

EXHIBIT D

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

_____)	
IN RE ING GROEP, N.V.)	MASTER FILE NO.
ERISA LITIGATION)	1:09-CV-00400-JEC
_____)	
)	
THIS DOCUMENT RELATES TO:)	
All Actions)	
_____)	

ORDER AND FINAL JUDGMENT

This Action involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. §§ 1001 et seq. (“ERISA”), with respect to the ING Americas Savings Plan and ESOP and the ING 401(k) Plan for ILIAC Agents.¹

This Action came before the Court on _____, 2013 for a hearing to determine the fairness of the Settlement and the subject of the Court’s Order Conditionally Certifying Class for Settlement Purposes, Preliminarily Approving Settlement, Approving the Forms and Procedure for Providing Notice to the Class, and Setting Date for

¹ Capitalized terms not otherwise defined in this Order and Final Judgment shall have the same meaning as ascribed to them in the Stipulation and Agreement of Settlement dated November 5, 2012 (the “Stipulation”).

Hearing on Final Approval of Settlement (Doc No. [___]) (the “Preliminary Approval Order”). The Court having considered all matters presented to it at the Fairness Hearing and in writing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Jurisdiction: For purposes of considering the fairness of and effectuating the Settlement, the Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including the Plans, all members of the Settlement Class, and all Defendants.

2. Class Findings: (a) Solely for the purpose of the Settlement, the Court finds as follows:

(i) As required by Rule 23(a)(1) of the Federal Rules of Civil Procedure, the Settlement Class is ascertainable from the Plan Participant List, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable.

(ii) As required by Rule 23(a)(2) of the Federal Rules of Civil Procedure, there are one or more questions of fact and/or law common to the Settlement Class.

(iii) As required by Rule 23(a)(3) of the Federal Rules of Civil Procedure, the claims of Named Plaintiffs are typical of the claims of the Settlement Class and of the Plans, in that the claims of Named Plaintiffs arise from the same alleged course of conduct that

gives rise to the claims of the members of the Settlement Class and the Plans, and the claims are based on the same legal theory.

(iv) As required by Rules 23(a)(4) and 23.2 of the Federal Rules of Civil Procedure, Named Plaintiffs have fairly and adequately protected, and will fairly and adequately protect, the interests of the Settlement Class and the Plans in that: (1) the interests of Named Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class and the Plans; (2) there appear to be no conflicts between or among Named Plaintiffs and the Settlement Class or the Plans; and (3) Named Plaintiffs, the Settlement Class and the Plans are represented by qualified, reputable counsel who are experienced in preparing and prosecuting class actions.

(v) The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications as to individual Settlement Class members that would establish incompatible standards of conduct for the Defendants, and adjudications as to individual Settlement Class members would, as a practical matter, be dispositive of the interests of the other members of the Settlement Class not parties to the

adjudications, or substantially impair or impede the ability of such persons to protect their interests.

(b) The Court has also considered each of the elements required by Rule 23(g) of the Federal Rules of Civil Procedure to ensure that Plaintiffs' Counsel have and will fairly and adequately represent the interests of the Settlement Class and the Plans. Plaintiffs' Counsel: (i) have done appropriate work necessary to identify or investigate potential claims in the Action; (ii) have substantial experience in handling class actions and claims of the type asserted in the Action; (iii) have demonstrated extensive knowledge of the applicable law; and (iv) have committed the necessary resources to represent the Settlement Class and the Plans. The Court concludes that Plaintiffs' Counsel have fairly and adequately represented the interests of the Settlement Class and the Plans.

(c) The members of the Settlement Class have received proper and adequate notice of the Stipulation, the Fairness Hearing, Plaintiffs' Counsel's application for Attorneys' Fees and Expenses and for Incentive Compensation Awards, and the Plan of Allocation, such notice having been given in accordance with the Preliminary Approval Order. Such notice was the best notice practicable under the circumstances and was sufficient to provide members of the Settlement

Class and, through them, the Plans, due, adequate and proper notice of their rights with respect to the Settlement pursuant to Rules 23(c)(2) and 23.2 of the Federal Rules of Civil Procedure, and the requirements of due process.

3. Certification of the Settlement Class: (a) Solely for the purpose of the Settlement, the Court hereby certifies this Action as a class action pursuant to Rules 23(a), 23(b)(1) and 23.2 of the Federal Rules of Civil Procedure, and defines the Settlement Class as follows:

All persons (other than Defendants or any of the other persons named as defendants in the Consolidated Complaint), who were participants in or beneficiaries of the Plans at any time during June 1, 2007 to November 5, 2012, and whose accounts included investments in ING Stock, and each such person's beneficiaries, heirs, agents, executors, administrators, alternate payees (including spouses of deceased persons who were participants of the Plans), and successors-in-interest.

(b) Solely for purposes of the Settlement, the Court appoints Kent Sewright and Deadre D. Diggs as representatives of the Settlement Class and of the Plans, and Bottini & Bottini, Inc. as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

(c) Certification of the Settlement Class pursuant to the terms of the Stipulation shall not constitute and does not constitute, and shall not be construed or used as an admission, concession, or declaration by or against Defendants that (except for purposes of the

Settlement) this Action or any other action involving one or more of them is appropriate for class or any other representative treatment under Rules 23 or 23.2 of the Federal Rules of Civil Procedure, or any similar federal or state class action statute or rule, for litigation purposes.

4. Settlement Approval: Pursuant to Rules 23(e) and 23.2 of the Federal Rules of Civil Procedure, the Court hereby approves and confirms the Settlement as a fair, reasonable, and adequate settlement and compromise of the Action.

(a) In concluding that the Settlement embodied in the Stipulation is fair, reasonable, and adequate, the Court specifically finds as follows:

(i) The Settlement was negotiated vigorously and at arm's length (including with the assistance of an experienced mediator) by Defendants' Counsel, on the one hand, and Plaintiffs' Counsel on behalf of Named Plaintiffs, the Settlement Class and the Plans on the other.

(ii) The Settlement was reviewed by an Independent Fiduciary who considered the Settlement in all material respects and concluded that it was fair and adequate.

(iii) If the Settlement had not been achieved, the Parties faced the expense, risk and uncertainty of extended litigation in the form of an appeal pending before the Eleventh Circuit.

(iv) The Settlement Amount (\$3,500,000) is fair, reasonable, adequate and within the range of settlement values obtained in similar cases.

(v) At all times, Named Plaintiffs have acted independently of Defendants and in the interest of the Settlement Class and the Plans.

(b) The Court finds that the Settlement does not represent a prohibited transaction within the meaning of ERISA § 406, and meets the criteria for class exemption under Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632-01 (Dec. 31, 2003).

5. Approval of the Plan of Allocation: The Plan of Allocation is hereby approved as fair and reasonable. The Court directs Plaintiffs' Counsel, the Claims Administrator and the Escrow Agent to administer and implement the Plan of Allocation in accordance with its terms and provisions.

6. Dismissal: The Action is hereby dismissed with prejudice, each Party to bear his, her, or its own costs, except as expressly provided in the Stipulation and herein.

7. Releases: The Court hereby approves the Releases set forth in the Stipulation and orders as follows:

(a) Plaintiffs, members of the Settlement Class and the Plans have released and discharged, and are hereby permanently barred and enjoined from asserting, commencing, prosecuting or continuing, either directly, individually, representatively, derivatively, or in any other capacity, any and all claims, demands, rights, liabilities, and causes of action of every nature or description whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunctive or declaratory relief, contribution, indemnification, or any other type of legal or equitable relief, and Unknown Claims), whether accrued or not, including any claim or right obtained by assignment, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise, asserted or that might have been asserted (i) by Named Plaintiffs individually, (ii) by any member of the Settlement Class, (iii) by Named Plaintiffs, or any other members of the Settlement Class, on behalf of either or both of the Plans, including, but not limited to, under ERISA § 502(a)(2) or (iv) by the Plans themselves, including, but not limited to, under ERISA § 502(a)(2), against any or all of the Defendants and Released Persons based on or arising out of or relating

in any way to the investment, acquisition or retention by Plaintiffs, or any member of the Settlement Class, by or through the Plans, of ING Stock during the Relevant Period that would be barred by principles of res judicata had the Action been fully litigated and resulted in a final judgment or order, except as otherwise provided in this paragraph (“Released Claims”).

(b) Scope of the Releases:

(i) Nothing in this Order and Final Judgment (the “Order”) shall release, bar or in any other manner affect any ERISA claim by any Participant for individual benefits that does not arise out of or is not related to the claims asserted in the Consolidated Complaint.

(ii) Plaintiffs, members of the Settlement Class, and the Plans expressly waive, and shall be deemed to have waived, and by operation of the Order shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which

if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiffs, each member of the Settlement Class, and either or both of the Plans may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each shall have expressly—and upon the Effective Date each shall be deemed to have, and by operation of this Order shall have—fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional with or without malice, or a breach of any duty, law or rule, without regard to subsequent discovery or existence of such different or additional facts. Named Plaintiffs, each other member of the Settlement Class, and each of the Plans by operation of law shall be deemed to have acknowledged that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement.

8. Award of Attorneys' Fees and Expenses and Incentive

Compensation Awards: The Court hereby awards Plaintiffs' Counsel attorneys' fees of \$_____ and litigation expenses in the amount of \$_____, which shall be paid from the Settlement Fund. The Court also awards each Named Plaintiff an Incentive Compensation Award in the amount of \$_____, which shall be paid from the Settlement Fund. In making these awards the Court finds that:

(a) The Settlement achieved as a result of Plaintiffs' Counsel's efforts has created a fund of \$3,500,000, which will benefit the members of the Settlement Class and the Plans.

(b) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy.

(c) The Action involves complex factual and legal issues litigated over several years and, in the absence of the Settlement, would involve further lengthy proceedings with an uncertain resolution.

(d) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs, members of the Settlement Class and the Plans may have recovered less, or nothing, in this Action.

(e) The award of Attorneys' Fees and Expenses is fair, reasonable and consistent with the awards in similar cases.

(f) The Named Plaintiffs rendered valuable service to the Plans and to the members of the Settlement Class, and the Incentive Compensation Awards awarded to them in this Order for their effort are fair and reasonable under the circumstances.

9. CAFA Compliance: Defendants have filed a Declaration of Compliance with the Class Action Fairness Act of 2005 (“CAFA”), indicating that, pursuant to 28 U.S.C. § 1715(b), they timely mailed Notice of the Settlement to the Attorney General of the United States of America and the Attorneys General of all states in which members of the Settlement Class reside. The Notice of the Settlement contained documents and information required by 28 U.S.C. § 1715(b)(1)-(8). The Court therefore finds that Defendants have complied in all respects with the requirements of 28 U.S.C. § 1715.

10. Termination of Settlement: In the event that the Stipulation is terminated in accordance with its own terms, this Order shall be deemed null and void, ab initio, and shall be vacated nunc pro tunc, and this Action shall revert to its status prior to the signing of the Stipulation, and the Parties shall revert to their respective litigation positions as if they had never entered into the Stipulation.

In the event that the Stipulation is terminated, neither this Order nor the Stipulation shall be construed or used as an admission,

concession, declaration or waiver by any party of any arguments, defenses or claims that he, she or it may have, including, but not limited to, any objections by any Defendant to class certification. The Stipulation and any proceedings taken pursuant to the Stipulation are for settlement purposes only. Neither the fact of, nor any provision contained in, the Stipulation or its exhibits, nor any actions taken thereunder, shall be construed as, offered into evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind as to the truth of any fact alleged or the validity of any claim or defense that has been, could have been or in the future might be asserted.

11. Use of Order: This Order is not admissible as evidence for any purpose against any Defendant in any pending or future litigation. This Order shall not be construed or used as an admission, concession or declaration by or against any Defendant of any fault, wrongdoing, breach or liability. This Order shall not be construed or used as an admission, concession or declaration by or against Named Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable.

12. Retention of Jurisdiction: The Court shall retain exclusive jurisdiction over Named Plaintiffs, members of the

Settlement Class, the Plans and Defendants for all matters relating to the administration and consummation of the Settlement, including any disputes or challenges that may arise as to the performance, validity, interpretation, administration, effectuation, termination or enforcement of the Stipulation and this Order.

SO ORDERED, this _____ day of _____, 2013.

HON. JULIE E. CARNES
UNITED STATES DISTRICT JUDGE