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E-FILED 06-11-08
JS-6

**IN THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

RALPH SHAFFER, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

CONTINENTAL CASUALTY
COMPANY, VALLEY FORGE
LIFE INSURANCE CO. and CNA
FINANCIAL CORPORATION dba
CNA LTC.,

Defendants.

CASE NO. CV 06-2235-PSG (PJWx)

**AMENDED [~~PROPOSED~~] FINAL
ORDER AND ORDER APPROVING
SETTLEMENT**

Date: May 5, 2008
Time: 1:30 PM
Crtrm: 790

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[PROPOSED] ORDER

The Court has received the Stipulation of Settlement dated December 31, 2007, as amended by the Amended Stipulation of Settlement dated May 19, 2008 (collectively, “Agreement” or “Settlement Agreement”), entered into by and between (1) Plaintiffs Ralph Shaffer, Samuel Loeb, and Susan Souveroff (“Plaintiffs” or “Class Representatives”), on behalf of themselves, and on behalf of the Class hereinafter defined; and (2) Defendants Continental Casualty Company, Valley Forge Life Insurance Company, and CNA Financial Corporation (“Defendants” or “the Company”).

The Court, having held a fairness hearing on May 5, 2008 and hearing oral argument, and having reviewed: (1) the Settlement Agreement and the Exhibits to the Settlement Agreement, (2) Plaintiffs’ Motion for Final Approval of Class Action Settlement and supporting declarations; (3) Plaintiffs’ Memorandum of Points and Authorities In Support of Value of Settlement and the accompanying Declaration of John Wilkin; (4) Defendants’ Memorandum of Points and Authorities in support of the Class Action Settlement and supporting declarations; (5) Plaintiffs’ Motion for an Award of Reasonable Costs and Attorneys Fees; (6) Plaintiffs’ Motion for Award of Class Representative Incentive Payments; (7) Phyllis Landau’s Motion to Intervene and Objection to the Proposed Settlement; and (8) all other objections to the Settlement, properly and timely submitted to the Court, and good cause appearing,

IT IS HEREBY ORDERED as follows:

1. The Court, for purposes of this order (the “Order”), adopts all defined terms as set forth in the Settlement Agreement;
2. The Settlement Parties have submitted to the jurisdiction of the Court

1 for purposes of the Proposed Settlement, the Court has personal jurisdiction over
2 the Settlement Parties, and the Court has subject matter jurisdiction to approve the
3 Settlement Agreement, including all Exhibits to the Settlement Agreement.

4 3. The Court approves the Settlement Agreement and Proposed
5 Settlement, as fair, reasonable, and adequate, and consistent and in compliance
6 with all applicable requirements of the Federal Rules of Civil Procedure, the Class
7 Action Fairness Act, the United States Constitution (including the Due Process
8 Clause), the Rules of the Court, and any other applicable law, and in the best
9 interests of each of the Parties and the Class Members;

10 4. Under the Settlement Agreement, the parties have agreed to the
11 following definition for "Released Claims": "Released Claims" means any and all
12 claims, actions, suits, obligations, demands, promises, liabilities, costs, expenses,
13 and attorneys' fees (whether class, mass, collective, joint, or individual in nature),
14 whether based on any federal or state law or a right of action, whether filed or
15 threatened to be filed in state or federal court or in any other venue of any type, in
16 law or in equity or otherwise, which the Plaintiffs and the Class Members or any of
17 them ever had, now have, or can have, or shall or may hereafter have against
18 Defendants or Releasees:

19 (a) relating to or arising out of any acts, failures to act, omissions,
20 oral or written representations, facts, events, transactions, or
21 occurrences set forth or alleged in the Actions or in any way
22 related directly or indirectly to the subject matter of the
23 Actions;

24 (b) relating to any premium rate increase;

25 (c) relating to marketing, pricing and actuarial assumptions for
26 pricing, actuarial analysis of Policy experience, solicitation,
27 application, underwriting, acceptance, sale, purchase, renewal,
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1 operation, retention, improper payment of premium,
2 administration, replacement or suitability of any Policy issued
3 by any of the Defendants, including but not limited to claims
4 for negligence, breach of contract, fraud, non-disclosure,
5 deceptive trade practices, abuse of the elderly, violation of any
6 federal or state regulatory scheme or any other claim, except for
7 claims for denial of benefits under the terms of a Policy;

8 (d) relating to acts, omissions, facts, matters, transactions,
9 occurrences, or oral or written statements or representations
10 made or allegedly made in connection with or directly or
11 indirectly relating to the Settlement Agreement or the
12 settlement of the Actions, except nothing in this Release shall
13 preclude any action to enforce the terms of the Settlement; or
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15 (e) for attorneys' fees, costs, or disbursements incurred by Counsel
16 for Plaintiffs or by Plaintiffs or the Class Members, or any of
17 them, in connection with or related in any manner to the
18 Actions, the settlement of the Actions, or the administration of
19 such settlement, except to the extent otherwise specified in this
20 Settlement Agreement.

21 5. The Parties and their Counsel are directed to implement and
22 consummate the Settlement Agreement according to its terms;

23 6. The Settlement Agreement is binding on all Settlement Class
24 Members and preclusive in all pending and future lawsuits or other proceedings;

25 7. The Settlement Agreement is binding as to all of the Released Claims,
26 and claims and issues that have or could have been raised in this Action on behalf
27 of Plaintiff and all other Settlement Class Members, as well as their heirs,
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1 executors, administrators, successors, and assigns;

2 8. The Company may file the Settlement Agreement to support any
3 defense or claim that it is binding on and has *res judicata* and preclusive effect in
4 all pending and future lawsuits or other proceedings maintained by or on behalf of
5 Plaintiffs or any other Settlement Class Members, as well as their heirs, executors,
6 administrators, successors, and assigns;

7 9. The Class is finally certified for purposes of this Settlement only, and
8 the Court has reviewed and hereby affirms its January 14, 2008 preliminary
9 certification of the national settlement class, defined by the Settlement Agreement
10 and amended by stipulation of the parties on February 6, 2008 and as further
11 clarified by the Amended Stipulation of Settlement dated May 19, 2008, as: all
12 individuals nationwide who have or had in-force as of February 1, 2008 an
13 individual Premier, Classic, Preferred Advantage, Preferred Advantage TQ or
14 Classic TQ Long-Term Care Policy numbered P1-18215, P1-18876, P0-18876, P1-
15 21295, P1-21300, P1-21305, P0-21295, P0-21300, P0-21305, P1-N0022, P1-
16 N0023, P1-N0026, P1-N0027, P1-N0030, P1-N0031, P1-N0034, P1-N0035, P1-
17 N0066, P1-N0070, P0-N0022, P0-N0023, P0-N0026, P0-N0027, P0-N0030, or P0-
18 N0034 purchased from Continental Casualty Company or Valley Forge Life
19 Insurance Company. Notwithstanding the foregoing, the terms "Class Members,"
20 "Class," and "Settlement Class" do not include any of the following: (1) persons
21 whose policies lapsed before receiving notice of a premium rate increase or more
22 than 120 days after receiving notice of a premium rate increase; (2) persons who
23 received claim payments under their policies before the Effective Date of the
24 Settlement; (3) persons who, as of the Effective Date of the Settlement, had lapsed
25 their Policies within 120 days following a rate increase of less than 50% where the
26 total increase, when combined with all past increases (if any), was less than the
27 contingent nonforfeiture ("CNF") threshold percentage specified by the NAIC
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1 Model Regulation for that person's issue age, in the chart incorporated as part of
2 Exhibit B of the Stipulation of Settlement; (4) persons who owned Policies
3 numbered P0-N0023, P0-N0027, P1-N0023, P1-N0027, P1-N0031, and P1-N0035
4 but lapsed or cancelled their Policies before the Effective Date of the Settlement;
5 and (5) persons who were deceased as of the Effective Date of the Settlement.

6 10. The Class Notice and the notice methodology implemented pursuant
7 to the Settlement Agreement, as described in part in the Declarations of Richard
8 Simmons and Shannon Wheatman:

- 9 (a) Constituted the best practicable notice;
- 10 (b) Constituted notice that was reasonably calculated, under the
11 circumstances, to apprise Class Members of the pendency of
12 the Action, the terms of the Proposed Settlement, their right to
13 object or exclude themselves from the Proposed Settlement, and
14 their right to appear at the Fairness Hearing;
- 15 (c) Was reasonable and constitutes due, adequate, and sufficient
16 notice to all persons entitled to received notice; and
- 17 (d) Met all applicable requirements of the Federal Rules of Civil
18 Procedure, the Class Action Fairness Act, the United States
19 Constitution (including the Due Process Clauses), the Rules of
20 the Court, and any other applicable law;

21 11. Class Counsel and the Class Representatives adequately represented
22 the Class for purposes of entering into and implementing the Settlement;

23 12. The Actions (including all individual and Settlement Class Member
24 claims presented thereby) are hereby dismissed, on the merits and with prejudice,
25 without fees or costs to any party excepts as provided in the Settlement Agreement
26 and approved by the Court's Orders (a) granting Plaintiffs' Motion for Award of
27 Reasonable Costs and Attorneys Fees and (b) granting Plaintiffs' Motion for
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1 Award of Representative Incentive Payments;

2 13. The Court hereby incorporates the Release and makes the Release
3 effective as of the Effective Date of the Settlement, and forever discharges
4 Defendants and the Releasees from any claims or liabilities arising from or related
5 to the Released Claims, and permanently bars and enjoins all Settlement Class
6 Members who have not been timely excluded from (a) filing, commencing,
7 prosecuting, intervening in, participating in (as Class Members or otherwise), or
8 receiving any benefits or other relief from, any other lawsuit, arbitration, or
9 administrative, regulatory or other proceeding or order in any jurisdiction based on
10 or relating to the Released Claims or the facts and circumstances relating to the
11 Released Claims; and from (b) organizing such non-excluded Settlement Class
12 Members into a separate class for purposes of pursuing a purported class action
13 (including by seeking to amend a pending complaint to include class allegations, or
14 by seeking class certification in a pending action) any lawsuit based on or relating
15 to the Released Claims or the facts and circumstances relating to the Released
16 Claims;

17 14. The Opt-Out Claimants are identified for the Court in a document to
18 be provided by Analytics, Inc. and to be maintained by this Court under seal.

19 15. Without affecting the finality of the Final Judgment and Order
20 Approving Settlement for purposes of appeal, the Court retains jurisdiction as to all
21 matters relating to the administration, consummation, enforcement, and
22 interpretation of this Settlement Agreement and the Final Order and Judgment
23 Approving Settlement, and for any other necessary purpose;

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25 **IT IS SO ORDERED.**

26 DATE: June 11, 2008

PHILIP S. GUTIERREZ
Honorable Philip S. Gutierrez
Judge of the United States District Court,
Central District

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