

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	
	§	
MEMORIAL SERVICE LIFE INSURANCE	§	TRAVIS COUNTY, TEXAS
COMPANY, LINCOLN MEMORIAL LIFE	§	
INSURANCE COMPANY, AND	§	
NATIONAL PREARRANGED SERVICES,	§	
INC.	§	
Defendants.	§	250 <sup>TH</sup> JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S RESPONSE IN OPPOSITION TO  
MOTION TO LIFT STAY BY NORTHSTAR REINSURANCE IRELAND LIMITED**

TO THE HONORABLE JUDGE OF THE COURT:

Donna Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. (the “SDR” and “Lincoln”, “Memorial”, and “NPS” respectively), files this *Response in Opposition to Motion to Lift Stay by Northstar Reinsurance Ireland Limited*.

**I. INTRODUCTION AND SUMMARY**

1.1 The SDR objects to the motion of Northstar Reinsurance Ireland Limited (“Northstar”), and urges that it be denied. Northstar puts the cart before the horse - its motion is premised on the claim that the SDR has no equity in an approximately \$38,000,000 trust account securing Lincoln insurance policies. However, the books and records of the receivership estate establish that the trust account is “property of the estate” as that term is defined in the Insurer Receivership Act, TEX. INS. CODE Ch. 443. Northstar seeks to lift the stay so that it can arbitrate its claim that it owns these trust assets. On its face, and as more fully described below, the Motion presents contested issues of fact and law that cannot be resolved in a summary fashion, thereby

barring the lifting of the stay.

1.2 Northstar seeks extraordinary relief from the Court, but it ignores a fundamental element of that relief. The reinsurer seeks to lift the automatic stay so it can arbitrate its claim to estate assets. Legally, Northstar fails to meet the express statutory requirements of the Insurer Receivership Act for the relief it seeks. Factually, Northstar does not meet the very high burden of proof imposed by the Texas Legislature that it present “**clear and convincing evidence**” on the merits of its motion. Indeed, the factual and legal basis of its claimed right to convert estate property is suspect.

1.3 In addition, Northstar’s motion is silent on the Permanent Injunction barring claims against Lincoln in any forum outside the Receivership proceeding. Accordingly, even if Northstar was entitled to relief from the stay (which it is not), it still cannot compel the SDR to arbitrate the matters referenced in its Motion in the face of the Permanent Injunction.

1.4 Finally, the relief that Northstar requests would result in the preferential treatment of one creditor among the many creditors of this estate, and an ensuing avalanche of litigation. This Court should deny Northstar’s motion in order to avoid preferences and legal expenses that will dissipate the assets of this insolvent estate.

## II. BACKGROUND

2.1 The legal and factual issues underlying the dispute between Movant and the SDR are complex. Effective January 1, 2006, Lincoln and Northstar entered into a Reinsurance Agreement, under which Northstar agreed to reinsure, on a 90% coinsurance basis, certain life insurance policies written by Lincoln. As required under the Reinsurance Agreement, Lincoln paid Northstar 90% of the reinsurance premiums, in exchange for which Northstar agreed to reimburse Lincoln for 90% of all of the losses incurred by Lincoln under the reinsured policies. Pursuant to the terms of the

Reinsurance Agreement, Northstar's obligation to reimburse Lincoln 90% of the losses was secured by a trust.

2.2 On November 27, 2007, Northstar demanded arbitration against Lincoln under the Reinsurance Contract alleging, among other things, that the monthly reports submitted by Lincoln for the months ending September 30, 2007 and October 31, 2007 were inaccurate. See **Exhibit A**. Shortly thereafter, Northstar alleged that the Reinsurance Agreement had been fraudulently induced by Lincoln, and demanded that the Reinsurance Agreement be rescinded. See **Exhibit B**, Northstar Motion at ¶ 5.

2.3 On March 17, 2008, while the arbitration was pending, Northstar filed an Original Petition and Application for a Temporary Restraining Order and Temporary Injunction in the District Court for the 419<sup>th</sup> Judicial District in Travis County, styled *Northstar Reinsurance Ireland, Limited v. Lincoln Memorial Life Insurance Company*, Cause No. D-1-08-GN-000900 (the "TRO App.," **Exhibit C**). In that Application, Northstar sought to enjoin Lincoln from drawing down on the trust account, alleging "Northstar believes that Lincoln is financially distressed and might be placed into an insolvency proceeding before Northstar's arbitrable claims can be adjudicated." See **Exhibit C**, TRO App. at ¶ 33. Northstar further alleged that Lincoln's capital had decreased to \$6.9 million, and that "since August of 2007 Lincoln has had difficulty in making timely payments and providing timely accounting reports to Northstar under the Agreement." *Id.* at ¶ 33.

2.4 Northstar's TRO Application was resolved by a Rule 11 Agreement read into the record, under which Lincoln agreed not to make any withdrawals from the trust unless such withdrawals were in accord with the terms of the Reinsurance Agreement and the trust agreement. Because Lincoln was under a confidential order of supervision, the Texas Department of Insurance also agreed to the terms of the Rule 11 Agreement. See **Exhibit D**.

2.5 On May 14, 2008, this Court entered its *Agreed Order Appointing Rehabilitator and Permanent Injunction* (the “Rehabilitation Order”), placing Lincoln, Memorial and NPS into rehabilitation and appointing the Commissioner of Insurance as Rehabilitator under TEX. INS. CODE §443.101(a). The Rehabilitator appointed the SDR effective May 15, 2008.

2.6 On September 22, 2008, this Court entered its *Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction*.

2.7 On or about October 16, 2008, Northstar filed its *Motion to Lift Stay*, requesting that this Court lift the Automatic Stay to allow Northstar to arbitrate its claims to certain trust assets securing its reinsurance obligations to Lincoln and Memorial. 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* entered on October 24, 2008.

### III. NORTHSTAR’S CONTENTIONS

3.1 Northstar would have the Court believe that its entitlement to the relief it seeks in the arbitration is so clear and unambiguous, and the equities so clearly in its favor, that “the burden on the estate to arbitrate this issue is small. In addition, any expense that the estate may incur to prepare its response to the motion [for summary judgment in the arbitration] is small.” *Northstar Motion* at ¶ 19. Yet Northstar seeks nothing less than the complete forfeiture by the estate of over \$38 million in reinsurance protection, for which Lincoln has paid in excess of \$26 million. Given what is truly at stake, Northstar’s assessment of the amount of time, energy and resources that the estate is likely to devote to preventing such an outcome is wildly below the mark.

3.2 In an effort to minimize the impact of its motion to lift the stay, Northstar claims that its focus is simply on the “Termination issue” and has nothing whatsoever to do with the fraud and

rescission claims that would presumably remain to be arbitrated. However, the “Termination issue” cannot be so neatly severed from the arbitration in which it arises; even less can the “Termination issue” be adjudicated in a vacuum divorced from the reality of Northstar’s other claims.

3.3 First, Northstar’s purported termination of the Reinsurance Agreement was not valid. As noted above, not only did Northstar’s initial arbitration demand put into issue the very accuracy of Lincoln’s monthly statements – thereby putting before the panel the very question of how much Northstar might be owed by Lincoln – but by February 2, 2008, before the January accounting was even due, Northstar admitted that it intended to rescind the Reinsurance Agreement *ab initio*. There is a significant body of case law, in Texas and elsewhere, that holds that where one party repudiates the contract, the other party is then relieved of the obligation to perform until there is a judicial determination of the controversy. *See, e.g., Ridge Oil Co. v. Guinn Investments, Inc.*, 148 S.W.3d 143, 157 (Tex. 2004). As the Fifth Circuit has stated, for a party to complain about the other party’s non-performance after “essentially demanding rescission and seeking refund of payment, is disingenuous,” as it is a “fundamental rule of contract law . . . that whenever a party to a contract repudiates the other party is excused from further performance.” *McNair v. City of Cedar Park*, 993 F.2d 1217, 1221 (5<sup>th</sup> Cir. 1993).

3.4 Northstar’s claim that the panel would simply rubber-stamp its attempted termination for failure to pay amounts accruing during the pendency of the arbitration - that Northstar itself commenced - is further undercut by the fact that the Agreement itself contains several provisions that address the very situation where a contractual payment is not made when due. First, the Agreement explicitly excuses non-payments arising out of misunderstandings or oversights and states:

If any failure to pay amounts due or to perform any other act required by this Agreement is *unintentional and caused by misunderstanding or oversight*, the Ceding Company and the Reinsurer will adjust the situation to what it would have been had the misunderstanding or oversight not occurred.

Agreement, Article I, ¶ 11 (emphasis added). Here, the fact that the validity of the entire contract was in dispute before an arbitration panel certainly gives rise to a legitimate “misunderstanding” over whether Lincoln was required to make the subject payment under the time frames imposed by the Agreement that Northstar was alleging was no longer in operation.

3.5 The panel will also have grounds to conclude that any non-payment by Lincoln was “unintentional,” which also would trigger the remedial provisions in Paragraph 11 of Article I. Lincoln was under Confidential Supervision as of October 24, 2007. Further, a Chapter 404 Order by Consent was entered on April 8, 2008 which prohibited Lincoln from withdrawing any funds or transferring any assets without the prior written approval of the Commissioner’s representative. *April 8, 2008 Order*, at 3. Thus, because Lincoln was prohibited from disposing of assets absent prior written approval, and since the company was clearly in distress during the subject time period, any failure to pay Northstar, even if such was required notwithstanding Northstar’s repudiation of the contract, was clearly “unintentional” and the situation should be adjusted to what it would have been had the misunderstanding or oversight not occurred.

3.6 Under these circumstances, Northstar’s efforts to convert the trust assets are barred. Indeed, the Reinsurance Agreement contemplated such a situation, and provided for a default rate of interest to accrue when an account remained unpaid. Article VI, ¶ 7 expressly provides for the assessment of a “Delayed Payment Rate” of interest to be assessed when any Monthly Accounting payment is delayed more than 15 days after its is due – i.e. 35 days after the end of the Accounting Period. Moreover, under Article VI, ¶ 8, it was expressly envisioned that payments might be delayed for “multiple accounting periods,” which by definition would mean that the delayed payment would already have triggered the termination provision invoked by Northstar. In addition, the Agreement also contains a general “errors and omissions” clause which could excuse a delayed payment. This

clause provides:

Inadvertent or accidental delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either party from any liability which would have attached had such delay, error or omission not occurred, provided always that such delay, error or omission is not prejudicial to the other party, is capable of being rectified, and is in fact rectified as soon as possible after discovery. In no circumstances shall the liability of the Reinsurer under this Agreement exceed the limits specified herein, nor be extended to cover any risks, perils, or classes of insurance or reinsurance generally or specifically excluded from cover hereunder.

3.7 Moreover, the facts here also disclose that Northstar appears to have actively attempted to manipulate Lincoln's alleged breach, by studiously evading any disclosure that might have alerted Lincoln as to Northstar's intent to preempt its own arbitration and force Lincoln into forfeit. First, Northstar failed to make any mention of the allegedly delinquent payment in its Position Statement filed with the arbitration panel on April 21, 2008, even though that document was intended to set before the arbitration panel all of Northstar's claims regarding Lincoln's alleged breaches of the Reinsurance Agreement. That glaring omission was underscored exactly one week later at the Organizational Meeting before the arbitration panel, when Northstar provided what can only be described as deliberately misleading responses to the arbitration panel regarding the non-payment issue. First, in response to the umpire's inquiry as to the parties' intentions regarding possible motion practice, Northstar informed the panel only that it intended to bring a motion addressed to preserving the security, carefully avoiding any mention of their plans to file a motion for summary judgment on the termination issue four days later. This lack of candor was compounded when Arbitrator Tobin directly asked if the parties were current in complying with the contract. Instead of candidly informing the panel that Northstar believed the contract had already been terminated, Northstar simply affirmed its own compliance with the contract. *Org. Meeting Tr., April 28, 2008* at 33:21-34:11.

3.8 Northstar candidly admits its goal-to seize the trust assets paid by Lincoln while avoiding the risk of payment on the reinsurance for Lincoln. It is exactly this type of dispute that the Receivership Court should consider given the amount at issue and the legal and factual complexity of the controversy. The Texas Legislature enacted the Insurer Receivership Act to insure that such decisions vest with the courts.

#### IV. STATUTORY REQUIREMENTS GOVERNING THE STAY

4.1 TEX. INS. CODE §443.008(c) provides that the commencement of a delinquency proceeding operates as a stay of the commencement or continuation of any action or proceeding against the insurer, with certain exceptions. Northstar has not alleged that any of these exceptions exist, and concedes that the automatic stay prevents it from prosecuting the Lawsuit.

4.2 TEX. INS. CODE §443.008 (h) allows a “party in interest”, as defined in TEX. INS. CODE §443.004, to request relief from the stay. However, Northstar is not entitled to the relief it seeks under the plain terms of the Insurer Receivership Act. The statute provides for very limited relief from these vitally important protections. In order to obtain relief from the stay, Northstar must comply with the statutory requirements, as follows:

##### § 443.008. Injunctions and Orders

.....

- (h) On request of a party in interest and after notice and any hearing the receivership court determines is appropriate, the receivership court may grant relief from the stay of Subsection (c) or (d), such as by terminating, annulling, modifying, or conditioning the stay:
  - (1) for cause as described by Subsection (i); or
  - (2) with respect to a stay of an act against property under Subsection (c) if:
    - (A) the insurer does not have equity in the property; and
    - (B) the property is not necessary to an effective rehabilitation plan.
- (i) For purposes of Subsection (h), “cause” includes the receiver canceling a policy, surety bond, or surety undertaking if the creditor is entitled, by contract or by law, to require the insured or the principal to have a policy, surety bond, or surety undertaking and the insured or the principal fails to obtain a replacement policy, surety bond, or surety

undertaking not later than the later of

(1) the 30th day after the date the receiver cancels the policy, surety bond, or surety undertaking; or

(2) the time permitted by contract or law.

4.3 Northstar seeks relief under both subsection (h)(1) and (h) (2), claiming that it has established “cause” under subsection (h)(1), and that the estate has no equity in the subject property under subsection (h)(2). The SDR would show that Northstar fails both tests under subsection (h).

4.4 Northstar has not demonstrated “cause” as defined in § 443.008(i) which is a predicate for seeking relief under subsection (h)(1). The conditions that give rise to “cause” are specifically defined, and are restricted to situations where: (1) a policy, surety bond, or surety undertaking is cancelled by the Receiver, (2) a creditor is entitled to require the insured or the principal to have a policy, surety bond, or surety undertaking, and (3) the insured or the principal fails to obtain a replacement policy, surety bond, or surety undertaking. This provision is simply not applicable to this situation. Northstar argues, without authority, that this Court should look to bankruptcy case law to determine the meaning of the term “cause”. The plain meaning of the term in this context is clearly defined in the Insurer Receivership Act, and Northstar does not contend that it is ambiguous. Even if there were some question as the interpretation of this term, bankruptcy case law would not be applicable. The Insurer Receivership Act and the United States Bankruptcy Code take very different approaches with respect to the lifting of stays, and the Insurer Receivership Act deliberately does not mirror the United States Bankruptcy Code in this regard. The standard for relief from the automatic stay is significantly different here, and bankruptcy cases are not instructive under these facts.

4.5 To the extent that Northstar claims that its motion falls under subsection (h)(2), it ignores the statutory definition of “property” found in the Insurer Receivership Act, as follows:

§ 443.004. Definitions

(20) “Property of the insurer” or “property of the estate” includes:

(A) all right, title, and interest of the insurer in property, whether legal or equitable, tangible or intangible, choate or inchoate, and includes choses in action, contract rights, and any other interest recognized under the laws of this state;

(B) entitlements that:

(i) existed prior to the entry of an order of rehabilitation or liquidation; and

(ii) may arise by operation of the provisions of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights ...

4.6 Furthermore, regardless of the grounds under which it seeks relief, Northstar bears a heavy burden to establish relief from the stay. TEX. INS. CODE ANN. 443.008(j) provides that “[i]n any hearing under Subsection (h), the party seeking relief from the stay has the burden of proof on each issue, which must be established by clear and convincing evidence.” [emphasis added]. Northstar cannot meet this very high standard of proof in the face of the SDR’s verified response. The Texas Legislature expressly intended to make the burden of proof heavy on this type of relief.

4.7. Here, lifting the stay imposes enormous burdens upon the estate. The SDR’s evidence is uncontested on this issue. While there is no reported case law under the Insurer Receivership Act applying the “clear and convincing” evidence standard, there are numerous Texas cases applying the standard in different contexts. The Texas Supreme Court recently considered the “clear and convincing” standard in *Columbia Medical Center of Las Colinas, Inc. v. Hogue*, \_\_\_ S.W.3d \_\_\_, 2008 WL 3991190 (August 29, 2008, Tex. Sup. Ct.)

On appellate review, we do not disregard undisputed evidence that does not support the jury’s finding because doing so could skew the analysis of whether there is clear and convincing evidence. *Diamond Shamrock Ref. Co.*, 168 S.W.3d at 170 (quoting *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex.2002)). In this case, the record fails to show the required clear and convincing evidence of a state of mind so indifferent to peril as to elevate the hospital’s conduct from negligence to gross negligence.

In another example, in an election contest, the Waco Court of Appeals held:

An election contestant’s burden is a heavy one, and the declared results of an election will be

upheld in all cases except where there is and convincing evidence [footnote omitted] of an erroneous result. *Olsen*, 24 S.W.3d at 610. The clear and convincing standard requires more proof than the preponderance of the evidence standard in ordinary civil cases. *Id.* That standard is the degree of proof that will produce in the mind of the trier of fact a “firm belief or conviction” as to the truth of the allegations sought to be proved. *Id.* See *Willet v. Cole*, 249 S.W.3d 585 (Tex.App.-Waco, 2008, no writ).

## V. APPLICATION OF THE PERMANENT INJUNCTION

5.1 TEX. INS. CODE §443.008 provides that the Receivership Court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of the Insurer Receivership Act. Pursuant to this authority, this Court entered the *Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction* on September 22, 2008; the Court enjoined Northstar and all other alleged creditors, as follows:

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect: All other parties, including but not limited to: policyholders, creditors, claimants, **reinsurers** ....

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

...

Making any claim, charge or offset; commencing or prosecuting any action, appeal, **arbitration**, or administrative proceeding; obtaining any preference, judgment, attachment, garnishment, or other lien; making any levy against Defendants, Defendants’ Property or any part thereof, or the Liquidator; except as permitted by TEX. INS. CODE Chapter 443. [emphasis added].

5.2 Northstar ignores the Permanent Injunction barring it from continuing the arbitration and related lawsuit to enforce claims to funds in which this receivership estate has an interest. Pursuant to TEX. INS. CODE § 443.055(b), the Permanent Injunction constitutes a final judgment. Northstar has not requested any relief from this final judgment.

## VI. EFFECT OF THE STAY AND PERMANENT INJUNCTION

6.1 Northstar's motion illustrates exactly why the Texas Legislature provided for a stay and injunctive relief in an insurance receivership and established a high bar for relief. As more fully described below, the estate is faced with demands for arbitration and termination by at least three (3) reinsurers.

6.2 Northstar bases its motion on the contention that Lincoln and Memorial "does not have equity in the property". The SDR denies this contention and the documents submitted by Northstar concede that title to the property in question belongs to the SDR. As noted above, Northstar is not entitled, as a matter of law and fact, to any recovery of the trust money. It, not surprisingly, is attempting to take advantage of the natural and normal confusion associated with the insolvency of any financial institution. There is no ruling, whether final or interlocutory, granting Northstar ownership of the trust funds.

6.3 Northstar's motion also ignores the costs that would be imposed on the receivership estate. It blithely contends that its arbitration "will not impose an undue burden on the estate." *Northstar Motion*, ¶ 19 (p. 9). It provides no evidence on this crucial issue on which it has the burden of proof. In contrast, the SDR's evidence is uncontested that arbitrating this reinsurance dispute will burden the estate.

6.4 Obviously, litigation, whether by arbitration or by the proof of claim process, on a multi-million dollar reinsurance treaty will be lengthy, expensive and time consuming to the SDR and her staff. Lifting the stay and allowing arbitration requires the estate to spend money for the benefit of one, very solvent alleged creditor, Northstar. By way of example, Lincoln has incurred over \$5 million in legal fees and expenses in arbitrating a similar dispute with Hannover Re. See **Exhibit E**.

6.5 Northstar also fails to even mention the two other pending or threatened arbitration demands from reinsurers. Before receivership, Lincoln incurred over \$5,000,000 in attorneys fees and expenses in connection with arbitration demand by reinsurer, Hannover Re. The arbitration hearing took place several weeks before the commencement of delinquency proceedings and no ruling has been issued. The SDR has refused demands from Hannover Re, company counsel and the arbitration panel to pay pre-receivership fees and expenses and then authorize release of any arbitration award.

6.6 Another reinsurer, Quanta, appears to have sought to terminate its coverage before receivership. See **Exhibit F** [February 27, 2008 Quanta demand letter]. This matter remains unresolved, but Quanta would presumably argue that it also is entitled to lift the stay and pursue arbitration if Northstar is granted relief.

6.7 Lifting the stay for Northstar would appear to mandate lifting the stay for any reinsurer or other alleged creditor. Northstar makes no effort to distinguish its efforts to seize estate property from any other claimant. If the stay is lifted, the estate will be forced to incur millions in attorneys' fees and expenses, and the SDR and her staff and contractors will be forced to concentrate their efforts not on paying policyholders and the other innocent victims of these insolvencies, but litigating with solvent reinsurers.

## **VII. RELIEF SOUGHT BY SDR**

7.1 The SDR moves, after notice and hearing, the Court to deny Northstar's motion. Northstar needs to file its proof of claim like every other creditor of this estate. The SDR will file a motion to set a claims filing deadline and approve the handling of claims in the near future. Once entered, Northstar can file its claim and be treated equally with all the other creditors of the estate. The alternative is a free for all by Northstar and other reinsurers desperate to abandon their liability.

The threat that the estate can be required to expend millions of dollars of the very limited assets of these estates to defend the arbitrations itself gifts the reinsurers with a significant bargaining chip.

### **VIII. NOTICE**

8.1 This Response has been served on the attorney for Northstar, and the entire service list for this proceeding in the manner shown on the Certificate of Service. Pursuant to the agreement of the parties and the order of the Special Master, this matter is set for submission on December 1, 2008.

### **IX. OFFER OF PROOF**

9.1 Donna Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. submits her certificate pursuant to §443.017(b) verifying the statements in this pleading and authenticating the attached exhibits.

### **X. CONCLUSION**

10.1 In conclusion, the SDR urges the Court to deny Northstar's motion. It has failed to prove sufficient "cause" to justify lifting the automatic stay. Northstar ignores the Permanent Injunction requiring it to assert its claims in the Receivership Proceeding. The enforcement of the stay and the Permanent Injunction will fulfill the purpose of the protections that the Legislature has established, and enable the SDR to efficiently marshal the assets of the estate for the benefit of all creditors, not simply Northstar and the host of other reinsurers, which seek to deny their liability.

### **PRAYER**

WHEREFORE PREMISES CONSIDERED, Donna Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. respectfully requests this Court to deny Northstar's motion, and

grant such further relief to which she may show herself to be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on November 3, 2008, a true and correct copy of this Response was served pursuant to the provisions of the Court's order on electronic service, the *Amended Order of Reference*, 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.

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/s/Christopher Fuller  
CHRISTOPHER FULLER

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	
	§	
MEMORIAL SERVICE LIFE INSURANCE	§	TRAVIS COUNTY, TEXAS
COMPANY, LINCOLN MEMORIAL LIFE	§	
INSURANCE COMPANY, AND	§	
NATIONAL PREARRANGED SERVICES,	§	
INC.	§	
Defendants.	§	250 <sup>TH</sup> JUDICIAL DISTRICT

**ORDER DENYING NORTHSTAR REINSURANCE IRELAND LIMITED'S  
MOTION TO LIFT STAY**

On the undersigned day the Court considered the *Motion to Lift Stay* filed by Northstar Reinsurance Ireland Limited (the "Motion") and the *Response in Opposition to Motion to Lift Stay by Northstar Reinsurance Ireland Limited* (the "Response") filed by Donna Garrett, Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. Having considered the Application, the Response and the recommendation of the Special Master appointed in this proceeding, the Court finds that that the Motion should be denied.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Northstar Reinsurance Ireland Limited's Motion to Lift Stay is DENIED.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
JUDGE PRESIDING

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

STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS

**AFFIDAVIT OF DONNA J. GARRETT**

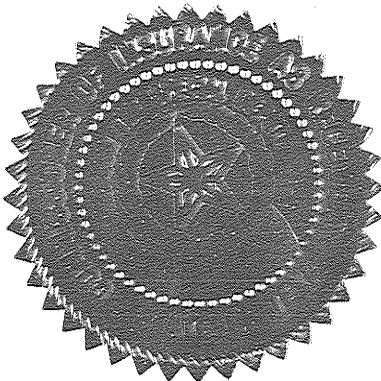
BEFORE ME, the undersigned authority appeared Donna J. Garrett, who after being by me duly sworn, stated the following under oath:

1. "My name is Donna J. Garrett. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

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 this delinquent insurer, and are held by the Special Deputy Receiver in her official capacity.

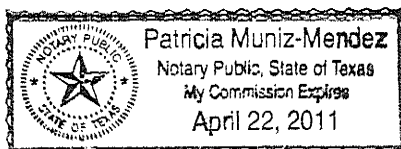
3. I have read the attached Response and the statements contained therein are true and correct.

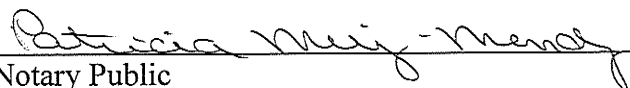
4. Further affiant sayeth not.



By:   
DONNA J. GARRETT

**SUBSCRIBED AND SWORN TO BEFORE ME** on November 3, 2008, 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