

CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
RETIREMENT VALUE, LLC,	§	
RICHARD H. "DICK" GRAY, HILL	§	
COUNTRY FUNDING, LLC, a	§	
Texas Limited Liability Company,	§	
HILL COUNTRY FUNDING, a Nevada	§	
Limited Liability Company, and	§	TRAVIS COUNTY, TEXAS
WENDY ROGERS,	§	
	§	
Defendants,	§	
	§	
AND	§	
	§	
JAMES SETTLEMENT SERVICES, LLC,	§	
ET AL.,	§	
	§	
Third Party Defendants.	§	126 th JUDICIAL DISTRICT

RECEIVER’S MOTION TO AUTHORIZE AN INITIAL DISTRIBUTION PURSUANT TO THE PLAN OF DISTRIBUTION

Eduardo S. Espinosa, in his capacity as the court-appointed Receiver for Retirement Value, moves this Court for authorization to make an initial distribution to the Investors¹ pursuant to § VII of the Plan of Distribution.

SUMMARY

The Receiver seeks permission to make an initial distribution of \$5,500,000. The distribution will be split \$5,208,500 to the RV Investors and \$291,500 to the HCF Investors. The proposed distribution is authorized by the Plan and is in the best interest of the estate.

¹ Unless otherwise defined herein, capitalized terms have the same meaning as they do in the Plan of Distribution.

STATUS OF CLAIMS PROCESS

The Receiver has compiled and filed with the Court the Schedule of Claims required by the Plan of Distribution. The Schedule lists each known claimant of Retirement Value and HCF, the amount claimed by each person, the classification of each claim and whether the Receiver approves or disputes the claim. In order to provide notice of the Schedule and of the Bar Date, the Receiver mailed a copy of the Schedule, the Plan, the bar date notice and proof of claim forms to all persons known to have claims against Retirement Value or Hill Country Funding. In addition, he has posted these items on the Receiver's website, www.rvllreceivership.com. Further, the Receiver has purchased the newspaper advertisements required by the Plan, which have been running in various newspapers across the state. The State Securities Board has also posted a copy of the Plan on its website.

Since filing and mailing the Schedule, the Receiver has received a number of inquiries from investors and others. Many of these inquiries have been resolved.² Others have escalated into formal proofs of claim. A table summarizing the proofs of claim filed and their status is attached as Exhibit A.

THE PROPOSED DISTRIBUTION

The Receiver seeks permission to distribute \$5,500,000 to the Investors pursuant to the Plan. After making the distribution, the Receiver will retain sufficient funds to pay premiums on the portfolio and to maintain expected receivership operations. The proposed distribution is proper and in the best interest of the estate.

² The Receiver has filed amended Schedules reflecting changes resulting from the claims process to date and showing the claims that have been disputed. The most recent amended schedule, the 2nd Amended and Restated Schedule, was filed on September 7, 2012.

Pursuant to the Plan, the Receiver may not make a distribution unless he has sufficient funds on hand to maintain adequate reserves to pay the anticipated premiums due on the Policies. Plan at § VI.B.3. Reserves are adequate “if they are at least equal to (a) the needed premium reserves calculated at the 97 ½ percentile in the most recent stochastic model prepared by the Receiver’s actuaries plus (b) the amount calculated by the Receiver as necessary to meet anticipated future expenses.” *Id.*

The Receiver had his actuaries at Lewis & Ellis prepare a stochastic analysis of the portfolio of policies maintained by both Retirement Value and HCF. According to the stochastic analysis, the needed premium reserve calculated at the 97½ percentile is \$17,414,248, as of August 31, 2012. Of note, the needed premium reserve calculated at the median or 50th percentile is \$6,694,073 and the average of all results in the stochastic analysis was a needed premium reserve of \$7,372,861. The report of Lewis & Ellis is attached as Exhibit B.

As of August 31, 2012, the Receiver has cash on hand of \$23,408,197.46. Looking only at the cash on hand, the Receiver has slightly less than \$6,000,000 in excess of the required premium reserve. The Receiver proposes an initial distribution of \$5,500,000.³ This will leave about \$500,000 to cover non-premium expenses. While this reserve for future may not be sufficient to carry through to the end of the receivership, we anticipate that it will be supplemented by settlements which have been reached but not yet finalized (such as those with Wendy Rogers and Michael McDermott), by future maturities and by future recoveries.

In addition, we believe that reserve requirements are conservative. By reserving at the 97½ percentile, we are building in a significant cushion against unexpected results. In addition,

³ The reduction of the distribution from the \$7.7 million anticipated in April 2011 is attributable to the inclusion of the HCF Policies into the portfolio and to the passage of nearly 18 months without a maturity. In addition, litigation filed by the Beste/James defendants attempting to wrest control over the portfolio, including the involuntary bankruptcy, caused an unanticipated increase in expenses further reducing excess capital available for distribution.

the life expectancies of the HCF insureds are probably overstated. Because we do not have current health information on these insureds, we have been unable to obtain a life expectancy calculation on them. Therefore, we have used standard life expectancies based on the insureds' ages without any discount for health issues. However, old life expectancy calculations that we have obtained on these insureds suggest that each insured does have health issues that may result in a shorter than standard life expectancy.

Because the funds to be distributed are not traceable to a cause of action that is owned solely by either the Receiver or the HCF Receiver, the funds will be distributed in accordance with § V.B.1 of the Plan – 94.7% will be paid pro rata to the RV Investors and 5.3% will be paid pro rata to the HCF Investors. This works out to \$5,208,500 to be split among the RV Investors and \$291,500 to be split among the HCF Investors. The proposed distribution by Investor is attached as Exhibit C.

Not all Investors will receive a distribution. Those Investors holding a Contested Claim will not be paid until their disputes are resolved. Plan at § IV.E.3. However, the Receiver will reserve funds to pay these Investors out of this distribution. *Id.* at § VII.C.4. For purposes of this distribution, the Receiver has reserved the full amount claimed by the Investor for Contested Claims. Depending upon the resolution of each Contested Claim, the Receiver will pay up to the amount shown on Exhibit C as “Amount withheld pending resolution of Dispute” for each Contested Claim.

In addition, certain Investors who are also Licensees have reached agreements with the Receiver to have monies otherwise payable to them pursuant to their claims paid to the Estate.

ACCORDINGLY the Receiver requests permission to make a distribution of \$5,500,000 to the Investors as set forth on Exhibit C.

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above pleading has been served on the following counsel on this the 7th day of September 2012 as indicated below:

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