UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION This Document Relates To: All Actions	:	**ECF CASE** Master File No. 04 Civ. 8141 (DAB) (AJP) Oral Argument Requested

LEAD PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT WITH THE GENERAL REINSURANCE CORPORATION

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PRELIMINARY STATEMENT

Pursuant to Rules 23(a), (b)(3) and (e) of the Federal Rules of Civil Procedure, the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio and the Ohio Police & Fire Pension Fund (collectively, "Lead Plaintiff" or the "Ohio State Funds"),[1] as Court-appointed Lead Plaintiff in this Action, respectfully submits this memorandum of law in support of:

(1) final approval of the proposed Settlement of claims against Defendant General Reinsurance Corporation ("Gen Re" and, together with Lead Plaintiff, the "Settling Parties")[2] in the Action for $72 million in cash, as set forth in the Agreement;

(2) certification of a settlement class (the "Settlement Class") of all persons or entities who purchased or otherwise acquired the publicly traded securities of American International Group, Inc. ("AIG" or the "Company") during the period from October 28, 1999 through April 1, 2005 (the "Class Period"), inclusive, as well as all persons and entities who held the common stock of HSB Group, Inc. ("HSB") at the time HSB was acquired by AIG in a stock for stock transaction, and all persons and entities who held the common stock of American General Corporation ("AGC") at the time AGC was acquired by AIG in a stock for stock transaction, and were damaged thereby;[3] and

(3) approval of the proposed Plan of Allocation for the proceeds of the Settlement.

The $72 million proposed Settlement with Gen Re is an outstanding result for the proposed Settlement Class. Lead Plaintiff is not aware of any similar recovery in any private securities fraud class action from a third party situated such as Gen Re. Moreover, this Settlement, taken together with the

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[1] All capitalized terms that are not defined herein are defined in the Agreement of Compromise and Settlement, dated February 24, 2009 (the "Agreement"). *See* Ex. 1. Herein, "Ex. __" refers to an Exhibit to the accompanying Declaration of Thomas A. Dubbs, dated July 26, 2013 ("Dubbs Declaration"), unless otherwise indicated. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. ___ - ___." The first numerical reference refers to the designation of the entire exhibit attached to the Dubbs Declaration and the second reference refers to the exhibit designation within the exhibit itself.

[2] Pursuant to the Agreement, former Gen Re CEO Ronald E. Ferguson and former Gen Re executives Richard Napier and John B. Houldsworth are Released Persons. Herein, Ferguson, Napier, Houldsworth and Gen Re are referred to collectively as the "Gen Re Defendants."

[3] Excluded from the class are the Defendants, members of the immediate families of the Individual Defendants, any parent, subsidiary, affiliate, officer, or director of defendant AIG, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person and any person who makes a valid and timely request for exclusion from the Settlement Class and does not thereafter rescind such a request. This is the same Settlement Class that the Court certified in connection with Lead Plaintiff's settlements with AIG (the "Company Settlement"), the Starr Defendants (the "Starr Settlement") and PricewaterhouseCoopers LLP (the "PwC Settlement").

three previously Court-approved settlements in this Action—*i.e.*, the $725 million Company Settlement, the $115 million Starr Settlement, and the $97.5 million PwC Settlement—would completely resolve the Action and bring the total amount of the Settlement Class's recovery to more than ***$1 billion***. ¶ 5.[4]

In view of the very substantial recovery achieved and the risks that Lead Plaintiff would face in trying to obtain a greater recovery for the Settlement Class through continued litigation and trial, this Settlement constitutes an excellent result that should—like the Company, Starr and PwC Settlements—readily be approved by the Court as fair, reasonable and adequate. Lead Plaintiff respectfully asks this Court to: (1) enter the proposed Order and Final Judgment as to General Reinsurance Corporation Defendants ("Proposed Judgment"); (2) finally certify the proposed Settlement Class; and (3) enter the proposed Order Approving Plan of Allocation.[5]

RELEVANT BACKGROUND

As the Court is well aware, the Action arises from, *inter alia*, material misstatements and omissions allegedly made by Defendants in connection with a massive alleged accounting fraud at AIG that resulted in the Company restating nearly four years of earnings. One of the most significant transactions that made up the alleged accounting fraud was a sham reinsurance deal between AIG and Gen Re (the "Gen Re Transaction") that allegedly artificially inflated AIG's claims reserves by $500 million. *See* Consolidated Third Amended Class Action Complaint (the "Complaint") ¶¶ 11, 18-27, 314-464.

The Complaint asserts claims against the Gen Re Defendants based on the Gen Re Transaction under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5. ECF 308. Lead Plaintiff asserts that, during the Class

[4] Herein, "¶__" and "¶¶__" refers to a paragraph(s) of the Dubbs Declaration, unless otherwise indicated.

[5] Proposed orders will be submitted to the Court with Lead Plaintiff's reply submissions, after the deadline for objections and exclusion requests has passed.

Period, the Gen Re Defendants knowingly, or with severe recklessness, designed and executed the Gen Re Transaction, which was structured solely to artificially boost AIG's reported reserves and reported to the market in AIG's state statutory financial statements. ECF 393 (Memorandum of Law in Opposition to the Gen Re Defendants' Joint Motion for Judgment on the Pleadings) at 7-9.

As discussed in greater detail in the accompanying Dubbs Declaration, Lead Plaintiff tirelessly pursued the claims against the Gen Re Defendants since its appointment as Lead Plaintiff on February 7, 2005. The Settlement was reached in February 2009, after four years of litigation that spanned motions to dismiss, fact and expert discovery, class certification, a motion for judgment on the pleadings and an appeal to the Second Circuit.

A. The Gen Re Defendants' Motions to Dismiss

In December 2005, Gen Re and Gen Re Defendant Ferguson filed motions to dismiss the then-operative complaint. ECF 186 & 200. On February 6, 2006, Lead Plaintiff filed its brief in opposition. ECF 235. On April 20, 2006, the Court heard oral argument, ¶ 44, and on April 27, 2006, the Court denied those motions to dismiss. ECF 252.

B. Fact Discovery

Lead Plaintiff served document requests on all of the Gen Re Defendants, including three document requests served on Gen Re. In addition, Lead Plaintiff served twenty document requests on other Defendants, and served more than 50 document subpoenas on non-parties. ¶ 51.

Overall, by the time the Settlement was reached, more than 46 million pages of documents were produced by parties and non-parties—including approximately 9 million pages relating to the Gen Re Defendants or the Gen Re Transaction—and all of those documents were reviewed and analyzed by Lead Counsel and its experts. ¶ 52-61.[6] Further, Lead Plaintiff took or defended more than 47

[6] Post-Settlement, the total document production in the Action reached 53.3 million pages. ¶ 53.

depositions of fact and expert witnesses by the time the Settling Parties reached the proposed Settlement. ¶ 62.[7]

In addition to the voluminous formal discovery, Lead Counsel conducted an extensive investigation to, among other things, (1) review and analyze AIG's public filings with the New York State Insurance Department and other state insurance departments, including filings relating to the Gen Re Transaction, and (2) locate and interview former AIG employees and other knowledgeable persons within the insurance industry. Dozens of potential fact or expert witnesses were located and contacted and thousands of pages of documents were obtained and analyzed. ¶ 49.

Further, Lead Counsel had reviewed and analyzed all of the trial exhibits and the voluminous trial testimony from the five-week federal criminal trial of Gen Re Defendant Ferguson in *U.S. v. Ferguson*, which was based solely on the Gen Re Transaction. ¶ 50.[8]

C. The Gen Re Defendants' Motion for Judgment on the Pleadings

On May 29, 2008, the Gen Re Defendants filed a joint motion for judgment on the pleadings, seeking dismissal of the class claims against them under the Supreme Court's decision in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008). ECF 367. On June 30, 2008, Lead Plaintiff opposed the motion. ECF 393.

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[7] Post-Settlement, Lead Plaintiff took or defended 50 additional depositions. ¶ 63.

[8] In February 2008, a jury found Gen Re Defendant Ferguson and Starr Defendant Christian M. Milton (AIG's former Vice President of Reinsurance), as well as three additional former Gen Re executives, guilty of 16 counts each of securities fraud and other charges in connection with the Gen Re Transaction. However, the Second Circuit reversed the convictions of all five defendants based on, *inter alia*, defective jury instructions. *U.S. v. Ferguson*, 653 F.3d 61 (2d Cir. 2011), *amended and superseded by* 676 F.3d 260 (2d Cir. 2011). A retrial was scheduled for January 2013 but then canceled after the defendants entered into deferred prosecution agreements. ¶¶ 33-36.

D. Settlement Negotiations and the Proposed Settlement

The Settlement was reached through extensive arm's-length negotiations by experienced counsel who possessed a comprehensive understanding of the Settling Parties' respective claims and defenses informed by years of contentious litigation and discovery.

The Settlement was the result of two separate mediation sessions. The first took place in March 2006 before mediator Kenneth Feinberg, who was later appointed by the Honorable Loretta A. Preska to oversee the distribution of AIG's settlement with the Securities and Exchange Commission ("SEC"). ¶ 64. The second took place in December 2008 before former United States District Judge Layn R. Phillips. ¶ 65. In addition, numerous settlement-related conferences took place over several months at the end of 2008. *Id.* These negotiations were well-informed by the years of litigation and discovery discussed above.

On December 18, 2008, while Lead Plaintiff's motion for class certification and the Gen Re Defendants' motion for judgment on the pleadings were pending, the Settling Parties signed a Memorandum of Understanding reflecting an agreement, in principle, to settle the claims against the Gen Re Defendants. ¶ 66. On February 25, 2009, Lead Plaintiff filed a motion for preliminary approval of the Settlement. ECF 494.

E. The Court Declined to Certify a Litigation Class Against the Gen Re Defendants or Preliminarily Approve the Settlement and Dismissed the Claims Against the Gen Re Defendants

On February 22, 2010, the Court issued an Order certifying a litigation class. *See In re AIG, Inc. Sec. Litig.* ("*AIG*"), 265 F.R.D. 157 (S.D.N.Y. 2010) (the "Class Certification Order"). In its Class Certification Order, the Court held that, because *Stoneridge* barred Lead Plaintiff from invoking the fraud-on-the-market presumption of reliance against the Gen Re Defendants, Lead Plaintiff could not satisfy the predominance requirement with respect to a litigation class against those Defendants. *See*

AIG, 265 F.R.D. at 175.[9] The Court reasoned that, under controlling Second Circuit precedent, it was required to make a "definitive assessment" that Lead Plaintiff had met the predominance requirement. *See id.* (citing *In re Salomon Analyst Metromedia Litig.*, 544 F.3d 474, 485 (2d Cir. 2008), *abrogated on other grounds by Amgen, Inc. v. Connecticut Ret. Plans and Tr. Funds*, 133 S. Ct. 1184 (2013); *In re Initial Public Offerings Sec. Litig.*, 471 F.3d 24 (2d Cir. 2006)).

On March 4, 2010, in light of its Class Certification Order, the Court issued an order denying "as moot" Lead Plaintiff's February 25, 2009 motion for preliminary approval of the Settlement. ECF 538 (March 4, 2010 Order). On September 10, 2010, the Court granted the Gen Re Defendants' motion for judgment on the pleadings under *Stoneridge*. ECF 557 (the "Dismissal Order"). On September 23, 2010, the Court entered a Rule 54(b) judgment dismissing all claims against the Gen Re Defendants. ECF 560 (the "Partial Final Judgment").

F. Decision by the Second Circuit

On October 21, 2010, Lead Plaintiff filed a Notice of Appeal with respect to the Class Certification Order, the March 4, 2010 Order and the Partial Final Judgment. ECF 562.

While that appeal was pending, the relevant area of the law continued to develop. In particular, the Third Circuit addressed an analogous issue in *Sullivan v. DB Investments, Inc.*, a case involving a nationwide settlement of an anti-trust action against De Beers involving indirect "consumer claims." In that case, the District Court had certified two nationwide settlement classes comprising purchasers of diamonds. 667 F.3d 273, 285 (3d Cir. 2011), *cert. denied*, *Murray v. Sullivan*, 132 S. Ct. 1876 (2012). A Third Circuit panel held that the District Court's ruling was inconsistent with the predominance inquiry and remanded the matter for further proceedings. *Id.* However, the Third Circuit granted the plaintiffs' petition for rehearing *en banc* and vacated its prior order, reasoning:

[9] The Court held that (with the exception of certain other allegations not relevant here) the predominance requirement of Rule 23(b)(3) was otherwise satisfied. *See AIG*, 265 F.R.D. at 168.

> The same analytical rigor is required for litigation and settlement certification, but ***some inquiries essential to litigation class certification are no longer problematic in the settlement context***. A key question in a litigation class action is manageability—how the case will or can be tried, and whether there are questions of fact or law that are capable of common proof. But ***the settlement class presents no management problems because the case will not be tried***.

Id. at 335 (Scirica, J., concurring).

Here, on appeal, the Second Circuit considered *Sullivan* in conjunction with the Supreme Court's decision in *Amchem* and concluded that "a securities fraud class's failure to satisfy the fraud-on-the-market presumption primarily threatens class certification by creating 'intractable management problems' at trial" and that, "***[b]ecause settlement eliminates the need for trial, a settlement class ordinarily need not demonstrate that the fraud-on-the-market presumption applies to its claims in order to satisfy the predominance requirement***." *AIG*, 689 F.3d 229, 232 (2d Cir. 2012) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621 (1997)); *id.* at 239 (quoting *Sullivan*, 667 F.3d at 335).

The Second Circuit therefore clarified that, while a rebuttal of the fraud-on-the-market presumption may defeat certification of a ***litigation*** class, where, as here, the "***settlement*** *class* would otherwise satisfy the predominance requirement, the fact that the plaintiff class is unable to invoke the presumption, without more, is no obstacle to certification." *Id.* at 243 (emphasis added).

Thus, on August 13, 2012, the Second Circuit vacated (i) the Class Certification Order with respect to the claims against the Gen Re Defendants; (ii) the Court's March 4, 2010 Order; and (iii) the Partial Final Judgment. *See id.* at 244.

G. Preliminary Approval and the Pre-Hearing Notice Program

By its May 13, 2013 Preliminary Approval Order, the Court preliminarily approved the Settlement and approved the Notice of Proposed Settlement, Motion for Attorneys' Fees and Expenses Award and Fairness Hearing ("Notice"), Proof of Claim form ("Proof of Claim"), Release Form and the Summary Notice of Pendency and Proposed Settlement of Class Action ("Summary Notice") for dissemination to the Settlement Class. ECF 687. Copies of the notices, Proof of Claim, and Release

Form are attached as Exhibits A to D to the accompanying Declaration of Eric Schachter, a Rust Senior Project Administrator ("Rust Declaration" or "Rust Decl."). Ex. 3. The Court also approved Rust Consulting, Inc. ("Rust") as the Administrator of the Settlement and set a final hearing for September 10, 2013 (the "Fairness Hearing") to consider the fairness, reasonableness and adequacy of the proposed Settlement and Plan of Allocation. ECF 687.

In compliance with the Preliminary Approval Order, under the supervision of Lead Counsel, the Administrator mailed notice packets containing copies of the Notice, Proof of Claim and Release Form (when applicable) to all potential members of the Settlement Class who could be reasonably identified. Rust Decl. ¶¶ 3-13. To date, the Administrator has mailed nearly 2.4 million notice packets to potential Settlement Class Members and brokers/nominees and mailed nearly 230,000 Notices with Release Forms. *Id.* ¶¶ 9, 13.

In addition, pursuant to the Preliminary Approval Order, the Summary Notice was published in *The Wall Street Journal* and disseminated over *PR Newswire*. *Id.* ¶ 14. The Notice, Proof of Claim and Release Form were also made available on the website created by Rust specifically for purposes of this Settlement for easy downloading by interested investors. *Id.* ¶ 15.

The Notice described, *inter alia*, the claims asserted in this Action, the contentions of the Settling Parties, the course of the litigation, the terms and consequences of the Settlement, the proposed Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 3-A. The Notice also advised potential Settlement Class Members of the scheduled Fairness Hearing, and of Lead Counsel's intention to seek an award of attorneys' fees that would not exceed 13.25% of the Cash Settlement Account and reimbursement of expenses not to exceed $525,000. *Id.* at 2-3. In addition, the Notice informed Settlement Class Members that Lead Plaintiff could seek up to $10,000 for its reasonable costs and expenses, pursuant to the Private Securities Litigation Reform Act. *Id.* at 2.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, AND SHOULD THEREFORE BE APPROVED

A court determines the fairness of a settlement by looking at both its terms and the negotiation process leading up to it. As discussed below, Lead Plaintiff submits that the proposed Settlement is eminently fair, reasonable and adequate, whether considered in terms of process or substance.

A. The Settlement Is Entitled to a Presumption of Fairness

With respect to process, a class action settlement enjoys a strong "presumption of fairness" where it is the product of arm's-length negotiations conducted by experienced, capable counsel after meaningful discovery. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005), *cert. denied, Leonardo's Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044 (2005).

A presumption of fairness is certainly appropriate here. The Settlement was reached at a point where Lead Plaintiff had a solid understanding of the strengths and weaknesses of the claims against the Gen Re Defendants based on its review of more than 46 million pages of documents produced prior to the Settlement—including approximately 9 million pages relating to the Gen Re Defendants or the Gen Re Transaction—and the extensive briefing on the Gen Re Defendants' motions to dismiss and joint motion for judgment on the pleadings.

Moreover, the Settling Parties participated in numerous formal and informal discussions sessions from 2006 through 2008, including the December 2008 mediation session before Judge Phillips that ultimately resulted in this Settlement. *See In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 194 & 194 n.42 (S.D.N.Y. 2005) (Scheindlin, J.) (where negotiations were facilitated by former judge, settlement was "clearly the result of arm's length bargaining").

Given the vigorous negotiation and mediation efforts that occurred between the Settling Parties, it is clear that counsel for both sides were determined and zealous in their representation of their clients. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) (Lynch, J.) (approving

a settlement upon finding that "[b]oth sides have been represented well [by counsel]"). Therefore, the Court should accord a presumption of fairness to the Settlement in considering the substantive *Grinnell* factors discussed below.

B. The Settlement Satisfies the *Grinnell* Factors

With respect to the substantive terms of a settlement, courts in this Circuit examine the fairness, adequacy and reasonableness of a class action settlement utilizing the "*Grinnell* factors," to the extent they are applicable, including:

> (1) the complexity, expense and likely duration of the litigation;
>
> (2) the reaction of the class to the settlement;
>
> (3) the stage of the proceedings and the amount of discovery completed;
>
> (4) the risks of establishing liability;
>
> (5) the risks of establishing damages;
>
> (6) the range of reasonableness of the settlement fund in light of the best possible recovery; and
>
> (7) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Wal-Mart, 396 F.3d at 117 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)).

Here, as discussed *infra*, all of the above factors militate in favor of approval of the Settlement.

1. Ongoing Litigation Would Be Complex, Expensive and Lengthy

In deciding to enter into the Settlement, Lead Plaintiff, represented by counsel highly experienced in securities litigation, weighed the value of a substantial, immediate recovery against the prospect that significant proceedings remained ahead, including a potential dismissal under the Supreme Court's January 2008 decision in *Stoneridge* (a risk that in fact materialized). *See also Klein ex rel. IRA v. PDG Remediation, Inc.*, No. 95 Civ. 4954 (DAB), 1999 WL 38179, at *2 (S.D.N.Y. Jan. 28, 1999) (Batts, J.) (considering complexity, expense and duration of litigation, settlement that "offer[ed] Class members

the benefit of immediate recovery as opposed to an uncertain award several years from now" was preferred outcome).

Even if the case against the Gen Re Defendants survived dismissal, without the Settlement, years of litigation against them would remain ahead. The prosecution of the claims would have required additional fact and expert discovery, hotly contested motions under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) (and likely *Daubert* hearings), summary judgment briefing on numerous issues, including loss causation and, of course, trial preparation and a trial. These efforts would require additional large expenditures over an extended period, after which the Settlement Class might obtain a result far less beneficial than the one provided by the Settlement.

If this Action were to proceed to trial, the jury would have to assimilate intricate facts, learn numerous insurance company practices and procedures, and comprehend complex accounting rules in order to fully understand the nexus between the Gen Re Transaction, the alleged violations of the securities laws and the Settlement Class's alleged injury. Moreover, in light of the highly contested nature and the complexity of the issues presented, a judgment favorable to the Settlement Class would undoubtedly have been the subject of post-trial motions and appeals. Accordingly, a favorable outcome for the Settlement Class was far from assured.

By contrast, the Settlement offers the certainty of a prompt and substantial payout from the Cash Settlement Account. Thus, the first *Grinnell* factor strongly favors approval.

2. The Reaction of the Class to Date

The Notice and Summary Notice advised members of the Settlement Class of their right to object to the Settlement and the procedures for doing so. To date, despite the dissemination of nearly ***2.4 million*** notice packets, none has filed any objection. Rust Decl. ¶¶ 13, 18.

Both the Notice and Summary Notice also advised members of the Settlement Class of their right to request exclusion from the Settlement Class and the procedures for doing so. To date, 29

requests for exclusion have been received. *Id.* ¶ 19. However, 22 of the requests did not satisfy the requirements in the Notice or Preliminary Approval Order and are therefore invalid. *Id.* Accordingly, to date just 7 valid requests for exclusion have been received, representing just 1,689 shares of stock, *id.*, which is approximately 0.00006% of the almost ***2.6 billion*** shares of AIG common stock outstanding as of March 31, 2005. *See* Ex. 19 (AIG Quarterly Report for the period ended March 31, 2005, filed with the SEC on Form 10-Q on June 28, 2005) at 1.

Objections and exclusions are due by August 20, 2013. Lead Plaintiff will address the substance of any objections and report on any exclusions in its reply submissions on or before August 29, 2013.

3. There Was a Solid Foundation Underlying the Decision to Settle with Gen Re

There can be no question that Lead Plaintiff and Lead Counsel conducted negotiations, and later entered into the Settlement, only after developing a thorough understanding of both the potential favorable outcomes and the significant challenges involved in continuing with the Action. Lead Plaintiff conducted a thorough investigation and took voluminous discovery of the Gen Re Defendants and other Defendants and third parties regarding the Gen Re Transaction. Also, by the time the Settlement was reached, Lead Counsel had reviewed and analyzed the trial exhibits and the trial testimony of numerous witnesses in *U.S. v. Ferguson*, which was based solely on the Gen Re Transaction.

Thus, Lead Plaintiff and Lead Counsel had a very well-founded understanding of the merits of the case against the Gen Re Defendants, which warrants approval of the Settlement.

4. There Were Significant Risks in Establishing the Gen Re Defendants' Liability

Lead Plaintiff and Lead Counsel submit that there were considerable risks involved in further pursuing the Action that could have led to a substantially smaller recovery or to no recovery at all for the Settlement Class. Most significant, of course, was the threat of dismissal under *Stoneridge*. Moreover, the accounting fraud alleged with respect to the Gen Re Transaction is, at its crux, based on violations

of very complex accounting rules, which might not be easily understood by a jury. In addition, proving the individual Gen Re Defendants' scienter to the jury would also have been challenging for the Settlement Class. It was, therefore, far from assured that a jury would have found the Gen Re Defendants liable of securities fraud in this Action.

There was also a further risk that any finding against the Gen Re Defendants could have been overturned on appeal.

Given the uncertain prospects of success at trial and on any appeal as to the claims against the Gen Re Defendants, settlement at this time is highly beneficial to the Settlement Class. The Settlement will provide tangible and certain relief to the Settlement Class Members now, and without subjecting them to the risks, complexity, duration, and expense of continuing litigation.

5. The Settlement Class Faced Risks in Establishing Damages

Damages issues in securities litigation are often reduced to a "battle of the experts," which could lead the jury in this Action to minimize the Settlement Class's proffered losses caused by the Gen Re Defendants' participation in the alleged fraud. *See In re Am. Bank Note Holographics, Inc., Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) (McMahon, J.) ("In such a battle, Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses.").

The Gen Re Defendants would likely argue at summary judgment and at trial that Lead Plaintiff could not establish loss causation against them unless Lead Plaintiff could show precisely how much of any decline was caused by each alleged corrective disclosure relating specifically to the Gen Re Transaction, as opposed to other AIG or industry-related news that was made public on the alleged corrective disclosure dates. Indeed, Gen Re raised the issue of loss causation at the motion to dismiss stage, arguing, in part, that the then-operative complaint disclosed a host of AIG "firm-specific facts" and "changed economic circumstances" that came to light on one of the alleged corrective disclosure

dates for the Gen Re Transaction—March 30, 2005—which were not alleged to relate to the Gen Re Defendants. ECF 188 at 5. Moreover, Defendant Ferguson raised a similar loss causation argument in 2010, in response to Lead Plaintiffs' petition for permission to appeal from the Class Certification Order. ECF 45 (Defendant Ronald E. Ferguson's Answer to the Petition of Lead Plaintiffs for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f), *In re American International Group, Inc. Securities Litigation*, Nos. 10-847(L), 10-849, 10-950 (2d Cir. Mar. 31, 2010)).

Lead Plaintiff and Lead Counsel strongly believe that loss causation and resulting damages can be established with respect to the claims against the Gen Re Defendants. *See, e.g.*, ECF 356-3 (Declaration of John D. Finnerty, Ph.D. in Support of Lead Plaintiff's Motion for Class Certification) ¶ 35 (On March 30, 2005, "AIG announced that it had concluded that its documentation of [the Gen Re Transaction] was improper.") However, Lead Plaintiff recognizes that at summary judgment or trial the Court or a jury could credit the Gen Re Defendants' arguments and determine that the class suffered no (or significantly smaller) recoverable damages relating solely to the Gen Re Transaction.

6. The Settlement Amount Is Very Reasonable

The $72 million Settlement is a very significant recovery that falls well within the range of reasonableness both in absolute terms and when weighing potential recoveries and all the risks of proceeding with the claims against the Starr Defendants. Indeed, to our knowledge there have been no similarly substantial recoveries from any third party situated such as the Gen Re Defendants in *any* other private securities fraud class action.

By comparison, the settlement reached between Gen Re and the U.S. Government in January 2010 concerning the Gen Re Transaction amounted to just $31.7 million, including $12.2 million paid to the SEC and $19.5 million paid to the U.S. Postal Inspection Service Consumer Fraud Fund. ¶ 32.

Furthermore, when the Settlement is considered in combination with the three other partial class action settlements in this Action—*i.e.*, the $725 million Company Settlement, the $115 million Starr

Settlement and the $97.5 million PwC Settlement—the recovery for the Class totals more than ***$1 billion***, which represents the ***10th largest*** securities class action recovery of all time. Viewed in light of the significant risks discussed above, and compared to other securities class action settlements, the Settlement clearly represents an excellent result for the Settlement Class.

In sum, Lead Plaintiff and Lead Counsel submit that the Settlement is eminently fair, adequate and reasonable in light of the best possible recovery and all of the risks of litigation, and should be approved.

II. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class is the same as those certified by the Court in connection with the three other partial class action settlements in this Action.[10] Moreover, in its Preliminary Approval Order, the Court granted Lead Plaintiff's request and certified the Settlement Class. Nothing has changed to alter the propriety of the Court's certification, and so Lead Plaintiff requests that the Court: (i) finally certify the Settlement Class for Settlement pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) appoint Lead Plaintiff as Class Representative; and (iii) appoint Lead Counsel as Class Counsel.

A. The Action Meets the Requirements of Rule 23(a)

1. Rule 23(a)(1): the Class Is So Numerous that Joinder of All Members Is Impracticable

Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable. This rule does not require that "joinder of all parties be impossible-only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate." *AIG*, 265 F.R.D. at 167 (Class Certification Order).

As the Court has repeatedly found, the numerosity requirement is met where, as here, the "proposed class contains over two million shareholders." *AIG*, 265 F.R.D. (Class Certification Order)

[10] It is also substantially similar to the settlement class certified by the Honorable John E. Sprizzo in a related ERISA action. *See In re AIG ERISA Litig.*, No. 04-9387 (S.D.N.Y. Oct. 8, 2008) (ECF 135).

at 167; *see also AIG*, No. 04 Civ. 8141(DAB), 2012 WL 345509, at *2-3 (S.D.N.Y. Feb. 2, 2012) ("Company Settlement Approval Order"); *AIG*, No. 04 Civ. 8141(DAB), 2013 WL 1499412, at *4 (S.D.N.Y. Apr. 11, 2013) ("Starr Settlement Approval Order"); *AIG*, No. 04 Civ. 8141(DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) ("PwC Settlement Approval Order"), *aff'd on other grounds*, 452 F. App'x 75 (2d Cir. 2012), *cert. denied*, *Rothstein v. Ohio Pub. Emp. Ret. Sys.*, 133 S. Ct. 280 (2012).

2. Rule 23(a)(2): Questions of Law or Fact Are Common to the Class

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The commonality requirement is met if plaintiffs' grievances share a common question of law or of fact." *AIG*, 265 F.R.D. at 167-68 (Class Certification Order).

Here, the claims of each Class Member arise from the same operative facts and share the same legal theories. Central questions common to the class include, *inter alia*, whether the Gen Re Transaction was material, whether the Gen Re Defendants designed and executed the Gen Re Transaction with the requisite mental state, and whether the Gen Re Defendants' conduct caused Class Members' losses. Therefore, questions of law and fact relating to the existence and nature of the Gen Re Defendants' alleged liability will be common to all Class Members, and the claims of each Class Member arise from the same operative facts and share the same legal theories. *See AIG*, 265 F.R.D. at 168 (Class Certification Order); *AIG*, 2012 WL 345509, at *2-3 (Company Settlement Approval Order); *AIG*, 2013 WL 1499412, at *4 (Starr Settlement Approval Order); *AIG*, 2010 WL 5060697, at *3 (PwC Settlement Approval Order).

3. Rule 23(a)(3): Plaintiffs' Claims Are Typical of the Claims of Other Class Members

"To establish typicality under Rule 23(a)(3), the party seeking certification must show that each class member's claim arises from the same course of events and each class member makes similar legal

arguments to prove the defendant's liability." *AIG*, 265 F.R.D. at 168 (Class Certification Order) (quoting *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009).

As this Court has repeatedly found, Lead Plaintiff's claims are typical of other members of the Settlement Class where, as here, "Lead Plaintiff, like all Class Members, purchased AIG securities at allegedly artificially inflated prices during the Class Period" and claims to have suffered damages because of Defendants' alleged material misconduct. *AIG*, 2012 WL 345509, at *3 (Company Settlement Approval Order); *see also AIG*, 2013 WL 1499412, at *4 (Starr Settlement Approval Order) (same); *AIG*, 2010 WL 5060697, at *3 (PwC Settlement Approval Order) (same).

4. Rule 23(a)(4): The Ohio State Funds Will Adequately Protect the Interests of the Class

Rule 23(a)(4), the adequacy of representation requirement, entails showing whether: "(1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *AIG*, 265 F.R.D. at 172 (Class Certification Order).

Here, there is no conflict between the claims of the proposed Class Representative and those of the other members of the proposed Settlement Class.[11] Moreover, this Court has repeatedly found that Labaton Sucharow LLP ("Labaton Sucharow") and Hahn Loeser & Parks LLP ("Hahn Loeser"), Court-appointed Co-Lead Counsel for Lead Plaintiff will "fairly and adequately protect the interests of the class." *AIG*, 265 F.R.D. at 168 (Class Certification Order); *see also AIG*, 2012 WL 345509, at *2-3 (Company Settlement Approval Order); *AIG*, 2013 WL 1499412, at *5 (Starr Settlement Approval Order); *AIG*, 2010 WL 5060697, at *3 (PwC Settlement Approval Order). Labaton Sucharow and Hahn Loeser are amply qualified, experienced and able to conduct this litigation vigorously and effectively, and

[11] The Settling Parties are not aware of any members of the Settlement Class that have viable state law claims that would be released by the Settlement. Thus, there is no reason to believe that any conflict exists based on variations in state law.

have zealously and ably represented Lead Plaintiff on behalf of the proposed Settlement Class for more than eight years. ¶¶ 101-102.

In addition, Lead Plaintiff the Ohio State Funds is a group of three large institutional investors with collective assets of more than $100 billion and proven track records of successfully pursuing securities class claims, including: (1) a $475 million settlement in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, No. 07-cv-9633 (S.D.N.Y. 2009) (Rakoff, J.); (2) a $410 million settlement in *Ohio Public Employees Retirement System et al. v. Freddie Mac*, No. 03 Civ. 4261 (S.D.N.Y. 2006) (Sprizzo, J.); (3) a $400 million settlement in *In re Marsh & McLennan Co. Inc. Securities Litigation*, No. 04 Civ. 8144, 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009) (McMahon, J.); (4) a $325 million settlement in *In re Global Crossing Securities & ERISA Litigation*, 225 F.R.D. 436 (S.D.N.Y. 2004) (Lynch, J.) and (5) a $153 million settlement in *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, MDL No. 1668 (D.D.C.) (Leon, J.) (June 7, 2013 order granting preliminary approval; final approval pending). The Ohio State Funds have proven their commitment to monitoring Co-Lead Counsel and prosecuting the Action vigorously, as indicated by their involvement in the litigation to date (and also in the mediations that led to this Settlement).

Given that no conflicts exist between Lead Plaintiff's interests and those of other Class Members, and its counsel are highly experienced lawyers in this area of practice, the adequacy of representation requirement is met.

B. The Action Meets the Requirements of Rule 23(b)(3)

In addition to the four requirements of Rule 23(a), a certifiable class must also satisfy one of the three subparts of Rule 23(b). Lead Plaintiff here seeks class certification under Rule 23(b)(3), which establishes two requirements, commonly referred to as "predominance" and "superiority," both of which are satisfied here.

1. Questions of Law or Fact Common to the Class Predominate Over Any Questions Affecting Only Individual Members

Under Rule 23(b)(3), questions of law or fact common to the members of a class must "predominate" over any questions affecting individual members. In the Second Circuit, the predominance requirement is satisfied "if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *AIG*, 689 F.3d at 240 (citations omitted). This test is "readily met in certain cases alleging . . . securities fraud," including this one. *Id.*

Here, the Gen Re Defendants' alleged fraudulent conduct affected all Class Members in the same manner (*i.e.*, through publicly filed AIG documents) and generalized proof will be necessary with respect to the issues of whether: (1) Gen Re entered into a sham reinsurance transaction with AIG; (2) the Gen Re Transaction was material to AIG's investors; (3) the Gen Re Defendants possessed the requisite scienter; and (4) loss causation can be established with respect to the Gen Re Transaction.[12]

2. A Class Action Is Superior to Other Available Methods for the Fair and Efficient Adjudication of the Controversy

Finally, Rule 23(b)(3) also requires that a class action be superior to other available methods for the fair and efficient adjudication of the controversy.

Here, the utility of presenting the claims asserted through the class action method is significant since "the proposed class is substantial in size" and thus the "desirability of conducting the litigation in

[12] As noted in Section E., *supra*, the Court initially held that, because *Stoneridge* barred Lead Plaintiff from invoking the fraud-on-the-market presumption of reliance against the Gen Re Defendants, Lead Plaintiff could not satisfy the predominance requirement with respect to a litigation class against the Gen Re Defendants. However, the Second Circuit has now clarified that, while a rebuttal of the fraud-on-the-market presumption may defeat certification of a litigation class, where, as here, the "settlement class would otherwise satisfy the predominance requirement, the fact that the plaintiff class is unable to invoke the presumption, without more, is no obstacle to certification." *AIG*, 689 F.3d at 243.

the class action form substantially outweighs the interest of members of the class in individually controlling the prosecution of separate actions." *AIG*, 265 F.R.D. at 188 (Class Certification Order). Further, without the settlement class device, the Gen Re Defendants could not obtain a class-wide release, and therefore would have had little, if any, incentive to enter into the Settlement. Moreover, certification of a class for settlement purposes will allow the Settlement to be administered in an organized and efficient manner.

Thus, as the Court found in certifying the litigation class and in certifying the settlement class in connection with the Company, Starr and PwC Settlements, resolution of Lead Plaintiff's claims against the Gen Re Defendants through the proposed Settlement Class is plainly superior to any other available method of resolution. *See AIG*, 265 F.R.D. at 188 (Class Certification Order); *AIG*, 2012 WL 345509, at *2-3 (Company Settlement Approval Order); *AIG*, 2013 WL 1499412, at *4 (Starr Settlement Approval Order); *AIG*, 2010 WL 5060697, at *3 (PwC Settlement Approval Order).

For all of the foregoing reasons, the Court should find that the Settlement Class meets the requirements of both Rules 23(a) and 23(b) and should certify the Settlement Class.

C. Co-Lead Counsel Should Be Appointed Class Counsel Under Rule 23(g)

Rule 23(g)(1) of the Federal Rules states that "a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1). Lead Plaintiff respectfully requests that Labaton Sucharow and Hahn Loeser, Court-appointed Co-Lead Counsel for Lead Plaintiff, be appointed class counsel for the Settlement Class, as it did with respect to the litigation class and the settlement classes for the Company, Starr and PwC Settlements. *See AIG*, 265 F.R.D. at 189 (Class Certification Order); *AIG*, 2012 WL 345509, at *3 (Company Settlement Approval Order); *AIG*, 2013 WL 1499412, at *5 (Starr Settlement Approval Order); *AIG*, 2010 WL 5060697, at *3 (PwC Settlement Approval Order).

III. THE PLAN OF ALLOCATION SHOULD BE APPROVED

Lead Plaintiff respectfully submits that the Plan of Allocation should be approved because it provides a fair and equitable method of dividing the Settlement proceeds among Settlement Class Members who submit a timely and valid Proof of Claim or Release Form ("Authorized Claimants"), consistent with governing law. Under the Plan of Allocation, each Authorized Claimant is entitled to recover her Recognized Loss to the extent that the Distribution Amount is sufficient. If there are not sufficient funds, Authorized Claimants will be entitled to receive their *pro rata* share of the Distribution Amount (*i.e.*, the percentage of their Recognized Loss determined by the ratio of the total Recognized Losses of all Authorized Claimants to the Distribution Amount). It is substantially similar to the plans of allocation approved by the Court in connection with the Company, Starr and PwC Settlements,[13] which were developed by the Settlement Class's non-testifying damages experts, Dr. Scott D. Hakala and Frank C. Torchio, both of whom have extensive experience in developing plans of allocation for settlements in securities class actions and worked on the plans of allocation for the Company, Starr and PwC Settlements. ¶¶ 83-90.[14]

[13] Unlike the plan of allocation in the Company Settlement, the Plan of Allocation here does not involve any reduction based on a Class Members' recovery from the Fair Fund created in *SEC v. American International Group, Inc.*, 06 Civ. 1000 (S.D.N.Y.) (LAP).

[14] Dr. Hakala was also retained by the SEC to create its plan of allocation in the related AIG Fair Fund settlement.

CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court (1) enter the Proposed Judgment; (2) certify the Settlement Class and (2) enter the Order Approving Plan of Allocation.

Dated: New York, New York
July 26, 2013

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