

Phoenix settles suit for \$134.8M

Includes guarantees by the insurer not to raise COI rates for five years

BY DONNA HOROWITZ

A final class-action settlement valued at \$134.8 million, including \$40.5 million in cash, was approved between **Phoenix Cos.** (PNX) and life settlement investors over the insurer's cost-of-insurance rate increases.

Along with the cash, the settlement includes commitments by Phoenix not to raise its cost-of-insurance rates for five years and not to mount insurable-interest legal challenges against the validity of policies held by life settlement investors. Those guarantees are valued at \$94.3 million under the settlement approved Sept. 9 by Judge Colleen McMahon of the U.S. District Court in Manhattan.

Life settlement market participants accused Phoenix of discriminating against them when it raised cost-of-insurance rates in 2010 and 2011. They argued that the insurer unfairly targeted investors who optimize, or pay minimum amounts of premiums, to keep policies in force.

"These are exceptional results for the Class in this hotly-contested litigation," McMahon said.

Phoenix, based in Hartford, Conn., has denied wrongdoing or liability. It said in a Securities and Exchange Commission filing in May that settling the case would avoid further legal costs.

The plaintiffs are trustee Martin Fleisher of the Michael Moss Irrevocable Life Insurance Trust II, trustee Jonathan Berck of the John L. Loeb Jr. Insurance Trust and **SPRR LLC** on behalf of themselves and others.

A preliminary settlement had been reached in April for \$48.5 million in cash. However, the non-cash portion of the settlement was not quantified at that time.

The cash portion was decreased in the final settlement as plaintiffs including **U.S. Bank National Association**, securities intermediary for a **Fortress Investment Group LLC** affiliate, opted out of the agreement.

Fortress affiliate Lima Acquisition LP's separate lawsuit against Phoenix over its cost-of-insurance increases is scheduled to go to trial Sept. 21 in the same New York court.

Only three other class members representing 26 insurance policies sought to be excluded from the class action settlement.

Also, since the preliminary settlement was announced, Tiger Capital LLC, a unit of **AmTrust Financial Services Inc.** (AFSI), joined the settlement.

"We are thrilled on behalf of eligible Phoenix policy owners," said Steven Sklaver, a partner with the **Susman Godfrey LLP** law firm in Los Angeles, who represented class members who own more than 1,600 policies. "They will receive checks and the STOLI [stranger-originated life insurance] waiver and COI freeze."



SUSMAN GODFREY PARTNER STEVEN SKLAVER

He was referring to Phoenix's agreement not to challenge any eligible policies owned by class members for lack of insurable interest or misrepresentations on policy applications. In addition, Phoenix said it would not increase cost-of-insurance rates for class members through 2020.

Ann Juliano, founder of **Demeter Investments Ltd.**, a London-based consultant for large, institutional life settlement investors, had estimated that the net present value of the STOLI and fraud defense waiver and five-year cost-of-insurance rate freeze added \$94.3 million in value to the class, the judge said in her decision. Juliano provided her opinion as an expert witness for the plaintiffs.

Juliano has more than 10 years of experience in analyzing the sales of life insurance policies, including Phoenix policies, in the secondary market, McMahon said. Juliano was previously managing director of Fortress, where she marketed life settlement policies and portfolios, and before that had worked in **Credit Suisse's** longevity markets group on life settlements.

The judge said Juliano analyzed the historical challenge rate by Phoenix on the validity of class members' policies as well as the insurance company's likelihood of success based on industry data. Juliano estimated that Phoenix's commitment not to challenge policies when they matured would be worth about \$33.3 million in claims payments that Phoenix would otherwise have recovered.

Juliano also analyzed previous cost-of-insurance rate increases by Phoenix and the likelihood of such future increases during the next five years and how not raising them for class members would impact the value of the policies, the judge added. Juliano concluded that such a rate freeze would add another \$61 million in value to the settlement.

Sklaver's law firm will be paid a total of \$13.5 million by Phoenix in legal fees, or 9.9% of the gross settlement.

McMahon complimented Susman Godfrey's effort in the case.

"To be blunt, on only one other occasion has this court seen a case that settled after such full and thorough preparation. Class counsel could not possibly have been more knowledgeable about the strengths and weaknesses of their case," McMahon said.

She said the case settled after more than three years of "hard-fought litigation" and one year of negotiations with a mediator when the trial only was 45 days away, and after extensive discovery in which the law firm analyzed more than 1.2 million pages of documents.

Sklaver said he worked on the case with two associates, Frances Lewis, also in the Los Angeles office, and Seth Ard in New York. ■