

The Honorable Hollis R. Hill
Hearing Date: February 11, 2016
Without Oral Argument

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SHIVA Y. STEIN, individually and on behalf
of all others similarly situated,

Plaintiff,

-against-

SYMETRA FINANCIAL CORPORATION,
LOWNDES A. SMITH, PETER S. BURGESS,
DAVID T. FOY, LOIS W. GRADY, SANDER
M. LEVY, ROBERT R. LUSARDI, THOMAS
M. MARRA, SUMITOMO LIFE INSURANCE
COMPANY, and SLIC FINANCIAL
CORPORATION

Defendants.

No. 15-2-20458-1SEA

~~(PROPOSED)~~ HH

ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING
NOTICE PURSUANT TO CR 23(A),
23(B)(1) AND 23(B)(2)

On February 2, 2016, the parties to the above-captioned action (the "Action") pending before the Superior Court of the State of Washington, King County (the "Court"), which parties (the "Parties") include: (a) Plaintiff Shiva Y. Stein ("Plaintiff") and (b) Lowndes A. Smith, Peter S. Burgess, David T. Foy, Lois W. Grady, Sander M. Levy, Robert R. Lusardi, Thomas M. Marra (collectively, the "Director Defendants"), as well as Symetra Financial Corporation ("Symetra"), Sumitomo Life Insurance Company ("Sumitomo"), and SLIC Financial Corporation, (collectively, and together with the Director Defendants, "Defendants"), by and through their attorneys, have entered into a Stipulation and Agreement of Compromise, Settlement and Release

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT (15-2-20458-1SEA) 1

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ORIGINAL

1 (the "Stipulation"), which is intended to completely, fully, finally and forever compromise, settle,
2 release, discharge, extinguish and dismiss with prejudice the Released Claims (as defined below)
3 (including any Unknown Claims (as defined below)) upon and subject to the terms and conditions
4 of this Stipulation (the "Settlement").
5

6 The Parties having applied for an order preliminarily approving the proposed Settlement
7 and determining certain matters in connection with the proposed Settlement in accordance with
8 the terms and conditions of the Stipulation;

9 **IT IS HEREBY ORDERED:**

10 1. This Order Preliminarily Approving Settlement and Providing for Notice (the
11 "Preliminary Approval Order") incorporates and makes part hereof: (a) the Stipulation; and (b)
12 the Notice of Pendency of Class Action, Proposed Class Action Determination, Proposed
13 Settlement of Class Action, Settlement Hearing and Right to Appear (the "Class Notice") filed
14 with the Court as Exhibit C to the Stipulation. Unless otherwise defined herein, all capitalized
15 terms shall have the meanings as set forth in the Stipulation.
16

17 **PRELIMINARY APPROVAL**

18 2. The terms of the Settlement set forth in the Stipulation are preliminarily approved
19 as fair, reasonable and adequate and in the best interests of Plaintiff and the Class (as defined
20 below).
21

22 **PROVISIONAL CLASS CERTIFICATION**

23 3. The Court provisionally finds that the Action is a proper non-opt-out class action
24 pursuant to Rules 23(a) and 23(b)(1) and (b)(2) of the Washington Superior Court Civil Rules and
25 hereby provisionally certifies, for purposes of the Settlement only, the Class (as defined below)
26 consisting of all record and beneficial owners of common stock of Symetra who owned shares of

1 Symetra common stock at any time during the period beginning on August 11, 2015 through
2 February 1, 2016 (the "Class Period"), including any and all of their respective successors in
3 interest, successors, predecessors in interest, predecessors, representatives, trustees, executors,
4 administrators, heirs, assigns or transferees, immediate and remote, and any person or entity
5 acting for or on behalf of, or claiming under, any of them, and each of them, together with their
6 predecessors, successors and assigns (collectively, the "Class"). Excluded from the Class are
7 Defendants, members of the immediate family of any Director Defendant, any entity in which a
8 Defendant has or had a controlling interest and the legal representatives, heirs, successors or
9 assigns of any such excluded person. Members of the Class shall not have the right to opt out of
10 the Class.
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12 4. Plaintiff Shiva Y. Stein is provisionally appointed as the Class representative (the
13 "Class Representative"), and Pomerantz LLP is provisionally appointed as counsel for the Class
14 ("Class Counsel").
15

16 5. The Court provisionally finds, for the purposes of the Settlement only, that each of
17 the requirements of Rules 23(a) and 23(b)(1) and (b)(2) of the Civil Rules have been satisfied for
18 the reasons set forth below:
19

20 (a) the members of the Class are so numerous that joinder of all members is
21 impracticable;

22 (b) there are questions of law or fact common to the Class;

23 (c) the claims or defenses of the Class Representative are typical of the claims
24 or defenses of the Class;

25 (d) the Class Representative and Class Counsel will fairly and adequately
26 protect the interest of the Class;

1 (e) the prosecution of separate actions by individual members of the Class
2 would create a risk of inconsistent or varying adjudications with respect to individual members
3 of the Class, which would establish incompatible standards of conduct for Defendants;

4 (f) adjudications with respect to individual members of the Class would, as a
5 practical matter, be dispositive of the interests of the other members not parties to the individual
6 adjudications or would substantially impair or impede their ability to protect their interests; and

7 (g) Defendants are alleged to have acted or refused to act on grounds that apply
8 generally to the Class, so that final injunctive relief or corresponding declaratory relief would be
9 appropriate respecting the Class as a whole.
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11 6. Each and every member of the Class shall be bound by all determinations and
12 judgments in the Action.
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14 APPROVAL OF CLASS NOTICE

15 7. The Court approves, in form and substance, the Class Notice and finds that the
16 form and method of notice described herein is the best notice practicable and constitutes due and
17 sufficient notice of the Settlement Hearing (as defined below) to all persons entitled to receive
18 such a notice.

19 8. Within twenty-one (21) calendar days after the date of this Preliminary Approval
20 Order, Symetra (or its successor-in-interest) shall cause a notice of the Settlement Hearing (as
21 defined below) in substantially the form annexed as Exhibit C to the Stipulation to be mailed by
22 United States mail, postage pre-paid, to all members of the Class as of the date of the
23 consummation of the merger at their last known address appearing in the stock transfer records
24 maintained by or on behalf of Symetra. All record holders in the Class who, during the Class
25 Period, were not also the beneficial owners of the shares of Symetra common stock held by them
26

1 of record shall be requested to forward the Class Notice to such beneficial owners of those shares.
2 Symetra (or its successor-in-interest) shall use reasonable efforts to give notice to such beneficial
3 owners by: (a) causing additional copies of the Class Notice to be made available to any record
4 holder who, prior to the Settlement Hearing (as defined below), requests the same for distribution
5 to beneficial owners, or (b) causing additional copies of the Class Notice to be mailed to beneficial
6 owners whose names and addresses Symetra (or its successor-in-interest) receives from record
7 owners prior to the Settlement Hearing. Symetra (or its successor-in-interest) shall be responsible
8 for and shall pay all reasonable costs and expenses incurred in providing such Class Notice to the
9 members of the Class.
10

11 9. Within two (2) business days after the date of this Preliminary Approval Order,
12 Plaintiff's counsel shall post a copy of the Class Notice on its firm's website(s), and such copy
13 (or copies) shall remain posted on such website(s) through the Final Approval of the Settlement.
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15 10. In the event that the Stipulation is terminated, nullified or avoided pursuant to
16 paragraphs 13 and 14 of the Stipulation, the obligations of the Parties to provide Class Notice in
17 accordance with these paragraphs 8 to 9 shall be of no force and effect, nor shall the Parties have
18 any obligation to file affidavits of compliance pursuant to paragraph 11 below.
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20 11. Counsel for Symetra (or its successor-in-interest) shall, at least fourteen (14) days
21 before the Settlement Hearing (as defined below) directed herein, file with the Court an affidavit
22 with respect to compliance with paragraph 8 above.

23 SETTLEMENT HEARING

24 12. A hearing (the "Settlement Hearing") shall be held on May 10, 2016, at 8:30 a.m.,
25 at the King County Superior Court, 516 Third Avenue, Seattle, Washington 98104 to:
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(a) determine whether, for settlement purposes only, the Court's provisional

1 certification of the Class pursuant to Rules 23(a) and 23(b)(1) and (b)(2) of the Washington
2 Superior Court Civil Rules and its provisional designation of Class Representative and Class
3 Counsel should be made final;

4 (b) determine whether the Settlement should be finally approved by the Court
5 as fair, reasonable and adequate and in the best interests of Plaintiff and the Class;
6

7 (c) determine whether an Order and Final Judgment should be entered
8 pursuant to the Stipulation dismissing the Action with prejudice;

9 (d) consider any request by Plaintiff's counsel for an award of Fees and
10 Expenses in accordance with the Stipulation;

11 (e) hear and determine any objections to the Settlement or to any request of
12 Plaintiff's counsel for an award of Fees and Expenses; and
13

14 (f) rule on such other matters as the Court may deem appropriate.

15 13. The Court reserves the right to adjourn the Settlement Hearing or any part thereof,
16 including consideration of any request for Fees and Expenses, without further notice of any kind
17 to members of the Class other than oral announcement at the Settlement Hearing or any
18 adjournment thereof.

19 14. Plaintiff's counsel shall file and serve opening papers in support of the Settlement
20 not less than fourteen (14) calendar days prior to the objection deadline, the last day for Class
21 members to object to the Settlement shall be fourteen (14) calendar days prior to the Final
22 Approval Hearing, and reply papers, if any, shall be filed and served not less than seven (7)
23 calendar days prior to the Settlement Hearing.
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25 15. If the Settlement is approved by the Court following the Settlement Hearing, an
26 Order and Final Judgment shall be entered as described in the Stipulation.

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OBJECTIONS

16. Any member of the Class who objects to the Settlement, the Order and Final Judgment to be entered in the Action and/or any award of Fees and Expenses requested by Plaintiff's counsel, or who otherwise wishes to be heard, may appear in person or by his or her attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless, no later than fourteen (14) calendar days before the Settlement Hearing, such person files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear, (b) proof of membership in the Class and (c) a detailed written statement of such person's objections to any matters before the Court, as well as all documents or writings such person desires the Court to consider. Service may be made by hand or by overnight mail upon the following counsel of record:

<u>COUNSEL FOR PLAINTIFF</u>	<u>COUNSEL FOR SYMETRA AND THE DIRECTOR DEFENDANTS</u>
Gustavo F. Bruckner POMERANTZ LLP 600 Third Avenue New York, NY 10016	Sandra C. Goldstein Michael A. Paskin Cravath, Swaine & Moore LLP Worldwide Plaza 825 Eighth Avenue New York, NY 10019-7475

17. Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement or to the Order and Final Judgment to be entered, or to any award of Fees and Expenses, or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as described above in paragraph 16. Any person who fails to

1 object in the manner described above shall be deemed to have waived the right to object (including
2 any right of appeal) and shall be forever barred from raising any objection in this Action or any
3 other action or proceeding. Members of the Class or their counsel are not required to appear at
4 the Settlement Hearing or take any other action to indicate their approval of the Settlement.
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6 **STAY OF PROCEEDINGS**

7 18. All proceedings in the Action, other than such proceedings as may be necessary to
8 carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further
9 order of this Court. Pending final determination of whether the Settlement should be approved,
10 all Releasing Persons are hereby barred, enjoined, and precluded from instituting, commencing,
11 prosecuting, instigating or in any way participating in the institution, commencement, prosecution
12 or instigation of any and all Released Claims (including any Unknown Claims), either directly,
13 representatively, derivatively or in any other capacity against any Released Person.
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15 **TERMINATION**

16 19. If the Settlement is terminated as provided in the Stipulation:

17 (g) this Preliminary Approval Order shall be vacated, rendered null and void
18 and be of no further force and effect, except as otherwise provided by the Stipulation;

19 (h) this Preliminary Approval Order shall be without prejudice to the
20 rights of the Parties; and
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22 (i) the Parties shall be restored to their respective positions in the Action
23 immediately prior to the execution of the MOU, as provided in the Stipulation.
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25 **EFFECT OF SETTLEMENT**

26 20. The existence of the Stipulation, its contents and any negotiations, statements or
proceedings in connection therewith shall not be argued to be, and shall not be deemed to be, a

1 presumption, concession or admission by any Released Person or any other person of any breach
2 of fiduciary duty, breach of any securities law, fault, liability or other wrongdoing as to any facts
3 or claims alleged or asserted in the Action or otherwise, including any disclosure violations or
4 other violations, in connection with the Merger, the Merger Agreement, the Preliminary Proxy,
5 the Proxy, the Form 8-K, the Further Disclosures or any drafts, versions, amendments,
6 supplements or modifications to any of the foregoing, or any other public disclosures, statements
7 or filings made or to be made in connection with or regarding the Merger, the Merger Agreement
8 or any of the transactions contemplated thereby, including the Merger; or that Plaintiff or
9 Plaintiff's counsel, any member of the Class or any other person have suffered any damage
10 attributable in any manner to any of the Released Persons. Nor shall the existence of the
11 Stipulation and its contents or any negotiations, statements or proceedings in connection therewith
12 be construed as a presumption, concession or admission by Plaintiff, any member of the Class or
13 Plaintiff's counsel of any lack of merit of the Released Claims. In the event that the Settlement
14 and/or the Stipulation is terminated, nullified or avoided, or that this Preliminary Approval Order
15 is vacated, nothing in the Stipulation shall be interpreted so as to waive, forfeit or otherwise estop
16 Defendants from continuing to pursue any position Defendants have asserted formally or
17 informally in court filings or other communications, or have not asserted, including, but not
18 limited to, any positions taken with respect to jurisdiction, venue, discovery, class certification,
19 the propriety of expedited proceedings or discovery or the availability or propriety of injunctive
20 relief, in the Action or any other litigation concerning or relating to the Merger. The existence of
21 the Stipulation, its contents or any negotiations, statements or proceedings in connection therewith
22 shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or
23 otherwise used by any person in the Action, or in any other action or proceeding, whether civil,
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1 criminal or administrative, except as may be necessary to enforce, or obtain Final Approval of,
2 the Settlement.

3 21. Notwithstanding the foregoing paragraph 20, any of the Released Persons may file
4 the Stipulation, or any judgment or order of the Court related thereto (including this Preliminary
5 Approval Order), in any action brought against them in order to support any and all defenses or
6 counterclaims based on principles of release, waiver, forfeiture, judgment bar or reduction, good
7 faith settlement, estoppel and/or res judicata, or any other theory of claim preclusion or issue
8 preclusion or similar defense or counterclaim. Plaintiff also may refer to and utilize the
9 Stipulation in connection with any application for an award of Fees and Expenses as agreed in the
10 Stipulation. Paragraphs 30 and 31 of the Stipulation shall remain in force in the event that the
11 Settlement and/or the Stipulation is terminated, nullified or avoided, or this Preliminary Approval
12 Order is vacated.
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15 RESERVATION OF JURISDICTION

16 22. This Court reserves jurisdiction over all matters relating to the administration and
17 consummation of the Settlement. This Court may, for good cause, extend any deadlines set forth
18 in this Preliminary Approval Order without further notice to members of the Class
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20 **IT IS SO ORDERED.**

21 DATED: February 12, 2016

22 

23 The Honorable Hollis R. Hill
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