

NO. D-1-GV-08-000945

THE STATE OF TEXAS,  
Plaintiff

v.

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

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250<sup>th</sup> JUDICIAL DISTRICT

**APPLICATION TO AUTHORIZE HANDLING OF NATIONAL PREARRANGED  
SERVICES, INC. CONTRACTS WITH NO RELATED INSURANCE, RELATED  
PAYMENTS AND RECEIVERSHIP COURT CLAIMS  
[ORPHAN CONTRACT APPLICATION]**

**TO THE HONORABLE JUDGE OF THIS COURT:**

Donna J. Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. (the “SDR” and “Memorial Service,” “Lincoln Memorial,” and “NPS,” respectively), files this *Application to Authorize Handling of National Prearranged Services, Inc. Contracts with No Related Insurance, related payments and Receivership Court Claims* (the “Application”).

**I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED**

1.1 The SDR is currently collecting payments on preneed funeral contracts for which there is, or may be, no related Lincoln Memorial or Memorial Service insurance policy. In that regard, the SDR receives approximately \$60,000 every month from consumers on such contracts that are in “payment status”- preneed funeral contracts on which some form of regular payment is still required in order to maintain the benefit. Collectively, the set of preneed funeral contracts with no related Lincoln Memorial or Memorial Service insurance policies are commonly referred to, and are referred to throughout this Application, as the “Orphan Contracts”. Currently, there are approximately 5,400 Orphan Contracts that have no identified associated insurance policy at this time. The majority of the

Orphan Contracts are paid in full. However, there are approximately 1,800 Orphan Contracts in payment status. This Application sets out proposed terms for the handling of the payments on these Orphan Contracts in payment status and proposes to deem, as timely filed, proofs of claims relating to the Orphan Contracts.<sup>1</sup>

1.2 The Liquidation Plan sets out the parameters under which the Participating Associations have agreed to handle the payment of Covered Obligations. The SDR understands that certain Participating Associations are in the process of evaluating Orphan Contracts. There were in excess of 7,500 identified Orphan Contracts as of liquidation date. That number has been reduced to approximately 5,400 as of the filing of this Application. The investigation process, which is ongoing, involves collecting and evaluating documentation from estate records, funeral homes and other sources, and may not be completed for some time.

### **1.3 Proposed Actions**

1.3.1 All Orphan Contract payments received since the date of Liquidation, September 22, 2008, are currently held by the SDR and are not used in the administration of the estate. The funds are held in a separate bank account. By this Application, the SDR asks the Court to:

(1) authorize the SDR to escrow all preneed funeral contracts' payments received by the estates from the Liquidation date of September 22, 2008 forward that cannot be traced to a particular Covered Obligation ("Orphan Contract Payments");

(2) authorize the SDR to transfer escrowed funds as if there is an insurance policy under the terms of the Liquidation Plan in the event a Participating Association or any other affected insurance guaranty association ("IGA") provides coverage or the funds are determined to be related to a Covered Obligation;

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<sup>1</sup> Unless otherwise defined herein, all terms in this Application have the same definitions as set forth in the Court's *Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction* and the Liquidation Plan (including the Service and Early Access Agreement).

(3) authorize the SDR to either use escrowed funds to pay preneed funeral contracts' benefits upon the death of a contract holder as described more fully below, or return all escrowed funds to the contract holder or assignee upon the request of the contract holder;

(4) apply all interest earned by the escrowed funds to each orphan contract on a monthly basis and turnover the interest along with the account as described below;

(5) authorize the SDR to interplead any escrowed funds that are subject to conflicting claims; and

(6) authorize the SDR to apply to the Receivership Court for orders regarding the disposition of orphan contract accounts to a trustee or escrow company or other disposition at the close of the estate.

1.3.2 In summary, this Application requests that the Receivership Court deem that all Orphan Contract holders have a timely filed proof of claim with the receivership estates; that all payments made on Orphan Contracts after the Liquidation Date, September 22, 2008, be deemed to be secured claims and provides for the handling of the post liquidation payments.

1.3.3 The relief requested in this Application does not change or otherwise modify the provisions of the Liquidation Plan relating to a Participating Association's responsibility, if any, to an Orphan Contract.

## **II. JURISDICTION AND AUTHORITY**

### **2.1 Jurisdiction**

2.1.1 This Court has jurisdiction over the subject matter of this Application and of the parties affected herein pursuant to TEX. INS. CODE § 443.005.

2.1.2 The Court has exclusive jurisdiction over property of the estates pursuant to TEX. INS. CODE § 443.005(c) and personal jurisdiction over all parties affected herein because this is a civil proceeding arising under and related to a delinquency proceeding under Chapter 443 of the Texas Insurance Code (the "Code"), the transactions and occurrences which form the basis for the

proceeding occurred, in whole or in part, in this state, because some of the parties affected herein reside and/or conduct business in this state that is directly related to the subject matter of this proceeding, and because the parties affected herein fall under the Court's statutory personal jurisdiction set out in TEX. INS. CODE § 443.005(d) and TEX. CIV. PRAC. & REM. CODE Chapter 17. The exercise of jurisdiction over any non-resident parties affected herein comport to customary standards of fair play and substantial justice and complies with the protections of the Constitutions of the United States of America and the State of Texas.

## **2.2 Authority**

2.2.1 Memorial Service, Lincoln Memorial and NPS were placed in receivership for rehabilitation in this proceeding on May 14, 2008, and the Receiver designated Donna J. Garrett as SDR on May 15, 2008. On September 22, 2008, the court found that the companies were insolvent and ordered the Commissioner of Insurance, as Liquidator, to liquidate the companies. In accordance with TEX. INS. CODE § 443.154(a), the SDR has all powers of the Liquidator.

2.2.2 Under TEX. INS. CODE § 443.154(i), the SDR is authorized to encumber, transfer, abandon, or otherwise dispose of or deal with any property of the receivership estates upon terms and conditions that are fair and reasonable. TEX. INS. CODE § 443.154(y) provides that the SDR shall obtain court approval of such action if the property or claim has a value exceeding the lesser of \$1 million or ten percent (10%) of the general assets of the estates, and may otherwise request court approval at her discretion. Pursuant to TEX. INS. CODE § 443.154(x), the enumeration of the SDR's powers may not be construed to limit the right to take other necessary or appropriate actions that are not specifically enumerated.

2.2.3 This Court is further authorized to enter an order as requested in this Application pursuant to TEX. INS. CODE § 443.008, which provides that this Court may issue any order as necessary or appropriate to carry out the provisions of TEX. INS. CODE Chapter 443.

2.2.4 The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the *Amended Order of Reference to Master*.

### **III. BACKGROUND**

#### **3.1 Company Relationships and Contracts**

3.1.1 NPS was a Missouri-based funeral service company and an affiliate of Memorial Service and Lincoln Memorial. NPS acted as the general agent for both Memorial Service and Lincoln Memorial, in addition to other relationships with the companies, and sold, purchased or otherwise acquired preneed funeral contracts. At the date of receivership, NPS administered over 200,000 preneed funeral contracts. The preneed funeral contracts generally obligated NPS to pay a set amount to a funeral service provider, (i.e., a funeral home) for burial and funeral services. Each preneed funeral contract typically contained a schedule of goods and services that were to be provided by the funeral home and paid for by NPS.

3.1.2 At some point prior to receivership, NPS began to purchase life insurance policies from Lincoln Memorial and Memorial Service on the lives of the preneed funeral contract owners. The majority of the preneed funeral contracts administered by NPS had related insurance policies issued by Lincoln Memorial or Memorial Service. NPS was the assignee and/or beneficiary, either directly or through a bank trust, of many of the Lincoln Memorial and Memorial Service life insurance policies. NPS would either buy the policy directly or require the bank trustee of a preneed trust to acquire the policy. However, NPS failed to obtain a policy of insurance for all of its preneed contracts.

3.1.3 Lincoln Memorial and Memorial Service were ordered to cease writing new business (issuing life insurance policies) in a number of states starting in 2007 and concluding on March 17, 2008, when they were ordered to stop all new business by the Commissioner of Insurance of the State of Texas. The “No New Business” orders arose from regulatory findings that Lincoln Memorial and

Memorial Service had violated insurance laws and regulations and/or were insolvent or operating in a hazardous condition. As stated above, the companies were then placed in receivership on May 14, 2008.

### **3.2 Post Receivership Actions**

3.2.1 Lincoln Memorial and Memorial Service had approximately 203,000 policies and annuities in force at the time of receivership. In accordance with TEX. INS. CODE § 443.152(d), such policies of insurance or annuities or any portion thereof covered by a Participating Association continue in force as provided by applicable guaranty association law and the Liquidation Plan. Regardless of the relief sought in this Application, Orphan Contract owners must continue to make payments, if due, in order to maintain the preneed contract and the possibility of a Participating Association or any other affected insurance guaranty association (“IGA”) providing coverage or if the funds are determined to be related to a Covered Obligation.

3.2.2 The SDR has compiled an inventory of the Orphan Contracts, containing the name and state of the original contracting funeral home, name and state of the contract owner, contract identification number, issue date and contract amount. Attached, as Exhibit A, is the redacted list of this information sorted by funeral home resident state. In order to protect the privacy of the Orphan Contract owners, the contract owner names have been redacted in Exhibit A. This exhibit will be posted in its entirety for reference at [www.LincolnMemorialLife.com](http://www.LincolnMemorialLife.com) upon approval of this Application.

## **IV. PROPOSED HANDLING OF ORPHAN PRENEED CONTRACT PAYMENTS**

### **4.1 Overview**

4.1.1 TEX. INS. CODE § 443.151(b) provides that the rights and liabilities of the insurer, its creditors, policyholders, and other persons become fixed as of the date of the Liquidation Order, except as otherwise provided by Chapter 443 or otherwise fixed by the Court.

4.1.2 The Liquidation Plan does not provide for the disposition of Orphan Contract Payments in the event that there is no Covered Obligation related to the preneed funeral contract. While the rights of all claimants have been fixed as of the date of the Liquidation Order with respect to the payments made prior to that date, there has been no determination of the rights regarding any payments made after that date and not assigned to the Participating Association pursuant to Liquidation Plan, section 10.4. The SDR requests that this Court enter an order determining the rights to and disposition of Orphan Contract Payments received by the SDR after the Liquidation date of September 22, 2008 under TEX. INS. CODE §§ 443.151(b) and 443.154(y).

4.1.3 The SDR submits that consumers who continue to make Orphan Contract Payments to the SDR should not be penalized if there is no corresponding Participating Association or IGA coverage. Under the proposal described in this Application, the SDR will escrow the post liquidation Orphan Contract Payments. Upon approval, the SDR will treat claims relating to the funds, as described below, as secured claims.

4.1.4. Under the proposal described in this Application, there are three possible outcomes, provided that Orphan Contract owners continue making payments to the SDR pursuant to the preneed funeral contract:

- a) First, if a Participating Association or IGA provides coverage, any funds collected on the Orphan Contract post-liquidation would be paid to the affected Participating Association or IGA and all claims handled to the extent of the coverage provided by the Participating Association or IGA.
- b) Second, upon the death of an Orphan Contract owner for which a Participating Association or IGA does not provide coverage, the funds paid to the SDR by or on behalf of that particular Orphan Contract owner after September 22, 2008, plus interest accrued on those funds, will be paid to the funeral service provider in accordance with terms of the applicable Preneed Funeral Contract.

c) Finally, the Application provides that, pursuant to TEX. INS. CODE § 443.251 (a), all Orphan Contract owners shall be deemed, as a matter of law, to have timely filed a POC in the NPS estate in an amount deemed as the lower of the sum of all payments or the value of the Orphan Contract as of September 22, 2008. Further, the SDR proposes to deem all Orphan Contract owners as having filed secured claims for the sum of all orphan contract payments made after September 22, 2008. An Orphan Contract owner may request the return of the post Liquidation Date payment by submitting a request to the SDR and, upon approval by the SDR and Receivership Court, the escrowed post Liquidation Date Orphan Contract payments, plus interest earned on those particular post Liquidation Date payments up until the end of the month preceding the date of the request, shall be returned to the owner. Upon the approval and payment of such request, the applicable preneed funeral contract is terminated and there will be no obligation to any funeral service provider upon the death of the Orphan Contract owner, and no Participating Association or IGA would have any obligation to the former Orphan Contract owner or funeral service provider. Upon the return of the funds and termination of the Orphan Contract as described above, the Orphan Contract owner shall still have a deemed claim in the NPS estate for the lower of the sum of all payments prior to September 22, 2008 or the value of the Orphan Contract as of September 22, 2008.

4.2 The relief sought in this Application does not affect outstanding and unpaid claims arising prior to the Liquidation Date. A funeral service provider, next of kin or contract assignee may file a claim against the NPS estate for any preneed funeral contract benefits related to the death of a contract owner prior to September 22, 2008 and/or for any payments made on the orphan contract prior to September 22, 2008. Orphan Contract owners may file a claim against NPS estate for payments made prior to the Liquidation date of September 22, 2008. Such claims will be treated as a Class 5 creditor claim against the NPS receivership estate as provided in TEX. INS. CODE § 443.301

and the Liquidation Plan. Notwithstanding the request to “deem” certain claims, there is no bar on any claimant from filing any claim.

### **4.3 Impact on the Estate and its Creditors**

4.3.1 The SDR submits that the relief sought in this Application is in the best interest of the estates and their creditors. Creditors of Lincoln Memorial and Memorial Service would have no claim to the Orphan Contract Payments made to NPS. Continuing to accept the money without providing benefits exposes the estates to legal challenges. The SDR cannot legally assume the Orphan Contracts under TEX. INS. CODE § 443.013 (c) because the NPS estate is deeply insolvent. The NPS estate cannot afford to pay death claims pursuant to the preneed funeral contracts. Any such payments would violate TEX. INS. CODE § 443.301 and would prejudice other creditors. The SDR could reject the Orphan Contracts. However, this action could imperil the funeral homes’ legal obligations to provide services under the preneed funeral contracts.

### **4.4 Process**

- a) All Orphan Contract payments collected since September 22, 2008 to date and thereafter shall be placed into a separate escrow account. Funds held in the escrow account will not be subject to distribution under the provisions of TEX. INS. CODE Chapter 443 but instead would be held pursuant to provisions of the Court’s order on this Application and treated as secured claims.
- b) All Orphan Contract owners in payment status would be notified of the approval of Application and informed that failure to continue any payments required under their preneed funeral contract may result in its cancellation. The SDR shall provide the same notice to any Orphan Contract owners in payment status identified after the filing of this Application.
- c) Upon the death of an Orphan Contract owner in payment status occurring after September 22, 2008, the funds held in escrow plus interest accrued on those funds for that particular preneed funeral contract shall be paid to the funeral service provider, next of kin or contract assignee, pursuant to the terms of the applicable preneed funeral contract.

- d) The SDR will transfer to an IGA the applicable escrowed funds for a particular preneed funeral contract(s) if a Covered Obligation does exist consistent with the terms of the Liquidation Plan, or in the event an IGA otherwise agrees to provide coverage to an Orphan Contract owner or beneficiary.
- e) All Orphan Contract owners that have made Orphan Contract payments on or after September 22, 2008 shall be deemed to have timely file a proof of claim in the NPS estate claiming secured claim status for such payments. Any Orphan Contract owner may request the return of the post Liquidation Date Orphan Contract payments by submitting a request to the SDR and, upon approval by the SDR and Receivership Court, the escrowed Orphan Contract payments, plus interest accrued on those funds earned up until the end of the month preceding the date of the request, shall be returned to the claimant.
- f) The funeral service provider, next of kin or contract assignee may file a claim against the NPS estate for any preneed funeral contract benefits related to the death of an Orphan Contract owner prior to September 22, 2008. Such claims will be treated as a Class 5 creditor claims against the NPS receivership estate.
- g) The SDR shall provide reasonable notice of the Orphan Contract owners of the right to request the return of the funds paid in after September 22, 2008 and accrued interest and shall prepare guidelines relating to the return.

#### **4.5 No Assumption or Rejection**

4.5.1 TEX. INS. CODE §§ 443.013 and 443.154 (k) authorize the SDR to assume or reject any executory contract to which the insurer is a party. As described above, the SDR cannot and does not seek to assume the Orphan Contracts because NPS is deeply insolvent and an assumption would create a preference under TEX. INS. CODE § 443.301. However, the SDR does not seek to reject the Orphan Contracts out of a concern some funeral service providers will, notwithstanding their legal obligations to perform under the preneed funeral contracts, refuse to provide services. The contracting

funeral service providers remain obligated to provide services under applicable state law and the terms of the preneed funeral contracts. In turn, the funeral service providers may file a claim against the NPS receivership estate to the extent of any unpaid services and/or growth in the same manner as any other creditor.

## **V. CLAIMS FILING DEADLINE AND OTHER REQUIREMENTS**

5.1 Pursuant to TEX. INS. CODE § 443.251 (a), the SDR requests that all Orphan Contract holders shall be deemed, as a matter of law, to have timely file a POC with the SDR for all Orphan Contract Payments made on or after September 22, 2008.

5.2 Subsection (a) of TEX. INS. CODE § 443.251 provides that the Receivership Court, upon application by the SDR, may deem that a claim is timely filed for a class or group of persons, as follows:

..... The receivership court, only upon application of the liquidator, may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims. Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person or a class or group of persons, a proof of claim for the person, class, or group is deemed to have been filed for all purposes, except that the receivership court's waiver of proof of claim requirements does not impact guaranty association proof of claim filing requirements or coverage determinations to the extent the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

5.3 The relief sought in this section does not bar the Orphan Contract owners from filing their own POC for Orphan Contract payments or any other amounts.

## **VI. NO WAIVER OR CREATION OF RIGHTS**

6.1 Nothing in this Application or any related proceeding or filing shall affect, in any way, the immunities from suit of the Receiver, the SDR, NOLHGA and the affected Participating Associations and IGAs and shall not give rise to any right to sue or create any causes of action against SDR, NOLHGA and the affected Participating Associations and IGAs. The Application is not intended to and shall not create any third party beneficiaries to this Application, any prior Applications approved by the court in this case, and any subsequent orders thereto. This Application and any subsequent orders thereto are without prejudice to the SDR to seek additional or alternative

relief regarding preneed funeral contracts and/or policies that fall under the provisions of this Application.

## **VII. NOTICE**

7.1 The SDR has served this Application to all known parties at interest and all individuals and entities identified by the SDR in the Certificate of Service by email and, as noted, by mail or overnight delivery to certain state and federal agencies. In addition, the SDR has served the Application by mail to the address shown in the NPS books and records for funeral homes and contract owners identified on Exhibit A, the list of "Orphan Contracts."

## **VIII. OFFER OF PROOF AND VERIFICATION**

8.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017 (b) of Donna J. Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc.

## **IX. NOTICE OF ELECTRONIC SERVICE REQUIREMENT**

9.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices* entered on October 29, 2008, all pleadings filed in response to this Application or in regards to these estates shall be served by email on the undersigned counsel and all parties shown in the attached Certificate of Service.

## **X. CONCLUSION**

10.1 The relief proposed in this Application will allow Preneed Funeral Contract owners to continue their payments to the SDR, without suffering any prejudice in the event that there is no Covered Obligation and provide for the administration of claims relating to the Orphan Contracts. The proposed treatment of the Orphan Contract payments will enable the owners of Orphan Contracts to obtain the benefit of their post liquidation payments, without any detriment to the other creditors. The relief sought herein does not affect the insurance guaranty associations or any other creditors of the estates.

## **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Donna J. Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. respectfully requests that this Court enter an Order:

1. Approving the Application in all respects and giving the Special Deputy Receiver authority to execute any documents and take such actions necessary to effectuate the purposes of this Application;
2. Authorizing the SDR to escrow all Orphan Contract payments received by the NPS estate from September 22, 2008 forward that cannot be traced or related to a particular life insurance policy or policies;
3. Ordering, pursuant to TEX. INS. CODE § 443.251 (a), that all Orphan Contract owners shall be deemed, as a matter of law, to have timely filed a POC with the SDR for all Orphan Contract Payments made before September 22, 2008;
4. Authorizing the SDR to transfer escrowed funds to the Participating Association or IGA in the event that an Orphan Contract is determined to be a Covered Obligation, or the Participating Association or IGA otherwise provides coverage;
5. Upon the death of an Orphan Contract owner, authorizing the SDR to pay the funds held in escrow for that particular contract to the funeral service provider or the next of kin or contract assignee;
6. Finding that all Orphan Contract owners' claims to Orphan Contract payments received by the NPS estate from September 22, 2008 forward that cannot be traced or related to a particular life insurance policy or policies are deemed to be and shall be treated as "secured claims," as defined in TEX. INS. CODE § 443.260;
7. Authorizing the SDR to return all escrowed funds to the Orphan Contract owner or its assignee upon its request and approval of the Receivership Court;

8. Applying all interest earned by the escrowed funds to each Orphan Contract on a monthly basis and turning over the interest earned up until the end of the month preceding the date of the request along with the account as described herein if the Orphan Contract owner requests the return of escrowed funds;
9. Authorizing the SDR to provide reasonable notice to the Orphan Contract owners of the right to request the return of the funds paid in after September 22, 2008 and accrued interest, and to prepare guidelines relating to the return.
10. Authorizing the SDR to interplead any escrowed funds that are subject to conflicting claims;
11. Authorizing the SDR to apply to the Receivership Court for orders regarding the disposition of orphan contract accounts to a trustee or escrow company or other disposition at the close of the estate; and
12. Granting such other and further relief for which the Special Deputy Receiver shows herself justly entitled.

Respectfully submitted,

/s/ Christopher Fuller  
Christopher Fuller  
Texas Bar No. 07515500  
4612 Ridge Oak Drive  
Austin, Texas 78731  
Tel. (512) 470-9544  
Fax. (512) 374-0957  
cfuller@fullerlaw.org  
Attorney for Donna J. Garrett  
Special Deputy Receiver of  
Memorial Service Life Insurance Company,  
Lincoln Memorial Life Insurance Company  
and National Prearranged Services, Inc.

## CERTIFICATE OF SERVICE

I certify that on January 5, 2010, a true and correct copy of this Application was served pursuant to the *Order of Liquidation, Order Approving Liquidation Plan and Permanent Injunction, the Amended Order of Reference*, the Court's order requiring electronic service, the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by electronic mail, except as specifically noted.

*Via Email:* [Leanne.Layne@tdi.state.tx.us](mailto:Leanne.Layne@tdi.state.tx.us)

Leanne Layne  
Texas Department of Insurance  
Liquidation Oversight - 305-1D  
PO Box 149104  
Austin, TX 78714-9104

*Via Email:* [Rachel.Giani@tdi.state.tx.us](mailto:Rachel.Giani@tdi.state.tx.us)

Rachel Giani  
Texas Department of Insurance  
Financial Counsel/Legal Services - 821  
PO Box 149104  
Austin, Texas 78714-9104

*Via Email:* [James.Kennedy@tdi.state.tx.us](mailto:James.Kennedy@tdi.state.tx.us)

James Kennedy  
Texas Department of Insurance  
872- Legal Services/Liquidation Allocated  
110-1A  
PO Box 149104  
Austin, Texas 78714-9104

*Via Email:* [Kathy.Gartner@tdi.state.tx.us](mailto:Kathy.Gartner@tdi.state.tx.us)

Kathy Gartner  
Texas Department of Insurance  
582 - Rehabilitation & Liquidation Oversight  
305-1C  
PO Box 149104  
Austin, Texas 78714-9104

*Via Email:* [Jean.Sustaita@tdi.state.tx.us](mailto:Jean.Sustaita@tdi.state.tx.us)

Jean Sustaita  
Texas Department of Insurance  
582 Liquidation Oversight  
PO Box 149104  
Austin, Texas 78714-9104

*Via Email:* [SNewberg@banking.state.tx.us](mailto:SNewberg@banking.state.tx.us)

Stephanie Newberg  
Texas Department of Banking

*Via Email:* [jrixen@rixenlaw.com](mailto:jrixen@rixenlaw.com)

Jackie Rixen  
The Law Office of Jacqueline Rixen  
8500 N. Mopac, Suite 605  
Austin, Texas 78759  
Counsel to TLAHHSIGA

*Via Email:* [jglover@rothgerber.com](mailto:jglover@rothgerber.com)

Joel A. Glover  
Rothgerber, Johnson & Lyons LLP  
One Tabor Center, Suite 3000  
1200 Seventeenth Street  
Denver, CO 80202  
Counsel to NOLHGA Task Force

*Via Email:* [foloughlin@rothgerber.com](mailto:foloughlin@rothgerber.com)

Frank O'Loughlin  
Rothgerber, Johnson & Lyons LLP  
One Tabor Center, Suite 3000  
1200 Seventeenth Street  
Denver, CO 80202  
Counsel to NOLHGA Task Force

*Via Email:* [coliver@rothgerber.com](mailto:coliver@rothgerber.com)

Cindy C. Oliver  
Rothgerber, Johnson & Lyons LLP  
One Tabor Center, Suite 3000  
1200 Seventeenth Street  
Denver, CO 80202  
Counsel to NOLHGA Task Force

*Via Email:* [karen.pettigrew@oag.state.tx.us](mailto:karen.pettigrew@oag.state.tx.us)  
Karen Pettigrew  
Ass't. Attorney General  
PO Box 12548  
Austin, TX 78711-2548

*Via Email:* [hdeleon@dwlawtx.com](mailto:hdeleon@dwlawtx.com)  
Hector DeLeon  
De Leon & Washburn, PC  
221 W. 6<sup>th</sup> Street, Suite 1050  
Austin, Texas 78701  
Counsel for National Heritage Enterprises, Inc.  
and Forever Enterprises, Inc.

*Via Email:* [mkeller@winstead.com](mailto:mkeller@winstead.com)  
Mary Keller  
Winstead PC  
401 Congress Avenue, Ste. 2100  
Austin, TX 78701  
Counsel for Northstar Reinsurance

*Via Email:* [hskelton@skeltonwoody.com](mailto:hskelton@skeltonwoody.com) &  
[ekaye@skeltonwoody.com](mailto:ekaye@skeltonwoody.com)  
J. Hampton Skelton  
Edward F. Kaye  
Skelton & Woody  
PO Box 1609  
Austin, TX 78767-1609  
Counsel for Northstar Reinsurance

*Via Email:* [kyelkin@gardere.com](mailto:kyelkin@gardere.com)  
Kimberly Yelkin  
Gardere Wynne Sewell  
600 Congress Ave. Suite 3000  
Austin, TX 78701-2978  
Counsel for Quanta Reinsurance

*Via Email:* [sharon.euler@ago.mo.gov](mailto:sharon.euler@ago.mo.gov)  
Sharon K. Euler  
Assistant Attorney General  
Fletcher Daniels State Office Bldg.  
615 E 13<sup>th</sup> Street Suite 401  
Kansas City MO 64112

*Via Email:* [jennifer.jackson@oag.state.tx.us](mailto:jennifer.jackson@oag.state.tx.us)  
Jennifer Jackson  
Ass't. Attorney General  
PO Box 12548  
Austin, TX 78711-2548

*Via Email:*  
[Douglas.schmidt@huschblackwell.com](mailto:Douglas.schmidt@huschblackwell.com)  
Douglas Schmidt  
Husch Blackwell & Sanders  
4801 Main Street #1000  
Kansas City, MO 64112

*Via Email:* [Marybeth.wilkinson@lovells.com](mailto:Marybeth.wilkinson@lovells.com)  
MaryBeth Wilkinson  
Lovells, LLP  
330 N. Wabash Avenue  
Suite 1900  
Chicago, IL 60611  
Counsel for Hannover Life Re

*Via Email:* [eric.haab@lovells.com](mailto:eric.haab@lovells.com) &  
[kay.wilde@lovells.com](mailto:kay.wilde@lovells.com)  
Eric Haab  
Kay Wilde  
Lovells, LLP  
330 N. Wabash Avenue  
Suite 1900  
Chicago, IL 60611  
Counsel for Hannover Life Re

*Via Email:* [jwerner@rmqlawfirm.com](mailto:jwerner@rmqlawfirm.com)  
John Werner  
Reaud, Morgan & Quinn LLP  
801 Laurel Street  
PO Box 26005  
Beaumont, TX 77720-6005  
Counsel for Broussard's Mortuary, Inc.

*Via First Class Mail*  
Internal Revenue Service  
Special Procedures Branch  
P.O. Box 250  
300 East 8<sup>th</sup> Street, Suite 352  
Mail Stop 5022AUS  
Austin, TX 78701

*Via Email:* [phobbs@mcginnislaw.com](mailto:phobbs@mcginnislaw.com) &  
[lyork@mcginnislaw.com](mailto:lyork@mcginnislaw.com)  
Penny Hobbs  
Larry York  
McGinnis, Lochridge & Kilgore  
600 Congress Avenue #2100  
Austin, TX 78701  
Counsel for Henneke Funeral Home

*Via Email:* [bmcculley@mcculleymccluer.com](mailto:bmcculley@mcculleymccluer.com)  
R. Bryant McCulley  
McCulley McCluer, PLLC  
One Independent Drive, Suite 3201  
Jacksonville, FL 32202  
Interim Class Counsel for James & Gahr

*Via Email:* [smccluer@mcculleymccluer.com](mailto:smccluer@mcculleymccluer.com)  
Stuart H. McCluer  
McCulley McCluer, PLLC  
1109 Van Buren Avenue  
Oxford, MS 38655  
Interim Class Counsel for James & Gahr

*Via Email:* [mhassan@butlerrubin.com](mailto:mhassan@butlerrubin.com)  
Michael R. Hassan  
Butler Rubin Saltarelli & Boyd, LLP  
70 West Madison Street, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
Counsel for Northstar Reinsurance

*Via Email:* [mark.bienz@ge.com](mailto:mark.bienz@ge.com)  
Mark Bienz  
Employer Re  
5700 Broadmoor Street, Suite 1000  
Mission, Kansas 66202

*Via Email:*  
[barb.waymire@americanenterprise.com](mailto:barb.waymire@americanenterprise.com)  
Barb Waymire  
American Enterprise Group, Inc.  
601 6th Avenue  
Des Moines IA 50309  
Counsel for World

*Via Email:* [mponder@cbmplaw.com](mailto:mponder@cbmplaw.com)  
J. Michael Ponder  
Cook, Barkett, Maguire & Ponder, L.C.  
715 N. Clark  
P.O. Box 1180  
Cape Girardeau, MO 63702-1180  
Interim Class Counsel for James & Gahr

*Via Email:* [tbutler@wdkclaw.com](mailto:tbutler@wdkclaw.com)  
Thomas J. Butler  
Whatley Drake & Kallas, LLC  
2001 Park Place North, Suite 1000  
Birmingham, AL 35203  
Interim Class Counsel for James & Gahr

*Via Email:* [jwhatley@wdkclaw.com](mailto:jwhatley@wdkclaw.com)  
Joe R. Whatley  
Whatley Drake & Kallas, LLC  
1540 Broadway, 37<sup>th</sup> Floor  
New York, NY 10036  
Interim Class Counsel for James & Gahr

*Via Email:* [charles@elpolaw.com](mailto:charles@elpolaw.com)  
Charles E. English  
English Lucas Priest & Owsley, LLP  
1101 College Street  
P.O. Box 770  
Bowling Green, Kentucky 42102-0770  
Counsel for Hardy & Son Funeral Homes

*Via Email:* [kprettyman@woodsaitken.com](mailto:kprettyman@woodsaitken.com)  
Keith A. Prettyman  
Woods & Aitken, LLC  
301 South 13th St. #500  
Lincoln NE 68508  
Counsel for Assurity

*Via Email:* [brentea@rentealaw.com](mailto:brentea@rentealaw.com)  
Bogdan Rentea  
Bogdan Rentea & Associates  
1002 Rio Grande  
Austin, Texas 78701  
Counsel for North America Life Ins. Co.

*Via Email:* [donottojr@yahoo.com](mailto:donottojr@yahoo.com)

Don Otto

Executive Director and General Counsel

Missouri Funeral Directors & Embalmers  
Association

PO Box 104688

Jefferson City, MO 65110

*Via Email:* [k.dekoven@argopartners.net](mailto:k.dekoven@argopartners.net)

Kenneth A. De Koven, Esq.

Argo Partners

12 West 37th Street, 9th Floor

New York, New York 10018

/s/ Christopher Fuller

Christopher Fuller

**SPECIAL DEPUTY RECEIVER'S VERIFICATION AND CERTIFICATION PURSUANT TO  
TEX. INS.CODE ANN. § 443.017(b)**

**AFFIDAVIT OF DONNA J. GARRETT**

State of Texas  
County of Travis

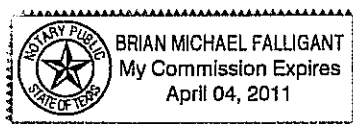
BEFORE ME, the undersigned authority appeared Donna J. Garrett, who after being by me duly sworn, stated the following under oath:

1. My name is Donna J. Garrett. I am competent to make this affidavit.
2. I am the Special Deputy Receiver of Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc. (the "SDR" and "Lincoln-Memorial-NPS," respectively). I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE ANN. § 443.017, are either true and correct copies of records of the insurer and were received from the custody of the insurer or found among its effects or were created by and filed with the Receiver's office in connection with the receivership of these delinquent insurers, and are held by the Special Deputy Receiver in her official capacity.
3. I have read the foregoing Application and the facts stated therein are true and correct based on my personal knowledge, my review of estates' records and my consultation with my staff and sub-contractors.
4. Further affiant sayeth not.

By:   
Donna J. Garrett

**SUBSCRIBED AND SWORN TO BEFORE ME** on January 5, 2010, by Donna J. Garrett., Special Deputy Receiver of Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc.

Notary Public



  
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## APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the Special Deputy Receiver's Application is set for submission before the Special Master, Tom Collins, on January 18, 2010.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by email by such date on:
  - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita at [Jean.Sustaita@tdi.state.tx.us](mailto:Jean.Sustaita@tdi.state.tx.us);
  - (b) The undersigned counsel, Christopher Fuller at [cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org); and
  - (c) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512)463-6450] to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/s/ Christopher Fuller  
Christopher Fuller