IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

RICHARD DICKMAN **304 Crestfield Court** **Charlottesville, VA 22911** **~ and~** **KENT ALDERSON** **601 Country Club Road** **Culpeper, VA 22701** ***Individually and on behalf of all those similarly situated*** **Plaintiffs,** **v.** **BANNER LIFE INSURANCE COMPANY,** **3275 Bennett Creek Avenue,** **Frederick, Maryland, 21704** **Frederick County** **~and~** **LEGAL & GENERAL AMERICA, Inc.** **3275 Bennett Creek Avenue,** **Frederick, Maryland, 21704** **Frederick County** **~and~** **LEGAL & GENERAL GROUP PLC** **One Coleman Street** **London, EC2R 5AA** **Defendants.**	)	**Civil Action No.** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiffs Richard J. Dickman and Kent Alderson, individually and on behalf of a class of all those similarly situated, bring this action against Banner Life Insurance Company; Legal & General America; and Legal and General Group Plc and allege based upon the investigation of counsel and upon information and belief as follows:

INTRODUCTION

1. Banner Life Insurance Company ("Banner") is a for-profit life insurer organized under Maryland law. Legal and General America, Inc. ("LGA"), Banner's immediate parent, owns all of Banner's Class A common stock, Class B common stock, and preferred stock. "Full control of LGA ultimately resides with Legal and General Group Plc" ("L&G"), a United Kingdom company. *See, e.g.*, Annual Statement for Year 2012 of the Banner Life Insurance Company at 19.5 n.10(a).

2. Banner, LGA, and L&G, working in concert with each other, embarked upon a scheme to take funds, which were designated as support for reserves and set aside to pay American policyholders' death claims, and convert them to L&G's investors' and executives' benefit.

3. For more than a decade, Banner, under the direction of its ultimate parent, L&G, put investors and executives ahead of their own policyholders. In doing so, Banner pretended to offload *billions of dollars* of liabilities, *a la Enron*, from Banner's balance sheet to its wholly-owned "captives" and other affiliates. As false "surplus" was created by this scheme, L&G caused Banner to pay more than $800,000,000 in "extraordinary stockholder dividends."

4. Importantly, L&G executives have stated, in press releases to its United Kingdom investor audience, that it was repatriating capital and profits from Banner, its American insurer, through an "internal reinsurance arrangement."

5. This "internal reinsurance arrangement" has been called "financial alchemy" by New York's former Superintendent of Financial Services, Benjamin M. Lawsky. In reality, Banner merely dumped approximately $4,000,000,000 worth of liabilities into wholly-owned captive reinsurance companies that are incapable of satisfying their assumed obligations, thereby freeing up hundreds of millions of dollars Banner would otherwise be legally required to hold as reserves.

6. Banner's captive reinsurance companies are strategically domiciled in jurisdictions that, amazingly, allowed the "reinsurers" not to file any public financials, hiding the true nature and details of these transactions.

7. After engaging in this financial alchemy for a decade, Banner decided to embark upon a new scheme to take U.S. policyholder funds and send them to L&G, ultimately to benefit shareholders. In September 2015, Banner suddenly increased the Cost of Insurance ("COI") charged to certain universal life insurance policyholders; in some cases, by as much as 620 percent.

8. Through mailers, press releases, and myriad other mediums, Banner has told policyholders that dramatic COI increases are necessary because "the company did not adequately account for future experience." A Legal & General America Agency Communication: Cost of Insurance FAQs, *available at* http://www.ubsnet.com/assets/Uploads/Newspdf/Banner-COI-Increase-7-22-15.pdf. Banner and LGA define "experience" as "the number and timing of death claims; how long people would keep their policies; how well the company's investments would perform; and the cost to administer policies." *Id.* Apparently suffering from corporate amnesia, Banner, LGA, and L&G forgot that they told insurance examiners, policyholders, rating agencies, and shareholders the exact opposite for more than a decade to justify paying extraordinary dividends and encourage investment by both policyholders and shareholders.

9. Since September 2015, Banner has systematically raided policyholder accounts, arguing that its action is permitted by the policies' terms. In reality, the justifications offered by Banner are false, and merely a guise to accomplish two objectives: (1) find new cash with which to fund future dividends, and (2) rid itself of near-term liabilities, and delay inevitable financial disaster.

PARTIES

10. Plaintiff Richard J. Dickman is an adult male resident of Charlottesville, Virginia. Plaintiff Dickman purchased one of Banner's universal life insurance policies in 2002.

11. Plaintiff Kent Alderson is an adult male resident of Culpepper, Virginia. Plaintiff Alderson also purchased one of Banner's universal life insurance policies in 2002.

12. L&G is organized under the laws of the United Kingdom with its principal place of business at One Coleman Street, London, EC2R 5AA. L&G exercises "[f]ull control of LGA." *See, e.g.*, Annual Statement for Year 2012 of the Banner Life Insurance Company at 19.5n.10(a). LGA "is a wholly owned subsidiary of" L&G. Legal & General Group plc – Statement re: US Capital Restructuring Programme, Feb. 2, 2011. LGA pays annual dividends to L&G from its operations, including $73 million in 2014 and $80 million in 2015. Half-Year Results: A Presentation From Legal and General, Aug. 6, 2014, at 8; Legal and General plc Half-Year Results, Aug. 5, 2015, at 17.

13. LGA is a Delaware financial holding company, organized under the laws of Delaware and with its principal place of business at 3275 Bennett Creek Avenue, Frederick, Maryland, 21704. LGA is "in the business of providing financial protection for American families" and currently has "10 million customers for its life insurance, pensions, investments and general insurance plans." LGA owns 100 percent of Banner's stock.

14. Banner is a Maryland life insurance company, organized under the laws of Maryland. Its principal place of business is 3275 Bennett Creek Avenue, Frederick, Maryland, 21704. Banner sells life insurance and is LGA's wholly owned subsidiary. Banner is the parent corporation of William Penn Life Insurance Company of New York, First British American Reinsurance Company II, First British Bermuda Reinsurance Company, II Limited, and First British Vermont Reinsurance Company II.

JURISDICTION AND VENUE

15. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act ("CAFA"), provides federal courts original jurisdiction over any class action in which any member of a class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5 million, exclusive of interest and costs.

16. This Court has personal jurisdiction over Defendants LGA, Banner, and FBVRC II because they reside in the state due to their principal place of business being located in Frederick, Maryland. This Court has personal jurisdiction over all other Defendants due to their continuous transactions with the in-state Defendants that gave rise to this claim.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events—the unfair and deceptive raising of Plaintiffs' and Class Members' cost of insurance—occurred in the District of Maryland.

FACTS

I. Banner Universal Policies At Issue

18. Plaintiff Dickman and Plaintiff Alderson each purchased a universal life insurance policy from Banner Life Insurance Company in 2002, specifically policies 17B548485 and 17B558503,

respectively.[1]

19. The policies purchased provided a $300,000 death benefit with a 20-year no-lapse-guarantee, provided the policyholder continued to pay the monthly guaranteed premium.[2] Additionally, the policies included a projected account value, based on the payment of excess premiums and guaranteed interest.

20. The policies sold to Plaintiff Dickman and Plaintiff Alderson were sold with "no-lapse-guarantees." Unlike a regular universal life policy that would normally expire or "lapse" if the cash or account value dwindles to the point that it is insufficient to cover a policy's ongoing charges for insurance and expense costs, a no-lapse-guarantee policy is guaranteed to stay in force for the guaranteed period if the minimum premium is paid regularly and on time. The policy therefore will not lapse anytime during the guarantee period, even if the cash value is technically negative.

21. Mr. Dickman's and Mr. Alderson's policies also enjoyed a minimum guaranteed 4% annual interest accrual on the accounts' cash values.[3]

22. Both Mr. Dickman and Mr. Alderson paid their monthly premiums in accordance with their contractual obligations for all relevant periods.[4]

23. Mr. Dickman's policy's effective date was September 27, 2002.

24. Mr. Dickman's monthly guaranteed premium was $345.71; however, Mr. Dickman paid an excess premium of $450 each month through automatic bank withdrawals to accrue a higher cash

[1] *See* Exhibit 1 Plaintiff Dickman's Flexible Premium Adjustable Life Insurance Policy, page 3; Exhibit 2, Plaintiff Alderson's Flexible Premium Adjustable Life Insurance Policy, page 3.
[2] Exhibit 1, p. 3, Exhibit 2, p. 3.
[3] Exhibit 1, p. 3; Exhibit 2, p. 3.
[4] *See* Exhibit 3, Plaintiff Dickman's Annual Statement as of September 29, 2015, page 1, listing premiums received; Exhibit 4, Plaintiff Alderson's Annual Statement as of August 8, 2015, page 1, listing premiums received.

value and ensure coverage past the guarantee period.[5]

25. On August 27, 2015, Mr. Dickman paid his $450 excess premium, was charged $18.50 in expenses and $285.58 in COI. The remaining $145.92 was added to the policy's cash value, exactly as his excess premium had been treated each month the policy had been in force. On August 27, 2015, Mr. Dickman's policy's cash value earned $86.54 in interest, and had a total cash value of $26,345.93.[6]

26. Mr. Alderson's policy's effective date was September 29, 2002.

27. Mr. Alderson's monthly guaranteed premium was $110.16; however, Mr. Alderson paid an excess premium of $200 each month through automatic bank withdrawals to accrue a higher cash value and ensure coverage past the guaranteed date.[7]

28. On August 5, 2015, Mr. Alderson paid his $200 excess premium, was charged $11.00 in expense charges and $88.86 for COI. The remaining $100.14 was added to the policy's cash value, exactly as his excess premium had been treated each month the policy had been in force. On August 5, 2015, the cash value of Alderson's policy earned $78.31 in interest, and had a total cash value of $24,100.26.[8]

29. In October 2015, COI charged for both policies increased dramatically.[9] Plaintiff Dickman's COI jumped from $285 to $1,859.72.[10] Similarly, Plaintiff Alderson's COI increased from

[5] *See* Exhibit 3.
[6] *Id.*
[7] Exhibit 4.
[8] Exhibit 4.
[9] *See* Exhibit 5, August 19, 2015 Letter from Legal & General and Banner Life to Richard J. Dickman Re: Important Notification Concerning Monthly Deductions; Exhibit 6, August 19, 2015 Letter from Legal & General and Banner Life to James K. Alderson Re: Important Notification Concerning Monthly Deductions.
[10] *See* Exhibit 3, page 1 listing cost of insurance.

approximately $93/mo. to $667.14/mo.[11]

30. By dramatically increasing COI charges, Banner is raiding Messrs. Dickman's and Alderson's policies' cash values and attempting to force them to surrender their policies.

31. For thirteen years, Mr. Dickman paid more than one hundred dollars ($100) over his guaranteed premium every month because the projected values indicated that the cash value of his policy would provide coverage for ten years beyond the guaranteed period. Mr. Alderson also paid excess premium for the same purpose. Now, however, because Banner is taking ***all*** cash value from their policies, Messrs. Dickman's and Alderson's excess premium payments will not fund the policy sufficiently to provide coverage past the 20-year no-lapse-guarantee.[12]

32. Messrs. Dickman and Alderson are not alone. Banner has dramatically increased COI charges on all of the following universal life policies: 1) Life Umbrella, (2) Life Umbrella Classic, (3) Sterling 1, (4) Advantra (OPTERM20), (5) Advantra (OPTRM20UL), (6) Advantra (ADV02/05), (7) Continuity (ULCONT), (8) Continuity (ULCONTPS -98), (9) Classic UL, (10) Continuity 100, and (11) Life Umbrella 120.

33. The policies specifically state that any changes in the COI are "determined and redetermined prospectively."[13] Banner Life also claims that it "will not recoup any prior losses not [sic] distribute past gains by means of such changes in cost of insurance rates."[14]

34. However, upon information and belief, Banner (and its parent company, LGA) is increasing the COI because it is financially unstable—a fact it has cleverly hidden through a captive

[11] *See* Exhibit 4.
[12] Exhibit 8, Letter from Legal & General and Banner Life to James E. Dickman, CFP Re: Policy # 17B5484485, p. 3.
[13] Exhibit 1, p. 6-7; Exhibit 2, p. 6-7.
[14] Exhibit 1, p. 6-7; Exhibit 2, p. 6-7.

reinsurance scheme—and to fund exorbitant dividend payments to LGA, and ultimately to L&G.

II. General Background Allegations

35. Life insurance policies are unique financial obligations: long-term commitments where the life insurer promises to be a faithful steward of policyholders' money and to give a sum-certain to policyholders' loved ones after their death.

36. To induce people to enter into these decades-long agreements, life insurers tout their longevity, long-standing commitment to policyholders and their families, and their financial strength. For example, Banner is a relatively young company, incorporated in 1949 and acquired by Legal & General Assurance Corporation in 1983 (the surviving entity being Banner). Because Banner does not have the rich history enjoyed by many of its competitors in the United States, it markets the history of its ultimate parent, L&G, to encourage the public to purchase its policies. *See* https://www.lgamerica.com/corporate/financials ("**A History More Than 178 Years Strong**" (emphasis in original)).

37. Because life insurance companies promise to pay death benefits far into the future, a company's financial condition is particularly important to potential purchasers. Life insurers understand this and market themselves as financially strong and prudent. For example, the first sentence on LGA's website[15] section called "About Us" reads: "Legal & General America is financially strong, fiscally responsible and committed to the business practices that will allow us to keep our promises to you." *Id.*

38. The National Association of Insurance Companies (the "NAIC") also specifically acknowledges that a company's financial condition is an essential tool used to protect policyholders. NAIC Statement of Statutory Accounting Principles (the "SSAP"), Preamble, ¶ 27 ("The ability to

[15] LGA is merely a holding company, with Banner being its only holding.

effectively determine financial condition using financial statements is of paramount importance to the protection of policy holders.").

39. So, too, is a life insurer's accounting information acknowledged as a factor consumers use to determine which entity they will trust with their money. *Id*. at Preamble at ¶ 6 ("Customers . . . may use accounting information to make choices as to the entity with which they engage in a business transaction.")

40. The way in which financial information is accumulated and reported to users is governed by the SSAP. *Id.*, Preamble, ¶ 6.

A. SSAP Is Designed to Protect Policyholders and Requires Accurate Financial Condition Disclosure

41. NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from each of the 50 states, the District of Columbia, and five U.S. territories. One of NAIC's goals is to "[p]rotect the public interest" and to "[p]romote the reliability, solvency and financial solidity of insurance institutions." "Our Mission," About the NAIC, *available at* http://www.naic.org/index_about.htm.

42. The SSAP are found in the NAIC Accounting Practices and Procedures Manual ("AP&P Manual"). The SSAP's objectives are specifically spelled out:

> The conceptual framework used in developing and maintaining statutory accounting principles for insurance companies is summarized in the Statutory Accounting Principles Statement of Concepts. The application of the concepts of ***conservatism, consistency and recognition*** assure that guidance developed and codified as part of this project is consistent with the underlying objectives of statutory accounting.

SSAP, Preamble, ¶ 20 (Emphasis added.)

43. The SSAP Preamble: Conclusion, further states:

> Application of [SSAP], either contained in the [Statements on Standards for Accounting and Review Services] SSARs or defined as GAAP and adopted by NAIC, to unique circumstances or individual transactions should be consistent with the concepts of ***conservatism, consistency, and recognition***.

SSAP, Preamble, ¶ 38 (Emphasis added.)

44. The SSAP differs from other financial accounting methods because the focus is on solvency for the protection of policyholders.

45. To protect policyholders, the applicable statutory accounting principles promote conservativism: "Conservative valuation procedures provide protection to policyholders against adverse fluctuations in financial condition or operating results. Statutory accounting should be reasonably conservative over the span of economic cycles and in recognition of the primary responsibility to regulate for financial solvency." AP&P Manual, ¶ 30. This emphasis—determining an insurer's ability to satisfy obligations years in the future—is much different than other financial accounting methods, such as Generally Accepted Accounting Principles ("GAAP").

46. The NAIC requires all fifty states must adopt the AP&P Manual and Annual Statement Instructions, and all fifty states have adopted them.

47. Codified by every state, the SSAP "provide examiners and analysts with uniform accounting rules against which companies' financial statements can be evaluated," thereby providing "more complete disclosures and more comparable financial statements," in which surplus and RBC "will be reported more consistently . . . ." SSAP Preamble, ¶ 14.

48. To that end, Maryland, Banner's state of domicile, and all other states, require all Annual Statements conform to the annual statement instructions and manuals promulgated by NAIC.

49. Therefore, every year Banner is required to prepare and file a sworn Annual Statement,

based on the convention blank form adopted by NAIC, that accurately reports its financial condition with the Maryland Department of Insurance.

50. An Annual Statement is a detailed statement of an insurance company's finances. It must be prepared according to SSAP, to the extent they are not in conflict with applicable state statutes or regulations. Quarterly Statements, which contain less detail than the Annual Statement, are also prepared using the same accounting methodology.

51. States can by law, regulation, or rule, specifically require accounting practices (which may differ from NAIC SSAP), or they can permit accounting practices that differ from SSAP, however, both the deviation and its financial effect must be specifically disclosed in an insurance company's Annual Statement. SSAP No. 1. While "[s]tatutory requirements vary from state to state ... to the extent that they exist it is the objective of NAIC statutory accounting principles to provide the standard against which the expectations will be measured and disclosed if material." Statement of Concepts, ¶ 26.

52. Therefore, if an insurer's use of a state accounting practice departs from SSAP, and the deviation affects its surplus or Risk Based Capital ratio ("RBC ratio"), the insurer must disclose both the accounting practice and explain the financial impact to the insurance company in Note 1 of its Annual Statement:

> [I]f a reporting entity employs accounting practices that depart from the NAIC accounting practices and procedures, disclosure of the following information about those accounting practices that affect statutory surplus or risk-based capital shall be made at the date each financial statement is presented:
>
> (a) A description of the accounting practice;
>
> (b) A statement that the accounting practice differs from NAIC statutory accounting practices and procedures;
>
> (c) The monetary effect on net income and statutory surplus of using an accounting practice which differs from NAIC statutory accounting practices and procedures;

> (d) If the insurance enterprise's risk-based capital would have triggered a regulatory event had it not used a prescribed or permitted practice, that fact should be disclosed in the financial statements.

SSAP No. 1.

53. Essential to SSAP principles, and inherent in all of its requirements, is the concept of ***adequate disclosure***:

> Statutory reporting applies to all insurers authorized to do business in the United States and its territories, and ***requires sufficient information to meet the statutory objectives.*** However, statutory reporting as contained in this guide is not intended to preempt state legislative and regulatory authority. The SSAP financial statements include the balance sheet and related summary of operations, changes in capital and surplus, and cash flow statements. Because these basic financial statements cannot be expected to provide all the information necessary to evaluate an entity's short-term and long-term stability, ***management must supplement the financial statements with sufficient disclosures*** (e.g., notes to the financial statements, management's discussion and analysis, and supplementary schedules and exhibits) to assist financial statement users in evaluating the information provided.

SSAP Preamble: Objectives of Statutory Financial Reporting (Emphasis added).

54. Consistent with these objectives, life insurance companies must fully and accurately disclose the nature of their financial transactions. If they do not, regulators, rating agencies, and policyholders will not have sufficient information with which to accurately evaluate the insurance companies' ability to satisfy policy obligations.

55. Accurate Annual Statement reporting is critically important because it is one of the few publicly available financial disclosure documents. Consumers, agents, ratings agencies, and others rely on the Annual Statements to assess companies' financial strength and ability to pay future claims as they come due. In short, Annual Statements are essential for the ultimate customer—the policyholder—to evaluate whether to put his or her trust in the insurance company.

56. An insurance company's Annual Statement, statutory surplus, and RBC ratios are also some of the key metrics A.M. Best, a rating agency that focuses on the insurance industry, uses to evaluate life insurers' financial strength.

57. For example, A.M. Best issues financial strength ratings that provide opinions about an insurer's financial strength and ability to meet its ongoing obligations to policyholders. Among other things, the financial strength rating is based on an insurance company's reported surplus and RBC ratio because this data is "the foundation for policyholder security." A.M. Best Methodology, Criteria – Insurance, May 2, 2012, at page 1.

58. According to A.M. Best, financial strength ratings are important "to assess the creditworthiness of an insurer's operations, to evaluate prospective reinsurance accounts, to compare company performance and financial condition." Moreover, a "rating can influence an agent's selection of plans to market." *Id*. Likewise, "[a] rating also is an important factor in the consumer's decision-making process to purchase insurance," and it "can provide consumers with the information necessary for an educated buying decision." *Id*.

B. Surplus and RBC Are The Two Main Ways Insurance Companies Are Measured for The Ability to Meet Long-Term Obligations

59. Two of the main metrics used to measure whether an insurance company is adequately capitalized to meet future obligations are surplus and RBC. Both metrics reflect life insurance's conservative nature.

i. *Surplus as a measure of solvency*.

60. An insurance company's solvency is critical to policyholders. It "ensure[s] that the policyholder, contract holder and other legal obligations are met when they come due and ***that the companies maintain capital and surplus at all times and in such forms as required by statute to***

provide an adequate margin of safety." SSAP Preamble, ¶ 27 (emphasis added).

61. The consumer can only assess an insurance company's ability "to provide an adequate margin of safety" if the life insurance company accurately discloses its financial condition because "the cornerstone of solvency measurement is financial reporting." *Id.*

62. Surplus is the company's ***admitted assets*** minus its liabilities, including its current and projected future policyholders' obligations.

63. ***Admitted assets*** are an insurer's assets that are available to satisfy the obligations owed to policyholders. Assets that cannot be readily liquidated due to encumbrances or other third party interests cannot be reported as ***admitted assets***. SSAP No. 4.

64. A contingent letter of credit is an example of an asset that cannot be an admitted asset.

65. The following example of a simplified balance sheet demonstrates how surplus is calculated:

Admitted Assets			**Liabilities**	
Bonds	$13 Billion		All Reserves	$14 Billion
Stock	$ 1 Billion		Expenses Due	$2 Billion
Cash	$ 1 Billion		Debt	$0
All Other	$2 Billion			
Total Admitted Assets	**$17 Billion**		**Total Liabilities**	**$16 Billion**

	Surplus = $1 Billion	

66. If a life insurance company's statutory surplus falls below the minimum legal levels, or if the company operates at an annual loss, it is not permitted to pay dividends to shareholders and may not be able to continue operations.

67. Management of every U.S.-based life insurer swears, under penalty of perjury, that the financial condition of their company, as reported in the Annual Statements, is completely true. That means that assets must be valued truthfully, and liabilities calculated in accordance with the law, specifically SSAP.

68. State laws and SSAP requirements create a framework by which an insurer's financial condition is externally reported to, among others, consumers.

69. For a life insurer, liabilities are almost entirely promises made to policyholders—such as death benefits—and those promises are most often very long-term commitments. The nature of insurance business requires that insurance company management engage actuaries to calculate the total commitments associated with a company's annuities and life policies for the Annual Statement. To calculate the present value of all those future promises, actuaries must consider future contingent events that would trigger claims the company must pay.

70. The projected amount due under life insurance policies is a relatively predicable figure because the calculation is relatively simple, involving far fewer unknowns than property and casualty risks, which would include such events as hurricanes and fires.

71. The actuary performs mathematical calculations to determine, in his judgment, the

present value of future liability, which is the liability figure used on a life insurer's balance sheet. If the value of the admitted assets exceeds that liability figure, the company can show surplus. If, however, admitted assets are insufficient to cover the liability figure, the company suffers from a deficit and the state regulator must take action to protect policyholders by, for example, putting the company in receivership.

72. Accurate reporting of assets and liabilities is necessary to measure a life insurer's solvency—as measured through surplus—and rating agencies, regulators, and consumers rely on companies to fulfill their obligation to report their true financial condition.

ii. *RBC as a measure of ability to meet future obligations*.

73. RBC is another measure of insurance company solvency and is one of the most important factors examined in determining an insurance company's ability to meet future obligations.

74. RBC is a ratio used to recognize the amount of risk a company has acquired. RBC requires a company that has greater risk to hold more capital, thereby giving the company a cushion against insolvency. Stated another way, RBC is a ratio that measures a company's ability to meet its future obligations. All things being equal, a company with a higher RBC ratio is more capable of meeting its future obligations than a company with a lower RBC ratio.

75. To assure policyholders that the benefits they purchased are available when needed, NAIC began regulating insurer capital through the Risk-Based Capital Model Act ("the RBC Model Act.")

76. The RBC Model Act provides a method of measuring the minimum capital necessary for an insurer to support its overall business operations when considering its size and risk profile.

77. Under the RBC Model Act, insurance companies calculate and self-report their total

adjusted capital (in general, the amount by which a company's assets exceed liabilities) and a RBC figure which reflects the riskiness of the company's activities. Although the insurance company reports the results of those calculations on its Annual Statement, the calculations themselves are not part of the Annual Statement.

78. RBC is intended to be a ***minimum*** capital standard, and is not necessarily a measure of the total capital an insurer would want to meet its safety and competitive objectives. Additionally, RBC is not designed as a stand-alone tool to determine financial solvency of an insurance company; rather it is one of the tools used to assess the ability of insurance companies to meet its risk obligations both now and in the future.

79. Before RBC was created, fixed capital standards were a primary tool used to monitor insurance companies' financial solvency. Under fixed capital standards, insurers were required to hold the same minimum amount of capital, regardless of the riskiness of the company's activities. Capital requirements varied by state, ranging from $500,000 to $6 million, and were dependent upon the state and the lines of business the insurance carrier wrote. Companies were required to meet minimum capital and surplus requirements to be licensed and to write business in the state. As insurance companies changed and grew, it became clear that the fixed capital standards were no longer effective in providing a sufficient cushion for many insurers.

80. Following a string of large company insolvencies in the late 1980s and 1990s, the NAIC implemented its RBC regime, intending it to be an early warning system that alerted regulators to potential insolvencies.

81. The RBC regime's intent was to provide a capital adequacy standard directly related to risk that (a) provided a safety net for insurers, (b) was uniform among the states, and (c) provided

regulatory authority for timely action.

82. The NAIC RBC regime has two main components: (1) the risk-based capital formula, that established a hypothetical *minimum* capital level that is compared to a company's actual capital level, and (2) a risk-based capital model law that gives state insurance regulators authority to take specific actions based on the level of impairment if an insurer's RBC drops below the minimum threshold.

83. Under the RBC system, regulators have statutory authority to take preventive and corrective measures, which vary depending on the capital deficiency indicated by the RBC result. These preventive and corrective measures are intended to enable, and even require, regulatory intervention that will correct problems before insolvencies become inevitable, thereby minimizing the number and adverse impact of insolvencies.

84. On their Annual Statements, insurance companies must report two RBC-related numbers: (1) Total Adjusted Capital, and (2) their Authorized Control Level Capital.

85. Frequently, the comparison between a company's Total Adjusted Capital and the Authorized Control Level Capital is expressed as a ratio—the RBC Ratio. The ratio is:

$$\frac{Total\ Adjusted\ Capital}{Capital\ Reserved\ In\ Accordance\ Pursuant\ to\ RBC\ Model\ Act}$$

86. When the NAIC RBC system is tripped, one of two things happens: (1) a company must take action to increase its capital as compared to its risk (meaning increase its surplus), or (2) regulators can exercise their statutory authority and intervene in the business affairs of the insurer. If a company's financial reporting is accurate, reported RBC alerts regulators to undercapitalized companies, giving them sufficient time to act and minimize overall costs associated with insolvency.

87. The RBC ratio is also used by consumers to evaluate the likelihood an insurer will become insolvent given its capital, surplus, and liabilities because it is a significant factor rating agencies use to measure a company's financial strength.

88. If RBC is misstated, a company not only improperly avoids regulatory intervention, but it also misleads ratings agencies and consumers about its financial stability and the sufficiency of its capitalization.

C. Transactions with Affiliates Can Manipulate Surplus and RBC.

89. "An 'affiliate' . . . is a [company] that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the [company] specified." Insurance Holding Company System Regulatory Act §1A.

90. Historically, some companies have used affiliated entities to hide their distressed financial condition, a la Enron. Accounting machinations and off-balance sheet liability transfers are easily executed when the company that assumes liabilities is wholly owned or affiliated with the ceding company, and has every incentive to act for a common benefit, rather than its own benefit.

91. Surplus and RBC are good predictors of an insurer's solvency only if all the company's transactions regarding the transfer of liabilities, assets, and risk are legitimate and arm's-length. When, however, such transactions are not arm's-length, surplus and RBC can be easily manipulated.

92. Obviously, some affiliated transactions achieve meaningful purposes, for example, consolidating certain lines of business into an affiliate that specializes in that line. Affiliated transactions, however, can also be used for nefarious purposes, such as shuffling liabilities between entities, artificially "transferring" risk, inflating valueless assets, or merely generating phantom assets.

93. Insurance companies legitimately use reinsurance, coinsurance, and modified coinsurance

transactions to spread risk to third-party companies that are solvent and capable of meeting policyholder obligations. This allows insurance companies to obtain surplus relief, as well as improve their RBC ratios.

94. When an insurer "cedes" risks of a block of life insurance policies or annuities through a bona fide reinsurance transaction, the assuming company is obliged by the governing reinsurance contract—a "treaty"—to set up reserve liabilities for that block. Once ceded, the ceding company can drop those liabilities from its own financial statements because the assuming company becomes responsible for paying those liabilities.

95. By way of example, assume that Company A originally sold 100 insurance policies to customers (policyholders), each with a death benefit of $100,000. Although extremely unlikely, the worst-case scenario for the insurer is that all 100 policyholders suddenly die the very next day. Doing the math, a $100,000 death benefit multiplied by 100 policies equals a $10 million liability. However, it is highly unlikely that all 100 policyholders will die after just one day. Applying mathematical tables, formulas, and the "Law of Large Numbers," actuaries can predict with accuracy what proportion of insureds, within a given class of insureds, will die. Accordingly, Company A is not required to hold reserves equal to a policy's ultimate death benefit. However, between the policy's issue date and the policyholder's death, the insurance company is expected to collect premiums and earn interest on those funds which will, over time, equal more than the $100,000 benefit. For this reason, the initial reserve liability for a very young, healthy, non-smoker will be much lower than it would be for an elderly smoker. This assessment, keyed to the present value of the obligation, is done through annual cash flow testing and reserve calculations.

96. In insurance parlance, the total needed to fulfill all contractual obligations (in this

example $10 million) is referred to as the "Gross In-Force"—the sum of all ultimate death benefit payments. Because it is extremely likely that the deaths will be staggered across many ensuing years, the insurance company only needs to hold in reserve the present value of that ultimate $10 million. For this example, assume that the actuarially required immediate reserve liability is $1 million for the entire block.

97. When Company A cedes this block of policies to Company B in a reinsurance transaction, Company A drops the present value amount of $1 million from its liabilities and Company B sets up the $1 million liability on its books. Company B is essentially backing Company A, and must pay Company A $100,000 for each death claim as it is made. The terminology used to describe Company A's reduction of the $1 million liability is a "reserve credit." In other words, because Company B is now "on the hook" to pay the claims as they come due, Company A is allowed to reduce its reserve liability (called a "reserve credit") by $1 million. In this way, Company A reduces its liabilities by $1 million and Company B adds $1 million to its liabilities.

98. Because this is a business transaction between two independent companies, Company B will not acquire the reserve liabilities without sufficient payment; therefore, Company A must also send sufficient assets to cover the reserve liabilities. In an arm's-length transaction, those assets are cash or cash-equivalents that are commensurate to cover the assuming company's obligations.

99. RBC assumes that all reinsurance agreements are reached at arm's-length with reinsurers financially capable of performing the ceded reinsurance obligations; therefore, the RBC formulas do not account for reinsurance *quality*. As a result, reinsurance with a highly solvent third-party reinsurer and reinsurance with an undercapitalized wholly owned captive shell company are treated the same.

100. Coinsurance or modified coinsurance similarly spreads risk. However, the assets for the

block of business that is coinsured stay on the balance sheet of the ceding company for surplus calculation purposes, but are considered transferred to the assuming company for RBC purposes. In other words, the ceding company's RBC is calculated as if the company had transferred that block of business off its books.

101. Historically, insurance companies reinsure or coinsure their risks with highly capitalized and independent—non-affiliated—companies. Legitimate reinsurers are used for their strong financial support and their valuable expertise and advice. A knowledgeable, well-capitalized, and honest reinsurer helps a company spread its risks and shares knowledge of good underwriting practices and economic expectations. The independent reinsurer has its own set of experienced executives, actuaries, and other experts that help the ceding company achieve shared goals. With well-capitalized and independent reinsurers, the valid purpose for reinsuring or coinsuring risks is achieved.

102. In arm's-length transactions between unaffiliated entities, both companies are independently incentivized to ensure that liabilities transferred mirror liabilities assumed, and that the transferred assets are real and sufficient to cover the assumed liabilities.

103. In fact, for the ceding company to take a reserve credit, the reinsurance agreements must transfer risk from the ceding entity to the reinsurer. SSAP 61R, ¶ 17.

104. When insurance companies engage in reinsurance, coinsurance, and modified coinsurance transactions with affiliated entities, the companies can manipulate their balance sheets or risk profiles. Such transactions can foist large liabilities or risky assets onto an affiliated entity that is not subject to the strict capital and surplus requirements imposed on life insurance companies for the policyholders' benefit.

105. Such transactions between affiliates, especially shell entities, often have no valid

economic purpose. Indeed, pretending to transfer risk to an affiliate or captive is similar to a husband handing off a debt he owes a bank to his wife, purportedly to improve the family's financial condition. It simply does nothing.

106. These types of sham liability transfers have recently become prevalent in the life insurance industry: insurance companies create, and enter into transactions with, wholly owned captive subsidiaries whose finances are secret and free from regulatory scrutiny. These entities provide a vehicle for financial alchemy that serves to mask a ceding company's dire financial condition, or even insolvency.

D. The Danger of Financial Alchemy Through Transactions with Affiliates Worsens Through the Use of Wholly Owned Captives

107. A legitimate captive insurance company can be a very specific kind of risk financing wherein a non-insurance company, such as Exxon, creates an insurance subsidiary for which it is the sole policyholder. The captive insurer is a regulated entity designed to provide a form of self-insurance. Through a captive reinsurer, a company creates a self-insurance vehicle and tax deductions because it can write off the premiums. Companies typically form captives when they are either so large that they have more resources than the insurers who would be covering their risk, or when it is simply less expensive to start and run one's own insurance company than it is to pay the market value for certain kinds of insurance.

108. A captive insurer is "an insurance or reinsurance entity created and owned, directly or indirectly, by one or more industrial, commercial or financial entities, other than an insurance or reinsurance group entity, the purpose of which is to provide insurance or reinsurance cover for risks of the entity or entities to which it belongs, or for entities connected to those entities and only a small part if any of its risk exposure is related to providing insurance or reinsurance to other parties." International

Association of Insurance Supervisors, Issues Paper on the Regulation and Supervision of Captive Insurance Companies, October 2006, *available at* www.captiveglobal.com/files/documents/Issues_paper_on_regulation_and_supervision_of_captive_insurance_companies_October_2006.pdf.

109. Nevertheless, insurance companies have begun to create "captive" reinsurance subsidiaries primarily to hide liabilities, thereby falsely inflating RBC.

110. Arguably, the impetus for captive reinsurance subsidiaries was the NAIC's Regulation XXX reserving methodology. The XXX reserving methodology is the product of the NAIC's March 1999 adoption of the revised Valuation of Life Insurance Policies Model Regulation.

111. Becoming effective in January 2000, Regulation XXX significantly increased the U.S. statutory reserve requirements for term life insurance writers.

112. Regulation XXX was a response to life insurer's attempt to drive down reserves by creating products that had excessively late-duration guaranteed premiums. Regulation XXX was intended to foreclose this practice, which was generally regarded as a loophole exploitation. Regulation XXX addressed this practice by necessitating that each level of a premium be calculated separately in order to ensure sufficient reserve requirements.

113. The insurance industry pushed back against increased reserves requirements imposed by Regulation XXX. Insurance companies alleged that the reserve requirements were overly stringent and, in response, began pursuing workarounds.

114. Ultimately, companies began to evade the increased reserve requirements by using captive reinsurers. More specifically, many companies began ceding their policy liabilities to offshore

or out-of-state reinsurers where local statutory reserving requirements were less onerous, such as allowing the use of U.S. GAAP rather than SSAP.

115. Universal life ("UL") policies with secondary guarantees are subject to Regulation AXXX (also known as Actuarial Guideline 38). Reserves under AXXX demonstrate a similar "hump-backed" pattern as XXX with longer tails since universal life typically has a longer average policy life than term life products. The reinsurance market for the AXXX reserve is very limited and most insurers retain the risk.

116. To address the looming capital needs associated with XXX and AXXX reserves, many for-profit life insurance companies turned to so called "alternate capital-funding solutions," among which securitization is considered the more elegant solution.

117. Securitization is the process of repackaging certain assets or cash flows for sale in the capital markets as debt securities that pay periodic coupons as well as the eventual repayment of principal. Investors buying these securities will assume the risks inherent in the underlying cash flow.

118. A common and well-known type of securitization in the asset world is a mortgage-backed security ("MBS"), where the cash flows from a pool of mortgages are sold as debt. Insurance securitizations follow a very similar process, except that the cash flows are derived from liabilities instead of assets, and the risks are related to insurance risks such as mortality and lapse rates instead of prepayment.

119. A simple hypothetical illuminates how these securitizations function in practice: Suppose a block of term insurance reserves under XXX is being securitized. Similar concepts would apply to UL reserves under AXXX as well. The original company is either a direct writer or a reinsurer looking to finance its mounting XXX reserve. The company typically would set up a captive reinsurer and cede off

its block of term policies under a coinsurance treaty. Many companies choose to set up captives either offshore or in states that offer favorable regulatory accounting treatment, such as allowing the use of GAAP reserves for the captive's regulatory reporting. A holding company may be set up as the parent to the captive reinsurer. Many prefer this type of holding company structure, since the original company does not directly own the captive reinsurer, and it is less likely that the original company will need to reflect the captive reinsurer on its statutory financial statement.

120. Special Purpose Vehicles ("SPVs") are often used in securitization. An SPV is set up to serve a specific purpose, such as raising capital and servicing investors in a securitization. It performs little or no other activities. The investors have claims to assets only in the SPV and have no recourse to the original company. Similarly, the creditors of the original company have no claims to any assets in the SPV. The equity holder of the SPV is often the original company, an affiliate or an investment bank, and controls the SPV's activities, including the issuing of debt or equity securities, as well as selling notes to the investors. The SPV pays the financial guarantor a premium to compensate for the risks the guarantor assumes.

121. For years, insurance companies created these captive entities in off-shore countries, such as Bermuda. Because the offshore captives are not subject to U.S. regulation, they provide a means to hide balance sheet and RBC problems from United States regulators.

122. In the last decade, several states, including Vermont and South Carolina, encouraged the formation of the "special purpose financial captives" ("SPFCs")—a specific type of SVP—in their states, hoping to spur a cottage industry that would generate fee revenues and create jobs. Such state programs feature confidentiality protections that, despite the required transparency of the ceding company's financial condition, shield the SPFCs' financial condition from the view of consumers (and

even from other state regulators that would be unwilling to offer SPFCs the same degree of secrecy).

123. Vermont, for example, cloaks domestic SPFCs in secrecy, only permitting its Commissioner of the Department of Financial Regulation to disclose captive formation and financial information under two circumstances: (1) in response to a subpoena if certain specific requirements are met, VT. STAT. ANN. tit. 8, § 6002(c)(3)(A), or (2) to a public officer with insurance regulation responsibilities in another state, provided that: "(i) such public official shall agree in writing to maintain the confidentiality of such information; and (ii) the laws of the state in which such public official serves require such information to be and to remain confidential." *Id*. at § 6002(c)(3)(B).

124. The same strict confidentiality restrictions apply to examinations and investigations by the commissioner into a captive insurance company's financial condition:

> All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. ***The commissioner may, in the commissioner's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.***

Id. at § 6008(c) (emphasis added). These confidentiality restrictions are expressly applicable to Vermont SPFCs. *Id*. at § 6048(a).

125. In short, Vermont and certain other states now allow insurance companies to create U.S. subsidiaries whose balance sheets are secret.

126. Simply stated, insurance companies can shuttle financial statement problems onto captive SPFCs, and away from regulation and public scrutiny.

127. For this reason, many people consider captive SPFCs the "black hole" of insurance company financial analysis.

128. As captives have become more prevalent, the NAIC has begun to examine and advise the insurance industry on their potential abuse. In fact, the NAIC has expressly stated that these entities should not be used to manipulate company finances: "Commercial insurer-owned captives and [SPFCs] ***should not be used to avoid statutory accounting***." NAIC, The Captive and Special Purpose Vehicles: An NAIC White Paper (hereinafter "NAIC White Paper"), at 3 (emphasis added); *see also id.* at 20 ("the general opinion of the Subgroup was that it is inappropriate for captives and [SPFCs] to be used as a means to avoid statutory accounting"); *id.* at 23 (recognizing "a consensus view that captives and special purpose vehicles should not be used by commercial insurers to avoid statutory accounting prescribed by states"); *id.* at 30 ("The practice of using a different entity or different structure outside of the commercial insurer to engage in a particular activity because of a perception that the regulatory framework does not accurately account for such activity should be discouraged. The Subgroup held a consensus view that captives and [SPFCs] should not be used by commercial insurers to avoid statutory accounting prescribed by the states.").

129. The NAIC White Paper also stated that conditional letters of credit ("LOC"), which cannot be admitted assets pursuant to SSAP, were not appropriate means for capitalizing captive SPFCs:

> The transactions involving conditional LOCs or parental guarantees effectively permit assets to support reinsurance recoverables, either as collateral or as capital, in forms that are otherwise inconsistent with requirements under Model #785 and Model #786 or other financial solvency requirements applicable to U.S.-domiciled commercial assuming insurers. The Subgroup held a consensus view that these types of transactions may not be

> consistent with the NAIC credit for reinsurance requirements.

NAIC White Paper, at 23.

130. The draft White Paper was more blunt:

> The transactions involving conditional LOCs or parental guarantees effectively permit assets to support reinsurance recoverables, either as collateral or as capital, in forms that are otherwise inconsistent with requirements under the credit for reinsurance models or other financial solvency requirements applicable to U.S.-domiciled commercial assuming insurers. The subgroup held a consensus view that these types of transactions were not consistent with the NAIC credit for reinsurance requirements. ***It is not financially sound to provide credit for reinsurance when the assuming insurer's solvency depends on a parental guaranty, while the parent's surplus that supports that guaranty includes credit for the very reinsurance whose performance depends on the guaranty. Similar bootstrapping problems arise if reinsurance is directly secured by an LOC, or is indirectly secured when an LOC is used to capitalize the assuming insurer, and the ceding insurer itself, or one of its affiliates, is the LOC applicant, which becomes liable to reimburse the bank if the LOC is drawn.***

Draft White Paper (setting out Maine comments), at 18 (emphasis added).

131. In short, an otherwise regulated commercial insurer, like Banner, cannot do through an SPFC what it is prohibited from doing by SSAP. Liabilities originating with, and retained by, the ceding insurer cannot be granted favorable treatment merely by reporting that those liabilities are on the books of an affiliated captive. *See, e.g.*, NAIC White Paper, at 28 ("allowing a captive or [SPFC] to account for LOCs or parental guarantees as assets [is] something not permitted in the current statutory accounting framework."). Likewise, risky assets that would normally affect a company's RBC ratio cannot simply be transferred to a wholly owned captive entity to make the insurance company look financially stable when it is not.

132. As alleged with particularity below, and precisely as feared by the NAIC, Banner has used SPFCs and other affiliated entities to facilitate a fraudulent scheme to avoid statutory accounting

rules and principles to make Banner appear financially stable and inflate statutory surplus, and magically improve its RBC ratios. As shown below, Banner, during the Class Period, used the "black box" confidentiality afforded by Vermont, South Carolina, and Bermuda to evade SSAP principles, to misstate its true surplus, and mask its troubled financial condition to regulators, rating agencies, and ultimately, its life insurance customers.

E. Rules Prohibiting Financial Alchemy through Affiliated Transactions

133. Because the risk that insurance companies will alter their balance sheet through affiliate transactions is so grave, the NAIC drafted the Model Holding Company Act, adopted in all 50 states, to govern such transactions. The Act's primary objective is to ensure that insurance companies' transactions with affiliates are "fair and reasonable," and done at "arm's-length."

134. Those requirements, mainly contained in SSAP 25, prohibit companies from recording non-arm's-length or non-economic transactions with affiliates in such a way that they seem to "create" assets, falsely inflate assets, or mask liabilities.

135. SSAP No. 25 governs accounting for transactions with affiliates and other related parties. SSAP No. 25 in pertinent part provides:

> [1] Related party transactions are subject to abuse because reporting entities may be induced to enter transactions that may not reflect economic realities or may not be fair and reasonable to the reporting entity or its policyholders. As such, related party transactions require specialized accounting rules and increased regulatory scrutiny. This statement establishes statutory accounting principles and disclosure requirements for related party transactions.
>
> ***
>
> [9] Loans or advances by a reporting entity to all other related parties shall be evaluated by management and nonadmitted if they do not constitute arm's length transactions as defined in paragraph 12.
>
> ***
>
> [12] An arm's-length transaction is defined as a transaction in which willing parties, each

being reasonably aware of all relevant facts and neither under compulsion to buy, sell, or loan, would be willing to participate. A transaction between related parties involving the exchange of assets or liabilities shall be designated as either an economic transaction or non-economic transaction. An economic transaction is defined as an arm's-length transaction which results in the transfer of the risks and rewards of ownership and represents a consummated act thereof, i.e., "permanence." The appearance of permanence is also an important criterion in assessing the economic substance of a transaction. In order for a transaction to have economic substance and thus warrant revenue (loss) recognition, it must appear unlikely to be reversed. If subsequent events or transactions reverse the effect of an earlier transaction prior to the issuance of the financial statements, the reversal shall be considered in determining whether economic substance existed in the case of the original transaction.

***

An economic transaction must represent a bona fide business purpose demonstrable in measurable terms. ***A transaction which results in the mere inflation of surplus without any other demonstrable and measurable betterment is not an economic transaction. The statutory accounting shall follow the substance, not the form of the transaction.***

***

[13] In determining whether there has been a transfer of the risks and rewards of ownership in the transfer of assets or liabilities between related parties, the following – and any other relevant facts and circumstances related to the transaction – shall be considered:

[a] Whether the seller has a continuing involvement in the transaction or in the financial interest transferred, such as through the exercise of managerial authority to a degree usually associated with ownership;

***

[15] A non-economic transaction is defined as any transaction that does not meet the criteria of an economic transaction. Similar to the situation described in paragraph 13, ***transfers of assets from a parent reporting entity to a subsidiary, controlled or affiliated entity shall be treated as a non-economic transactions at the parent reporting level because the parent has continuing indirect involvement in the assets***.

***

[16] When accounting for a specific transaction, reporting entities shall use the following valuation method:

[a] Economic transactions between related parties shall be recorded at fair value at the date of the transaction. To the extent that the related parties are affiliates under common control, the controlling reporting entity shall defer the effects of such transactions that result in gains or increases in surplus (*see* paragraph 13);

> [b] Non-economic transactions between reporting entities, which meet the definitions of related parties above, shall be recorded at the lower of existing book values or fair values at the date of the transaction;
> [c] Non-economic transactions between a reporting entity and an entity that has no significant ongoing operations other than to hold assets that are primarily for the direct or indirect benefit or use of the reporting entity or its affiliates, shall be recorded at the fair value at the date of the transaction; however, to the extent that the transaction results in a gain, that gain shall be deferred until such time as permanence can be verified;
> [d] ***Transactions which are designed to avoid statutory accounting practices shall be reported as if the reporting entity continued to own the assets or to be obligated for a liability directly instead of through a subsidiary***.

SSAP 25, ¶¶ 1, 9, 12, 13, 15 & 16 (emphasis added).

136. The Model Act also addresses transactions with affiliates and prohibits self-interested transactions with affiliates:

> Each transaction within an insurance holding company system to which an insurer subject to registration under Subtitle 6 of this title is a party is subject to the following standards:
>
> (1) the terms shall be fair and reasonable in light of the purposes of this title;
>
> (2) the records of each party shall clearly and accurately disclose the precise nature and details of the transaction, including accounting information necessary to support the reasonableness of the charges or fees to the parties;
>
> (3) after the transaction, including any dividend or distribution to shareholder affiliates, the insurer has assets and surplus as regards policyholders that:
>
> (i) bear a reasonable relation to the insurer's outstanding liabilities; and
> (ii) are adequate to meet the insurer's financial needs;
> (4) charges or fees for services performed shall be reasonable;
>
> (5) expenses incurred and payments received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied; and
>
> (6) agreements, including management agreements, service contracts, tax allocation agreements, or cost-sharing agreements, shall include the provisions that the Commissioner requires by regulation.

MD. INS. CODE § 7-702.

F. Captives and Offshore Affiliates Help Companies Break the Rules

137. While SSAP 25 clearly prohibits the use of affiliated transactions to manipulate a company's financial picture and give the appearance of stability and strength, it still relies on insurance companies to accurately disclose and report their financials.

138. Companies that are motivated to cheat have found a perfect vehicle for financial alchemy in domestic and offshore captive subsidiaries and affiliates. Because the captives' finances are largely secret and not subject to the same regulations, parent insurance companies can, and do, hide liabilities through affiliated transactions.

139. Life insurance companies are now using captive SPFCs to misuse reinsurance and coinsurance as methods of masking their troubled financial condition.

140. They do this by causing their affiliates to enter into what appears to be reinsurance transactions, but that are in reality simply means of shuffling the insurance company's worst liabilities and assets off its books. In reality, however, liabilities are not transferred because they never left the holding company system or the insurance company where it started.

G. Affiliated Transactions Help Hide Liabilities.

141. A company that wishes to disguise its troubled financial condition can hide some of its liabilities through affiliated transactions, allowing it to report positive surplus and favorable RBC ratios.

142. By creating captive reinsurers and offshore affiliated entities, life insurers can enter into imbalanced economic, non-arm's-length transactions in which the ceding company can "cede" more liabilities than the assuming company reports it "assumes," or the ceding company can "send" significant liabilities, while sending insufficient assets to back these liabilities.

143. Because surplus is a component of the insurance company's RBC ratio (it is part of the

numerator in the RBC ratio calculation), artificially inflating surplus also artificially inflates RBC.

144. In a normal arm's-length reinsurance transaction, an independent reinsurance company would not assume liabilities without also receiving real assets commensurate to back those liabilities. Because life insurance involves such predictable risk factors, as compared to other forms of insurance, it is likely that the actuary working for the ceding company will independently derive a number that reasonably tracks the number derived by the assuming company's actuary.

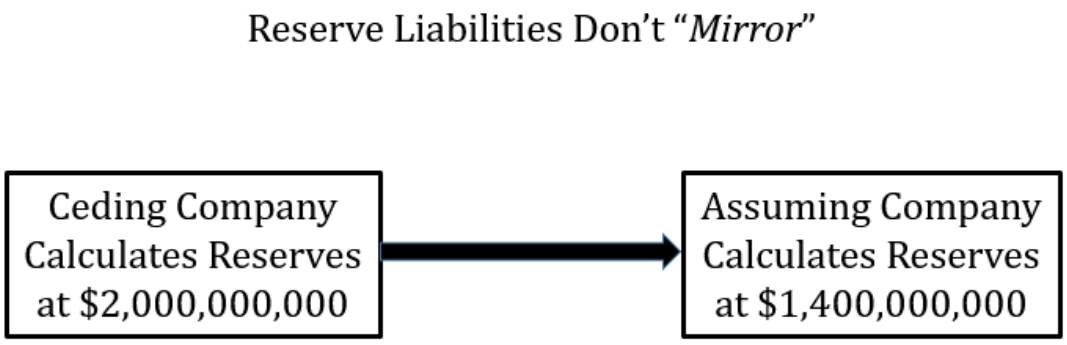
145. If the ceding actuary arrives at $2 billion, for example, the assuming actuary should be in the same ballpark, substantially "mirroring" his counterpart. Because different and independent executives and actuaries are involved in arm's-length reinsurance transactions, there is no great concern if the liability to asset ratio is minimally different because it simply reflects the subtle differences in each companies' management and actuarial approach. Such a transaction could, for example, look like this:

Reserve Liabilities Should "*Mirror*"

146. When, however, the ceding company chooses to "cede" the $2 billion to an affiliated company (or wholly owned captive), no independent actuarial calculations occur. Because the ceding parent and assuming captive share management and actuaries, the amount ceded and the amount assumed should be ***comparable***.

147. If the terms of the transaction can be concealed, however, there is a powerful incentive

for the assuming affiliated company to set its reserves much lower. Such a transaction could, for example, look like this:



148. In this example, the difference is neither subtle nor reasonable. The two parties are not independent; instead, the same management is intentionally creating the disparity, which gives the appearance that $600 million in surplus for the ceding company resulted from the reinsurance deal. Such manufacturing of phony surplus can be accomplished only because the captive does not file public financial statements revealing the lack of mirroring.

149. The Model Holding Company Act expressly prohibits this sort of "reserve discounting" scheme. In the insurance industry it is called "window dressing." The Act mandates that when a ceding company transacts with an affiliate, the deal terms must be fair and reasonable; one party cannot benefit to the other party's detriment. If such transactions were permitted, no regulator, rating agency, or life insurance purchaser could possibly know the true condition of the ceding insurer.

150. Through such affiliated reinsurance transactions, insurers generate false surplus by sending significant liabilities and likewise decreasing reserves, all the while sending far fewer assets than necessary to establish the assuming company reserves. Because the reinsurer is often an offshore entity or wholly owned domestic captive without regulated finances, the acquiring entity has no corresponding obligation to certify that its reserves meet statutorily mandated levels, or are adequate to

cover the transferred liabilities. In short, the offshore affiliate or wholly owned captive is not subject to the same reserve scrutiny by regulators.

151. By transferring reserve liabilities off a company's books, and onto an affiliate's books, through sham or non-arm's-length "reinsurance" transactions, the "ceding" company is able to significantly reduce the reserves it is required to hold to pay future claims, thereby improving the company's risk profile in the process. This, of course, allows the company's surplus and capital picture to appear much healthier than it actually is, permitting stockholder dividend payouts while, at the same time, lulling policyholders into a false sense of security.

III. Banner Captive Insurance Scheme

152. As discussed more fully below, since as early as 2004, Defendants have engaged in numerous sham reinsurance transactions with the sole purpose of raiding reserves from Banner and its subsidiaries, allowing L&G to ultimately acquire those funds through stock dividends. To that point, the sham reinsurance transactions allowed Defendants to misrepresent their financial health by hiding liabilities and inflating assets, thereby improving their risk profile and reducing the amount of cash reserves they were required to maintain.

A. Banner's History

153. Banner was incorporated in September 1981 as Legal & General Assurance Corporation ("LGAC"), a life insurance company, under the laws of the District of Columbia.

154. LGAC was formed to effect the 1983 acquisition and to be the successor to the business of the Banner Life Insurance Company, which was originally incorporated in 1949 under the laws of the District of Columbia as Government Employees Life Insurance Company.

155. Concurrent with the 1983 acquisition, LGAC changed its name to Banner Life Insurance

Company. In 1986, Banner redomesticated from the District of Columbia to Maryland.

156. In November 1995, Banner's immediate parent, Legal & General Life Insurance Company of America, Inc. was dissolved by merging into its parent, LGA, which became Banner's immediate parent. LGA is owned by Legal & General Overseas Operations Limited, a United Kingdom company. The ultimate parent is Legal & General Group, Plc., a United Kingdom company founded in 1836.

157. First British American Reinsurance Company II ("FBARC II") is one of Banner's wholly owned captive reinsurers, allegedly reinsuring some of Banner's life insurance liabilities. FBARC II is organized under the laws of South Carolina, with its principal place of business at 151 Meeting Street Suite 301, Charleston, South Carolina 29401.

158. First British Bermuda Reinsurance Company II, Limited ("FBBRC II") is one of Banner's wholly owned captive reinsurers, allegedly reinsuring some of Banner's life insurance liabilities. FBBRC II is organized under the law of Bermuda, with its principal place of business at Victoria Hall, 11 Victoria Street, Hamilton, HM HX, Bermuda.

159. First British Vermont Reinsurance Company II ("FBVRC II") is one of Banner's wholly owned captive reinsurers, allegedly reinsuring some of Banner's life insurance liabilities.

FBVRC II is incorporated under the laws of Vermont, but it has no principal business address according to Vermont's Corporations Division. *See* https://www.vtsosonline.com/online/BusinessInquire/BusinessInformation?businessID=131556. On information and belief, FBVRC II's principal business address is 3275 Bennett Creek Avenue, Frederick, Maryland, 21704.

160. The majority of Banner's operations concentrate on the marketing and sale of individual traditional life, annuity, and universal life insurance policies. Banner's primary marketing strategy is through independent brokerage agencies, including members of the National Association of Independent Life Brokerage Agencies. On information and belief, Banner's individual life insurance products are sold through 12 marketing brokerage general agencies with approximately 300 member agencies and almost 60 other independent brokerage general agencies.

B. Banner's Captive Reinsurance Scheme

161. Following the NAIC's adoption of Regulation XXX, Banner was required to increase its policy reserve liabilities to levels much higher than in previous years. As discussed above, the entire purpose of Regulation XXX was to inject more conservatism into the reserving methodologies to better protect policyholders.

162. Choosing to disregard NAIC's concerns for policyholders, Banner began, as early as 2004, engaging in a series of "captive reinsurance" schemes to sidestep these higher reserve requirements imposed by Regulation XXX. The schemes began relatively small with a total of reserve credits for reinsurance transferred to captives in 2004 in the amount of $63.86 Million. The schemes snowballed into a monstrous swirl of circular promises that, in 2014, totaled $3.8 Billion.

163. In 2004, Banner created its first domestic special purpose financial captive reinsurer, First British American Reinsurance Company ("FBARC") in South Carolina. In 2004, Banner began ceding life insurance business to FBARC, in an attempt to sidestep the increased reserves Regulation XXX required it to hold. Because Banner "ceded" these liabilities to FBARC, it took a "reserve credit" of $63.86 million. In simplified terms, Banner "reduced" its reported policy liabilities by $63.86 million, thereby reducing the amount of assets it needed to hold to match the policy liabilities.

164. To be allowed to recognize that $63.86 million reserve credit, traditional standards of statutory accounting require Banner to send to its captive, FBARC, assets commensurate with the policy liabilities ceded. However, Banner chose to form FBARC as a Special Purpose Captive in South Carolina to take advantage of what Banner would describe as regulatory arbitrage. Under the special purpose captive statutes in South Carolina, the insurance regulator allows certain types of captives to operate much more loosely than life insurers. Specifically, the special purpose captives have extremely low capital requirements and are permitted to carry certain investments as admitted assets that do not qualify under the standard accounting definition of assets; much less carry any value. Pursuant to SSAP No. 4, any form of investment that is ***contingent*** in any way upon anything cannot be classified as an admitted asset. Under South Carolina law, contingent letters of credit, parental guarantees and other types of contingent investments may be approved by the South Carolina regulator as an admitted asset for a *special purpose financial captive reinsurer domiciled in South Carolina*. However, no regular life insurer in the United States is permitted to allow such contingent investments as admitted assets. Importantly, even South Carolina does not permit its *non-captive traditional insurers* to do so. Despite South Carolina's lax captive laws, NAIC's SSAP 97 specifically prohibits a parent company—such as Banner—from receiving on its books any benefit recognized from such a transaction within its subsidiary.

165. Despite improperly taking reserve credit for ceding policy liabilities to FBARC in 2004 and substantially underfunding its reserves as a result, Banner assured regulators and rating agencies that it "establishe[d] sufficient policy reserves in accord with appropriate regulations." Annual Statement for the Year 2004 of the Banner Life Ins. Co., Management's Discussion and Analysis.

166. In each of the subsequent years Banner's total reserve credits from transactions with its affiliates grew in both volume and dollar amount. New "captives" were formed and even version II of several of them. The specific amounts of total Gross in Force (total of all policies' face value) amounts and reserve credit taken are reflected below. Each and every item was taken directly from Banner's sworn statutory annual statements, Schedule S - Part 3 for those respective years:

2004	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co	$31,181,147,291	$63,856,645
	Totals	$31,181,147,291	**$63,856,645**

2005	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co	$29,641,628,473	$108,889,705
	Totals	$29,641,628,473	**$108,889,705**

2006	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co	$28,434,755,907	$168,943,608
	First British American Reins Co II	$50,657,865,297	$123,787,666
	Totals	$79,092,621,204	**$292,731,274**

2007	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co	$27,371,899,107	$231,566,929
	First British American Reins Co II	$48,117,577,727	$197,011,411
	First British Bermuda Reins Co LTD	$92,262,744,467	$909,874,575
	Totals	$167,752,221,301	**$1,338,452,915**

2008	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co	$72,096,493,627	$563,809,492
	First British Bermuda Reins Co LTD	$125,905,806,740	$1,078,771,688
	Totals	$198,002,300,367	**$1,642,581,180**

2009	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co	$25,381,417,374	$248,319,259
	First British American Reins Co II	$43,647,944,532	$246,107,548
	First British Bermuda Reins Co LTD	$128,805,775,189	$1,159,550,956
	First British Bermuda Reins Co LTD II	$19,703,917,937	$26,399,505
	Totals	$217,539,055,032	**$1,680,377,268**

2010	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co II	$41,891,026,593	$293,748,631
	First British Bermuda Reins Co	$121,405,396,493	$1,289,627,518
	First British Bermuda Reins Co II	$37,811,044,994	$79,702,033
	First British Vermont Reins Co	$11,862,055,635	$18,454,198
	Legal and General Assurance Society, LTD	$26,690,552,243	$313,572,992
	Totals	$239,660,075,958	**$1,995,105,372**

2011	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co II	$40,605,511,424	$333,228,559
	First British Vermont Reins Co	$61,357,824,102	$118,143,739
	First British Vermont Reins Co II	$114,361,942,772	$1,409,910,833
	First British Bermuda Reins Co LTD II	$36,421,386,484	$135,801,783
	Legal and General Assurance Society, LTD	$33,488,475,544	$447,967,708
	Totals	$286,235,140,326	**$2,445,052,622**

2012	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co II	$39,276,689,294	$363,962,076
	First British Vermont Reins Co II	$107,627,158,949	$1,494,790,810
	First British Bermuda Reins Co LTD II	$35,203,860,770	$193,683,643
	Legal and General Assurance Society, LTD	$32,378,266,465	$465,622,931
	Totals	$214,485,975,478	**$2,518,059,460**

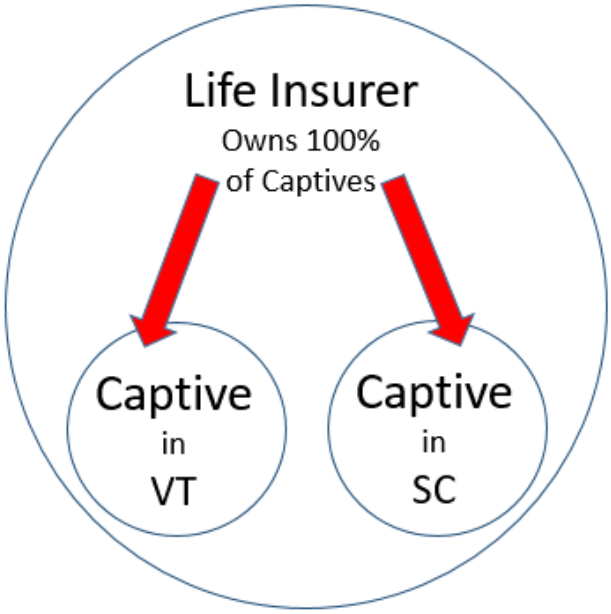
2013	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co II	$38,042,016,644	$385,976,393
	First British Vermont Reins Co II	$102,556,938,150	$1,555,729,927
	First British Bermuda Reins Co LTD II	$34,115,927,840	$248,489,522
	Legal and General Assurance Society, LTD	$30,681,815,131	$476,257,744
	Totals	$205,396,697,765	**$2,666,453,586**

2014	Affiliate Name	In-Force	Reserve Credit
	First British American Reins Co II	$36,815,610,344	$397,714,126
	First British Vermont Reins Co II	$99,199,673,034	$1,590,543,011
	Legal and General Assurance Society, LTD	$27,578,794,470	$476,141,150
	Legal and General Assurance Society, LTD	$1,367,650,615	$340,427,023
	Legal and General Assurance Society, LTD	$244,351,211,208	$1,011,653,491
	Totals	$409,312,939,671	**$3,816,478,801**

167. It is difficult to explain the sheer magnitude of Banner's "reinsurance" abuse. The "reinsurance" transactions are imprudent and have no legitimate business purpose.

168. To put this in perspective, Banner reported only $365.6 Million in Total Surplus on December 31, 2014. However, Banner has significantly "reduced" its policy liabilities through $3.8 billion in affiliated reinsurance, which equals 940% of reported surplus.

169. What Banner has done is simply illogical; an insurance company cannot receive any balance sheet benefit by transferring policy liabilities to its wholly-owned subsidiary as shown by the below graphic. Because Banner has merely shoved its liabilities onto its captives, the liabilities, in fact, go nowhere. In reinsurance parlance, *no risk has been transferred*. It is very well documented in reinsurance texts, accounting guidelines, and even major white-collar criminal investigations and convictions that total absence of true risk transfer renders a "reinsurance transaction" a sham.



170. All 50 states incorporated the NAIC Model Holding Company Act into their insurance statutes. Specific to these affiliated transactions, those statutes require, as previously stated, the following:

> Each transaction within an insurance holding company system to which an insurer subject to registration under Subtitle 6 of this title is a party is subject to the following standards:

> (1) the terms shall be fair and reasonable in light of the purposes of this title;
>
> (2) the records of each party shall clearly and accurately disclose the precise nature and details of the transaction, including accounting information necessary to support the reasonableness of the charges or fees to the parties;
>
> (3) after the transaction, including any dividend or distribution to shareholder affiliates, the insurer has assets and surplus as regards policyholders that:
>
> > (i) bear a reasonable relation to the insurer's outstanding liabilities; and (ii) are adequate to meet the insurer's financial needs;
>
> (4) charges or fees for services performed shall be reasonable;
>
> (5) expenses incurred and payments received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied; and
>
> (6) agreements, including management agreements, service contracts, tax allocation agreements, or cost-sharing agreements, shall include the provisions that the Commissioner requires by regulation.

MD. INS. CODE § 7-702.

171. The manner in which Banner effected and reported its transactions with its captives failed to comply with *all* of the following standards:

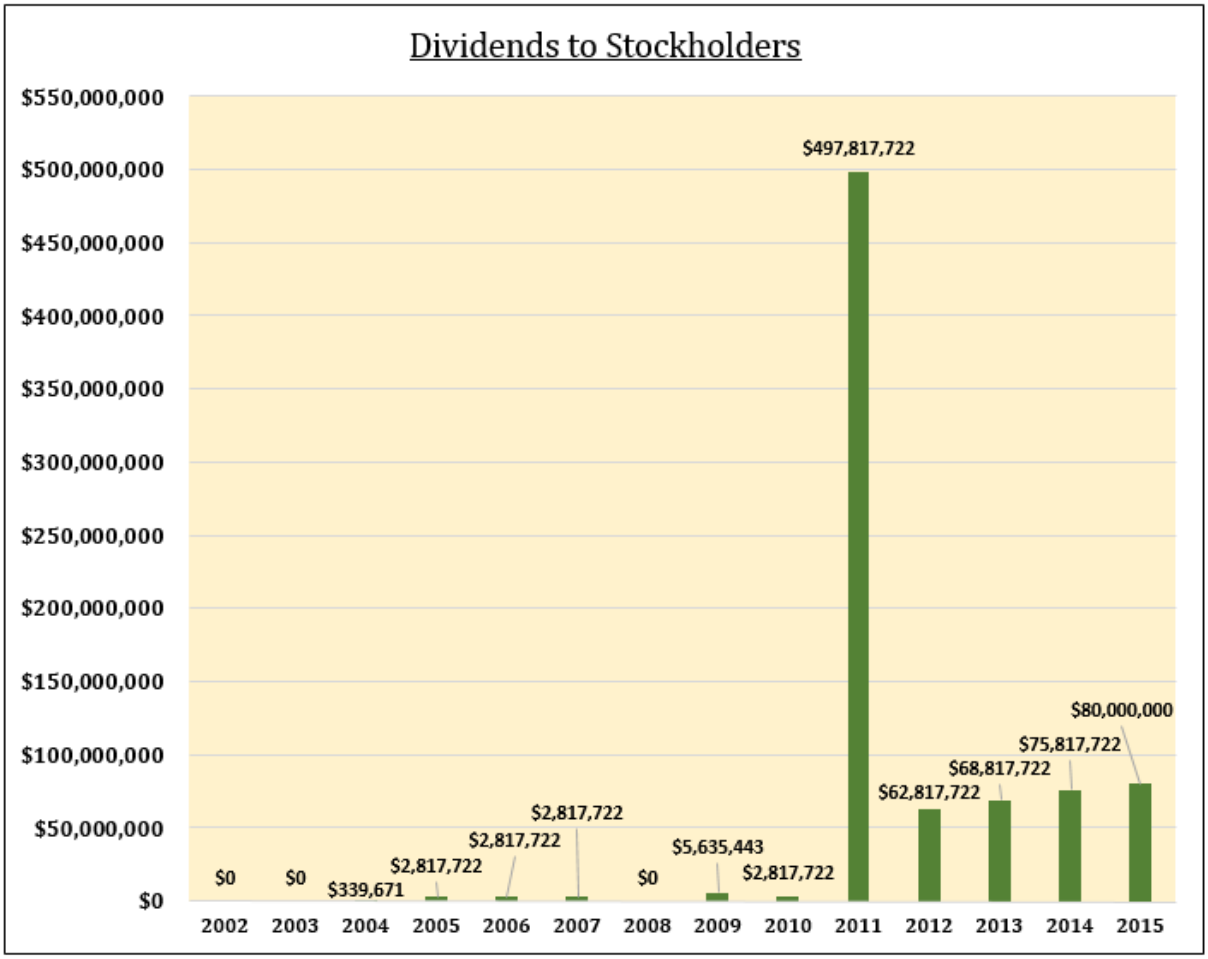
- Transferring policy liabilities to wholly-owned subsidiaries does not qualify as "risk transfer" sufficient to support the related reserve credits;
- Transferring policy liabilities to wholly-owned subsidiaries without transferring commensurate admitted assets cannot qualify as "fair and reasonable;"
- Because the captives (both onshore and offshore) do not file statements with the NAIC and do not even make financial statements available to the public, none of the material transactions with the captives comply with the requirement that "the books, accounts and records shall be so maintained as to clearly and accurately disclose the nature and details of the transactions…;"
- Because Banner Life does not transfer admitted assets commensurate with the policy liabilities, the transactions are deemed "window dressing." If such lopsided transactions were permitted, no one would ever be able to determine the insurer's true financial condition;
- Because Banner has not actually shed the policy liabilities, they are, in essence, reinsuring themselves, a circular transaction;

- Although it can't be determined without access to discovery if Banner Life is actually "discounting" its policy liabilities in the captive jurisdiction, it has been reported that some life insurers have discounted the reserves both offshore and onshore;
- Banner Life has failed to disclose in its Note 1 of the Notes to Financial Statements the fact that Banner Life has received, on its own balance sheet, very material benefits from sham transactions at are being booked at the captives' level.

IV. L&G Accomplishes Its Repatriation Goal Through Banner's Excessive Stockholder Dividends

172. The use of the above-described sham reinsurances has allowed Banner to give away significant assets in the form of stockholder dividends.

173. To that point, Banner paid $802,516,890 in stock dividends to LGA from 2002 through June 30, 2015. LGA then immediately turned around and paid these dividends to L&G. The illustrations below demonstrate the handsome dividend increases paid by Banner to L&G:



Year	Dividends to Stockholders
2002	$0
2003	$0
2004	$339,671
2005	$2,817,722
2006	$2,817,722
2007	$2,817,722
2008	$0

2009	$5,635,443
2010	$2,817,722
2011	$497,817,722
2012	$62,817,722
2013	$68,817,722
2014	$75,817,722
2015	$80,000,000

174. Notably, all dividends paid from 2011 to present were required by law to be classified as "extraordinary." Below is Note to Financial Statement No. 13 as reported in the Banner Life 2014 Annual Statement. The language required in (3) and (4) explains "ordinary" (without prior approval) versus "extraordinary" dividends.

13. Capital and Surplus, Shareholders' Dividend Restrictions and Quasi-Reorganizations

(1) The Company has 2,500,000 Class A shares and 300,000 Class B shares of common stock authorized, issued, and outstanding at December 31, 2014. Par value is $1 per share.

(2) The Company has 664,557 shares of preferred stock authorized, issued, and outstanding at December 31, 2014. In the event of a liquidation, preferred stockholders shall be paid any unpaid declared, accumulated dividends in an amount equal to $70.72 per share. Preferred stockholders are entitled to receive an annual cash dividend at the rate of $4.24 per share.

(3) The maximum amount of dividends which can be paid by State of Maryland insurance Companies to shareholders during 2014 without prior approval of the Insurance Commissioner is the lesser of: 1) 10% of surplus as regards policyholders as of December 31, 2014 or 2) the net gain from operations not including realized capital gains and pro- rata distributions of the Company's own securities. Common stock dividends are not cumulative. Preferred stock dividends are cumulative.

(4) The Company yielded an extraordinary dividend on Class B common stock of $73,000,000 to LGA on February 27, 2014. The Company paid a preferred stock ordinary dividend of $2,817,722, with the approval of Maryland Insurance Administration on December 18, 2014.

(5) The maximum dividend payout which may be made in 2014 without prior approval is $0.

175. Extraordinary dividends can be issued only when Banner's financial health meets the legally required thresholds. The justification behind this requirement is obvious; a company should not

issue dividends when it does not possess the requisite financial health to do so. To that point, Maryland explicitly addresses the circumstances where stockholder dividends may be issued:

> **Regulation of dividends and distributions -- Extraordinary dividends and distributions**
>
> (a) "Earned surplus" defined.
>
> (1) In this section, "earned surplus" means the part of surplus that, after deduction of all losses, represents the net earnings, gains, or profits that have not been distributed to shareholders as dividends, transferred to stated capital, transferred to capital surplus, or applied to other purposes allowed by law.
>
> (2) In this section, "earned surplus" does not include unrealized capital gains or reevaluation of assets.
>
> (b) "Extraordinary dividend" and "extraordinary distribution" defined. -- In this section, "extraordinary dividend" or "extraordinary distribution" includes any dividend or distribution of cash or other property with a fair market value, that when combined with the fair market value of any other dividends or distributions made in the preceding 12 months exceeds the lesser of:
>
> (1) 10% of the insurer's surplus as regards policyholders as of December 31 of the preceding year; or
>
> (2) (i) for a life insurer, the net gain from operations of the insurer not including:
>
> 1. realized capital gains for the 12-month period ending December 31 of the preceding year; and
> 2. pro rata distributions of any class of the insurer's own securities;

MD. INS. CODE § 7-706.

176. As described, during the relevant period, Banner and its affiliates did not possess the requisite financial health to justify paying extraordinary dividends. Banner was only able to pay such dividends through the above described sham reinsurance scheme. By "ceding" the policy liabilities, Banner "freed" up cash, and used that cash to pay these dividends.

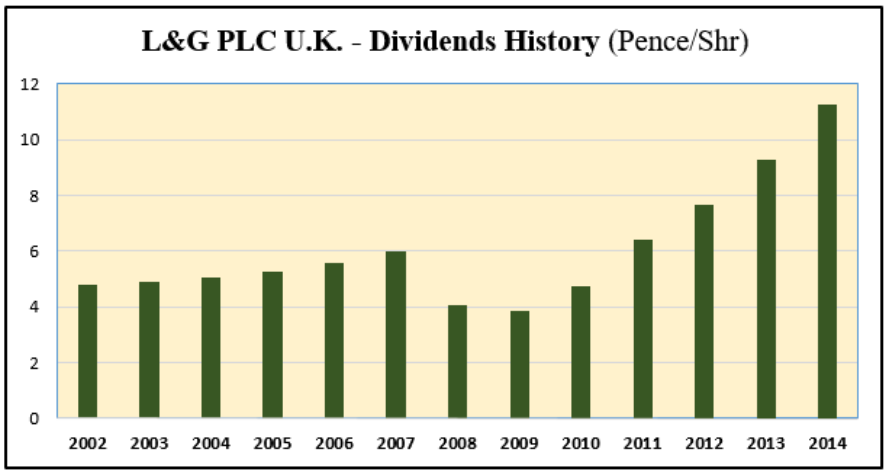
177. The affiliated transactions used by Banner and defendants had a massive impact on Banner's finances, yet crucial aspects of the shell game LGA played with its captives and affiliated

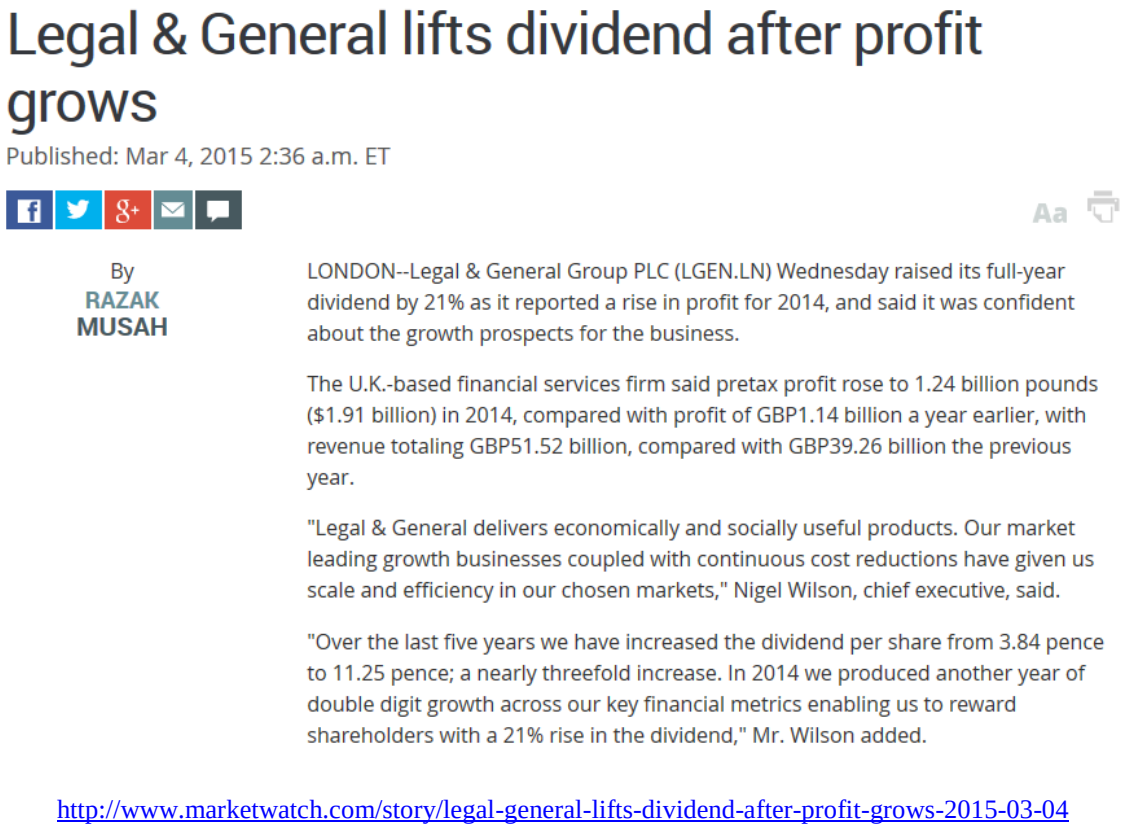
entities went undisclosed in the sworn financial statements Banner filed annually under penalty of perjury. The incomplete disclosures by Banner paint a picture of "form" only that might appear proper on the surface. But it is the *substance*—the true nature and details of the transaction—that is missing.

178. Indeed, Banner's annual financial statements falsely portrayed a stable company with ample capital and assets on hand to meet its long term obligations and pay such monstrous "stockholder dividends." This was, indeed, the way in which L&G accomplished its "twin aims of improving cash flow from the US business to the UK parent and improving return on capital through a capital management programme by reducing both the amount of capital tied up in the US and the associated costs." Legal & General Group Plc – Statement re US Capital Restructuring Programme, Feb. 2, 2011.

179. As shown below, the "repatriated" funds have been used to pay increasing dividends to L&G shareholders, dividends that have increased from 2009 – 2015:

Year	Year Total
2002	4.78
2003	4.9
2004	5.06
2005	5.28
2006	5.55
2007	5.97
2008	4.06
2009	3.84
2010	4.75
2011	6.4
2012	7.65
2013	9.3
2014	11.25





Legal & General lifts dividend after profit grows

Published: Mar 4, 2015 2:36 a.m. ET

By RAZAK MUSAH

LONDON--Legal & General Group PLC (LGEN.LN) Wednesday raised its full-year dividend by 21% as it reported a rise in profit for 2014, and said it was confident about the growth prospects for the business.

The U.K.-based financial services firm said pretax profit rose to 1.24 billion pounds ($1.91 billion) in 2014, compared with profit of GBP1.14 billion a year earlier, with revenue totaling GBP51.52 billion, compared with GBP39.26 billion the previous year.

"Legal & General delivers economically and socially useful products. Our market leading growth businesses coupled with continuous cost reductions have given us scale and efficiency in our chosen markets," Nigel Wilson, chief executive, said.

"Over the last five years we have increased the dividend per share from 3.84 pence to 11.25 pence; a nearly threefold increase. In 2014 we produced another year of double digit growth across our key financial metrics enabling us to reward shareholders with a 21% rise in the dividend," Mr. Wilson added.

http://www.marketwatch.com/story/legal-general-lifts-dividend-after-profit-grows-2015-03-04

180. While the Banner dividend scheme has greatly benefited L&G's executives and shareholders, it has placed significant downward pressure on Banner's liquidity and benchmark ratios. Now, at this late stage, L&G continues to require Banner to pay ever increasing dividends to LGA, and ultimately L&G; however, Banner is cash strapped. Without any other options, Banner has decided to take that cash from policyholders through a fraudulent COI increase.

V. Banner's COI Increase

181. Banner markets and sells life insurance policies through an expansive marketing machine, predominantly made up of agents and brokers. On information and belief, the marketing specifics touted by agents and brokers lack the requisite information necessary for potential

policyholders to understand how COI is calculated and the effect various factors may have on monthly debits to their policies' cash value.

182. To that point, information provided to policyholders fails to illuminate how Banner determines premiums and how policyholders could potentially bear the cost of various expenses.

183. Not surprisingly, policyholders do not possess the basic information necessary to determine whether Banner accurately calculates and attributes COI, and the ultimate cash value of the policy.

A. The Banner Life Policies at Issue

184. To maintain life insurance coverage for the guaranteed period, a purchaser of a Banner universal life policy makes an initial premium payment, and continues to make premium payments for, at a minimum, the guaranteed period.

185. For example, in the case of Richard J. Dickman and James K. Alderson, the policies at issue are flexible premium adjustable life policies with a 20-year no-lapse guarantee. Under the terms of the policy, provided the minimum premium is paid, the policies guarantee a $300,000 death benefit for 20 years.[16] The portion of the premiums Messrs. Dickman and Alderson pay that exceeds the costs attributable to the policy accumulate and earn interest. This is the policy's cash value.

186. Under the convoluted terms of these particular policies, the cash value is determined on a monthly basis as follows: (a) the account value on the preceding monthly anniversary; (b) plus one month's interest on item (1); plus any net premium received since the preceding monthly anniversary, plus interest from the day such premium is received; minus (4) the "monthly deduction," and (5) any partial surrender and partial surrender charge. Item (4)—monthly deduction—is the cost of insurance,

[16] Exhibit 1, pp. 3-3a; Exhibit 2, pp. 3-3a.

plus the cost for the policy month of additional coverage provided by any riders and benefits, plus the policy fee, which is guaranteed not to exceed $8.[17]

187. Banner contends that it determines the COI attributable to the universal life policies subject to this lawsuit on a monthly basis, and that the COI is determined by a policyholder's age, sex, and rating classification.[18]

188. With respect to the rating classification, both Dickman and Alderson were "preferred non-tobacco" policyholders.[19]

189. For the universal life insurance policies subject to this lawsuit, Banner reserved to itself the right to adjust the monthly COI rates. No policyholder can independently calculate the monthly deduction on his or her policy—meaning they cannot verify that the COI Banner charges them is accurate—because Banner does not disclose the equation it uses. In fact, the only insight a policyholder has into the manner in which COI is determined is the following tortuous policy language:

> **Cost of Insurance**
> The cost of insurance is determined on a monthly basis. The cost is (1) multiplied by the result of (2) minus (3) where:
> (1) is the monthly cost of insurance rate described below;
> (2) is the death benefit at the beginning of the policy month, divided by 1.0032737; and
> (3) is the account value at the beginning of the policy month, prior to the deduction of item (1) of the monthly deduction provision of the following month.
>
> If the benefit option is type B and there has been an increase in the specified amount, then the account value will first be considered a part of the specified amount when the policy was issued. If the account value is greater than the initial specified amount, it will then be considered a part of each increase in order, starting with the first increase. The benefit options and death benefit are described in the insurance coverage provisions.

[17] Exhibit 1, p. 6; Exhibit 2, p. 6.
[18] Exhibit 1, p. 6; Exhibit 2, p. 6.
[19] Exhibit 1, p. 3; Exhibit 2, p. 3.

> **Cost of Insurance Rate**
> The monthly cost of insurance rate is based on your attained age, sex, and rating classification. The rating classification is shown in the policy schedule.
> The cost of insurance rates are based on our expectation as to future experience. However, the cost of insurance rates for your rating classification will not be greater than the guaranteed maximum rates shown in the policy schedule. The guaranteed maximum rates are based on the 1980 Commissioners' Standard Ordinary Mortality Table, Male or Female, age nearest birthday. For attained ages below 20, the aggregate basis of this table will be utilized; otherwise, the smoker or nonsmoker basis will be utilized, as appropriate.
> If there is an increase in specified amount, the rating classification for such increase will be shown in the policy schedule. If the rating classification for the increase is different from previous rating classifications, additional policy schedule pages will be issued with the applicable guaranteed maximum cost of insurance rates for that rating classification.
> We may use lower monthly cost of insurance rates than those shown in the policy schedule at our option. Any change in the cost of insurance rates will apply to all persons of the same class. Such changes are determined and redetermined prospectively. We will not recoup any prior losses not [sic] distribute past gains by means of such changes in cost of insurance rates.[20]

190. Even the most capable policyholder, reading her policy with excruciating care, cannot determine what her COI charges should be at any given period. Instead, she must fully rely on Banner to accurately calculate COI for her policy and to alert her to any adverse conditions that would negatively affect her expectations for the policy, such as a $300,000 death benefit for 20 years with a sizeable cash value at the end of the guarantee period that can be cashed out or used to extend the death benefit duration.

B. Banner Sends Annual Reports Indicating the Policies' Performance are Adequately Funded and that Minimal Fees are Charged

191. Under the terms of the policies, Banner must send policyholders annual statements on each yearly anniversary.

[20] Exhibit 1, pp. 6-7; Exhibit 2, pp. 6-7.

192. The annual statements tell policyholders (a) the payments they have made, (b) the monthly expenses and cost of insurance deductions, (c) what interest has been credited to the policy's cash value, and (d) the rate at which interest has been credited. The annual statements do not tell policyholders what their COI rate is, but rather simply provide the COI charge.[21]

193. Over the years, Plaintiffs' annual statements, and the statements of all Members of the Class, stated that the policies were performing as they had been marketed. The accumulated account values increased each month through September 2015.

194. For example, Dickman's Annual Statement for the period from September 27, 2014 to August 27, 2015 showed that Banner charged him monthly expenses of $18.50, and charged between $285.58 and $288.20 for COI.[22]

195. Similarly, Alderson's Annual Statement for the period from August 5, 2014 to August 5, 2015 showed that Banner charged him monthly expenses of $11.00, and charged between $89.54 and $88.86 for COI.[23]

196. At no time between the policies' effective date in 2002 and July 2015 did Banner make any statement to policyholders that would indicate that the policies' "experience" was failing to meet Banner's original expectations. To the contrary, in fact, every public representation Banner, LGA, or L&G made indicated that the companies were performing strongly, reducing costs, and outperforming the market.

197. Despite a constant stream of information from LGA and L&G that painted Banner as the picture of a well-performing insurer, LGA announced, through an Agency Communication dated July

[21] See, *e.g.*, Exhibits 3 & 4.
[22] Exhibit 3.
[23] Exhibit 4.

14, 2015 (available on LGA's website), that effective August 1, 2015, Banner would increase COI for several universal life plans. Approximately 10,230 universal life policies were affected by the LGA announcement.

198. Neither Banner nor LGA notified the affected universal life policyholders that their COI charges would dramatically increase until August 19, 2015. The letter sent to policyholders did not explain why the COI charges were increasing, and it did not give any further insight into how COI was calculated.[24]

199. Both Dickman's and Alderson's policies, and the policies of all Members of the Class, were subject to the COI increases.

200. Dickman's Annual Statement reflects that the COI he was charged increased from $285.82 in July and $285.58 in August to a staggering $1,859.72 on September 27, 2015.[25]

201. The COI expenses Banner charged Alderson started at $94.37 in November 2014 and gradually decreased to $93.80 in September 2015, only to increase the very next month—October—to an astonishing $667.14.

202. Because the monthly premiums plaintiff's, and all similarly situated policyholders, are paying is now less than the COI charges (while the monthly premium payments have historically exceeded the monthly COI charges), Banner is "paying" itself the increased COI charges by taking money from the policies' accumulated cash values. For illustration purposes, the below table is taken from Mr. Dickman's Annual statement dated September 29, 2015:

[24] Exhibit 5; Exhibit 6.
[25] Exhibit 3.

Month End	Premiums Received	Expense Charges	COI	Guaranteed Interest	Month End Cash Value
July 27, 2015	$450.00	$18.50	$285.82	$85.78	$26,113.47
Aug. 27, 2015	$450.00	$18.50	$285.58	$86.54	$26,345.93
Sept. 27, 2105	$450.00	$18.50	$1,859.72	$87.30	$25,005.11

As shown, Mr. Dickman's policy's cash value increased from July to August, but decreased by $1,340.82 in September, the exact amount required to cover the increased COI charge.

C. Banner Claims that "A confluence of factors has severely eroded the profitability of the life policies"

203. According to policy language, a Banner policy's finances depend on the interaction of several variables. To administer the policies, Banner makes monthly deductions and monthly deposits to the accounts. This requires Banner to review and update the non-guaranteed (*i.e.*, variable) elements of the policies—COI, interest paid on the policy's cash value, and the monthly expense—on a monthly basis.

204. Supposedly, at some point long before July 15, 2015, Banner realized that a combination of "investment, mortality, persistency and expense experience" had "significantly eroded profitability." This contention is reflected in the July 14, 2015 Agency Communication.

205. To that point, Banner further represented that this realization was nothing new:

> Investment returns have been at all-time lows **for an extended period of time** making it impossible to earn the investment income assumed in pricing.

> Credited Interest rates have been much lower than those reasonably assumed in pricing, **at times decades ago,** resulting in lower cash values and less interest margin.

206. If Banner's claims are true, it long ago realized that its COI charges "did not adequately account for future experience." Nonetheless, it chose to lull policyholders into a false belief that their policies were performing adequately and that they should continue to pay excess premiums and build the policies' cash value.

207. During this time, however, LGA and Banner believed that the policyholders should have been paying higher COI rates than they were. Yet, Banner continued to send annual statements that it knew to be false to encourage policyholders to rely on their universal life policies for future death benefits.

208. Had Banner notified Plaintiffs as soon as it realized that it had made a unilateral mistake accounting for "future experience," the Plaintiffs would have been in a better position to respond to Banner's mistake. They could have attempted to purchase life insurance elsewhere, they could have reduced their premium payments to the minimum required premium and stopped adding to the policies' cash values, or they could have surrendered their policies for the available proceeds.

209. During the period when Banner knew of its claimed mistake but concealed it, the Plaintiffs' damages increased as their ability to purchase life insurance elsewhere diminished and they continued to increase their policies' cash values only to have the cash value raided by Banner beginning in September/October 2015.

210. LGA and Banner have acknowledged that policyholders obtain no benefit by paying the excess premiums they have historically paid. In a letter to James E. Dickman regarding Mr. Richard Dickman's policy, LGA stated: "Since the non-guaranteed factors have changed and $450.00/month will

only provide coverage for the 20-year guarantee period, the premium can be reduced to $345.72/month as this is the minimum premium needed to guarantee coverage for the duration of the 20-year guarantee period."[26]

211. Despite their actual and demonstrated knowledge that continued excess premium payments harm members of the Class, Banner and LGA continue to bill policy holders excess premiums, robbing the policyholders of the amount in excess of the minimum premium required to guarantee coverage for the duration of the guaranteed period.

212. For example, Mr. Alderson did not send Banner a letter asking why his COI had increased, and Banner has not reduced his monthly premium payment to the minimum premium payment required to maintain his policy—$110.16—as it did for Mr. Dickman. Instead, Banner has continued to take $200 out of Mr. Alderson's bank account every month, fully knowing that doing so is essentially stealing $89.84 every month because Mr. Alderson receives absolutely no benefit from the excess payment.

213. On information and belief, Banner has only reduced the premium charges to the minimum premium requirement for those policyholders that have formally inquired about the extreme COI increase. For all other policyholders, Banner continues to charge the excess premium for its sole benefit.

214. In failing to notify its policyholders "for an extended period of time" that the profitability of the policies had been "severely eroded," Banner did not consider the interest of its policyholders. Its willful decision to allow the policyholders' damages to escalate to a point where many policyholders

[26] Exhibit 7, p. 3.

would have no choice but to forfeit their policies or allow their cash value to be taken is tantamount to an attempt to cancel the policies and/or raid the policies of accumulated policyholder savings.

215. Additionally, if Banner's late and extreme COI increase is, in fact, a reaction to "significantly eroded profitability," Banner is still bound by its policy commitments, and is unable to use the COI increase to "recoup . . . prior losses." In the July 14, 2015 agency communication, LGA acknowledges that it "can't recover past losses," but in the same breath admits that that is ***exactly*** what it intends to do, stating that it is increasing COI charges in an "attempt to *restore profitability in the future*."

D. Banner's Explanation for the COI Increase is Untrue

216. The story LGA and Banner chose to tell the agents selling Banner products was markedly different than the story it wanted policyholders to hear. In a later agency communication, entitled "Cost of Insurance FAQs," LGA instructed agents to answer policyholders' COI increase questions as follows:

> **1. Why did the cost of insurance (COI) rates increase on my policy?**
>
> After the most recent review of the company's experience factors (mortality, persistency, investment income, and expenses), it has been decided that the company did not adequately account for future experience; as a result, the COI rates have been increased to reflect our new expected future experience.
>
> - **What does this mean?**
>
> When the cost of insurance rates were originally set, the company had certain expectations for: the number and timing of death claims; how long people would keep their policies; how well the company's investments would perform; and the cost to administer policies. Based on our review of the company's recent experience, the company has revised future expectation for the experience factors.
>
> - **Why is that my problem?**
>
> The policy contract allows increase in COI rates when there is a change in the company's future expectation, which is based on the company's expectations for mortality, interest, expense, and lapse experience.

217. Banner and LGA want policyholders to believe, and expressly say, that the COI increase is the result of unexpectedly bad mortality and lapse rates, poor investment income, and increased expenses.

218. The available data for Banner as a whole, and for the specific policies affected by the COI increase prove that LGA's statements are false. These claims are also directly contradicted by statements L&G has made to its shareholders over the last several years.

i. *Overall Banner financial data*

219. The Annual Statements that Banner has filed with the Maryland Insurance Administration over the last decade prove Banner's claims are false. In 2003, Banner paid approximately $88,912,161 in death benefits, and in 2014 it paid $91,113,122. During the same period, the total amount of in-force increased dramatically—from $139,645,945,000 in 2002 to $539,793,347,000 in 2014—and the total premium Banner collected significantly increased as well—from $391,579,037 in 2004 to $901,289,013 in 2014. In 2003, Banner's general insurance expenses were $44,255,782, and they increased to $128,959,132 in 2014, roughly the same percentage increase seen in total premiums collected. In 2002, 5.9% of Banner's policies lapsed, while in 2014, 4.2% lapsed. Similarly, Banner has not suffered a setback in its investment income; in 2002 Banner earned investment income of $48,644,228, and in 2014 it earned $141,090,638.

220. During the same period Banner represented to the Maryland Insurance Administration that its performance was so strong that Maryland should permit it to pay more than $800 million in extraordinary dividends to LGA and other L&G affiliate that were, at various times, Banner stockholders and, in fact, did pay over $800 million in dividends.

ii. *Policy specific data disproves LGA's assertions*

221. Banner is increasing the COI charges on eleven of its universal life insurance products: (1) Life Umbrella, (2) Life Umbrella Classic, (3) Sterling 1, (4) Advantra (OPTERM20), (5) Advantra (OPTRM20UL), (6) Advantra (ADV02/05), (7) Continuity (ULCONT), (8) Continuity (ULCONTPS - 98), (9) Classic UL, (10) Continuity 100, and (11) Life Umbrella 120.

222. Together these policies represent 21.32% of Banner's total universal life policies and 39.7% of Banner's universal life liabilities. In total, the face value of these policies is $2,511,702,000—meaning Banner is obligated to pay this amount in future death benefits.

223. The total accumulated cash value for these policies is $121,958,000, which represents 23.9% of the cash value of all of Banner's in-force universal life policies.

224. Currently there are 467 Life Umbrella policies in-force with an average death benefit of $89,000. The average issue year for these policies was 1985, and the average age at date of issue was 31. Banner has increased its COI charge by 24.25%. At origination, Banner assumed its "interest spread"—meaning the spread between Banner's earned rate and the policyholder's credited rate—would be 100 basis points; however, with the proposed COI increase, it expects to earn 225 basis points, meaning Banner expects to earn more than twice the interest it originally assumed. At origination, Banner assumed its maintenance expense would be $30 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $98. At origination, Banner assumed a 10% lapse rate, and through 2013, 7.8% of the policies had lapsed. Through 2013, mortality has been 105% of what Banner assumed at origination—meaning Banner's assumption was incredibly accurate considering the relatively small number of policies in-force. As demonstrated, none of Banner's

"experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

225. Currently there are 503 Life Umbrella Classic policies in-force with an average death benefit of $43,000. The average issue year for these policies was 1991, and the average age at date of issue was 37. Banner has increased its COI charge by 70.50%. At origination, Banner assumed its "interest spread" would be 100 basis points; however, with the proposed COI increase, it expects to earn 225 basis points, meaning Banner expects to earn more than twice the interest it originally assumed. At origination, Banner assumed its maintenance expense would be $30 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $98. At origination, Banner assumed a 10% lapse rate, and through 2013, 3.5% of the policies had lapsed. Through 2013, mortality has been 115% of what Banner assumed at origination—meaning Banner's assumption was incredibly accurate considering the relatively small number of policies in-force. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

226. Currently there are 3,025 Sterling 1 policies in-force with an average death benefit of $65,000. The average issue year for these policies was 1990, and the average age at date of issue was 34. Banner has increased its COI charge to the maximum amount allowed under the policies. At origination, Banner assumed its "interest spread" would be 125 basis points; however, with the proposed COI increase, it expects to earn 225 basis points, meaning Banner expects to earn nearly twice the

interest it originally assumed. At origination, Banner assumed its maintenance expense would be $30 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $98. At origination, Banner assumed a 7.5% lapse rate after the third year the policy was in-force, and through 2013, 6.4% of the policies had lapsed. Through 2013, mortality has been 109% of what Banner assumed at origination—meaning Banner's assumption was incredibly accurate. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

227. Currently there are 871 Advantra (OPTERM20) policies in-force with an average death benefit of $159,000. The average issue year for these policies was 1997, and the average age at date of issue was 50. Banner has increased its COI to the maximum amount permitted by the policy (on average 620%). At origination, Banner assumed its "interest spread" would be 75 basis points; however, with the proposed COI increase, it expects to earn 125 basis points, meaning Banner expects to earn nearly twice the interest it originally assumed. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 5% lapse rate for policies after the sixth year it was in-force, and through 2013, 3.0% of the policies had lapsed. Through 2013, mortality has been 87% of what Banner assumed at origination—meaning Banner has been required to pay death benefits on *fewer* policies than it assumed. As demonstrated, none of Banner's "experience factors" for this product have

negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

228. Currently there are 211 Advantra (OPTRM20-UL) policies in-force with an average death benefit of $328,000. The average issue year for these policies was 2002, and the average age at date of issue was 57. Banner has increased its COI to the maximum amount permitted by the policy (on average 560%). At origination, Banner assumed its "interest spread" would be 50 basis points; however, with the proposed COI increase, it expects to earn 125 basis points, meaning Banner expects to earn more than twice the interest it originally assumed. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 7% lapse rate for non-smokers and a 10% lapse rate for smokers, and through 2013, 3.5% of the policies had lapsed. Through 2013, mortality has been 115% of what Banner assumed at origination—meaning Banner assumption was incredibly accurate considering the relatively small number of policies in-force. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

229. Currently there are 2,393 Advantra (ADV 02/05) policies in-force with an average death benefit of $337,000. The average issue year for these policies was 2005, and the average age at date of issue was 57. Banner has increased its COI to the maximum amount permitted by the policy (on average 390%). At origination, Banner assumed its "interest spread" would be 50 basis points; however, with the proposed COI increase, it expects to earn 125 basis points, meaning Banner expects to earn

more than twice the interest it originally assumed. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 7% lapse rate for non-smokers and a 10% lapse rate for smokers, and through 2013, 4.2% of the policies had lapsed. Through 2013, mortality has been 98% of what Banner assumed at origination—meaning Banner has been required to pay death benefits on *fewer* policies than it assumed. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

230. Currently there are 170 Continuity (ULCONT) policies in-force with an average death benefit of $134,000. The average issue year for these policies was 1997, and the average age at date of issue was 53. Banner has increased its COI by 25.5%. At origination, Banner assumed its "interest spread" would be 75 basis points; however, with the proposed COI increase, it expects to earn 125 basis points. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 6% lapse rate, and through 2013, 3.5% of the policies had lapsed. Through 2013, mortality has been 103% of what Banner assumed at origination—meaning Banner assumption was incredibly accurate considering the relatively small number of policies in-force. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

231. Currently there are 384 Continuity (ULCONTPS -98) policies in-force with an average death benefit of $349,000. The average issue year for these policies was 1999, and the average age at date of issue was 51. Banner has increased its COI by 12.25%. At origination, Banner assumed its "interest spread" would be 50 basis points; however, with the proposed COI increase, it expects to earn 125 basis points. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 6% lapse rate, and through 2013, 4% of the policies had lapsed. Through 2013, mortality has been 88% of what Banner assumed at origination—meaning Banner has been required to pay death benefits on *fewer* policies than it assumed. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

232. Currently there are 108 Classic UL policies in-force with an average death benefit of $364,000. The average issue year for these policies was 2001, and the average age at date of issue was 50. Banner has increased its COI by 10.5%. At origination, Banner assumed its "interest spread" would be 50 basis points; however, with the proposed COI increase, it expects to earn 125 basis points. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 6% lapse rate, and through 2013, 6.1% of the policies had lapsed. Through 2013, mortality has been 116% of what Banner assumed at origination—meaning Banner assumption was incredibly

accurate considering the relatively small number of policies in-force. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

233. Currently, there are 1,489 Continuity 100 policies in-force with an average death benefit of $528,000. The average issue year for these policies was 2006, and the average age at date of issue was 54. Banner has increased its COI by 172.5%. At origination, Banner assumed its "interest spread" would be 50 basis points; however, with the proposed COI increase, it expects to earn 125 basis points. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation, its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 6% lapse rate, and states that it now expects an 8% conversion rate and a 4% non-conversion lapse rate. Through 2013, mortality has been 116% of what Banner assumed at origination—meaning Banner assumption was incredibly accurate. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

234. Currently, there are 488 Life Umbrella 120 policies in-force with an average death benefit of $422,000. The average issue year for these policies was 2009, and the average age at date of issue was 57. Banner has increased its COI to the maximum allowed under the policy (on average 195%). At origination, Banner assumed its "interest spread" would be 50 basis points; however, with the proposed COI increase, it expects to earn 125 basis points. At origination, Banner assumed its maintenance expense would be $45 per year, per policy. Because Banner did not assume *any* inflation,

its assumption was far from conservative. Its current future expectation is that it will cost $128 per year, per policy; an increase of only $83. At origination, Banner assumed a 2% lapse rate, and through 2013, 3.5% of the policies had lapsed. Through 2013, mortality has varied, but it has not significantly deviated from Banner's original expectations. As demonstrated, none of Banner's "experience factors" for this product have negatively deviated from Banner's original assumptions in any significant way, and certainly not to an extent that would justify increasing the COI charge as Banner has done.

iii. ***L&G's public statements contradict LGA's COI increase explanation***

235. Similarly, L&G also represented Banner's strength to L&G shareholders (L&G is a publicly traded company, trading on the London Stock Exchange under the symbol LGEN): "US operating profits of £85m (2009: £86m) are marginally below last year in local currency terms, with good investment returns offsetting mortality experience which was not as strong as in 2009." Legal & General Group PLC Annual Report and Accounts 2010, at 38-39. The following year, L&G continued to report strong performance from LGA (whose sole subsidiary is Banner):

- US operating profits grew by 22%, from £85m to £104m.
- Dividends from US grew by 9%, from $53m to $58m.
- We maintained our competitive, low-cost operating model with further expense efficiencies, whilst growing new business volume.
- The capital programme is on track with £52m of capital returned to the Group in early 2011.

Legal & General Group PLC Annual Report and Accounts 2011, at 28-29. Just one year later L&G reported that "L&G America is now a major player in the US life insurance market and has a sound platform from which to add new term life products and expand its distribution reach," Legal & General PLC Preliminary Results 2012, at 5, and that "[n]ew business margin improved to 11.8% (2011: 10.7%) with LGA ***benefiting from growth in scale and improved cost efficiencies***," *id*. at 12. In 2012, L&G

also stated that "[o]perational cash generation for LGA is the sustainable dividends paid to the Group. Operational cash generation has continued to grow to $63m in 2012 (2011: $58m). **In March 2013 LGA paid an ordinary dividend to the Group of $66m.**" *Id*. (emphasis in original). Most recently L&G touted LGA's continued success: "LGA: $ premiums up 9%, $ net cash up 10%." Legal & General Group plc Year End Results, Mar. 4, 2015 at 11.

236. The above shows that the explanations LGA and Banner have given for significantly increasing COI charges are false. Instead, on information and belief, Banner increased COI to accomplish two goals: (1) generate cash to fund extraordinary dividend payments to LGA and ultimately L&G and its shareholders—specifically to raid the affected policies' for their accumulated cash value of $121,958,000 to fund ever increasing dividend demands from L&G, and (2) to rid itself of nearly $2.5 billion in liabilities coming due over the next 15 years.

CLASS ALLEGATIONS

237. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and as representatives of the following class: All individuals who purchased, contributed to, or participated in the purchase of the policies at issue and who received coverage from insurance policies issued by Banner.

238. The members of the class are so numerous that joinder of all class members in this action is impracticable. Plaintiffs believe that there are over 10,000 members of the class.

239. There are questions of fact and law common to the class, including but not limited to the following:

a. whether defendants engaged in a scheme to defraud Plaintiffs through misrepresentations regarding Banner's financial strength and by failing to disclose deviations from NAIC SSAP and the financial ramifications resulting from said deviations;

b. whether the Banner policies described above were defective by virtue of their being underfunded;

c. whether the Defendants knew that the Life Policies were underfunded at the time it marketed and sold the policies to Plaintiffs;

d. whether the Defendants conspired to market and did market the Banner Life Policies for the purposes of defrauding members of the class;

e. the actual financial health of Banner after accounting for its proper financial valuation;

f. the true economic justification for raising the cost of insurance under the Banner Life Policies;

g. whether Banner failed to maintain statutorily required reserve amounts;

h. whether Banner breached its contractual obligations to Plaintiffs by raising the cost of insurance for improper purposes;

i. whether defendants were unjustly enriched by their actions towards Plaintiffs and class members;

j. whether defendants converted the premiums and policy values of Plaintiffs and class members;

k. the extent of injuries sustained by members of the class; and

l. the appropriate type and/or measure of damages.

240. Plaintiffs' claims are typical of the claims of all members of the class because Plaintiffs and all members of the putative Class have been damaged by the same unlawful/improper uniform misconduct the Defendants alleged herein.

241. Plaintiffs will fairly and adequately protect the interests of the members of the class. In addition, Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex litigation, including class action litigation. Finally, the interests of Plaintiffs are coincident with, and not antagonistic to, those of the class.

242. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that could result from individualized litigation. Further, individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Class action treatment will also permit the adjudication of relatively small claims by the class members, as measured against the effort and expense required to individually litigate these complex claims against Defendants.

243. Plaintiffs know of no difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

244. The class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure in that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the Plaintiffs will fairly and adequately protect the interests of the class; (5) individualized litigation would create the danger of inconsistent or contradictory judgments

arising from the same set of facts and increase the delay and expense to all parties and the court system from the issues raised by this action; and (6) the questions of law or fact common to the class members predominate over any questions affecting any individual members.

COUNTS

COUNT I

BREACH OF CONTRACT

245. Plaintiffs incorporate the allegations of Paragraphs 1 through and including 245 as if fully set forth herein.

246. Plaintiffs each entered in a contract with Banner when they purchased their life insurance policies.

247. Throughout the life of each respective life insurance policy, Plaintiffs have paid to Defendants all premiums and charges due under the policies as set forth at the time of execution of the policies, and Plaintiffs have performed all obligations and conditions under the policies.

248. Under the life insurance policies, Defendants owed and continue to owe duties and obligations to Plaintiffs and members of the Class. Among these duties is the duty to properly administer the policy consistent with the terms and obligations set forth within the respective life insurance policies. This includes the duty to determine the correct monthly deduction from a policyholder's account, the duty to notify policyholders in a timely manner whenever Banner believed a policy's COI expenses increased; and to refrain from increasing the COI except under very specific conditions.

249. Defendants materially breached the terms of the life insurance policies and its duties to Plaintiffs under the policies when it:

a. instituted unreasonable COI increases for purposes not authorized under the life insurance policies;

b. failed to determine the correct monthly deduction from the life insurance policies' accounts in accordance with the policies' terms and conditions;

c. failed to notify policyholders as soon as Banner determined that their "expectations" for the life insurance policies were inaccurate and that the policies were not performing sufficiently and required an increase in COI;

d. failed to determine in a reasonably timely manner that the life insurance policies were not charged the appropriate COI;

e. failed to maintain adequate assets backings reserves sufficient to make good on its obligations under the policies;

f. failed to administer and/or maintain said policies consistent with Defendants' duties of good faith and fair dealing implied in the performance of every contract.

250. As a direct and proximate result of Defendants' conduct, Plaintiffs and members of the putative Class have been damaged in an amount to be determined at trial. The aforementioned damages include, but are not limited to, the diminished value in Plaintiffs' and the members of the Class' life insurance policies; the improper increased cost of insurance premiums; and any damages suffered by Plaintiffs and members of the Class from not having the opportunity to pursue and secure alternatives to the diminished life insurance policies at issue that occurred due to their reliance on the representations of financial solvency of the life insurance policies by Defendants.

COUNT II

UNJUST ENRICHMENT

251. Plaintiffs incorporate the allegations of Paragraphs 1 through and including 251 as if fully set forth herein.

252. Plaintiffs conferred benefits upon Banner, LGA, and L&G; specifically, paid money in the form of premiums and excess premiums to fund their life insurance policies, and that Banner, LGA, and L&G used those funds to earn investment income and to pay extraordinary dividends to LGA and ultimately L&G and L&G's shareholders.

253. Banner, LGA, and L&G knew that they were enjoying such benefits from the Plaintiffs' premium and excess premium payments.

254. Banner, LGA, and L&G misused the benefits Plaintiffs conferred on them by engaging in the above described schemes to pay extraordinary dividends to LGA and ultimately L&G and its shareholders.

255. Banner, LGA, and L&G chose not to inform Plaintiffs that Banner's "expectations" for the subject universal life insurance policies were not being met as soon as they knew such information, causing Plaintiffs to continue make premium and excess premium payments to the Plaintiffs' detriment.

256. Banner and LGA have unlawfully raided Plaintiffs' cash value accounts under the guise of a justified contractually mandated increase in COI.

257. Actions of Banner and LGA have caused policyholders to abandon their universal life insurance policies without receiving the benefit of said policies.

258. Actions of Banner and LGA have caused policyholders to rely on false statements Banner and LGA have made and, as a result, permit Banner to raid their policies' cash value.

259. It is inequitable for Banner, LGA, and L&G to retain the benefits they have enjoyed from Plaintiffs' premium payments and excess premium payments.

260. As a direct and proximate result of Defendants' conduct, Plaintiffs and members of the putative Class have been damaged in an amount to be determined at trial. The aforementioned damages include, but are not limited to, the diminished value in Plaintiffs' and the members of the Class' life insurance policies; the improper increased COI premiums; and any damages suffered by Plaintiffs and members of the Class from not having the opportunity to pursue and secure alternatives to the diminished life insurance policies at issue that occurred due to their reliance on the representations of financial solubility of the life insurance policies by Defendants. Plaintiffs and the members of the putative Class are entitled to restitution for all premiums paid or, in the alternative, the unlawful and artificially inflated COI charges that Banner has paid itself from the policies' cash value.

COUNT III

CONVERSION

261. Plaintiffs incorporate the allegations of Paragraphs 1 through and including 261 as if fully set forth herein.

262. On and before September 2015, Plaintiffs' had acquired significant cash values as part of their universal life insurance policies.

263. Plaintiffs' policies' cash values were specific and identifiable, and were the Plaintiffs' personal property.

264. Beginning in September 2015, and continuing every month thereafter, Banner, LGA, and L&G caused money to be withdrawn from the Plaintiffs' cash value accounts and deposited into Banner, LGA, and/or L&G accounts.

265. In so doing, Banner, LGA, and L&G have exerted ownership and dominion over the Plaintiffs' personal property in denial of the Plaintiffs' rights.

266. As a direct and proximate result of Defendants' conduct, Plaintiffs and members of the putative Class have been damaged in an amount to be determined at trial.

COUNT IV

FRAUD

267. Plaintiffs incorporate the allegations of Paragraphs 1 through and including 267 as if fully set forth herein.

268. Banner and LGA have falsely stated to Plaintiffs' that Banner was justifiably and lawfully increasing the COI charged to their universal life policies.

269. Banner, LGA, and L&G falsely represented to the Plaintiffs', as stated above, that Banner was a well-funded company, operating efficiently, increasing profits and cash flows, and reducing costs.

270. At the time Banner, LGA, and L&G made these statements, they knew them to be false.

271. Banner, LGA, and L&G made these statements with the express intention of defrauding the Plaintiffs.

272. Plaintiffs relied on Banner's, LGA's, and L&G's statements and were entitled to rely on such statements. In reliance on those statements, Plaintiffs continued to pay premiums and excess premiums long after they otherwise would have; Plaintiffs did not attempt to obtain alternative life insurance policies at an earlier date when they either could have obtained them and/or could have obtained them at a lesser charge than they can now.

273. Additionally, Plaintiff Dickson relied on Banner's and LGA's statements regard the COI increases and allowed Banner to withdraw the increased COI charges from his policy's cash value, and

subsequently surrendered his policy without obtaining the benefit for which he paid for over twelve years.

274. Additionally, Plaintiff Alderson relied on Banner's and LGA's statements and has continued to pay excess premiums and allowed Banner to withdraw the increased COI charges from his policy's cash value.

275. If Banner, LGA, and L&G had not made such false statements, Plaintiffs would not have taken the above described actions.

276. As a result of the fraudulent actions and misrepresentations Banner, LGA, and L&G have taken, the Plaintiffs have suffered compensable injuries as stated above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment:

A. Certifying the Class as requested herein;

B. Awarding Plaintiffs and Class members compensatory damages in an amount to be determined at trial;

C. Awarding Plaintiffs and Class members restitution damages in an amount to be determined at trial;

D. Punitive Damages;

E. Awarding Plaintiffs declaratory and injunctive relief;

F. Awarding Plaintiffs and Class members attorneys' fees and costs; and

G. Affording Plaintiffs and Class members with such further and other relief as deemed just and proper by the Court.

JURY DEMAND

Plaintiffs demand a jury trial of all issues triable by right by jury.

Dated: January 19, 2016

RESPECTFULLY SUBMITTED,

/s/ Barry J. Nace
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