the best interest of Plaintiffs and the Settlement Class to enter into this Settlement to assure a benefit to the Settlement Class and to resolve their individual claims. Plaintiffs' counsel also have determined that the terms of the class action settlement in this case are fair, reasonable, adequate, and in the best interest of Plaintiffs and the members of the Settlement Class, including Subclasses A and B.

G. LNC has concluded that, in order to avoid the costs and risks of ongoing litigation but without admitting any liability, a settlement of the claims of Plaintiffs and the Settlement Class in this case is appropriate. In this connection, LNC agrees that the terms of the class action settlement in this case are fair, reasonable, and adequate.

H. The Parties desire to fully settle and compromise the Litigation.

I. The Parties desire and intend to seek Court approval of this Settlement Agreement, and the Parties intend to seek a Final Order and Judgment from the Court dismissing with prejudice all claims of Plaintiffs and all members of the Settlement Class made in this

Litigation as covered by the release in Section III.M and in the attached Release and Waiver. The Parties agree that this Settlement Agreement is final and enforceable only upon Court approval.

III. AGREEMENT.

In consideration of the agreements, promises, and mutual covenants set forth in this Settlement Agreement, the Release and Waiver, the entry by the Court of a Final Order and Judgment dismissing the Litigation with prejudice and approving the terms and conditions of this Settlement Agreement, and for such other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree that this action shall be settled and compromised under the conditions and terms set forth below.

A. Agreement on The Settlement Class.

1. For settlement purposes only, the Parties agree that the Settlement Class and Subclasses identified above (Paragraph II.D) should be certified as an “opt-out” class with subclasses under Rule 23(b)(3) and (c)(2) of the Indiana Rules of Trial Procedure.

2. Persons who timely submit requests for exclusion (“opt out”) after notice of the conditional class certification order and preliminary approval by the Court will not be entitled to participate in the Settlement Class or to receive the financial consideration described in this Settlement Agreement.

3. Persons who do not opt out of the Settlement Class but who do not return an executed Release and Waiver will be a part of the Settlement Class but will not be entitled to receive financial consideration described in the Settlement Agreement. Amounts assigned to them pursuant to III.B will be distributed on a pro rata basis to the Class Members who did not opt out and who timely executed Releases and Waivers as provided herein.

B. Financial Consideration To The Subclasses.

1. The “Settlement Fund” consists of \$4,300,000.00 plus interest (defined below), minus (a) amounts assigned pursuant to paragraph 4, below, to those who properly opt out of the Settlement Class and (b) Settlement Interest on amounts assigned to those who properly opt out and attorney fees correlating with such opt-out amounts (such subtracted amounts of (a) and (b) collectively being the “Opt-out Fund”).

2. “Settlement Interest” on the \$4,300,000.00 (and on amounts assigned to those who properly opt out) will be calculated for the period beginning July 23, 2004 and ending on the date of delivery of settlement checks to Class Counsel. Settlement Interest shall be calculated by LNC using the Treasury Bill rate from the *Wall Street Journal* with maturity to the date nearest the expected payment date.

3. The Opt-out Fund will be retained by LNC and neither it nor attorney fees or Settlement Interest on the amounts assigned to Class Members who opt out shall be paid to Class Counsel or Settlement Class Members.

4. The following calculations on \$4,300,000.00 plus Settlement Interest shall be made to determine payments to be made by LNC:

a. The calculations below will be based on Incentive Compensation Plan-eligible wages from Lincoln Re through December 7, 2001. This date is used solely for computational purposes. It is expressly understood and agreed that the payments to class members are being made in consideration of the Settlement Class’ release and waiver of any and all claims for 2001 Incentive Compensation.

b. Members of the Subclass A, defined above, shall be assigned 50% of the maximum payouts as provided in their 2001 Incentive Compensation Opportunity Sheets or other reliable records (their “Par Payouts”). (Example: \$100,000 incentive plan-eligible wages (salary through December 7, 2001) times 50% maximum opportunity equals \$50,000 divided by 2 equals \$25,000.) Court-approved attorney fees, taxes and withholdings, and proportionate shares of Court-approved expenses and Class Representatives’ awards will be subtracted from the calculated final payouts.

c. The members of Subclass B, defined above, shall be assigned a percentage of Par Payouts (as provided by their 2001 Incentive Compensation Plan Opportunity Sheets or other reliable records). The percentage of Par Payouts to be assigned to Subclass B members will be an estimated percentage of up to 50% of Par Payouts that can be paid to Subclass B members in light of the funds remaining after the subtraction of amounts assigned to Subclass A members. (Example: \$100,000 incentive plan-eligible compensation (salary through December 7, 2001) times 50% maximum opportunity equals \$50,000 divided by 2 equals Par Payout divided by 2 equals one-half of Par Payout, or \$12,500.) Court-approved attorney fees, taxes and withholdings, and proportionate shares of Court-approved expenses and Class Representatives' awards will be subtracted from the calculated final payouts.

d. If a Class Member opts out of the Settlement, the amount assigned to him/her pursuant to subparagraphs b. and c. above, including all attorney fees, plus corresponding Settlement Interest, will be retained by LNC (the "Opt-out Fund").

e. Any amounts remaining in the Settlement Fund after the above calculations have been made shall be assigned on a pro-rated basis (in the same proportions as amounts assigned under paragraphs b. and c., above) to members of Subclass A and Subclass B who do not opt out and who timely return executed Releases and Waivers as instructed in the Notice of Class Action, proposed Settlement and Fairness Hearing.

f. Class Members (members of Subclasses A and B) will be eligible to receive the amounts calculated in the above subparagraphs if they do not opt out and if they timely return executed Releases and Waivers as instructed in the Notice of Class Action, Proposed Settlement, and Fairness Hearing. The amounts that these Class Members are eligible to receive will be subtracted from the Settlement Fund.

g. To be subtracted from the Settlement Fund will be 1) the amount of Court-approved attorney fees for Class Counsel and litigation expenses, and 2) the amount of any payments to Plaintiffs approved by the Court for their service as Class Representatives.

h. Court-approved attorney fees will be subtracted from the total amounts calculated as due to each Class Member eligible for payment.

i. In making the above calculations, no consideration shall be made to any amounts previously paid to Class Members by Swiss Re.

j. Amounts assigned to Class Members pursuant to the above paragraphs is based on whether they are classified as being in Subclasses A or B. This classification will be made on the best available information as of the October 28,

2004 hearing. In no event, however, will LNC pay more than the amount of the Settlement Fund.

Each Class Member shall be responsible for obtaining his or her own tax advice as to the treatment of the amount received. LNC or an affiliated company shall withhold taxes and other standard withholdings from amounts paid to Class Members. Such withholding shall be based upon the most recently complete Internal Revenue Service (“IRS”) Form W-4 in the possession of LNC or an affiliated company. The amounts withheld shall correspond to the amount paid to Class Members and to the attorney fees and expenses attributable to the amount paid to such Class Members. LNC or an affiliated company shall issue an IRS Form 1099 for the amounts paid to Class Counsel.

C. Opt-Outs.

The Notice of Class Action, Proposed Settlement, and Fairness Hearing shall be approved by the Court and shall thereafter be mailed to Class Members by Class Counsel. Each Class Member shall have thirty (30) days from the date of mailing of the Notice of Class Action, Proposed Settlement, and Fairness Hearing to opt out as provided in the Settlement Agreement and the Notice. This 30 days ends with opt-outs to be received by October 11, 2004. Names and last known addresses of all Class Members, together with their 2001 Incentive Compensation Plan par payout opportunity percentages and 2001 compensation through December 7, 2001, shall be furnished to Class Counsel by LNC and/or Swiss Re together with a designation of the dates of termination, whether each Class Member signed a release that purported to release LNC and Swiss Re from any claim for 2001 Incentive Compensation. LNC shall also provide self-addressed, stamped envelopes in which to mail such Notices.

D. Waiver and Release.

To be entitled to receive payment under this Settlement Agreement, a Class Member shall submit his or her executed Release and Waiver, with an original signature and subclass designation, to Class Counsel at 301 Massachusetts Avenue, Indianapolis, Indiana 46204, so that it is received by Class Counsel by October 18, 2004. Class Counsel will immediately (and by no later than October 21, 2004) submit such Releases and Waivers to LNC's counsel.

E. Report by Class Counsel.

Class Counsel, as soon as possible after the closing of the 30-day opt-out period, and by at least October 21, 2004, shall notify LNC of the Class Members who have opted out.

F. Administrative Costs.

LNC will be separately obligated to pay the costs of publishing the Notice, copying and mailing the Class Notice and the cost of preparing checks payable to each Class Member who has returned a Release and Waiver pursuant to the Settlement Agreement and the costs of preparing and mailing necessary tax forms. LNC or its affiliates will also be responsible for preparing and mailing necessary tax forms, on the schedule that LNC or its affiliates will prepare and mail such forms for compensation paid in 2004.

G. Denial Of Wrongdoing Or Liability; Lack Of Liability Finding.

This Settlement Agreement constitutes the resolution of disputed claims and is for settlement purposes only. LNC expressly denies that it or any Released Party has violated any law, breached any agreement or obligation to Plaintiffs or the Settlement Class, or engaged in any wrongdoing with respect to Plaintiffs or the Class Members. LNC denies that it is liable to Plaintiffs or to the Class Members for any claims, causes of action, costs, expenses, attorneys' fees or damages of any kind. Neither this Agreement nor any actions undertaken by LNC in satisfaction of this Agreement shall constitute, or be construed as, an admission of any liability

or wrongdoing, or recognition of the validity of any allegation of fact or law made by Plaintiffs in this action or in any other action or proceeding. This Agreement, any statements or negotiations made in connection with this Agreement, and any actions undertaken by LNC under this Agreement, shall not be offered or be admissible as evidence or used in any other fashion against LNC in any action or proceeding for any purpose, except in any action or proceeding brought by the Parties hereto to enforce the terms of this Agreement.

H. Preliminary Approval And Notice Of Proposed Settlement.

Class Counsel shall present this Settlement Agreement to the Court along with a Motion for Preliminary Approval of Class Settlement and Approval of Notice to Class Members. In addition, counsel for the Parties agree to take all appropriate steps to obtain an Order from the Court: (i) preliminarily approving this Agreement and finding that the Settlement is fair, reasonable and sufficient to allow notice to be disseminated to members of the Settlement Class; (ii) approving Notice to Class Members in the form attached as Exhibit B to this Agreement, (iii) approving Published Notice in the form attached as Exhibit C to this Agreement to be published for three days in newspapers of general circulation in Fort Wayne, Indiana; Indianapolis, Indiana; Miami, Florida; and Toronto, Canada, at the earliest date allowed by the publication schedules of these newspapers, (iv) directing that the notice to Class Members be disseminated and published pursuant to the terms of this Agreement; and (v) scheduling a hearing on final approval of the proposed Settlement.

I. Exclusions And Objections.

1. Subject to Court approval, any Class Member may present written objections as to (a) why this Settlement Agreement should not be approved as fair, reasonable, and adequate, (b) why attorneys' fees and expenses to Class Counsel should not be awarded in the amounts requested, (c) why the Plaintiffs should not be awarded compensation for their service as Class

Representatives, and/or (d) why Class Representatives' or Class Counsel's appointment should not be finally approved. All objections must (1) be in writing, (2) include the objector's full name, address and telephone number and, if applicable, the name, address and telephone number of the Class Member's independently retained attorney, (3) state with specificity the basis for the objection, (4) include any supporting papers, materials, or briefs, and (5) be accompanied by a Notice of Intent to Appear at the Final Approval Hearing if the objector desires to appear personally or by counsel. Such written objections must be filed with the Court and mailed to Class Counsel and Counsel for LNC. Any such objections must be filed with the Court and received by Class Counsel and Counsel for LNC by no later than October 18, 2004.

2. Any Class Member who has filed a written objection may appear at the final fairness hearing and show cause why the Settlement Agreement should not be approved as fair, reasonable, and adequate. Any Class Member who does not file and serve written objections to the settlement and notice of his or her intent to appear at the final fairness hearing in the manner and within the time set forth above shall not be permitted to object to the settlement at the final fairness hearing, and shall be barred from seeking review of the settlement by appeal or otherwise.

J. Final Order and Judgment.

The Settlement Agreement is subject to and conditional upon the issuance by the Court, following the formal Fairness Hearing, of an Order and Judgment granting final approval to the Settlement Agreement in accordance with Rule 23(E) of the Indiana Rules of Trial Procedure. A copy of that Order and Judgment will be provided to each Class Member who has executed a Release and Waiver, together with the check to be paid to each such Class Member. At least one week before the final fairness hearing, Class Counsel shall provide to the Court and to LNC a

complete proposed accounting of the distributions of the entirety of the Settlement Fund plus interest earned thereon.

Subsequent to the final settlement hearing or “fairness hearing” and upon the Court’s approval of this Settlement Agreement, the parties contemplate that a Final Order and Judgment will be entered by the trial court, essentially in the form attached hereto as Exhibit D. The parties understand that the Court obviously retains the right and ability to enter the Order it deems appropriate. However, the parties agree that they will submit to the Court for entry an Order Granting Final Approval to Class Action Settlement and Entry of Final Judgment essentially in the form attached hereto as Exhibit D.

K. Events To Nullify Agreement.

This Agreement shall be null and void and shall have no further force and effect with respect to any party in this action in the event that (i) the preliminary or final approval of the settlement described in this Settlement Agreement is not obtained or is reversed on appeal; (ii) the Effective Date as described in Section I.E above does not occur for any reason; (iii) entry of the Final Order and Judgment described in Section III.J above is finally reversed; or (iv) the Final Order and Judgment is substantially modified by the Court or on appeal, and either LNC or Plaintiffs do not agree with such modification. In such event, this Agreement shall not be offered in evidence or used in this or any other action for any purpose including, but not limited to, the existence, certification or maintenance of any purported class. In the event of nullification of this Agreement for the reasons set forth in this paragraph, all negotiations, proceedings, documents and statements made in connection with this Agreement shall be without prejudice to any party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not

be used in any manner for any purpose, and all Parties to this action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

L. Cooperation For Implementation.

Plaintiffs and LNC, individually and collectively, together with their respective counsel, agree to take all actions necessary to obtain preliminary approval of this Settlement Agreement and its plan for notice, final approval of this Settlement Agreement, and entry of the Final Order and Judgment dismissing this action with prejudice as to Plaintiffs and all Class Members. Plaintiffs and LNC also agree to take all actions necessary to obtain dismissal of all pending lawsuits, and all other subsequent lawsuits that may be filed by any non opting out Class Member between the time that this Agreement is executed and the Effective Date, relating to the subject matter of this Litigation against LNC, either individually or collectively, for claims covered by the Release and Waiver.

M. Release And Dismissal Of Claims; Covenant Not To Pursue Related Claims.

1. Plaintiffs and each Class Member agree to the form and substance of Release and Waiver that is appended to the attached Notice (Exhibit A).

2. Upon the Effective Date, Plaintiffs shall have, and each Class Member and the Settlement Class shall be deemed to have, covenanted and agreed that he, she or it shall not, at any time, institute, cause to be instituted, assist in instituting or permit to be instituted on his, her or its behalf any proceeding in any state or federal court, in or before any administrative agency, or any other proceeding or otherwise allege or assert any of the claims released against the Released Parties, individually or collectively, as described in the Release and Waiver.

3. Plaintiffs agree, and each Class Member shall be deemed to have agreed, to the dismissal with prejudice of the Litigation.

4. As a condition of this Settlement, Settlement Class Members Walter Pugh, Jr. and Mark Haarer must dismiss with prejudice their claims in the United States District Court for the Northern District of Indiana, Fort Wayne Division, in the action captioned *Walter Pugh, Jr., and Mark Haarer v. Swiss Re Life & Health America Inc., Lincoln National Corporation, Lincoln National Corporation Investments Committee, Administrator of the Lincoln National Corporation Severance Plan and Safeco*, Case No. 1:03-CV-443.

N. Payments to Class Members and Payment of Attorneys' Fees And Expenses.

1. Within thirty (30) days of the latter of the (a) Effective Date or (b) Class Counsel's delivery of any and all timely postmarked Releases and Waivers executed by Class Members, LNC shall deliver to Class Counsel checks payable to all Class Members for whom LNC has timely received Releases and Waivers with original signatures.

2. Payment of attorneys' fees and expenses and of compensation to Plaintiffs for their service as Class Representatives is subject to the review and approval of the Court. Class Counsel will apply to the Court for an award of attorneys' fees of 40% of the Settlement Fund and expenses in connection with this action and Plaintiffs will seek compensation for their service as Class Representatives (\$10,000 for Bade and \$2,500 for Pugh). LNC shall pay Class Counsel attorneys' fees/class representative compensation, as approved by the Court, out of the Settlement Fund. The amount of attorneys' fees and expenses proposed and class representative compensation requested by Class Counsel shall be disclosed in the Notice of Proposed Settlement provided for in Section III.H. above. The Final Order and Judgment of dismissal in this action shall include the Court's award of any attorneys' fees and expenses and any class representative compensation. LNC shall pay such amounts on the same schedule as checks payable to Class Members as set forth in III.N.1.

O. Final Report to the Court.

At the conclusion of delivery of consideration to all valid claimants, the Parties will jointly report to the Court that the settlement has been effected and concluded.

P. Confidential Documents.

Within 30 days of the filing of the report described in Section III.O, counsel for the Parties will certify to opposing counsel that documents produced by the opposing party designated as Confidential or Attorney's Eyes Only have been returned or destroyed.

Q. Miscellaneous Provisions.

1. **Entire Agreement.** This Settlement Agreement and its attachments shall constitute the entire agreement of the Parties and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel on behalf of all Parties to the Agreement and shall be binding and inure to the benefit of the Parties hereof and their representative heirs, successors, and assigns.

2. **Illegality Or Unenforceability Of Provisions.** In the event that any provision of this Agreement shall for any reason be held, in whole or in part, to be invalid, illegal, or unenforceable in any respect, then the Agreement will be null and void unless LNC and the Class Representative agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. If this Agreement is terminated for any reason prior to issuance by the Court of a final Order approving the settlement, or if the settlement contemplated by this Agreement is not concluded substantially as described in this Agreement with an Order of the Court approving the settlement that becomes final after all appeals, then the Agreement and all other acts taken to effect a settlement shall be void and of no effect and shall not be admissible by or against any Party to this Agreement. The Parties to this Agreement shall use their best efforts to obtain approval of this Agreement by the Court.

3. **Agreement Mutually Prepared** This Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship.

4. **Independent Investigation And Decision.** The Parties hereto understand, acknowledge and agree that they (i) have each performed an independent investigation of the allegations of fact and law made in connection with this action; and (ii) that they each 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 this Settlement Agreement. Nevertheless, it is the Parties' intention to resolve their disputes pursuant to the terms of this Agreement. In furtherance of their stated intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any change or difference in facts or law.

5. **Authority To Enter Into Agreement And Indemnity.** The Parties hereby warrant and represent that the persons signing this Settlement Agreement shall have full power and/or authority to bind to all terms of this Agreement of Class Action Settlement every person included within the definitions of the Settlement Class and LNC as set forth in Section II.D above. Plaintiffs and the Settlement Class agree to indemnify LNC, defend and hold LNC harmless from any and all claims, demands, disputes and causes of action asserted against LNC and any and all losses, judgments, legal costs, attorneys' fees, expert fees and expenses incurred by LNC and/or its counsel as a result of a violation of this Section. Similarly, LNC agrees to indemnify Plaintiffs, Class Members and Class Counsel, defend and hold Plaintiffs, Class Members and Class Counsel harmless from any and all claims, demands, disputes, and causes of

action asserted against Plaintiffs and/or Class Counsel and any and all losses, judgments, legal costs, attorneys' fees, expert fees and expenses incurred by Plaintiffs and/or Class Counsel as a result of a violation by LNC of this paragraph.

6. **No Promise Or Inducement For Release.** The Parties hereto warrant and represent that no promise or inducement has been offered or made for the release in Section III.D. and in the attached Release and Waiver except as herein set forth, that this Settlement Agreement is executed without reliance on any statements or any representations not contained herein, and this Settlement Agreement and the attached Release and Waiver reflect the entire agreement among the Parties with respect to the terms of the release. The warranties and representations made herein shall survive the execution and delivering of this Settlement Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of each of the Parties.

7. **Binding Agreement.** Plaintiffs and LNC, individually and collectively, expressly agree that the terms of this Agreement and all provisions hereof, including all representations, promises, agreements, covenants, and warranties, are contractual and not a mere recital and shall survive the execution of this Agreement and entry of the Final Order and Judgment and shall continue in full force and effect thereunder.

8. **Receipt Of Advice Of Counsel.** The Parties acknowledge, agree and specifically warrant to each other that they have fully read this Settlement Agreement and the accompanying Waiver and Release, received independent legal advice with respect to the advisability of entering into this Settlement Agreement concerning the legal effect of this Settlement Agreement, and fully understand this Settlement Agreement and its effect.

9. **Extensions Of Time.** The Parties may agree, subject to approval of the Court when required, to reasonable extensions of time to carry out the provisions of this Agreement.

10. **Execution Of Agreement In Counterparts.** This Settlement Agreement may be executed in counterparts by the Parties, and a facsimile signature shall be deemed an original signature for purposes of this Agreement.

11. **Retention Of Jurisdiction.** The Court shall retain continuing and exclusive jurisdiction over the Parties hereto for the purpose of enforcing, implementing, and interpreting this Agreement, including jurisdiction over all Class Members, and over the administration and enforcement of the Settlement and the distribution of benefits to Class Members. Any disputes or controversies arising out of or related to the interpretation, enforcement, or implementation of the settlement shall be made by motion to the Court.

12. **Controlling Law.** For all issues of procedure relating to this settlement or this Settlement Agreement, the laws of the State of Indiana shall apply.

DATED: _____

Ned Bade
Class Representative, Subclass A

DATED: _____

Walter Pugh, Jr.
Class Representative, Subclass B

DATED: _____

Henry J. Price
Jana K. Strain
PRICE WAICUKAUSKI
& MELLOWITZ, P.C.
The Hammond Block Building
301 Massachusetts Avenue
Indianapolis, IN 46204

DATED: _____

Daniel A. Roby
ROBY HOOD & MANGES LAW FIRM
Standard Federal Plaza, Suite 520
200 East Main Street
Fort Wayne, IN 46802

Attorneys for Class Representatives and the
Settlement Class

DATED: _____

Title: _____
For Lincoln National Corporation