IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

HEALTHCARE STRATEGIES, INC., Plan Administrator of the Healthcare Strategies, Inc. 401(k) Plan and the Healthcare Strategies, Inc. CBU 401(k) Plan, On Behalf of Itself and All Others Similarly Situated,	:	No. 3:11-cv-00282 (WGY)
and	:	
The DEROSA CORPORATION, Plan Administrator of The DeRosa Corporation 401K PS Plan, On Behalf of Itself and All Others Similarly Situated,	:	
Plaintiffs,	:	
vs.	:	
ING LIFE INSURANCE AND ANNUITY COMPANY,	:	
Defendant.	:	April 10, 2014

SETTLEMENT AGREEMENT AND RELEASE

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This Settlement Agreement and Release ("Settlement Agreement" or "Agreement") is entered into on April 10, 2014 by and among Plaintiffs, Healthcare Strategies, Inc. ("HSI"), as Plan Administrator of the Healthcare Strategies, Inc. 401(k) Plan and the Healthcare Strategies, Inc. CBU 401(k) Plan, The DeRosa Corporation ("TDC"), as Plan Administrator of The DeRosa Corporation 401K PS Plan, on their own behalf and on behalf of the Class (defined below), and Defendant, ING Life Insurance & Annuity Co. ("ILIAC" or Defendant").

RECITALS

WHEREAS, on February 23, 2011, HSI filed a putative class action against ILIAC in the United States District Court for the District of Connecticut (the "Court"), on its own behalf and on behalf of all administrators of employee pension benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, subject to Internal Revenue Code ("IRC") §§ 401(a), (k), with which ILIAC has maintained a contractual relationship based on group annuity contracts and/or group funding agreements for which since February 23, 2005, ILIAC has received Revenue Sharing payments (as defined below) from any mutual fund or investment adviser (the initial Complaint, together with all subsequent pleadings and proceedings in the litigation, are collectively referred to as the "Action");

WHEREAS, the Court in the Action certified the following class on September 27, 2012:

> All administrators of employee pension benefit plans covered by the Employee Retirement Income Security Act of 1974 subject to Internal Revenue Code §§ 401(a), (k) with which ING has maintained a contractual relationship based on a group annuity contract or group funding agreement and for which, since February 23, 2005, ILIAC has received revenue sharing payments (*e.g.*, asset-based sales compensation, service fees under distribution and/or servicing plans adopted by funds pursuant to Rule 12b-1 under the Investment Company Act of 1940, administrative service fees and additional payments, and expense reimbursement) from any mutual fund, investment advisor or related entity.

WHEREAS, pursuant to a Motion to Intervene that was granted by the Court on December 26, 2012, TDC was added as a party plaintiff and class representative on December 27, 2012 in connection with the filing of an Amended Complaint by HSI and TDC (collectively, "Plaintiffs");

WHEREAS, following certain additional proceedings, notice of class certification and an opportunity to opt-out was provided to the certified class on July 12, 2013;

WHEREAS, sixteen (16) members of the certified class timely requested exclusion from the certified class (see Excluded Class Members, as defined below);

WHEREAS, a trial commenced in this Action on September 9, 2013;

WHEREAS, the Court entered an Order on September 10, 2013 approving a Stipulation of Plaintiffs and Defendant modifying the definition of the certified class to exclude all plan administrators of employee pension benefit plans with which ILIAC had a contract and which were invested through Separate Account "C" and notice was provided to those employee pension benefit plans so excluded pursuant to the agreement of the Parties (defined below) and the direction of the Court;

WHEREAS, the trial with respect to liability concluded on October 3, 2013;

WHEREAS, Plaintiffs in the Action allege various claims against ILIAC relating to Defendant's operation of its retirement plan business including, but not limited to, claims brought under ERISA, as amended, 29 U.S.C. § 1001, *et seq.*, for breach of fiduciary duty (ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B)), violation of the prohibited transaction rules (ERISA §§ 404 and 406(b), 29 U.S.C. § 1104 and 1106(b)), and knowing participation in a breach of trust;

WHEREAS, Defendant asserted certain counterclaims for indemnification and contribution;

WHEREAS, all of the claims and counterclaims at issue arise, in whole or in part, from Defendant's contractual arrangements with and/or provision of various services to retirement plans and/or its receipt from Mutual Funds (as defined below) of Revenue Sharing Payments or RSPs (as defined below) (collectively, the "Claims");

WHEREAS, since before and after October 3, 2013, the Parties engaged in settlement discussions with the assistance, at times, of a mediator;

WHEREAS, to accommodate the Parties' settlement discussions, the Court delayed ruling on liability for a period of two (2) weeks and then granted extensions of that time period so that the Parties could continue and conclude their settlement discussions;

WHEREAS, during the course of litigation and settlement discussions, the Parties exchanged substantial documentation and engaged in extensive discovery, as well as trial proceedings, and were able to fully evaluate the merits of their respective claims and defenses;

WHEREAS, the Parties have reached an agreement to settle the Claims in the Action on the terms and conditions set forth in this Agreement;

WHEREAS, Defendant has vigorously denied, and continues to vigorously deny, any wrongdoing and any liability for the Claims;

WHEREAS, the Parties have decided to enter into this Settlement (defined below) because it provides substantial and meaningful benefits to the Members of the Class (defined below) and to avoid the uncertainties of continued litigation; and

WHEREAS, entry into this Settlement Agreement is not an admission of liability by Defendant, which liability Defendant denies in its entirety.

NOW, THEREFORE, it is agreed, by and among the undersigned, that this Action shall be settled and dismissed with prejudice on the terms and conditions set forth herein, subject to judicial approval.

I. DEFINITIONS

1.1 "Administration Costs" shall mean (i) the costs and expenses associated with the production and dissemination of the Long Form Notice (as defined in Section 1.24); (ii) the costs and expenses associated with the production and publication of the Published Notice (as defined in Section 2.3); and (iii) all reasonable costs incurred by the Settlement Administrator in administering and effectuating this Settlement, which costs and expenses are necessitated by performance and implementation of this Settlement Agreement and any Court orders relating thereto.

1.2 "Attorneys' Fees" shall mean any and all attorneys' fees, costs (including expert costs) and expenses of Plaintiffs' counsel for their past, present, and future work, efforts, and expenditures in connection with this Action and the resulting Settlement.

1.3 "Case Contribution Fee" shall have the meaning ascribed to it in paragraph 7.1.

1.4 "Class" or "Settlement Class" shall mean the certified class, as modified by the Court's Order dated September 10, 2013, and excluding the Excluded Class Members (defined below).

1.5 "Class Counsel" shall mean Shepherd, Finkelman, Miller & Shah, LLP, and O'Neil, Cannon, Hollman, DeJong & Laing, S.C.

1.6 "Defendant's Counsel" shall mean Morgan, Lewis & Bockius, LLP and Pullman & Comley, LLC.

1.7 "Defendant's Released Parties" shall mean Defendant and each of its present, past and future predecessors, successors, parents, subsidiaries, affiliates, divisions, assigns, officers,

directors, committees, employees, fiduciaries, administrators, actuaries, agents, insurers, representatives, attorneys, retained experts and trustees.

1.8 "Distributable Settlement Amount" shall have the meaning ascribed to it in paragraph 3.2(a).

1.9 "DOL" shall mean the United States Department of Labor.

1.10 The Excluded Class Members shall mean C&C 401(k) Plan & Trust (Claremont, CA), DAC Labels & Graphic Specialties (Dallas, TX), Easy Auto/Sunrise Acceptance, Inc. (Cleveland, TN), Etkin Johnson Group, LLC (Denver, CO), J.W. Cole & Sons, Inc. (Detroit, MI), Liftmoore, Inc. (Houston, TX), Oregon Wire Products (Portland, OR), Powers Products III, LLC (Pleasantville, NY), Prime Engineering, Inc. (Atlanta, GA), SCUREF (Aiken, SC), Sholand, LLC (Nashville, TN), South Louisiana Bank (Houma, LA), Sunsation Products, Inc. (Albonac, MI), The Plastic Works (Rocky River, OH), and The Thomas Compliance Associates, Inc. (Chicago, IL), all of which sought timely exclusion from the class certified by the Court on September 27, 2012.

1.11 "Effective Date" shall mean the date upon which the Final Order and Judgment becomes both final and no longer subject to appeal or review (or further appeal or review), whether by exhaustion of any possible appeal, lapse of time, or otherwise.

1.12 "Escrow Account" shall mean an account at Huntington National Bank or a similar established financial institution agreed upon by the Parties that is established for the deposit of any amounts relating to the Settlement.

1.13 "Escrow Agent" shall mean the Settlement Administrator, or whatever other person or entity is approved by the Court to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.14 "Fairness Hearing" shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Settlement Agreement should receive Final Approval by the Court.

1.15 "Fee and Expense Application" shall mean the petition, to be filed by Plaintiffs' counsel, seeking approval of an award of Attorneys' Fees and Expenses.

1.16 "Final Approval" shall mean the entry of the Final Order and Judgment.

1.17 "Final Order and Judgment" or "Final Approval Order" shall mean a final Order entered by the Court after the Fairness Hearing, identical in all material respects to that attached hereto as Exhibit F, granting its approval of the Settlement.

1.18 "Fixed Account" shall mean any ING Fixed Account investment option made available through a group annuity contract or group funding agreement issued by ILIAC wherein ILIAC contractually guarantees a return based on a specified minimum interest rate for any period.

1.19 "Float" shall mean all items mentioned in DOL Advisory Opinion 93-24A and Field Assistance Bulletin 2002-3, including, but not limited to, earnings or internal banking credits resulting from the short-term investment of cash received from plans in the form of funds awaiting investment into separate accounts or awaiting distributions to plans or their participants. Float shall also include any difference between the value of any participant account at the time of distribution and the value distributed.

1.20 "Fund Agreement" shall mean any agreement (whether written or oral) between a Mutual Fund (as defined in Section 1.26) and Defendant (whether on its own behalf, on behalf of either Defendant's separate account or otherwise) or any affiliate of Defendant relating to investment of funds by retirement plans.

1.21 "Guaranteed Accumulation Account" shall mean the ING Guaranteed Accumulation Account investment option made available through a group annuity contract or group funding agreement issued by ILIAC wherein ILIAC guarantees a stipulated rate of interest for a specified period of time.

1.22 "Instruction Form" shall mean the form, identical in all material respects to the document attached hereto as Exhibit B, to be provided to and the returned by the Class Members pursuant to paragraph 2.2.

1.23 "Lead Counsel" shall mean Shepherd, Finkelman, Miller & Shah, LLP.

1.24 "Long Form Notice" shall mean the notice, identical in all material respects to that attached hereto as Exhibit A, to be provided directly to Class Members pursuant to paragraph 2.2 and made available on the Settlement Website and the website of Lead Counsel following publication of the Summary Notice.

1.25 "Member of the Settlement Class" or "Member of the Class" or "Class Member" shall mean any member of the Class and, derivatively, any and all Plans for which such member acts as plan administrator, and any person acting or claiming to act on behalf of such a Plan, or claiming through such a Plan, including, but not limited to, trustees, sponsors, fiduciaries, beneficiaries, and participants.

1.26 "Mutual Fund(s)" shall mean investment companies registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, as amended, which are offered as investment options through Defendant's group annuity contracts/group funding agreements as assets of Separate Accounts (defined below) maintained by Defendants.

1.27 "Parties" shall mean Plaintiffs and Defendant (individually and/or collectively).

1.28 "Plaintiffs' Counsel" shall mean Class Counsel.

1.29 "Plans" or "Plan" shall mean those employee pension benefit plans included within the Class -- meaning for which the administrators of the Plans are Class Members.

1.30 "Plan of Allocation" shall mean the plan or formula of allocation of the Distributable Settlement Amount as approved by the Court, which plan or formula shall govern the distribution of the Distributable Settlement Amount, in the form attached hereto as Exhibit D.

1.31 "Plan Fiduciary" shall mean (individually and/or collectively) any and all administrators, sponsors, trustees or other fiduciaries of employee pension benefit plans covered by ERISA, subject to IRC §§ 401(a) or 401(k), which utilize or have utilized ILIAC as a service provider. For purposes of this Settlement Agreement only, the term "Plan Fiduciary" shall exclude Defendant, its affiliates and agents.

1.32 "Plan Menu" shall mean the menu of investments chosen by a Plan fiduciary from a Product Menu and made available under a Plan to Plan participants for investment.

1.33 "Preliminary Approval Order" shall mean an order entered by the Court preliminarily approving the Settlement pursuant to paragraph 2.1, identical in all material respects to that attached hereto as Exhibit E.

1.34 "Product Menu" shall mean a menu of investment options made available through a group annuity contract or group funding agreement issued by ILIAC to a Plan.

1.35 "Proprietary Funds" shall mean Mutual Funds (as defined in paragraph 1.26) which are advised or sub-advised by any entity affiliated with ILIAC.

1.36 "Regulatory Change" shall have the meaning ascribed to it in paragraph 4.5(b).

1.37 "Released Claims" shall mean any and all claims, liabilities, demands, causes of action or lawsuits, known or unknown (including Unknown Claims, as defined below), whether legal, statutory, equitable or of any other type or form, whether under federal or state law, and

whether brought in an individual, representative or any other capacity, that in any way relate to or arise out of or in connection with acts, omissions, facts, statements, matters, transactions, or occurrences that have been alleged or referred to or could have been alleged in the Action, including in any court filing or any discovery request or response including, but not limited to, (a) matters pertaining to or arising out of the solicitation, negotiation, or receipt of Revenue Sharing (defined below); (b) claims of excessive fees of any kind in connection with Mutual Funds, Proprietary Funds, the Fixed Account or the General Accumulation Account or the administration of the Plans; (c) matters pertaining to disclosure, receipt or retention of Float; (d) disclosures about Revenue Sharing or any administrative or investment management fees paid directly or indirectly by the Plans or their sponsors; (e) assembly, substitution, addition, or removal of investment options from Product or Plan Menus, including the appropriateness of inclusion of Mutual Funds, Proprietary Funds, the Fixed Account and the General Accumulation Account in Product or Plan Menus; (f) the investment performance of Mutual Funds, Proprietary Funds, the Fixed Account, and the General Accumulation Account included in Product Menus or Plan Menus; (g) Fund Agreements; (h) operation of any Separate Accounts; (i) the reinvestment of dividends paid by any Mutual Fund; (j) sufficiency of the information about investment options, fees, and charges that is provided in connection with the operation of Defendant's retirement plan business(es); (k) contractual arrangements or conduct as a service provider relating to any Member of the Settlement Class, including, but not limited to, any alleged rights, obligations, discretion or conduct by Defendant as a service provider claimed to give rise to fiduciary status on the part of Defendant with respect to Revenue Sharing; (l) any actions arising out of or related to the negotiation or performance of the Settlement Agreement or matters

relating thereto; and (m) all Class Members' decisions related to the allocation of any proceeds of the Distributable Settlement Amount.

1.38 "Counterclaims" shall mean only those counterclaims asserted in the Action.

1.39 "Revenue Sharing" "Revenue Sharing Payments" or "RSPs" shall mean any payment made or value provided, directly or indirectly, to Defendant by a Mutual Fund, investment advisor or any related entity pursuant to a Fund Agreement, including asset-based sales compensation, service fees under distribution and/or servicing plans adopted by funds pursuant to Rule 12b-1 under the Investment Company Act of 1940, administrative service fees, additional payments, expense reimbursements and/or other compensation.

1.40 "Separate Account" or "Separate Accounts" shall mean an account established by ILIAC separating the assets funding the variable benefits for a group annuity contract or group funding agreement from the other assets of Defendant.

1.41 "Settlement" shall mean the compromise and resolution embodied in this Settlement Agreement.

1.42 "Settlement Administrator" shall mean Strategic Claims Services (http://www.strategicclaims.net).

1.43 "Settlement Amount" shall mean the amount of $14,950,000.

1.44 "Settlement Class" shall mean the Class.

1.45 "Settlement Website" shall have the meaning ascribed to it in paragraph 2.5.

1.46 "Taxes" shall have the meaning ascribed to it in paragraph 3.1(g).

1.47 "Tax-Related Costs" shall have the meaning ascribed to it in paragraph 3.1(g).

1.48 "Unknown Claims" shall mean any Released Claims which Plaintiffs and any Member of the Settlement Class do not know or suspect to exist in their favor at the time of the

release of the Defendant's Released Parties relating to the claims and allegations asserted in the Action which, if known by them, might have affected their settlement with and release of the Defendant's Released Parties, or might have affected their decision not to object to this Settlement. Without admitting that California law in any way applies to this Agreement, with respect to any and all Released Claims, the Parties agree that, upon the Effective Date, Plaintiffs, and each Member of the Settlement Class, shall be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE 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.

Plaintiffs and each Member of the Settlement Class shall be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiffs and any Member of the Settlement Class may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs and any Member of the Settlement Class, upon the Effective Date, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever settled and released any and all Released Claims (and Unknown Claims), suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future relating in any way to the Action, including, but not limited to, conduct

which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and any Member of the Settlement Class shall be deemed by operation of the Final Order and Judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

II. MOTION FOR PRELIMINARY APPROVAL

2.1 ***Motion for Preliminary Approval.*** As soon as is practicable after execution of this Agreement, Plaintiffs shall move the Court for preliminary approval of the Settlement, including entry of an Order identical in all material respects to the form of the Preliminary Approval Order attached as Exhibit E hereto.

2.2 ***Long Form Notice.***

(a) Within thirty (30) days of the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Long Form Notice and Instruction Form by first-class mail or electronic mail (if available) to the Class Members. The Long Form Notice and Instruction Form will be sent to the last known electronic mail address (if any) or last known mailing address of the Class Member, which mailing address has been supplied by Defendant and updated through the National Change of Address database by the Settlement Administrator before mailing (with all returned mail skip-traced and promptly re-mailed), and will be in the forms attached hereto as Exhibits A and B.

(b) The Instruction Form must be returned to the Settlement Administrator within one hundred and eighty (180) days of entry of the Preliminary Approval Order. For each Class Member that has not returned the Instruction Form within one-hundred and twenty (120) days of the entry of the Preliminary Approval Order, the Settlement Administrator will send within fourteen (14) days thereafter a post card by electronic mail (if available) or first class mail

to such Class Member notifying them again of the deadline by which to submit the Instruction Form, unless the previous mailings and communications to the Class Member have been returned as undeliverable and the Settlement Administrator is unable to identify a valid electronic mail or physical mailing address through the exercise of reasonable and good faith efforts.

(c) The Settlement Administrator will make payment of the Distributable Settlement Amount to each Class Member's Plan in the form of a check made payable as designated in the Instruction Form. A Class Member that has an in-force contract with ILIAC shall use the Distributable Settlement Amount to pay allowable Plan expenses, and the Plan shall not deposit such amount to the Plan or distribute such amount to the Plan's participants. Class Members, as fiduciaries of their Plans, shall be solely responsible for all fiduciary decisions related to the use of any proceeds of the Distributable Settlement Amount and release and hold harmless Defendant's Released Parties from any claims related thereto. Plaintiffs acknowledge that it is not administratively feasible for ILIAC to distribute any settlement proceeds into any accounts it maintains for Plans, or to current or former Plan participants and that any such distribution to Plan participants would be de minimis.

2.3 ***Published Notice.*** Within forty-five (45) days of the entry of the Preliminary Approval Order, and one week after the first date on which the Long Form Notice is emailed or mailed by First Class Mail, the Settlement Administrator shall cause to be published once in the Legal Notices section of the Wall Street Journal a summary class notice (with dimensions of 5.35" x 6" or 1/8 of a page) identical in all material respects to that attached hereto as Exhibit C, which provides the general details of the Settlement Agreement and directs members of the Class

to the Settlement Website (the "Published Notice"), where the Long Form Notice, Settlement Agreement and its exhibits all will be available.

2.4 ***Class Action Fairness Act Notice.*** Defendant shall comply with the notice requirements of 28 U.S.C. § 1715, including providing notice to the DOL, and shall file a notice confirming compliance prior to the Fairness Hearing.

2.5 ***Settlement Website.*** Within thirty (30) days of the entry of the Preliminary Approval Order and no later than the first date that the mailing of the Long Form Notice occurs, the Settlement Administrator shall establish the Settlement Website, which will contain the Long Form Notice and this Settlement Agreement and its exhibits. The Long Form Notice and the Published Notice will identify the web address of the Settlement Website.

2.6 ***Settlement Information Line.*** Within thirty (30) days of the entry of the Preliminary Approval Order, and no later than the first date of mailing of the Long Form Notice, the Settlement Administrator shall establish a toll-free telephone number (the "Settlement Information Line") to which Settlement Class Members can direct questions about the Settlement. The Settlement Administrator shall develop a question-and-answer-type script, with input and approval from Defendant's and Plaintiffs' Counsel, for the use of persons who answer calls to the Settlement Information Line.

2.7 ***Rights of Exclusion.*** Class Members shall be permitted to opt out of the Class, provided they comply with the requirements for doing so as set forth in the Preliminary Approval Order.

2.8 ***Right to Object.*** Members of the Settlement Class, the DOL and any other federal or state governmental entity, agency or instrumentality with an interest in the Settlement shall be

permitted to object to the Settlement. Requirements for filing an objection shall be as set forth in the Preliminary Approval Order.

III. PAYMENTS TO THE CLASS

3.1 ***The Settlement Amount.***

(a) Defendant shall cause the Settlement Amount to be deposited by wire transfer into the Escrow Account within fourteen (14) days of entry of the Final Order and Judgment.

(1) The Settlement Amount shall be used solely for the purposes set forth in paragraph 3.1(h) below.

(2) The Class Members agree that the Settlement Amount shall not be considered "plan assets," as that term is defined in ERISA and the regulations promulgated pursuant to ERISA, until such time as the checks are cashed by the Plans. The Class Members further agree that the Parties are not exercising any discretion over the Settlement Amount as part of this settlement, and that the Class Members, as fiduciaries of their Plans, shall be solely responsible for all fiduciary decisions related to the use of any proceeds of the Distributable Settlement Amount.

(b) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator. Neither Defendant nor Plaintiffs shall have any liability whatsoever for the acts or omissions of the Settlement Administrator appointed by the Court. The Settlement Administrator shall not disburse the Settlement Amount or any portion thereof except as provided for in this Agreement, by an Order of the Court, or with prior written agreement of Plaintiffs' Counsel and Defendant's Counsel.

(c) The Settlement Administrator is authorized to execute transactions on behalf of the Class Members that are consistent with the terms of this Agreement and with Orders of the Court.

(d) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Settlement Agreement.

(e) The Settlement Administrator shall, to the extent practicable, invest the Settlement Amount pursuant to paragraph 3.1(a) above in discrete and identifiable instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settlement Administrator shall maintain records identifying in detail each instrument in which the Settlement Amount or any portion thereof has been invested, and identifying the precise location (including safe deposit box number) of each such instrument. Neither the Settlement Amount nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Amount not invested in instruments of the type described in the first sentence of this paragraph shall be maintained by the Settlement Administrator, and not commingled with any other monies, at a bank account, which shall promptly be identified to Plaintiffs and Defendant at either party's request by account number and any other identifying information. The Settlement Administrator and Class Members shall bear all risks related to investment of the Settlement Amount. All income, gain, or loss earned by the investment of the Settlement Amount shall be credited to the Escrow Account.

(f) The Escrow Account is intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. Defendant agrees to provide the Settlement Administrator with the statement described in Treasury Regulation §1.468B-3(e). Neither Defendant, Defendant's Counsel, Plaintiffs, or Plaintiffs' Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

(g) All (i) taxes on the income of the Escrow Account ("Taxes") and (ii) expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) ("Tax-Related Costs") shall be timely paid by the Settlement Administrator out of the Escrow Account.

(h) The Settlement Amount, together with any interest accrued thereon, will be used to pay the following amounts associated with the Settlement:

(i) Compensation to Class Members determined in accordance with paragraph 3.2;

(ii) Any Case Contribution Fee (as defined in paragraph 7.1 below) approved by the Court;

(iii) Administration Costs;

(iv) All Attorneys' Fees and Expenses approved by the Court; and

(v) Taxes and Tax-Related Costs.

3.2 ***Distribution to Class Members.***

(a) The money remaining from the Settlement Amount, including any accrued interest thereon, after the payment of any approved Case Contribution Fee, Administration Costs,

approved Attorneys' Fees, and Taxes and Tax-Related Costs, shall be available for distribution to Class Members (the "Distributable Settlement Amount").

(b) The Distributable Settlement Amount shall be divided among Class Members in accordance with the Plan of Allocation attached hereto as Exhibit D.

(c) The Settlement Administrator shall disburse the Distributable Settlement Amount as promptly as possible after the Effective Date and, in any event, no later than two hundred-seventy (270) days after the Effective Date.

(d) Class Members must cash checks within ninety (90) days of issuance. If they do not do so, the checks will be void. This limitation shall be printed on the face of each check. The voidance of checks shall have no effect on the Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.3 ***Treatment of Uncashed Checks.*** Any funds associated with checks that are not cashed within ninety (90) days of issuance, any funds that cannot be distributed to Class Members for any other reason, together with any interest earned on them, and after the payment of any applicable taxes by the Escrow Agent, shall be donated to an appropriate charity or charities pursuant to a *cy pres* award of the Court. As soon as practicable following the Effective Date, Plaintiffs shall make any application for a *cy pres* award of any such funds to the Court. Plaintiffs will meet and confer with Defendant regarding the proposed recipients of any *cy pres* awards before making such application and Defendant shall have the right to object to any proposed *cy pres* recipient if Defendant does not believe that such a recipient is appropriate to receive such an award.

3.4 ***Administration Costs.*** The Administration Costs shall be paid from the Settlement Amount beginning thirty (30) days after the entry of the Final Approval Order

and on every thirty (30) days thereafter, and the Settlement Administrator shall provide Plaintiffs with a detailed accounting of any administrative costs expended to date and an invoice for the amount of such Administration Costs payable from the Settlement Amount.

3.5 ***Entire Monetary Obligation.*** In no event, and notwithstanding anything else in this Settlement Agreement (except with respect to the obligations it will be required to incur with respect to implementation of the structural changes/changes in practices described in Section IV below), shall Defendant be required to pay any amounts other than the Settlement Amount. It is understood and agreed that Defendant's monetary obligations under this Settlement Agreement will be fully discharged by paying the amounts specified in paragraphs 3.1(a) above and that Defendant shall have no other monetary obligations, or obligations to make any other payments under this Agreement or otherwise.

IV. CHANGES IN PRACTICES

4.1 ***Changes to Business Practices.*** As part of the Settlement of this Action, Defendant agrees to make certain specified changes to its business practices as set forth in the remaining paragraphs of this Section IV, which would remain in effect after the date of Final Approval of the Settlement, unless there is a change in applicable law that renders any change or practice unlawful (in which case Defendant shall be permitted to alter its practices to the extent (but only to the extent) required by law). It is understood and agreed by the Parties that by making the changes described in Section IV, Defendant does not agree with or in any way admit, and shall not be deemed to agree with or in any way admit, (a) any theories of Plaintiffs or Plaintiffs' Counsel regarding Defendant's liability in the Action, including, without limitation, that Defendant has exercised any discretion or control with respect to the business practices described in Section IV, or possesses any fiduciary status or obligations in relation thereto, or (b) that any of its prior or existing business practices violate any federal or state laws, statutes, or

regulations. Defendant is agreeing to make the changes described in Section IV solely to resolve disputes and provide agreed clarity on a prospective basis as to the propriety of its future conduct and its future receipt of Revenue Sharing Payments.

4.2 ***Changes to Defendant's Practices and Revisions to the Contracting and Disclosure Documents.***

(a) Subject to the provisions of paragraphs 4.4 and 4.5, Defendant will implement the following changes:

(1) Defendant-Initiated Changes to Product Menus

The following provisions apply to changes to Product Menus that are initiated solely by Defendant. They do not apply to actions initiated by others or by Defendant or its affiliates in any other capacity that may affect Product Menus or Plan Menus, such as, for example, decisions by mutual funds or separate accounts to close to new investments, merge, or change investment advisers or sub-advisers.

a. *Additions*. Defendant will specifically identify to plan sponsors, via ILIAC's plan sponsor website, any addition of a fund to a Plan's Product Menu at the time of the addition. Defendant will update its new customer proposals, prospective plan sponsor booklets and plan sponsor website to inform plan sponsors that such additions are identified on the plan sponsor website.

b. *Removals*. Defendant will provide to plan sponsors written notice of any removal of a fund from a Plan's Product Menu. Such notice shall be published on ILIAC's plan sponsor website at least thirty (30) days prior to the removal, and shall state the effective date of the removal. Defendant will update its new customer proposals, prospective

plan sponsor booklets and plan sponsor website to inform plan sponsors that such deletions are identified on the plan sponsor website.

c. *Substitutions*. ILIAC will not exercise any authority to make a substitution of one fund for another (*i.e.*, transfer current investment in existing Fund A to Fund B) or to delete/remove a fund from a Plan's Product Menu if the Plan already offers such fund on its Plan Menu, and shall modify its contracts to eliminate any such authority to the extent applicable. This provision shall not limit ILIAC's ability to continue its practice of removing a fund from its Product Menus only for new customers or existing customers that have not included the fund on their Plan Menu and shall apply only to ILIAC acting in its capacity as designer of Product Menus. For example, this provision shall not apply to deletions, removals, or substitutions necessitated by actions of investment option providers such as fund closings or mergers.

(2) Disclosures of Fund-Related Fees and Expenses

The following provisions apply solely to Defendant's disclosures relating to Mutual Fund related fees and expenses contained in new customer proposals, plan sponsor booklets, and ILIAC's plan sponsor website. These provisions do not apply to Rule 408b-2 disclosures or fund fact sheets.

a. ILIAC shall provide on the plan sponsor website a disclosure, in the form of Exhibit "G," of fund fees and expenses, including revenue paid to ILIAC, if any, for each fund available within the Plan's Product Menu. Defendant shall discontinue use of the report in the form of Trial Exhibit 16 for any purpose (see Exhibit "H").

b. Defendant shall eliminate language that Revenue Sharing Payments neither directly nor indirectly increase mutual fund expenses and replace it with