

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MARYLAND

DAVID R. KRUSS,  
individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

BANNER LIFE INSURANCE CO.,

Defendant.

Case No. 230503  
Hon. Durke G. Thompson

ORDER AND FINAL JUDGMENT

On the 3<sup>rd</sup> day of December, 2004, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation of Settlement and Release Agreement dated April 23, 2004 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by Plaintiff David R. Kruss ("Plaintiff") and the Class against Defendant Banner Life Insurance Company ("Banner") in the Amended Complaint now pending in this Court under the above caption, including the release of Banner as that term is defined in the Stipulation, should be approved; (2) whether judgment should be entered dismissing the Amended Complaint on the merits and with prejudice as against Banner; and (3) whether and in what amount to award Lead Counsel fees and reimbursement of expenses;

At that hearing, the Court having: (1) granted the Motion For Special Admission Of Out-Of-State Attorney Edward W. Cochran, counsel for Thomas Pekoc, a Banner policyholder and objector to the Stipulation; (2) heard the

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objection of Objector Pekoc to the proposed amount to be awarded Lead Counsel for fees and reimbursement of expenses; and (3) granted Objector Pekoc until January 3, 2005, in which to submit additional case law supporting his objection, and also granted Plaintiff and Banner until January 18, 2005, in which to respond to any additional case law submitted by Objector Pekoc;

The Court subsequently having been advised by Objector Pekoc, through his counsel, that he has withdrawn all objections to the Stipulation;

The Court having considered all matters submitted to it at the December 3, 2004, hearing, and otherwise being fully advised;

It appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all members of the Class as defined in the Stipulation;

And the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested;

NOW, THEREFORE, IT IS ORDERED THAT:

1. All of the terms as defined in the Stipulation are incorporated herein. The capitalized terms used herein have the same meaning as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, the Plaintiff, all Class Members, and Banner.

3. The Court finds that the prerequisites for a class action under Rule 2-231 of the Maryland Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c)

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the claims of the Plaintiff are typical of the claims of the Class that he seeks to represent; (d) the Plaintiff has and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 2-231 of the Maryland Rules of Civil Procedure, and for the purposes of this Settlement only, this Court hereby finally certifies this action as a class action on behalf of all Class Members, as defined in Paragraph 5.6 of the Stipulation. Excluded from the Class are the Excluded Persons as defined in Paragraph 5.14 of the Stipulation, including, but not limited to, those individuals listed on the attached **Exhibit 1** (a six page document containing 242 names and policy numbers) who requested exclusion from the Class.

5. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of this Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Maryland law and the Maryland Rules of Civil Procedure, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to the same.

6. The Court finds that all objections filed to the Stipulation and/or to the final approval of the Settlement in this case are without merit.

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7. The Settlement is approved as fair, reasonable and adequate, and the parties are directed to complete the Settlement in accordance with the terms and provisions of the Stipulation.

8. The Amended Complaint, which the Court finds was filed on a good faith basis in accordance with Maryland Rules of Civil Procedure, is hereby dismissed with prejudice and without costs and fees, except as expressly provided for in the Stipulation or this Order and Final Judgment, as against Banner.

9. Plaintiff, all Class Members, and the heirs, executors, administrators, successors, assigns and beneficiaries of any of them, are hereby permanently barred and enjoined from instituting, maintaining or asserting any Released Claim against Banner, and Banner is hereby released and discharged from any and all Released Claims.

10. Plaintiff, all Class Members, and the heirs, executors, administrators, successors, assigns and beneficiaries of any of them, are hereby deemed to have expressly agreed not to sue and are permanently barred and enjoined from suing Banner for anything arising out of or connected to the Released Claims.

11. Neither this Order and Final Judgment, the Stipulation, nor any of their terms and provisions, nor any of the negotiations or proceedings connected with them, nor any of the documents or statements referred to therein shall be:

A. offered or received against Banner as evidence of or construed as or deemed to be evidence of any presumption, concession, or

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admission by Banner with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Banner;

B. offered or received against Banner as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Banner, or against the Plaintiff and the Class as evidence of any infirmity in the claims of Plaintiff and the Class;

C. offered or received against Banner or against Plaintiff or the Class as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation or this Order and Final Judgment; provided, however, that Banner may refer to the Stipulation and this Order and Final Judgment to effectuate the liability protection granted to Banner thereunder;

D. construed against Banner or the Plaintiff or the Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been received after trial; or

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E. construed or received in evidence as an admission, concession or presumption against Plaintiff or the Class that any of their claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the value of the Settlement.

12. Lead Counsel are hereby awarded \$1,350,000 (One Million, Three Hundred and Fifty Thousand Dollars) which is inclusive of **all** attorneys' fees, costs and expenses. The Court finds this amount to be fair and reasonable. This amount shall be paid to Lead Counsel by Banner and shall not reduce the relief to be afforded the Class Members pursuant to the Stipulation. This amount shall be allocated among Lead Counsel and the firms of Quinn, Gordon & Wolf, CHTD, Donovan, Searless, LLC and the Law Offices of Andrew S. Kierstead in a fashion which, in the opinion of Lead Counsel, fairly compensates them for their respective contributions in the prosecution of the Action. Banner shall not be obligated to pay any other attorneys' fees, expenses, costs or disbursements to any person or entity in connection with this Action or the Stipulation other than the amount stated above.

13. Exclusive jurisdiction is hereby retained over Plaintiff, Banner and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment.

14. The time period for implementing the Retrospective Relief set forth in Paragraph 7.3 of the Stipulation shall be modified to now provide that Banner shall have **forty-five (45) days from the Final Settlement Date** in which to

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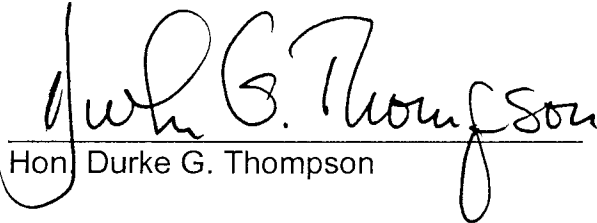
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provide the Class Members with the certificates for additional insurance coverage.

15. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to the Maryland Rules of Civil Procedure.

Dated: March 24, 2005.

  
Hon. Durke G. Thompson

**ENTERED**

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2005 3 24

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**Exhibit 1 to Order and Final Judgment**

***List of Banner Life Insurance policies for which  
an opt-out of settlement request was received***

1	Aaron, Cyril	17B714066
2	Addison, James	17B595131
3	Alderson, Arthur	17B067937
4	Amato, Daniel	17B097051
5	Anderson, Anne	17B605579
6	Arabia, Joe	17B304972
7	Atadgy, Catherine	17B216879
8	Atadgy, David	17B216880
9	Atkinson, Mark	17B259337
10	Backo, Gary	17B179530
11	Bali, Doru	17B594045
12	Ballersteros, Tim	
13	Banks, Cathy	17B214384
14	Banks, John	17B155701
15	Barton, Carol	17B605296
16	Beatty, Harold	17B046419
17	Befort, Curtis	17B672427
18	Bianchi, Nora	17B714749
19	Bilazzo, Nancy	17B646763
20	Bjorkman, Carl	17B111503
21	Bjorkman, Cathy	17B100406
22	Blaha, Rhonda	17B266488
23	Blair, Virginia	17B354319
24	Boden, Patrick	17B553094
25	Boisselle, Carol	17B056529
26	Boisselle, Guy	17B046437
27	Brennan, John	17B734844
28	Bundy, TC	17B331799
29	Bundy, Wanda	17B331800
30	Calvo, Carmela	17B676197
31	Carroll, Dan	17B558101
32	Carter, Mark	17B619321
33	Chang, Cindy	17B198087
34	Checkley, Brian	17B613528

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35	Checkley, James	17B613531
36	Chunn, E.K.	17B032228
37	Cividanis, Nidia	17B324617
38	Cividanis, Samuel	17B324616
39	Clancy, Kevin	17B711037
40	Clancy, Stephanie	17B711039
41	Clendenan, Connie	17B707279
42	Costello, Rick A.	17B199427
43	Crane, Douglas	17B550781;
44	Crist, Margaret	17B728384
45	Cuthrell, William	17B595426
46	Da Silva, Carlos	17B553006
47	Dean, Eva	17B192946
48	Delkov, Angel	17B244283
49	Dellis, Wendy	17B702182
50	Dimtroff, Didi	17B650980
51	Dominguez, Frank	17B557987
52	Dominguez, Laura	17B557985
53	Dos Santos, William	17B169828;
54	Earle, George	17B690692
55	Eggers, Patricia	17B027686
56	Ehlerding, Deborah	17B701016
57	Ehlerding, Roy Jr.	17B700711
58	Einhorn, Kathleen	17B534099
59	Einhorn, Kenneth	17B534098
60	Elguezabal, M	17B645473
61	Fain, David	17B676065
62	Fairchild, Cindy	17B073140
63	Faustino, Erick	17B607283
64	Faustino, Jasmin	17B604812
65	Feichter, Thomas	17B705568
66	Feichter, Thomas	17B550777
67	Feichter, Thomas	17B565572
68	Feichter, Thomas	17B550776
69	Fisher, Moira	17B714952
70	Flynn, Stephen	17B086441
71	Foxworthy, Virginia	17B709541
72	Frazer, Ronald	17B056728
73	Frazier, John	17B178758
74	Frazier, Patricia	17B179592
75	Friedman, Robert	17B637733
76	Friel, Jeffery	17B618695
77	Friel, Susan	17B568181
78	Gangopadhyay, Nabaneeta	17B564959
79	Gangopadhyay, Partha	17B523451
80	Gates, David	17B159481

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81	Gates, Elizabeth	17B159482
82	Gazzerro, John	17B285395
83	Gazzerro, Myrna	17B285430
84	Geis, Mary	17B274513
85	Geis, Ronald	17B274512
86	Gellman, David	17B591422
87	Gifford, Gordon	17B116275
88	Gil, Jose	17B580281
89	Gladd, Jeffery	17B552460
90	Gomez, Scott	17B123701
91	Gonzalez, Mario	17B329071
92	Goodwin, Lewis	17B2561688
93	Goodwin, Richard	17B232449
94	Gopinath, Vimala	17B056334
95	Greene, Dawn	17B716122
96	Greene, Michael	17B716124
97	Haberer, JoAnn	17B193074
98	Hagel, Dale	17B651626
99	Heiskell, Timothy	17B602941
100	Hendricks, Anthony	17B750286
101	Higgins, Michael	17B593021
102	Hollingsworth, Dean	17B725223
103	Holmquist-Sutherland,	17B643622
104	Holmquist-Sutherland, Todd	17B737520
105	Horn, Clifton	17B317571
106	Horn, Paul	17B638603
107	Hudson, Christopher	17B198086
108	Hughes, Dedra	17B171466
109	Ihnat, Denise Kung	17B652002
110	Jekel, Brian	17B544443
111	Jekel, Marlene	17B544450
112	Jones, Darryl	17B604942
113	Kaneshiro, Edward	17B151628
114	Kavanaugh, Corinne	17B671650
115	Kelleher, Daniel	17B113333
116	Kelleher, Jennifer	17B113334
117	Kindsfather, Justin	17B596860
118	King, Marlon	17B144645
119	Kling, David	17B116706
120	Knell, Gary	17B165336
121	Kramer, Steven	17B354974
122	Krause, Rick	17B587941
123	Lahoda, Stanley	17B104706
124	Landers, William	17B753200
125	Lange, Patricia	17B193280
126	Langham, Rosa	17B503437
127	Lawrence, David	17B282554
128	Lawrence, Sharon	17B282553
129	Leavelle, Betty	17B758229

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130	Lefkon, Bruce	17B571006
131	Lessivee, George	17B006552
132	Lewis, Raymond	17B092172
133	Lewis, Ricky	17B205496
134	Lin, Juiteng	17B573343
135	Lin, Yuchin	17B572156
136	Loeb, Daniel	17B699702
137	Lombard, Edith	17B693650
138	Love, Kimerberly Ann	17B521992
139	Lynch, John	17B606283
140	Lynch, Krista	17B606910
141	Marrella, Pat	17B024060
142	Martin, Vincent	17B698214
143	McCloskey, Leah	17B606211
144	McDougall, Tina	17B691253
145	Mench, Mark	17B608150
146	Merck, Melinda	17B133756
147	Mickes, Carla	17B653577
148	Minzel, David	17B534118
149	Moore, Charles	17B263859
150	Moore, Pamela	17B263858
151	Morozini, Aparecida	17B578405
152	Moskowitz, Joseph	17B043050
153	Moyer, Thomas	17B615827
154	Munson, Sonia	17B242343
155	Murphy, Joseph M. Jr.	17B037680
156	Naghshineh, Shahriar	17B349773
157	Nichols, Bruce	17B709144
158	Nickell, Steven	17B311360
159	North, Georgette	17B064101
160	Novak, Mark	17B313115
161	Nyce, Catherine	17B608224
162	Nyce, David	17B608227
163	O'Brien, Cynthia	17B094583
164	Olnowich, Lorraine	17B218702
165	Orth, Steven	17B719214
166	Osborne, Laura	17B699607
167	Osborne, Shaun Lee	17B699624
168	Pansini, Linda	17B634767
169	Pansini, Tommaso	17B634782
170	Pasetta, Elise	17B309050
171	Pasetta, Martin	17B309049
172	Patel, Pushpakant	17B204427
173	Patton, Troy	17B569726
174	Paul, Russell	17B667887
175	Pauline, James	17B616220
176	Pauline, Kersten	17B616218
177	Phillips, Benjamin	17B249777
178	Pimchaipong, Panoo	17B267592
179	Pintar, Theodore	17B575000
180	Prascik, Francis	17B673511
181	Price, Tim	

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182	Prior, Dan	17B720956
183	Refling, Mark	17B264940
184	Richardson, Louis	17B110426
185	Richardson, Marta	17B110427
186	Rivas, Rita	17B354552
187	Robert, Mark	17B610242
188	Rockwell, Andrew	17B188495
189	Rogers, Carol	17B238313
190	Rogers, Lani	17B238314
191	Ross, Robert	17B218044
192	Rudolph, Matthew	17B513603
193	Rudolph, Michelle	17B513607
194	Rule, Richard	17B547212
195	Rutkin, Cathie	17B222592
196	Sanson, Jonathan	17B113819
197	Schroeder, Larry	
198	Sciosciolo, Eva	17B664273
199	Scott, J.Ryland	17B569057
200	Semmens, Elizabeth	17B081321
201	Semmens, Kenneth	17B081322
202	Shebek, John	17B086475
203	Shumaker, Mark	17B670493
204	Shustak, Eileen	17B214041
205	Shustak, Steven	17B214040
206	Siekyta, Jayne	17B529431
207	Sims, Carol	17B697613
208	Simsek, Angela	17B122639
209	Simsek, Jim	17B150370
210	Smathers, Royce	17B676065
211	Smith, Alan	17B194353
212	Smith, David	17B037334
213	Smith, Freddie	17B105305
214	Smith, Nathan	17B537450
215	Spencer, Barbara	17B351940
216	Starr, Cynthia	17B676713
217	Starr, Eugene	17B676712
218	Stickley, James	17B059571
219	Stokes, Christopher	17B511211
220	Stowe, Nicole	17B213498
221	Stowe, Richard	17B213205
222	Strack, William	17B243508
223	Terry, Benjamin	17B139179
224	Therrien, Timothy	17B668272
225	Thompson-Crook, Marcia	17B732793
226	Trickett, Terry	17B011802
227	Tymoszczuk, Joseph	17B080867
228	Tymoszczuk, Tina	17B080868
229	Uhlman, David	17B645582
230	Wahus, Richard	17B608174
231	Walczak, Tammy	17B104580
232	Walicek, James	17B638215

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233	Waters, Dean	17B748723
234	Wear, Cheryl	17B753759
235	Westmoreland, Leo	17B506958
236	Westpy, Guy	17B149894
237	Whitacre, Christine	17B647973
238	Widdifield, G.E.	17B058380
239	Willis, Cynthia	17B637799
240	Wing, Edward	17B203000
241	Wolf, Adrienne	17B655013
242	Wood, Wayne	17B588132