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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SHIVA Y. STEIN, individually and on behalf
of all others similarly situated,

Plaintiff,

-against-

SYMETRA FINANCIAL CORPORATION,
LOWNDES A. SMITH, PETER S. BURGESS,
DAVID T. FOY, LOIS W. GRADY, SANDER
M. LEVY, ROBERT R. LUSARDI, THOMAS
M. MARRA, SUMITOMO LIFE INSURANCE
COMPANY, and SLIC FINANCIAL
CORPORATION

Defendants.

No. 15-2-20458-1SEA

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Shiva Y. Stein (“Plaintiff”), by her attorneys, alleges upon information and belief (based, in part, upon the investigation conducted by and through her undersigned counsel), except with respect to her ownership of Symetra Financial Corporation (“Symetra” or the “Company”) common stock, and her suitability to serve as class representative, which is alleged upon personal knowledge, as follows:

I. NATURE OF THE ACTION

1. This is a shareholder class action brought by Plaintiff on behalf of shareholders of Symetra against Symetra and its Board of Directors (the “Board”), Sumitomo Life Insurance

1 Company (“Sumitomo”) and SLIC Financial Corporation (“Merger Sub”), arising out of their
2 breaches of fiduciary duty and/or aiding and abetting such breaches of fiduciary duty in
3 connection with the proposed sale of the Company (the “Proposed Transaction”) where Symetra
4 shareholders will receive \$32 in cash in exchange for each share of Symetra common stock (the
5 “Merger Consideration”).

6
7 2. Realizing that the unfair Merger Consideration would most likely result in
8 litigation, and in an effort to avoid shareholder litigation, on the very same date that the Merger
9 Agreement was executed, the Board amended its bylaws to include an exclusive forum bylaw
10 provision that essentially requires all cases filed against the Company in connection with the
11 Proposed Transaction be filed in Delaware.

12
13 3. The Proposed Transaction, valued at approximately \$3.8 billion, is designed to
14 allow Sumitomo to wrongfully wrestle control of the Company away from Symetra’s shareholders
15 and into its own hands at a time when the Company is vulnerable, having missed earnings
16 estimates for two consecutive quarters in 2015. Sumitomo secured preferential treatment from
17 the Board, in part, by promising the entire Board, management, and employees continued
18 employment with the combined company.

19
20 4. Knowing that the lack of a substantial premium of the Proposed Transaction would
21 draw serious interest from other potential buyers, the Individual Defendants further tilted the
22 playing field in favor of Sumitomo by agreeing, in breach of their fiduciary duties, to preclusive
23 deal protection devices that unreasonably inhibit potential third party bidders from launching
24 topping bids, including: (i) a strict no-solicitation provision that severely constrains the Individual
25 Defendants’ ability to communicate and negotiate with potential buyers who wish to submit or
26 who have submitted unsolicited alternative proposals; (ii) a definition of “Superior Proposal”

1 requiring a third party to acquire 50% or more of Symetra's assets or 50% of more of the
2 aggregate voting power of the Company, without which Symetra is not entitled to terminate the
3 Merger Agreement (excluding common termination clauses); (iii) a five (5) business days
4 "matching right" provision whereby Sumitomo has the right to revise its proposal in response to
5 a Superior Proposal; and (iv) a "termination fee" provision whereby the Board agreed to pay
6 Sumitomo \$95 million if the Merger Agreement is terminated under specified circumstances.
7 Considered together, the preclusive deal protection devices coupled with the Voting Agreements
8 entered into by White Mountains Insurance Group, Ltd. ("White Mountains") and Berkshire
9 Hathaway Inc. ("Berkshire Hathaway"), representing 35% of Symetra's outstanding stock, were
10 designed to deter any third parties from making an offer for the Company, and render the
11 likelihood of a rival bidder emerging as remote.
12

13
14 5. The Proposed Transaction also provides the added benefit of liquidity to the Board,
15 as their otherwise illiquid holdings shed their restrictions as a result of the Proposed Transaction.
16 Additionally, certain Individual Defendants will be entitled to considerable severance and golden
17 parachute payments in connection with the Proposed Transaction. Defendant Thomas M. Marra
18 ("Marra"), for example, will receive over a staggering *\$25 million* in immediate liquidity upon
19 the close of the Proposed Transaction. Plainly, the Individual Defendants were incentivized to
20 drive a sales process that primarily served their own interests and was detrimental to Symetra
21 shareholders.
22

23 6. To add insult to injury, the Board retained a conflicted financial advisor, Morgan
24 Stanley & Co. LLC. Morgan Stanley acted out of self-interest when it opined that the Proposed
25 Transaction is fair because the entire amount payable to Morgan Stanley by Symetra (\$26 million)
26 is contingent on the closing of the Proposed Transaction. In short, Morgan Stanley needs the

1 Proposed Transaction to close in order to receive any portion of its fee.

2 7. Compounding the unfairness of the Proposed Transaction, on August 31, 2015,
3 Symetra filed a Schedule 14A Proxy Statement (“Schedule 14A”) with the U.S. Securities and
4 Exchange Commission (“SEC”). The Schedule 14A is deficient and misleading in that it fails to
5 provide adequate disclosure of material information related to the Proposed Transaction.
6 Specifically, the Schedule 14A omits and/or misrepresents material information concerning,
7 among other things: (a) the sales process for the Company; (b) management’s financial
8 projections; and (c) the data and inputs underlying the financial valuation analyses that purport to
9 support the fairness opinion provided by Morgan Stanley.
10

11 8. Plaintiff seeks enjoinder of the Proposed Transaction or, alternatively, rescission
12 of the Proposed Transaction in the event Defendants are able to consummate it.
13

14 II. JURISDICTION AND VENUE

15 9. This Court has jurisdiction of this action pursuant to Rev. Code Wash. § 2.08.010.

16 10. This Court may properly exercise personal jurisdiction over Defendants because:
17 (1) Symetra principally operates within the State of Washington and its corporate headquarters
18 are located at 777 108th Avenue NE, Suite 1200, Bellevue, Washington; (2) the Individual
19 Defendants (defined below) in many cases are residents of the State of Washington and all have
20 intentionally directed business conduct into and otherwise established minimum contacts with the
21 State of Washington; and (3) Defendant Sumitomo has intentionally directed business conduct in
22 the State of Washington and otherwise established minimum contacts, by, inter alia, attempting
23 to take over Symetra’s operations in the State of Washington and use Symetra’s assets to conduct
24 future business within the State of Washington.
25

26 11. While there is a forum selection clause in Symetra’s by-laws designating the

1 Delaware Court of Chancery for breach of fiduciary claims, the provision was put into the bylaws
2 under highly suspect circumstances as a deal protection device. On the very same date that the
3 Merger Agreement was executed, the Board amended its bylaws to include an exclusive forum
4 bylaw provision that essentially requires all cases filed against the Company in connection with
5 the Proposed Transaction be filed in Delaware.
6

7 12. This amendment to the Company's bylaws was enacted by many of the Individual
8 Defendants **only after** the wrongful conduct alleged herein. Clearly, the Individual Defendants
9 were anticipating litigation as a result of their wrongful conduct in connection with the Proposed
10 Transaction, and wished to dictate the forum in which such litigation will be heard. The forum
11 bylaw is an attempt to prevent Symetra's shareholders from seeking redress in the courts of
12 Washington, where the Company is based, but instead insists that the action be brought in
13 corporate-friendly Delaware.
14

15 13. This forum selection clause, which was not voted upon by shareholders and was
16 instituted by the Individual Defendants in the underlying action following their alleged
17 wrongdoing, cannot bind the Company's shareholders to the Board's unilateral selection of a
18 venue for the litigation.
19

20 14. The public interest favors litigation in Washington state where, as stated in
21 Symetra's Form 10-K filed with the Securities and Exchange Commission on February 26, 2015,
22 *a substantial part of Symetra's operations is located*. The Form 10-K also states that *the*
23 *Company leases a 222,000 square feet space in Bellevue, Washington which serves as*
24 *Symetra's corporate headquarters and the primary operations location for its divisions*. The
25 pertinent portions of the Form 10-K reads
26

A substantial part of our operations are located in Bellevue,

1 **Washington**, although we have offices throughout the U.S., primarily in
2 Waltham, Massachusetts and Enfield, Connecticut, as well as new
3 operations in Guilford, Connecticut and Des Moines, Iowa.

4 **We lease 222,000 square feet in Bellevue, Washington which serves as**
5 **our corporate headquarters and the primary operations location for**
6 **our divisions.** We also lease 29,000 square feet in Enfield, Connecticut and
7 14,000 square feet in Waltham, Massachusetts, where we have strategic
8 operations supporting our Benefits and Individual Life divisions. In addition
9 to these locations, we lease 19 other properties throughout the U.S. which
10 comprise a total of 80,000 square feet. [Emphasis supplied]

11 15. In view of the foregoing, it is clear that the Court has a substantial interest in
12 monitoring the impact of the Proposed Transaction in Washington state and in ensuring that those
13 who transact business in Washington state to do so in a manner consistent with public policy.

14 16. Venue is proper in this county pursuant to Rev. Code Wash. § 4.12.025(1) because
15 Symetra is based in and transacts substantial business in this county.

16 **III. PARTIES**

17 17. Plaintiff owns Symetra common stock and has owned such stock at all relevant
18 times.

19 18. Defendant Symetra is a Delaware corporation with its principal executive office
20 located at 777 108th Avenue NE, Suite 200, Bellevue, Washington. Symetra is a financial
21 services company in the life insurance industry. The Company's stock is listed on the New York
22 Stock Exchange ("NYSE") under the symbol "SYA".

23 19. Defendant Lowndes A. Smith ("Smith") has been a director of Symetra since June
24 2007 and has served as Chairman of the Board since May 2009.

25 20. Defendant Peter S. Burgess ("Burgess") has been a director of Symetra since June
26 2010.

21. Defendant David T. Foy ("Foy") has been a director of Symetra since March 2004

1 and served as Chairman of the Board from August 2004 until May 2009.

2 22. Defendant Lois W. Grady (“Grady”) has been a director of Symetra since August
3 2004 and served as Vice Chairman of the Board from May 2009 through April 2012.

4 23. Defendant Sander M. Levy (“Levy”) has been a director of Symetra since August
5 2004.

6 24. Defendant Robert R. Lusardi (“Lusardi”) has been a director of Symetra since
7 August 2005.

8 25. Defendant Tom Marra (“Marra”) is President and Chief Executive Officer
9 (“CEO”) of Symetra and its insurance subsidiaries, as well as a member of the Board. He joined
10 Symetra in June 2010.

11 26. Defendants Smith, Burgess, Foy, Grady, Levy, Lusardi, and Marra are collectively
12 referred to hereinafter as the “Individual Defendants” or the “Board.”

13 27. As directors of Symetra, each of the Individual Defendants has the highest
14 fiduciary duties of good faith, loyalty, fair dealing, due care, and disclosure to Plaintiff and the
15 other members of the class. The Individual Defendants are fiduciaries to the Company’s
16 shareholders requiring them to exercise their best judgment, and to act in a prudent manner and
17 in the best interests of the Company’s shareholders.

18 28. Defendant Sumitomo is a Japanese mutual company with its principal executive
19 office located at 7-8-24 Tsukiji Chuo-ku, Tokyo 104-8430, Japan.

20 29. Defendant Merger Sub is a Delaware corporation and a direct wholly owned
21 subsidiary of Sumitomo.

22 30. The Defendants “Sumitomo” and “Merger Sub” are collectively referred to
23 hereinafter as “Sumitomo” unless otherwise indicated. Each of the entities collectively referred
24
25
26

1 to herein as “Sumitomo” are named as defendants herein because they are parties to the Merger
2 Agreement and for aiding and abetting the Board’s breaches of fiduciary duties.

3 31. The Individual Defendants, together with Defendant Symetra and Defendant
4 Sumitomo are collectively referred to herein as “Defendants.”

5
6 **IV. DEFENDANTS’ FIDUCIARY DUTIES**

7 32. Where the directors of a publicly-traded corporation undertake a transaction that
8 will result in either: (i) a change in corporate control, or (ii) a break-up of the corporation’s assets,
9 the directors have an affirmative fiduciary obligation to obtain the highest value reasonably
10 available for the corporation’s shareholders, and if such transaction will result in a change of
11 corporate control, to obtain for shareholders a reasonable premium. To diligently comply with
12 these duties, the directors and/or officers may not take any action that:

- 13 a. misleads shareholders about the fairness of the proposed transaction;
14 b. adversely affects the value provided to the corporation’s shareholders;
15 c. unreasonably discourages or inhibits alternative offers to purchase control of the
16 corporation or its assets;
17 d. contractually prohibits themselves from complying with their fiduciary duties;
18 e. will otherwise adversely affect their duty to search for and secure the best value
19 reasonably available under the circumstances for the corporation’s shareholders;
20 and/or
21 f. will provide the directors and/or officers with preferential treatment at the expense
22 of, or separate from, the public shareholders.
23
24

25 33. As explained below, Plaintiff alleges that the Individual Defendants, separately
26 and together, in connection with the Proposed Transaction, are knowingly or recklessly violating

1 their fiduciary duties, including their duties of loyalty, good faith, disclosure and independence
2 owed to Plaintiff and other public shareholders of Symetra.

3 **V. SUBSTANTIVE ALLEGATIONS**

4 ***Company Background***

5 34. Symetra provides employee benefits, annuities and life insurance through a
6 national network of benefits consultants, financial institutions and independent agents and
7 advisors. As of June 30, 2015, Symetra had \$34 billion in assets, approximately 1.7 million
8 customers, and 1,400 employees nationwide.

9
10 35. The Company's principal products include medical stop-loss insurance; fixed and
11 variable deferred annuities; single premium immediate annuities; universal life insurance,
12 including single-premium life and bank-owned life insurance, and term life insurance.

13
14 36. Symetra began as a subsidiary of Safeco Corp ("Safeco") in 1957. In 2004, Safeco
15 sold its life and investments operations to a group of investors led by White Mountains and
16 Berkshire Hathaway for \$1.35 billion. The business, renamed Symetra, was chosen to "evoke a
17 sense of balance essential for long-term success in the financial services business," according to
18 a statement from the Company.

19
20 37. Symetra went public in an initial public offering on January 21, 2010, when it sold
21 30.4 million shares at \$12 each. Neither Berkshire Hathaway nor White Mountains sold any stock
22 into the offering. The Company had originally tried to go public in 2008, but pulled the deal
23 because of the financial crisis.

24 ***Symetra Is Poised For Growth***

25 38. 2015 has been a disappointing year for Symetra. For the first quarter of 2015, net
26 income was \$38.8 million compared with \$79.3 million in the same period a year ago. For the

1 second quarter of 2015, net income significantly decreased by 56.4% when compared to the same
2 quarter a year ago, falling from \$71.50 million to \$31.20 million. Despite the decrease in net
3 income, Symetra still managed to outperform the industry average of 12.3%. Moreover, compared
4 to its closing price of one year ago, Symetra's share price has jumped by 38.73%, exceeding the
5 performance of the broader market during the same time frame.

6
7 39. Because of this, Defendant Marra, the Company's CEO confirmed on July 31,
8 2015 that the Company is still on track to meet its growth targets for 2015:

9 We are on track to meet our growth targets for 2015 and we're returning another
10 \$58 million in capital to shareholders in the form of a special dividend. In the
11 second half of the year, we remain focused on maintaining our strengths, building
12 out our newer business lines, achieving profitable sales growth across all three
13 divisions and continuing to manage the business with a long-term perspective.

14 40. In view of the foregoing, it is clear the Symetra is poised for substantial growth.
15 The Proposed Transaction, however, will deprive the Company's shareholders from reaping the
16 benefits of its bright future.

17 ***The Flawed Sales Process Leading Up to the Merger Agreement***

18 41. According to Schedule 14A, in August 2014, Symetra began identifying potential
19 acquirers. Four large insurance companies were contacted, two of whom (Party A and Party
20 B) expressed interest. The reason why the two other insurance companies contacted declined to
21 enter into discussion with Symetra was not disclosed in the Schedule 14A.

22 42. On October 6, 2014, Morgan Stanley was contacted on an unsolicited basis by a
23 representative of a Shanghai-based conglomerate with limited experience in the life insurance
24 industry (Party C). Morgan Stanley informed Party C that Symetra was not for sale. As a result,
25 Party C never submitted an offer or any specific proposed deal terms.

26 43. On October 23, 2014 and November 7, 2014, Symetra entered into confidentiality

1 agreements with Party A and Party B, respectively. The Schedule 14A does not state whether the
2 confidentiality agreements contain “don’t ask don’t waive” standstill provisions that would
3 prevent a party from making a topping bid. Although the Schedule 14A states that Party A remains
4 subject to certain customary standstill restrictions contained in its confidentiality agreement with
5 Symetra, these customary standstill restrictions were not identified.

6
7 44. On November 18, 2014, Party A informed Symetra that it was no longer interested
8 in pursuing a potential transaction. Party A never submitted an offer or any specific proposed deal
9 terms.

10 45. On December 2, 2014, an unidentified director of Symetra had an in-person
11 introductory meeting with a representative of a Beijing-based financial services company (Party
12 D). The purpose of the introductory meeting with Party D was not disclosed in the Schedule 14A.
13 Party D never submitted an offer or any specific proposed deal terms.

14
15 46. On December 5, 2014, Morgan Stanley received an informal inquiry from a private
16 equity firm (Party E) potentially interested in acquiring certain business lines of Symetra if
17 Symetra were to engage in a formal sale process. Party E never submitted an offer or any specific
18 proposed deal terms.

19 47. On February 5, 2015, Party B informed Symetra that it was no longer interested in
20 pursuing a potential transaction with Symetra.

21
22 48. In January 2015, Defendant Marra received, on an unsolicited basis, a letter from
23 a diversified holding company with primary interests historically in the gaming industry (Party F)
24 expressing interest in Symetra. Symetra immediately told Party F that it was not interested.

25 49. On February 13, 2015, Defendant Marra received an unsolicited communication
26 from a representative of Goldman Sachs & Co. (“Goldman Sachs”), financial advisor to

1 Sumitomo. The Goldman Sachs representative informed Mr. Marra that Sumitomo had serious
2 interest in exploring an acquisition of Symetra. On March 10, 2015, Sumitomo was provided with
3 certain limited nonpublic information of Symetra, including certain financial forecasts. The
4 Schedule 14A does not state whether the other potential acquirers were also provided with these
5 financial forecasts.
6

7 50. On June 17, 2015, Symetra received a written non-binding indication of interest
8 from Sumitomo to acquire Symetra for \$30 per share in cash. The letter stated that the per share
9 consideration was based on the assumption that there would be no special dividend paid by
10 Symetra to its shareholders after the date of the letter. The letter was accompanied by a draft
11 exclusivity agreement.
12

13 51. On June 17, 2015, Morgan Stanley told Sumitomo that it would likely need to
14 increase its price for the Board to authorize exclusive discussions.
15

16 52. On June 22, 2015, Sumitomo increased its offer to \$31.50 per share.
17

18 53. On June 25, 2015, Sumitomo agreed that it would permit Symetra to issue a
19 special dividend of \$0.50 per share, but that the \$31.50 offer would remain the same.
20

21 54. On June 29, 2015, Sumitomo increased its offer to \$32 per share. The revised
22 indication of interest also noted the acceptability to Sumitomo of a special dividend of \$0.50 per
23 share of Common Stock, reflecting a total transaction value of \$32.50 per share.
24

25 55. On July 1, 2015, Symetra entered into an exclusivity agreement with Sumitomo.
26

56. Soon thereafter, certain of Symetra's executive officers entered into letter
agreements dated as of August 10, 2015, related to their post-closing employment and
compensation with Sumitomo. The identities of these executive officers and the terms of their
post-closing employment and compensation were not revealed in the Schedule 14A.

1 57. Early in the morning on August 11, 2015, Symetra and Sumitomo executed the
2 Merger Agreement.

3 ***The Proposed Transaction***

4 58. On August 11, 2015, Symetra announced the Merger Agreement with Sumitomo
5 through a press release (the “Press Release”), pursuant to which Symetra shareholders will receive
6 \$32 in exchange for each share of Symetra common stock.

7 59. The Press Release states in pertinent part:

8
9 BELLEVUE, Wash.—(Aug. 11, 2015)—Symetra Financial Corporation (NYSE:
10 SYA) (“Symetra”) today announced that it has entered into a definitive merger
11 agreement with Sumitomo Life Insurance Company (“Sumitomo Life”) pursuant
12 to which Sumitomo Life will acquire all of the outstanding shares of Symetra.
13 Symetra shareholders will receive \$32.00 per share in cash at closing, plus a
14 previously announced special dividend of \$0.50 per share in cash, which is payable
15 on August 28, 2015 to Symetra shareholders of record as of August 10, 2015. The
16 amount of the special dividend was established in connection with the
17 determination of the total combined transaction consideration. The total combined
18 transaction consideration of \$32.50 per share is approximately \$3.8 billion in
19 aggregate and represents a 32% premium over Symetra’s average stock price of
20 \$24.64 for the 30 days ending August 5, 2015.

21 Sumitomo Life, founded in 1907 and headquartered in Tokyo and Osaka, Japan, is
22 a leading life insurer in Japan with multi-channel, multi-product life insurance
23 businesses. Sumitomo Life provides traditional mortality life insurance, nursing
24 care, medical care and retirement plans through sales representatives, insurance
25 outlets, the Internet and banc assurance. As of March 31, 2015, Sumitomo Life
26 had \$229 billion in assets, approximately 6.8 million customers and 42,000
employees.

21 Symetra, founded in 1957 and based in Bellevue, Washington, provides employee
22 benefits, annuities and life insurance through a national network of benefits
23 consultants, financial institutions and independent agents and advisors. As of June
24 30, 2015, Symetra had \$34 billion in assets, approximately 1.7 million customers,
25 and 1,400 employees nationwide.

26 Symetra will become Sumitomo Life’s platform in the U.S., where Sumitomo Life
does not currently have a material operational presence. Symetra’s President and
Chief Executive Officer, Thomas M. Marra, and the current management team will
continue to lead the business from Symetra’s headquarters in Bellevue. Symetra
will maintain its current brand, employees, distribution channels and product mix.

1 Symetra's expertise in and commitment to the retirement, employee benefits and
2 life insurance markets, coupled with Sumitomo Life's resources, will create a
3 stronger and more diversified combined company with total assets of \$250 billion.

4 60. Sumitomo is attempting to take advantage of Symetra by paying an unfair Merger
5 Consideration. The Board obviously failed to recognize the value of Symetra to Sumitomo when
6 it agreed to such an unfair Merger Consideration. According to the Press Release:

7 Symetra's expertise in and commitment to the retirement, employee benefits and
8 life insurance markets, coupled with Sumitomo Life's resources, will create a
9 stronger and more diversified combined company with total assets of \$250 billion.

10 Masahiro Hashimoto, president and CEO of Sumitomo Life Insurance Company,
11 said, "We are enthusiastic about the opportunity to acquire Symetra's dynamic
12 business and believe that a transaction will be mutually beneficial and will create
13 significant value for both Symetra and Sumitomo Life. Both companies share a
14 management philosophy that strives to provide customers with valuable insurance
15 solutions and offer the highest quality of service. We are confident that this
16 transaction will further enhance our financial and earnings foundation by
17 expanding the size of overseas revenues, diversifying the revenue base and thereby
18 enabling us to build a well-balanced overseas business portfolio across Asia and
19 the United States."

20 61. To make the Merger Consideration offered my Sumitomo more palatable and
21 attractive, a special dividend that was contemplated to be distributed to Symetra shareholders was
22 included in the calculation of the total transaction value. It was misleading for Symetra to have
23 factored in the special dividend in the total transaction value because Symetra shareholders were
24 entitled to a special dividend regardless of any deal with Sumitomo.

25 62. To make matters worse, Morgan Stanley was acting out of self-interest when it
26 opined that the Proposed Transaction is fair. According to the Schedule 14A, the entire amount
payable to Morgan Stanley by Symetra (\$26 million) was contingent on the closing of the
Proposed Transaction. Morgan Stanley needs the Proposed Transaction to close otherwise it will
not receive fees for its work on the Proposed Transaction.

63. By failing to reject the unfair Merger Consideration, the Individual Defendants

1 have artificially depressed the value of Symetra’s stock, thereby depriving Plaintiff and the Class
2 of the right and opportunity to receive the maximum value for their shares.

3 ***Unreasonable Deal Protection Devices***

4 64. To reiterate, on the very same date that the Merger Agreement was executed, the
5 Board amended its bylaws to include an exclusive forum bylaw provision that essentially requires
6 all cases filed against the Company in connection with the Proposed Transaction be filed in
7 Delaware. The forum bylaw is an attempt to prevent Symetra’s shareholders from seeking redress
8 in the courts of Washington, where the Company is based, but instead insists that the action be
9 brought in corporate-friendly Delaware.
10

11 65. The terms of the Merger Agreement entered into on August 11, 2015 by and among
12 Symetra and Sumitomo were designed to deter competing bids and prevent the Board from
13 exercising their fiduciary duties to obtain the best possible price for Symetra public shareholders.
14

15 66. The Merger Agreement contains deal protection devices which substantially
16 increase the likelihood that the Proposed Transaction will be consummated, leaving Symetra’s
17 shareholders with no meaningful change of control premium for their shares. When viewed
18 collectively, these provisions, which are detailed below, further the personal interests of
19 Sumitomo, certain Individual Defendants and Symetra’s insiders to the detriment of Symetra’s
20 shareholders and cannot represent a justified, appropriate or proportionate response to any threat
21 posed by a potential third party bidder.
22

23 67. In breach of their fiduciary duties, the Individual Defendants have agreed to the
24 following unreasonable deal protection devices:

- 25 • a “no-solicitation” clause which prevents Symetra from soliciting, or its
26 directors and officers from even participating in discussions which may
lead to an Acquisition Proposal from any bidder (Merger Agreement,

1 Section 6.05 (a));

- 2 • a definition of “Superior Proposal”, requiring a third party to acquire 50%
3 or more of the consolidated assets of the Company or 50% or more of the
4 issued and outstanding shares of Company common stock, without which
5 Symetra is not entitled to terminate the Merger Agreement (excluding
6 common termination clauses) (Merger Agreement, Section 1.01);
- 7 • “matching right” provision which allows Sumitomo five business days to
8 re-negotiate with the Board after it is provided with written notice of any
9 unsolicited third-party bid which may be presented to the Board (Merger
10 Agreement, Section 6.05(e)); and
- 11 • The Company will be required to pay Sumitomo a termination fee of \$95
12 million if Symetra decides to pursue a competing bid. (Merger Agreement
13 Section 1.01).

14 68. The \$95 million termination fee serves as a boon for Sumitomo, rather than making
15 it whole should the Proposed Transaction not go through.

16 69. Furthermore, Voting Agreements were entered into by White Mountains and
17 Berkshire Hathaway (collectively, the “Supporting Shareholders”) with Sumitomo pursuant to
18 which the Supporting Shareholders agreed to, among other things, vote their shares of Symetra
19 common stock in favor of the approval of the Merger Agreement and against any alternative
20 acquisition proposals. As a result, 35% of the Company’s outstanding shares is already locked up
21 in favor of the Proposed Transaction.

22 70. The reason behind these deal protection devices is clear: the absence of a
23 meaningful premium for shareholders increases the potential for a third party bidder to attempt to
24 usurp Sumitomo and submit a higher bid for Symetra. The Individual Defendants elected to
25 effectively “wrap-up” the Proposed Transaction by adopting unreasonable deal protection devices
26 which collectively act to unreasonably deter the possibility of a topping bid, thereby allowing
Sumitomo to acquire the Company for less than would otherwise be possible. As such, the deal
protection devices, which were approved by the Board as part of the Merger Agreement, represent

1 an ongoing breach of fiduciary duties.

2 71. Unless the Proposed Transaction is preliminarily enjoined until such time as the
3 Individual Defendants act in accordance with their fiduciary duties to maximize shareholder
4 value, Plaintiff and the other members of the Class will be harmed and will lose the opportunity
5 to receive full value for their shares.
6

7 72. The Proposed Transaction is wrongful, unfair, and harmful to Symetra's public
8 shareholders who are members of the Class, and represents an attempt by Defendants to
9 aggrandize their personal and financial positions and interests at the expense of and to the
10 detriment of the members of the Class.

11 73. The Proposed Transaction will deny Plaintiff and other Class members their rights
12 to share appropriately in the true value of the Company's assets and future growth in profits and
13 earnings, while usurping the same for the benefit of Sumitomo at an unfair and inadequate price.
14

15 ***Symetra's Board and Management Are Conflicted***

16 74. The Board and the Company's management have material conflicts of interest and
17 are acting to better their own personal interests through the Proposed Transaction at the expense
18 of Symetra's public shareholders.

19 75. If the Proposed Transaction closes, the Board and management will all maintain
20 their positions in the combined company. The Board and management are conflicted regarding
21 the Proposed Transaction because they will be retained in the combined company and have
22 significant reasons to support the Proposed Transaction, which is otherwise against the best
23 interest of Symetra shareholders. By encouraging shareholders to accept the unfair Merger
24 Consideration, they are reaping undue personal gain at the expense of Symetra public
25 shareholders.
26

1 76. The Proposed Transaction also provides the added benefit of liquidity to the Board,
2 as their illiquid holdings shed their restrictions as a result of the Proposed Transaction.
3 Additionally, certain Individual Defendants will be entitled to considerable severance and golden
4 parachute payments in connection with the Proposed Transaction. Defendant Marra, for example,
5 will receive over a staggering *\$25 million*, in immediate liquidity upon the close of the Proposed
6 Transaction. Plainly, the Individual Defendants were incentivized to drive a sales process that
7 primarily served their own interests and was detrimental to Symetra shareholders.
8

9 77. Based on the aforementioned, the Proposed Transaction is wrongful, unfair and
10 harmful to Symetra's public shareholders, and represents an effort by the Board and management
11 to aggrandize their own financial position and interests at the expense of and to the detriment of
12 Company shareholders. The Proposed Transaction is an attempt to deny Plaintiff and other public
13 shareholders their rights while usurping the same for the benefit of the Board and management on
14 unfair terms.
15

16 ***The Materially Incomplete and Misleading Registration Statement***

17 62. Compounding the unfair process and inadequacy of the consideration, on August
18 31, 2015, Symetra filed a Schedule 14A with the SEC in connection with the Proposed
19 Transaction. As discussed below and elsewhere herein, the Schedule 14A omits material
20 information that must be disclosed to Symetra's shareholders to enable them to cast an informed
21 vote with respect to the Proposed Transaction.
22

23 63. The Schedule 14A omits material information with respect to the process and
24 events leading up to the Proposed Transaction, as well as the opinions and analysis of Morgan
25 Stanley. This omitted information, if disclosed, would significantly alter the total mix of
26 information available to Symetra's shareholders.

1 ***Materially Misleading Disclosures Concerning the Flawed Sales Process***

2 64. The Schedule 14A fails to disclose material information relating to the process
3 leading up to the Proposed Transaction, including:

- 4 (a) The reason communicated by the insurance companies previously contacted for
5 declining to enter into discussions with Symetra regarding a potential acquisition;
6
7 (b) Whether other financial advisors, aside from Morgan Stanley, were considered;
8
9 (c) The efforts made by Symetra to solicit a proposal from Party A, B, C, D, E, and F;
10
11 (d) The purpose of the introductory meeting with Party D;
12
13 (e) The identity of the Symetra director who met with Party D;
14
15 (f) The reasons communicated by Party A and Party B for declining to pursue a
16 potential transaction with Symetra;
17
18 (g) The standstill restrictions contained in the confidentiality agreement which Party
19 A remains subject to;
20
21 (h) Whether any of the confidentiality agreements entered into contain “don’t ask
22 don’t waive” standstill provisions that would prevent a party from making a
23 topping bid;
24
25 (i) Whether Party A, B, C, D, E, and F were also provided with the forecasts that
26 were provided to Sumitomo during the March 11, 2015 meeting;
27
28 (j) The reason the special dividend was treated as part of the total transaction value;
29
30 (k) Whether Symetra informed Party A, B, C, D, E, and F that it was entering into an
31 exclusivity agreement with Sumitomo; and
32
33 (l) Whether discussions regarding the retention of Symetra’s management and/or
34 other employees took place during the course of negotiations, and if so, when those

1 discussions occurred and who were involved in those discussions.

2 ***Materially Misleading Disclosures Concerning Morgan Stanley's Financial Analysis***

3 62. The Schedule 14A describes Morgan Stanley's fairness opinion and the various
4 valuation analyses they performed in support of their opinion. However, the description of
5 Morgan Stanley's fairness opinions and analyses fails to include key inputs and assumptions
6 underlying some of these analyses. Without this information, as described below, Symetra's
7 public shareholders are unable to fully understand these analyses and, thus, are unable to
8 determine what weight, if any, to place on Morgan Stanley's fairness opinion in determining how
9 to vote in connection with the Proposed Transaction.
10

11 63. The Schedule 14A fails to disclose the criteria used to select comparable
12 companies in Morgan Stanley's *Comparable Company Analysis*.

13 64. The Schedule 14A fails to disclose material details concerning Morgan Stanley's
14 *Precedent Transactions Analysis*, including: (i) the criteria used to select the transaction group;
15 (ii) the reason for the large time gap between the selected transactions; and (iii) the multiples for
16 the March 2014 acquisition and the January 2005 acquisition in the Selected Life Insurance
17 Company Transactions chart.
18

19 65. Finally, the Schedule 14A must disclose completely the financial projections that
20 were provided to Morgan Stanley.
21

22 66. Defendants readily possess the above information which is necessary for
23 shareholders to make an informed decision. The Proposed Transaction will deprive the
24 Company's public shareholders of any enhanced premium that an action by the Company and/or
25 further negotiations with other potential suitors could provide. Unless enjoined by the Court,
26 Defendants will prevent the sale of Symetra at an adequate premium, all to the irreparable harm

1 of the Company. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the
2 irreparable injury that Company will to suffer absent judicial intervention.

3 ***The Individual Defendants' Breach of Fiduciary Duties***

4 78. By reason of the above Individual Defendants' positions with the Company as
5 officers and/or directors, said individuals are in a fiduciary relationship with Plaintiff and the other
6 public shareholders of Symetra and owe Plaintiff and the other members of the Class a duty of
7 highest due care, loyalty, good faith, disclosure, and independence.

8 79. Each of the Individual Defendants is required to act in good faith, in the best
9 interests of the Company's shareholders and with such care, including reasonable inquiry, as
10 would be expected of an ordinarily prudent person. In a situation where the directors of a publicly
11 traded company undertake a transaction that may result in a change in corporate control
12 (particularly when it involves a decision to eliminate the shareholders' equity investment in a
13 company), applicable law requires the directors to take all steps to maximize the value
14 shareholders will receive rather than use a change of control to benefit themselves.

15 80. To diligently comply with this duty, the directors of a corporation may not take
16 any action that: adversely affects the value provided to the corporation's shareholders;
17 contractually prohibits them from complying with or carrying out their fiduciary duties;
18 discourages or inhibits alternative offers to purchase control of the corporation or its assets; or
19 will otherwise adversely affect their duty to search and secure the best value reasonably available
20 under the circumstances for the corporation's shareholders.

21 81. The Individual Defendants owe fundamental fiduciary obligations to Symetra's
22 shareholders to take all necessary and appropriate steps to maximize the value of their shares. In
23 addition, the Individual Defendants have the responsibility to act independently so that the
24
25
26

1 interests of the Company's public shareholders will be protected and to consider properly all bona
2 fide offers for the Company and to reject offers that are clearly not in the interest of shareholders.

3 82. Further, the Individual Defendants, as directors of Symetra, must adequately
4 ensure that no conflict of interest exists between the Individual Defendants' own interests and
5 their fiduciary obligations to maximize shareholder value or, if such conflicts exist, to ensure that
6 all such conflicts will be resolved in the best interests of the Company's shareholders.
7

8 83. Because the Individual Defendants dominate and control the business and
9 corporate affairs of Symetra and because they are in possession of private corporate information
10 concerning the Company's assets, businesses and future prospects, there exists an imbalance and
11 disparity of knowledge and of economic power between the Individual Defendants and the public
12 shareholders of Symetra. This discrepancy makes it grossly and inherently unfair for the
13 Individual Defendants to entrench themselves at the expense of Symetra shareholders.
14

15 84. The Individual Defendants have breached their fiduciary duties owed to Plaintiff
16 and other members of the Class in that they have not and are not exercising independent business
17 judgment and have acted and are acting to the detriment of the Class.

18 85. Plaintiff seeks preliminary and permanent injunctive relief and declaratory relief
19 preventing the Individual Defendants from inequitably and unlawfully depriving Plaintiff and the
20 Class of their rights to realize a full and fair value for their stock at a premium over the market
21 price, and to compel the Individual Defendants to carry out their fiduciary duties to maximize
22 shareholder value.
23

24 86. Only through the exercise of this Court's equitable powers can Plaintiff be fully
25 protected from the immediate and irreparable injury which Defendants' actions threaten to inflict.

26 87. Unless enjoined by the Court, Defendants will continue to breach their fiduciary

1 duties owed to Plaintiff and the members of the Class, and/or aid and abet and participate in such
2 breaches of duty, and will prevent the sale of Symetra at a substantial premium, all to the
3 irreparable harm of Plaintiff and other members of the Class.

4 88. Plaintiff and the Class have no adequate remedy at law.

5 VI. CLASS ACTION ALLEGATIONS

6 89. Plaintiff brings this action as a class action individually and on behalf of all other
7 public shareholders of the Company (except the Defendants herein and any person, firm, trust,
8 corporation or other entity related to, or affiliated with, any of the Defendants) and their successors
9 in interest, who are or will be threatened with injury arising from Defendants' actions as more
10 fully described herein (the "Class").

11 90. This action is properly maintainable as a class action.

12 91. The Class for whose benefit this action is brought is so numerous that joinder of
13 all class members is impracticable. As of August 31, 2015, there were over 116 million shares of
14 Symetra's common stock outstanding, likely owned by thousands of shareholders of record
15 scattered throughout the United States.

16 92. There are questions of law and fact which are common to members of the Class
17 and which predominate over any questions affecting any individual members. The common
18 questions include, inter alia, the following:

- 19 a) whether one or more of the Individual Defendants has engaged in a plan and
20 scheme to benefit themselves at the expense of Symetra's public shareholders;
21 b) whether the Individual Defendants have fulfilled, and are capable of fulfilling,
22 their fiduciary duties to Plaintiff and the Class;
23 c) whether the Individual Defendants have breached their fiduciary duties owed by
24
25
26

1 them to Plaintiff and members of the Class, and/or have aided and abetted in such
2 breach, by virtue of their participation and/or acquiescence and by their other
3 conduct complained of herein;

4 d) whether the consideration to be paid for the Symetra shares pursuant to the Merger
5 Agreement is fair and reasonable;

6 e) whether the Individual Defendants have wrongfully failed and refused to seek a
7 sale of Symetra at the highest possible price and, instead, will allow the valuable
8 assets of Symetra to be acquired by Sumitomo at an unfair and inadequate price;

9 f) whether Plaintiff and the other members of the Class will be irreparably damaged
10 by the transactions complained of herein;

11 g) whether Sumitomo has aided and abetted the breaches of the fiduciary and other
12 common law duties owed by the Individual Defendants to Plaintiff and the other
13 members of the Class; and

14 h) whether Plaintiff and other members of the Class will be irreparably harmed by
15 Defendants' misconduct if Defendants are not enjoined from the misconduct
16 complained of herein.

17 93. Plaintiff is committed to prosecuting this action and has retained competent
18 counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims
19 of the other members of the Class and Plaintiff has the same interest as the other members of the
20 Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and
21 adequately protect the interests of the Class.
22 adequately protect the interests of the Class.

23 94. Plaintiff anticipates that there will not be any difficulty in the management of this
24 litigation.
25 litigation.
26 litigation.

1 95. For the reasons stated herein, a class action is superior to other available methods
2 for the fair and efficient adjudication of this action.

3 96. The prosecution of separate action by individual members of the Class would
4 create a risk of inconsistent or varying adjudications with respect to individual members of the
5 Class which would establish incompatible standards of conduct for the party opposing the Class.
6

7 97. Plaintiff anticipates no difficulty in the management of this litigation as a class
8 action. A class action is superior to other available methods for the fair and efficient adjudication
9 of this controversy.

10 98. Defendants have acted, or refused to act, on grounds generally applicable to, and
11 causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the
12 Class, as a whole, is appropriate.
13

14 **FIRST CAUSE OF ACTION**
15 **BREACH OF FIDUCIARY DUTY**
16 **(Against the Individual Defendants)**

17 99. Plaintiff repeats and realleges each and every allegation above as if set forth in full
18 herein.

19 100. The Individual Defendants, acting in concert, have violated their fiduciary duties
20 owed to the public shareholders of Symetra and put their own personal interests and the interests
21 of Sumitomo ahead of the interests of the Symetra public shareholders and have used their control
22 positions as officers and directors of Symetra for the purpose of reaping personal gain for
23 themselves at the expense of Symetra's public shareholders.

24 101. The Individual Defendants failed to: (1) undertake an adequate evaluation of
25 Symetra's worth as a potential merger/acquisition candidate; (2) take adequate steps to enhance
26 Symetra's value and/or attractiveness as a merger/acquisition candidate; (3) effectively expose

1 Symetra to the marketplace in an effort to create an active and open auction for Symetra; or (4)
2 act independently so that the interests of Symetra's public shareholders would be protected.
3 Instead, the Individual Defendants have allowed Sumitomo to set an acquisition price for the
4 shares of Symetra stock that does not reflect the true value of Symetra and without an appropriate
5 premium.
6

7 102. These tactics pursued by the Individual Defendants are, and will continue to be,
8 wrongful, unfair and harmful to Symetra's public shareholders, and are an attempt by certain
9 Defendants to aggrandize their personal positions, interests and finances at the expense of and to
10 the detriment of the Symetra public shareholders. These maneuvers by the Individual Defendants
11 will deny members of the Class their right to share appropriately in the true value of Symetra's
12 valuable assets, future earnings and profitable businesses to the same extent as they would as
13 Symetra's shareholders.
14

15 103. In contemplating, planning, and effectuating the foregoing specified acts and in
16 pursuing and structuring the Proposed Transaction, the Individual Defendants are not acting in
17 good faith toward Plaintiff and the Class, and have breached, and are breaching, their fiduciary
18 duties to Plaintiff and the Class.
19

20 104. Because the Individual Defendants dominate and control the business and
21 corporate affairs of Symetra and because they are in possession of private corporate information
22 concerning Symetra's businesses and future prospects, there exists an imbalance and disparity of
23 knowledge and economic power between the Individual Defendants and the public shareholders
24 of Symetra which makes it inherently unfair to Symetra's public shareholders.
25

26 105. By reason of the foregoing acts, practices and course of conduct, the Individual
Defendants have failed to use the required care and diligence in the exercise of their fiduciary

1 obligations owed to Symetra and its public shareholders.

2 106. As a result of the actions of the Individual Defendants, Plaintiff and the Class have
3 been and will be irreparably damaged in that they will not receive the fair value of Symetra's
4 assets and business in exchange for their Symetra's shares, and have been and will be prevented
5 from obtaining a fair price for their shares of Symetra common stock.
6

7 107. Unless enjoined by this Court, the Individual Defendants will continue to breach
8 their fiduciary duties owed to Plaintiff and the Class, all to the irreparable harm of the Class.

9 108. Plaintiff and the Class have no adequate remedy at law.

10 **SECOND CAUSE OF ACTION**
11 **BREACH OF THE DUTY OF DISCLOSURE**
12 **(Against the Individual Defendants)**

13 109. Plaintiff repeats and realleges each and every allegation above as if set forth in full
14 herein.

15 110. The Individual Defendants, as Symetra Directors, are required to act to foster the
16 best interests of the Company's public shareholders in compliance with their fiduciary duty of
17 disclosure. The Individual Defendants have failed to disclose in the Schedule 14A all material
18 information necessary for Symetra's public shareholders to make an informed decision
19 concerning whether to vote their shares in favor of the Proposed Transaction.
20

21 111. By reason of the foregoing, the Individual Defendants have violated their duty of
22 disclosure owed to Plaintiff and the Class.

23 112. Plaintiff and the Class have no adequate remedy at law.
24

25 **THIRD CAUSE OF ACTION**
26 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**
(Against Sumitomo)

113. Plaintiff repeats and realleges each and every allegation above as if set forth in full

1 herein.

2 114. Defendant Sumitomo knowingly aided and abetted the Individual Defendants in
3 breaching their fiduciary duties owed to the public shareholders of the Company, including
4 Plaintiff and the Class. The Proposed Transaction could not take place without the active
5 participation of Sumitomo.
6

7 115. The Individual Defendants owed to Plaintiff and the members of the Class certain
8 fiduciary duties as fully set out herein. By committing the acts alleged herein, the Individual
9 Defendants breached their fiduciary duties owed to Plaintiff and the members of the Class.

10 116. Defendant Sumitomo knowingly colluded in or aided and abetted the Individual
11 Defendants' breaches of fiduciary duties, and was active and knowing participants in the
12 Individual Defendants' breaches of fiduciary duties owed to Plaintiff and the members of the
13 Class.
14

15 117. As a result, Plaintiff and the Class shall be irreparably injured as a direct and
16 proximate result of the aforementioned acts.

17 118. Plaintiff and the Class have no adequate remedy at law.

18 **RELIEF REQUESTED**

19 **WHEREFORE**, Plaintiffs demand judgment as follows:

- 20 1. Declaring that this action may be maintained as a class action;
21
22 2. Declaring that the Proposed Transaction is unfair, unjust and inequitable to
23 Plaintiff and the other members of the Class;
24
25 3. Preliminarily and permanently enjoining the Defendants from taking any steps
26 necessary to accomplish or implement the Proposed Transaction at a price that is not fair and
equitable;

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16th day of October, 2015, a copy of the foregoing was
3 electronically filed and served via the King County E-Filing system which will send notification
4 of such filing to following Defense counsel:

5 Stephen M. Rummage
6 Brendan T. Mangan
7 Davis Wright Tremaine LLP
8 1201 Third Avenue, Suite 2200
9 Seattle, WA 98101

10 Steven Fogg
11 David Edwards
12 Corr Cronin Michelson Baumgardner Fogg & Moore, LLP
13 1001 Fifth Avenue, Suite 3900
14 Seattle, WA 98154

15 I hereby certify that on the 16th day of October, 2015, a copy of the foregoing was emailed
16 and mailed to the following Defense counsel:

17 Sandra Goldtein (sgoldstein@cravath.com)
18 Michael Paskin (mpaskin@cravath.com)
19 Cravath Swaine & Moore, LLP
20 825 Eighth Avenue
21 New York, NY 10019

22 Joshua Slocum (jslocum@stblaw.com)
23 Peter Kazanoff (pkazanoff@stblaw.com)
24 Simpson Thacher & Bartlett LLP
25 425 Lexington Avenue
26 New York, NY 10017

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of October, 2015.

/s/Karin B. Swope
Karin B. Swope, WSBA #24015