

As reflected by regulatory actions taken by the State of Texas and numerous other state departments of insurance, those in control of Memorial Service Life Insurance Company (“Memorial Service”), Lincoln Memorial Life Insurance Company (“Lincoln Memorial”) and National Prearranged Services, Inc. (“NPS”) (collectively "Companies") inappropriately tampered with various key components of insurance policies issued by Memorial Service and Lincoln Memorial. The inappropriate actions taken by these controlling parties modified or impacted the types of policies issued by Memorial Service and Lincoln Memorial, ownership and other key rights with respect to such policies, the cash values of such policies, and policy loans against such policies. These actions further resulted in the failure to lapse policies for non-payment of premium and numerous other inappropriate consequences.

From the perspective of the Guaranty Associations, this conduct tampered with key components of the guaranty association safety net. For instance, Guaranty Associations generally protect owners of insurance policies who reside in their states at the time of an insolvency. In this case, both ownership and state of residency are subject to debate in tens of thousands of policies. In addition, Guaranty Associations typically will lapse a policy for non-payment of premium. Here, in thousands of cases, the failure to make premium payments was caused by the controlling parties as opposed to the consumer.

Furthermore, Guaranty Associations are entitled to reduce coverage provided to an insured for the amount of any outstanding policy loans. Here, in thousands of cases, the loans were taken by controlling parties, not the consumers. Confusion exists with respect to whether thousands of policies should be properly recognized as term policies

(as reflected on the books of Lincoln Memorial and Memorial Service) or whole life policies, as originally issued.

These are examples of key components required for a determination of guaranty association coverage and allocation issues which, in the case of tens of thousands of policies, are subject to tremendous debate because a review of Companies' records and documents leads to conflicting answers.

The records and accounts of Memorial Service and Lincoln Memorial substantiate numerous defenses which the Participating Guaranty Associations in every state could assert to deny claims, in whole or in part, presented to the Association. Thus, the Participating Guaranty Associations could take the position that each of approximately 200,000 future policyholder claims would need to be proven up and adjusted in accordance with the records and accounts of Memorial Service and Lincoln Memorial. The Participating Guaranty Associations, however, believe that this approach would likely lead to delayed and significantly reduced claims payments on behalf of insureds and regulatory actions, adversarial proceedings and litigation in the 44 states where Guaranty Associations are arguably affected by these insolvencies.

The nature and purpose of Guaranty Associations is to protect insureds and others identified in the Guaranty Association statutes from the financial consequences of the insolvency of a life or health insurance company, subject to the terms and conditions of their enabling Acts and the policies issued by the insolvent company. In light of this, the Participating Guaranty Associations have elected to proceed under specific statutory authority to settle and compromise the numerous legal and factual issues which have arisen in this matter. The Liquidation Plan is properly structured as a settlement

agreement between the Receiver for the Companies and NOLHGA on behalf of its Participating Guaranty Associations. The objections to the Plan are without merit.

II. UNRESOLVED OBJECTIONS

There are five unresolved objections to the Liquidation Plan or portions of the Liquidation Plan.

A. Kerrville Funeral Home--Objection Filed by Class Action Attorneys

On behalf of Kerrville Funeral Home and three other named funeral homes, and purportedly on behalf of a proposed class consisting of Texas funeral home operators,² Plaintiffs' counsel has filed an objection to the Liquidation Plan. The four objections raised within class action counsels' pleading and NOLHGA's response are as follows:

Objection 1: The Liquidation Plan only covers claims for the face amount of insurance policies and provides for no growth or amounts over the face amount of the insurance policy.

Response: This Liquidation Plan provides for payment of death benefit face amounts of policies originally issued by Lincoln Memorial and Memorial Service which were subject to improper manipulation. The growth factors, which class action counsel apparently wants the Guaranty Associations to pay, are found exclusively in Preneed Funeral Contracts issued by NPS--which are not insurance policies. Under their statutes, the Guaranty Associations provide coverage for insurance products issued by their member insurance companies. They do not provide coverage for Preneed Funeral Contracts. In this case, the PGAs cover only the insurance policies obtained to fund a portion of the Preneed Funeral Contracts, and the terms of the insurance policies do not

² The class action referenced in this objection has been filed in federal court in Austin, Texas.

provide for the growth factors. There is simply no Guaranty Association coverage for the growth factors. However, any claimant who does suffer a loss as a result of an uncovered growth factor is entitled to a claim against the NPS Estate, just as any other creditor with a claim which is not covered by a Guaranty Association.

Objection 2: The Liquidation Plan provides for payment of face amounts on policies which may be reduced by failure to pay premiums or debts owed to the companies by any payee.

Response: The Participating Guaranty Associations provide coverage for an insolvent insurer's contractual obligations. Insurers are contractually entitled to reduce policyholder face amounts or death benefits by the amount of loans which have been taken out by insureds but remain unpaid. Similarly, insurers must receive premiums on those policies which require continuing premium payments or the policies will lapse. Guaranty Associations have these same contractual rights.

As discussed more fully below, the Liquidation Plan separates the policies into Standard Policies and Disputed Policies. Standard Policies are defined as those policies issued by Lincoln Memorial and Memorial Service which have not been subject to improper manipulation by the Companies. For Standard Policies, premium payments must be kept current and loans must be repaid pursuant to the terms of the policy or coverage will be reduced by outstanding loans. In other words, the insureds must comply with their contractual obligations.

For Disputed Policies, as defined under the Plan, the insureds apparently did comply with their contractual obligations, but the benefits of the policies were improperly manipulated by the Companies. In accordance with the settlement contained in the

Liquidation Plan, benefits will be paid on Disputed Policies despite the manipulation because the insureds complied with their contractual obligations.

Objection 3: The Plan does not relieve a funeral home operator from an obligation to provide contractual funeral/burial services in accordance with a Preneed Contract.

Response: This is true. The obligations of funeral homes to the ultimate consumer under a Preneed Funeral Contract are not the subject of the Liquidation Plan. Those are non-insurance obligations and are not covered obligations of the Participating Guaranty Associations. Indeed, there would be no legal basis to alter any funeral home's contractual obligations to a consumer in the Liquidation Plan.

Objection 4: The Plan requires an assignment of rights and claims from the funeral homes to the PGAs against third parties as such rights claims and relate to the policies of insurance.

Response: Class action counsel objects to the requirements within the Liquidation Plan that the guaranty association statutory subrogation and assignment rights be recognized. Specifically, the Liquidation Plan provides:

In accordance with Texas Insurance Code Section 463.261(a) and the Enabling Act, for each respective Participating Association, effective upon approval of the Liquidation Plan by the Receivership Court . . . , each and every current or future recipient of a benefit under this Liquidation Plan from a Participating Association is considered to have assigned to the respective Participating Association the rights under, and any cause of action relating to, the Policy to the extent of the benefit provided or to be provided, including but not limited to the benefit of continuing coverage under a Policy

Liquidation Plan, § 9.1.

Section 9.1 goes on to provide that each Participating Guaranty Association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the insolvent insurers, the contract holder and/or policyholder with respect to the policy.

In addition, Section 9.2 of the Liquidation Plan provides as follows:

Assignment Required for Benefits. In addition the statutory assignment and subrogation rights addressed in Section 9.1, in accordance with Texas Insurance Code Section 463.261(a) and the respective Enabling Act for each Participating Association, each and every Participating Association may require a payee, policy or contract owner, beneficiary, and/or Insured to assign in writing to the Participating Association the person's rights and causes of action relating to the Policy as a condition of receiving a right or benefit from the Participating Association. The Participating Associations may require such an assignment as a condition for receipt of payments, and the Participating Associations may develop one or more form assignments consistent with the applicable statutory language that will be utilized by the SDR in the implementation and administration of the Service Agreement.

These rights are specifically authorized by the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act, Texas Insurance Code, Chapter 463. Section 463.261, Assignment of Rights, reads in part as follows:

(a) A person receiving a benefit under this chapter, including the payment of or on account of a contractual obligation, continuation of coverage, or provision of substitute or alternative coverage, is considered to have assigned to the association the rights under, and any cause of action relating to, the covered policy to the extent of the benefit received. The Association may require a payee, policy or contract owner, beneficiary, insured, or annuitant to assign the person's rights and cause of action to the association as a condition of receiving a right or benefit under this chapter.

Texas Insurance Code, Section 463.261(c) provides as follows:

(c) The association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or holder of a Policy or contract with respect to the Policy or contract.

This language is reflective of similar provisions in each Guaranty Association's enabling act throughout the country. The language in the Liquidation Plan is modeled on the Texas assignment and subrogation provisions and such rights include not only rights back against the insolvent insurers for contractual obligations paid, but rights and causes of action held by those who receive benefits or continuation of coverage from the Association against third parties. The Liquidation Plan does not purport to assign rights to the Participating Guaranty Associations beyond the benefits paid or to be paid with respect to a policy. The assignment and subrogation rights to which class action counsel objects are specifically authorized by Texas law and the laws of the other states.

B. James and Gahr Mortuary, Inc.—Objection by Class Action Attorneys

The second unresolved objection is filed by class action counsel for James and Gahr Mortuary, Inc. and a proposed class of Missouri funeral home operators.³ The objection is labeled as a "limited objection." After commending the Receiver in obtaining an agreement from the Guaranty Associations, the objection mischaracterizes and then criticizes a portion of the agreement.

Objection: There is no opportunity to reinstate lapsed policies (a misunderstanding of the Plan's operation by class action counsel) and premiums must be

³ This action is pending in the United States District, Western District of Missouri.

paid under a policy even if the policy was a lump sum single premium policy (another misunderstanding by class action counsel).

Response: The Liquidation Plan does indeed allow for the reinstatement of lapsed policies. With respect to Standard Policies, a lapsed policy will be continued with payment of premium pursuant to the provisions of the policy itself. *See* Liquidation Plan, § 4.2.

Disputed Policies will not be lapsed as long as the insured has complied and continues to comply with his original contractual obligations. Liquidation Plan, §§ 5.2 and 5.4.5. The Liquidation Plan does not require payment of premiums by any insured who paid full consideration through a single lump sum premium payment or multiple premium payments. This is one of the advantages of the settlement found in the Liquidation Plan for the benefit of consumers. The tampering of the policies through conversions from whole life to premium paying term life and then failure to pay premiums by NPS will not be used by the Participating Guaranty Associations to reduce or deny face amount death benefit payments found in the original policies issued.

C. National Heritage Enterprises, Inc. Objection

A third objection was filed by National Heritage Enterprises, Inc. ("National Heritage") and Forever Enterprises, Inc. ("Forever"). National Heritage is the parent of Forever. Forever is the parent of Memorial Service. Memorial Service is the parent of Lincoln Memorial. Thus, the controlling entities with respect to both Lincoln Memorial and Memorial Service have filed an objection.

Objection 1: The Liquidation Plan establishes improper subclasses.

Response: The owners of Lincoln Memorial and Memorial Service incorrectly state that the Liquidation Plan constitutes an improper establishment of subclasses under

the Insurer Receivership Act, Section 443-301. This is simply not true and a total misunderstanding of the terms of the settlement agreement within the Plan.

The objection indicates that PGA coverage for Standard and Disputed Policies is the basis for their claim that subclasses have been created. First of all, the necessity of recognizing Standard and Disputed Policies for guaranty association coverage purposes is the direct result of the improper actions of the controlling entities of Lincoln Memorial and Memorial Service. Approximately 90% of all 220,000 policies are Disputed Policies, that is, policies that have been improperly tampered with by the controlling parties. Only 10% of all policies escaped tampering and constitute Standard Policies.

The designation of Standard and Disputed Policies was recognized in the Liquidation Plan, as part of the settlement and compromise, to determine the manner in which guaranty associations provide statutory obligations to owners, insureds, and payees. Standard Policies will be covered by the Participating Guaranty Associations in the ordinary course of business. The improper modifications to the Disputed Policies make it impossible, without years of litigation, to determine the essential policy features necessary for coverage allocation among Guaranty Associations or even whether the Guaranty Associations should provide coverage for the policies at all.

As a result of the settlement and compromise, Disputed Policies provide insurance benefits to or on behalf of insureds who have apparently complied with their contractual obligations, but many of whom would likely be denied those benefits, in whole or in part, as a result of misdeeds by now insolvent Companies. Texas law specifically authorizes these actions by the Participating Guaranty Associations. First, in the Texas Guaranty

Association Act, the General Powers and Duties of the Association are described in Section 463.101:

- (a) The association may:
 - (1) enter into contracts as necessary or proper to carry out this chapter and the purposes of this chapter;
 - (2) sue or be sued, including taking:
 - (A) necessary or proper legal action to:
.....
 - (ii) settle a claim or potential claim against the Association; or
 - (B) necessary legal action to avoid payment of an improper claim

With respect to an insolvent insurer, the Guaranty Association has many alternative powers:

- (b) The association shall provide money, pledges, guarantees, or other means reasonably necessary to discharge the insurer's duties and to:
 - (1) guarantee, assume, or reinsure, or caused to be guaranteed, assumed, or reinsured, the insurer's policies or contracts; or
 - (2) ensure payment of the insurer's contractual obligations.

Texas Insurance Code, § 463.253.

The Association is granted discretion by the Texas legislature with respect to the manner of providing benefits. Section 463.206 of the Guaranty Association Act provides in part as follows:

(a) The board shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.

(b) If the association arranges or offers to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefit from the association in addition to or other than those provided under the plan or arrangement.

Texas Insurance Code, § 463.206. The Guaranty Association statutes in other states have identical or similar provisions.

The provisions of the Liquidation Plan clearly fall within the discretion granted to the Guaranty Associations, and it fulfills their statutory obligations. Without the Liquidation Plan's settlement agreement and compromise, each Guaranty Association would have the right and the discretion to assert each and every statutory and policy defense referenced within this response, and more. This Liquidation Plan, negotiated by the Texas Department of Insurance, the Special Deputy Receiver and NOLHGA on behalf of the Participating Guaranty Associations avoids years of litigation, significantly delayed claims payments and likely reduced claims payments in many states as a result of policy defenses related to the improper manipulation of policy components by NPS and the controlling parties.

Objection 2: The Liquidation Plan allows for potential offsets of payments from Guaranty Associations to those who owe money to the Companies.

Response: One or more of these objecting parties have withheld premium payments from Lincoln Memorial, Memorial Service and/or the Special Deputy Receiver for many months. Other offsets may be available, but this offset is clear on its face. The

insurance company Estates, and upon Liquidation, the Guaranty Associations, should not make payments to entities which are improperly, and in violation of court order, holding premium dollars owned by the insurance companies, and ultimately by the Guaranty Associations.

Objection 3: The Liquidation Plan does not provide for a dispute resolution procedure with respect to these offsets.

Response: Whether the insurance company Estates or a Guaranty Association is entitled to an offset under the Liquidation Plan is governed by and construed in accordance with the laws of Texas. Unless such dispute involves the concept of whether a policy is a Standard versus Disputed policy or involves a determination of a particular Participating Association's covered obligations under its own enabling Act, this Court maintains jurisdiction over such disputes. Liquidation Plan, § 13.3.1.

The objecting parties' claim that there will be no due process with respect to an offset asserted against them is simply untrue.

D. Henneke Funeral Home, Ltd. Objection

Henneke is a Texas funeral home. Its objection clearly states that it has not had sufficient time to analyze the Liquidation Plan and is objecting out of “an abundance of caution.” The three objections and NOLHGA's responses are as follows:

Objection 1: The Liquidation Plan is objectionable to the extent it authorizes any payment less than the benefits that would have been payable under the policies since that is what the Texas guaranty association is required to pay.

Response: This objection reflects a misunderstanding of the terms of the Plan. As discussed above, the benefits being provided under the Plan are in compliance with the obligations of the PGAs.

Objection 2: There is no basis for the distinction between Standard and Disputed Policies.

Response: As discussed above, there are good and valid reasons for the distinctions between Standard and Disputed Policies. Without the distinction and attempt to undo the improper manipulation of the Disputed Policies, there would likely be significant litigation, delay and reduction in benefits for 90% of the policies.

Objection 3: The Plan fails to take into consideration actions NPS may have taken with respect to the policies.

Response: This is simply not a true statement. As discussed above, the recognition of Disputed Policies does in fact take into consideration the improper actions of the Companies.

E. Denzer-Farison-Hottinger & Snyder Funeral Home Objection

This Ohio funeral home seems to object because it will be paid the amount of the insurance policy and not the amount of the preneed funeral contract. As discussed above, the PGAs only cover the insurance policies, and the funeral home will have a claim against the NPS Estate for any shortfall.


III. CONCLUSION

The settlement and compromise in the Liquidation Plan resolves the chaos created by the Companies and their controlling parties. There are simply no valid objections to the Plan and it should be implemented as soon as possible.

WHEREFORE, PREMISES CONSIDERED, the Court is requested to enter the Order of Liquidation and Order Approving Liquidation Plan, and all other relief to which NOLHGA may be justly entitled.

Respectfully submitted,

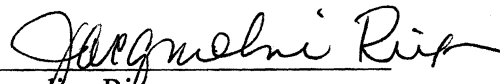
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NOLHGA's RESPONSE TO OBJECTIONS TO APPLICATION FOR ORDER OF LIQUIDATION AND FOR ORDER APPROVING PLAN OF LIQUIDATION was served upon the parties listed below on September 4th, 2008, via email or first class mail, as indicated.


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