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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: § **Case No. 11-35165-SGJ**
§
RETIREMENT VALUE, LLC, § **Involuntary Chapter 11**
§
DEBTOR. §

MOTION, IN THE ALTERNATIVE, TO TRANSFER VENUE

Eduardo S. Espinosa, in his capacity as the State Court Receiver (the “Receiver”) for Retirement Value, LLC (the “Alleged Debtor”) appointed by the District Court of Travis County, Texas for the 126th Judicial District (the “State Court”) in *Texas v. Retirement Value, LLC, Richard H. “Dick” Gray, and Bruce Collins, and Keisling, Porter & Free, P.,C., Relief Defendant*, Cause No. D-1-GV-10-000454 (the “Receivership Action”) hereby moves (the “Motion”) the Court to transfer this involuntary Chapter 11 bankruptcy case (the “Involuntary”) to the proper venue. In support of the Motion, the Receiver states as follows:

I. SUMMARY

1. Contemporaneously with the filing of this Motion, the Receiver filed in the Involuntary his Motion to Abstain or Dismiss (the “Motion to Abstain”).¹ In the Motion to

¹ The Receiver incorporates by reference the allegations made in the Motion to Abstain as if they were fully restated in this Motion.

Abstain, the Receiver argues, in part, that the Court must dismiss the Involuntary because the Northern District of Texas is an improper venue for a bankruptcy of the Alleged Debtor to go forward. To the extent that the Court does not abstain from hearing the Involuntary or dismiss it entirely, for the same reasons, the Receiver asks the Court to transfer the Involuntary to the Western District of Texas.

II. BACKGROUND

A. THE ALLEGED DEBTOR'S FRAUDULENT ENTERPRISE

2. The Alleged Debtor's sole business was to perpetrate a securities fraud on the general public. It was extraordinarily successful. Using false claims, the Alleged Debtor stole approximately \$77.6 million from more than 900 investors to whom it promised approximately \$125 million in return. The proceeds of this scam were used to acquire insurance policies at a grossly inflated purchase price of approximately \$28 million from a co-conspirator and to establish a premium reserve of approximately \$25 million; the balance was dissipated to the Alleged Debtor's principals and to other co-participants in its fraud.

B. ORIGINS OF THE RECEIVERSHIP ACTION

3. Upon learning of the scheme, the Texas State Securities Board issued a cease and desist order on March 29, 2010. The Texas Department of Insurance followed shortly with a cease and desist order of its own. The State of Texas filed the Receivership Action against the Alleged Debtor and two of its principals on May 5, 2010, alleging that the defendants had perpetrated a massive fraud on the investing public through the sale of "participations" in policies of life insurance to be purchased by the Alleged Debtor.

4. At the request of the State, the State Court appointed the Receiver. The State Court directed the Receiver to: (a) collect and preserve the receivership assets; (b) notify the investor-victims of the Receivership Action; (c) attempt to effect fair restitution to the investor-

victims based on a plan to be approved by the State Court; and (d) assist the State in its investigation of the Alleged Debtor, its principals, and those who dealt with them. On May 28, 2010, the State Court continued the Receiver's appointment indefinitely.

C. LOCATION OF ALLEGED DEBTOR'S OFFICES, ESTATE'S ASSETS, AND CREDITORS

5. Before the appointment of the Receiver, the Alleged Debtor maintained its offices in New Braunfels, Texas. That was always the Alleged Debtor's principal place of business and where it maintained its assets. At no point before the Receiver's appointment were the Alleged Debtor or its assets located in Dallas, Texas.

6. While the Alleged Debtor's creditors are variously located around the United States, the majority of the Alleged Debtor's creditors are located in Texas. While approximately five percent (5%) of the Alleged Debtor's investors have spoken directly with the Receiver,² the interests of the investing public have been primarily represented throughout the Receivership Action by the Attorney General of the State of Texas, whose offices are located in Austin, Texas. Due to the current tightness of the State of Texas's budget, the Attorney General's staff has a far greater ability to attend hearings in Austin than hearings in Dallas.

7. Additional parties that have actively participated in the Receivership Action are located in Irving, Texas (Mr. Cain); San Antonio, Texas (Mr. Edelstein); Las Vegas, Nevada (Qvest III Master Fund); Southlake, Texas (the Bejceks); and Memphis, Texas (Ladell Harrison and the Allen Charitable Trust).

8. At all times since the Receiver's appointment, including over the six (6) months preceding the Petition Date, the Alleged Debtor's assets were in the constructive custody of the

² More of the Alleged Debtor's investors have contacted the Receiver's staff with their input over the course of the Receivership Action.

State Court in Austin, Texas.³ With the Receivership Action pending for far more than six (6) months in the State Court, all major decisions concerning the use of the Alleged Debtor's assets have been made in Austin by the State Court with the input of the Receiver and the State of Texas; put differently, any and all decisions made by the Receiver have been supervised by the State Court in Austin.

9. On behalf of the State Court, the Receiver holds the Alleged Debtor's assets *in custodia legis*. In that capacity, the Receiver maintains a primary account with the Wells Fargo branch located in New Braunfels, Texas (holding approximately \$18 million of the Alleged Debtor's assets); the Receiver also maintains a smaller operating account with the Chase Bank branch located in Dallas, Texas (holding approximately \$10 million of the Alleged Debtor's assets at the Petition Date). The Alleged Debtor's original insurance policies are maintained in the Oklahoma City offices of Asset Servicing Group, the Receiver's policy servicers retained with State Court approval. The lions' share of the Alleged Debtor's assets is thus located in either Oklahoma City or New Braunfels.

III. MOTION TRANSFER VENUE

10. As set out fully in the Motion to Abstain, this Court is not a viable forum for the Involuntary to go forward. To the extent the Court denies the Motion to Abstain, ruling that the Northern District is one potential venue for the Involuntary to continue, it would still be *more* proper to transfer the Involuntary to the Western District. The Receiver hereby moves for a transfer of the Involuntary to the Austin Division of the Western District of Texas, to the extent that the Involuntary is not simply dismissed.

³ See *Neel v. Fuller*, 557 S.W.2d 73, 76 (Tex. 1977) (stating that receivership property is "held in custodia legis[,] free from interference with the exclusive custody and possession which the court had assumed over it.")

11. Pursuant to 28 U.S.C. § 1412, the Court “may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice of for the convenience of the parties.” In determining the interests of justice and convenience, this Court considers factors such as:

(1) [t]he proximity of creditors of every kind to the Court; (2) [t]he proximity of the bankruptcy (debtor) to the Court; (3) [t]he proximity of the witnesses necessary to the administration of the estate; (4) [t]he location of the assets; (5) [t]he economic administration of the estate; (6) [t]he necessity for ancillary administration if bankruptcy should result.

In re Cole, 2008 WL 2857118, *3 (Bankr. N.D. Tex. 2008) (citing *In re Commonwealth Oil Refining Co.*, 596 F.2d 1239 (5th Cir. 1979). If the consideration of these factors clearly demonstrates “good cause” for transferring the case, the Court should do so.⁴

12. In this case, at least three factors (the first, fourth, and fifth) strongly favor a transfer to Austin and the Western District. The fourth (location of assets) is discussed at length, in the Motion to Abstain; nearly two-thirds of the Alleged Debtor’s cash assets, which constitute the majority of the Alleged Debtor’s total assets if valued at current liquidation prices, are located in the Western District of Texas. The Alleged Debtor’s creditors are located around the nation and the interests of most (as the defrauded, investing public) are represented most directly through the public advocacy of the Attorney General of Texas; therefore, the first factor weighs in favor of transfer to Austin. Given the key role the State has played in the Receivership Action and will play in the Involuntary, should it continue, the State’s interest in having the Involuntary moved to Austin, where the State’s budget will allow its full participation, strongly impact where the estate may be efficiently administered and should strongly influence the Court toward a transfer. Admittedly, this impacts the second factor as it will require the Receiver to travel to

⁴ *In re Victorville Aerospace, LLC*, 2008 WL 5482785, *3 (Bankr. S.D. Tex. 2008) (citing *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008).

hearings in Austin, but given that this has been the case for the Receivership Action, it is not an imposition and the Receiver does not mind.

13. The third factor is not to the contrary -- flying to Austin is equally convenient to flying into Dallas for out-of-state parties and for the Receiver's portfolio manager. Given that the Receiver has already filed many of the estate's fraudulent transfer avoidance actions, and that the age of the Receivership Action at the Petition Date assures that the Alleged Debtor has not preference actions available to it, the final factor (the need for ancillary proceedings) similarly bears little weight in this case.

14. With three factors strongly favoring transfer and none counseling against it, the relevant factors constitute "good cause" to transfer the Involuntary to the Western District of Texas, to the extent that the Court does not dismiss the Involuntary entirely.

IV. PRAYER

WHEREFORE, the Receiver respectfully asks the Court, to the extent it denies the Motion to Abstain, to: (i) transfer the Involuntary to the Western District of Texas; and (ii) grant such other and further relief as the Court deems just and proper.

DATE: September 6, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 6, 2011, a true and correct copy of the attached Answer was served via email through the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service and via first class U.S. Mail upon the parties listed below.

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