



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ATHENE ANNUITY AND LIFE COMPANY,
AMERICAN INVESTORS LIFE INSURANCE
COMPANY, INC. REVOCABLE TRUST, and
INDIANAPOLIS LIFE INSURANCE
COMPANY REVOCABLE TRUST,

Plaintiffs,

v.

AMERICAN GENERAL LIFE INSURANCE
COMPANY, ZC RESOURCE INVESTMENT
TRUST, and ZC RESOURCE LLC,

Defendants.

C.A. No. N19C-10-055 PRW [CCLD]

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT ZC RESOURCE INVESTMENT TRUST**

Defendant ZC Resource Investment Trust (“ZCRIT”), by and through its attorneys, hereby sets forth below its Answer and Affirmative Defenses to the Verified Complaint (the “Complaint”) of Plaintiffs Athene Annuity and Life Company, American Investors Life Insurance Company, Inc. Revocable Trust, and Indianapolis Life Insurance Company Revocable Trust (collectively, “Plaintiffs”).*

* The Court dismissed all claims against ZC Resource LLC in its May 18, 2020 memorandum opinion, which may be found at Athena Annuity and Life Company, et al. v. Am. Gen. Life Ins. Co., et al., C.A. No. N19C-10-055, 2020 WL 2521557 (Del. Super. May 18, 2020) (the “May 18, 2020 Memorandum Opinion”), and therefore ZC Resource LLC is no longer a party to this action. To the extent any answer is required of ZC Resource LLC, it adopts the responses set forth herein.

ANSWER

As and for its answer, ZCRIT pleads as follows, upon its knowledge as to its own acts, and upon information and belief as to all other matters:

1. Plaintiffs Athene Annuity and Life Company (f/k/a Aviva Life and Annuity Company) (“Athene”), American Investors Life Insurance Company Revocable Trust (“American Investors Trust”), and Indianapolis Life Insurance Company Revocable Trust (“Indianapolis Life Trust”) bring this action for equitable relief and damages against Defendants American General Life Insurance Company (“American General”), ZC Resource Investment Trust (“ZC Trust”), and ZC Resource LLC (“ZC Resource”).

ANSWER: To the extent that the allegations in Paragraph 1 characterize Plaintiffs’ claims, ZCRIT avers that no response is required. To the extent that a response is required, ZCRIT admits that Plaintiffs purport to bring this action in the capacities alleged and seek equitable relief and damages, but specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

NATURE OF THE ACTION

2. Although the insurance products at the heart of this case are complicated, the underlying dispute is not: Athene asks this Court to reject Defendants’ attempts to abrogate their agreements with Athene, which have already harmed Athene and threaten to prevent Athene from realizing the benefit of its bargain with Defendants.

ANSWER: To the extent that the allegations in Paragraph 2 characterize Plaintiffs’ claims, ZCRIT avers that no response is required. To the extent that a response is required, ZCRIT denies the allegations in Paragraph 2, and

specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

3. This Court has already reviewed many of the facts that give rise to this dispute. On March 18, 2013, Athene sued Defendants in this Court to enforce the negotiated terms of two variable group life insurance policies issued by American General (the “Policies”).¹ This Court declined to grant the relief Athene sought at that time, dismissing the action without prejudice on ripeness grounds. The Court also encouraged Athene to seek guidance from the IRS on certain tax issues and to refile the suit at a later date, if necessary. *See Aviva Life & Annuity Co. v. Am. Gen. Life Ins. Co.*, C.A. No. 8414-VCG, 2014 WL 1677798, at *11 (Del. Ch. Apr. 29, 2014). The Court’s opinion is attached hereto as Exhibit D.1.

ANSWER: In response to the allegations in Paragraph 3, ZCRIT admits that Aviva Life and Annuity Company and U.S. Bank Trust National Association, in its capacity as trustee of American Investors Life Insurance Company, Inc. Revocable Trust (“American Investors Trust”) and Indianapolis Life Insurance Company Revocable Trust (“Indianapolis Life Trust”, and together with the American Investors Trust, the “Trusts”), filed a complaint in the Delaware Chancery Court on March 18, 2013 against American General Life Insurance Company (“AGL”), ZCRIT, and ZC Resource LLC. ZCRIT further admits that the Chancery Court issued a memorandum opinion in that case found at *Aviva Life & Annuity Co. v. Am. Gen. Life Ins. Co.*, C.A. No. 8414-VCG, 2014 WL 1677798 (Del.

¹ The Policies are held in the American Investors Trust and the Indianapolis Life Trust (together, the “Trusts”). Each trust is governed by Delaware law. Athene is the sole grantor and beneficiary of each trust. Attached as Exhibits A.1 through 5 (original) and Exhibits B.1 and 2 (restated) are the Transaction Documents for the American Investors Policy, which mirror in all material respects the corresponding Transaction Documents for the Indianapolis Life Policy.

Ch. Apr. 29, 2014) (the “April 29, 2014 Memorandum Opinion”), and that a copy of such opinion is attached to the Complaint as Exhibit D.1. ZCRIT denies the characterizations of the Chancery Court complaint and the April 29, 2014 Memorandum Opinion, and states those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 3.

In response to the allegations in footnote no. 1 to Paragraph 3, ZCRIT admits that the AGL policies at issue in this litigation (the “Policies”) are held in the Trusts, and that Exhibits A.1-A.5 and B.1-B.2 comprise versions of some of the materials included in the full set of documents (collectively, the “Policies and Related Documents”) relevant to the parties’ rights under the Policies. ZCRIT also admits that the Policy held by Indianapolis Life Trust is governed in part by documents substantially similar, but not identical, to Exhibits A.1-A.5 and B.1-B.2. ZCRIT further states that the allegation in the footnote regarding governing law constitutes a legal conclusion to which ZCRIT need not respond. ZCRIT admits that Athene operates as the sole grantor and beneficiary of the Trusts. To the extent a response is required, and with respect to the remainder of the footnote, ZCRIT denies the footnote’s characterizations of Exhibits A.1-A.5 and B.1-B.2, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in the footnote.

4. Having heeded this Court’s advice, Athene now seeks relief that only this Court can provide. As discussed *infra* at paragraphs 69-71, the IRS, while taking no position on Athene’s request, declined to provide guidance that might have settled this dispute. Athene now seeks this Court’s intervention to stop Defendants’

attempts to “cap” Athene’s returns under the Policies, which have already wrongfully reduced an insurance policy death benefit paid to Athene by approximately \$9,000 and threaten to eviscerate Defendants’ contractual commitments to Athene—with damages to Athene that could reach nearly \$169 million as of the date of this filing.

ANSWER: To the extent that the allegations in Paragraph 4 characterize Plaintiffs’ claims, ZCRIT avers that no response is required. To the extent that a response is required, ZCRIT admits that application of the 55% cap (the “55% Cap”) has reduced payments under one of the Policies by approximately \$9,000 as compared to the sums that would be payable without such cap. ZCRIT further denies the characterization of the March 1, 2017 Internal Revenue Service (“IRS”) letter, and states such letter speaks for itself. ZCRIT additionally states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 relating to the intentions of Athene Annuity and Life Company (“Athene”) in bringing the Complaint, and therefore denies the same. ZCRIT denies the remaining allegations in Paragraph 4, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

5. The Policies are two bespoke corporate-owned life-insurance policies that insure certain covered employees, and that were the result of extensive arm’s-length negotiations between Athene and Defendants in 2000 and 2001. Athene is the owner and beneficiary of the Policies and Defendants are responsible for managing an investment portfolio that holds the policy premiums paid by Athene, which total \$180 million.

ANSWER: In response to the allegations in Paragraph 5, ZCRIT admits that Athene operates as the sole grantor and beneficiary of the Trusts that acquired the Policies. ZCRIT further admits that premiums of \$180 million were paid, and that negotiations surrounding the Policies occurred in 2000 and 2001. ZCRIT denies the express and implied characterizations of the Policies and Related Documents, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 5.

6. The value of the Policies is based on the performance of the investments to which Athene allocates its cash value. At the time Athene purchased the Policies, Athene allocated, at Defendants' urging, all of its cash value to, and continues to keep all of its cash value in, the "SVP Balanced Portfolio," an investment option made available by American General and offered by ZC Trust.

ANSWER: ZCRIT admits that since the Policies were purchased, the cash value of the Policies has been allocated to the SVP Balanced Portfolio and that such portfolio was made available by American General and offered by ZCRIT. ZCRIT denies the remaining allegations in Paragraph 6.

7. The SVP Balanced Portfolio comprises an actively managed portfolio of assets (as defined in the relevant documents, the "Corresponding Portfolio"), supported by a Zurich Insurance Company guarantee (as discussed below, the "SVP Product"). When Athene bought the Policies, the Corresponding Portfolio comprised an equity component and a bond component.

ANSWER: In response to the allegations in the first sentence of Paragraph 7, ZCRIT admits that the SVP Balance Portfolio comprises an actively managed portfolio of assets (as defined in the relevant documents, the "Corresponding Portfolio"), but denies any further characterizations of the Policies

and Related Documents, including commitments of Zurich Insurance Company Ltd. (“ZIC”), through its Bermuda Branch (“ZIB”), and states that those materials speak for themselves. ZCRIT specifically denies that any “guarantee” of a monetary return was provided. ZCRIT admits that when the Policies were issued the Corresponding Portfolio contained the Fixed Income Portfolio and the Equity Index Portfolio. ZCRIT denies any remaining allegations in Paragraph 7.

8. In 2001, following Athene’s notice of its intent to exit the policies, Defendants and Athene agreed to certain amendments by which Defendants induced Athene to withdraw its cancellation notice. Under these amendments, Athene agreed to pay an additional \$30 million in premiums and Defendants guaranteed Athene a minimum annual return of eight percent per year (notwithstanding the actual performance of the Corresponding Portfolio). While this limited Athene’s risk, Defendants provided upside for themselves by setting a maximum return for Athene at ten percent per year. Additionally, the amendments also introduced a new component to the Corresponding Portfolio that employed hedge-fund strategies for the purpose, on information and belief, of helping to increase returns for Defendants.

ANSWER: In response to the allegations in Paragraph 8, ZCRIT admits that after a surrender notice on behalf of American Investor Trust was rescinded an additional premium payment of \$30 million was made. ZCRIT denies the express and implied characterizations in Paragraph 8 of the Policies and Related Documents, including of the “amendments” referenced therein, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 8, and specifically denies that any “guarantee” of a monetary return was provided.

9. To illustrate how the Policies functioned following the 2001 amendments, if Athene initially had \$100 in the Corresponding Portfolio (*i.e.*, the portfolio of assets purchased with Athene’s premiums), ZC Trust would select

stocks, bonds, and other assets consistent with the hedge-fund strategies valued at \$100, to be held in the Corresponding Portfolio. If at the end of Year 1, the assets in the Corresponding Portfolio were worth \$108, then the SVP Product (*i.e.*, the Zurich Insurance Company guarantee) would be worth \$0 such that the total SVP Balanced Portfolio (*i.e.*, the Corresponding Portfolio and the SVP Product together) was worth \$108—the minimum eight percent return guaranteed to Athene under the policies. If, however, the assets in the Corresponding Portfolio *underperformed* Defendants’ guarantee and were worth \$105 at the end of Year 1, then the SVP Product would be worth \$3 such that the SVP Balanced Portfolio was worth \$108—the minimum eight percent return guaranteed to Athene under the policies. In the same fashion, if the assets in the SVP Balanced Portfolio *exceeded* Defendants’ guarantee and Athene’s maximum possible return of ten percent, and were worth \$115 at the end of Year 1, then the SVP Product would be worth *negative* \$5 such that the SVP Balanced Portfolio would be worth \$110—the maximum return permitted to Athene under the Policies. In this way, the parties ensured a stable investment for Athene and upside for Defendants, with Defendants wagering that any downside of low-growth years would be offset by returns in excess of ten percent during high-growth years and the substantial fees received by Defendants on the products, totaling nearly \$17 million to date and continuing to accrue at a rate of over \$120,000 per month in 2017.

ANSWER: The allegations in Paragraph 9 comprise an improper hypothetical, argument and legal conclusions to which no response is required. To the extent that a response is required, ZCRIT denies the allegations in Paragraph 9.

10. Market performance between 2001 and 2011, however, saw the Corresponding Portfolio regularly underperform eight percent growth, resulting in corresponding increases in the size of the SVP Product. As Defendants watched their guarantee through the SVP Product continue to grow, they moved to implement unilateral changes in the Policies to frustrate Athene’s ability to realize the benefit of the bargain struck by the parties.

ANSWER: In response to the allegations in the first sentence of Paragraph 10, ZCRIT admits that market performance during the 2001-11 period resulted in the Corresponding Portfolio growing at less than eight percent and the

SVP Product increasing in value. ZCRIT denies the remaining allegations in Paragraph 10.

11. Specifically, Defendants aimed to alter Athene’s ability to realize the benefit of its bargain with Defendants upon exit of the Policies, which Athene may do in one of two ways: (i) by “reallocating” its investment from the SVP Balanced Portfolio to another product offered by Defendants, or (ii) by “surrendering” (*i.e.*, canceling) the Policies. In the event that Athene exercised either option while the value of the SVP Product comprised a substantial portion of the value of the SVP Balanced Portfolio, Defendants would be called upon to make good on their guarantee; but if Defendants could forestall Athene’s exit, they might be able to realize gains to the Corresponding Portfolio that could reduce the value of the SVP Product—and erase the cost to Defendants’ in making good on the guarantee to Athene. Defendants would also continue to collect substantial fees from Athene.

ANSWER: ZCRIT states that no response is required to Paragraph 11 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the allegations in Paragraph 11.

12. Accordingly, focused on keeping Athene in the Policies and limiting their exposure under the SVP Product, Defendants asserted an erroneous interpretation of federal tax rules to purport to impose a “cap” on the value of the SVP Product. Under this “cap,” Defendants declared that the SVP Product could never comprise more than 55 percent of the value of the SVP Balanced Portfolio (the “55 Percent Cap”). This position had the effect of:

- First, eliminating the eight percent minimum return on the SVP Balanced Portfolio, which Defendants had guaranteed Athene to keep Athene in the Policies, by “capping” the SVP Product at 55 percent of that portfolio. By implementing this “cap,” Defendants ensured that the SVP Product could not increase in value until after the Corresponding Portfolio had increased in value so as to comprise

a larger percentage of the SVP Balanced Portfolio. The ten percent limit on Athene's returns, however, was left in place.

- Second, having unilaterally imposed the 55 Percent Cap on the SVP Product, Defendants announced that they would implement the Cap in an arbitrary and self-serving fashion aimed at preventing Athene from realizing the benefit of its investment in the SVP Balanced Portfolio. Specifically, Defendants declared that in the event of Athene's notice of reallocation, Defendants would not reallocate any funds from the SVP Product until *after reallocation of all funds* from the Corresponding Portfolio. This practice, employed in concert with the 55 Percent Cap, meant that any reallocation of the Corresponding Portfolio would require a concomitant reduction in the value of the SVP Product, which could never comprise more than 55 percent of the total value of the SVP Balanced Portfolio. This effectively foreclosed Athene from exercising its reallocation rights because doing so would eviscerate the value of the SVP Product.

ANSWER: ZCRIT states that no response is required to Paragraph 12 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the implied characterizations of the Policies and Related Documents, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 12.

13. Additionally, Defendants also purported to amend the Policies to refuse to permit Athene, in the event of Athene's notice of surrender, from realizing any value from the SVP Product until that product had zero or nominal value. By these purported amendments, Defendants aimed to continue the life of the Policies and the fees they generated for Defendants and to negate Athene's ability to realize the benefit of its agreement with Defendants.

ANSWER: ZCRIT states that no response is required to Paragraph 13 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 13.

14. Athene objected to Defendants’ purported amendments when they were announced and has not, and will not, agree to the amendments. Notwithstanding Athene’s objections, Defendants have since purported to implement the amendments unilaterally, causing harm to Athene and threatening to cause further harm. As of March 1, 2018, the SVP Product comprised nearly \$169 million of the SVP Balanced Portfolio—all of which is imperiled by Defendants’ wrongful acts.

ANSWER: ZCRIT denies the allegations in the first sentence of Paragraph 14, except that it admits that Athene has objected to the issuance of the 2011 supplements by AGL and ZCRIT (the “2011 Supplements”). ZCRIT denies the allegations in the second sentence of Paragraph 14. ZCRIT denies the allegations in the third sentence of Paragraph 14, but admits that on or about March 1, 2018, the SVP Product was valued at approximately \$169 million.

15. Athene now brings this action for breach of contract and for a declaratory judgment, as well as for tortious interference against ZC Resource and ZC Trust, the latter of which manages Athene’s investments. Defendants have breached their obligations under the Policies, and threaten to continue to breach those obligations, by their improper and wrongful assertion that federal tax law

requires the 55 Percent Cap. This Cap has resulted in a diminished death benefit paid to Athene and threatens to continue to prevent Athene from realizing the benefit of its bargain with Defendants by imperiling Athene's ability to access the SVP Product. At the same time, Athene has paid and continues to pay substantial monthly fees to Defendants for the benefit of maintaining the SVP Product, totaling nearly \$17 million to date and continuing to accrue at a rate of over \$120,000 per month in 2017. This Court can and should find that federal tax law does not operate as Defendants theorize; but if this Court declines to address this issue, it may still find for Athene by holding that Defendants may not unilaterally amend the Policies to frustrate Athene's ability to realize the benefit of its bargain—in breach of the plain terms of the Policies—and must implement the 55 Percent Cap in a manner that is consistent with the Policies and that is not detrimental to Athene.

ANSWER: To the extent that the allegations in Paragraph 15 characterize Plaintiffs' claims, ZCRIT avers that no response is required. To the extent that a response is required, ZCRIT admits that, as of the date of the Complaint filed in the Chancery Court, payments for the SVP Product together totaled approximately \$17 million and were accruing at a rate of approximately \$120,000 per month. ZCRIT denies the remaining allegations in Paragraph 15.

THE PARTIES

16. Plaintiff Athene is an Iowa corporation with its headquarters in West Des Moines, Iowa. Athene is a leading provider of fixed-indexed life-insurance and annuity products and is licensed to conduct business in 49 states. Athene was formerly known as Aviva Life and Annuity Company.

ANSWER: ZCRIT admits the allegations in the first sentence of Paragraph 16. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16, and therefore denies the same, except that it admits that on October 2, 2013, Athene Holding Ltd. announced that it had completed its acquisition of Aviva USA Corporation and its subsidiaries.

17. Plaintiff American Investors Trust is a trust organized under Delaware law. Athene is the sole grantor and beneficiary of American Investors Trust.

ANSWER: ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies the same, except that it admits that Athene operates as the sole grantor and beneficiary of the American Investors Trust.

18. Plaintiff Indianapolis Life Trust is a trust organized under Delaware law. Athene is the sole grantor and beneficiary of Indianapolis Life Trust.

ANSWER: ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies the same, except that it admits that Athene operates as the sole grantor and beneficiary of the Indianapolis Life Trust.

19. Defendant American General, now a subsidiary of American International Group (AIG), is a Texas corporation with its headquarters in Houston, Texas.

ANSWER: ZCRIT admits the allegations in Paragraph 19.

20. Defendant ZC Trust is a Delaware business trust with its principal place of business in New York, New York.

ANSWER: ZCRIT admits the allegations in Paragraph 20.

21. Defendant ZC Resource is a Delaware limited liability company with its principal place of business in Wilmington, Delaware. ZC Resource is one of the trustees of ZC Trust.

ANSWER: In response to the allegations in Paragraph 21, ZCRIT admits that ZC Resource LLC was a Delaware limited liability company, but denies that it is currently the trustee of ZCRIT.

22. Zurich Insurance Company, which is not a party to this litigation, is a Swiss corporation with its headquarters in Zurich, Switzerland. Zurich Insurance Company owns and maintains a number of affiliates in the United State, including ZC Trust, ZC Resource, and Benefit Finance Partners, LLC (“BFP”).

ANSWER: In response to the allegations in Paragraph 22, ZCRIT admits that ZIC is not a party to this litigation, that it is a Swiss company with its headquarters in Zurich, Switzerland, and that it has had a number of affiliates in the United States, including ZCRIT and ZC Resource LLC. ZCRIT denies the remaining allegations in Paragraph 22.

23. On information and belief, BFP, which is not a party to this litigation, is a Missouri limited liability company with its principal place of business in Wilmington, Delaware. BFP is the administrator of the Policies.

ANSWER: In response to the allegations in Paragraph 23, ZCRIT admits that Benefit Finance Partners, LLC (“BFP”) is not a party to this litigation, and that it is the administrator of the Policies. ZCRIT denies the remaining allegations in Paragraph 23.

FACTUAL ALLEGATIONS

A. The Policies

24. In October 2000, American Investors Life Insurance Company, Inc. (“American Investors”) purchased a group-variable life-insurance policy from American General (the “American Investors Policy”) (Ex. A.3) and paid a \$100 million premium.

ANSWER: In response to the allegations in Paragraph 24, ZCRIT admits that in October 2000, American Investors Life Insurance Company, Inc. (“American Investors”) purchased a Group Flexible Premium Variable Life

Insurance Master Policy from AGL for which a \$100 million premium was paid.

ZCRIT denies the remaining allegations in Paragraph 24.

25. In June 2001, Indianapolis Life Insurance Company (“Indianapolis Life”) purchased a substantially similar group-variable life-insurance policy from American General (the “Indianapolis Life Policy”) and paid a \$50 million premium.

ANSWER: ZCRIT admits that in June 2001, Indianapolis Life Insurance Company (“Indianapolis Life”) purchased a Group Flexible Premium Variable Life Insurance Master Policy from AGL for which a \$50 million premium was paid. ZCRIT further admits that the documents governing the Indianapolis Life Policy are substantially similar, but not identical, to the documents governing the American Investor Policy. ZCRIT denies the remaining allegations in Paragraph 25.

26. The American Investors Policy and the Indianapolis Life Policy together comprise the Policies. The documents and agreements evidencing and supporting the two Policies mirror each other in all material respects.

ANSWER: ZCRIT states that the first sentence of Paragraph 26 is merely intended to define terms in Complaint, and therefore no response is required. In response to the second sentence of Paragraph 26, ZCRIT states that the documents governing the Policy issued to American Investor are substantially similar, but not identical, to the documents governing the Policy issued to Indianapolis Life. ZCRIT denies the remaining allegations in Paragraph 26.

27. Both American Investors and Indianapolis Life have been merged into Athene, which owns the beneficial interest in the Policies.

ANSWER: ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and therefore denies the same, except that it admits that Athene purports to have a beneficial interest in the Policies.

28. As this Court observed in its 2014 decision, the Policies at issue here are corporate-owned life-insurance policies that commence with an employer's payment of a large premium that is then invested on the employer's behalf. *Aviva Life*, 2014 WL 1677798, at *1. Any growth is then used to pay the policy owner death benefits for covered employees, which are "free of income or capital gains tax" upon distribution; while it is unquestionable that "this tax benefit" matters, *see id.* at 2, it is axiomatic that the insurer is bound by the terms of the Policies.

ANSWER: ZCRIT admits that Paragraph 28 includes excerpts from the April 29, 2014 Memorandum Opinion. ZCRIT denies the characterizations of the opinion, and states that it speaks for itself. ZCRIT denies the remaining allegations in Paragraph 28.

B. The SVP Balanced Portfolio

29. At the time Athene purchased the Policies, it paid premiums to American General totaling \$150 million. In return, Athene received life insurance on the lives of designated employees. The payouts from the Policies helped fund Athene's employee-benefit plans. Athene's premiums were used to establish Athene's cash value in the Policies.

ANSWER: In response to the allegations in Paragraph 29, ZCRIT admits that the Policies were funded at the time of issuance with premiums totaling \$150 million, that they provided life insurance on the lives of designated individuals. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of

the allegation concerning Athene's employee benefit plans, and denies the remaining allegations in Paragraph 29.

30. American General made available to Athene different investment options reflecting different investment philosophies and risk profiles. Each investment portfolio was managed by ZC Trust. American General offered Athene the ability to allocate premium payments among different investment options. The value of the Policies is based on the performance of the investments to which Athene allocates its cash value. At the time Athene purchased the Policies, it allocated all of its cash value to, and continues to keep all of its cash value invested in, a portfolio called the SVP (or "stable-value protection") Balanced Portfolio.

ANSWER: ZCRIT admits that the first three sentences of Paragraph 30 describe generally certain aspects of investment elements of the Policies, but denies that those sentences detail all the contractual terms governing the parties' relationships in this regard. ZCRIT denies the allegations in the fourth sentence of Paragraph 30. In response to the allegations in the fifth sentence, ZCRIT admits that all investments in connection with the Policies have been allocated to the SVP Balanced Portfolio. ZCRIT denies the remaining allegations in paragraph 30.

31. Currently, the SVP Balanced Portfolio has two components: (i) an equity and bond portfolio (as defined in the Transaction Documents, the "Corresponding Portfolio"), which is actively managed with the objective to outperform an equally-weighted blend of the Barclays Capital Aggregate Bond Index² and the S&P 500, and (ii) a Zurich Insurance Company guarantee (as defined in the Transaction Documents, the "SVP Product").

ANSWER: ZCRIT admits that the allegations in Paragraph 31 describe generally certain aspects of the SVP Portfolio, but denies that those

² The Barclay's index was the successor to the Lehman Brothers Investment Grade U.S. Credit Index Corporate, after Lehman's bankruptcy and dissolution.

allegations accurately and completely detail all the contractual terms governing the parties' relationships in this regard. ZCRIT denies that any "guarantee" of a monetary return was provided.

ZCRIT admits the allegations in footnote no. 2 to Paragraph 31.

32. The SVP Product is a contractual obligation of Zurich Insurance Company and is equal to the difference between (i) the total value of the SVP Balanced Portfolio and (ii) the net asset value of the Corresponding Portfolio. Accordingly, the total value of Athene's SVP Balanced Portfolio is the sum of the value of the Corresponding Portfolio and the value represented by the contractual obligation of the SVP Product.

ANSWER: In response to the allegations in Paragraph 32, ZCRIT avers that the Policies and related Documents speak for themselves and are the best evidence of the rights and obligations they create. To the extent any further response is required, ZCRIT denies the allegations of Paragraph 32 inconsistent therewith.

33. Under the original Transaction Documents (attached hereto as Exhibits A.1 through 5 and later amended as discussed herein), the parties contemplated that the total value of the SVP Balanced Portfolio would grow at a fixed crediting rate that would be reset periodically based on a formula that would reflect market conditions and amortize the value of the SVP Product over time. Under this approach, ZC Trust and Zurich Insurance Company established a floor-crediting rate of zero percent to ensure that Athene would not experience a negative return. In practice, this meant that the overall value of the SVP Balanced Portfolio would not decrease over time, even in years when the market performed poorly, because Athene was guaranteed a non-negative return.

ANSWER: In response to the allegations in Paragraph 33, ZCRIT avers that the Policies and related Documents speak for themselves and are the best evidence of the rights and obligations they create or created, including how the crediting rate originally operated. To the extent any further response is required,

ZCRIT denies the allegations in Paragraph 33 inconsistent therewith, and specifically denies that any “guaranteed” monetary return was provided.

34. For example: if (i) \$100 million were allocated to the SVP Balanced Portfolio (with the invested funds going into the Corresponding Portfolio), (ii) the initial crediting rate on the SVP Balanced Portfolio was set at seven percent, and (iii) the Corresponding Portfolio gained two percent during the first annual period, at the end of the first annual period (a) the total value of the SVP Balanced Portfolio would be \$107 million (reflecting the hypothetical seven percent crediting rate), (b) the net asset value of the Corresponding Portfolio would be \$102 million (reflecting the two percent gain), and (c) the value of the SVP Product would be the difference between \$107 million and \$102 million—or \$5 million. The crediting rate then would be reset and a reduced crediting rate would be established in subsequent periods to amortize the value of the SVP Product over time.

ANSWER: The allegations in Paragraph 34 comprise an improper hypothetical, argument and legal conclusions to which no response is required. To the extent that a response is required, ZCRIT denies the allegations in Paragraph 34.

C. The Original Transaction Documents

35. Each Policy is governed by six documents that set forth the binding obligation of the parties, including: (i) the Policy document, (ii) a Private Placement Memorandum from American General for the Policy (“Policy PPM”), (iii) an additional Private Placement Memorandum from ZC Resource (“Investment PPM”), (iv) a Commitment Letter from American General to Athene, and (v) a Commitment Letter from ZC Resource to American General, which covenants to enforce the letter for Athene’s benefit. In addition, there is a Hold Harmless Agreement that is not implicated by this dispute (collectively, the “Transaction Documents”). The Transaction Documents for the two policies mirror each other in all material respects.

ANSWER: In response to the allegations in Paragraph 35, ZCRIT admits that the identified documents include some of the materials that govern, or governed, the relationships between the parties with respect to the Policies. ZCRIT denies the other express and implied characterizations of the Policies and Related

Documents, including the documents identified in this Paragraph, and states those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 35.

36. Relevant to this dispute, where a conflict exists in the Transaction Documents, the Commitment Letters control over the Policy documents and the two PPMs.

a. **The Policies:** The Policies issued by American General are group-variable life-insurance policies. (Ex. A.3.) They contain provisions governing surrender and reallocation rights, death-benefit terms, and other terms associated with typical insurance contracts.

b. **The Policy PPMs:** At the time Athene purchased the Policies, American General prepared and delivered to Athene private placement memoranda describing the terms of the Policies and Athene's right to allocate premium dollars to various investment products. (collectively, the "Original Policy PPMs") (Ex. A.1.) These documents provided summary descriptions of the terms of the Policies. As described below, the Original Policy PPM for the American Investors Policy was amended and restated on December 18, 2001 (attached hereto as Exhibit B.1), and the Original Policy PPM for the Indianapolis Life Policy was amended and restated on January 4, 2002 (collectively, the amended and restated Original Policy PPMs are referred to as the "Restated Policy PPMs").

c. **The Investment PPMs:** At the time Athene purchased the Policies, ZC Trust prepared and delivered to Athene private placement memoranda describing the terms and features of the SVP Balanced Portfolio, including the SVP Product (collectively, the "Original Investment PPMs") (Ex. A.2.) As described below, the Original Investment PPM for the American Investors Policy was amended and restated on December 18, 2001 (attached hereto as Exhibit B.2), and the Original Investment PPM for the Indianapolis Life Policy was amended and restated on January 4, 2002 (collectively, the amended and restated Original Investment PPMs are referred to as the "Restated Investment PPMs").

d. **American General Commitment Letters:** At the time Athene purchased the Policies, Athene and the Trustee entered into a letter agreement with American General for each Policy (the "American General Commitment Letters") (attached hereto as Exhibit A.4). In the event of a conflict between provisions of the Transaction Documents, the Commitment Letters control. Critically, Section 13 of each of the American General Commitment Letters states that American General "will not modify, amend or change any of the Transaction Documents in any way

which could change in any material respect the rights of the Owner and/or the terms and conditions of the transactions reflected in the [Transaction] Documents.” Section 13 of each of the American General Commitment Letters also states that (i) America General is obligated to “enforce for the benefit of the Owner all of their respective rights under all of the ... Transaction Documents,” and (ii) “[t]he intent of this paragraph is that [American General] will not make or agree to any changes in any Transaction Documents that would prevent the Owner from realizing in all material respects the benefits of the transactions reflected in the [Transaction] Documents.”

e. **ZC Trust Commitment Letters:** At the time Athene purchased the Policies, American General entered into a letter agreement with ZC Trust for each Policy (the “ZC Trust Commitment Letters”) (attached hereto as Exhibit A.5). Like the American General Commitment Letters, each of the ZC Trust Commitment Letters states that it takes precedence over the other Transaction Documents if any such documents contain conflicting provisions. And also like the American General Commitment Letters and again critically, the ZC Trust Commitment Letters state that ZC Trust “will not modify amend or change any of the Transaction Documents in any way which could change in any material respect the rights of the Owner and/or the terms and conditions of the transactions reflected in the Trust [Transaction] Documents.” The ZC Trust Commitment Letters also state that “[t]he intent of this paragraph is that the Trust [ZC Trust] will not make or agree to any changes in any Transaction Documents that would prevent the Owner from realizing in all material respects the benefits of the transactions reflected in the Trust [Transaction] Documents.” Pursuant to Section 11 of the American General Commitment Letters, all the Transaction Documents are governed by Delaware law. Pursuant to Section 8 of the ZC Trust Commitment Letters, the ZC Trust Commitment Letters are governed by Delaware law.

ANSWER: In response to the allegations in Paragraph 36, ZCRIT admits that the identified documents generally were adopted as titled and when indicated, and include some of the materials that govern, or governed, the relationships between the parties with respect to the Policies. ZCRIT also admits that Paragraph 36 includes excerpts from portions of commitment letters issued by AGL and ZCRIT. ZCRIT denies the express and implied characterizations of the

Policies and Related Documents in Paragraph 36, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 36.

37. The SVP Balanced Portfolio for each Policy had an annual fee of 0.45 percent of the SVP Balanced Portfolio (*i.e.*, the entire value of Athene's investment with American General).

ANSWER: In response to the allegations in Paragraph 37, ZCRIT admits that an annual fee of 0.45 percent of the Accumulation Value, and as further defined in the parties' agreements, was charged for the SVP Balanced Portfolio under each of the Policies. ZCRIT denies the remaining allegations in Paragraph 37.

38. The Transaction Documents note that federal tax law imposes certain investment-diversification requirements on life-insurance policies, including that no single investment may constitute more than 55 percent of a portfolio. American General reserved the right to manage the investments to comply with the diversification rules. American General also agreed to indemnify Athene if the Policies were found to violate tax law.

ANSWER: ZCRIT admits the allegations in the first two sentences of Paragraph 38. In response to the allegations in third sentence in Paragraph 38, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, and states those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 38.

39. Athene can exit its investment under the Transaction Documents in one of two ways: (i) by "reallocating" its investment from the SVP Balanced Portfolio to another investment vehicle sponsored by Defendants, or (ii) by exercising its right to "surrender" (*i.e.*, cancel) the Policies. Each is described in further detail below.

a. With respect to "reallocation," at the conclusion of a 36-month Restriction Period (which has already expired), Athene can direct that American

General reallocate all or a portion of its investment from the SVP Balanced Portfolio to another investment opportunity. The value of the SVP Balanced Portfolio would then be reallocated in five installments over four years. Reallocation serves as an important procedure by which Athene could transfer the Net Asset Value of the SVP Balanced Portfolio to another investment. (*See* Exs. A.3, A.5 (Appendix I, Example A).)

b. The second way for Athene to exit the Policies is through “surrender,” or cancelation. Upon surrender, American General would be obligated to pay to Athene the value of the SVP Balanced Portfolio. American General promised to repay Athene as soon as possible after receiving a demand for surrender from Athene, while reserving the ability to delay payment for the lesser of six months or a period permitted by law.

ANSWER: ZCRIT states that no response is required to Paragraph 39 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the documents identified in Paragraph 39, and states those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 39.

40. Separate and apart from Athene’s exit rights, the Transaction Documents also specified that certain events gave Zurich Insurance Company the right to immediately modify the allocation of Athene’s investment and crediting rate for the SVP Product. Specifically, the Investment PPM states that for a product called the “SVP Product Basic,” Zurich could modify the crediting rate in certain circumstances. But Athene purchased the SVP Product Premier, not the SVP Product Basic; under the terms of the Investment PPM, Zurich Insurance Company was not permitted to alter the crediting rate of the SVP Product Premier in exchange for Athene’s agreement to pay a higher fee, which Athene did. Also relevant here, once the weighted average attained age of the covered individuals reached 65, Zurich

Insurance Company could reallocate and modify the crediting rate. Currently, the weighted average attained age is approximately 55 years for lives covered by the Policies.

ANSWER: ZCRIT states that no response is required to Paragraph 40 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations of the Policies and Related documents, and states those materials speak for themselves. ZCRIT admits that at the time the Complaint was filed, the weighted average attained age of the lives covered by the Policies was 55 years. ZCRIT denies the remaining allegations in Paragraph 40, except that it admits that premiums under the Policies were initially invested in the Premier SVP Balanced Portfolio.

D. The Restated Transaction Documents

41. In late 2001, Athene notified American General of its intent to surrender the Policies and requested the cash value of the Policies (*i.e.*, the value of the SVP Balanced Portfolio, which consists of the Corresponding Portfolio and the SVP Product).

ANSWER: ZCRIT states that no response is required to Paragraph 41 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of

contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT admits that in or about late 2001, notice was given that the American Investor Trust intended to surrender its policy. ZCRIT denies the characterization of the notice, and states that the notice speaks for itself. ZCRIT denies the remaining allegations in Paragraph 41.

42. At that time, the total value of the SVP Balanced Portfolio exceeded the net asset value of the Corresponding Portfolio by approximately \$23 million; *i.e.*, the value of the SVP Product equaled \$23 million. Accordingly, Athene's surrender of the Policies would have triggered an obligation for Zurich Insurance Company to pay \$23 million on its guarantee under the SVP Product. As ZC Trust committed to Athene in the Transaction Documents: "In the event of a redemption" from the SVP Balanced Portfolio at a time when the Corresponding Portfolio "is insufficient for the redemption," Zurich Insurance Company "may be obligated to pay ... an amount equal to the deficiency" because of the SVP Product. Additionally, American General, ZC Trust, and Zurich Insurance Company would have lost revenue opportunities in future years to be derived from fees paid by Athene in connection with the Policies.

ANSWER: ZCRIT states that no response is required to Paragraph 42 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT admits in response to the first sentence in Paragraph 42 that in or around late 2001, the SVP Product had a book value of approximately \$22 million. The second sentence in Paragraph 42 calls for a legal conclusion to which no response is required. ZCRIT admits that the third sentence in Paragraph 42 includes an excerpt from a portion of the 2001 ZCRIT amended

private placement memorandum. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 42 as they are speculative, and therefore ZCRIT denies the same. ZCRIT denies any remaining allegations in Paragraph 42.

43. Accordingly, to avoid paying the \$23 million to Athene and to ensure continued revenue opportunities from Athene, American General and ZC Trust proposed three material enhancements to the parties' then-existing deal aimed at inducing Athene to withdraw its surrender notices.

ANSWER: In response to the allegations in Paragraph 43, ZCRIT denies the characterizations of the AGL and ZCRIT proposals, and states that the terms of those proposals are reflected in the parties' communications. ZCRIT denies any remaining allegations in Paragraph 43.

44. First, American General and ZC Trust offered to guarantee Athene an eight percent minimum annual crediting rate for the SVP Balanced Portfolio, subject to a ten percent maximum annual crediting rate to create an upside opportunity for American General and ZC Trust.

ANSWER: In response to the allegations in Paragraph 44, ZCRIT admits that an 8% minimum crediting rate was offered (subject to an annual 10% maximum annual crediting rate) for the American Investors and Indianapolis Life SVP Balanced Sub-Portfolios, but denies that any "guarantee" of a monetary return was offered. ZCRIT further denies the characterization of the motives as described in Paragraph 44. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 regarding discussions to which ZCRIT was not a party. ZCRIT denies any remaining allegations in Paragraph 44.

45. Second, as part of the renegotiated Policies, Zurich changed the Corresponding Portfolio investment components by adding a vehicle that employed hedge-fund-strategies, identified in the Restated Investment PPM as the “Zurich Institutional Benchmark Series LLC.” On information and belief, the purpose of this amendment was to help ensure increased returns to limit downside and to help Defendants capitalize on potential upside on returns above the eight-percent to ten-percent corridor.

ANSWER: In response to the allegations in Paragraph 45, ZCRIT states that, in connection with the Policies, in late 2001 American Investors and Indianapolis Life were offered certain series of the Zurich Institutional Benchmark Series LLC. ZCRIT further denies the express and implied characterizations of the Policies and Related Documents, including the “Restated Investment PPM”, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 45, and specifically denies the characterization of the motives as described in Paragraph 45.

46. Third, American General advised Athene that Zurich Insurance Company would agree to pay \$15.6 million into the Corresponding Portfolio to reduce the value of the SVP Product.

ANSWER: In response to the allegations in Paragraph 46, ZCRIT admits that ZIB agreed to pay \$15.6 million into the SVP Balanced Portfolio. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 regarding discussions to which ZCRIT was not a party, and therefore denies the remaining allegations in Paragraph 46.

47. In reliance on these three commitments, Athene agreed to rescind its surrender notices and to pay an additional \$30 million premium to American General.

ANSWER: In response to the allegations in Paragraph 47, ZCRIT admits that the American Investor Trust surrender notice was rescinded and that an additional premium payment in the amount of \$30 million was made. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 47 and therefore denies the same.

48. In connection with this agreement, certain Transaction Documents were amended and restated in December 2001 (for the American Investors Policy) and in January 2002 (for the Indianapolis Life Policy), with American General delivering to Athene the Restated Policy PPMs (Ex. B.1) and ZC Trust delivering to Athene the Restated Investment PPMs (Ex. B.2).

ANSWER: ZCRIT admits the allegations in Paragraph 48.

49. The Restated Transaction Documents did not impact Athene's ability to reallocate its investments under the Policies and affirmed Athene's right upon surrender of the Policies to access the full value of the SVP Balanced Portfolio, including the SVP Product.

ANSWER: ZCRIT states that no response is required to Paragraph 49 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the 2001 and 2002 amended private placement memoranda, and states that those materials speak for themselves. ZCRIT denies any remaining allegations in Paragraph 49.

50. Both American General and ZC Trust acknowledged in the Restated Policy PPMs and the Restated Investment PPMs, respectively, that Athene made its decision to retain the Policies and its investment in the SVP Balanced Portfolio in reliance on the revised deal terms set forth in the Restated Policy PPMs and the Restated Investment PPMs, respectively.

ANSWER: In response to the allegations in Paragraph 50, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the 2001 and 2002 amended private placement memoranda, and states that those documents speak for themselves. ZCRIT denies any remaining allegations in Paragraph 50.

E. The Policy Supplements

51. In the decade following the 2001 negotiation of the Restated Transaction Documents, the value of the SVP Product increased significantly. In 2011, in the wake of the 2008 financial crisis and ensuing Great Recession, Zurich withdrew the Zurich Institutional Benchmark Series, eliminating the hedge-fund strategy as a component of the Corresponding Portfolio and returning the Corresponding Portfolio to its original investment classes of equities and bonds. In an apparent pre-emptive effort to limit their exposure under the SVP Product, Defendants also attempted to impose unilaterally a series of amendments to the Restated Transaction Documents. These amendments purported to make two major changes to the Policies. First, Defendants purported to cap the value of the SVP Product at 55 percent of the total value of the SVP Balanced Portfolio. Second, Defendants attempted to rewrite the Surrender Protocol to prevent Athene from realizing any value from the SVP Product.

ANSWER: ZCRIT states that no response is required to Paragraph 51 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the

extent a response is required, ZCRIT admits that the value of the SVP Product rose over the period 2001 to 2011. ZCRIT denies the allegations in the second sentence of Paragraph 51. In response to sentences three through six in Paragraph 51, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the 2011 Supplements, and states that those materials speak for themselves. ZCRIT denies any remaining allegations in Paragraph 51.

52. Defendants attempted to impose these changes because of their growing contractual obligation under the SVP Product. In particular, due to poor market performance from 2001–2010, the Corresponding Portfolio grew at a rate significantly less than eight percent. But because Defendants had committed in 2001 to locking the crediting rate at a minimum of eight percent, the SVP Product grew sizably.

ANSWER: ZCRIT denies the allegations in the first sentence of Paragraph 52. In response to the allegations in the second sentence of Paragraph 52, ZCRIT admits that due to market performance during the 2001-2010 period, the Corresponding Portfolio grew at less than an eight percent rate and that the SVP increased in value. ZCRIT denies the remaining allegations in the second and third sentences of Paragraph 52.

53. In November 2011, BFP (the administrator of the Policies) met with Athene concerning the Policies and Athene’s investment in the SVP Balanced Portfolio. At that meeting, BFP advised Athene that the Defendants and Zurich Insurance Company intended to unilaterally cancel the SVP Product.

ANSWER: In response to the allegations in Paragraph 53, ZCRIT admits that BFP is the administrator of the Policies. ZCRIT lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 53, and therefore denies the same.

54. Further to that message, in December 2011, BFP delivered to Athene draft “supplements” to the Restated Policy PPMs and Restated Investment PPMs (collectively, the “Policy Supplements”) (attached hereto as Exhibit C.1 and C.2, respectively). These Policy Supplements sought to cancel the SVP Product through a series of amendments to the Policies.

ANSWER: In response to the allegations in Paragraph 54, ZCRIT admits that draft supplements to the 2001 and 2002 amended placement memoranda were delivered at some point prior to their issuance in December 2011 in final form. ZCRIT denies that the 2011 Supplements are in draft form and states that the Complaint attaches the final form of the 2011 Supplements. ZCRIT also denies the express and implied characterizations of the Policies and Related Documents, including of the 2011 Supplements, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 54.

55. First, the Policy Supplements purported to implement the 55 Percent Cap, which limited the value of the SVP Product to 55 percent of the total value of the SVP Balanced Portfolio. Under the Policy Supplements, if the value of the SVP Product reaches the 55 Percent Cap, the value of the SVP Product (and, correspondingly, the value of the SVP Balanced Portfolio), will be automatically adjusted so that the value of the SVP Product does not exceed the 55 Percent Cap.

a. This purported amendment, which is not in the original Transaction Documents or the Restated Transaction Documents, would compromise Athene’s ability to realize the benefit of its bargain under the Restated Transaction Documents. In the event the Corresponding Portfolio increased in value by three percent in a given year but the value of the SVP Product already constituted 55 percent of the SVP Balanced Portfolio, the Policy Supplements permitted Zurich Insurance Company to renege on its commitment to account for the difference between the three percent return on the Corresponding Portfolio and the eight percent guaranteed return on the entire SVP Balanced Portfolio. Remarkably, while

the 55 Percent Cap vitiated the investment protection afforded Athene under the guaranteed eight percent return, the amendment left the ten percent *limit* on Athene's returns.

b. The 55 Percent Cap also effectively eliminated Athene's ability to realize the value of the SVP Product when exiting the Policies through reallocation. Under the Investment PPM, a reallocation occurs in five successive steps over the course of four years, with a certain percentage of the investment value redeemed and reallocated each year. Upon Athene's exercise of its reallocation rights, Defendants have stated that they would implement this process by redeeming the Corresponding Portfolio *first*—*i.e.*, before the SVP Product—***precluding Athene from realizing any value of the SVP Product.***³ As a result, each redemption and reallocation from the SVP Balanced Portfolio would reduce the Corresponding Portfolio, but would not result in any extracted value from a reduction in the SVP Product, which could never be more than 55 percent of the total SVP Balanced Portfolio under Defendants' position. If Athene provided notice of reallocation, then, Defendants would be able to systematically reduce the value of the SVP Product simply because of the approach they unilaterally attempted to foist upon Athene through the Policy Supplements—causing Athene to realize no value from the SVP Product and effectively eliminating reallocation as an option. This impact became even more clear in 2017, when BFP provided illustrations to Athene, discussed *infra* at paragraphs 72-75, demonstrating how Defendants envisioned reallocation, rendering the SVP Product of no value to Athene. This is incompatible with the contract between Athene and Defendants.

ANSWER: ZCRIT states that no response is required to Paragraph 55 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied

³ For example, under this approach, assuming a Corresponding Portfolio value of \$100 and SVP Product of \$55, if \$50 of the Corresponding Portfolio is redeemed then the SVP Product would be reduced to \$27.50—with no payment to Athene.

characterizations of the Policies and Related Documents, including of the 2011 Supplements, and states that those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 55.

The allegations in footnote no. 3 to Paragraph 55 comprise an improper hypothetical, legal conclusions and argument to which no response is required. To the extent that a response is required, ZCRIT denies the allegations in the footnote.

56. Second, the Policy Supplements purport to amend the Surrender Protocol by eliminating Athene's right to access the full value of the SVP Balanced Portfolio—including the SVP Product—upon surrender of the Policies. Specifically, under the Policy Supplements, if Athene surrenders the Policies, Athene cannot access any value of the SVP Balanced Portfolio—including the value of the stocks and bonds in the Corresponding Portfolio—until the value of the SVP Product is at or below zero. Neither the Transaction Documents nor the Restated Transaction Documents includes such language regarding the Surrender Protocol.

ANSWER: ZCRIT states that no response is required to Paragraph 56 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the 2011 Supplements, and states that those materials speak for themselves. ZCRIT denies any remaining allegations in Paragraph 56.

57. BFP and Athene met on December 14, 2011, to discuss the Policy Supplements. Following that meeting, BFP sent to Athene and the Trustee the following documents: (i) copies of the Policy Supplements with the “draft” label

deleted, (ii) documents titled “Acknowledgement of Receipt,” pursuant to which American General requested that Athene and the Trustee agree that the Policy Supplements would “amend, supersede, and supplement” the Restated Policy PPMs and the Restated Investment PPMs, and (iii) a memorandum requesting that Athene execute the Acknowledgements of Receipt.

ANSWER: In response to the allegations in Paragraph 57, ZCRIT admits that the 2011 Supplements were implemented and that the 2011 Supplements and documents titled “Acknowledgement of Receipt” were delivered but not executed. ZCRIT states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 57, and therefore denies the same.

58. On January 9, 2012, Athene advised BFP by letter that Athene did not agree to the Policy Supplements and that it had instructed the Trustee not to sign the Acknowledgements of Receipt. To date, neither Athene nor the Trustee has signed the Acknowledgements of Receipt—nor will they.

ANSWER: In response to the allegations in Paragraph 58, ZCRIT denies the characterization of the January 9, 2012 communication, and states that such communication speaks for itself. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 58, and therefore denies the same.

59. On January 11, 2012, representatives of Athene and BFP held a teleconference to discuss the Policy Supplements. During that teleconference, BFP asserted that the Defendants deemed the Policy Supplements to be in full force and effect without Athene’s consent or approval. Athene’s representatives objected to BFP’s assertion.

ANSWER: In response to the allegations in Paragraph 59, ZCRIT admits that the 2011 Supplements are in “full force and effect” and that they were

effective without Athene's consent or approval under the terms of the parties' agreements. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 59, and therefore denies the same.

60. On March 2, 2012, Athene advised American General by letter that Athene did not agree to the Policy Supplements and reiterated that the Transaction Documents and the Restated Transaction Documents prohibit American General and ZC Trust from making the changes described in the Policy Supplements.

ANSWER: In response to the allegations in Paragraph 60, ZCRIT denies the characterizations of the March 2, 2012 communication, and states that such communication speaks for itself. ZCRIT denies the remaining allegations in Paragraph 60.

61. On April 30, 2012, Athene again advised American General by letter that Athene did not agree to the Policy Supplements and reiterated that, under the Transaction Documents and the Restated Transaction Documents, Defendants cannot implement the Policy Supplements unilaterally.

ANSWER: In response to the allegations in Paragraph 61, ZCRIT denies the characterizations of the April 30, 2012 communication, and states that such communication speaks for itself. ZCRIT denies the remaining allegations in Paragraph 61.

62. American General responded by letter on May 3, 2012, stating that it did not intend to withdraw the Policy Supplements.

ANSWER: In response to the allegations in Paragraph 62, ZCRIT denies the characterizations of the May 3, 2012 communication, and states that such communication speaks for itself. ZCRIT denies the remaining allegations in Paragraph 62.

63. As described below, Defendants have unilaterally implemented the amendments set forth in the Policy Supplements and, accordingly, Athene has suffered and will continue to suffer substantial injuries as a result.

ANSWER: ZCRIT denies the allegations in Paragraph 63.

F. The 2013 Litigation

64. On March 18, 2013, Athene sued Defendants in this Court to enforce the negotiated terms of the Policies. *Aviva Life & Annuity Co. v. Am. Gen. Life Ins. Co.*, C.A. No. 8414-VCG. Athene sought, among other relief, a declaratory judgment that Defendants' unilateral implementation of amendments to the Surrender Protocol and imposition of the 55 Percent Cap were an invalid exercise of Defendants' rights under the Restated Transaction Documents.

ANSWER: In response to the allegations in Paragraph 64, ZCRIT admits that Aviva Life and Annuity Company and U.S. Bank Trust National Association, in its capacity as trustee of American Investors Life Insurance Company, Inc. Revocable Trust and as trustee of Indianapolis Life Insurance Company Revocable Trust, filed a complaint in the Delaware Chancery Court on March 18, 2013 against the AGL, ZCRIT, and ZC Resource LLC. ZCRIT denies the characterizations of the Chancery Court complaint, and states that such complaint speaks for itself. ZCRIT denies the remaining allegations in Paragraph 64.

65. In August 12, 2013, ZC Trust and ZC Resource filed a motion for judgment on the pleadings. ZC Trust and ZC Resources argued that the 55 Percent Cap was required in order to comply with IRS diversification requirements for life insurance accounts. As set forth in 26 U.S.C. 817(h) and 26 C.F.R. § 1.817-5, if 55 percent or more of the total assets of a life insurance account is represented by any one investment, the life insurance policy will cease to be deemed life insurance for tax purposes.

ANSWER: In response to the first sentence of Paragraph 65, ZCRIT admits that it and ZC Resource LLC filed a motion for judgment on the pleadings in the Delaware Chancery Court, but denies that the motion was filed on August 12, 2013. In response to the second sentence, ZCRIT admits that, among other things, the motion asserted that application of the 55% Cap was required in order to comply with IRS diversification requirements for life insurance accounts. ZCRIT admits that the third sentence provides a general description of the diversification requirements set forth in 26 U.S.C § 817(h) and 26 C.F.R. § 1.817-5. ZCRIT denies the remaining allegations in Paragraph 65.

66. On October 4, 2013, Athene filed a cross-motion for judgment on the pleadings. Athene argued that the IRS diversification requirements do not apply where, as here, the life insurance account initially satisfied the diversification requirements but subsequent market fluctuations caused the value of one investment to exceed 55 percent of the total account assets. *See* 26 C.F.R. § 1817.5(d) (accounts “shall not be considered nondiversified” for failure to satisfy “diversification requirements unless [the] discrepancy exists immediately after the acquisition of any asset and such discrepancy [results from] such acquisition”).

ANSWER: ZCRIT admits the allegations in the first sentence of Paragraph 66. In response to the second sentence, ZCRIT admits that Athene’s cross-motion argued, among other things, that IRS diversification requirements did not apply here, but denies the remaining allegations in that sentence and specifically denies the contention that the requirements were inapplicable. ZCRIT admits that the third sentence contains excerpts from a portion of 26 C.F.R. § 1.817-5(d). ZCRIT denies the remaining allegations of Paragraph 66.

67. After briefing and argument, on April 29, 2014, the Court granted ZC Trust and ZC Resource's motion for judgment on the pleadings and dismissed Athene's complaint without prejudice. *Aviva Life*, 2014 WL 167798, at *14. The primary basis for the Court's decision was that the parties' dispute was not ripe for decision because the SVP Product had not reached the 55 Percent Cap and because Athene had not yet demanded surrender from American General. *Id.* at *10. As the Court stated:

[Athene], however, requests declaratory relief despite the fact that the 55% Cap has never been reached, and may never be reached, and although [Athene] has neither provided AGL with notice of its intent to surrender nor demonstrated -- or even pleaded -- any intent to surrender these Policies. ... Accordingly, the Defendants aver that [Athene's] request is not ripe for judicial determination. Under the specific facts here, I agree. ..."

ANSWER: ZCRIT admits the allegations in Paragraph 67.

68. In its decision, the Court also stated that Athene was not "unduly burdened" by dismissal because it could request a private letter ruling from the IRS clarifying whether the 55 Percent Cap was required by the IRS diversification requirements.

ANSWER: ZCRIT admits the allegations in Paragraph 68.

G. IRS Private Letter Ruling Request

69. On March 30, 2016, Athene submitted to the IRS a request for a private-letter ruling concerning application of the diversification requirements to the Policies. By this time, Defendants had implemented the 55 Percent Cap for the Indianapolis Life Policy but not for the American Life Policy.

ANSWER: ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 69, and therefore denies the same. ZCRIT admits the allegations in the second sentence of Paragraph 69.

70. Athene's request to the IRS sought confirmation that the SVP Product's increase to 55 percent of the value of the SVP Balanced Portfolio would not violate federal regulations because such an occurrence would arise from the market performance of the Corresponding Portfolio. Athene also requested that the IRS confirm that this occurrence would not disqualify the Policies as life insurance

contracts for purposes of federal-income tax. Athene asserted that under the market-fluctuation rule, a violation of the diversification requirements can result only from the acquisition of an asset. Applying that rule, Athene explained that any increase in the SVP Product over 55 percent would result from changes in the values of the assets in the SVP Balanced Portfolio because of market performance and the eight percent crediting rate, not from the acquisition of any asset. In other words, any failure to satisfy the diversification standard would result from the mere act of holding existing assets in a segregated account. Consequently, any increase in the SVP Product over 55 percent would not violate the diversification requirement. Athene later submitted a supplemental letter to the IRS on January 20, 2017.

ANSWER: ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70, and therefore denies the same.

71. By letter on March 1, 2017, the IRS declined to provide the private letter ruling that Athene had requested. The IRS did not agree or disagree with Athene's position, but informed Athene that: (i) with respect to the Indianapolis Life Policy, Athene "had already taken a return position on the tax effect of the market performance," and (ii) with respect to the American Life Policy, the general advice sought would not be provided in "the interest of sound tax administration." The IRS also refunded Athene's request fee. A copy of the IRS letter declining to provide the private letter ruling is attached as Exhibit E.1.

ANSWER: In response to the allegations in Paragraph 71, ZCRIT admits that the IRS sent a letter to Athene dated March 1, 2017, that a copy of the letter is attached to the Complaint as Exhibit E.1, and that Paragraph 71 includes excerpts from portions of the letter. ZCRIT denies the characterization of the letter in Paragraph 71, and states that the letter speaks for itself. ZCRIT denies any remaining allegations in Paragraph 71.

H. Discussions Between the Parties

72. After the IRS declined to issue a private-letter ruling, Athene engaged in additional negotiations with Defendants to discuss a potential business resolution,

including an in-person meeting between Athene and ZC Trust representatives in New York City on April 6, 2017.

ANSWER: In response to the allegations in Paragraph 72, ZCRIT admits that a meeting occurred between representatives of Athene and ZCRIT in New York City on or about April 6, 2017. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 72, and therefore denies the same.

73. Subsequently, on July 31, 2017, BFP provided Athene with a slide deck evidencing the negative impact of the Policy Supplements on Athene (the “BFP Deck”). In the event of reallocation, the scenarios delineated in the BFP Deck illustrated that Athene would realize diminished or no value from the SVP Product. For example, slide 8 of the BFP Deck set forth a scenario in which the SVP Product would be *reduced from 51.2 percent to zero*:

Scenario 8

Wait 5 Years, then Reallocate to Non-SVP Portfolio in 5 Installments over 4 Years

(20% Each Installment)

(Not currently supported by PPM)

> **4% Corresponding Portfolio Growth Assumption, 15 Year Projection**

- In the first five years, Athene would encounter adjustments due to the SVP Product Cap totaling approximately \$50MM, and the net annual return decreases to 1.68%.
- Starting in year 6, the reallocations would require adjustments totaling \$230MM. Additional adjustments totaling \$15MM would result from the underperformance in the Corresponding Portfolio.
- SVP is reduced from 51.20% to 0.00% over eight years.

ANSWER: ZCRIT states that no response is required to Paragraph 73 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the

extent a response is required, ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73, and therefore denies the same.

74. Similarly, in the event of surrender, the scenarios delineated in the BFP Deck make clear that Athene would realize only a fraction of the value of the SVP Product—currently worth nearly \$169 million—and far less than the eight percent crediting rate guaranteed by Defendants. For example, slide 1 sets forth a scenario in which 4 percent growth is assumed and in which Athene would realize *only 1.66 percent return on its investment*:

Scenario 1

Continue with the Current Status Quo

> 4% Corresponding Portfolio Growth Assumption, 15 Year Projection

- Athene would encounter adjustments due to the SVP Product Cap totaling approximately \$285MM, resulting in a 1.66% net annual return.
- Terms of current SVP continue to apply.

ANSWER: ZCRIT states that no response is required to Paragraph 74 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74, and therefore denies the same.

75. The only consistency in the scenarios found in the BFP Deck is that Athene would be stripped of the value of the SVP Product—and concomitant losses that could reach nearly \$169 million as of the date of this filing.

ANSWER: ZCRIT states that no response is required to Paragraph 75 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75, and therefore denies the same.

II. THE EFFECTS OF THE POLICY SUPPLEMENTS

76. Athene intends to reallocate its investment or surrender the Policies in order to access the full value of its investment in the SVP Balanced Portfolio, including the SVP Product. But Athene cannot reallocate its investments or deliver notices of its intent to surrender the Policies until the uncertainty concerning Defendants’ amendments to the Surrender Protocol is resolved by this Court.

ANSWER: ZCRIT states that no response is required to Paragraph 76 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT specifically denies that Athene is entitled to the “full value of its investment in the SVP Balanced Portfolio, including the SVP Product,” and states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 76, and

therefore denies the same. The second sentence in Paragraph 76 calls for a legal conclusion to which no response is required. To the extent any further response is required, ZCRIT denies the allegations Paragraph 76.

1. The 55 Percent Cap

77. Defendants' unilateral implementation of the 55 Percent Cap has harmed Athene by: (i) reducing death benefits paid under the Policies, (ii) eliminating the eight percent guaranteed return for the SVP Balanced Portfolio set forth in the Restated Transaction Documents, and (iii) effectively foreclosing Athene from exiting the Policies by reallocation.

ANSWER: ZCRIT states that no response is required to Paragraph 77 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the allegations in Paragraph 77.

78. First, Defendants implemented the 55 Percent Cap periodically during September 2015, from January 7, 2016 to March 15, 2016, periodically throughout June 2016, periodically throughout September 2016, from October 4, 2016 to February 13, 2017, and from March 31 to November 30, 2017, to decrease the value of at least one death benefit paid under the Indianapolis Life Policy by approximately \$9,000.⁴ The impact on the SVP Product resulting from the implementation of the 55 Percent Cap has reduced and will continue to reduce the death benefits paid under that Policy.

⁴ This reduction is all the more striking because BFP maintains a "Reference Value"—the hypothetical value if the cap were *not* implemented—for the SVP Balanced Portfolio.

ANSWER: With respect to the allegations in Paragraph 78, ZCRIT admits that the 55% Cap was implemented and that, as a result of the adoption of the 2011 Supplements, prior to the filing of the Complaint, at least one benefit payment was reduced by approximately \$9,000. ZCRIT denies the remaining allegations in Paragraph 78.

With respect to the allegations in footnote no. 4 to Paragraph 78, ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies the same.

79. Second, the Restated Transaction Documents state that the value of the SVP Balanced Portfolio will grow at a minimum annual crediting rate of eight percent. Athene relied on this guaranteed minimum crediting rate when it agreed to withdraw its surrender notices in late 2001, pay an additional \$30 million premium, and to forego any returns over ten percent. Neither American General nor ZC Trust may implement the 55 Percent Cap and thereby reduce or eliminate the eight percent guaranteed minimum annual crediting rate unilaterally. Additionally, the 55 Percent Cap prevents Athene, as the beneficial owner of the Policies, from realizing the benefits of the Policies and its investment in the SVP Balanced Portfolio, despite leaving in place the ten percent maximum return provision that limited Athene's access to any upside in its investment, and slows the amortization rate of the SVP Product. As such, Section 13 of the American General Commitment Letters and Section 7 of the ZC Trust Commitment Letters prohibit the implementation of the 55 Percent Cap as proposed, which would eliminate the benefits to Athene of the value of the SVP Product while leaving untouched the substantial benefits that Defendants continue to enjoy under the Policies, including collection of the 0.45 percent fee on the SVP Balanced Portfolio—which has resulted in nearly \$17 million in fees over the life of the Policies and continues to accrue, averaging over \$120,000 per month in 2017—as well as benefit from the ten percent limitation on returns to Athene.

ANSWER: In response to Paragraph 79, ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the exhibits to the Complaint, and states those materials speak for themselves. ZCRIT

lacks knowledge or information sufficient to form a belief as to the motives described in the second sentence of Paragraph 79, and therefore denies the same.

ZCRIT denies the remaining allegations in Paragraph 79.

80. Third, as discussed above, the 55 Percent Cap also effectively eliminated Athene's ability to exit the Policies through reallocation. Under the Policy Supplements, upon Athene's exercise of its reallocation rights, Defendants would redeem the Corresponding Portfolio before the SVP Product, ***precluding Athene from realizing any value of the SVP Product***, in breach of Defendants' obligations to Athene.

ANSWER: ZCRIT states that no response is required to Paragraph 80 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, denies the express and implied characterizations of the Policies and Related Document and states those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 80.

81. The only justification offered by American General and ZC Trust for their position is that the imposition of the 55 Percent Cap is purportedly required by the IRS diversification rule. But even if Defendants were correct (and they are not), Defendants could implement the 55 Percent Cap in myriad ways that do not have the effect of eviscerating the value of the Policies to Athene—such as converting a portion of the SVP Product into the Corresponding Portfolio ***as they did in 2001***, or implementing a pro rata reallocation from each of the Corresponding Portfolio and SVP Product. This would not only permit Defendants to comply with their articulated justification for imposition of the Cap, but would do so without breaching their commitments to Athene.

ANSWER: ZCRIT states that no response is required to Paragraph 81 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, denies the express and implied characterizations of the Policies and Related Document and states those materials speak for themselves. To the extent a further response is required, ZCRIT denies the allegations in Paragraph 81.

2. Amendments to the Surrender Protocol

82. The attempted amendments to the Surrender Protocol contained in the Policy Supplements harm Athene's economic interests by eliminating Athene's right upon surrender of the Policies to access the full value (currently just over \$347 million) of the SVP Balanced Portfolio, including the SVP Product.

ANSWER: ZCRIT states that no response is required to Paragraph 82 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, denies the express and implied characterizations of the Policies and Related Document and states those materials speak for themselves. To the extent a further response is required, ZCRIT denies the allegations in Paragraph 82.

83. The Transaction Documents and the Restated Transaction Documents set forth a specific protocol that allows Athene to access the full value of the SVP Product following surrender of the Policies. Athene relied on this protocol when it agreed to withdraw its surrender notices in late 2001, pay an additional \$30 million premium, and agree to forgo any returns over ten percent. Neither American General nor ZC Trust may amend this protocol unilaterally under the terms of the Restated Transaction Documents.

ANSWER: ZCRIT states that no response is required to Paragraph 83 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations in Paragraph 83 of the Policies and Related Documents, and states those materials speak for themselves. ZCRIT admits in response to the allegations in the second sentence of Paragraph 83 that in 2001 the American Investor Trust surrender notice was withdrawn and an additional \$30 million premium was paid. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence in Paragraph 83 with respect to the motives described, and therefore denies the same. ZCRIT denies the remaining allegations in Paragraph 83.

84. Additionally, the attempted amendments to the Surrender Protocol contained in the Policy Supplements prevent Athene, as the beneficial owner of the Policies, from realizing the benefits of the Policies and its investment in the SVP Balanced Portfolio. As a result, the amendments have rendered meaningless the guaranteed eight-percent crediting-rate and the SVP Product, which was central to the Policies. As such, these attempted amendments are prohibited by Section 13 of

the American General Commitment Letters and Section 7 of the ZC Trust Commitment Letters.

ANSWER: ZCRIT states that no response is required to Paragraph 84 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the express and implied characterizations in Paragraph 84 of the Policies and Related Documents, and states those materials speak for themselves. To the extent a further response is required, ZCRIT denies the allegations in Paragraph 84.

85. American General and ZC Trust have not offered any proper justification for these amendments to the Surrender Protocol.

ANSWER: ZCRIT states that no response is required to Paragraph 12 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the allegations in Paragraph 85.

86. On January 11, 2012, BFP advised Athene that Defendants considered these amendments to be in effect and have since administered the Policies as though in effect. Athene has contested the validity of these amendments since announced and continues to do so.

ANSWER: ZCRIT states that no response is required to Paragraph 86 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86 and therefore denies the same, except that it specifically states that the 2011 Supplements are fully effective and that they are permissible without Athene’s consent or approval under the terms of the Policies and Related Documents.

COUNT 1
BREACH OF CONTRACT/SPECIFIC PERFORMANCE
(against American General)

87. Athene and the Trusts incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

ANSWER: The allegations in Paragraph 87 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. To the extent a response is required, ZCRIT incorporates by reference the preceding paragraphs of this Answer as if fully set forth herein.

88. In the Transaction Documents and the Restated Transaction Documents, including the American General Commitment Letters, American General agreed that it would “not modify, amend or change any of the Transaction Documents in any way which could change in any material respect the rights of the Owner and/or the terms and conditions of the transactions reflected in the [Transaction] Documents.”

ANSWER: The allegations in Paragraph 88 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. To the extent a response is required, ZCRIT admits that the allegations in Paragraph 88 include excerpts from portions of commitment letters issued by AGL. ZCRIT denies the express and implied characterizations of the Policies and Related Documents, including the commitment letters, and states those materials speak for themselves. ZCRIT denies the remaining allegations in Paragraph 88.

89. Despite this commitment, American General purported to amend the Restated Transaction Documents unilaterally in a way that materially harms Athene. The Policy Supplements, as implemented by American General, constitute a breach of contract in that they unilaterally impose a 55 Percent Cap on the value of the SVP Product. Between 2015 and late 2017, the value of the Indianapolis Life Policy reached the 55 Percent Cap on a number of occasions, depriving the overall SVP Balanced Portfolio of the guaranteed crediting rate of eight percent.

ANSWER: The allegations in Paragraph 89 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. To the extent a response is required, ZCRIT denies the allegations in Paragraph 89.

90. Consequently, Defendants reduced the value of at least one death benefit that was paid out under the Policy to Athene by approximately \$9,000.

ANSWER: The allegations in Paragraph 90 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. To the extent a response is required, ZCRIT admits that as a result of compliance with IRS diversification requirements, at least one benefit payment was reduced by approximately \$9,000. ZCRIT denies the remaining allegations in Paragraph 90.

91. If the 55 Percent Cap continues to be applied, Athene will lose additional money when death benefits are paid out in the future.

ANSWER: The allegations in Paragraph 91 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. To the extent a response is required, ZCRIT denies the allegations in Paragraph 91.

92. As set forth above, Athene purchased the Policies in good faith, withdrew surrender notices it issued for the Policies, paid an additional \$30 million premium in late 2001, and agreed to forego any returns over ten percent, in reliance on American General and ZC Trust's commitments in the Transaction Documents to (i) guarantee an eight percent return on the SVP Balanced Portfolio and (ii) permit Athene to access the full value of the SVP Balanced Portfolio, including the SVP Product, upon Athene's surrender of the Policies. In addition to reducing the value of the death benefits paid out to Athene, the 55 Percent Cap also negates Athene's ability to access the full value of the SVP Balanced Portfolio, whether through surrender or reallocation.

ANSWER: The allegations in Paragraph 92 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. Additionally, ZCRIT states that no response is required to Paragraph 92 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT admits in response to the allegations in the first sentence of Paragraph 92 that in 2001 the American Investor Trust surrender notice was withdrawn and an additional \$30 million premium was paid. ZCRIT denies the remaining allegations in the first sentence,

and specifically denies that any “guarantee” of a monetary return was provided. ZCRIT denies the allegations in the second sentence of Paragraph 92.

93. Athene and the Trusts have fully performed their obligations under the Policies and stand ready to continue performing such obligations.

ANSWER: The allegations in Paragraph 93 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. The allegations in Paragraph 93 also call for a legal conclusion, to which no response is required. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegation that “Athene and the Trusts . . . stand ready to continue performing such obligations” and therefore denies it. To the extent any further response is required to the allegations in Paragraph 93, ZCRIT denies those allegations.

94. By its action set forth above, American General has breached its commitments in the Transaction Documents and the Restated Transaction Documents, including those set forth in Section 13 of the American General Commitment Letters, by acting together with or allowing ZC Trust to implement the Policy Supplements, including the amendments to the Surrender Protocol and the 55 Percent Cap. American General further breached its commitments to Athene by paying Athene a death benefit that was less than what would have been paid in the absence of the 55 Percent Cap.

ANSWER: The allegations in Paragraph 94 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. Additionally, ZCRIT states that no response is required to Paragraph 94 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment,

and injunctive relief. The allegations in Paragraph 94 also call for a legal conclusion, to which no response is required. To the extent a response is required to the allegations in Paragraph 94, ZCRIT denies those allegations.

95. American General's breach has proximately caused and threatens to proximately cause economic harm to Athene and the Trusts.

ANSWER: The allegations in Paragraph 95 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. The allegations in Paragraph 95 also call for a legal conclusion, to which no response is required. To the extent a response is required to the allegations in Paragraph 95, ZCRIT denies those allegations, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

96. Athene and the Trusts are entitled to specific performance of the Restated Transaction Documents. Specific performance is required to prevent American General from taking further actions that will irreparably harm Athene by denying it the unique, negotiated benefits of the Policies as well as its investment in the SVP Balanced Portfolio, for which Athene contracted and which are difficult or impossible to quantify. As such, there is no adequate remedy at law.

ANSWER: The allegations in Paragraph 96 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. The allegations in Paragraph 96 also call for a legal conclusion, to which no response is required. To the extent a response is required to the allegations in Paragraph 96, ZCRIT denies those allegations, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

97. In addition, and in the alternative, Athene and the Trusts are entitled to an award of monetary damages.

ANSWER: The allegations in Paragraph 97 are not directed to ZCRIT, and therefore ZCRIT need not respond to them. The allegations in Paragraph 97 also call for a legal conclusion, to which no response is required. To the extent a response is required to the allegations in Paragraph 97, ZCRIT denies those allegations, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

COUNT 2
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT,
10 Del. C. § 6501
(against all Defendants)

98. Athene and the Trusts incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

ANSWER: In response to the allegations in Paragraph 98, ZCRIT incorporates by reference the preceding paragraphs of this Answer as if fully set forth herein.

99. Contrary to their commitments in the Transaction Documents and the Restated Transaction Documents, Defendants have unilaterally implemented the Policy Supplements and amended the Restated Transaction Documents. These amendments, and Defendants unilateral implementation of them, harm Athene and violate Athene's rights under the Restated Transaction Documents by (i) reducing or eliminating Athene's eight percent guaranteed return, (ii) improperly employing the 55 Percent Cap and unreasonably applying that cap, including with respect to reallocation, and (iii) removing the protocol for Athene to access the full value of the SVP Product upon surrender of the Policies.

ANSWER: ZCRIT states that no response is required to Paragraph 99 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13

dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the allegations in Paragraph 99, and specifically denies that any “guaranteed” monetary return was provided.

100. Defendants’ improper use of the 55 Percent Cap and unreasonable implementation of that Cap materially harms Athene and is a breach of contract. Although the 55 Percent Cap does not apply to fluctuations in Athene’s investment under the Policies under the IRS market-fluctuation exception, Defendants have improperly applied that Cap here. Defendants have also confirmed to Athene that if Athene seeks to reallocate, Defendants will employ an unreasonable application of the 55 Percent Cap that breaches the parties’ agreements by reducing the Corresponding Portfolio and destroying the existing value of the SVP Product. Even supposing the 55 Percent Cap had any basis in law in this context, which it does not, the use of the cap in this way is not justified. If Defendants’ Policy Supplements are permitted to stand, Athene seeks a declaratory judgment from this Court that prevents Defendants from unilaterally applying the 55 Percent Cap to cause Athene to realize none of the existing value of the SVP Product and credits to Athene any value of the SVP Product lost due to imposition of the 55 Percent Cap. The implemented Policy Supplements are a breach of contract, and Athene is entitled to a declaratory judgment so that it may evaluate the value of its investments and the economic consequences of reallocation. As set forth above, Athene purchased the Policies in good faith, withdrew surrender notices it issued for the Policies, paid an additional \$30 million premium in late 2001, and agreed to forego any returns over ten percent, in reliance on American General and ZC Trust’s commitments in the Transaction Documents (i) to access the full value of the SVP Balanced Portfolio, including the SVP Product, and (ii) the eight percent guaranteed return on the SVP Balanced Portfolio.

ANSWER: ZCRIT states that no response is required to Paragraph 100 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the

extent a response is required, Zurich denies the allegations in the first six sentences of the Paragraph, and specifically denies that any “guaranteed” monetary return was provided. ZCRIT also specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever. ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the final sentence of Paragraph 100 and therefore denies the same, except that it admits that in 2001 the American Investor Trust surrender notice was withdrawn and an additional \$30 million premium was paid.

101. Defendants’ removal of the surrender protocol eliminates Athene’s right to access the full value of the SVP Product upon surrender of the Policies. In conflict with the plain terms of the Restated Transaction Documents, the Policy Supplements state that no amounts shall be paid to Athene following surrender of the Policies unless and until the value of the SVP Product is at or below \$0. This amendment deprives Athene of the value of the SVP Product as well as of the eight percent guaranteed return, in breach of the Restated Transaction Documents.

ANSWER: ZCRIT states that no response is required to Paragraph 101 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the allegations in Paragraph 101, and specifically denies that any “guaranteed” monetary return was provided. ZCRIT also specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

102. Athene and the Trusts have fully performed their obligations under the Policies and stand ready to continue performing such obligations.

ANSWER: The allegations in Paragraph 102 comprise legal conclusions, and therefore ZCRIT need not respond to them. To the extent a response is required, ZCRIT denies the allegations in Paragraph 102.

103. Athene intends to surrender or reallocate the Policies in order to access the full value of the SVP Balanced Portfolio, including the SVP Product. But Athene cannot deliver notices of its intent to surrender or reallocate the Policies until the uncertainty concerning Defendants' amendments to the Surrender Protocol and the 55 Percent Cap are resolved by this Court.

ANSWER: ZCRIT states that no response is required to Paragraph 103 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 103, and therefore denies the same. ZCRIT denies the allegations in the second sentence of Paragraph 103.

104. Pursuant to Delaware's declaratory judgment statute, 10 *Del. C.* § 6501, *et seq.*, Athene is entitled to a judicial determination of its rights in connection with Defendants' unilateral implementation of the Policy Supplements. Specifically, Athene and the Trusts seek a judgment pursuant to 10 *Del. C.* §§ 6501 and 6502 and Court of Chancery Rule 57 declaring that:

a. the Defendants are not permitted to implement the 55 Percent Cap unilaterally under the Transaction Documents and the Restated Transaction Documents; and

b. the Defendants are not permitted to amend the Surrender Protocol unilaterally under the Transaction Documents and the Restated Transaction Documents.

ANSWER: ZCRIT states that no response is required to Paragraph 104 to the extent that it relates to claims involving reallocation or surrender rights because the Superior Court in its May 18, 2020 Memorandum Opinion at **10-13 dismissed on ripeness grounds all such claims, including claims for breach of contract, specific performance, declaratory judgment, and injunctive relief. To the extent a response is required, ZCRIT denies the allegations in Paragraph 104, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

105. In the event that this Court declines to grant the relief Athene and the Trusts seek in paragraph 104(a), Athene and the Trusts seek a judgment pursuant to 10 *Del C.* §§ 6501 and 6502 and Court of Chancery Rule 57 declaring that the Defendants' unilateral implementation of the 55 Percent Cap to impair Athene's and the Trusts' ability to obtain the benefit of the SVP Product is an invalid exercise of their rights under the Transaction Documents and the Restated Transaction Documents.

ANSWER: To the extent that the allegations in Paragraph 105 characterize Plaintiffs' claims or include legal conclusions, ZCRIT avers that no response is required. To the extent that a response is required, ZCRIT denies the allegations in Paragraph 105, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

106. Additionally, Athene and the Trusts seek an injunction enjoining Defendants from taking any action inconsistent with this declaration. Further violations of the contracts will irreparably harm Athene by denying it the unique, negotiated benefits of the Policies as well as its investment in the SVP Balanced

Portfolio, for which Athene contracted and which are difficult or impossible to quantify. The balance of the equities favors Athene because, while such violations will prevent Athene from enjoying the benefit of its bargain, complying with contractual obligations negotiated at arms-length will not harm Defendants.

ANSWER: To the extent that the first sentence in Paragraph 106 characterizes Plaintiffs' claims or include legal conclusions, ZCRIT avers that no response is required. To the extent that a response is required, ZCRIT denies the allegations in that sentence. ZCRIT denies the remaining allegations in Paragraph 106, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

COUNT 3
TORTIOUS INTERFERENCE WITH CONTRACT
(against ZC Trust and ZC Resource)

107. Athene and the Trusts incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

ANSWER: In response to the allegations in Paragraph 107, ZCRIT incorporates by reference the preceding paragraphs of this Answer as if fully set forth herein.

108. As set forth above, Athene entered into the Transaction Documents and the Restated Transaction Documents with American General, which constitute valid and enforceable contracts.

ANSWER: To the extent that the allegations in Paragraph 108 includes legal conclusions, ZCRIT avers that no response is required. To the extent a response is required, ZCRIT admits to the existence of the transaction documents and restated transaction documents, and states that those material speak for themselves. ZCRIT denies any remaining allegations in Paragraph 108.

109. ZC Trust and ZC Resource had knowledge of the terms of the Transaction Documents and the Restated Transaction Documents as evidenced by, among other things, (i) their offer of investment portfolio options including the SVP Balanced Portfolio and issuance of private placement memoranda in connection therewith, and (ii) their entering into the ZC Trust Commitment Letters with American General.

ANSWER: ZCRIT denies the allegations in Paragraph 109, except it admits that it had knowledge of the terms of the transaction documents and restated transaction documents.

110. Despite their knowledge of the terms of the Transaction Documents and the Restated Transaction Documents, ZC Trust and ZC Resources unilaterally implemented the Policy Supplements, including the amendments to the Surrender Protocol and the 55 Percent Cap, and thereby caused American General to breach the Restated Transaction Documents.

ANSWER: ZCRIT denies the allegations in Paragraph 110.

111. The implementation of the Policy Supplements by ZC Trust and ZC Resource was not justified.

ANSWER: ZCRIT denies the allegations in Paragraph 111.

112. The implementation of the Policy Supplements by ZC Trust and ZC Resource has proximately caused and threatens to proximately cause further harm to Athene and the Trusts, entitling Athene and the Trusts to injunctive relief from further interference by ZC Trust and ZC Resource in the future and, in addition, an award of monetary damages resulting from their past interference.

ANSWER: ZCRIT denies the allegations in Paragraph 112, and specifically denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

PRAYER FOR RELIEF

WHEREFORE, Athene and the Trusts respectfully request that this Court:

- A. order specific performance of American General’s commitments under the Restated Transaction Documents;
- B. enter an order enjoining American General from violating its commitments under the Restated Transaction Documents;
- C. enter an order enjoining ZC Trust and ZC Resource from violating their commitments under the Restated Transaction Documents;
- D. award Athene and the Trusts all damages to which it is entitled, including but not limited to compensatory damages, consequential damages, and other damages;
- E. award Athene and the Trusts prejudgment interest;
- F. award Athene and the Trusts reasonable costs and expenses incurred in this litigation, including without limitation attorneys’ fees and costs pursuant to the Restated Transaction Documents and/or applicable law; and
- G. provide such other and further relief as the Court may deem just and proper.

* * * * *

In response to the “PRAYER FOR RELIEF” following Paragraph 112, ZCRIT denies the contract breaches alleged in the Complaint and denies that Plaintiffs are entitled to any relief whatsoever.

* * * * *

ZCRIT expressly denies all allegations in the Complaint that are not specifically admitted in this Answer.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any issue where it would not otherwise lie, ZCRIT hereby pleads the following affirmative defenses, upon knowledge as to itself and its own acts, and upon information and belief as to all other matters:

**First Affirmative Defense
(Failure to State a Claim)**

Plaintiffs' claims are barred because they fail to state a cause of action.

**Second Affirmative Defense
(Contractual Authorization)**

Plaintiffs' claims are barred because all of the actions taken by Defendants were authorized by the relevant agreements between and among the parties.

**Third Affirmative Defense
(Estoppel)**

Plaintiffs' claims are barred in whole or in part by undue delay and the doctrine of estoppel.

**Fourth Affirmative Defense
(Waiver)**

Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

**Fifth Affirmative Defense
(Justification)**

Plaintiffs' claim for tortious interference with contractual relations is barred because ZCRIT's actions were justified or otherwise legally permitted.

**Sixth Affirmative Defense
(Injunctive Relief Barred)**

Plaintiffs' claims for injunctive relief are barred because Plaintiffs will not suffer irreparable harm if such relief is not granted, and the agreements at issue do not entitle Plaintiffs to such relief. Further, to the extent that Plaintiffs ever

actually suffer a harm, it can be adequately resolved through the payment of money damages and, accordingly, injunctive relief is not appropriate.

**Seventh Affirmative Defense
(Specific Performance Barred)**

Plaintiffs' claims for specific performance are barred because Plaintiffs cannot show an absence of an adequate remedy at law, and they have not pointed to any contractual provision entitling them to specific performance.

FRIEDLANDER & GORRIS, P.A.

/s/ Joel Friedlander

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