

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 07-cv-10712-RGS
	)	
LYDIA CAPITAL, LLC;	)	
GLENN MANTERFIELD, and	)	
EVAN ANDERSEN,	)	
	)	
Defendants.	)	

**RECEIVER'S MOTION AND BRIEF IN SUPPORT FOR AN ORDER  
(A) AUTHORIZING THE RECEIVER TO SETTLE CLAIMS PERTAINING  
TO CERTAIN LIFE INSURANCE POLICIES, (B) APPROVING SETTLEMENT  
AGREEMENTS, (C) AUTHORIZING THE RECEIVER TO TAKE THE  
NECESSARY ACTIONS TO EFFECT THE PROPOSED SETTLEMENTS  
AND (D) GRANTING RELATED RELIEF**

COMES NOW, H. Thomas Moran, II, Court-Appointed Receiver for Defendant Lydia Capital, LLC (“Receiver”), in the above-entitled cause, and respectfully submits this Motion and Brief in Support (the "Settlement Motion") seeking an Order (A) Authorizing the Receiver to Settle Claims Pertaining to Certain Life Insurance Policies, (B) Approving Settlement Agreements, (C) Authorizing the Receiver to Take the Necessary Actions to Effect the Proposed Settlements, and (D) Granting Related Relief (the "Settlement Order"). A proposed Settlement Order is attached hereto as Exhibit 2. In support of this Settlement Motion, the Receiver respectfully represents to the Court as follows:

**I. BACKGROUND**

**A. LYDIA CAPITAL, LLC'S BUSINESS**

Lydia Capital, LLC ("Lydia") was a Delaware limited liability company established in February 2006 with an office in Boston, Massachusetts. Lydia was registered as an investment advisor with the United States Securities and Exchange Commission ("SEC"). Lydia acted as an investment advisor to, and general partner of, Lydia Capital Alternative Investment Fund LP (the "Fund"). The Fund, a Delaware limited partnership, was a pooled investment vehicle formed to purchase and sell all types of securities, but it focused on investing in life insurance policies. The Fund used money from investors to purchase policies (the "Policies") and to pay premiums on the Policies. In this way, the sellers of the Policies received money in advance of their deaths while investors expected to receive a higher percentage rate of return than with traditional investment vehicles when the Policies matured.

**B. THE APPOINTMENT OF A RECEIVER FOR LYDIA**

On April 12, 2007, the SEC filed this action against Defendants Lydia, Evan Anderson and Glenn Manterfield. [Doc. No. 1]. On the same date, the SEC sought, and on April 13, 2007 secured, a temporary restraining order freezing certain of the Defendants' assets. [Electronic Order, dated April 13, 2007.] The temporary restraining order was modified on April 17, 2007. [Electronic Order, dated April 17, 2007.] On May 3, 2007, the Court entered unopposed preliminary injunction orders, freezing certain assets of Defendants. [Doc. Nos. 20, 21 and 22].

On May 23, 2007, the SEC filed an unopposed motion seeking the appointment of a receiver for Lydia as well as a brief in support of the motion. [Doc. Nos. 25 and 26]. On June 1, 2007, the Court entered its Order for Appointment of Receiver ("Order for Appointment"),

granting the SEC's request and appointing Mr. Moran as Receiver for Lydia. [Doc. No. 28]. In the June 1, 2007, Order for Appointment, the Court directed the Receiver to:

A. take and retain immediate possession, custody and control of the funds, assets, monies, securities, contracts, notes, bank accounts, safe deposit boxes, negotiable and non-negotiable instruments or documents of title, chose in action and properties, real, if any, and personal, tangible and intangible, of whatever kind and description, wherever situated, of Lydia, and of all other entities which Lydia either owned, controlled or benefited from (including, but not limited to, Lydia Capital Alternative Investment Fund LP) including without limitation, the accounts established by Lydia on behalf its investors (the 'Lydia Client Accounts'), as well as all property of whatsoever nature, whether real or personal, tangible or intangible, which has been acquired with or through funds or proceeds of Lydia (hereinafter 'Receivership Assets');

B. take all steps the Receiver deems necessary to conduct an inventory of the assets and liabilities of Lydia and Lydia Capital Alternative Investment Fund LP;

C. take all steps the Receiver deems necessary to reconstruct the histories of the Lydia Client Accounts to determine whether and how client funds have been dissipated;

D. take all steps the Receiver deems necessary to secure and protect the Receivership Assets, including all assets and property of Lydia and Lydia Capital Alternative Investment Fund LP;

\* \* \* \*

H. after prior consultation with the staff of the Boston Regional Office of the Commission, institute, prosecute, defend, compromise, adjust, intervene in, or become party to such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order;

\* \* \* \*

J. receive and collect any and all sums of money due and/or owing to Lydia or Lydia Capital Alternative Investment Fund LP and make or authorize such payments and disbursements from the funds and assets taken into control or thereafter received by the Receiver, engage in or authorize such transactions, incur or authorize the incurrence of such expenses, and make or authorize the making of such agreements, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order;

K. in connection with the exercise of these powers, liquidation of any, or all, of the assets of Lydia or the Lydia Capital Investment Fund LP shall be undertaken, if at all, with due regard for the best long-term interests of investors in the Fund;....

[Doc. No. 28, pp. 1-4, ¶¶ II.A-D, II.H and II.J-K].

The Receivership Assets include the portfolio of Policies that Lydia had purchased in the life insurance after-market and all potential causes of action related to the acquisition of these policies (the "Lydia Portfolio"). At the time of the Receiver's appointment, the Lydia Portfolio consisted of thirty-seven life insurance policies, on the lives of twenty-eight individuals, which ranged in face value from \$1,000,000.00 to \$10,000,000.00 (the "Portfolio"). The Court has subsequently approved the sale of certain Policies by the Receiver. [Doc. 166-2].

### **C. RELEVANT PROCEDURAL HISTORY**

On November 29, 2007, the Court granted The Lincoln National Life Insurance Company ("Lincoln") leave to file a declaratory judgment action with respect to a Policy issued by Lincoln insuring the life of R. Black (the "Black Policy").<sup>1</sup> [Electronic Order, dated November 29, 2007].

On March 11, 2008, the Court granted AXA Equitable Life Insurance Company ("AXA") leave to file declaratory judgment actions with respect to three Policies issued by AXA: two Policies insuring the life of R. Williamson (the "Williamson Policies") and the third Policy insuring the life of A. Lancet (the "Lancet Policy"). [Electronic Order, dated March 11, 2008]. On March 18, 2008, the Court granted AXA leave to file a declaratory judgment action with respect to a Policy issued by AXA insuring the life of A. Fischbach (the "Fischbach Policy"). [Electronic Order, dated March 18, 2008]. On July 28, 2008, the Court granted AXA leave to file declaratory judgment actions with respect to three Policies issued by AXA insuring the lives

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<sup>1</sup> In order to protect the privacy of the insureds, who are not parties to this litigation, the Receiver will use the initial for the insured's first name, rather than the insured's full name.

of H. Richman (the "Richman Policy"), R. Menconi (the "Menconi Policy") and H. Herzog (the "Herzog Policy"). [Electronic Order, dated July 28, 2008].

The Black, Williamson, Lancet, Fischbach, Richman, Menconi and Herzog Policies are referred to collectively as the "Disputed Policies."<sup>2</sup>

#### D. DECLARATORY JUDGMENT ACTIONS

AXA and Lincoln have filed the following declaratory judgment actions regarding the Disputed Policies (the "Litigation"):

DATE FILED	PARTIES/POLICY	COURT/ CASE NO.
1/09/2008	<i>The Lincoln National Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC</i>  Black Policy	S. D. Cal. 08-CV-0023-IEG-NLS
3/17/2008	<i>AXA Equitable Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC, et al.</i>  Lancet Policy	S. D. Cal. 08-CV-497-H-JMA
3/17/2008	<i>AXA Equitable Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC, et al.</i>  Williamson Policy	S. D. Cal. 08-CV-498-H-LSP
3/17/2008	<i>AXA Equitable Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC, et al.</i>  Williamson Policy	D. Utah 08-CV-00206

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<sup>2</sup> The Court also granted Lincoln leave to file declaratory judgment actions with respect to two other Lincoln Policies. However, these Policies are not included in the proposed settlement for which the Receiver seeks approval. Additionally, the Court granted another insurer, Sun Life Assurance Company, leave to file declaratory judgment actions with respect to two Policies issued by that insurer. These Policies are also not included in the proposed settlement.

DATE FILED	PARTIES/POLICY	COURT/ CASE NO.
3/26/2008	<i>AXA Equitable Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC, et al.</i>  Fischbach Policy	S. D. Cal. 08-CV-0569-BTN-BLM
1/23/2009	<i>AXA Equitable Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC, et al.</i>  Menconi Policy	N.D. Ill. 1:09-CV-004545
2/27/2009	<i>AXA Equitable Life Ins. Co. v. H. Thomas Moran, II, Court-Appointed Receiver for Lydia Capital, LLC, et al.</i>  Herzog Policy	C.D. Cal. CV09-1429 AHM

Lincoln and AXA allege that the insureds, and in some cases the beneficiaries, for each Disputed Policy made intentional misrepresentations in their applications for life insurance, including fraudulent misrepresentations concerning the respective insured's net worth, medical history and the insured's alleged intent to sell the Disputed Policy after it was issued. Lincoln and AXA allege that the purported fraud and misrepresentations, if proven, render the Disputed Policies void *ab initio* and/or subject to rescission. In addition to rescission, Lincoln and AXA seek to retain the premiums paid in connection with the Disputed Policies. Alternatively, Lincoln and AXA seek to deduct, from premiums they are required to return in order to obtain rescission, their alleged costs, including commissions paid by them to their agents in connection with the sale of the Policies. Lincoln and AXA also seek to recover their attorney's fees and costs associated with prosecuting the Litigation.

The Receiver has been named as a Defendant in the Litigation solely due to his status as the assignee and owner of each Policy. If a court should declare any Disputed Policy void and/or

subject to rescission, any such ruling would necessarily be predicated on the actions of the insured and others involved in the procurement and subsequent sale of the Policy. The Receiver has obtained leave to file Third-Party Complaints in the declaratory judgment actions concerning the Williamson and Black Policies, naming the insureds and others involved in the sale of these Policies as Third-Party Defendants and asserting claims for indemnity, breach of contract, fraud, unjust enrichment and rescission. These Third-Party Complaints have been filed in the Litigation on the Williamson Policies. The Receiver has until July 30, 2009 to file his Third-Party Complaint in the Litigation on the Black Policy.

The Receiver has entered into an agreement to stay the Litigation on the Fishbach and Richman Policies pending approval of the present Motion by this Court. AXA recently filed suit on the Herzog and Menconi Policies. However, the Receiver has not yet been served. These Policies are included in the proposed Settlement Agreement, for which the Receiver seeks approval.

After discovery and negotiations, the parties in these cases have agreed to settle the Litigation on the terms set forth below.

## **II. THE RECEIVER SEEKS APPROVAL OF PROPOSED SETTLEMENT AGREEMENTS RELATING TO THE DISPUTED POLICIES.**

### **A. INTRODUCTION**

The Receiver's authority to act on behalf of the Receivership is expressly provided for in the Order for Appointment of Receiver [Doc. No. 28]. The Receiver is authorized to "institute, prosecute, defend, compromise, adjust, intervene in, or become party to such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate . . . ." *Id.* Acting pursuant to this

authority, the Receiver has performed his duties and responsibilities consistent with the scope of the Order for Appointment, and successfully preserved the Portfolio. In further performance of his duties and responsibilities, the Receiver and his counsel have devoted, and continue to devote, significant time and attention to the Litigation. The Receiver has also pursued settlement of the Litigation to preserve the Receivership Assets, eliminate further litigation costs and avoid the uncertainty of litigation.

To date, Lydia and the Receivership have expended a total of \$6,475,162.60 to acquire and maintain the Disputed Policies. This amount includes the sales price paid to the insureds and/or their beneficiaries, commissions paid to brokers involved in the sale of each Disputed Policy and premiums paid to Lincoln and AXA. None of the Disputed Policies have matured. In the event of a maturity, the Receivership would not receive payment of the benefit amount until the Litigation on that Policy is resolved in the Receiver's favor.

The annual premiums for the Disputed Policies total approximately \$1,769,800.00. As part of the Receiver's efforts to minimize expenses to the Receivership, the Receiver negotiated an agreement with Lincoln and AXA whereby the premiums for the Disputed Policies would be suspended pending the Litigation. Under the terms of these agreements, the Receivership would be obligated to pay the accrued premiums for a particular Disputed Policy in the event a court declares the Policy to be valid and enforceable. In such event, the Receivership would then be obligated to pay all accrued premiums to maintain the Policy.

As stated above, there are currently eight (8) pending lawsuits. The Receiver is currently prosecuting two (2) pending Third-Party actions and has obtained leave to file a third. In the absence of settlement, the Receiver will be prosecuting eight (8) Third-Party actions. The cost to the Receivership to defend the Litigation brought by Lincoln and AXA, together with the cost of

prosecuting the related Third-Party actions, will be substantial and is estimated at \$800,000.00 to \$1,000,000.00.

**B. PROPOSED SETTLEMENT**

If approved by the Court, the parties to all settlement agreements related to the Disputed Policies will pay to the Receivership a total of between \$3,105,200.00 and \$3,205,200.00. A detailed summary setting forth the identity of the parties to each of the settlements, the consideration for each settlement, and the basic terms of the settlements is set forth in Exhibit 1, which has been filed under seal pursuant to the Court's Electronic Order, dated June 5, 2009. Full copies of the individual settlement agreements are included in Exhibit 1.

**C. PROPOSED NOTICE, HEARING AND BAR OF CLAIMS**

By separate motion, the Receiver intends to request that the Settlement Motion be set for hearing before the Court after a time for notice to all interested parties, and opportunity for any interested parties to object to the entry of the Settlement Order. A copy of this Settlement Motion is being provided to: (1) the SEC; (2) Defendant Evan Anderson; (3) Defendant Glenn Manterfield; (4) the investors in Lydia and/or the Fund; (5) those creditors of Lydia and/or the Fund the Receiver is aware of; and (6) those parties who received payments from Lydia and/or the Fund in connection with the Disputed Policies that the Receiver is aware of. The Receiver asks the Court to include this Bar of Claims in the Settlement Order. The Receiver requests in the proposed Settlement Order that the Court find this Notice to be sufficient.

The Receiver proposes that the deadline for objecting to the Settlement Order be ten business days prior to the hearing on this Settlement Motion. Following the hearing on the Settlement Motion, the Receiver requests that the Settlement Order be entered. Further, as part of the proposed settlement with AXA, as described in Exhibit 1, the parties negotiated for the

establishment of a Bar of Claims as set forth in paragraph 26(e) of the agreement with AXA. *See* Tab A to Exhibit 1, p. 19.

### **III. THE COURT'S JURISDICTION AND THE RECEIVER'S AUTHORITY**

A Court's authority to impose and administer a receivership is derived from its inherent powers as a court of equity. *SEC v. Forex Asset Mgmt., L.L.C.*, 242 F.3d 325, 331 (5th Cir. 2001). A federal court exercises "broad powers and wide discretion" in crafting relief in an equitable receivership proceeding. *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001). This Court's jurisdiction over the Receiver and the Receiver's authority to act on behalf of the Receivership are set forth in the Order for Appointment. [Doc. No. 28]. Pursuant to the Order for Appointment, the Receiver was directed to take complete control, possession, and custody of all Receivership Assets. Acting pursuant to this authority, the Receiver took possession and control of the Disputed Policies. The Order of Appointment further directed the Receiver to "defend [or] compromise . . . such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order." [Doc. 28, ¶ II.H]. Now, the Receiver requests Court approval to compromise the Litigation regarding the validity of the Disputed Policies.

The Receiver believes it is in the best interest of the Receivership Estate, and the Lydia Investors, to settle the Litigation on the terms outlined in Exhibit 1. Specifically, the Receiver believes the total settlement proceeds, combined with the elimination of further litigation uncertainty and costs, and elimination of the cost of paying premiums on the Disputed Policies,

is reasonable under the circumstances. Accordingly, the Receiver respectfully requests the Court authorize him to enter into the proposed settlements on the terms reflected in Exhibit 1.

Although not contemplated, circumstances may require, prior to closing of the settlements but after Court approval, the modification, amendment or supplementation of terms of one or more of the settlement agreements. The Receiver therefore requests that the Court allow him to consent to modifications, amendments or supplementations that have no material adverse effect on the Receivership Estate without the need for further approval from the Court.

**WHEREFORE**, premises considered, the Receiver respectfully requests the Court approve the settlement agreements reflected in Exhibit 1.

Dated: June 17, 2009

Respectfully submitted,

*/s/ Melvin R. McVay, Jr.*

\_\_\_\_\_  
Melvin R. McVay, Jr. (admitted *pro hac vice*)

Phillips Murrah P.C.

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*Attorney for H. Thomas Moran, II, Court-Appointed  
Receiver for Lydia Capital, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of June 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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*Pro Se*

/s/ Melvin R. McVay, Jr.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

<hr/>		)	
SECURITIES AND EXCHANGE COMMISSION,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Case No. 07-CV-10712-RGS
		)	
LYDIA CAPITAL, LLC,		)	Filed Under Seal --
GLENN MANTERFIELD, and		)	Leave to file granted on
EVAN ANDERSEN,		)	June 5, 2009
Defendants.		)	
<hr/>		)	

**EXHIBIT 1 TO  
RECEIVER'S MOTION AND BRIEF IN SUPPORT FOR AN ORDER  
(A) AUTHORIZING THE RECEIVER TO SETTLE CLAIMS PERTAINING TO CERTAIN  
LIFE INSURANCE POLICIES, (B) APPROVING SETTLEMENT AGREEMENTS,  
(C) AUTHORIZING THE RECEIVER TO TAKE THE NECESSARY ACTIONS TO  
EFFECT THE PROPOSED SETTLEMENTS AND (D) GRANTING RELATED RELIEF**

FILED UNDER SEAL

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
)  
LYDIA CAPITAL, LLC; )  
GLENN MANTERFIELD, and )  
EVAN ANDERSEN, )  
)  
Defendants. )

Case No. 07-cv-10712-RGS

**ORDER (A) AUTHORIZING THE RECEIVER TO SETTLE CLAIMS  
PERTAINING TO CERTAIN LIFE INSURANCE POLICIES,  
(B) APPROVING SETTLEMENT AGREEMENTS, (C) AUTHORIZING  
THE RECEIVER TO TAKE THE NECESSARY ACTIONS TO EFFECT THE  
PROPOSED SETTLEMENTS AND (D) GRANTING RELATED RELIEF**

Upon the Motion [Doc No. \_\_\_\_] (the "Settlement Motion") of H. Thomas Moran, II, Court Appointed Receiver for Defendant Lydia Capital, LLC ("Lydia") by his counsel, Phillips Murrah P.C. for, *inter alia*, entry of an Order (A) Authorizing the Receiver to Settle Claims Pertaining to Certain Life Insurance Policies, (B) Approving Settlement Agreements, (C) Authorizing the Receiver to Take the Necessary Actions to Effect the Proposed Settlements and (D) Granting Related Relief, after notice to all interested parties; a hearing on the Settlement Motion having been held on the \_\_\_ day of \_\_\_\_\_, 2009 (the "Settlement Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Settlement Motion; and the Court having reviewed and considered the Settlement Motion and exhibits thereto; and it appearing that the relief requested in the Settlement Motion is in the best interests of the Receivership estate; and upon the record of the Settlement Hearing in this case and after due deliberation thereon; and good cause appearing therefore,

**THE COURT HEREBY FINDS AND DETERMINES THAT**

1. This Court has jurisdiction over the subject matter of the Settlement Motion.

2. Pursuant to the Court's Order of June 1, 2007, H. Thomas Moran, II was appointed the Receiver for the assets of Lydia (the "Order of Appointment"). [Doc. No. 28]. Pursuant to the Order of Appointment, Mr. Moran, as Receiver for Lydia, was charged with the duty to "institute, prosecute, defend, compromise, adjust, intervene in, or become party to such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP (the "Fund"), as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order." [*Id.*]

3. The Court previously granted The Lincoln National Life Insurance Company ("Lincoln") leave to file a declaratory judgment action with respect to a Policy issued by Lincoln insuring the life of R. Black. [Electronic Order, dated November 29, 2007]. The Court also previously granted AXA Equitable Life Insurance Company ("AXA") leave to file declaratory judgment actions with respect to seven Policies issued by AXA: two Policies insuring the life of R. Williamson, and Policies insuring the lives of A. Lancet, A. Fischbach, H. Richman, R. Menconi, and H. Herzog. [Electronic Orders, dated March 11, 2008, March 18, 2008 and July 28, 2008]. The Black, Williamson, Lancet, Fischbach, Richman, Menconi and Herzog Policies are referred to collectively as the "Disputed Policies."<sup>1</sup>

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<sup>1</sup> The Court also granted Lincoln leave to file declaratory judgment actions with respect to two other Lincoln Policies. However, these Policies are not included in the proposed settlement for which the Receiver seeks approval. Additionally, the Court granted another insurer, Sun Life Assurance Company, leave to file declaratory judgment actions with respect to two Policies issued by that insurer. These Policies are also not included in the Receiver's proposed settlement.

4. The proposed settlements will pay to the Receivership a total of between \$3,105,200.00 and \$3,205,200.00, as more particularly detailed in Exhibit 1 to the Settlement Motion, filed under seal pursuant to Order of the Court. [Electronic Order, dated June 5, 2009].

5. Notice of Hearing on the Settlement Motion was provided to: (1) the SEC; (2) Defendant Evan Anderson; (3) Defendant Glenn Manterfield; (4) the investors in Lydia and/or the Fund; (5) those creditors of Lydia and/or the Fund the Receiver is aware of; and (6) those parties who received payments from Lydia and/or the Fund in connection with the Disputed Policies that the Receiver is aware of. This Notice is sufficient and reasonable in light of the circumstances and the nature of the relief requested in the Settlement Motion.

6. The Court finds that the Settlement Agreements described and attached as Exhibit 1 to the Settlement Motion are reasonable with respect to the claims made on the Disputed Policies by AXA and Lincoln. Further, the Court finds that the Settlement Agreements described and attached as Exhibit 1 to the Settlement Motion are in the best interests of the Receivership estate and the investors in Lydia and/or the Fund.

7. A Hearing on the Settlement Motion was conducted on the \_\_\_ day of \_\_\_\_\_, 2009. All interested parties were provided an opportunity to file written objections to the Settlement Motion prior the Hearing, and were provided an opportunity to appear at the Hearing on the Settlement Motion, and be heard in connection therewith.

The Court finds that good cause exists for granting the Receiver's Settlement Motion, and accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

(a) The Settlement Agreements in Exhibit 1 to the Settlement Motion are hereby approved by this Court as reasonable and in the best interests of the Receivership estate and the investors in Lydia and/or the Fund.

(b) The Receiver is authorized to enter into the Settlement Agreements in Exhibit 1 to the Settlement Motion.

(c) The Receiver is authorized to take such steps as may be reasonably necessary to effectuate the Settlement Agreements attached as Exhibit 1 to the Settlement Motion. Further, the Receiver is authorized to consent to modifications, amendments or supplementations that do not have a material adverse effect on the Receivership Estate, without the need for further approval from the Court.

(d) No person or entity that is or ever was an investor in or a beneficiary of any of the Disputed Policies, or who is or ever was an investor in Lydia and the Fund (collectively “Investors”) shall commence, file, or prosecute a suit, arbitration, or other legal proceeding in any court or tribunal or before any arbitral body or panel, or assert any claim or cause of action in any such proceeding or forum, against AXA Equitable or Lincoln, or any of their predecessors, successors, assigns, or affiliates, or against their respective directors, officers, or employees in their capacities as such, that is in any manner based on, or seeks any remedy or relief relating to, (1) AXA Equitable or Lincoln having entered into and complied with the Settlement Agreements attached as Exhibit 1 with the Lydia or the Fund or any of the related settlement agreements and/or releases, (2) any such investor or beneficiary having either (A) dealt or contracted with Lydia or the Fund or (B) invested or agreed to invest in a Disputed Policy, in a secondary market transaction related to a Disputed Policy, or in rights to or a fractional interest in a Disputed Policy or (C) been named or designated, or agreed or intended to have been named or designated, as a beneficiary of a Disputed Policy, regardless of whether any such designation ever was, or was ever agreed or intended to be, irrevocable. Any and all claims and causes of action held by or accruing to any Investors against AXA Equitable or Lincoln

within the scope of this paragraph, however denominated, regardless of the allegations, facts, law, theories, or principles on which they may be based, including but not limited to claims for damages, contribution, or indemnity, against AXA Equitable or Lincoln, by any Investor and by any person who acquired an interest in a Disputed Policy from or through an Investor, including but not limited to persons that are parties to this proceeding and all others who receive notice of this Order or of this paragraph, whether such claims now exist or have accrued or may in the future exist or accrue, are hereby extinguished, discharged, satisfied, and otherwise unenforceable.

(e) The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

(f) The requirement that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Settlement Motion or otherwise waived.

(g) To the extent this Order is inconsistent with any prior order or pleading with respect to the Settlement Motion in this case, the terms of this Order shall govern.

(h) This Court shall retain jurisdiction to resolve any disputes relating to the interpretation of the terms or conditions of this Order. Further, the Court shall retain jurisdiction to interpret, construe and enforce any of the agreements in Exhibit 1 to the Settlement Motion.

WHEREFORE, Receiver's Motion (A) Authorizing the Receiver to Settle Claims Pertaining to Certain Life Insurance Policies, (B) Approving Settlement Agreements, (C) Authorizing the Receiver to Take the Necessary Actions to Effect the Proposed Settlements and (D) Granting Related Relief is hereby GRANTED.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Richard G. Stearns  
UNITED STATES DISTRICT JUDGE

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