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D-1-GV-10-000454

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

STATE OF TEXAS, 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 WENDY ROGERS, Defendants, AND KIESLING, PORTER, KIESLING, & FREE, P.C., Relief Defendant.	§ §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 126th JUDICIAL DISTRICT

NOTICE OF FILING OF RECEIVER'S INITIAL REPORT

Eduardo S. Espinosa, court-appointed temporary receiver for Retirement Value, LLC, hereby provides notice that he is filing the attached Initial Report of Eduardo S. Espinosa, temporary receiver for Retirement Value, LLC and Appendix of Exhibits in Support of the Initial Report.

The Initial Report provides an overview of the operation of the receivership since the Receiver was appointed on May 5, 2010. In the Initial Report, the Receiver discusses his investigation to date, the preliminary results of that investigation, the financial condition of Retirement Value and the status of the portfolio of insurance policies acquired with investor funds.

The Initial Report and Appendix of Exhibits have been served on all parties to this case and posted to the Receiver's website (www.rvllcreceivership.com). In an effort to save costs, the Receiver will not mail a copy of the Interim Report and exhibits to the more than 900 known investors. Instead, the Receiver will notify the investors that the Interim Report has been filed and ask that they investors download a copy from the website. The Receiver will mail a copy of the Interim Report and Appendix of Exhibits upon request to investors who are unable to access it on the website.

Respectfully submitted,

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ATTORNEYS FOR THE COURT-APPOINTED RECEIVER OF RETIREMENT VALUE, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above pleading has been served on the following, via certified mail, return receipt requested on this the 28th day of July 2010:

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Initial Report

Of

Eduardo S. Espinosa,
Temporary Receiver

For

Retirement Value, LLC
a Texas limited liability company

As of
July 28, 2010

Issued in connection with
that certain matter pending before the
126th District Court of Travis County, Texas,
Cause Number D-1-GV-10-000454

**INITIAL REPORT OF EDUARDO S. ESPINOSA,
TEMPORARY RECEIVER FOR RETIREMENT VALUE, LLC**

On May 5, 2010, the 126th Judicial District Court of Travis County, Texas (the "Court") appointed Eduardo S. Espinosa as the temporary receiver for Retirement Value, LLC, a Texas limited liability company. Since then, my team and I have been engaged in: (a) gathering and preserving Retirement Value's assets; (b) investigating claims against Retirement Value by investors and others; and (c) investigating Retirement Value's potential claims against its principals and other participants in its Re-Sale Life Insurance Policy Program. We have also spoken or corresponded with many of the investors. However, because there are more than 900 investors, it is not possible for us to communicate with each investor, individually. This report updates the investors, the Court and the public as to the status of the Receivership.

I. Background and Status of the State's Suit

On May 5, 2010, the State of Texas filed suit against Retirement Value, Gray and Collins alleging that they were selling unregistered securities, engaging in securities fraud and violating the Texas Deceptive Trade Practices Act. Among other things, the State sought the appointment of a receiver for Retirement Value, the issuance of temporary and permanent injunctions against the defendants and restitution for the losses suffered by investors. The State subsequently amended its suit to include Wendy Rogers as a defendant, and to seek a receivership over Hill Country Funding, LLC, a Texas limited liability company ("HCF-TX"), and Hill Country Funding, LLC, a Nevada limited liability company ("HCF-NV"), each a Retirement Value affiliate.

On May 28, 2010, the Court entered, by agreement of the parties, a temporary injunction against Gray and Retirement Value and continued the Receiver's appointment. The temporary injunction and the receivership will remain in place until the end of the trial of this matter, which is currently scheduled for February 28, 2011.

Bruce Collins has agreed to the entry of a permanent injunction which the Court entered on June 17, 2010. He has also entered into a settlement with the Receiver under which Collins transferred approximately $319,000 in cash and other assets to the Receiver. On June 17, 2010, the Court approved the settlement between Collins and the Receiver.

II. The Appointment of the Receiver

Whenever there are allegations of fraud in an investment context, particularly if there are assets remaining in the estate, the State will usually seek the appointment of a receiver to preserve the assets and protect them from being dissipated by the individuals accused of fraud. The Receiver's duties include: (a) collecting and preserving the receivership assets; (b) notifying the investor-victims of these proceedings; (c) attempting to effect fair restitution to the investor-victims based on a plan to be approved by the court; and (d) assisting the State in its investigation of the Defendants and those who dealt with them.

The Receiver has retained the law firm of K&L Gates, LLP to represent him in connection with this case, to assist him in the performance of his duties and to prosecute or defend litigation on behalf of Retirement Value. The Receiver is a partner in K&L Gates. He has also retained the following professionals:

- BKD, LLC to act as the Receiver's accountants and to prepare the Receivership's books and records;
- Asset Servicing Group to act as a portfolio manager for Retirement Value's policies and to advise the Receiver on how to maximize the policies' value; and
- Lewis & Ellis to provide actuarial consulting as to the portfolio's value and the funds necessary to keep the policies in force.

The fees of the Receiver, K&L Gates and the other professionals employed by the Receiver are subject to the approval of the Court.

III. The Receiver's Investigation

Once appointed, the Receiver instituted an investigation into the business and assets of Retirement Value and its affiliates. The investigation is intended to: (1) determine Retirement Value's current status and to assess the investors' claims against it; (2) identify, gather and protect any assets belonging to Retirement Value; and (3) to uncover and prosecute viable claims against members, officers, licensees and others who have done business with Retirement Value.

The investigation, although well under way, is not complete. To date, we have interviewed most of Retirement Value's employees, including Dick Gray, Wendy Rogers and Bruce Collins as well as key employees of Kiesling Porter. We have also spoken with many investors and licensees to gain their perspectives on the investment offered by Retirement Value. In addition, we have spoken with representatives of each bank known to have done business with Retirement Value as well as representatives of the insurance companies which have issued policies owned by Retirement Value. We have also spoken with Ron James of James Settlement Services, which sold the policies to Retirement Value.

We have searched Retirement Value's offices for the purpose of gathering and examining records relating to the operations of Retirement Value. We have also obtained and reviewed the accounting records maintained by Retirement Value and Kiesling Porter as well as banking and other financial records. In addition, we have gathered some 236 gigabytes of data (if printed, that would be roughly about 14 million pages of information) from Retirement Value's computers. In addition, we have obtained access to substantial additional Retirement Value data stored by various vendors. With the assistance of the Texas Department of Insurance, we have also gathered additional documents and records from the insurance companies. We have also reviewed recordings of Retirement Value's monthly sales meetings and calls with licensees.

As a result of the investigation, we have been able to reach certain preliminary conclusions as to the business conduct of Retirement Value.

A. Nature of the Investment

From April 2009 through March 29, 2010, Retirement Value raised approximately $77 million from more than 900 investors through the sale of investments in its Re-Sale Life Insurance Policy Program.

Each of the investments was structured as a loan to Retirement Value, whereby the investors provided Retirement Value with funds in exchange for Retirement Value's promise to pay a fixed sum of money at an undetermined date in the future. The amount that Retirement Value agreed to pay was tied to the calculated life expectancy of insureds under life insurance policies purportedly owned by Retirement Value. In all instances, Retirement Value agreed to pay a return of 16.5% simple interest per year for the insured's calculated life expectancy. Thus, Retirement Value would pay $18,800 on a $10,000 investment in a policy where the insured had a calculated life expectancy of 64 months. The date on which the insured under the policy died set the date that the investment matured and when Retirement Value would be required to repay the loan. The loan's maturity date did not affect the amount of money that Retirement Value was obligated to pay the investor, except that investors were entitled to a return of unused premiums, if any. Each investor was allowed to select a life insurance policy or policies to which to tie his or her investment from a rotating portfolio of ten policies maintained by Retirement Value. Investor Agreement – Qualified (Exh. A-1); Investor Agreement – Non-Qualified (Exh. A-2).[1]

[1] The exhibits to this report are contained in the Appendix to the Initial Report.

B. Use of Investor Funds by Retirement Value

Retirement Value used funds received from investors to purchase insurance policies, to set up premium reserves, to pay administrative costs, including commissions to its licensees, fees payable to Kiesling Porter and to fund its operations. The amount of the premium reserve for a given policy was calculated by Retirement Value based on: (i) the life expectancy of the insured, as calculated by Midwest Medical, plus 24 months; and (ii) a schedule of estimated premiums provided by the seller of the policies, James Settlement Services, LLC.[2] Retirement Value paid Kiesling Porter a fee equal to 1% of the face value of each policy and the licensees a commission of no less than 16% of the money invested. Any money not allocated towards purchasing the policies, establishing premium reserves or paying administrative costs was immediately released by Kiesling Porter to Retirement Value.

All money paid by investors was received by and held in accounts administered by Kiesling Porter. On any given investment, after funds cleared and the 10-day free look period expired,[3] Retirement Value would instruct Kiesling Porter as to the distribution of the funds. Based on instructions received from Retirement Value, Kiesling distributed money to the licensees involved in the particular investment, to Retirement Value's operating account and to itself as payment for its fee. The remaining funds were placed in sub-accounts dedicated to the particular policies in which the investor invested.

As of May 5, 2010 – the date that the TRO was entered, Retirement Value had distributed the following amounts:

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[2] This schedule was an estimate. It did not reflect the premiums actually due on the policies or ultimately paid by Retirement Value.

[3] The 10 day free look commenced running upon Kiesling Porter's receipt of executed documents or funds from the investor, whichever came first. Accordingly, the 10 day free look period often ran contemporaneously with the funds clearing process.

Recipient	Amount
James Settlement Services, LLC (via Pacific Northwest Title)	$27,939,063.00
Retirement Value, LLC Operating	$10,251,508.49
Kiesling, Porter, Kiesling & Free PC	$1,275,666.48
Licensees	$12,796,389.76

KPKF Accounting Record Excerpts – Vendor Distributions (Exh. B). Retirement Value used the remaining funds to pay premiums and to fund the premium reserve accounts. There are approximately $23 million remaining in the various reserve accounts.

The Defendants or members of their immediate families received the following amounts from Retirement Value prior to the issuance of the TRO:

Dick and Catherine Gray	
Dividends (10/6/09 to 3/5/10)	$2,139,000
2010 Tax Prepayment	599,200
Dick Gray salary (2009-10)	210,574
C Gray (2009-10)	45,833
Dick Gray, Licensee	13,400
Total	**$3,008,007**

Wendy Rogers	
Dividends (10/6/09 to 3/5/10)	$688,000
2010 Tax Prepayment	149,800
Wendy Rogers salary (2009-10)	133,693
Wendy Rogers, Licensee	12,300
Total	**$983,793**

Bruce Collins	
Honorarium as COO	$75,000
B Collins, Licensee	43,390
Collins Marketing, Licensee	469,799
Total	**$588,189**

David and Elizabeth Gray[4]	
Buyout Agreement (2010)	$231,155
Dividends (2009)	579,307
Total	**$810,462**

RV & KPKF Accounting Record Excerpts – Insiders (Exh.C).

Retirement Value also diverted over $1 million to HCF-TX, a company owned and controlled by Dick and Catherine Gray. In a series of transactions occurring in February and March of 2010, Retirement Value and HCF-TX transferred significant sums of money between

[4] David Gray is the brother of Dick Gray and a former member (owner) of Retirement Value. Elizabeth Gray is David Gray's wife.

them. The net result of these transactions was the transfer of $1,150,000 from Retirement Value to HCF-TX. RV Accounting Record Excerpts – RV to HCF (Exh. D). Dick Gray explained these transfers as money that he intended to use to reimburse previous investors whom he had convinced to invest in a Ponzi scheme operated by Secure Investment Services, Inc.

On March 30, 2010 – the day that the Texas State Securities Board served its emergency cease and desist order on Retirement Value, Dick Gray obtained a cashier's check drawn on the HCF-TX account at First Commercial Bank in the amount of $1,075,000[5] and withdrew all of the funds remaining in Retirement Value's bank account ($342,000). He deposited these funds into an account at JP Morgan Chase in the name of Special Acquisitions, Inc., a Texas corporation ("Special Acquisitions"). *Id.* Special Acquisitions was formed on March 30, 2010 by Carie Morales, a part-time employee of Retirement Value and a long-time friend of Wendy Rogers. According to state records and the statements of Ms. Morales and Ms. Rogers, Carie Morales was Special Acquisitions' sole owner, officer and director. Special Acquisitions Formation Records (Exh. E). The signatories on the Special Acquisitions account at JP Morgan Chase were Ms. Rogers and Ms. Morales.

Gray and Rogers intentionally created a corporation, in which the public record did not reflect them as having any interest in; to hide Retirement Value's remaining assets from the State as it continued its investigation. The Receiver discovered this account during the search of Retirement Value's offices on May 5 and immediately took steps to seize these funds

C. Fraud in the Sale of Investments

The investigation to date has uncovered substantial evidence of fraud in the sale of investments by Retirement Value and its licensees in the Re-Sale Life Insurance Policy Program.

[5] This money is directly traceable to the $1,150,000 transferred from Retirement Value.

This fraud covers most aspects of the program from the structure of the investment, the protections offered to the investors to the potential return and risks of the investment. Material misstatements and omissions were made to the investors regarding the Re-Sale Life Insurance Policy Program, denying them the opportunity to make an informed investment decision. Quite simply, the investors have not received the investment that they were promised.

1. The Investors Are Not Irrevocable Co-Beneficiaries

The investors were promised that they would be "irrevocable co-beneficiaries" in the policies associated with their investments. RV Marketing Materials (Exh. F) at F-1, p.3, F-2, p.3, F-5, p.4, F-6, p.7. Kiesling Porter was the only named beneficiary under the policies. It, however, owed no contractual duty to the investors and was, itself, merely a revocable beneficiary. In short, the investors have no contractual interest in or lien on the proceeds of the policies. And, Retirement Value had no contractual obligation to maintain the policies, particularly beyond the calculated life expectancy plus 24 months.

2. Investor Funds Were Not Held in Escrow

The "escrow accounts" into which the investor's money was deposited were not true escrows. Retirement Value and its licensees[6] represented that all investor funds would be deposited in "escrow accounts" that would be managed by Kiesling Porter in its role as an "independent escrow agent" and that Retirement Value would not receive or handle investor money. *Id.* at F-1, p.2, 5, F-2, p.2, 5. In addition, Retirement Value represented that funds would be placed in sub-accounts tied to each policy owned by Retirement Value. Retirement Value described Kiesling Porter's role as "your Third Party Fiduciary," which would assure the

[6] According to Dick Gray and corroborated by records reviewed in the investigation, Retirement Value approved the promotional materials used by the licensees and created some materials for use by the licensees.

safe-keeping of investor money. *Id.* at F-6, p.8. Retirement Value made numerous comments about the role of Kiesling Porter as the "protector" of the investor's funds. *Id.* at F-1, p.5, F-2, p.5. For example, at the July 2009 licensee meeting, Dick Gray described Kiesling Porter's role as "representing the money and protecting the money and protecting you from us in a sense." July 2009 Meeting, Disk 2; Transcript (Exh. G) at 2. Although Brent Free of Kiesling Porter was present, he did not contradict this statement. Later at the July 2009 meeting, Free described Kiesling Porter's role, "Our job is to safe guard the money and as the anti drug campaign used to say 'just say no.' … Our job as escrow agents is…as I said is to make sure the money is safe " *Id.* at 9.[7]

These statements significantly misstate the role of Kiesling Porter and the nature of the premium reserve accounts. First, the funds loaned to Retirement Value by the investors were not held in escrow and Kiesling Porter did not act as an escrow agent. An escrow agreement requires at least three parties – the two parties to the transaction and the escrow agent. Further, to create an escrow, the depositor – in this case, Retirement Value – must make an irrevocable deposit with the escrow agent and cede all control over the escrowed funds to the escrow agent. The escrow agent owes fiduciary duties to both parties to release the escrowed property only upon the occurrence of the conditions set forth in the escrow agreement.

The "master escrow agreement" between Kiesling Porter and Retirement Value does not satisfy this test. The only parties to the agreement were Kiesling Porter and Retirement Value. Master Escrow Agreement (Exh. H) at ¶ 23 Further, Kiesling Porter agreed to "disburse funds as directed by Retirement [Value]" and that its liability was limited to transferring funds into sub-

[7] At this point, Free also vouched for Gray, Retirement Value and the Program. *See* July 2009 Meeting, Disk 2 (Transcript at 8)("[W]hen we talked with Dick about this about a year ago he explained what it was and we did as much research as we could and we felt very comfortable with him in the whole process.").

accounts “as directed by Retirement [Value];” paying premiums “upon written instruction by Retirement [Value];” and “disbursement of re-sale life insurance proceeds upon death of insured in accordance with written instruction from Retirement [Value].” Master Escrow Agreement at ¶¶ 6, 8. In other words, Kiesling Porter acted only as the agent of Retirement Value. And, far from acting as the investors' “Third Party Fiduciary,” Kiesling Porter expressly disavowed any duties to the investors.

> This Agreement is solely between Retirement [Value] and Kiesling [Porter]. Neither Participants investing funds nor Licensees are intended to be nor shall they be a party to this Agreement or a third-party beneficiary of this Agreement. Kiesling [Porter] has no responsibility, obligations or duties to such Participants and will have no contact with Participants other than the receipt of funds and transfer of such funds as directed by Retirement [Value].

Master Escrow Agreement at ¶ 23 (emphasis added).

Second, Retirement Value (with the acquiescence of Kiesling Porter) repeatedly commingled the funds held in the sub-accounts. Retirement Value routinely directed Kiesling Porter to take funds out of a sub-account dedicated to one policy to pay the purchase price owed to James Settlement Services on a second policy. As an example on March 25, 2010, Retirement Value directed Kiesling Porter to pay $552,384 towards the purchase of policy AVL180-030510-MR[8] but to take the funds from the sub-accounts for the following policies:

From the account for policy	**Amount**
AXA091-012110-PC	$ 61,878
AXA335-022410-PS	$ 54,235
AVL180-030510-MR	$136,045
LFG735-030510-AS	$ 53,300
LFG311-031210-HM	$ 96,450
AXA036-031610-PC	$ 26,817
JHL633-031210-CT	$123,659
Total	**$552,384**

[8] To preserve the insureds' privacy, we are using the policy codes used by Retirement Value to sell the investments.

Only $136,045 of the payment for the AVL180-030510-MR policy came from the correct sub-account. The remaining $416,339 came from accounts that were to be set aside solely to pay expenses related to other policies. Kiesling Porter followed these instructions, without comment. Copies of Retirement Value's instructions to Kiesling Porter and Kiesling Porter's transmittal to Pacific Northwest, redacted to protect the underlying insured privacy, are attached hereto as Exhibits I-1 and I-2, respectively. Retirement Value directed Kiesling Porter to commingle funds in this manner on at least 50 separate occasions from November 2009 through March 2010.

As a result of the frequent use of funds dedicated to one policy to pay expenses related to a second policy, Kiesling Porter was required to "re-balance" the sub-accounts from time to time. KPKF Accounting Record Excerpts – Rebalancing (Exh. J). As of the date of the TRO, some sub-accounts were over funded in relation to what is expected to be in those accounts while many others are under funded by that measure.[9] Premium Reserve Calculation (Exh. K).

In short, investors were led to believe that Kiesling Porter had custody and control over their funds and that Retirement Value "never touched the money." In reality, Retirement Value at all times maintained control over the funds.

3. <u>Retirement Value Overstated the Likely Return from the Investments and Understated the Likely Risks</u>

When selling the investment, Retirement Value provided the investors with charts showing the return on an investment in a given policy over time. As an example, the "Client Participation Example and Base Line Targeted Income During Ten Years" Chart for policy PL1140-111109-DM, is attached hereto as Exhibit L-1. The chart represented that the policy had

[9] This is an entirely separate issue from the under funding of all accounts due to the miscalculation of life expectancies by Midwest Medical and the underestimation of premiums due on the policies when setting the original reserve amounts.

a face value of $10,000,000 with an annual premium of $399,702 and that the insured's life expectancy was 38 months. An investment of $10,000 would have a base line return of $15,225. Assuming that the insured died at month 38,[10] the investment would return $16,442 representing the base line return of $15,225 plus unused premiums of $1,217 for an annualized return of 18.41%. If the insured survived to LE+24 or 62 months, the investment would return $15,225 for an annualized return of 9.50%.

The chart also reflects Retirement Value's predictions for the investment's performance beyond LE +24. In making this prediction, Retirement Value assumed that the investors would respond to premium calls in accordance with their agreements. In the chart, Retirement Value represented that each investor would be required to pay an annual premium of $608.55 per $10,000 invested in the policy.

In connection with the use of these charts, Retirement Value made a number of misrepresentations. First, Retirement Value misrepresented the likelihood that an insured would survive beyond LE+24. Second, it misrepresented the premium cost that each investor would be expected to incur if the insured survived beyond Third, Retirement Value misrepresented the risk to the investor if the insured survived beyond LE+24.

a. *Life Expectancy Calculations*

The insured's life expectancy is a key component of the value of a life insurance policy and of the likelihood of success in the Re-Sale Life Insurance Program. If the insured lives more than 24 months longer than his or her calculated life expectancy, then the premium reserves would be exhausted and the investors would be required to pay future premium costs.

[10] Retirement Value's projections assume that the investment in a given policy would be made on the date of the life expectancy certificate provided by Midwest Medical.

Retirement Value significantly misrepresented the insureds' likelihood of outliving their calculated life expectancy. In its written materials, Retirement Value represented that "90% of policies mature at or before projected LE" and that "95% of policies mature at or before LE plus 12 months." Marketing Materials (Exh. F) at F-1, pp. 8,10. In other materials, Retirement Value represented that Midwest Medical was "accurate 95% of the time to LE" and had "98.5% accuracy within 12 months after expected LE." *Id.* at F-6, p.11. In conversations with the undercover investigator for the State Securities Board, Dick Gray represented that 95% of the insureds would die within 24 months of the life expectancy calculated by Retirement Value. Transcript of "Cody Walker" Call (Exh. M) at 6. All in all, Retirement Value strove to and succeeded in creating an impression that it was a very low risk (1.5% to 5%) that the insureds would outlive the premium reserve.

Retirement Value's representations as to this risk are wholly false. The life expectancy calculation used by Retirement Value and presented to the investors was Midwest Medical's calculation of the insured's median life expectancy. It is the point at which 50% of the people who are statistically similar to the insured are expected to have died and 50% are expected to remain alive. Thus, even if Midwest Medical was 100% accurate in its calculations (which it was not), there was at best a 50% likelihood that the insured would die at or before his or her life expectancy.

Retirement Value did not disclose, and in fact hid, its use of a median life expectancy from the investors. As a general matter, Retirement Value did not provide investors with copies of the life expectancy certificates when the investors made their investment decisions. Instead, it simply stated a life expectancy without disclosing that it was a median or explaining what that meant. After the investor's 10-day free look period expired, Retirement Value purported to provide the life expectancy certificates for the policies in which an investor invested. However, in many cases, Retirement Value provided only the first two pages of the three-page life expectancy certificate provided by Midwest Medical.[11] The first two pages contain a narrative of the insured's health and a statement of the life expectancy. On the third page (the page often hidden by Retirement Value), Midwest Medical provided its statistical analysis. This analysis discloses that the life expectancy shown on the first two pages was a median. It also discloses a life expectancy at an 85% confidence level (i.e., the point at which 85% of the people like the insured are expected to have died). On average Midwest Medical's 85% life expectancy was just over LE+30. In other words, Retirement Value's assertion that there was a 95%-98.5% probability that the insured would pass away within LE+24 is contradicted by the Midwest Medical life expectancy certificates in its possession, which estimate the probability of death prior to LE+30 at less than 85%.

Even if RV had not misrepresented them, Midwest Medical's life expectancy calculations are unreliable. Midwest Medical has a very poor reputation and a history of regulatory problems. Its owner, George Kindness, is a convicted felon. He and Midwest Medical's predecessor, AmScot Medical, were accused of falsifying life expectancy calculations as part of fraudulent schemes to sell life insurance policies to investors. Retirement Value was aware of these issues with Midwest Medical and failed to disclose them to investors. Moreover, Retirement Value knew that Midwest Medical's life expectancy calculations were shorter than those provided by more reputable companies. When Dick Gray and Jeremy Gray were interviewed, they told the Receiver those life expectancy calculations provided by better known

[11] The Life Expectancy Certificate for policy AGL73L-031909-WK (Exh. N) is attached as an example.

life expectancy providers (such as AVS and Fasano) were at least 180% longer than those provided by Midwest Medical.

In the course of its investigation, the State of Texas obtained life expectancy calculations by 21st Services and AVS Underwriting, LLC on many of the persons insured under policies owned by Retirement Value. Comparison of their calculations to those by Midwest Medical show that the life expectancies calculated by 21st and AVS, on the same individuals generated at or about the same time, were about 2½ times as long. To further illustrate the disparity between Midwest Medical and the more reputable providers, we compared Midwest Medicals 85% life expectancy certificates with 21st and AVS median life expectancies for the same individuals. As you can see from the table below,[12] even the average of Midwest Medical's 85% calculations is significantly below the average of the median life expectancies provided by the more reputable providers.

	Midwest Medical (50%)	(85%)	21st (50%)	AVS (50%)
All data points	53	52	40	52
Average LE	52.42	83.83	120.85	133.77
Data points in Common	40	39	40	40
Average LE (in months)	52.55	83.69	120.85	134.65
% MM (50%)	-	159%	230%	256%
% MM (85%)	-	-	144%	161%

Attached as Exhibit L-2, is a modified version of Retirement Value's "Client Participation Example and Base Line Targeted Income During Ten Years" chart for policy PLI140-111109-DM. It is modified to superimpose 21st Services' and AVS's median life expectancies (and 21st Services 85% calculation) and to reflect the anticipated effect of a more reliable but longer life expectancy on the underlying investment. In this instance, the insured's

[12] The underlying data is shown on Exhibit O.

median life expectancy extends well beyond the 38 months reported by Midwest Medical or the 62 months of LE+24. In fact the insured's median life expectancy exceeds Retirement Value's LE+24 by 4-5 years. Thus, there is a significant probability (more then 50%) that the insured will live beyond LE+24 and that the investors would have to cover significant premiums for many years beyond LE+24. Failure to do so is not only a default for that investor, but places at risk the other investors who participated in that policy. *See*: Section Il.C.3.c, below.

In addition, the State obtained a report by HMH Consulting on Midwest Medical's performance as an estimator of life expectancies. This report showed that Midwest Medical's Actual to Expected Performance to be 42%.[13] HMH reviewed 14,528 the life expectancy certificates issued by Midwest Medical. Based on Midwest Medical's predictions, HMH expected to observe that 3,319 subjects had died as of the study's effective date. Actually, only 1,395 people had died. As a general standard, a life expectancy underwriter's actual to expected performance should be between 90% (too short) and 110% (too long), with 100% considered perfect. As an example, 21st Services reports that an independent auditor calculated its actual to expected performance at 98.1%. 21st Services Press Release (Exh. P).

Further, Retirement Value misrepresented where it obtained life expectancy calculations and how it used them. Retirement Value represented in writing and in oral communications with potential investors that it used the longest of three independent life expectancy calculations. Marketing Materials (Exh. F) at F-1, p.2; Transcript of "Cody Walker" Call (Exh. M) at 5. Retirement Value did not in fact obtain any life expectancy calculation, but rather relied exclusively on Midwest Medical's certificate which was provided by James Settlement Services.

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[13] When describing the HMH Report to the TSSB's undercover investigator, Dick Gray misrepresented that Hess concluded that Midwest Medical's actual to expected performance was 92%. Transcript of "Cody Walker" Call (Exh. M) at 4

Contrary to its representations, Retirement Value did not obtain any life expectancy calculations and clearly did not use the longest of three calculations.

b. *Premium Cost*

Retirement Value disclosed that if the underlying insured survived LE+24, each investor would have to cover its pro rata portion of the premiums. However, as previously mentioned, Retirement Value falsely led investors to expect that there was only a 1.5%-5% chance that an insured would survive beyond LE+24. Moreover, Retirement Value also misrepresented the cost of maintaining the policy in force after the premium reserves expired at LE+24. Client Participation Example (Exh. L-1). In its projections to investors, Retirement Value represented that the premiums paid by the investors after the expiration of LE+24 would be the same as the premiums paid prior to LE+24. This representation was false. In a universal life policy, which is the only type of policy that Retirement Value purchased, the cost of insurance – the amount of money that must be paid each month to keep the policy in force – rises each year. As the underlying insured ages, this increase in cost of insurance increases dramatically.

When an insurance company sells a universal life policy, it typical sets a planned premium. The planned premium is substantially larger than the amount of money required to keep the policy in force initially. The excess cash is deposited with the insurance company and earns interest. In later years when the cost of insurance exceeds the planned premium, there should be sufficient cash value in the policy to pay the difference between the planned premium and the cost of maintaining the policy.

Retirement Value, like most life settlement companies, paid only the amount necessary to maintain the policy in force until the next premium payment was due. As a routine matter, Retirement Value engaged in premium optimization – working with the insurance company to determine the minimum payment need to keep the policy in force until the next premium is due.

In this manner, the current amount required to maintain the policy is reduced at the expense of the cash value which would otherwise subsidize the cost of insurance in later years. As a result, the premiums needed to keep the policies in force after LE+24 would be substantially higher than those estimated at the time of investment.

c. *Risk on Non-Payment by Other Investors*

Retirement Value failed to disclose the risk of loss, if the other investors on a policy failed to pay their share of the post-LE+24 premiums. While Retirement Value's debt to any investor who defaulted on its portion of a post LE+24 premium would be extinguished, Retirement Value remained liable to pay each investor who paid his or her share of the additional premiums. However, Retirement Value would be able to do so only if it were able to keep the policy in force. Thus, Retirement Value would have to: (i) solicit additional premiums from the non-defaulting investors; (ii) pay the premiums itself; or (iii) find a new investor to take over the defaulting investors positions. Retirement Value made no disclosures regarding its own credibility or ability to cover such post-LE+24 premium shortfalls. As of the date of the TRO, Retirement Value had distributed substantially all surplus cash to its owners and retained no reserves to cover such a contingency.[14] RV Accounting Records Excerpt – Balance Sheet (Exh. Q)[15] Further, Retirement Value had no other means of repaying the investors, except for the proceeds from the life insurance policies. In any case, the success on the investment turned on Retirement Value's success in raising money and selling investments. If Retirement Value could

[14] There was only $118,000 in Retirement Value's bank account as of the date of May 5, 2010, when the account was seized by the Receiver.

[15] The balance sheet attached as Exhibit Q was printed directly from Retirement Value's accounting records and reflects its assets and liabilities as such records were maintained by Retirement Value. This balance sheet is inaccurate and incomplete in that it fails to reflect either the liabilities associated with Retirement Value's debt to the investors or the current value of insurance policies owned by Retirement Value.

not raise the funds necessary to cover a premium shortfall, whether by selling new investments or from another source, then the respective policy would lapse and even those investors who complied with their obligation to pay premiums past LE + 24 would lose their entire investment.

Retirement Value did not disclose this risk to the investors. Nor did Retirement Value provide the investors with any information with which to make an informed decision as to Retirement Value's ability to pay additional premiums either from its own funds or by selling additional investments.

4. <u>Retirement Value failed to disclose the risk of regulatory action.</u>

Retirement Value received repeated warnings from multiple sources that its Re-Sale Life Insurance Program constituted or was likely to constitute a security under the Texas Securities Act. Given the probability that Retirement Value's Re-Sale Life Insurance Program would constitute a security, Retirement Value should have (i) registered its offering; (ii) offered the Program pursuant to an exemption from registration; or (iii) disclosed to investors that the investment could be subject to the securities laws, but that it was not being offered in compliance with those laws. It did none of these. By failing to do so, Retirement Value denied the investors the opportunity to make an informed investment decision.

5. <u>Other Issues</u>

a. *Retirement Value released funds from escrow before acquiring policies.*

Retirement Value entered into Policy Purchase Agreements with James Settlement Services with respect to each policy that it acquired or planned to acquire. The Policy Purchase Agreements called for the purchase price to be placed in escrow at Pacific Northwest Title in Oregon to be exchanged for the policy when it was delivered by James Settlement Services. Sample Policy Purchase Agreement (Exh. R). Retirement Value would routinely instruct

Kiesling Porter to distribute funds, as they were received from investors, to Pacific Northwest. As discussed previously, in many cases these funds were taken from sub-accounts other than that dedicated to the policy being purchased. As soon as a deposit was made at Pacific Northwest, Retirement Value authorized Pacific Northwest to release those funds to James Settlement Services even though the full purchase price had not been raised from investors and the policy had not been delivered by James Settlement Services. Escrow Releases (Exh. S). As a result, Retirement Value lost any protection provided by the escrow arrangement with James Settlement Services and Pacific Northwest.

b. *Failed to adequately reserve for the policies*

Commencing in the 4th quarter of 2009, Retirement Value accelerated payments for the purchase price to James Settlement Services by shorting the premium reserves from early subscribers to a policy and making it up from the late subscribers. Thus, Retirement Value acquired policies from James Settlement Services before Retirement Value had established adequate reserves to pay premiums for LE+24. If Retirement Value was unable to continue selling investments as happened at the end of March 2010, it would be unable to raise the funds necessary to fund the reserve accounts.

IV. Actions to Preserve and Protect the Estate

Since being appointed, the Receiver has acted to protect and preserve the assets of Retirement Value. We have secured Retirement Value's business premises, its computing facilities, its records and its bank accounts. In addition, the Receiver and his agents have been in contact with every insurance company which has issued a policy of life insurance owned by Retirement Value and all banks with which Retirement Value, Gray or Rogers are known to have done business with.

A. Cash and cash equivalents

Retirement Value's assets consist primarily of cash and short term securities, insurance policies and a building located in New Braunfels. In addition, Retirement Value has claims against its officers, members, licensees and others arising out of the receipt of funds from Retirement Value and misconduct related to its business. Pursuant to the powers granted to him by the Court, the Receiver has seized $25,463,772.69 in cash and securities as follows:

Entity	RV Assets	3rd Parties	Total
Retirement Value	118,379.23		118,379.23
Kiesling, Porter, Kiesling & Free			-
Bank Accounts	11,374,732.74		11,374,732.74
Investment Accounts	11,737,806.83		11,737,806.83
Special Acquisition Inc		1,231,925.00	1,231,925.00
Richard H. Dick Gray		263,912.24	263,912.24
Wendy Rogers		204,168.86	204,168.86
Bruce Collins			-
Collins Marketing		158,228.13	158,228.13
Hill Country Funding		374,619.66	374,619.66
	23,230,918.80	**2,232,853.89**	**25,463,772.69**

Please note that this chart represents the value of these accounts as of the time that they were seized by the Receiver and not their value as of the date of this Initial Report. Funds in the KPK&F premium reserve accounts have been used to pay premiums due on the insurance policies. Funds in the Retirement Value and Special Acquisition accounts have been used to pay expenses such as the mortgage on Retirement Value's office building, payroll for Retirement Value employees,[16] and utility bills.[17]

[16] The Receiver terminated the employment of all Retirement Value employees in May 2010.

[17] As of the date of this Initial Report, neither the Receiver nor his counsel has been paid. As directed by the Court in the Temporary Injunction, the Receiver and his counsel will submit their bills to the Court for approval. We anticipate that the monies recovered by the Receiver (including the $1.2 million from Special Acquisitions) will be sufficient to pay the costs of administering the Receivership.

B. Policies

Retirement Value also owns 41 policies of life insurance with a total face value of $118,250,000. All of these policies are in-force and premiums are being paid on them as they become due. There are an additional 12 policies (listed below) with a face value of $36,085,000 that were in the process of being transferred from James Settlement Services to Retirement Value as of the date the cease and desist orders were issued. There is also $559,304 on deposit in escrow accounts at Pacific Northwest related to purchase agreements between Retirement Value and James Settlement Services, $489,497 is associated with the disputed policies and the balance is associated with fully consummated transaction.

Policy	Face Amount	Purchase Price	PP Paid	PP Balance Due
GLG089-012110-RF	$1,000,000	$295,000	$295,000	$ -
AGL76L-12810-WS	$3,000,000	$653,300	$653,300	$ -
LFG3248-012610-HM	$3,000,000	$805,000	$761,077	$ 43,923
LFG311-031210-HM	$5,000,000	$1,400,000	$987,775	$412,225
AVL180-030510-MR	$5,000,000	$1,050,000	$641,104	$408,896
LFG735-022410-AS	$5,000,000	$1,100,000	$659,784	$440,216
AXA091-012110-PC	$5,000,000	$1,300,000	$1,300,000	$ -
AXA777-012310-TP	$1,000,000	$100,000	$100,000	$ -
AXA335-022410-PS	$3,000,000	$565,000	$565,000	$ -
LFG117-021710-HW	$2,000,000	$459,000	$459,000	$ -
LBL15J-021710-HW	$2,085,000	$420,000	$420,000	$ -
LBL918021710-RW	$1,000,000	$208,750	$208,750	$ -
	$36,085,000	**$8,356,050**	**$7,050,790**	**$1,305,260**

As of the date of this Initial Report, the Receiver and James Settlement Services have reached a tentative agreement whereby: (i) James Settlement Services and Retirement Value will jointly instruct Pacific Northwest to release the $559,304 remaining in escrow to Retirement Value; (ii) Retirement Value will relinquish its interest in GLG089-012110-RF, AGL76L-12810-WS, AXA777-012310-TP, LBL918021710-RW; and (iii) James Settlement Services will deliver the remaining policies to Retirement Value. The Texas State Securities Board and Texas Department of Insurance have assured the Receiver that they do not consider the completion of these transactions as a violation of the existing cease-and-desist orders.

Please note that prior to the Receiver's appointment, Retirement Value abandoned its right to acquire JHL383-03161-GR, JHL633-031210-CT, AXA826-032410-CD and AXA036-03161-PC.

C. Professional Advisors

The Receiver has retained Asset Servicing Group ("ASG") to act as portfolio manager, and Lewis & Ellis, Inc. ("L&E") to act as actuarial consultants. ASG and L&E will jointly undertake to review and evaluate the portfolio and to advise the Receiver as to its value and the premiums needed to maintain it in force until maturity. The Receiver has also engaged the services of BKD, LLP to provide accounting services for the estate and maintain the Receiverships financial books and records.

1. <u>Asset Servicing Group.</u>

The Receiver has ASG to act as portfolio manager for the 41 policies of life insurance owned by Retirement Value and for the 8 policies that the Receiver anticipates will be delivered by James Settlement Services. ASG will provide Policy Administration (payment of premiums, correspondence with insurers), Death Tracking, Claims Processing, Verification of Policies, Premium Optimization, and Policy Valuation services. These services are essential to the proper maintenance and management of the portfolio. The fees charged by ASG are the result of negotiation and represent a discount off of ASG's standard rates.

ASG is well qualified to act as portfolio manager. It is actively involved in the management of portfolios of life insurance policies and currently has approximately 6,000 policies under management. ASG has acted in this capacity for court-appointed receivers on numerous occasions. ASG is a member of the two principal trade associations for the life settlement industry, the Life Insurance Settlement Association and the Institutional Life Markets Association.

Tom Moran, ASG's principal, is highly respected in the life settlement industry. He has in excess of 30 years experience with insurance, the last 12 of which are exclusively with life settlements. Over the last 8 years, Mr. Moran, personally, has been appointed as receiver or conservator for life settlement companies by courts on several occasions and has extensive experience in dealing with distressed portfolios of policies.

The Receiver and his counsel researched various potential portfolio managers and conducted due diligence into the background, reputation and competency of ASG and Mr. Moran. Based on this research and due diligence, the Receiver is satisfied that ASG is the best candidate available to provide these services.

2. <u>Lewis & Ellis, Inc.</u>

L&E will provide an actuarial analysis of the portfolio's anticipated cash flows. This analysis is necessary to enable the Receiver to accurately value the portfolio and maximize its value. The principal actuary working on the portfolio will be Scott Gibson. Mr. Gibson is a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. In addition, he has extensive experience in the life settlement industry and has served on the board of directors of the Life Insurance Settlement Association.

The Receiver and his counsel researched actuarial consultants and conducted due diligence into the background, reputation and competency of Mr. Gibson and L&E. In addition, the Receiver obtained bids from other actuaries. Based on his research and due diligence, the Receiver is satisfied that L&E is the best candidate available.

L&E has agreed to provide an actuarial analysis of the policies at a fixed rate of $300 per policy. L&E will provide additional services at base hourly rates as set forth in its engagement agreement with the Receiver. L&E has requested and the Receiver has agreed to pay a refundable retainer of $6,000 against which L&E will bill. The fees charged by L&E are the result of negotiation resulting in a discount off of L&E' initial bid.

3. BKD LLP.

The Receiver has retained BKD, LLP to provide accounting services for the estate. In addition to maintaining the books of the receivership and preparing necessary tax filings, BKD will also restate the books of Retirement Value to more accurately reflect the company's true financial condition. This will require, among other things, consolidating the financial records maintained by Kiesling Porter Kiesling and Free on behalf of Retirement Value with those maintained directly by Retirement Value. BKD has requested and the Receiver has agreed to pay a refundable retainer of $5,000 against which BKD will bill

D. Issues Confronting the Portfolio's Administration

Based on information available to date, the portfolio is confronted by three significant issues: (1) we anticipate that the fair market Retirement Value's policy portfolio cannot be liquidated; (2) Retirement Value's failure to adequately reserve sufficient funds to pay premiums through the policies reasonably expected maturity; and (3) the portfolio's structure.

1. Portfolio Value.

Retirement Value paid over $28 million for its portfolio of insurance policies. The market value of a life insurance policy is largely determined by the insured's life expectancy. Because the Midwest Medical life expectancy certificates relied on by Retirement Value underestimated the life expectancy of the insureds to a significant degree, Retirement Value likely overpaid for these policies. Further, the life settlement market has a limited number of players, most of which are hoping to acquire the policies from a distressed seller, at a discount. Thus, any liquidation of the portfolio at this point in time would likely be for significantly less than Retirement Value paid for the policies. Though the portfolio does face certain long and short term challenges, there are several alternatives available to a fire-sale liquidation of the policies, all of which are being assessed and some of which may prove attractive.

2. Insufficient Premium Reserves.

This problem arises in large part because the premium reserves were based on the median life expectancies calculated by Midwest Medical. As discussed previously, these calculations are far too short, leading Retirement Value to make insufficient reserves for premiums. In addition, Retirement Value's mishandling of funds has led to premium shortfalls in specific accounts. The use of funds set aside for one policy to fund expenses related to a different policy depleted the fund available for the first policy. While Retirement Value doubtless intended to use funds from future investments to replenish these accounts, this source of replenishment ended with the TSSB's cease and desist order in March 2010. Further, Retirement Value routinely would disburse funds to pay James Settlement Services for policies before completely satisfying the premium reserve. As a result, Retirement Value purchased policies without having fully funded the premium reserves.

The following table[18] shows the portfolio's shortfalls based on the life expectancy calculations available to the Receiver.

[18] The underlying data is shown on Exhibit T.

	Actual Reserve	Midwest Medical	21st	AVS
Observations		53	40	52
Calculated reserves		$25,246,794	$33,830,592	$44,550,785
Avg Per Policy		$476,355	$845,765	$856,746
Premiums For LE(50) for 53 Policies	$24,345,935	$25,246,794	$44,825,354	$45,407,531
Shortfall	-	$900,858	$20,479,598	$21,061,595

Please note that this chart actually underestimates the problem because it based on the assumption that premiums needed to maintain the policies will remain level. As previously discussed, the cost of insurance and hence the premiums will increase over time. Because the exact amount of the increase is not known at this time, the Receiver has provided this chart for illustrative purposes.

3. The portfolio structure

The portfolio's structure issue further exacerbates the inadequacy of premium reserves. Retirement Value's Re-Sale Program was designed as a series of individual investments associated with individual policies. In other words, when an insured dies the corresponding loan matures and Retirement Value is supposed to use 100% of the insurance proceeds to satisfy its debt, but only as to those investors who facilitated Retirement Value's purchase of that particular policy. Accordingly, any early maturities would not generate any of the funds that are needed to support the premium payment on policies that are slower to mature. This structure epitomizes an inherent inequity in the estate. If adhered to, certain investors would receive a distribution from Retirement Value's assets to the detriment of Retirement Values remaining investors.

We anticipate that the vast majority of the policies will mature significantly after the LE+24 calculated by Midwest Medical and Retirement Value. By collapsing the portfolio's segregated structure into a unified portfolio, we may be able to overcome some of the shortfalls in its premium reserves and maximize the return to the investor-victims based on sound actuarial and management principles. With ASG's and L&E's assistance, we are analyzing this opportunity in order to establish a plan pursuant to maximize the value of the portfolio. When a plan is finalized, it will submitted to the Court for approval.

V. Conclusions

The Receiver has been put in place to preserve Retirement Values assets for the benefit of the investors. The Receiver has already identified over $2.2 million that were outside of Retirement Value's pool of investor funds and recovered in excess of $1.5 million of that.

Retirement Value misrepresented material characteristics of its Re-Sale Life Insurance Program, including, among other things: the investors interest in the underlying policies; the segregation, safety and control of the investors' funds; the investments' anticipated maturity; by downplaying the significant probability of premium beyond LE+24, the investor's reasonably expected cost; the investments anticipated rate of return; the uncertainty associated with Retirement Value's ability to legally market, and by failing to undertake any due diligence or otherwise adhere to the processes established in its own marketing materials, the value of the underlying policies.

The Receiver has assembled a team of professionals, accountants, actuaries, lawyers and portfolio managers to administer Retirement Value's estate in the most efficient manner possible. This team of professionals is dedicated to maximizing the portfolio's return, by using their respective skills to execute the portfolio's and the estate's administrative functions in the most efficient and cost-effective manner.

Contrary to widespread rumors, the Receiver is not liquidating the portfolio. The portfolio itself is being preserved and maintained. Policy premiums are being paid as they come due. The Receiver's professional advisors are assessing the portfolio at the individual policy basis and at the portfolio level. Once their assessments have been completed, we will proceed to formulate a plan of operation that will maximize the Receiver's ability to make restitution to the investors. The details of such a plan will be submitted to the Court for approval, prior to implementation.

The Receiver is periodically mailing updates to the investors. However, in order to minimize the cost and effort associated with frequent mailings, the Receiver has also established a website at "www.rvllcreceivership.com" to post information regarding this matter, such as: recently issued Court orders, frequently asked questions, and copies of the correspondence with the investors. In addition, the Receiver is will host a internet-based call to discuss the status of this case and his investigation Investors who do not have internet access will be able to dial in and listen to the presentation. The details of this call will be distributed separately.

Respectfully submitted,

Eduardo S. Espinosa,
Receiver for Retirement Value, LLC