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2 **SYLVESTER, OPPENHEIM & LINDE**
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5 Attorneys for Plaintiff/Appellee/Cross-
Appellant
6 THE EQUITABLE LIFE ASSURANCE
7 SOCIETY OF THE UNITED STATES

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 THE EQUITABLE LIFE
12 ASSURANCE SOCIETY OF THE
UNITED STATES,
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Plaintiff,
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vs.
15 S. ANDREW SCHWARTZ, M.D., an
16 individual, and DOES 1 through 10,
Inclusive,
17
Defendants.

CASE NO: CV-02-9496 GAF (JWJx)
[Honorable Gary A. Feess]
~~PROPOSED~~ AMENDED
JUDGMENT

19
20 I.
21 INTRODUCTION

22 Plaintiff, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE
23 UNITED STATES, filed the underlying Declaratory Relief/Restitution Action to
24 determine it's rights and obligations under four disability policies it issued to
25 Defendant, S. ANDREW SCHWARTZ, M.D., and to obtain restitution of
26 disability benefits paid for which SCHWARTZ was ineligible.

27 The case was tried commencing November 16, 2004.

28

1 On August 1, 2005, the trial court entered judgment in favor of the
 2 EQUITABLE and awarded restitution in the amount of \$1,304,953.78, inclusive
 3 of interests through July 31, 2005, and at the daily rate thereafter of \$362.49, and
 4 Plaintiff's costs awarded pursuant to cost bill.

5 Thereafter, Defendant made a Motion to Correct the Judgment, as the
 6 interest had been calculated improperly. This Motion was ultimately granted.

7 The Appeal was argued and submitted before the Ninth Circuit Court of
 8 Appeals on April 10, 2008. A Memorandum of Decision was filed August 14,
 9 2008. The matter was remanded to the District Court for recalculation of pre-
 10 judgment interest.

11 On or about October 27, 2008, an In Chambers Order was issued by
 12 District Court Judge, Gary A. Feess ordering the parties to submit a joint
 13 stipulation as a Proposed Amended Judgment, with supporting calculations.

14 Dr. Schwartz had four disability policies, purchased at different times.
 15 The interest rate on the pre-1986 policies was 7% and on the post-1986 policies,
 16 was 10%, respectively. Therefore, the proper judgment amount as of July 31,
 17 2005 would have been \$1,265,445.05. The annual interest rate thereafter is
 18 3.77%. Attached to this document as Exhibit "A" are all calculations showing
 19 the post-judgment interest amounts and the accumulated value to date.

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As of this writing, it is expected the Defendant will pay off the entire
Judgment on or before November 24, 2008.

Respectfully submitted,

DATED: November 20 2008

LAW OFFICES OF ROBERT K. SCOTT

By: Robert K. Scott

ROBERT K. SCOTT
Attorney for Defendant
S. ANDREW SCHWARTZ, M.D.

DATED: November 20 2008

SYLVESTER, OPPENHEIM & LINDE

By: Lauren G. Linde

LAUREN G. LINDE
Attorney for Plaintiff
THE EQUITABLE LIFE
ASSURANCE SOCIETY OF THE
UNITED STATES

IT IS SO ORDERED.
DATED: 11/24/08
[Signature]
UNITED STATES DISTRICT JUDGE

Calculation of Postjudgment Interest on:**Equitable Life Assurance Society of the United States v. S. Andrew Schwartz, M.D.**

Judgment Amount as of July 31, 2005: \$ 1,265,445.05
Annual Interest Rate: 3.77%
Daily Interest Rate: 0.00010328767

| Payment Date | Period since July 31, 2005 | | Postjudgment Interest Amount | Accumulated Value to Date |
|-------------------|----------------------------|------|---------------------------------|------------------------------|
| | Years | Days | | |
| July 31, 2006 | 1 | 0 | \$ 47,707.28 | \$ 1,313,152.33 |
| July 31, 2007 | 2 | 0 | \$ 97,213.12 | \$ 1,362,658.17 |
| July 31, 2008 | 3 | 0 | \$ 148,585.33 | \$ 1,414,030.38 |
| November 19, 2008 | 3 | 111 | \$ 164,797.09 | \$ 1,430,242.14 |
| November 20, 2008 | 3 | 112 | \$ 164,943.14 | \$ 1,430,388.19 |
| November 21, 2008 | 3 | 113 | \$ 165,089.20 | \$ 1,430,534.25 |
| November 22, 2008 | 3 | 114 | \$ 165,235.25 | \$ 1,430,680.30 |
| November 23, 2008 | 3 | 115 | \$ 165,381.30 | \$ 1,430,826.35 |
| November 24, 2008 | 3 | 116 | \$ 165,527.35 | \$ 1,430,972.40 |
| November 25, 2008 | 3 | 117 | \$ 165,673.40 | \$ 1,431,118.45 |
| November 26, 2008 | 3 | 118 | \$ 165,819.45 | \$ 1,431,264.50 |
| November 27, 2008 | 3 | 119 | \$ 165,965.51 | \$ 1,431,410.56 |
| November 28, 2008 | 3 | 120 | \$ 166,111.56 | \$ 1,431,556.61 |
| November 29, 2008 | 3 | 121 | \$ 166,257.61 | \$ 1,431,702.66 |
| November 30, 2008 | 3 | 122 | \$ 166,403.66 | \$ 1,431,848.71 |
| December 1, 2008 | 3 | 123 | \$ 166,549.71 | \$ 1,431,994.76 |
| December 2, 2008 | 3 | 124 | \$ 166,695.77 | \$ 1,432,140.82 |
| December 3, 2008 | 3 | 125 | \$ 166,841.82 | \$ 1,432,286.87 |
| December 4, 2008 | 3 | 126 | \$ 166,987.87 | \$ 1,432,432.92 |
| December 5, 2008 | 3 | 127 | \$ 167,133.92 | \$ 1,432,578.97 |
| December 6, 2008 | 3 | 128 | \$ 167,279.97 | \$ 1,432,725.02 |
| December 7, 2008 | 3 | 129 | \$ 167,426.03 | \$ 1,432,871.08 |
| December 8, 2008 | 3 | 130 | \$ 167,572.08 | \$ 1,433,017.13 |
| December 9, 2008 | 3 | 131 | \$ 167,718.13 | \$ 1,433,163.18 |
| December 10, 2008 | 3 | 132 | \$ 167,864.18 | \$ 1,433,309.23 |
| December 11, 2008 | 3 | 133 | \$ 168,010.23 | \$ 1,433,455.28 |
| December 12, 2008 | 3 | 134 | \$ 168,156.29 | \$ 1,433,601.34 |
| December 13, 2008 | 3 | 135 | \$ 168,302.34 | \$ 1,433,747.39 |
| December 14, 2008 | 3 | 136 | \$ 168,448.39 | \$ 1,433,893.44 |
| December 15, 2008 | 3 | 137 | \$ 168,594.44 | \$ 1,434,039.49 |
| December 16, 2008 | 3 | 138 | \$ 168,740.49 | \$ 1,434,185.54 |
| December 17, 2008 | 3 | 139 | \$ 168,886.54 | \$ 1,434,331.59 |
| December 18, 2008 | 3 | 140 | \$ 169,032.60 | \$ 1,434,477.65 |
| December 19, 2008 | 3 | 141 | \$ 169,178.65 | \$ 1,434,623.70 |

Calculated on November 19, 2008 by:
Timothy P. Swankey, ASA, MAAA, FLMI
Actuary
Disability Management Services, Inc.

Calculation of Prejudgment Interest on:

Equitable Life Assurance Society of the United States v. S. Andrew Schwartz, M.D.

| Payment Date | Days Until 7/31/05 | Pre-1986 Principle Amount | Accum. Factor at 7% | Accum. Amount at 7% | Post-1986 Principle Amount | Accum. Factor at 10% | Accum. Amount at 10% | Total Principle Amount | Total Accumulated Amount |
|--------------|--------------------|---------------------------|---------------------|---------------------|----------------------------|----------------------|----------------------|------------------------|--------------------------|
| 12/31/1999 | 2010 | 6,370.00 | 1.3908 | 8,859.61 | 3,900.00 | 1.5583 | 6,077.50 | 10,270.00 | 14,937.11 |
| 1/31/2000 | 1980 | 9,800.00 | 1.3850 | 13,573.00 | 6,000.00 | 1.5500 | 9,300.00 | 15,800.00 | 22,873.00 |
| 2/29/2000 | 1950 | 9,800.00 | 1.3792 | 13,515.83 | 6,000.00 | 1.5417 | 9,250.00 | 15,800.00 | 22,765.83 |
| 3/31/2000 | 1920 | 9,800.00 | 1.3733 | 13,458.67 | 6,000.00 | 1.5333 | 9,200.00 | 15,800.00 | 22,658.67 |
| 4/30/2000 | 1890 | 9,800.00 | 1.3675 | 13,401.50 | 6,000.00 | 1.5250 | 9,150.00 | 15,800.00 | 22,551.50 |
| 5/31/2000 | 1860 | 9,800.00 | 1.3617 | 13,344.33 | 6,000.00 | 1.5167 | 9,100.00 | 15,800.00 | 22,444.33 |
| 6/30/2000 | 1830 | 9,800.00 | 1.3558 | 13,287.17 | 6,000.00 | 1.5083 | 9,050.00 | 15,800.00 | 22,337.17 |
| 7/31/2000 | 1800 | 9,800.00 | 1.3500 | 13,230.00 | 6,000.00 | 1.5000 | 9,000.00 | 15,800.00 | 22,230.00 |
| 8/31/2000 | 1770 | 9,800.00 | 1.3442 | 13,172.83 | 6,000.00 | 1.4917 | 8,950.00 | 15,800.00 | 22,122.83 |
| 9/30/2000 | 1740 | 9,800.00 | 1.3383 | 13,115.67 | 6,000.00 | 1.4833 | 8,900.00 | 15,800.00 | 22,015.67 |
| 10/31/2000 | 1710 | 9,800.00 | 1.3325 | 13,058.50 | 6,000.00 | 1.4750 | 8,850.00 | 15,800.00 | 21,908.50 |
| 11/30/2000 | 1680 | 9,800.00 | 1.3267 | 13,001.33 | 6,000.00 | 1.4667 | 8,800.00 | 15,800.00 | 21,801.33 |
| 12/31/2000 | 1650 | 9,800.00 | 1.3208 | 12,944.17 | 6,000.00 | 1.4583 | 8,750.00 | 15,800.00 | 21,694.17 |
| 1/31/2001 | 1620 | 9,800.00 | 1.3150 | 12,887.00 | 6,000.00 | 1.4500 | 8,700.00 | 15,800.00 | 21,587.00 |
| 2/28/2001 | 1590 | 9,800.00 | 1.3092 | 12,829.83 | 6,000.00 | 1.4417 | 8,650.00 | 15,800.00 | 21,479.83 |
| 3/31/2001 | 1560 | 9,800.00 | 1.3033 | 12,772.67 | 6,000.00 | 1.4333 | 8,600.00 | 15,800.00 | 21,372.67 |
| 4/30/2001 | 1530 | 9,800.00 | 1.2975 | 12,715.50 | 6,000.00 | 1.4250 | 8,550.00 | 15,800.00 | 21,265.50 |
| 5/31/2001 | 1500 | 9,800.00 | 1.2917 | 12,658.33 | 6,000.00 | 1.4167 | 8,500.00 | 15,800.00 | 21,158.33 |
| 6/30/2001 | 1470 | 9,800.00 | 1.2858 | 12,601.17 | 6,000.00 | 1.4083 | 8,450.00 | 15,800.00 | 21,051.17 |
| 7/31/2001 | 1440 | 9,800.00 | 1.2800 | 12,544.00 | 6,000.00 | 1.4000 | 8,400.00 | 15,800.00 | 20,944.00 |
| 8/31/2001 | 1410 | 9,800.00 | 1.2742 | 12,486.83 | 6,000.00 | 1.3917 | 8,350.00 | 15,800.00 | 20,836.83 |
| 9/30/2001 | 1380 | 9,800.00 | 1.2683 | 12,429.67 | 6,000.00 | 1.3833 | 8,300.00 | 15,800.00 | 20,729.67 |
| 10/31/2001 | 1350 | 9,800.00 | 1.2625 | 12,372.50 | 6,000.00 | 1.3750 | 8,250.00 | 15,800.00 | 20,622.50 |
| 11/30/2001 | 1320 | 9,800.00 | 1.2567 | 12,315.33 | 6,000.00 | 1.3667 | 8,200.00 | 15,800.00 | 20,515.33 |
| 12/31/2001 | 1290 | 9,800.00 | 1.2508 | 12,258.17 | 6,000.00 | 1.3583 | 8,150.00 | 15,800.00 | 20,408.17 |
| 1/31/2002 | 1260 | 9,800.00 | 1.2450 | 12,201.00 | 6,000.00 | 1.3500 | 8,100.00 | 15,800.00 | 20,301.00 |
| 2/28/2002 | 1230 | 9,800.00 | 1.2392 | 12,143.83 | 6,000.00 | 1.3417 | 8,050.00 | 15,800.00 | 20,193.83 |
| 3/31/2002 | 1200 | 9,800.00 | 1.2333 | 12,086.67 | 6,000.00 | 1.3333 | 8,000.00 | 15,800.00 | 20,086.67 |
| 4/30/2002 | 1170 | 9,800.00 | 1.2275 | 12,029.50 | 6,000.00 | 1.3250 | 7,950.00 | 15,800.00 | 19,979.50 |
| 5/31/2002 | 1140 | 9,800.00 | 1.2217 | 11,972.33 | 6,000.00 | 1.3167 | 7,900.00 | 15,800.00 | 19,872.33 |
| 6/30/2002 | 1110 | 9,800.00 | 1.2158 | 11,915.17 | 6,000.00 | 1.3083 | 7,850.00 | 15,800.00 | 19,765.17 |
| 7/31/2002 | 1080 | 9,800.00 | 1.2100 | 11,858.00 | 6,000.00 | 1.3000 | 7,800.00 | 15,800.00 | 19,658.00 |
| 8/31/2002 | 1050 | 9,800.00 | 1.2042 | 11,800.83 | 6,000.00 | 1.2917 | 7,750.00 | 15,800.00 | 19,550.83 |
| 9/30/2002 | 1020 | 9,800.00 | 1.1983 | 11,743.67 | 6,000.00 | 1.2833 | 7,700.00 | 15,800.00 | 19,443.67 |
| 10/31/2002 | 990 | 9,800.00 | 1.1925 | 11,686.50 | 6,000.00 | 1.2750 | 7,650.00 | 15,800.00 | 19,336.50 |
| 11/30/2002 | 960 | 9,800.00 | 1.1867 | 11,629.33 | 6,000.00 | 1.2667 | 7,600.00 | 15,800.00 | 19,229.33 |
| 12/31/2002 | 930 | 9,800.00 | 1.1808 | 11,572.17 | 6,000.00 | 1.2583 | 7,550.00 | 15,800.00 | 19,122.17 |
| 1/31/2003 | 900 | 9,800.00 | 1.1750 | 11,515.00 | 6,000.00 | 1.2500 | 7,500.00 | 15,800.00 | 19,015.00 |
| 2/28/2003 | 870 | 9,800.00 | 1.1692 | 11,457.83 | 6,000.00 | 1.2417 | 7,450.00 | 15,800.00 | 18,907.83 |
| 3/31/2003 | 840 | 9,800.00 | 1.1633 | 11,400.67 | 6,000.00 | 1.2333 | 7,400.00 | 15,800.00 | 18,800.67 |
| 4/30/2003 | 810 | 9,800.00 | 1.1575 | 11,343.50 | 6,000.00 | 1.2250 | 7,350.00 | 15,800.00 | 18,693.50 |
| 5/31/2003 | 780 | 9,800.00 | 1.1517 | 11,286.33 | 6,000.00 | 1.2167 | 7,300.00 | 15,800.00 | 18,586.33 |
| 6/30/2003 | 750 | 9,800.00 | 1.1458 | 11,229.17 | 6,000.00 | 1.2083 | 7,250.00 | 15,800.00 | 18,479.17 |
| 7/31/2003 | 720 | 9,800.00 | 1.1400 | 11,172.00 | 6,000.00 | 1.2000 | 7,200.00 | 15,800.00 | 18,372.00 |
| 8/31/2003 | 690 | 9,800.00 | 1.1342 | 11,114.83 | 6,000.00 | 1.1917 | 7,150.00 | 15,800.00 | 18,264.83 |
| 9/30/2003 | 660 | 9,800.00 | 1.1283 | 11,057.67 | 6,000.00 | 1.1833 | 7,100.00 | 15,800.00 | 18,157.67 |
| 10/31/2003 | 630 | 9,800.00 | 1.1225 | 11,000.50 | 6,000.00 | 1.1750 | 7,050.00 | 15,800.00 | 18,050.50 |
| 11/30/2003 | 600 | 9,800.00 | 1.1167 | 10,943.33 | 6,000.00 | 1.1667 | 7,000.00 | 15,800.00 | 17,943.33 |
| 12/31/2003 | 570 | 9,800.00 | 1.1108 | 10,886.17 | 6,000.00 | 1.1583 | 6,950.00 | 15,800.00 | 17,836.17 |
| 1/31/2004 | 540 | 9,800.00 | 1.1050 | 10,829.00 | 6,000.00 | 1.1500 | 6,900.00 | 15,800.00 | 17,729.00 |
| 2/29/2004 | 510 | 9,800.00 | 1.0992 | 10,771.83 | 6,000.00 | 1.1417 | 6,850.00 | 15,800.00 | 17,621.83 |
| 3/31/2004 | 480 | 9,800.00 | 1.0933 | 10,714.67 | 6,000.00 | 1.1333 | 6,800.00 | 15,800.00 | 17,514.67 |
| 4/30/2004 | 450 | 9,800.00 | 1.0875 | 10,657.50 | 6,000.00 | 1.1250 | 6,750.00 | 15,800.00 | 17,407.50 |

Calculation of Prejudgment Interest on:
 Equitable Life Assurance Society of the United States v. S. Andrew Schwartz, M.D.

| Payment Date | Days Until 7/31/05 | Pre-1986 Principle Amount | Accum. Factor at 7% | Accum. Amount at 7% | Post-1986 Principle Amount | Accum. Factor at 10% | Accum. Amount at 10% | Total Principle Amount | Total Accumulated Amount |
|------------------------------|--------------------|---------------------------|---------------------|---------------------|----------------------------|----------------------|----------------------|------------------------|--------------------------|
| 5/31/2004 | 420 | 9,800.00 | 1.0817 | 10,600.33 | 6,000.00 | 1.1167 | 6,700.00 | 15,800.00 | 17,300.33 |
| 6/30/2004 | 390 | 9,800.00 | 1.0758 | 10,543.17 | 6,000.00 | 1.1083 | 6,650.00 | 15,800.00 | 17,193.17 |
| 7/31/2004 | 360 | 9,800.00 | 1.0700 | 10,486.00 | 6,000.00 | 1.1000 | 6,600.00 | 15,800.00 | 17,086.00 |
| 8/31/2004 | 330 | 9,800.00 | 1.0642 | 10,428.83 | 6,000.00 | 1.0917 | 6,550.00 | 15,800.00 | 16,978.83 |
| 9/30/2004 | 300 | 9,800.00 | 1.0583 | 10,371.67 | 6,000.00 | 1.0833 | 6,500.00 | 15,800.00 | 16,871.67 |
| 10/31/2004 | 270 | 9,800.00 | 1.0525 | 10,314.50 | 6,000.00 | 1.0750 | 6,450.00 | 15,800.00 | 16,764.50 |
| 11/30/2004 | 240 | 9,800.00 | 1.0467 | 10,257.33 | 6,000.00 | 1.0667 | 6,400.00 | 15,800.00 | 16,657.33 |
| 12/31/2004 | 210 | 9,800.00 | 1.0408 | 10,200.17 | 6,000.00 | 1.0583 | 6,350.00 | 15,800.00 | 16,550.17 |
| 1/31/2005 | 180 | 9,800.00 | 1.0350 | 10,143.00 | 6,000.00 | 1.0500 | 6,300.00 | 15,800.00 | 16,443.00 |
| 2/28/2005 | 150 | 9,800.00 | 1.0292 | 10,085.83 | 6,000.00 | 1.0417 | 6,250.00 | 15,800.00 | 16,335.83 |
| 3/31/2005 | 120 | 9,800.00 | 1.0233 | 10,028.67 | 6,000.00 | 1.0333 | 6,200.00 | 15,800.00 | 16,228.67 |
| 4/30/2005 | 90 | 9,800.00 | 1.0175 | 9,971.50 | 6,000.00 | 1.0250 | 6,150.00 | 15,800.00 | 16,121.50 |
| 5/5/2005 | 85 | 1,633.33 | 1.0165 | 1,660.33 | 1,000.00 | 1.0236 | 1,023.61 | 2,633.33 | 2,683.94 |
| Total | | 635,203.33 | | 763,943.94 | 388,900.00 | | 501,501.11 | 1,024,103.33 | 1,265,445.05 |
| Prejudgment Interest: | | | @ 7%: | 128,740.61 | | @ 10%: | 112,601.11 | Total: | 241,341.72 |

Calculated at simple interest, assuming 30-day months.

Calculated on November 19, 2008 by:
 Timothy P. Swankey, ASA, MAAA, FLMI
 Actuary
 Disability Management Services, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, Ana I. Acosta, am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 15910 Ventura Boulevard, Suite 1508, Encino, California 91436.

On November 21, 2008, I served upon the interested party(ies) in this action the following described document(s) **PROPOSED AMENDED JUDGMENT**

MAIL: by placing a true copy thereof enclosed in a sealed envelope(s), addressed as set forth below. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

PERSONAL DELIVERY: by delivering a true copy thereof by hand to the person or office, as indicated, at the address(es) set forth below.

FAX: by transmitting a true copy thereof by telecopier to the person or office, as indicated, at the address(es) and telecopier number set forth below.

MESSENGER: by causing a true copy thereof to be delivered via messenger service at the address(es) set forth below.


COURTESY COPY

Robert K. Scott, Esq.
7700 Irvine Center Drive, Suite 605
Irvine, CA 92618
(949)753-4950
(949)753-4949 FAX

Don Karpel, Esq.
ZELNER & KARPEL
9777 Wilshire Boulevard, Suite 1000
Beverly Hills, California 90212

I declare under penalty of perjury that the foregoing is true and correct.

XX I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on November 21, 2008, at Encino, California.


Ana I. Acosta