

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

TRANSAMERICA LIFE INSURANCE CORPORATION)

Plaintiff,)

v.)

UNITED STATES OF AMERICA, et al.)

Defendants.)

Case No. 3:08-cv-663-S (e-filed)

CONSENT JUDGMENT

1. This interpleader action was brought pursuant to 28 U.S.C. § 1335 and Fed. R. Civ. P. 22. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1335 and 2361.
2. On January 20, 1992, Alvin E. Messer, Jr. ("Messer") signed as a beneficiary a Settlement Agreement with the United States to resolve a claim, asserted pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and 2671 et. seq. The Settlement Agreement (in redacted format) is appended as Exhibit A to this Consent Judgment.
3. The Settlement Agreement, at Article II, obligated the United States to purchase an annuity that, in part, were to pay Messer lump sum payments in the amount of \$15,000; \$25,000 and \$40,000 at certain specified time intervals.
4. The Settlement Agreement provides, at Article II, that the "annuity or annuities will be owned solely and exclusively by the UNITED STATES."
5. The Settlement Agreement provides, at Article IV(1), that "the life insurance company or its assignee shall at all times remain the sole source from which the plaintiff shall receive the future payments, as directed by the United States of America in accordance with the terms of this settlement."
6. The Settlement Agreement provides, at Article IV(3), that "all settlement funds shall be free from anticipation, assignment, pledge or obligations. . . and shall not be subject to attachment, execution or other legal process."
7. Pursuant to the Settlement Agreement, the United States purchased an annuity contract through Sequoia Settlement Services, Inc. (Sequoia) to fund the

obligation to make the periodic payment outlined in the Settlement Agreement ("Annuity Contract"). The Annuity Contract subsequently purchased by Sequoia was issued by the interpleader plaintiff, Transamerica Life Insurance Company ("TLIC"). The Annuity Contract is appended as Exhibit B (in redacted format). The owner of the annuity is the United States. The Annuity Contract states, "The Owner has the right at any time to designate to whom annuity payments will be made." Exhibit B. The Annuity Contract provides no right to any other party to designate to whom annuity payments may be sent, other than the United States as Owner. Exhibit B.

8. Notwithstanding the above clear provisions of the Settlement Agreement and Annuity Contract, Messer entered into a structured settlement annuity sale and assignment agreement with defendant, J. G. Wentworth, S.S.C. ("Wentworth") under which Messer attempted to assign or sell his rights to the future periodic payments due under the U.S.-owned annuity to Wentworth in exchange for a lump sum payment. This agreement was in clear violation of the Settlement Agreement and Annuity Contract.

WHEREFORE, upon consideration of the record in this matter, and with consent of the parties, it is this 23 day of JUNE, 2009, hereby;

ORDERED that Judgment on the Interpleader Complaint is hereby entered in favor of the United States, and against Wentworth, and it is further

ORDERED the funds interpleaded in this case be paid to Messer pursuant to the terms of the Settlement Agreement entered into between, among others, Messer and the United States, Exhibit A, and the Annuity Contract, Exhibit B, and the express direction of the United States as is its exclusive right under those contracts; and it is further

ORDERED that the Clerk of this Court shall, without further order of this Court, disburse the interpleader funds of Forty Thousand Dollars (\$40,000.00), together with any interest earned, which was deposited into the registry of the Court, as follows: paid by check made payable to the order of "Alvin E. Messer, Jr." and delivered to the following address:

Alvin E. Messer, Jr.
231 Belvines Road
Robbinsville, N.C. 28771

Upon making the disbursal, the Clerk shall file with the Court a notice of disbursal indicating the total amount(s) disbursed and the date(s) of disbursal. The Clerk will provide to the undersigned counsel for the parties a certified copy of said notice of disbursal, without further order or request; and it is further

ORDERED that TLIC shall direct all future payments under the subject annuity contract to the person designated by the United States (except Alvin E. Messer, Jr., who will have received all annuity payments due him upon receipt of the funds interpleaded), in accordance with the Settlement Agreement and Annuity Contract; and it is further

ORDERED that each party will be responsible for its own costs, expenses and attorney fees.


6/23/09




CHARLES R. SIMPSON III, JUDGE
UNITED STATES DISTRICT COURT

HAVE SEEN AND AGREED:

TRANSAMERICA LIFE INSURANCE COMPANY

 6/1/09

Stephen R. Price, Sr., Esq.
Counsel for Transamerica Life Insurance Company

 6/3/09

Richard M. Rubenstein
Counsel for Transamerica Life Insurance Company

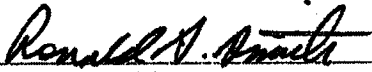
UNITED STATES OF AMERICA

Candace G. Hill
Acting United States Attorney



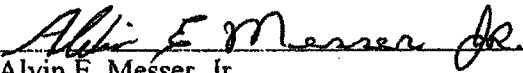
Benjamin S. Schechter
Assistant United States Attorney

J. G. WENTWORTH, S.S.C.



Ronald S. Smith
Counsel for J. G. Wentworth, S.S.C.

ALVIN E. MESSER, JR.



Alvin E. Messer, Jr.

2009 JUN 25 10:00 AM
FBI - MEMPHIS

EXHIBIT "A"

SETTLEMENT AGREEMENT

DATE OF INCIDENT: March 13, 1989

PLACE OF INCIDENT: Montcrief Army Community Hospital
Fort Jackson, South Carolina

This Agreement is made between THE UNITED STATES OF AMERICA as Offeror (hereinafter the "UNITED STATES"), and ALVIN E. MESSER, Senior, Individually, and as Guardian of ERIC L. MESSER, a minor, and as Administrator of the Estate of Yong W. Messer, the deceased, (hereinafter the "CLAIMANTS").

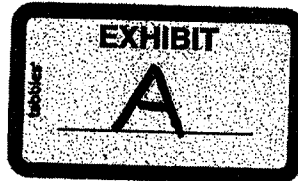
ARTICLE I

STIPULATION FOR COMPROMISE SETTLEMENT

It is hereby stipulated by and between ALVIN E. MESSER, Senior, Individually, and as Guardian of ERIC L. MESSER, a minor, and as Administrator of the Estate of Yong W. Messer, the deceased, and the UNITED STATES, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise the above-entitled claims under the terms and conditions set forth herein.

2. The UNITED STATES agrees to utilize the sum of [REDACTED] in accordance with the plan set forth in this document, which plan shall be in full



settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, loss of services and consortium, damage to property and the consequences thereof, including the death of Yong W. Messer, resulting, and to result, from the same subject matter that gave rise to the above-captioned claim, and any claims for wrongful death, for which CLAIMANTS or their heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the UNITED STATES, its agents, servants, and employees.

3. CLAIMANTS and their heirs, executors, administrators or assigns hereby agree to accept the plan set forth in this document, in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, including the death of Yong W. Messer, the deceased, which they may have or hereafter acquire against the UNITED STATES, its agents, servants and employees on account of the same subject matter that gave rise to the above-captioned claims, including any future claim for wrongful death. CLAIMANTS and their heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the UNITED STATES, its agents, servants, and employees from any and all such causes of action, claims, liens,

rights, or subrogated or contribution interests incident to or resulting from litigation or the prosecution of claims by the CLAIMANTS or their heirs, executors, administrators or assigns against any third party or against the UNITED STATES, including claims for wrongful death.

4. This stipulation for compromise settlement shall not constitute an admission of liability or fault on the part of the UNITED STATES, its agents, servants, or employees, and is entered into by both parties for the purpose of compromising disputed claims and avoiding the expenses and risk of litigation.

ARTICLE II

As soon as practicable after approval of this Agreement, the UNITED STATES, agrees to purchase through Sequoia Settlement services, Inc., of Timonium, Maryland, an annuity or annuities from an insurance company chosen by it, which said annuity or annuities will be owned solely and exclusively by the UNITED STATES, and will:

(1)

[REDACTED]

(2) Pay to Alvin E. Messer, Junior, a lump sum payment of Fifteen Thousand Dollars (\$15,000) on the Sixth (6th) annual anniversary from the date of the purchase of the annuity. Should Alvin E. Messer, Junior, die before this lump sum payment has been made from this annuity, the payment shall be made to the estate of Alvin E. Messer, Junior.

(3) Pay to Alvin E. Messer, Junior, a lump sum payment of Twenty-Five Thousand Dollars (\$25,000) on the Eleventh (11th) annual anniversary from the date of the purchase of the annuity. Should Alvin E. Messer, Junior, die before this lump sum payment has been made from this annuity, the payment shall be made to the estate of Alvin E. Messer, Junior.

(4) Pay to Alvin E. Messer, Junior, a lump sum payment of Forty Thousand Dollars (\$40,000) on the Sixteenth (16th) annual anniversary from the date of the purchase of the annuity. Should Alvin E. Messer, Junior, die before this payment has been made from this annuity, the payment shall be made to the estate of Alvin E. Messer, Junior.

(5) [REDACTED]

[REDACTED]

(6) [REDACTED]

[REDACTED]

(7)

[REDACTED]

(8)

[REDACTED]

ARTICLE III

The UNITED STATES further agrees to pay through Sequoia Settlement Services, Inc., upon the purchase of those annuities set forth in Article II above, the following cash payments:

1. Pay the cash sum of [REDACTED]

[REDACTED]
Individually, and as Administrator of the estate of Yong W. Messer, the deceased, subject to the provisions of paragraphs 4 and 5 below of this Article.

2. Pay the cash sum of Thirty Thousand Dollars (\$30,000) to Alvin E. Messer, Junior.

3. A cash sum not to exceed twenty (20%) percent of the cost to the UNITED STATES for the purchase of those annuities set out in Article II above, and the up front cash payments set forth in paragraphs 1 and 2 of this Article, is payable jointly to Stanley G. Freeman and Graydon V. Olive, III, as attorney fees.

4. The CLAIMANTS agree that in the event the above proposed settlement plan exceeds a total cost to the UNITED STATES of [REDACTED]

[REDACTED] on the date of the purchase of the annuities set forth in Article II above, the up front cash payment set forth in paragraph 1 of this Article will be reduced to the extent necessary to limit the cost of this Settlement to the UNITED STATES to a total of [REDACTED]

5. The CLAIMANTS further agree that in the event the above proposed settlement plan is less than a total cost to the UNITED STATES of [REDACTED] on the date of the purchase of the annuities set forth in Article II above, the difference between the actual cost to the UNITED STATES and [REDACTED] will be refunded to the UNITED STATES.

6. It is also agreed, by and among the parties, that the settlement represents the entire amount of the compromise settlement and that the respective parties will each bear their own costs, fees, and expenses, and that any attorney fees owed by the CLAIMANTS will be paid out of the settlement amount and not in

addition thereto.

7. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorney fees for services rendered in connection with this action shall not exceed 20 per centum of the amount of the compromise settlement.

8. Payment of the settlement amount will be made by a check drawn on the Treasury of the UNITED STATES and made payable to Sequoia Settlement Services, Inc., for the benefit of the CLAIMANTS. The check will be mailed to Sequoia Settlement Services, Inc., at the following address:

Sequoia Settlement Services, Inc.
The Atrium
375 Padonia Road West, Suite 265
Timonium, Maryland 21093

Sequoia Settlement Services, Inc., agrees to distribute the settlement proceeds among the Life Insurance Company or Companies, the CLAIMANTS, and their attorneys.

ARTICLE IV

The payments by the UNITED STATES set forth above shall operate as a full and complete discharge of all payments to be made to and of all claims which have been or which might be asserted against the UNITED STATES on behalf of the CLAIMANTS, their heirs and personal representatives, and any other persons who may assert a claim, provided, however, that if the insurance company hereinafter referred to defaults in the performance of its obligations under the annuity agreement with the UNITED STATES,

the CLAIMANT, her heirs, or personal representatives, as third party beneficiary shall have standing to sue the said insurance company for breach of contract. It is understood and agreed by the parties that the UNITED STATES is not responsible for the payment of any sums other than the immediate lump sum cash payments and the purchase of the annuities. The parties understand that upon purchase of the annuity contracts, the United States of America shall be released from any obligation to make future payments, and the life insurance company or its assignee shall at all times remain the sole source from which plaintiff shall receive future payments, as directed by the United States of America in accordance with the terms of this settlement.

2. The UNITED STATES will furnish to the CLAIMANTS certificates of insurance or other evidence of the purchase by the UNITED STATES of annuities in amounts sufficient to satisfy those obligations of the UNITED STATES under this Settlement Agreement which are to be satisfied by the purchase of annuities.

3. It is understood that all settlement funds shall be free from anticipation, assignment, pledge, or obligations of the claimants' heirs, executors, administrators, successors or assigns, and shall not be subject to attachment, execution or other legal process.

4. The payee, successor, or other person who is, or may become entitled to receive payments under this Agreement shall have no right to change the timing or amount of such payments.

ARTICLE V

This Settlement Agreement is subject to approval of the United States Department of Justice and a court of competent jurisdiction, and contains the entire agreement between the CLAIMANTS and the UNITED STATES with regard to the matters set forth in it; and shall be binding upon and inure to the benefits of all parties hereto, jointly and severally, and the personal representatives, heirs, successors (including without limitation, any successor guardians of the persons or the estates of the claimants) and the assigns of each.

ARTICLE VI

In the event of the death of Alvin E. Messer, Senior, prior to the approval of this Agreement, and the purchase of those annuities described in Article II above, this Agreement will be considered void ab initio, and no valid settlement will be considered to exist.

WHEREFORE, the parties accept the terms of this Settlement Agreement this _____ day of _____ 1992.

Alvin E. Messer
ALVIN E. MESSER, SENIOR
Individually, and as Guardian of
Eric L. Messer, and as
Administrator of the Estate of
Yong W. Messer, the deceased.

20th JAN. 92
DATE

Alvin E. Messer, Jr.
ALVIN E. MESSER, JUNIOR
Beneficiary

1-20-92
DATE

**TRANSAMERICA
OCCIDENTAL LIFE**

Transamerica Occidental
Life Insurance Company
1990 South Olive
Los Angeles, California
A Stock Company

SETTLEMENT ANNUITY

POLICY DATA

Owner

Policy Number

Issue Date

Measuring Lives

Annuity Payments to be Made to Owner's Designee

Single Premium

Annuity Payments—Transamerica Occidental Life Insurance Company will pay the policy owner, or such person(s) as the policy owner may designate, subject to the provisions of this and the following pages which are made a part of this policy, according to the attached Schedule of Benefits.

signed for the Company at Los Angeles, California, on the date of issue.

James W. Redman
Senior Vice President, General Counsel
and Corporate Secretary

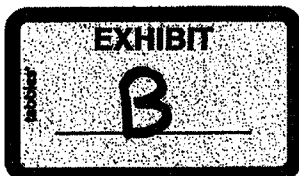
David R. Carpenter
President

Right to Examine and Return Policy Within 10 Days—The owner may, at any time within 10 days after receipt of this policy, return it for cancellation to us or to the agent through whom it was purchased. The return of the policy will void it from the beginning and any premium paid will be refunded to the owner.

This policy is a legal contract between the policy owner and Transamerica Occidental Life Insurance Company.

READ YOUR POLICY CAREFULLY

Single Premium Settlement Annuity
Annuity Payments Specified in Schedule
Non-Participating—No Annual Dividends



SCHEDULE OF BENEFITS

Owner **UNITED STATES OF AMERICA**

COPY

920326 Policy Number

Issue Date 11/10/92

[REDACTED]

Measuring Lives

Purchase Date 03/06/92

(1) [REDACTED]

(2) \$15,000.00 payable March 6, 1998 guaranteed;
\$25,000.00 payable March 6, 2003 guaranteed;
\$40,000.00 payable March 6, 2008 guaranteed;

(3) [REDACTED]

[REDACTED]

End of Schedule

**NO BENEFITS, INCLUDING ANY DEATH BENEFITS, ARE PAYABLE
EXCEPT ON THE DATES SET FORTH ABOVE**

dc

READ YOUR POLICY CAREFULLY

GENERAL PROVISIONS

Cash Values — This policy does not have cash or surrender values.

Date of Issue — The date of issue will be used to determine policy anniversaries and policy years.

Owner of the Policy — The owner of this policy will be entitled to the rights granted by this policy or allowed by the Company under this policy. If the owner is a partnership, the rights belong to the partnership as it exists when a right is exercised. If the owner is an individual, the rights of the owner belong to the executor or administrator of the owner's estate unless otherwise provided in this policy.

Change of Designation — The owner has the right at any time to designate to whom annuity payments will be made. A change of designation may only be made by filing a satisfactory written notice with the Company. A change of designation will not be effective until recorded at the Home Office of the Company. The change of designation will take effect on the date the notice was signed. Any payment made before the Company records a change of designation will not be subject to the change.

Incontestability — This policy will be incontestable from its date of issue.

Misstatement of Age or Sex — If the age or sex of the Measuring Life has been misstated, any amount payable under this policy shall be such as the premium paid would have purchased at the correct age and sex according to the rates in use by the Company at the date of issue. Any under-payments or over-payments by the Company with interest at 6% annually shall be added to or deducted from the payments to be made after the adjustment.

Change of Owner — An assignment of this policy will not be binding upon the Company until recorded at its Home Office. The Company assumes no responsibility for the sufficiency or validity of any assignment. However, when an assignment is filed with the Company and recorded at the Home Office, the owner's rights will be subject to it.

Payment of Proceeds — All payments by the Company are payable at the Home Office.

If the Schedule of Benefits provides for payment of proceeds for so long as the Measuring Life shall live, the Company has the right before each such payment is made to require due proof that the Measuring Life is living on the payment date. For such proceeds, no fractional payment will be made for the period from a payment date to the date of death of the Measuring Life.

If the Schedule of Benefits provides for payment of any proceeds by reason of the death of the Measuring Life, due proof of death of the Measuring Life must be submitted to the Home Office of the Company.

Non-Participation — This policy does not participate in profits or surplus of the Company.

The Contract — This policy is issued in consideration of the application and payment of the premium. This policy and the application for it, a copy of which is attached to and made a part of this policy, constitute the entire contract. All statements made by or for the applicant will be considered representations and not warranties. No statement will avoid this policy or be used in defense of a claim unless it is contained in the written application and a copy of the application is attached to this policy when issued.

Who is Authorized to Make Changes in the Policy — Only the Company's President or a Vice President, together with a Secretary or an Assistant have the authority to bind the Company to make any change in this policy and then only in writing. The Company will not be bound by any promise or representation made by or to any other persons.



Transamerica Assurance Company
370 17th Street, Suite 3150
Denver, CO 80202

Application for Single Premium
Settlement Annuity

Measuring Lives:

a. Name: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
First Middle Last Title
[REDACTED] [REDACTED] [REDACTED]
Social Security Number Sex Birth Date
 Address: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Street and No. City State Zip Code
Proof of age required

b. Name: ALVIN E. MESSER, JR.
First Middle Last Title
[REDACTED] Male [REDACTED]
Social Security Number Sex Birth Date
 Address: 2009 Morninglo Lane Columbia SC 29206
Street and No. City State Zip Code
Proof of age required

c. Name: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
First Middle Last Title
[REDACTED] [REDACTED] [REDACTED]
Social Security Number Sex Birth Date
 Address: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Street and No. City State Zip Code
Proof of age required

Owner of Annuity:

Name: United States of America
 Address: Fort George G. Meade, MD 20755-5360

The owner is Individual Partnership Corporation Trustee X OTHER

Annuity Plan and Schedule of Payments:

[REDACTED]
[REDACTED]
[REDACTED]

(SEE REVERSE SIDE FOR ADDITIONAL PAYMENTS)

Additional information for annuity payments can be added on reverse side.

Amount Paid with this Application: Valuable Consideration

This application will be a part of the annuity issued by Transamerica Assurance Company.

agreed that: (1) This application shall be the basis for any annuity issued on this application; (2) Any annuity issued or application shall not take effect until the policy is delivered to the owner and the single premium has been paid in full; (3) No information acquired by any representative of the Company shall be binding upon the Company unless set out in writing in this application; and (4) No waiver or modification shall be binding upon the Company unless in writing and signed by the President or a Vice President and the Secretary or an Assistant Secretary.

Signed by the Applicant/Owner at Fort George G. Meade, MD on March 12 19 92
Joseph H. Rouse [Signature]
Applicant/Owner Soliciting Agent

3. Annuity Plan and Schedule of Payments: (Continued)

TO ALVIN MESSER, JR.:

\$15,000 payable on 03/06/1998
\$25,000 payable on 03/06/2003
\$40,000 payable on 03/06/2008

Beneficiary: The Estate of Alvin Messer, Jr.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Single Premium Settlement Annuity
Annuity Payments Specified in Schedule
Non-Participating—No Annual Dividends**



Transamerica Occidental
Life Insurance Company
2150 South Olive
Los Angeles, CA 90035
A Stock Company

1-928 11-134

PAGE

Notice: In collecting any benefit under this policy, it is not necessary to employ any person or agency. Write directly to the Company at Transamerica Center, Los Angeles, California, and thus save unnecessary expense.