

IN THE SUPERIOR COURT
OF MUSCOGEE COUNTY, GEORGIA

GEORGIA, MUSCOGEE COUNTY
SUPERIOR COURT
APR 24 2007
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JA

GLORIA CARTER & ROY FARR, for)
themselves and on behalf of all others)
similarly situated;)
Plaintiffs;)
v.)
NORTH CENTRAL LIFE INSURANCE)
COMPANY,)
Defendant.)

CASE NO.: SU-2006-CV-3764-6

**FINAL ORDER AND
JUDGMENT APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS Plaintiffs and Defendant entered into a Stipulation and Settlement Agreement, with exhibits (collectively, the "Settlement Agreement"), dated November 20, 2006 to settle this Action; and

WHEREAS the Court entered an Order dated November 20, 2006 (the "Preliminary Approval Order"), preliminarily certifying the putative Class in this action for settlement purposes under Ga. Code Ann. § 9-11-23(b)(3), ordering first-class mail and Publication Notice to potential Class Members and follow-up first-class mail notice, scheduling a Fairness Hearing for April 24, 2007, and providing those persons with an opportunity either to exclude themselves from the settlement class or object to the proposed settlement; and

WHEREAS the Court held a Fairness Hearing on April 24, 2007, to determine whether to give final approval to the proposed settlement; and

WHEREAS the Court has granted final certification of the settlement class, approving the proposed settlement, and dismissing the Class Members' claims (among other things).

Based on the submissions of the parties and Class Members and the testimony adduced at the Fairness Hearing, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. **Incorporation of Other Documents.** This Final Order and Judgment incorporates and makes a part hereof:

- (a) the Settlement Agreement submitted to this Court on November 20, 2006;
- (b) the exhibits to the Settlement Agreement;
- (c) the Court's Preliminary Approval Order;
- (d) the Joint Motion and Memorandum In Support of Final Approval of Class Certification; and
- (e) the exhibits to the Joint Motion and Memorandum In Support of Final Approval of Class Certification.

2. **Jurisdiction.** The Court has personal jurisdiction over all Class Members (as defined below) and has subject-matter jurisdiction over this action including, without limitation, jurisdiction to approve the proposed settlement, grant final certification of the Class, and dismiss this action on the merits and with prejudice.

3. **Final Class Certification.** As part of its rigorous analysis, the Court employed the following six-factor analysis to determine whether to grant final approval to the class action settlement: (1) the stage of the proceedings at which the settlement was achieved; (2) the likelihood of success at trial; (3) the range of possible recovery; (4) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (5) the complexity, expense and duration of litigation; and (6) the substance and amount of opposition to

the settlement. The Court also examined whether there was any indicia of fraud, collusion or that the Settlement Agreement was not negotiated at arm's length.

After careful consideration, including the analysis and examination discussed in the preceding paragraph, the Class previously certified preliminarily is hereby finally certified for settlement purposes under Ga. Code Ann. 9-11-23(b)(3). The Class consists of all persons or entities (the "Class Members") who, at any time during the Class Period, purchased Credit Insurance and, upon the termination of the underlying indebtedness prior to the Certificate's Expiration Date, did not receive an Unearned Premium refund. The Class does not include (unless such persons or entities are Class Members by virtue of their ownership interest in other Policies):

- (a) any person or entity who, while represented by counsel in the settlement of an actual or threatened lawsuit, signed a document that released the Companies from any further claims concerning any such Policy or Policies;
- (b) any person or entity who has or had ownership of a Policy that was timely excluded from the Class, although that person or entity may be a class member by owning a different Policy that was not timely excluded from the Class;
- (c) any person or entity who has or had ownership of a Policy that terminated during the Class Period, where a death or disability benefit was paid under the Policy due to the death or disability of the Insured;
- (d) any person or entity who received a refund or credit of unearned policy premiums due under the terms of the Policy as a result of the premature discharge of the underlying credit transaction;

- (e) any person or entity whose loan went into default and the security was repossessed or whose Insured indebtedness was discharged in bankruptcy; and/or
- (f) the heirs of any such people or entities listed in (1) – (5)(a)-(e).

A list of those persons who have excluded themselves from the Class and who therefore are not bound by this Order and the accompanying Judgment (as to the excluded Policies) is on file with the Court as Plaintiffs' Report on Objections and Opt-outs, dated April 18, 2007 and filed with the Court on April 20, 2007, and is incorporated herein and made a part hereof

4. **Adequacy of Representation.** After conducting a rigorous analysis of the requirements of Ga. Code. Ann. § 9-11-23(a)(4), the Court finds that the law firms of Butler, Wooten & Fryhofer, LLP and O'Brien Law Firm, PC (collectively referred to as "Class Counsel"), and the Class Representatives have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Ga. Code Ann. § 9-11-23(a)(4).

5. **Class Notice.** As part of their Joint Motion and Memorandum In Support of Final Approval of Class Certification, the Parties submitted the Affidavit of Todd Hilsee, the Court-appointed Notice Administrator and one of the pre-eminent class action notice experts in North America. After completing the necessary rigorous analysis, including careful consideration of Mr. Hilsee's Affidavit, the Court finds that the first-class mail notice, Publication Notice and distribution of the notice in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order:

- (a) constituted the best practicable notice to Class Members under the circumstances of this action;

- (b) provided Class Members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to Class Members and all other persons wishing to be heard;
- (c) was reasonably calculated, under the circumstances, to apprise Class Members of:
 - (i) the pendency of this class action, (ii) their right to exclude themselves from the Class and the proposed settlement, (iii) their right to object to any aspect of the proposed settlement (including final certification of the settlement class, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of representation by Plaintiffs or Plaintiffs' counsel, and/or the award of attorneys' fees), (iv) their right to appear at the Fairness Hearing - either on their own or through counsel hired at their own expense - if they did not exclude themselves from the Class, and (v) the binding effect of the Orders and Judgment in this action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class;
- (d) was calculated to reach a large number of Class Members, and the prepared notice documents adequately informed Class Members of the class action, properly described their rights, and clearly conformed to the high standards for modern notice programs;
- (e) emphasized the use of objective and documented audience data in order to ensure that a substantial percentage of Class Members were reached. The Court is particularly impressed with the variety of modern communications techniques, including the use of state-of-the-art television commercials and highly prominent

placements owing to the appropriateness for this particular audience and set of circumstances, used in this case;

- (f) focused on the effective communication of information about the class action.

The Notices prepared in this matter were couched in plain, easily understood language and were written and designed to the highest communication standards.

The Notice Plan effectively reached a substantial percentage of Class Members and delivered noticeable Notices designed to capture Class Members' attention;

- (g) afforded sufficient notice and time to Class Members to receive notice and decide whether to request exclusion or to object to the settlement. The Notice Plan was consistent with, and far surpassed, what numerous other courts have approved. In fact, the Notice Plan designed and implemented in this case is as comprehensive as any plan of its kind could be in reaching those most directly affected;

- (h) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and

- (i) fully satisfied the requirements of the Georgia Rules of Civil Procedure (including Ga. Code Ann. § 9-11-23(c)(2) and (e)), the Georgia and United States Constitutions (including the Due Process Clause), the Rules of the Court, and any other applicable law.

6. **Claims Process.** Any Class Member who wishes to receive Class Relief must sign and return a valid and timely Claim Form to the Settlement Administrator in compliance with the Claims Process set forth in the Settlement Agreement and postmarked no later than May 24, 2007. Any Class Member who does not submit a valid and timely Claim Form in compliance with the Claims Process shall not be entitled to Class Relief but,

nonetheless, shall be barred by the Release and provisions of the Settlement Agreement and the Final Order and Judgment. However, the Settlement Administrator, in its sole discretion, may accept Claim Forms from Claimants who were unable to submit their Claim Forms on a timely basis for good cause shown.

7. **Final Settlement Approval.** The terms and provisions of the Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Parties and the Class Members, and in full compliance with all applicable requirements of the Georgia Rules of Civil Procedure, the Georgia and United States Constitutions (including the Due Process Clause), and any other applicable law. The Parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. **Binding Effect.** The terms of the Settlement Agreement and of this Final Order and Judgment shall be forever binding on Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and anyone acting on behalf of Class Members or for their benefit, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action or are otherwise encompassed by the Release.

9. **Release and Waiver.** The Release and Waiver, which is set forth in the Settlement Agreement, is expressly incorporated herein in all respects and is effective as of the date of this Final Order and Judgment. In return for the consideration provided in the

Agreement, the Plaintiffs, Class Members and all other Releasors release and discharge the Releasees from the following:

- a. Plaintiffs and all other Class Members and all other Releasors release, acquit and forever discharge the Releasees from any and all past, present and future causes of action, claims, damages, awards, equitable, legal and administrative relief, interest, demands or rights that are based upon, related to, or connected with, directly or indirectly, in whole or in part: (a) the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Action, (b) the Released Claims or (c) the manner in which the Companies trained and supervised any of the Releasees, including but not limited to the Companies' Producers and representatives, or any of them;
- b. Plaintiffs, Class Members and all other Releasors, and anyone acting on their behalf, shall not now or hereafter initiate, participate in, maintain, or otherwise bring any claim or cause of action, either directly or indirectly, derivatively, on their own behalf, or on behalf of the Class or the general public, or any other person or entity, against the Releasees based on allegations that are based upon or related to, directly or indirectly, in whole or in part: (a) the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Action, (b) the Released Claims, or (c) the manner in which the Companies trained and supervised any of the Releasees, including but not limited to the Companies' Producers and representatives, or any of them; and
- c. Plaintiffs, Class Members and all other Releasors, and anyone acting on their behalf, without limitation, are precluded and estopped from bringing any claim or cause of action in the future, related to in any way, directly or indirectly, in whole or in part: (a) the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Action, (b) the Released Claims or (c) the manner in which the Companies trained and supervised any of the Releasees, including but not limited to the Companies' Producers and representatives, or any of them.

The Court further finds and determines that:

- a. Plaintiffs, Class Members and Releasors acknowledge that they are releasing both known and unknown and suspected and unsuspected claims and causes of action, and are aware that they may hereafter discover legal or equitable claims or remedies presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the allegations and

subject matters in the Complaint or other filings in the Action or with respect to the Released Claims. Nevertheless, it is the intention of Plaintiffs, Class Members and Releasors to fully, finally and forever settle and release all such matters, and all claims and causes of action relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in the Action);

- b. Plaintiffs, Class Members and Releasors hereby expressly acknowledge certain principles of law applicable in some states, such as Section 1542 of the Civil Code of the State of California, which provide that a general release does not extend to claims that a Creditor does not know or suspect to exist in his or her favor at the time of executing the release which, if known by him or her, must have materially affected his or her settlement with the debtor. Notwithstanding the choice of law provision in this Agreement, to the extent that California or other law may be applicable, Plaintiffs and the Class Members hereby agree that the provisions of Section 1542 of the Civil Code of the State of California and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable here, are hereby knowingly and voluntarily waived and relinquished by Plaintiff and the Class Members, and Plaintiffs and the Class Members agree and acknowledge that this provision is an essential term of the Agreement and this Release;
- c. Plaintiffs, Class Members and Releasors further agree that no third party, including but not limited to any private attorney general or Cal. Bus. and Prof. Code § 17200 Plaintiff, shall bring any claims released herein on their behalf;
- d. Nothing in this Release shall be deemed to release a Class Member's right to assert any claims or causes of action that arise from acts, facts, or circumstances arising exclusively after the end of the Class Period; or preclude any action to enforce the terms of the Agreement;
- e. Nothing in this Release shall be deemed to alter a Class Members right to receive an Unearned Premium refund upon any Early Loan Payoff that occurs after the end of the Class Period; and
- f. This Release may be raised as a complete defense to and will preclude any action or proceeding that is encompassed by this Release.

10. **Permanent Injunction.** All Class Members who have not been timely excluded from the Class with respect to a Policy, and anyone acting on their behalf or for their benefit, are hereby permanently barred and enjoined from: (i) filing, commencing, prosecuting,

maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action that have been, may be or could have been set forth or raised in the Action, the Released Claims and/or the acts and circumstances relating thereto as to that Policy; and/or (ii) organizing or soliciting the participation of any Class Members in a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit or other proceeding based on or relating to the claims and causes of action that have been, may be or could have been set forth or raised in the Action, the Released Claims and/or the acts and circumstances relating thereto as to that Policy. The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's Final Order and Judgment. Any person found in contempt of this injunction will be subject to sanctions. Any Releasee who must seek from the Court the compliance of a Releasor who is in violation of this injunction is entitled to reimbursement of his or her or its attorneys' fees incurred as a result of seeking such compliance.

11. **Objections to Settlement.** The Court provided all Class Members and their representatives, who complied with the requirements for objections and appearance at the Fairness Hearing set forth in the Preliminary Approval Order, a fair and adequate opportunity to object to the proposed settlement. The Court notes that there have been no objections to the settlement.

12. **Enforcement of Settlement.** Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Settlement Agreement, nor shall anything in

this Final Order and Judgment preclude Plaintiffs or Class Members from participating in the Settlement Administration Process described in the Settlement Agreement if they are entitled to do so under the terms of the Settlement Agreement.

13. **Attorneys' Fees and Expenses.** After careful review and consideration of the entire record, and after hearing from Class Counsel and Counsel for the Company, Counsel of record for the Class are hereby awarded Attorneys' Fees and Expenses in the amount of \$1,700,000.00, to be paid by the Company to Class Counsel. Such Attorneys' Fees and Expenses are to be paid by the Company within 40 days after entry of this Final Order and Judgment, subject to the conditions set forth in the Settlement Agreement. Class Counsel, in its sole discretion, shall allocate and distribute this award of Attorneys' Fees and Expenses among counsel for the Class.

14. **No Other Payments.** The preceding paragraph of this Order covers, without limitation, any and all claims for Attorneys' Fees and Expenses, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members, or incurred by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to this action, the settlement of this action, the administration of such settlement, and/or the Released Claims except to the extent otherwise specified in this Order and the Settlement Agreement.

15. **Remainder Fund.** The Court hereby directs North Central to establish a Remainder Fund in the amount of \$500,000.00, to be paid within 40 days after entry of this Final Order and Judgment, subject to the conditions set forth in the Settlement Agreement. The Remainder Fund will be distributed to non-profit entities as agreed upon by a four-person Remainder Fund Committee to be composed of the Honorable John D. Allen (or his designee),

James E. Butler, Jr., Joel O. Wooten and Edward K. O'Brien. The address for correspondence with the Remainder Fund Committee shall be North Central Credit Insurance Remainder Fund, c/o Chambers of Hon. John D. Allen, Superior Court of Muscogee County, Georgia, Government Center, P.O. Box 1340, Columbus, Georgia 31902. In addition, after the Settlement Administrator has mailed all checks to Entitled Class Members, funds equal to the total of all returned checks, all undeliverable checks, and all checks which have not been cashed within 180 days of being mailed to the Entitled Class Members will be paid into the Remainder Fund.

16. **Incentive Award.** Class Representatives Carter and Farr are hereby awarded incentive awards in the amount of \$7,500.00 each. Such award is to be paid by the Defendant within 40 days after entry of this Final Order and Judgment, subject to the conditions set forth in the Settlement Agreement.

17. **Modification of Settlement Agreement.** The parties are hereby authorized, without needing further approval from the Court and without further notice to the Class, to agree to and adopt such amendments to, and modifications and expansions of the Settlement Agreement as are consistent with this Order and that do not limit the rights of Class Members under the Settlement Agreement.

18. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose, including, without limitation:

(a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or

arise out of the Settlement Agreement and this Final Order and Judgment (including, without limitation, whether a person or entity is or is not a Class Member; whether claims or causes of action allegedly related to this case are or are not barred by this Final Order and Judgment, etc.);

(b) entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Final Order and Judgment approving the Settlement Agreement, dismissing all claims on the merits and with prejudice, and permanently enjoining Class Members and anyone acting on their behalf or for their benefit, from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

(c) entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the parties to exercise their rights under the Settlement Agreement.

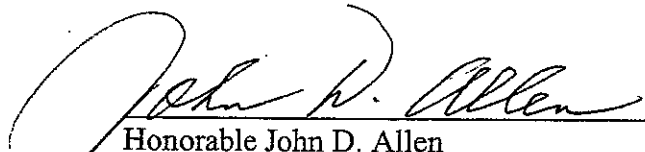
19. **No Admissions.** Neither this Final Order and Judgment nor the Settlement Agreement (nor any other document referred to herein) nor any action taken to carry out this Final Order and Judgment) is, may be construed as, or may be used as an admission or concession by or against the Defendant, the validity of any claim or any actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to the Defendant's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order and Judgment and the Settlement Agreement; provided, however, that this Final Order and Judgment and the Settlement

Agreement may be filed in any action against or by the Company or Releasees (as defined in the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

20. **Capitalized Terms.** Capitalized terms used in this Order but not defined shall have the meaning ascribed to them in the Settlement Agreement.


21. **Dismissal of Action.** This action, including all individual and Class claims resolved in it, is hereby **DISMISSED ON THE MERITS AND WITH PREJUDICE** against Plaintiffs and all other Class Members, without fees or costs to any party except as otherwise provided in this Final Judgment and Order.

Accordingly, pursuant to Ga. Code Ann. § 9-11-54(b) and finding no just reason for delay and upon express direction for the entry of Judgment, It Is Hereby **ORDERED, ADJUDGED and DECREED** that **FINAL JUDGMENT** is hereby entered this 24th day of April, 2007.



Honorable John D. Allen
Superior Court of Muscogee County, Georgia

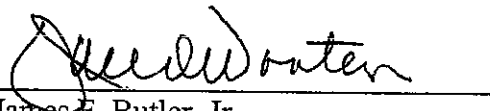
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By:  Date: 4/24/07

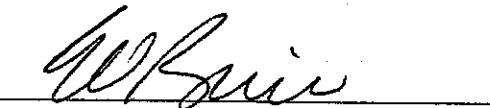
Michael D. Mulvaney
Maynard, Cooper & Gale, P.C.
One of the Attorneys for North Central Life Insurance Company

By: *Marcus B. Calhoun / in provision by JTB* Date: 4/24/07

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