

THE STATE OF TEXAS,
Plaintiff

v.

MEMORIAL SERVICE LIFE INSURANCE
COMPANY, LINCOLN MEMORIAL
LIFE INSURANCE COMPANY, AND
NATIONAL PREARRANGED
SERVICES, INC.,
Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas
BP MAY 14 2008 15
At Amalia Rodriguez-Mendoza, Clerk

**PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION REQUESTING
APPOINTMENT OF REHABILITATOR AND INJUNCTIVE RELIEF**

Plaintiff State of Texas, by and through the Office of the Attorney General of Texas at the request of the Commissioner of Insurance, requests that the Court appoint the Commissioner of Insurance as Rehabilitator of Defendants Memorial Service Life Insurance Company (“Memorial”), Lincoln Memorial Life Insurance Company (“Lincoln”), and National Prearranged Services, Inc. (“NPS”) as the defendant companies are in hazardous financial condition and further transaction of insurance business is hazardous to consumers and the public, and because the Defendants are inextricably intertwined.

A. Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

B. Nature of Suit

2. This suit is brought at the request of the Commissioner of Insurance for the State of Texas (“Commissioner of Insurance”) pursuant to TEX. INS. CODE § 443.052.

3. Plaintiff seeks to obtain and Defendants have consented to an order designating the Commissioner of Insurance as Receiver for Rehabilitation (“Rehabilitator”) of Defendants Memorial, Lincoln, and NPS under TEX. INS. CODE § 443.101. This petition seeking appointment of a Rehabilitator constitutes commencement of a formal delinquency proceeding under TEX. INS. CODE § 443.052.

4. Plaintiff further seeks to obtain and Defendants have consented to a Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining Defendants Memorial, Lincoln, and NPS from conducting the business of insurance, except as directed or approved by the Rehabilitator, and restraining other persons from taking any actions against Defendants Memorial, Lincoln, and NPS or their property.

5. Plaintiff further seeks to recover from Defendants Memorial, Lincoln, and NPS all the fees, taxes, fines, penalties, and forfeitures provided by law for the acts complained of, including but not limited to all of the taxes, fines, penalties, and forfeitures provided by TEX. CONST. ART. IV, § 22, and TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.051 and 66.003, and reasonable attorneys' fees and court costs provided by TEX. GOV'T CODE ANN. § 402.006, subject to the provisions of TEX. INS. CODE Chapter 443.

C. Parties

6. Plaintiff is the State of Texas, acting by and through the Office of the Attorney General of Texas. This action is brought at the request of the Commissioner of Insurance under and in accordance with TEX. INS. CODE Chapter 443.

7. Defendant Memorial Service Life Insurance Company is a Texas-domiciled stipulated premium insurance company authorized to do business in the State of Texas. Defendant Memorial is a “covered person” to which TEX. INS. CODE Chapter 443 applies as it is

an insurer doing the business of insurance in the State of Texas, claims arising from that business may exist, and insureds are residents of Texas. TEX. INS. CODE § 443.003. Defendant Memorial may be served by serving any of its officers at their Austin office at 1250 South Capital of TX Hwy., Building #1, Suite 470, Austin, Texas, 78716, or sending, via registered or certified mail, return receipt requested, a copy of the citation with this petition attached to P.O. Box 160050, Austin, Texas, 78716. Defendant Memorial has agreed to accept service of process.

8. Defendant Lincoln Memorial Life Insurance Company is a Texas-domiciled life insurance company authorized to do business in the State of Texas. Defendant Lincoln is a “covered person” to which TEX. INS. CODE Chapter 443 applies as it is an insurer doing the business of insurance in the State of Texas, claims arising from that business may exist, and insureds are residents of Texas. TEX. INS. CODE § 443.003. Defendant Lincoln may be served by serving any of its officers at their Austin office at 1250 South Capital of TX Hwy., Building #1, Suite 470, Austin, Texas, 78716, or sending, via registered or certified mail, return receipt requested, a copy of the citation with this petition attached to P.O. Box 160050, Austin, Texas, 78716. Defendant Lincoln has agreed to accept service of process.

9. Defendant National Prearranged Services, Inc. is a corporation that is registered to do business in Texas, holds a permit from the Texas Department of Banking as a prepaid funeral benefit contract seller, and maintains a registered agent for service of process in this state. Defendant NPS is a “covered person” to which TEX. INS. CODE Chapter 443 applies as it engaged in acts that constitute the business of insurance in the State of Texas. TEX. INS. CODE § 443.004(5). Defendant NPS engaged in the business of insurance in the State of Texas by collecting premiums for insurance contracts from Texas residents or covering a risk located in Texas. TEX. INS. CODE § 443.004(a)(5)(C). By engaging in the business of insurance, Defendant

NPS is an “insurer” for the purposes of TEX. INS. CODE Chapter 443. TEX. INS. CODE § 443.004(a)(14). Defendant NPS consented to be placed under a Chapter 404 Order that formally designated it as being in hazardous financial condition, and which stated that NPS is engaged in the business of insurance in the State of Texas. Defendant NPS is domiciled in Missouri, but may be served by serving its registered agent for service of process, Lexis Document Services, Inc., at 701 Brazos Street, Suite 1050, Austin, Texas, 78701. Defendant NPS has agreed to accept service of process.

D. Jurisdiction and Venue

10. This Court has jurisdiction over this action pursuant to TEX.CIV. PRAC. & REM.CODE ANN. § 64.001 and TEX .INS. CODE § 443.005.

11. This suit must be brought in Travis County, Texas pursuant to TEX. INS. CODE §§ 443.005(g) and 443.051.

E. Factual Background

12. Defendant Lincoln is a wholly owned subsidiary of Defendant Memorial. Defendant Memorial is one of at least 15 entities held by Forever Enterprises, Inc. (“Forever”). Forever and at least seven other entities, including Defendant NPS, are owned by National Heritage Enterprises, Inc. (“NHE”). The owner of NHE, and the ultimate controlling person of the three Defendants, as defined in TEX. INS. CODE § 823.055(a), is the RBT Trust II. See Exhibit A, Organizational Chart of Entities under RBT Trust II. The beneficiaries of the RBT Trust II are Rhonda Cassity, Brent D. Cassity, and Tyler Cassity; the trustee is Howard A. Wittner.

13. Defendants Memorial, Lincoln, and NPS are engaged in the business of selling pre-need funeral benefit contracts secured by life insurance policies. Defendants are inextricably intertwined. Defendant NPS only buys insurance products from Defendants Lincoln and

Memorial; Defendants Lincoln and Memorial only sell insurance products through Defendant NPS. The three companies share office space, staff, officers, and attorneys.

14. Defendants were engaged in a single business: selling pre-need funeral benefit contracts secured by insurance policies. Defendant NPS contracted with funeral homes and other independent agents to market and execute pre-need funeral benefit contracts with individual consumers. An insurance policy would then be purchased from Defendant Memorial in Texas or Defendant Lincoln in other states. In some states, including Texas, the consumer was aware that payment of the pre-need funeral benefit contract would be secured through an insurance policy; in other states, such as Missouri, the consumer was not aware that an insurance policy had been issued.

15. Defendants are in hazardous financial condition and have failed to comply with certain applicable laws. Defendants each record receivables from each other and from affiliates within the same organization, and Defendants have not demonstrated that they or their affiliates have the means to pay those receivables. Defendant Lincoln reports an outstanding premium receivable owed by Defendant NPS; Defendant Memorial reports outstanding receivables from both NPS and Lincoln under a cost-sharing agreement. These amounts are all ninety days past due and must therefore be non-admitted.

16. As time passes, the past-due receivables grow and the financial condition of all three Defendants continues to deteriorate. Policyholders, creditors, and the public will be endangered by further delay.

17. Defendants Memorial and Lincoln were placed under Confidential Supervision by the Commissioner of Insurance on October 24, 2007. On April 8, Defendants Memorial, Lincoln, and NPS all consented to a Chapter 404 Order that formally designated the companies

as in hazardous financial condition. In the Chapter 404 Order, Defendant NPS agreed that it has engaged in the business of insurance in Texas.

F. Grounds for Order of Rehabilitation

18. The Commissioner of Insurance may file a petition for rehabilitation of insurers when one or more of the grounds in TEX. INS. CODE § 443.057 exist. Grounds exist for placing each of the three Defendants in Rehabilitation.

19. Defendants Memorial, Lincoln, and NPS have all consented to rehabilitation. Consent by ownership is a proper ground for rehabilitation under TEX. INS. CODE § 443.057(20).

20. Defendants Memorial, Lincoln, and NPS are currently under a Chapter 404 order, and the Commissioner has determined that it is not in the best interest of the Defendants' policyholders, creditors, or the public to proceed with the business of insurance because of the companies' hazardous financial condition. This is a proper ground for rehabilitation under TEX. INS. CODE § 443.057(8) and (9).

21. For the reasons set forth above, Defendants Memorial, Lincoln, and NPS should all be placed in Rehabilitation.

G. Appointment of Rehabilitator

22. Plaintiff requests that the Court appoint the Commissioner of Insurance as Rehabilitator in accordance with TEX. INS. CODE § 443.001(a), and grant the Rehabilitator all powers under the law of the State of Texas, including but not limited to TEX. INS. CODE §§ 443.101-105, and to take any other actions as he deems necessary. Pursuant to TEX. INS. CODE § 443.008(m), Plaintiff further requests that the Commissioner of Insurance and the Rehabilitator not be required to file a bond.

23. Plaintiff requests that the Court grant the Rehabilitator all the powers of the directors, officers, and managers of the insurer as provided for in TEX. INS. CODE § 443.102(b), and such other powers as may be necessary to accomplish or aid the rehabilitation as allowed under TEX. INS. CODE § 443.102(e).

24. Plaintiff requests that the Court issue an order granting the Rehabilitator the power to take any action that he deems necessary or appropriate to redeem or revitalize the Defendants as allowed by TEX. INS. CODE § 443.102(b), including the power to address issues and make applications to the court relating to surrenders of whole life insurance policies and the subsequent replacement with term policies, and the power to address issues and make applications to the court related to designation or redesignation of beneficiaries and/or owners of insurance policies issued by Lincoln or Memorial.

H. Stay of Proceedings

25. Pursuant to TEX. INS. CODE § 443.008(c) the commencement of this delinquency proceeding operates as a stay against the commencement or continuation of a judicial, administrative, or other action or proceeding or process against Defendants or its property. Plaintiff requests that this Court enter any additional stays under TEX. INS. CODE § 443.008(a) as may be necessary.

I. Injunctive Relief

26. Plaintiff requests that this Court issue an injunction as set forth herein pursuant to TEX. INS. CODE § 443.008(a) to prevent immediate and irreparable injury, loss and damage to the State of Texas and the general public.

27. Plaintiff would show that, unless restrained by this Court, Defendants Memorial, Lincoln, and NPS will continue to operate in a hazardous financial condition.

28. Plaintiff therefore requests that this Court enter an order enjoining Defendants Memorial, Lincoln, and NPS and their current and former officers, trustees and directors (including but not limited to Randall J. Singer, Randall K. Sutton, George Wise, Brent D. Cassity, L. Keith Hale, Hans H. Dahl, Nekol Province, Anne M. Chrun, James M. Crawford, and Howard A. Wittner), owners (including but not limited to Brent Cassity, Forever Enterprises, Inc., National Heritage Enterprises, Inc., and the RBT Trust II), affiliates (including but not limited to Wise & Associates, Inc., Forever Memorial, Inc., Forever Network, Inc., Forever Illinois, Inc., Forever Georgia, Inc., Forever Preneed Insurance Agency, In., Heritage Research, Inc., Lincoln Memorial Services, Inc., National Cemetery Management Company, and National Cemetery Merchandise, Inc.), trustees, underwriters, managers, employees, contractors, agents, servants, representatives, attorneys, adjusters and other persons or entities from conducting business on behalf of Defendants Memorial, Lincoln, and NPS, and from taking any action with respect to any Property belonging to Defendants Memorial, Lincoln, and NPS, except as directed by the Rehabilitator. Plaintiff further requests that this Court order Defendants Memorial, Lincoln, and NPS and their agents to cooperate with the Rehabilitator as required by TEX. INS. CODE § 443.010.

29. Plaintiff would further show that all financial institutions and depositories (including, but not limited to, Bremen Bank and Trust Company, any and all banks, savings and loan associations, trust companies, credit unions, welfare trusts, or any other financial or depository institutions in the possession and/or control of any Property belonging to Defendants Memorial, Lincoln, and NPS) and any other parties that receive actual notice should be restrained from taking unauthorized actions in connection with such property. Plaintiff therefore requests that this Court issue an order pursuant to TEX. INS. CODE § 443.008(a) enjoining any

parties from releasing, transferring, concealing, withdrawing, allowing to be withdrawn, or affecting, in any manner, any such property, as further described herein, or other asset to the credit of Defendants Memorial, Lincoln, and NPS on deposit with them or in their possession, except as authorized by the Rehabilitator or his designees, and that such parties be ordered to produce and deliver to the Rehabilitator or his designees such assets, money, deposits, or other items they have in their custody.

30. Plaintiff further requests that this Court enjoin any parties from obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by TEX. INS. CODE § 443.010(b). Plaintiff further requests that this Court order that the United States Postmaster deliver to the Rehabilitator any items addressed to Defendants Memorial, Lincoln, and NPS.

J. Conclusion and Prayer

For the reasons stated herein, the Plaintiff prays:

1. That the Court grant the application and relief requested;
2. That the Court enter an order appointing the Commissioner of Insurance as Rehabilitator of Defendants Memorial, Lincoln, and NPS, and that the Rehabilitator be given all powers under the statute and the common law of the State of Texas that authorize appointment as a Receiver or Rehabilitator;
3. That the Court enter a Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining Defendants Memorial, Lincoln, and NPS from conducting the business of insurance, except as directed or approved by the Rehabilitator, and restraining other persons from taking any actions against Defendants Memorial, Lincoln, and NPS or their property;

4. That the Office of the Attorney General be awarded all costs incurred in this proceeding, including but not limited to reasonable attorney's fees, investigative costs, and court costs pursuant to TEX. CIV. PROC. & REM. CODE §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, subject to the provisions of TEX. INS. CODE § 443.301;
5. That no bond be required of the Commissioner of Insurance or the Rehabilitator; and
6. For any and further relief, both general and specific, in law and in equity, to which the Plaintiff may be entitled.

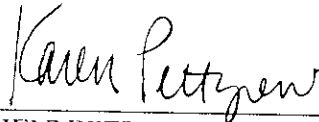
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX
Chief, Financial Litigation Division



JENNIFER S. JACKSON
Assistant Attorney General
State Bar No. 24060004
KAREN PETTIGREW
Assistant Attorney General
State Bar No. 01529500
Financial Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
(512) 475-4866 - Telephone
(512) 477-2348 - Telecopier
Jennifer.Jackson@oag.state.tx.us

**Attorneys for Plaintiff Texas Department of
Insurance**

Certificate of Service

I certify that a copy of *Plaintiff's First Amended Original Petition Requesting Appointment of Rehabilitator and Injunctive Relief* has been served by facsimile on:

Hector De Leon
De Leon, Boggins & Icenogle, P.C.
221 West 6th Street, Suite 1050
Austin, Texas 78701
Fax: (512) 482-8628
Voice: (512) 478-5308


KAREN PETTIGREW

AFFIDAVIT

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

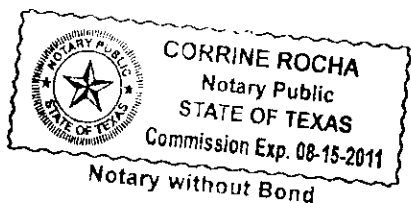
§

BEFORE ME, the undersigned authority, on this day personally appeared Angel Garrett, the Director of Rehabilitation and Liquidation Oversight for the Financial Program of the Texas Department of Insurance, who, after by me being duly sworn, upon oath deposed and said:

“I am over the age of eighteen, have never been convicted of a felony, and am competent to make this affidavit. I am of the Director of Rehabilitation and Liquidation Oversight for the Financial Program of the Texas Department of Insurance. I have carefully read the allegations contained in Section E of the foregoing *Plaintiff's First Amended Original Petition Requesting Appointment of Rehabilitator and Injunctive Relief*, and state that each and every one of the allegations of facts is true and correct, and is made on my personal knowledge.”

Angel Garrett
Angel Garrett

SUBSCRIBED AND SWORN to before me this the 14th day of May, 2008 to certify which, witness my hand and seal of office.

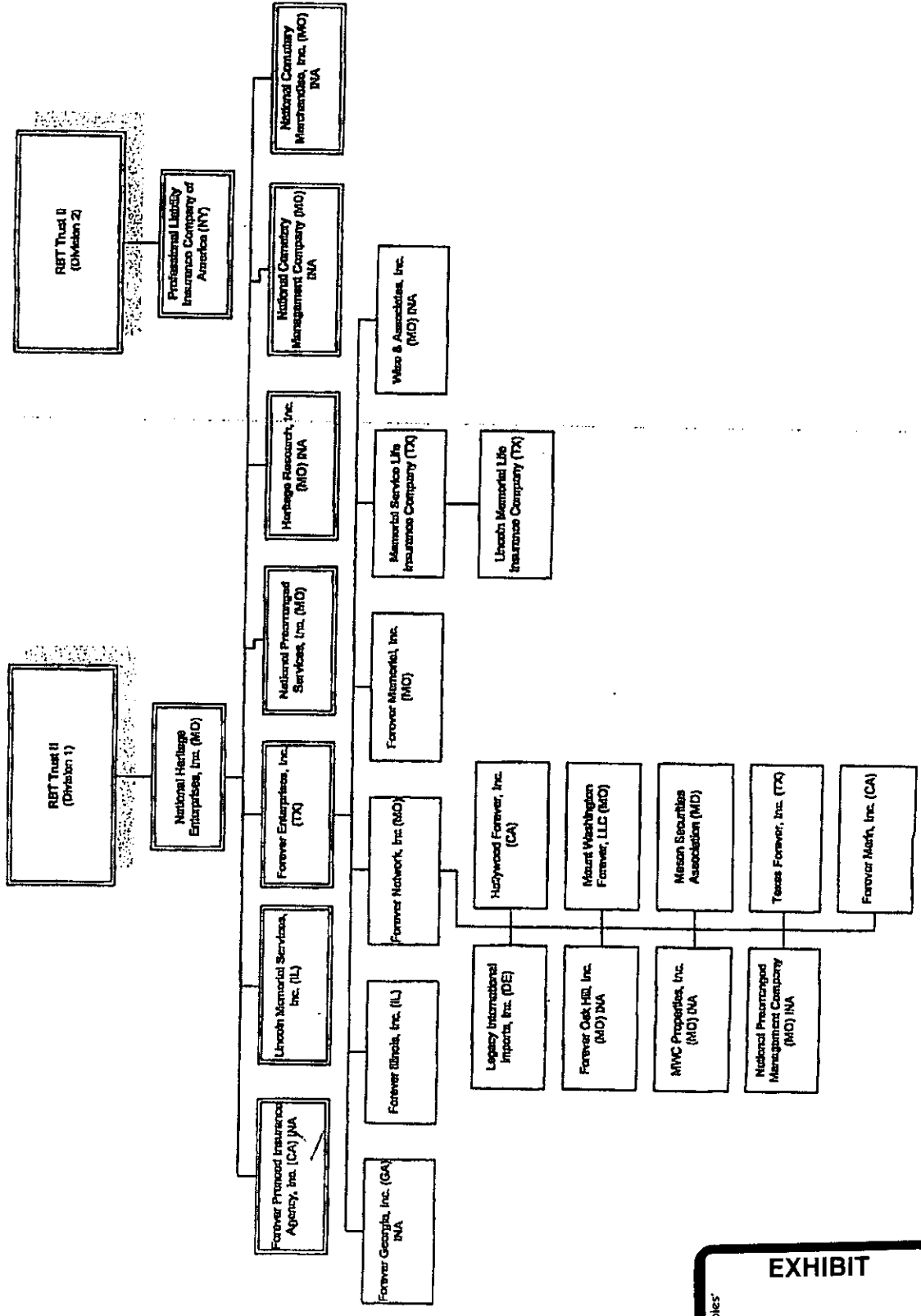


Corrine Rocha
Notary Public in and for the
State of Texas

12/11/08

RBT Trust II & Subsidiaries

Active and Inactive Entities 04/01/08



tabbles
EXHIBIT