

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	§	250th JUDICIAL DISTRICT

**APPLICATION FOR ORDER OF LIQUIDATION AND FOR ORDER APPROVING PLAN OF LIQUIDATION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Donna J. Garrett, the Special Deputy Receiver ("SDR") of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc., and files this *Application for Order of Liquidation and for Order Approving Plan of Liquidation*, and would respectfully show the Court the following:

**I. AUTHORITY**

1.1 The SDR is authorized to file this application pursuant to TEX. INS. CODE § 443.104, which provides for the conversion of a rehabilitation proceeding to a liquidation proceeding. The SDR is further authorized to file this application under TEX. INS. CODE § 443.008(a), which authorizes this Court to issue any order necessary or appropriate to carry out the provisions of the Insurer Receivership Act. Pursuant to TEX. INS. CODE § 443.102(a), the SDR has all the powers of the Rehabilitator, unless specifically limited by the Rehabilitator.

1.2 This matter has been referred to the Special Master appointed herein in accordance with the *Order of Reference to Master* entered on May 16, 2008.

## II. BACKGROUND

2.1 Memorial Service Life Insurance Company ("Memorial Service") is a Texas domiciled stipulated premium life insurance licensed only in Texas. Lincoln Memorial Life Insurance Company ("Lincoln Memorial") is a Texas domiciled life insurance company licensed in 44 states. National Prearranged Services, Inc. ("NPS") is a Missouri corporation affiliated with Memorial Service and Lincoln Memorial.

2.2 Both Lincoln Memorial and Memorial Service issued, among other insurance products, small life insurance policies in connection with prepaid funeral benefit contracts ("Preneed Funeral Contracts") sold by NPS. NPS funded the majority of its obligations under the Preneed Funeral Contracts with the proceeds from the insurance policies purchased from Lincoln Memorial or Memorial Service. In many cases, NPS involved one or more trustees in various aspects related to the insurance policy.

2.3 On October 24, 2007, Memorial Service and Lincoln Memorial were placed into supervision by the Commissioner of Insurance. On March 17, 2008, the Supervisor issued a directive to discontinue writing new policies in Texas as of that date. On April 8, 2008, Memorial Service, Lincoln Memorial and NPS consented to an order under TEX. INS. CODE Chapter 404 that found that the companies were in hazardous financial condition.

2.4 On April 8, 2008, NPS entered into an Agreed Order with the Banking Commissioner for the State of Texas. The Banking Commissioner found that NPS violated Texas law related to the sale of pre-paid funeral benefits, and ordered NPS to cease the sale of pre-paid funeral contracts in Texas. The order required NPS to re-assign policy benefits from NPS to the funeral providers designated as the beneficiaries, and refund payments made on all funeral contracts sold on or after March 17, 2008. However, NPS did not change the designation of the beneficiaries as ordered.

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

### **III. RELIEF REQUESTED**

3.1 TEX. INS. CODE § 443.104(a) provides that if the SDR believes that further attempts to rehabilitate an insurer would be futile or would substantially increase the risk of loss to creditors, policyholders or the public, the SDR may move for an order of liquidation. The SDR has determined that Memorial Service and Lincoln Memorial will not be able to pay policy claims as they become due, and that NPS is unable to pay its obligations to Memorial Service and Lincoln Memorial. NPS is also unable to fulfill its obligations to make payments required under the Preneed Funeral Contracts. The SDR has therefore concluded that rehabilitation is not possible, and that Defendants must be liquidated.

3.2 TEX. INS. CODE § 443.104(a) further provides that the SDR shall coordinate the transition to liquidation with any affected guaranty associations, and any national association of guaranty associations. The SDR has coordinated with the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association and the National Organization of Life and Health Insurance Guaranty Associations (collectively "NOLHGA") regarding the process for handling claims during liquidation. The SDR and NOLHGA have agreed to a Liquidation Plan, which resolves a number of disputed issues that will arise upon the entry of a liquidation order. The Liquidation Plan is conditioned upon its approval by this Court, and the entry of a final and

non-appealable liquidation order. A fully executed Liquidation Plan and Service and Early Access Agreement is attached as Exhibit A.

3.3 The entry of a Liquidation Order in conjunction with the approval of the Liquidation Plan will allow state life and health insurance guaranty associations ("Guaranty Associations") to pay policy claims of Memorial Service and Lincoln Memorial.

#### **IV. GROUNDS FOR LIQUIDATION**

4.1 As of June 30, 2008, Memorial Service's cash assets totaled \$297,944, and Lincoln Memorial's cash assets totaled \$10,186,778. If Memorial Service and Lincoln Memorial continue to pay claims as they come due, it is estimated that the cash assets will be exhausted in approximately 53 days. As of June 30, 2008, NPS had liabilities to Memorial Service and Lincoln Memorial in the amount of at least \$51,651,866. NPS is unable to pay these liabilities. Grounds exist to place Defendants into liquidation pursuant to TEX. INS. CODE § 443.057 as Defendants are insolvent as defined in TEX. INS. CODE § 443.004(a)(13).

4.2 Based on the foregoing, the continuation of a rehabilitation proceeding is futile, and would substantially increase the risk of loss to creditors, policyholders and the public.

#### **V. LIQUIDATION PLAN**

5.1 **Summary of Plan.** The proposed Liquidation Plan will promote the purposes of the Insurer Receivership Act and state Insurance Guaranty Association acts by:

- (a) providing for the payment claims by the Guaranty Associations in accordance with the original purposes of the policies;
- (b) effectuating the assignment of policy benefits to funeral providers that were designated as beneficiaries, consistent with the order of the Texas Banking Commission;

- (c) authorizing the SDR to handle claims on behalf of the Guaranty Associations, in order to enhance coordination and streamline administration;
- (d) resolving issues related to claims against the Receivership Estates, and
- (e) facilitating ongoing early access to the Guaranty Associations on their claims for administrative costs.

**5.2 Settlement and Compromise of Disputed Issues.** A number of disputed issues exist regarding certain insurance policies issued by Defendants Memorial Service and Lincoln Memorial. Numerous state regulators with varying degrees of regulatory authority, including regulators in Texas, Missouri, Kansas, Iowa, Illinois and others, have expressed significant concerns regarding one or more purportedly improper and/or illegal practices by one or more of the Defendants, including but not limited to: (i) assignment and/or transfer of ownership, beneficiary and/or payee rights of certain policies to NPS; (ii) NPS directing policy loans be taken from certain whole life policies; (iii) NPS directing conversion of whole life policies to term life policies; (iv) NPS failing to make premium payments on term life policies; (v) Lincoln Memorial and Memorial Service failing to lapse policies for failure to pay premiums; (vi) the Preneed Funeral Contracts and the related life insurance policies failing to comply with preneed funeral arrangement statutes in one or more states; (vii) Lincoln Memorial and/or Memorial Service issuing term policies without consideration; (viii) Lincoln Memorial issuing term policies on policy forms not approved by the appropriate states; (ix) Lincoln Memorial failing to utilize policy applications; (x) Lincoln Memorial failing to account for and identify accurately the identity and residency of owners; (xi) Lincoln Memorial failing to reflect accurately the true residency of Insureds; and (xii) Lincoln Memorial failing to issue physical policies even though policies may be reflected or reported on the books and records of the Insolvent Insurers. As a result of these practices, (a) one or more regulators has issued administrative orders and/or made

demands that Lincoln Memorial and/or Memorial Service correct these practices, including among other options, a comprehensive re-conversion of term policies to whole life policies, and (b) there are numerous issues regarding the identity and authority of the owner of many of the life insurance policies. Among other things, the compromise and settlement in the Liquidation Plan respond to those concerns. (Liquidation Plan, § 1.3.)

**5.3 Coverage for Insurance Death Benefits.** The Liquidation Plan operates to settle these disputed issues and permits the Guaranty Associations to provide coverage for the insurance policies by focusing on the original insurance death benefits purchased from Lincoln Memorial or Memorial Service. The Guaranty Associations do not cover Preneed Funeral Contracts and the Liquidation Plan recognizes and preserves that fact. Thus, while the Guaranty Associations will provide coverage only for insurance products (primarily life insurance with a small number of annuities), a consequence of the Liquidation Plan will be that funeral homes providing funeral services and merchandise for insureds under Preneed Funeral Contracts will receive the proceeds of the insurance policies.

**5.4 Two Categories – Standard Policies and Disputed Policies.** The Liquidation Plan divides the Lincoln Memorial and Memorial Service life insurance policies and annuities into two categories. "Standard Policies" are those life insurance policies and annuities that have an individual owner and beneficiary other than NPS, and in which NPS did not direct transactions relating to the policies. (Liquidation Plan, Article 4.) In other words, they are the policies unaffected by NPS and the transactions NPS directed. "Disputed Policies" are policies in which NPS was the owner or beneficiary, or NPS directed transactions such as policy loans, policy terminations and the like. Disputed Policies include policies that are identified by NPS as owned by a trust or trustee. (Liquidation Plan, Article 5.) The Disputed Policies are subject to disputes about the identity of the owner, the identity of the beneficiary and the validity of

transactions that had the effect of diminishing the value of the policies on the books and records of Lincoln Memorial and Memorial Service.

**5.5 Coverage for Standard Policies.** Guaranty Associations will cover the Standard Policies in accordance with their respective enabling acts as restricted or modified by the Liquidation Plan. (Liquidation Plan, Article 4.) Based on the current analysis of the SDR and NOLHGA, it appears that the Standard Policies represent a small portion of the total life insurance business of Lincoln Memorial and Memorial Service. The coverage provided will be subject to an 18-month moratorium on all policy transactions subject to hardship provisions that will be submitted to this Court for approval. While the moratorium will limit policy transactions, payment of insurance death benefits will continue. (Liquidation Plan, Article 7.)

**5.6 Coverage for Disputed Policies.** The vast majority of the insurance policies (approximately 90%) will be the Disputed Policies. For the Disputed Policies, the Guaranty Associations will recognize the face amount pursuant to the terms of the originally issued insurance policy and will pay the amount as the death benefit amount to the extent a valid death claim is incurred.<sup>1</sup> (Liquidation Plan, Article 5.) There will be no other benefits provided under Disputed Policies. Specifically, there will be no cash value provided or interest accumulation related thereto. The face amount and/or death benefits of the Disputed Policy will not grow or increase unless such growth or increase is expressly provided for in the original policy in the form of a graded death benefit. However, the face amount death benefit will be paid by the Guaranty Associations notwithstanding policy loans directed by NPS, NPS conversion of policies to reduced paid-up, termination of the whole life policies directed by NPS, and the failure of NPS to pay the premium for term life insurance policies.

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<sup>1</sup> If an insured stopped paying premiums or installments, then the face value would be reduced accordingly.

(a) Insurance Policy Ownership. The records of Lincoln Memorial and Memorial Service generally identify three categories of owners – individual insureds, one or more trusts, and NPS. Under the Liquidation Plan, where the individual insureds are the owners, there would be no change. Where NPS was previously identified as an owner, then the insured would be treated as the owner instead of NPS solely for purposes of the Liquidation Plan. (Article 8.) With respect to the trusts, the SDR has determined that the trust agreements will not be utilized as part of the benefits provided for in the Liquidation Plan. (Liquidation Plan, Article 8.) Going forward after the Liquidation Order, for purposes of the Liquidation Plan, the SDR has determined that the insureds will be treated as the owners in lieu of NPS or a trust. (Liquidation Plan, Article 8.)

(b) Insurance Policy Beneficiary. The Liquidation Plan makes changes to the beneficiary only if NPS or a trust was designated as the beneficiary, which appears to be the case in the majority of the Disputed Policies. In those cases, the Liquidation Plan provides that Guaranty Associations will pay insurance death benefits directly to the respective funeral home that provided the funeral services and merchandise to the insured in lieu of, and in satisfaction of, making any payments to NPS or the trust/trustee. (Liquidation Plan, § 5.4.8 and Article 8.) Thus, the funeral homes will be treated as the beneficiaries for purposes of the Liquidation Plan.

(c) Subrogation, Assignment and Release. The Liquidation Plan recognizes the statutory subrogation rights that apply immediately upon the triggering of the Guaranty Associations. (Liquidation Plan, Article 9.) In addition, the Liquidation Plan recognizes and requires receipt of an executed assignment, subrogation and release from the funeral homes, among others, before the payment of benefits as expressly provided for by statute. (Liquidation Plan, Article 9.) The Liquidation Plan provides that participation by Guaranty Associations, including the payment of the insurance death benefits, discharges their statutory obligations

related to the policies. (Liquidation Plan, § 13.4.) Moreover, if any person seeks to challenge the benefits provided under the Liquidation Plan, then the Guaranty Associations reserve all rights to assert defenses, arguments and the like that there is no coverage provided or available to such person. Said another way, no one may realize the benefits of the Liquidation Plan and also challenge them as insufficient.

(d) Allocation among Guaranty Associations. While the Guaranty Associations in other insolvencies have typically allocated coverage based on the residency of the "owners" of covered policies, under the Liquidation Plan obligations associated with the Disputed Policies will be allocated among the Guaranty Associations based on the residency of the "insureds." (Liquidation Plan, Article 6.) This allocation is premised upon and consistent with the SDR's decision under the Liquidation Plan to treat the insureds as the owners instead of treating NPS or a trustee as the owner.

**5.7 Claims against the Estate.** The Liquidation Plan recognizes that each of the three companies – NPS, Lincoln Memorial and Memorial Service – will be liquidated in the same liquidation proceeding but separately as to their assets and liabilities in accordance with the Liquidation Act. (Liquidation Plan, § 10.1.) While there may be some policyholder claims not covered by Guaranty Associations, based on the current records it appears that the vast majority of policyholder claims against Lincoln Memorial and Memorial Service will be covered by the Guaranty Associations. To the extent parties have claims against NPS, including claims of the Guaranty Associations through subrogation and/or assignment, those claims will be general creditor claims against the assets of NPS. Subject to the claims process and procedures provided in the Texas Insurance Code, the SDR agrees in the Liquidation Plan to recommend such approach for claims to the Receivership Court. (Liquidation Plan, § 10.5.) In addition, to the extent there may be regulatory claims against one or more of the Companies for failing to comply

with various state laws, those claims could be made by regulators against the Companies. However, those claims would not impact the statutory benefits provided by the Guaranty Associations in accordance with this Liquidation Plan.

**5.8 Identification of Participating Associations.** Under the Liquidation Plan, NOLHGA has 45 days after the date on which the Liquidation Plan was signed to identify those Guaranty Associations that elect to participate in the Liquidation Plan. In order to be effective, the Liquidation Plan requires participation by Guaranty Associations with anticipated dollar exposure on the Policies totaling at least eighty-five (85%) of the aggregate dollar exposure of the Policies. NOLHGA has advised the SDR that it will file a notice with the Court as soon as Guaranty Associations with sufficient aggregate exposure have elected to participate.

**5.9 Restriction on Policy Transactions.** The Liquidation Plan includes restrictions on insurance policy transactions. The Standard Policies are subject to an 18-month moratorium on all surrenders, policy loans, change in beneficiary and other transactions, subject to reasonable hardship provisions that are appropriate under the circumstances and subject to Receivership Court approval. (Liquidation Plan, Article 7.) Benefits provided by Guaranty Associations related to the Disputed Policies (i.e. payment of the original insurance death benefit) are restricted and may not be assigned or transferred without the express written approval of the respective Guaranty Association. (Liquidation Plan, § 5.4.9.)

**5.10 Third Parties.** Except as expressly provided in the Liquidation Plan, the Liquidation Plan is not intended to benefit or impair third parties. The Liquidation Plan specifically states that it does not give any person (other than the Parties) any legal or equitable right, remedy or claim. (Liquidation Plan, § 15.2.) For example, the Liquidation Plan permits persons to make claims against NPS, Lincoln Memorial and Memorial Service. (Liquidation Plan, Article 10.) The Liquidation Plan does not release funeral homes from their legal

obligations to provide burial services and merchandise. (Liquidation Plan, § 10.3.) In addition, the Liquidation Plan does not serve as any waiver or release by the Parties against any third parties, including reinsurers and trustees (Liquidation Plan, § 9.3). The Liquidation Plan recognizes that, with respect to the trust agreements that are not being utilized as part of the Liquidation Plan, all rights, defenses, claims and the like will be preserved and not waived. (Liquidation Plan, Article 8.)

**5.11 Legal Authority to Enter into Liquidation Plan.** Subject to approval of the Receivership Court, the SDR and the Guaranty Associations are expressly authorized to enter into this Liquidation Plan, as follows:

(a) The SDR is authorized to enter into the Liquidation Plan pursuant to, among others, TEX. INS. CODE §§ 443.102(a), (b) and (e) and 443.104(a). The SDR will be authorized to effectuate the Liquidation Plan, pursuant to TEX. INS. CODE § 443.151 *et seq.* upon the entry of a Liquidation Order and an order approving the Liquidation Plan. Under TEX. INS. CODE § 443.253, the SDR is authorized to agree on recommendations for claim amounts and priority levels.

(b) The SDR's negotiation and entry into this Liquidation Plan is expressly authorized by TEX. INS. CODE § 443.102 (b), which permits the Rehabilitator to deal with the property and business of the Defendants, and the Rehabilitation Order. Section 2.9 of the Rehabilitation Order authorizes the Rehabilitator to enter into settlements. Section 2.16 of the Rehabilitation Order authorizes the Rehabilitator "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 ability 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."

(c) The Guaranty Associations are authorized to enter into this Liquidation Plan as part of carrying out their powers and duties and as a settlement of claims and/or potential claims in accordance with their respective enabling acts, including for example, TEX. INS. CODE §§ 463.101(a)(1) and (2). The moratoria contemplated under the Liquidation Plan are authorized under the Guaranty Associations' enabling acts, including in TEX. INS. CODE § 463.257. Moreover, Guaranty Associations have discretion under their enabling acts to determine the means by which to provide benefits. In Texas and other states, the respective Guaranty Association Act specifies that persons receiving benefits from the Guaranty Associations are "not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement." *See, e.g.* TEX. INS. CODE § 463.206.

## **VI. SERVICE AND EARLY ACCESS AGREEMENT**

6.1 The Liquidation Plan provides for the Guaranty Associations to retain the SDR as third party administrator. The Services to be provided by the SDR and the payment structure and administrative fees to be paid by the Guaranty Associations to the SDR are detailed in the Service and Early Access Agreement.

6.2 At the outset of the implementation of the Liquidation Plan, the assets will be insufficient to make early access payments to the Guaranty Associations. The SDR has previously notified the Guaranty Associations and, in accordance with Exhibit 4.2 of the Service and Early Access Agreement, the SDR is providing notice herein that there are insufficient assets to make early access payments upon the commencement of the Liquidation Plan.

6.3 Pursuant to TEX. INS. CODE § 443.303, within 120 days after entry of the Liquidation Order, or sooner if requested by the Guaranty Associations after the Liquidation Order Effective Date, the SDR will file a petition with the Court seeking to make early access payments under § 443.303 by means of, and in accordance with, the terms and provisions of the

Service and Early Access Agreement. That filing will comply with the requirements of § 443.303, including providing 30 days advance written notice and making the financial reporting contemplated by that Section. No early access payments will be made until all aspects of § 443.303 have been satisfied.

6.4 As a result, at this time, all funding, whether for administrative expenses or for the payment of death benefits, will be provided by the Guaranty Associations.

## **VII. PAYMENT OF CLAIMS**

7.1 During the Rehabilitation, the SDR has been paying claims timely. However, as indicated above, there is insufficient liquidity to continue to pay claims on an ongoing basis. As a result, it will not be possible to continue the payment of claims after the date of the filing of this Application. However, the SDR will continue processing claims in anticipation of, and in preparation for the implementation of the Liquidation Plan. Assuming that the Liquidation Plan is approved by the Court relatively quickly, the SDR does not anticipate that any delays in claims payment will be substantial and contemplates that claims will be paid timely, subject to any delays in the Liquidation Plan approval process.

## **VIII. ORDER OF REFERENCE**

8.1 The *Order of Reference to Master* entered on May 16, 2008 provides for the referral of matters arising in this rehabilitation proceeding to the Master. The SDR requests that this Order be amended upon the entry of a liquidation order, and provide for the referral of matters arising in the liquidation proceeding to the Master.

## IX. NOTICE

9.1 TEX. INS. CODE § 443.007(d) provides that notice of an application shall be provided to all persons on the service list, and any other parties as determined by the SDR. The SDR has determined that two notices will be provided.

9.2 First, the attached Applicant's Notice of Submission, and, in the alternative, Applicant's Notice of Hearing will be provided: (i) to the insurance regulators and various state agencies licensing funeral homes in the states where Defendants did business; and (ii) to the life and health insurance guaranty associations that may become responsible for claims upon the entry of a liquidation order. Notice of this application will be provided by electronic mail, where possible, as permitted by TEX. INS. CODE § 443.007(d) and the Rehabilitation Order. Pursuant to TEX. INS. CODE § 443.007(a), inclusion on the service list does not confer standing on any party.

9.3 Second, the attached Notice of Liquidation Plan and Hearing will be provided: (i) to the insurance regulators and various state agencies licensing funeral homes in the states where Defendants did business; (ii) to the life and health insurance guaranty associations that may become responsible for claims upon the entry of a liquidation order; and (iii) to all funeral homes and trustees identified in the books and records of the Defendants. In order to preserve the confidentiality and privacy of the list of funeral homes and trustees, the SDR will prepare and maintain an affidavit of mailing that lists the date and addresses for all persons to whom the Notice of Liquidation Plan and Hearing was mailed. The SDR will file that affidavit of mailing under seal with the Court upon its request. The fact that persons receive this mailing does not require the SDR to send future notices to such persons.

9.4 In addition to providing notice as set forth above, the SDR will post the following documents on its website ([www.LincolnMemorialLife.com](http://www.LincolnMemorialLife.com)) the Application; the Liquidation

Plan; the Applicant's Notice of Submission, and, in the alternative, Applicant's Notice of Hearing; and the Notice of Liquidation Plan and Hearing.

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

10.1 This Application has been verified as required by the Texas Rules of Civil Procedure by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) by Donna J. Garrett, the Special Deputy Receiver of Memorial Service, Lincoln Memorial and NPS.

### **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., prays that the Court grant the Application, and grant such other and further relief to which the SDR may be entitled, including but not limited to entry of an order:

- a. Declaring NPS, Lincoln Memorial, and Memorial Service each to be insolvent and placed under an order of liquidation with a declaration of insolvency;
- b. Requiring that NPS, Lincoln Memorial and Memorial Service each be liquidated separately (as to assets and liabilities) but in the same proceeding;
- c. Approving and entering as an order of this Court all terms and provisions of the Liquidation Plan and Service and Early Access Agreement;
- d. Ordering and authorizing the Receiver and the SDR to take all steps necessary and appropriate to cause the Liquidation Plan to be implemented;
- e. Recognizing and approving of the designation and treatment of certain and specific insureds as owners in lieu of NPS and in lieu of a trustee, in accordance with and for purposes of the Liquidation Plan;

- f. Recognizing and approving of the designation and treatment of certain and specific funeral homes as beneficiaries in lieu of NPS and in lieu of a trustee, in accordance with and for purposes of the Liquidation Plan;
- g. Ordering that the trust agreements to which NPS is a party related to the Preened Funeral Contracts and related insurance policies will not be utilized in the Liquidation Plan;
- h. Recognizing and approving that statutory rights of subrogation and assignment belong to the Guaranty Associations, effective immediately upon the Liquidation Order Date and that Guaranty Associations may require a written subrogation and release as provided for in the Liquidation Plan; and
- i. Entering such other orders as reasonable and necessary under the circumstances.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent to the following in accordance with TEX. INS. CODE ANN § 443.007 on the 11<sup>th</sup> day of August, 2008:

  
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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 USPS FIRST CLASS MAIL

**APPLICANT'S NOTICE OF SUBMISSION,**  
**and, in the alternative,**  
**APPLICANT'S NOTICE OF HEARING**

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the *Application for Order of Liquidation and for Order Approving Plan of Liquidation* is set for written submission before the Special Master, Tom Collins, on August 25, 2008.

In the alternative, if any objections are filed requiring a hearing, the *Application for Order of Liquidation and for Order Approving Plan of Liquidation* is set for oral hearing before the Special Master, Tom Collins, beginning at 9:00 a.m. on September 15, 2008 in Hearing Room 100, 333 Guadalupe, Austin, Texas.

In accordance with the Order of Reference and the procedures established by the Master under Rule 171 of the Texas Rules of Civil Procedure, any interested party objecting to the Application must observe the following rules:

1. Any objection must be filed with the Travis County District Clerk on or before August 22, 2008.
2. A copy of any objection shall be served by such date on:
  - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, (**Hand Delivery**) 333 Guadalupe, Hobby Tower III, 5th Floor, Room 540-A, Austin, Texas; or (**Mail To**) P.O. Box 149104 (MC 305 1-D), Austin, Texas 78714-9104
  - (b) All interested parties, including those listed on the Applicant's Certificate of Service,
  - (c) Via e-mail to the Special Master's Docket Clerk, Jean Sustaita ([Jean.Sustaita@tdi.state.tx.us](mailto:Jean.Sustaita@tdi.state.tx.us)) and Counsel for the SDR, Christopher Fuller ([cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org)).
3. 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.
4. The Special Master shall determine whether an oral hearing is required upon receipt of any objections.
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 a Guaranty Association or other interested party should be filed on or before August 22, 2008.

  
Christopher Fuller, Counsel for the SDR

## NOTICE OF LIQUIDATION PLAN AND HEARING

Regarding  
Lincoln Memorial Life Insurance Company  
Memorial Service Life Insurance Company, and  
National Prearranged Services, Inc.  
Collectively the "Companies"

### NOTICE TO ALL INTERESTED PERSONS:

On May 14, 2008, Lincoln Memorial, Memorial Service and NPS consented to and were placed into rehabilitation in the District Court of Travis County, Texas, 250<sup>th</sup> Judicial District, in Cause No. D-1-GV-09-000945 ("Receivership Court"). The Receivership Court appointed the Commissioner of Insurance for the State of Texas as Rehabilitator, and the Rehabilitator appointed Donna J. Garrett as the Special Deputy Receiver.

Pursuant to the Texas Insurance Code, on August 11, 2008, the Special Deputy Receiver filed an Application seeking approval of a Liquidation Plan that includes the placement of NPS, Lincoln Memorial and Memorial Service under an order of liquidation with a finding of insolvency. A copy of the Application and the Liquidation Plan are available on-line at [www.LincolnMemorialLife.com](http://www.LincolnMemorialLife.com). The Special Deputy Receiver encourages all interested persons to review the details of the Application and Liquidation Plan. This two page notice does not include all the details of the Liquidation Plan.

Any and all objections to the Liquidation Plan must be filed with the Receivership Court on or before August 22, 2008 by service on the Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, 333 Guadalupe, Hobby Tower III, 5th Floor, Room 540-A, Austin, Texas (by hand delivery); or, MC 305-1D, P. O. Box 149104, Austin, Texas 78714-9104 (by mail).

If objections are filed, a hearing is scheduled to commence beginning at 9:00 a.m. on September 15, 2008 in Hearing Room 100, 333 Guadalupe, Austin, Texas.

The Special Deputy Receiver is seeking liquidation of the Companies because they are insolvent. The Companies do not have sufficient funds to pay claims.

Each state where Lincoln Memorial and Memorial Service were licensed has established by statute a life and health insurance guaranty association ("Guaranty Association") to provide continuing coverage for residents of its state that are owners of insurance policies issued by insurance companies that are insolvent. The coverage provided by the Guaranty Associations is expressly limited by statute.

The Liquidation Plan operates as a settlement and compromise of disputed claims and issues. Under the Liquidation Plan and as part of the settlement agreement, insurance policies and annuities issued by Lincoln Memorial and Memorial Service will be categorized as Standard Policies (approximately 10% of the total business) or as Disputed Policies (approximately 90% of the total business). For the Standard Policies, the coverage provided by Guaranty Associations

will recognize valid cash values, however those policies will be subject to an 18-month moratorium on surrenders and other policy transactions. The Disputed Policies are identified as those in which NPS and/or a trustee was identified as an owner or beneficiary or in which NPS directed policy transactions. For the Disputed Policies, the Guaranty Associations will pay the original death benefit from the life insurance policy issued by Lincoln Memorial or Memorial Service to the funeral home that provides the burial services and merchandise to the insureds under such policies (subject to certain limited exceptions such as where the insured ceased making the required payments). The Guaranty Association coverage will not include cash values, growth factors or the like. However, to the extent NPS directed certain policy transactions, including policy loans, policy terminations and/or conversions, and failure to pay premiums, those transactions would not reduce the original death benefit that would be covered by the Guaranty Associations. The Liquidation Plan will be administered by the Special Deputy Receiver.

In order to receive benefits from the Guaranty Associations, it is critical that all premiums continue to be paid. If any persons have stopped paying premiums and want to receive coverage from the Guaranty Associations, they must pay all outstanding premiums immediately. The Guaranty Associations will not provide coverage for policies upon which anyone other than NPS has failed to pay premiums.

The Guaranty Associations do not provide coverage for Preneed Funeral Contracts. Persons who have unpaid claims under Preneed Funeral Contracts will need to file a claim in accordance with the claims process under the Texas Insurance Code. At this time, a deadline for filing claims has not been established. The Receiver will provide notice of the claims process and the deadline for filing claims in the future.

In order to become effective, Guaranty Associations with 85% of the total exposure for Lincoln Memorial's policy liabilities must agree to participate in the Liquidation Plan. The process for determining whether Guaranty Associations participate has commenced. The identity of Participating Associations will be posted on the Receiver's website referenced above.

The Companies do not have enough money to continue to pay claims. The SDR will continue processing claims for death benefits, but payment of claims will be suspended, pending entry of a final, nonappealable order approving the Liquidation Plan. After the Liquidation Plan is approved and the order is final, the Guaranty Associations will resume the timely payment of claims, including claims that were processed but not paid pending the Liquidation Plan approval, as specified therein.

If you have questions or comments, please contact the Special Deputy Receiver: Donna Garrett, Special Deputy Receiver, 1406 Camp Craft Rd., S 108, Austin, TX 78746.

**SPECIAL DEPUTY RECEIVER'S 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. 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 Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. 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(b), are true and correct copies of records created by and filed with the Receiver's office in connection with the receivership of these insolvent companies, and are held by the Special Deputy Receiver in her official capacity.

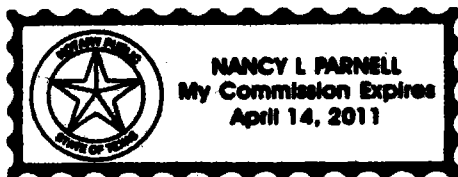
3. I further state that I have read the statements contained in the attached Application and that they are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and sub-contractors.

4. Further affiant sayeth not.

By: \_\_\_\_\_

*Donna J. Garrett*  
Donna J. Garrett  
Special Deputy Receiver

**SUBSCRIBED AND SWORN TO BEFORE ME** on August 10, 2008 by Donna J. Garrett, the Special Deputy Receiver of Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company and National Prearranged Services, Inc. in receivership.



*Nancy L. Parnell*  
\_\_\_\_\_  
Notary Public