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File No. 52366

April 21, 2011

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**FROM:**

Yoli w/Attorney Albert Garcia

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Re: Cause No. D-1-GV-10-000454; State of Texas al v. Retirement Value, L.L.C,  
et al; In the 126<sup>th</sup> District Court, Travis County, Texas

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**MESSAGE:**

See the attached Intervenors' Objections to Fifth Application for Fees by the Receiver and Receiver's Counsel.

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**TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET:** \_\_\_\_\_.

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

STATE OF TEXAS,  
Plaintiff

IN THE DISTRICT COURT

LADELL HARRISON, ON BEHALF OF  
MATTHEW C. ALLEN, JR., TEDDIE J.  
ALLEN, AND THE MATTHEW AND  
TEDDIE ALLEN CHARITABLE  
REMAINDER ANNUITY TRUST,  
Intervenors

126<sup>th</sup> JUDICIAL DISTRICT

VS.

RETIREMENT VALUE, L.L.C.,  
RICHARD H. GRAY, WENDY  
ROGERS, KIESLING, PORTER,  
KIESLING & FREE, P.C., and  
BRENTLY "BRENT" W. FREE  
Defendants

TRAVIS COUNTY, TEXAS

**INTERVENORS' OBJECTIONS TO FIFTH APPLICATION  
FOR FEES BY THE RECEIVER AND RECEIVER'S COUNSEL**

TO THE HONORABLE JUDGE:

COME NOW INTERVENORS Ladell Harrison, on Behalf of Matthew C. Allen, Jr.,  
Teddie J. Allen, and the Matthew and Teddie Allen Charitable Remainder Annuity Trust  
("Intervenors") file their Objections to the Fifth Fee Application filed by the Receiver and  
Receiver's Counsel, and in support hereof would show the Court as follows:

I.

**BACKGROUND**

Intervenors invested \$1.1 million in RV's resale life insurance program. They have  
not received one dollar in return for their investment. Their interests and invested funds are  
directly affected by this Receivership and by the Receiver's Application for Fees. While

Intervenors acknowledge that the Receiver and their counsel have performed considerable work on this matter from the inception of the Receivership, it should be noted that many other professionals have worked with and assisted the Receiver and its counsel. But, unlike the Receiver and its counsel, those other professionals have not been paid from funds in the Receivership. Left unchecked and without Court guidance, however, Intervenors reasonably fear that the attorneys' fees and expenses of the Receiver and its counsel will adversely affect the amount of ultimate return the Intervenors and other investors will receive.

In its 5<sup>th</sup> Application for Fees the Receiver seeks \$74,366 for his fees and expenses and \$281,591 for his law firm, K & L Gates. In the Fee Applications submitted to date, it appears that the Court approved about \$917,105.01 in fees and, including the 5<sup>th</sup> Application, there is an additional \$583,187.88 in fees that the Receiver is requesting (3<sup>rd</sup> through 5<sup>th</sup> Applications). If the Court approves those fees as well, the total fees to the Receiver for the 10-month period between April 30, 2010 and February 28, 2011 would be \$1,500,292.89 (an average of \$150,000 per month).

## II.

### DISCUSSION

Other intervenors in this case raised several objections to both the Receiver's 1<sup>st</sup> and 2<sup>nd</sup> Applications for Attorneys' Fees. Now that Intervenors are parties to this case, they join in the other intervenors' objections. Intervenors assert that the Receiver's counsel's bills need to be reduced, since a majority of the document retrieval, analysis and production has been completed. Intervenors are concerned that RV cannot continue to withstand this level of billing without significantly impacting the Intervenors' investment. As with the prior billings, Intervenors note that in the outstanding fee applications, there are multiple lawyers,

paralegals and other legal professionals billing time on the RV file. This may result in potentially unclear organization, oversight and planning to achieve an efficient outcome. Without proper oversight and delineation of tasks to achieve efficiencies, the Receiver stands at risk for a long term drain on what amounts to investors' funds. As RV is not generating any new business, the fees and expenses charged by Receiver and Receiver's counsel is seriously depleting the funds available to maintain the RV portfolio.

One of the factors that the Court should consider is the amount involved and the results obtained. In the Receiver's discussion of this factor, the Receiver notes that during the period of time covered by the Fee Application, the Receiver recovered a \$710,000 settlement with the Kiesling Porter law firm, a \$650,000 settlement with Dick Gray, and Pacific Life Insurance Company's agreement to pay the \$10 million that they were obligated to pay under a life insurance policy. *Fee Application, p. 10*. All of the parties to this lawsuit participated in and assisted in reaching the settlements with Kiesling Porter and Dick Gray and the hours associated with getting Pacific Life's compliance with its contractual obligations are not substantial relative to the amounts sought in the 5<sup>th</sup> Application.

Intervenors would also point out that at this stage of the Receivership there is no proposed distribution plan for the various investors. With about \$1.5 million in fees and expenses sought by the Receiver to date, the Intervenors and all of the investors for whom the Receiver is working, would reasonably expect that some proposal for distributions to the investors would be in place or at least under discussion. Intervenors would therefore request that the Court not grant the pending fee applications as they exist, request substantial reductions and/or include the amounts sought by the Fee Applications in a distribution plan that includes the investors.

Intervenors also request the Court to instruct the Receiver and his counsel to more closely focus their efforts with fewer periphery professionals on key issues. This Receivership must find a way to more efficiently proceed and to do it with less experienced professionals billing at a much lower rate.

WHEREFORE, Intervenors pray their Objections be heard and sustained, and that the Court enter appropriate orders.

Respectfully submitted,

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**ATTORNEYS FOR INTERVENORS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to the following counsel of record on this the 21<sup>st</sup> day of April, 2011.

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