

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

AXA EQUITABLE LIFE INSURANCE
COMPANY COI LITIGATION

[This document relates to *Brach Family Found,
Inc., et al. v. AXA Equitable Life Ins. Co.*, No. 16
Civ. 740 (JMF)]

ECF CASE

No. 1:16-cv-00740 (JMF)

**DECLARATION OF DAVID M. MURPHY OF PHILLIPS ADR IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, David M. Murphy, declare as follows:

1. I am over 18 years of age and am legally competent to make this Declaration. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.
2. The Hon. Layn R. Phillips (Ret.) and I both jointly served as mediators for settlement discussions with respect to the class action of *Brach Family Foundation, Inc., et al. v. AXA Equitable Life Insurance Company*, Civil No. 1:16-cv-00740-JMF (S.D.N.Y.). I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement with AXA Equitable Life Insurance Company ("AXA Equitable").
3. I am a full-time professional mediator, arbitrator, and independent panelist with Phillips ADR, an alternative dispute resolution firm founded by Judge Phillips. I joined Phillips ADR in 2017.
4. Prior to joining Phillips ADR, I was a partner in the law firm of Wachtell, Lipton, Rosen & Katz, where I practiced law for three decades following federal judicial clerkships with Judge Ralph K. Winter, Jr., of the U. S. Court of Appeals for the Second Circuit, and Chief Judge Charles L. Brieant of the U. S. District Court for the Southern District of New York. While a partner with Wachtell Lipton, I litigated federal securities and antitrust cases, contests for corporate control, corporate governance disputes, contract, tort and high-stakes defamation cases. I conducted numerous U.S. investigations involving the financial sector as well as international investigations into potential violations of anti-money laundering, antitrust, and other US laws. I also

negotiated numerous settlements involving complex financial and legal issues in cases involving both private and governmental entities. In my work with Phillips ADR, I have served as mediator, arbitrator and independent monitor in several hundred commercial cases, including antitrust, patent, securities law, corporate governance, investment company, bankruptcy, environmental, contract and tort cases.

5. Judge Phillips and I were jointly retained by the parties in this case to preside over the settlement discussion and negotiations between the parties. In that role, we both reviewed detailed mediation briefs and related exhibits and certain Court rulings on matters of contention between the parties.

6. Judge Phillips and I assisted the parties with four rounds of settlement discussions and negotiations over a period of nearly four years, including multiple in-person, all-day mediation sessions and numerous telephone and email exchanges. These included full-day mediation sessions held on February 6, 2019, May 5, 2021, June 16, 2022, and May 7, 2023. The mediation process involved extensive analysis of the parties' positions and assessment of the strengths and weaknesses of their positions, as well as candid conversations with counsel from each side regarding the potential risks and rewards of continued litigation. Most recently, I presided over the settlement discussions and negotiations during an in-person, all-day mediation session on Sunday, May 7, 2023 at the New York office of Milbank LLP. Following this session, I conducted further settlement discussions and negotiations via telephone and email until the parties reached agreement on material terms.

7. The negotiations were vigorous and hard-fought and ultimately led to the settlement agreement currently being considered by the Court for approval.

8. Based on the materials provided by the settling parties and my extensive participation in the process, Judge Phillips and I became familiar with the factual and legal issues involved in the Action, including the allegations asserted by Plaintiffs and the defenses to liability and damages asserted by Defendant. I am also familiar with the process by which the parties negotiated the settlement, and I believe that the settlement was reached by the parties acting at arm's length, carefully, deliberately, and in good faith to advance the best interests of their clients. I have conferred with Judge Phillips, and he shares this belief.

9. Based on my experience as a neutral, independent mediator and Judge Phillips' and my assessment of the claims and defenses in this class action, I believe, as does Judge Phillips, that the parties achieved an outstanding result here.

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

Executed this 7th day of June, 2023.


DAVID M. MURPHY