NO. D-1-GV-08-000945

THE STATE OF TEXAS	§	**IN THE DISTRICT COURT OF**
Plaintiff	§	
	§	
VS.	§	
	§	
MEMORIAL SERVICE LIFE	§	**TRAVIS COUNTY, TEXAS**
INSURANCE COMPANY, LINCOLN	§	
MEMORIAL LIFE INSURANCE	§	
COMPANY, AND NATIONAL	§	
PREARRANGED SERVICES, INC.	§	
Defendants	§	**250th JUDICIAL DISTRICT**

OBJECTION TO APPLICATION FOR APPROVAL OF PLAN

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, **National Heritage Enterprises, Inc. and Forever Enterprises, Inc.** (collectively "Objectors") and file this, their Objection to the Application for Order of Liquidation and For Order Approving Plan of Liquidation ("Application"), and in support thereof state as follows:

I. BACKGROUND AND SUMMARY

National Heritage Enterprises, Inc. is a Missouri Corporation, and is the parent of Forever Enterprises, Inc. (f/k/a Lincoln Heritage Corporation), a Texas Corporation, and National Prearranged Services, Inc. ("NPS"). Forever Enterprises, Inc. ("Forever") has 100% ownership of Memorial Service Life Insurance Company ("Memorial"), which in turn owns 100% of Lincoln Memorial Life Insurance Company (f/k/a World Service Life Insurance Company of America) ("Lincoln").

The Objectors now respectfully submit that the SDR's proposed Liquidation Plan ("Plan") is deficient in several respects. First, the SDR's proposed Plan violates § 443.301 of the Insurer Receivership Act by creating illegal subclasses contrary to the

mandate that "no subclasses may be established within a class." Second, the SDR's proposed Plan further violates § 443.301 of the Insurer Receivership Act by attempting to adopt a procedure wherein policies within the same class are not paid substantially the same percentage of the amount of the respective claims. The above distinction is exacerbated by creating internally inconsistent positions with respect to ownership of the life policies and annuities subject to the proposed Plan.

II. ARGUMENT

As provided in § 443.301 of the Insurer Receivership Act, "subclasses may not be established within a class." The Statute further provides that "[e]very claim in each class shall be paid in full... and all claims within a class must be paid substantially the same percentage of the amount of the claim."

The Special Deputy Receiver's Liquidation Plan divides policies into two categories: Standard and Disputed. The SDR attempts to set the two classifications apart by asserting that the definitions are straight-forward in that the policies comprising the Standard Policy classification are annuities and life insurance policies. Conversely, the Plan seeks to portray the Disputed Policy classification as being comprised of something completely different. Though a concise definition for Disputed Policies is conspicuously excluded, the classification is substantially similar in that it is populated by annuities and life insurance policies. According to § 443.301(b), annuities and life insurance policies fall under Class 2.

Combined with the realization that both classifications are comprised of the same type of policies, the Plan further attempts to disguise the creation of subclasses by alleging that since a portion of the policies are associated with NPS, all automatically fall

under Class 5 of § 443.301(e) since NPS sold only Preneed Funeral Contracts. The SDR's creation of the Standard and Disputed categories confuses the distinction between benefits payable under the insurance polices and annuities issued by Lincoln and Memorial and the "growth" payable by NPS.

The rouse is furthered by the assertion that the Guaranty Associations will ultimately cover both Standard and Disputed Policies in the hope that the Class 2 classified policies would be associated with NPS and mistaken as Class 5 claims because the Plan states clearly on its face that Standard (Class 2) and Disputed (Class 2) claims will not be paid substantially the same. Standard Policies will be covered in-step with their respective enabling acts, while only the face amount of Disputed Policies will be recognized. No legitimate basis for such subclass distinction is enunciated in the Plan. The reason for the above is that no basis exists for distinguishing between "Standard" and "Disputed" policies. Ultimately, the Disputed designation subjects a policy to a higher level of scrutiny and lower maximum pay-out of claims.

The intent behind the creation of subclasses in the Plan, and the ambiguity created by such dichotomy is revealed by reading §§ 1.2.2., 5.2., 5.4.7., 8.3., and 9.4 of the Plan. § 1.2.2. quotes a recitation from the April 4, 2008 Commissioners Order to the effect NPS, Lincoln and Memorial "are inextricably intertwined," which goes to the unstated target of the offset verbiage at § 9.4. of the Plan, Forever Enterprises, Inc. and any affiliate of the National Heritage, Inc. Under §9.4., to the extent payees of any Participating Association" have alleged debts owed to NPS, Lincoln, or Memorial, the "Participating Association" may offset against benefits payable to such payee debts allegedly owed to NPS, Lincoln or Memorial. The only debts allegedly owed to NPS,

Lincoln or Memorial by any potential payee are those which may allegedly be owed by Forever, National Heritage, or an affiliate of either. The first difficulty with the above scheme is that the Policies are intended to serve a specific purpose; payment of a casket and funeral service for a consumer as valued at the time of purchase of a pre-need funeral services agreement from NPS. If there is a right of offset with respect to some unverified and unproved debt owed by a payee, then the consumer is the victim of such offset scheme. The second difficulty with the scheme contemplated by §§ 1.2.2. and 9.4. is that no mechanism is set out for resolving any conflict or dispute as to an alleged debt owed NPS, Lincoln or Memorial before the "Participating Association" avails itself of self-help in the form of an offset. Absent some dispute resolution procedure as to alleged debts owed by a "payee" to NPS, Lincoln or Memorial, the "payee" (ultimately the consumer) is denied due process of law as to benefits owed such "payee" which are offset by a "Participating Association."

The above offset procedure is confused by the verbiage of §§ 8.3. and 8.4. of the Plan. Under § 8.3., if NPS or some trust "was previously identified as an owner of a policy... the Insured [will] be treated as the owner instead of NPS or the Trust." Under § 8.4., if NPS or a Trust were "previously identified as a beneficiary of a policy... the participating associations [will] pay any benefits under a disputed policy directly to the respective funeral home.. in lieu of.. making payments to NPS or the Trust." The only Trust of which discussion has been had in this Receivership process and the discussions with TDI leading up to the agreement to the Rehabilitation Order are the trusts established through NPS, Forever or an affiliate of either to benefit the pre-need contract holders of NPS. If the above is the case, then only a funeral home which is an affiliate of

Forever or National Heritage is in the position of having claims not paid based on § 9.4. This further exacerbates the effect of the creation of subclasses in violation of § 443.301 of the Receivership Act.

The above intent is brought into focus by §5.4. of the Plan. Under §5.4. a term life "Disputed Policy" is one "originally issued by an Insolvent Insurer so long...as consideration continues to be paid by someone other than NPS." The entities "other than "NPS" which have paid premium on term life Policies are Forever or affiliates of Forever. §5.4 of the Plan goes on to say that the benefits under the term policies will not be paid since the original death benefits under the replaced whole life policies are being paid. The above appears to say that even "Disputed Policy" benefits are to be paid to the extent of the original whole life policy. If the above is correct, given the verbiage of §§8.3. and 8.4. of the Plan, §9.4. of the Plan is an unnecessary section which has no real effect other than to evidence an intent on the part of the SDR to create a subclass of Class 2 Claimants as a vehicle to continue to deny payment of consumers' death claims who chose to utilize the services of Forever or an affiliate of Forever. The above is nothing more than a mean-spirited effort to violate the provisions of §443.301 of the Receivership Act.

Accordingly, the Objectors request that the Liquidation Plan be modified to remove any violations § 443.301 of the Insurer Receivership Act.

III. CONCLUSION

WHEREFORE, the Objectors respectfully request that the Receivership Court sustain each of the objections as set forth above to the Liquidation Plan, and further grant

the Objectors such other and further relief to which they may be justly entitled, at law or in equity.

Respectfully submitted,

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ATTORNEYS FOR OBJECTORS
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of National Heritage Enterprises, Inc. and Forever Enterprises, Inc.'s ***OBJECTION TO APPLICATION FOR APPROVAL OF PLAN*** was served on the parties listed below on August 22, 2008 via e-mail.

_____
Hector De Leon

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