



Funding") and Wendy Rogers as Defendants based on information learned by the undersigned since the filing of the State's Original Petition herein.

The State requests that the injunctive relief previously granted against Defendant Gray and Bruce Collins, the Chief Operating Officer of Defendant Retirement Value and a Defendant in the State's Original Petition ("Collins"), be maintained as well as the Court's appointment of Eduardo S. Espinosa of K&L Gates, LLP as Receiver for Defendant Retirement Value, LLC ("Receiver").

The State also seeks to maintain the injunctive relief previously granted against **Kiesling, Porter, Kiesling, & Free, P.C., as Relief Defendant**, to restrain any transfer of money or other assets it holds in the name of or pursuant to any account or interest of Defendants to the extent such money or assets are derived from Defendants' operations and to restrain any alteration, destruction, concealment or transfer of any records or information related to Defendants, or the disposition of investor-derived funds, and to restrain from cancelling the Master Escrow Agreement by and between Retirement Value, LLC and Kiesling, Porter, Kiesling & Free, P.C. dated March 10, 2009 ("Escrow Agreement") (**Exhibit A**) without the express written consent of the Receiver or by order of the court. The State has reason to believe that the Relief Defendant held money or other assets derived from investor funds, or records related to the Defendants' scheme. The money and assets sought to be thus protected include all money and assets on deposit with, held by, or under the control of the Relief Defendant to the extent such money or assets are subject to any claim whatsoever, whether direct or contingent.

In support of these requests, the State would show the Court the following:

### **DISCOVERY CONTROL PLAN**

1. Pursuant to Texas Rule of Civil Procedure 190, discovery in this cause is intended to be conducted under Level 2.

### **NATURE OF THIS ACTION**

2. This action is brought in the name of the State of Texas by the Attorney General of Texas, acting within the scope of his official duties under the authority granted him under the Constitution and laws of Texas. It is brought for injunctive relief, restitution, disgorgement of economic benefits, receivership and other equitable relief at the request of the Deputy Securities Commissioner, who, in making such a request, is acting within the scope of his official duties and authority under The Securities Act, TEX. REV. CIV. STAT. ANN. Art 581-1 et seq. (Vernon 1964 & Supp. 2009) (hereinafter referred to as the "**Texas Securities Act**" or the "Securities Act"). It is also brought pursuant to the Attorney General's authority under the **Texas Deceptive Trade Practices Act**, Tex. Bus. & Com. Code § 17.41, et seq. (the "DTPA").

## THE DEFENDANTS

3. **RETIREMENT VALUE, LLC** (hereinafter referred to as "Defendant Retirement Value") is a Texas Limited Liability Company for which the Court appointed Eduardo S. Espinosa of K&L Gates, LLP as Receiver on May 5, 2010. It may be served with this First Amended Petition and Application pursuant to Rule 21a of the Texas Rules of Civil Procedure by delivering same to the attorney of record for the Receiver of Retirement Value, LLC, Michael D. Napoli, at K&L GATES, LLP, 1717 Main Street, Ste. 2800, Dallas, Texas 75201.
4. **RICHARD H. "DICK" GRAY** (hereinafter referred to as "Defendant Gray") is a natural person who is licensed as a General Lines Agent with the Texas Department of Insurance, and he holds qualifications in life, accident, health and HMO. He is also a majority interest owner and Managing Member of Defendant Retirement Value and a part owner and Managing Member of Defendant Hill Country Funding. He may be served with this First Amended Petition and Application pursuant to Rule 21a of the Texas Rules of Civil Procedure by delivering same to his attorneys of record, Kevin F. Lee, Jay Thompson and Jeff Otto, at THOMPSON COE COUSINS & IRONS, L.L.P., 701 Brazos Street, Suite 1500, Austin, Texas 78701.
5. **HILL COUNTRY FUNDING, LLC** (hereinafter referred to as "Defendant HCF-Texas") is a Texas Limited Liability Company owned, managed and controlled by Defendant Richard H. "Dick" Gray and which maintains a business and mailing address at the same location as Defendant Retirement Value, 707 N. Walnut, New Braunfels, Texas 78130 and P.O. Box 310635, New Braunfels, Texas 78131. It may be served with process **through its Registered Agent, Richard H. "Dick" Gray**, which, by agreement, may be served through his attorneys of record, Kevin F. Lee, Jay Thompson and Jeff Otto, at THOMPSON COE COUSINS & IRONS, L.L.P., 701 Brazos Street, Suite 1500, Austin, Texas 78701.
6. **HILL COUNTRY FUNDING, LLC, a Nevada Limited Liability Company** (hereinafter referred to as "Defendant HCF-Nevada") is a Nevada Limited Liability Company owned, managed and controlled by Defendant Richard H. "Dick" Gray and his wife, Catherine Gray, which was formed on February 21, 2008 and dissolved on February 23, 2009. Its registered agent was Laughlin Associates, Inc. located at 2533 N. Carson Street, Carson City, NV 89706. It may be served with process **through its former managing member, Richard H. "Dick" Gray**, which, by agreement, may be served through his attorneys of record, Kevin F. Lee, Jay Thompson and Jeff Otto, at THOMPSON COE COUSINS & IRONS, L.L.P., 701 Brazos Street, Suite 1500, Austin, Texas 78701.
7. **WENDY ROGERS** (hereinafter referred to as "Defendant Rogers") is a natural person who is a part owner, Managing Member, and former Chief Executive Officer and Vice President of Defendant Retirement Value. She may be served

with process at her residential address at **1312 Havenwood Blvd., New Braunfels, Comal County, Texas 78132.**

### THE RELIEF DEFENDANT

8. **KIESLING, PORTER, KIESLING, & FREE, P.C.** (hereinafter referred to as "Relief Defendant Kiesling Porter"), a Texas Professional Corporation, is a Law Firm which is a Relief Defendant herein. It may be served with this First Amended Petition and Application pursuant to Rule 21a of the Texas Rules of Civil Procedure by delivering same to its attorneys of record, Matthew Nielsen and Spencer C. Barasch, Esq., at ANDREWS KURTH, L.L.P., 1717 Main Street, Suite 3700, Dallas, Texas 75201.

### JURISDICTION

9. The Court has jurisdiction over this action under Sections 25-1 and 32 of the Texas Securities Act and Sections 17.41 et seq. of the DTPA.

### VENUE

10. Venue is proper in Travis County, Texas under Sections 25-1.B and 32.A of the Texas Securities Act. Venue is also proper in Travis County, Texas under Section 17.47(b) of the DTPA because one or more of the subject transactions occurred in Austin, Travis County, Texas.

### NOTICE BEFORE SUIT

11. Pursuant to §17.47(a) of the DTPA, the Consumer Protection Division of the Office of the Attorney General did not make contact with the Defendants herein to inform them of the unlawful conduct alleged herein prior to filing the Original Petition, for the reason that the undersigned was of the opinion that there was good cause to believe that such an emergency existed that immediate and irreparable injury, loss or damage would have occurred as a result of such delay in obtaining a temporary restraining order, and that Defendants might have evaded service of process, destroyed relevant records and secreted assets if prior notice of the suit had been given.
12. The undersigned informed the attorneys for Defendants Gray and Hill Country Funding on June 16, 2010 of the unlawful conduct alleged herein and the relief being sought. The attorney for Defendant Rogers is unknown at the time of this filing.

### BACKGROUND OF THIS SUIT

13. On May 5, 2010, the State filed its Original Petition herein and the Court granted its requests for an *ex parte* temporary restraining order against Defendants Retirement Value, Gray and Collins as well as the appointment of Eduardo S. Espinosa of K&L Gates, LLP as the Receiver for Retirement Value ("First Amended TRO").
14. On May 28, 2010, the Court issued an *Agreed Temporary Injunction Order Against Defendants Retirement Value, LLC and Richard H. "Dick" Gray and the Relief Defendant and Order Appointing Receiver* ("Gray TI and Order Appointing Receiver") which granted the State's request for a temporary injunction against Defendants Retirement Value and Gray and the Relief Defendant, Kiesling Porter and which also continued the appointment of Eduardo S. Espinosa of K&L Gates, LLP as the Receiver for Retirement Value. By its terms, the Gray TI and Order Appointing Receiver dissolved the First Amended TRO to the extent it pertained to Defendants Retirement Value and Gray and the Relief Defendant, Kiesling Porter.
15. On June 2, 2010, the Court signed a *Second Agreed Order to Extend the TRO Against Defendant Bruce Collins* extending the TRO only as it pertained to Defendant Collins until such time as the Court could consider for approval an agreement between the State, the Receiver and Defendant Collins for a permanent injunction and final judgment.
16. On June 17, 2010, the Court entered a Permanent Injunction and Final Judgment as to Defendant Collins ("Collins PI"). Upon entry of the Collins PI, the State moved for and the Court agreed to sever the claims against Defendant Bruce Collins from this cause of action and make them the subject of a separate action numbered D-1-GV-10-000802 in the 126<sup>th</sup> District Court of Travis County, Texas, so that it could proceed to final judgment.
17. Since the filing of the State's Original Petition, the undersigned has learned additional facts which make it necessary to now seek (1) the appointment of a Receiver for Hill Country Funding to conserve and protect the assets thereof for the benefit of its investors; (2) injunctive relief against Defendants Hill Country Funding and Rogers and (3) the disgorgement of economic benefits from Defendant Rogers.
18. Such facts are discussed further herein and include:
  - A. Defendant Gray dissolved Defendant HCF-Nevada on February 23, 2009 with sums remaining due and owing to investors;
  - B. While Defendant HCF-Nevada did not reincorporate, merge or otherwise consolidate with Defendant Texas HCF-Texas, Defendant HCF-Texas has

assumed custody and control of all of HCF-Nevada's funds and administration of life insurance policies it purchased using investor funds;

- C. Other than the value of its policies and any claims to recover funds from Defendant HCF-Texas, Defendant HCF-Nevada has no funds to satisfy investor demands should they exercise their right to accelerate payment based on Defendant HCF-Nevada's default resulting from its dissolution;
- D. Defendant Hill Country Funding has insufficient funds to maintain interest payments due its investors or to pay future premiums that come due on life insurance policies it purchased using investor funds;
- E. Defendant Retirement Value co-mingled its assets and resources with those of Defendant Hill Country Funding;
- F. Defendant Rogers is a part owner, Managing Member and former Chief Executive Officer of Retirement Value;
- G. Defendant Retirement Value has paid almost \$1 million directly to or for the benefit of Defendant Rogers;
- H. At the direction of Defendants Gray and Rogers, Absolute Betah, LLC, a Delaware Limited Liability Company ("Absolute Betah") and then Special Acquisitions, Inc., a Texas corporation ("Special Acquisitions") were each formed for the purpose of continuing to sell Defendant Gray's and Defendant Rogers' "securitized product"<sup>1</sup>; and
- I. Defendant Rogers and a friend from college, Carie Morales ("Morales"), are the sole signatories on an account in the name of Special Acquisitions to which Defendant Retirement Value transferred approximately \$1.1 million the day after the Texas Securities Commissioner issued an emergency cease and desist order against Defendants Retirement Value, Gray and Collins.

19. Information related to Defendants' fraudulent investment schemes and the use of investors' funds are described further in this verified First Amended Petition and Application and in the sworn affidavits of Rani Sabban and Eduardo S. Esiponsa attached hereto, respectively, as **Exhibit B** and **Exhibit C**.

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<sup>1</sup> The Gray TI and Order Appointing Receiver includes findings that the assets of Absolute Betah and Special Acquisitions were derived from the operations of Retirement Value, were under the control of Gray and were therefore properly the subject of the Retirement Value receivership estate and constitute receivership assets.

**HISTORY OF COMPANIES OPERATED BY  
DEFENDANTS GRAY AND ROGERS**

20. Defendant Gray, with the assistance of Defendant Rogers, has repeatedly engaged in illegal sales of securities through fraudulent investment schemes. They have established a definite *modus operandi*: reap lucrative profits from fraudulent schemes involving the sale of securities until regulators either intervene or shut down the underlying brokerage. Once the underlying brokerage is unable to continue its operations, Defendants Gray and Rogers return to selling illegal securities on behalf of a new or different firm.
21. From January 2007 through March 30, 2010, Defendant Gray, and in most part, with the assistance of Defendant Rogers, formed and operated the following entities:
- A. Beginning as early as 2005 and continuing through as late as August 2007, Defendant Gray, by and through Barnard-Donagan Insurance, sold investments in bonded life settlement contracts issued by Secure Investment Services, Inc. (herein referred to as "SIS") which operated its principle place of business in Redding, California.
  - B. In January 2007, Defendant Gray operated **First Security Trust** against which the Banking Commissioner of Texas issued Emergency Order to Cease and Desist Activity No. 2007-004 on January 25, 2007. In the order, the Banking Commissioner found that Defendant Gray's unauthorized use of the word, "trust" in his business name effectively misrepresented to the public that First Security Trust was a legitimate trust company duly authorized to operate in Texas.
  - C. In or around September 2007, Defendant Gray, with the assistance of Defendant Rogers, operated under the business names of **First Security** and **Texas Funding Associates** to sell bonded life settlements as an agent for American Settlement Associates, LLC ("ASA"), which had previously done business as Secure Investment Services in Houston ("SIS-Houston").
  - D. On February 7, 2008, Defendant Gray and his wife, Catherine H. Gray, formed Defendant **Hill Country Funding, LLC, a Texas Limited Liability Company**, listing its address as New Braunfels, Texas, and, thereafter, with the assistance of Defendant Rogers, sold investments in bonded life settlement contracts issued directly by Defendant Hill Country Funding and as an agent for ASA.
  - E. Two weeks later, on February 21, 2008, Defendant Gray and his wife, Catherine H. Gray, formed **Hill Country Funding, LLC, a Nevada Limited Liability Company**, listing its address as Carson City, Nevada,

and, thereafter, with the assistance of Defendant Rogers, sold bonded life settlement contracts issued directly by Defendant Hill Country Funding and as an agent for ASA. Defendant HCF-Nevada was dissolved on February 23, 2009 and was not reincorporated in Texas, nor did it merge into or otherwise consolidate with Defendant HCF-Texas.

- F. On January 13, 2009, Defendants Gray and Rogers, together, with Catherine H. Gray, David A. Gray, and Elizabeth O. Gray, formed Defendant **Retirement Value, LLC, a Texas Limited Liability Company**, and began selling the re-sale life insurance policy program described further herein.
  - G. On March 1, 2010, Defendants Gray and Rogers, together with Catherine H. Gray and Carrie Morales, formed **Absolute Betah, LLC, a Delaware Limited Liability Company**, to sell a form of their "securitized product" in the death benefits of life insurance policies.
  - H. On March 30, 2010, Defendants Gray and Rogers directed the formation of **Special Acquisitions, Inc.** by Morales, to take the place of Absolute Betah to sell a "securitized product" in the death benefits of life insurance policies.
22. Defendants Gray and Rogers have shown clear intent and ability to form new companies whenever necessary to continue selling their investment scheme. While there is currently both an administrative order<sup>2</sup> and the May 28, 2010 Gray TI and Order Appointing Receiver prohibiting Defendant Gray from continuing such practice, there are no such orders directly prohibiting Defendant Rogers from continuing to form yet another entity to sell the same or similar investment scheme as that of Defendants Retirement Value or Hill Country Funding. The State is therefore seeking injunctive relief against Defendant Rogers as set forth below.

**DEFENDANT GRAY'S SALE OF ILLEGAL SECURITIES  
ISSUED BY SECURE INVESTMENT SERVICES, INC.**

- 23. Beginning as early as 2005 and continuing through as late as August 2007, Defendant Gray, by and through Barnard-Donagan Insurance, sold investments in bonded life settlement contracts issued by SIS.
- 24. Defendant Gray sold approximately ninety-two of these investments in bonded life settlements as an agent of SIS. Investors tendered approximately \$3 million for the purchase of the investment and Defendant Gray received in excess of \$400,000.00 in commissions for these sales.

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<sup>2</sup> On March 29, 2010, the Securities Commissioner entered Emergency Cease and Desist Order ENF-10-CDO-1686 ("Securities Emergency Order"), styled In the Matter of Retirement Value et al. The order was issued against Retirement Value, Gray and Collins.



25. Investors in SIS were allegedly told that their funds would be used to purchase interests in insurance policies that insured the lives of others and that they would receive a return on their investments payable from the proceeds of the insurance policies upon the deaths of the insured.
26. Investors were also allegedly told that a third party had provided an estimate of the life expectancy of the insured. Bonding companies, such as International Fidelity & Surety Ltd., Provident Capital Indemnity Ltd., BALGI, Sino Reinsurance, Internazionale SpA, and Union Credit Finanziaria had also purportedly issued a bond to secure the investment.
27. On or about August 23, 2007, the United States Securities and Exchange Commission filed a complaint against SIS and others in Cause No. 2:07-cv-01724-LEW-CMK, in the United States District Court for the Eastern District of California, Sacramento Division. The complaint alleged, among other things, that SIS orchestrated a Ponzi scheme and misled investors by providing them life expectancy estimates certified by a physician from Amscot Medical Labs, Inc. (hereinafter referred to as "Amscot Medical") and Midwest Medical Review, LLC (hereinafter referred to as "Midwest Medical").
28. On or about August 24, 2007, the United States District Court, the Honorable Judge Ronald S.W. Lew presiding, entered an Order Appointing Receiver, Temporary Restraining Order, and Order to Show Cause and appointed Michael J. Quilling as Temporary Receiver for SIS and other named defendants. On or about October 31, 2007, the United States District Court, the Honorable Judge Ronald S.W. Lew presiding, entered an Order Appointing Receiver that converted the Temporary Receiver to a Permanent Receiver.
29. On or about June 25, 2009, the Texas Department of Insurance filed a Notice of Hearing with the State Office of Administrative Hearings in Docket No. 454-09-4867C. The Notice of Hearing named Defendant Gray and sought the revocation of his insurance license based in part upon his conduct as an agent of SIS. It specifically alleged that Defendant Gray committed fraudulent or dishonest acts or practices and issued bonds without holding the required General Property and Casualty License.

**HCF DEFENDANTS'**  
**ILLEGAL SALES OF SECURITIES ISSUED BY**  
**AMERICAN SETTLEMENT ASSOCIATES, LLC**

30. As an associate of three of Defendant Gray's companies, First Security, Texas Funding Associates and Defendant Hill Country Funding, all of which shared the same business address located at 5945 Broadway in San Antonio, Texas 78209, Defendant Rogers assisted Defendants Gray and Hill Country Funding in the

sale of investments in bonded life settlement contracts issued by SIS-Houston, also known as ASA. See **Exhibit D** attached hereto (correspondence from all three said companies relating to investments in the same life insurance policy signed by Defendants Gray and/or Rogers).

31. SIS-Houston, which was purportedly formed by former sales agents of SIS, began operating as a d/b/a in Texas at or near the time the SEC filed its action against SIS described in paragraph 27 above. Soon thereafter, SIS-Houston changed its name to ASA. As discussed further below, on March 19, 2010, the SEC filed a complaint against ASA and its principals alleging they failed to use investor funds to pay future premium payments for the policies causing them to lapse, and instead, used said funds to support other business and personal expenses.
32. Approximately one month after the SEC filed its suit against SIS in August 2007, Defendant Gray notified his clients who had invested in SIS-Houston of its "long-sought and long-awaited name change to [ASA]," without discussing the SEC's pending suit against SIS, for which SIS-Houston's principals and Defendant Gray had previously been agents. See **Exhibit E** attached hereto.
33. Investors in ASA were allegedly told that their funds would be used to purchase interests in insurance policies that insured the lives of others and that they would receive a return on their investments payable from the proceeds of the insurance policies upon the deaths of the insured.
34. Investors were also allegedly told that Provident Capital Indemnity Ltd. had also purportedly issued a bond that secured the investment.
35. At the time Defendants Gray, Hill Country Funding and Rogers (collectively referred to herein as the "HCF Defendants") offered for sale and sold bonded life settlement contracts issued by ASA, the Texas Department of Insurance and the Texas State Securities Board had already taken actions against Provident Capital and Indemnity, Ltd, to wit:
  - A. On or around November 6, 2006, the Insurance Commissioner of Texas entered Emergency Cease and Desist Order No. 06-1154. The Insurance Commissioner found therein that Provident Capital Indemnity, Ltd., was engaging in the unauthorized business of insurance in Texas, the conduct was fraudulent, illegal, hazardous, and created an immediate danger to public safety, and that such conduct was designed to evade the insurance laws of the State of Texas.
  - B. On or about January 17, 2008, the Securities Commissioner entered Emergency Cease and Desist Order No. ENF-08-CDO-1647, styled In the Matter of Provident Capital Indemnity, LTD, et al. The Securities Commissioner found, inter alia, that:

- i. The bonded life settlement contract and bonds were "securities" as that term is defined in Section 4 of the Securities Act,
  - ii. Provident Capital Indemnity, Ltd., made offers containing statements that were materially misleading or otherwise likely to deceive the public and engaged in securities fraud, and
  - iii. Harold Maridon, a control person of Provident Capital Indemnity, Ltd., was previously convicted of conspiracy to commit mail and wire fraud in United States of America v. Harold Maridon, Cause No. 8:97CR-149-1, in the United States District Court, District of Nebraska.
36. The Enforcement Division of the Texas State Securities Board conducted an investigation of Defendants Gray and Hill Country Funding. On or about September 8, 2008, Defendant Gray, both individually and in his capacity as Managing Member of Defendant Hill Country Funding filed an Undertaking with the Securities Commissioner wherein he:
  - A. Agreed to notify all persons who made loans or any forms of investment with Defendant Hill Country Funding that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and advise them of the existence of the Emergency Cease and Desist Orders entered by the Texas Department of Insurance and the Texas State Securities Board.
  - B. Agreed to offer to rescind any transactions with persons who made loans or any form of investment with Defendant Hill Country Funding that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and
  - C. Agreed to comply with all provisions of the Texas Securities Act and to cooperate with any future inquiries by the Texas State Securities Board.
37. On or about March 19, 2010, the United States District Court for the Southern District of Texas, Houston Division, granted the United States Securities and Exchange Commission's request in Case No. 4:10-cv-00912 to freeze the assets of ASA and to appoint a Receiver for ASA and others. The SEC complaint alleged, inter alia, that principals of ASA failed to use investor funds to pay future premium payments for the policies causing them to lapse, and instead, used said funds to support other business and personal expenses.

**HCF DEFENDANTS' SALES**  
**OF ILLEGAL SECURITIES ISSUED BY**  
**DEFENDANT HILL COUNTRY FUNDING**

38. On February 7, 2008 and February 21, 2008, Defendant Gray formed Defendant **Hill Country Funding, LLC, a Texas Limited Liability Company**, and Defendant **Hill Country Funding, LLC, a Nevada Limited Liability Company**, respectively, and with the assistance of Defendant Rogers, began issuing investments in Defendant Hill Country Funding's own bonded life settlement contracts variously referred to as the "Re-Insured Re-Sale Insurance Policy" Program or the "Re-Sale Insurance Policy" Program (hereinafter referred to as the "HCF Bonded Program"). Investments in this program were purportedly secured by a mortality bond issued by various bonding companies, including Provident Capital Indemnity, Ltd. out of Costa Rica ("Provident Capital"), Internazionale SpA out of Genoa, Italy ("Internazionale"), Union Credit Finanziaria SpA out of Torino, Italy ("Credit Union"), and Condor Guaranty, Inc. out of Freeport, Grand Bahama, Bahamas ("Condor").
39. The basic structure of the HCF Bonded Program was to use investor funds to purchase re-sale life insurance policies by promising investors a guaranteed return payable from either the proceeds of the re-sale life insurance policies upon the death of the insureds or from the bond carrier. Basic components and representations of the HCF Bonded Program include:
- A. Investors were told their funds would be used to purchase re-sale life insurance policies and a mortality bond purportedly guaranteed investors' return. Investors would become "irrevocable beneficiaries" on the insurance carrier's permanent records.
  - B. Once enough investor funds were received for a particular re-sale life insurance policy, Defendant Hill Country Funding would complete the purchase of the policy, change ownership of the policy to Defendant Hill Country Funding and assign irrevocable beneficiary interests to the investors and secured the mortality bond.
  - C. The re-sale life insurance policies offered in the HCF Bonded Program were accompanied with life expectancies of the insureds which predicted the date the insureds would die and further set the date of maturity for the investment.
  - D. Investors were told investments in the HCF Bonded Program were purportedly secured with a mortality bond issued by at least one of the aforementioned bonding companies that purportedly guaranteed the promised return to investors should the insured live past the stated life expectancy.

- E. Based on the purported mortality bond, Defendant Hill Country Funding told investors from the outset the lowest annualized yield for their participation. However, investors were further told that should the insured pass away before life expectancy, their net annualized yield would be higher.
  - F. Investors in the HCF Bonded Program signed a "Loan Agreement" and a "Supplemental Agreement" wherein Defendant Hill Country Funding agreed to pay investors their principal investment plus a specified rate of return or "yield" on either the death of the insured, or by the bond carrier after life expectancy of the insured is reached.
  - G. Hill Country Funding investors were told the "total preservation" of their principal in the HCF Bonded Program was achieved by:
    - "having Tax Lawyers Exchange receive & distribute client funds to: (1) purchase the policy through an escrow account at Pacific Northwest Title Co. of Oregon; (2) purchase the re-insurance mortality or surety bond; and (3) function as the third-party fiduciary to make all the premium payments for [their] policy on a quarterly basis through the time-line of the policy, issuing quarterly policy-status reports."
  - H. The HCF Bonded Program was represented as a "Secure Money Idea" because investors would purportedly receive a guaranteed return on their investment payable from the proceeds of the insurance policies upon the death of the insured, or from the bond carrier if the insured lived past the stated life expectancy.
40. At the time the HCF Defendants offered for sale and sold bonded life settlement contracts issued by Defendant Hill Country Funding, the Texas Department of Insurance and the Texas State Securities Board had already taken actions against Provident Capital Indemnity, Ltd., one of the aforementioned bonding companies, to wit:
- A. On or around November 6, 2006, the Insurance Commissioner of Texas entered Emergency Cease and Desist Order No. 06-1154. The Insurance Commissioner found therein that Provident Capital Indemnity, Ltd., was engaging in the unauthorized business of insurance in Texas, the conduct was fraudulent, illegal, hazardous, and created an immediate danger to public safety, and that such conduct was designed to evade the insurance laws of the State of Texas.
  - B. On or about January 17, 2008, the Securities Commissioner entered Emergency Cease and Desist Order No. ENF-08-CDO-1647, styled In the

Matter of Provident Capital Indemnity, LTD, et al. The Securities Commissioner found, inter alia, that:

- i. The bonded life settlement contract and bonds were “securities” as that term is defined in Section 4 of the Securities Act,
- ii. Provident Capital Indemnity, Ltd., made offers containing statements that were materially misleading or otherwise likely to deceive the public and engaged in securities fraud, and
- iii. Harold Maridon, a control person of Provident Capital Indemnity, Ltd., was previously convicted of conspiracy to commit mail and wire fraud in United States of America v. Harold Maridon, Cause No. 8:97CR-149-1, in the United States District Court, District of Nebraska.

41. The Enforcement Division of the Texas State Securities Board conducted an investigation of Defendants Gray and Hill Country Funding. On or about September 8, 2008, Defendant Gray, both individually and in his capacity as Managing Member of Defendant Hill Country Funding filed an Undertaking with the Securities Commissioner wherein he:

- A. Agreed to notify all persons who made loans or any forms of investment with Defendant Hill Country Funding that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and advise them of the existence of the Emergency Cease and Desist Orders entered by the Texas Department of Insurance and the Texas State Securities Board.
- B. Agreed to offer to rescind any transactions with persons who made loans or any form of investment with Defendant Hill Country Funding that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and
- C. Agreed to comply with all provisions of the Texas Securities Act and to cooperate with any future inquiries by the Texas State Securities Board.

#### **SUMMARY OF RETIREMENT VALUE SCHEME**

42. While still operating Defendant Hill Country Funding, Defendants Gray and Rogers organized Defendant Retirement Value to fraudulently sell securities to the investing public. From in or about April 2009, through February 28, 2010, Defendants Retirement Value, Gray and Rogers (collectively referred to herein as the “RV Defendants”) collectively raised approximately \$65 million from over

800 investors through the sale of fraudulent investments in the death benefits of life insurance policies.

43. Investors were told that their funds would be used to purchase life insurance policies and that investors would receive a return on the investment payable from the proceeds of the insurance policies upon the death of the insured.
44. RV Defendants, either directly or through a network of numerous unregistered salespersons, told investors that a third party or third parties had performed analyses of the medical histories of the insureds. These analyses reportedly determined the estimated longevity of the insureds and thereby allowed the Defendants to estimate the date that the insureds would die.
45. The analyses determined the anticipated maturity of the investment because investors are not entitled to receive a return on their investment until or unless the insureds die. Defendant Retirement Value, moreover, purportedly only reserved funds to pay for premiums for the life insurance policies through a term equal to the estimated life expectancy of the insureds plus twenty-four (24) months. If the insureds live past this term, investors are required to pay for the ongoing premium payments for the life insurance policies until the insured dies or lose their entire investment.
46. RV Defendants, directly or indirectly, made a number of representations to investors regarding the accuracy in the determination of the life expectancy of the insureds. They represented, for example, that in excess of 90% of insureds die within their estimated life expectancy and that 98.5% of insureds die within their estimated life expectancy plus a term of twelve (12) months. These representations are important, because as discussed elsewhere herein, the estimated life expectancies of the insureds are the critical factors used to determine the anticipated maturity of the investments and assess whether investors need to pay additional funds to satisfy ongoing premium obligations.
47. RV Defendants made these statements in connection with a scheme to misrepresent the reliability of the life expectancies to investors in the Re-Sale Life Insurance Policy Program. They also did not tell investors that the life expectancies are obtained through a company controlled by a convicted felon who has provided similar life expectancies in other schemes that were eventually subject to regulatory action.
48. RV Defendants also misrepresented or failed to disclose material facts about their business repute and qualifications and the safety and security of the investments. Investors tendered more than \$65 million to Defendants based upon these fraudulent representations and nondisclosures.

**RV DEFENDANTS' SALES**  
**OF ILLEGAL SECURITIES ISSUED BY**  
**DEFENDANT RETIREMENT VALUE**

49. Beginning in or about April 2009, and continuing through March 29, 2010, RV Defendants offered for sale and sold investments in the death benefits of life insurance policies. RV Defendants marketed and referred to the investments as Retirement Value's Re-Sale Life Insurance Policy Program (the "RSLIP Program").
50. RV Defendants told investors that their purchase of an investment in the RSLIP Program would entitle them to "base-line expected income" at an annual rate of 16.5% that would be payable upon maturity of the investment. Individuals who invest \$100,000 in the RSLIP Program will therefore expect to receive "base-line expected income" in the amount of approximately \$74,800 upon maturity. Investors should therefore expect to receive \$174,800, representing the "base line expected income" and the original principal contribution, upon the maturity of the investment.
51. RV Defendants told investors they could realize the "base-line expected income" by using investor funds to purchase interests in re-sale life insurance policies. RV Defendants **represented** the structure of the transaction as follows:
- A. Investors were provided with a "portfolio" of re-sale life insurance policies selected by Defendant Retirement Value.
  - B. The "portfolio" of re-sale life insurance policies identified certain aspects of each individual policy, including the anticipated life expectancy of the person insured by each policy.
  - C. Investors chose to participate in one or more of the re-sale life insurance policies identified within this portfolio.
  - D. Principal tendered by investors was deposited into purported escrow accounts maintained by Wells Fargo.
  - E. The investors' funds were managed by Relief Defendant Kiesling Porter in its purported capacity as "an independent escrow agent" and "third party fiduciary". RV Defendants told investors that the use of Relief Defendant Kiesling Porter "assure[d] the total safeguarding and preserving of [the] basis and targeted income" because "[a]t no time do any [of the] funds come to, pass through, or get handled by anyone at Retirement Value." These were described as "essential components" of the RSLIP Program.
  - F. The investors' funds were used to purchase the re-sale life insurance policies identified on the aforesaid portfolio from a "policy aggregator."



- G. Funds were purportedly maintained in "escrow" to cover all premium payments for the life insurance policies that come due and owing on the life insurance policies for a term equal to the life expectancy of the insured plus twenty-four (24) months. Investors are entitled to receive a pro-rata return of all unused premiums that remain in escrow upon the death of the insured. Relief Defendant Kiesling Porter, in its capacity as escrow agent, was purportedly responsible for processing all premium payments.
  - H. Investors would be required to advance additional funds to cover a pro-rata portion of future premiums if the insured lived past his or her projected date of death plus a term of twenty-four (24) months. Investors who were unable to advance these funds under those circumstances would forfeit their interests and lose their expected returns
  - I. Defendant Retirement Value became the owner of the re-sale life insurance policies.
  - J. As owner of the re-sale life insurance policies, RV Defendants said Defendant Retirement Value would name Kiesling, Porter as the beneficiary and surrender its rights and authority to change the beneficiary thereafter.
  - K. Investors were told that Kiesling Porter, as the beneficiary, would be required to pay investors, as "irrevocable co-beneficiaries," a pro-rata distribution of the death benefit of the selected policies upon the maturity of the policy due to the death of the insured.
52. RV Defendants touted the business repute and qualifications of Defendants Gray and Rogers. For example:
- A. RV Defendants promoted Defendant Gray as being credible and qualified by representing that:

[Defendant Gray] has helped clients make wise money decisions in hard financial times for the past 35 years and has been a licensed insurance agent for over 18 years. Personal participation in the re-sale life insurance policies for his own retirement planning reinforces his credibility when assisting numerous clients in doing the same. After earning an A.B. degree in political science and a Master of Divinity degree - and prior to the start of his business career - [Defendant Gray] proudly completed four years of U.S. Army active duty as a Chaplain, which included 13 months of decorated field duty in Viet Nam [sic].

- B. RV Defendants also promoted Defendant Rogers as being credible and qualified by representing:

"[Defendant Rogers] supervises our Client Services Department while contributing personally to the development, design and implementation of all marketing and print materials; she also coordinates all computer and information technology needs. [Defendant Rogers] manages the massive data accumulation an operation like ours generates and assures client privacy, while providing timely on-line access for licensees and clients alike to all information needed for a satisfying business relationship with us. [Defendant Rogers] combines 10 years of service in the insurance, financial planning, and banking industries with several years of re-sale policy sales experience. [Defendant Rogers'] B.S. in Agribusiness was earned at Texas A & M University – College Station, and she has also earned a Masters of Business Administration.

53. RV Defendants also touted the business repute, qualifications and reliability of the third party or third parties that provide the medical reviews and estimate the life expectancies of the insureds. For example:

- A. RV Defendants represented that Defendant Retirement Value procured estimates provided by a third party or third parties to predict the date that the insured will die. RV Defendants told investors that the "fundamental data" for these estimates is "thoroughly underwritten by and provided... by as many as three (3) independent and totally objective... sources." RV Defendants purported to only use the longest available life expectancy from these sources to determine the life expectancy of the individuals insured by the insurance policies that are part of the RSLIP Program.
- B. RV Defendants represented that all policies are accompanied with a life expectancy certificate. However, RV Defendants failed to disclose that these life expectancy certificates are received by Defendant Retirement Value from James Insurance and not directly from Midwest Medical. Midwest Medical issues a disclaimer for any certificates not received directly from Midwest Medical and will not guarantee certificates received otherwise as authentic.
- C. RV Defendants touted the accuracy of the life expectancy estimates. For example, RV Defendants told investors that 95% of insureds die at or before their estimated date of death. RV Defendants also told investors that 98.5% of insured die within twelve months of their estimated date of death.

**THE LIFE EXPECTANCY REPORTS USED BY  
DEFENDANT RETIREMENT VALUE TO ESTIMATE  
THE DATE THAT THE INSURED WILL DIE**

54. Although RV Defendants represented to investors that Defendant Retirement Value received three life expectancy evaluations and always selected the longest, in truth and in fact, RV Defendants relied upon life expectancy reports that were provided solely by Midwest Medical.
55. Midwest Medical is controlled by George Kindness. In or around November 2003, George Kindness was indicted for twenty-one counts involving conspiracy and fraud in the introduction of misbranded and adulterated drugs into commerce in United States of America v. George Kindness et al., CR. No. 03-20433BV, in the United States District Court for the Western District of Tennessee, Western Division. The indictment also alleged that George Kindness falsely represented himself to be a medical doctor. He later pleaded to one count of the indictment and is a convicted felon.
56. Midwest Medical and George Kindness have been previously accused of providing inaccurate life expectancies that incorrectly and falsely predict the dates that insureds will die. These accusations were made in cases that resulted in the appointment of a receivership, such as SEC v. Mutual Benefits Corp., 408 F.3d 737 (11th Cir. 2005), SEC v. Secure Investment Services Inc. et al., Case No. 2:07-cv-O1724-LEW-CMK, in the Eastern District of California, Sacramento Division, and more recently, SEC v. American Settlement Associates et al., Case No. 4:10-cv-00912, in the Southern District of Texas, Houston Division.
57. Midwest Medical retained HMH Consulting to perform a detailed audit of its life expectancy estimate process and analysis of its result. On or about February 22, 2010, HessMorganHouse Consulting ("HMH") issued a preliminary report, which concluded that, on the surface:

...there seems to be clear evidence that [Midwest Medical]'s Life Expectancy Estimates have not been accurate and there is a strong tendency for [Midwest Medical]'s Median Life Expectancy Estimates to be too short.

HMH Consulting qualified its finding by noting that it uncovered a large number of data issues during the audit and analysis and that these data issues precluded a fully reliable statistical analysis.

58. AVS Underwriting, LLC, and 21<sup>st</sup> Services, LLC conducted life expectancy evaluations for at least 43 of the same insureds covered under the life insurance policies offered in the RSLIP Program. The reports show life expectancies averaging anywhere from 55 months up to 75 months longer than the life

expectancies provided by Midwest Medical for policies offered in the Re-Sale Life Insurance Program.

**RELIEF DEFENDANT KIESLING PORTER**  
**AS THE "ESCROW AGENT"**

59. RV Defendants represented that an essential component of the RSLIP Program is that Relief Defendant Kiesling Porter served as the "*independent*" escrow agent and "[a]t no time do any [investor] funds come to, pass through, or get handled by anyone at [Defendant Retirement Value]." In truth and in fact, Relief Defendant Kiesling Porter owed no duty to anyone other than Defendant Retirement Value and investors were specifically excluded as beneficiaries to the Escrow Agreement.
60. The Escrow Agreement between Defendant Retirement Value and Relief Defendant Kiesling Porter sets forth, among other things, the following responsibilities and duties as it pertains to Relief Defendant Kiesling Porter:
- A. Relief Defendant Kiesling Porter is not obligated to perform any independent, objective or fiduciary duties, to include independently verify commissions, administrative fees and the purchase price, premiums or terms of the life insurance policies;
  - B. Relief Defendant Kiesling Porter is only obligated to follow Defendant Retirement Value's instructions for the use of investor funds even if it receives conflicting instructions from any third party, which would include any investor;
  - C. Relief Defendant Kiesling Porter owes no duty to anyone other than Defendant Retirement Value except for instances of willful misconduct;
  - D. Neither investors nor licensees are intended to be a party or a third-party beneficiary of the Escrow Agreement;
  - E. Relief Defendant Kiesling Porter has no legal obligation to negotiate, mediate, arbitrate or litigate any contestable matters that relate to the life insurance policies or the payment of claims thereon; and
  - F. Relief Defendant Kiesling Porter is not required to continue to serve as the escrow agent and can relinquish its duties by canceling the Escrow Agreement at any time.
61. RV Defendants represented to investors that Relief Defendant Kiesling Porter deposited investor funds in separate policy escrow accounts to cover the specific policy purchase price and premium payments. However, the accounts are not

held in "escrow" since Relief Defendant Kiesling Porter owes no duty to anyone other than Defendant Retirement Value. Moreover, Defendant Retirement Value directed Relief Defendant to co-mingle investor funds by using funds from one policy account to pay the purchase price or the premiums for other policies.

62. RV Defendants told investors that Relief Defendant Kiesling Porter is required to pay investors, as "irrevocable co-beneficiaries," a pro-rata distribution of the death benefit of selected policies upon the death of the insured. However, neither Relief Defendant Kiesling Porter nor investors are listed as "irrevocable beneficiaries or irrevocable co-beneficiaries" on any of the policies and Defendant Retirement Value retains the rights and authority under the policies to change the beneficiary or beneficiaries at any time.

### **OTHER REGULATORY ACTIONS AGAINST DEFENDANTS RETIREMENT VALUE AND GRAY**

63. On March 29, 2010, the Securities Commissioner entered Emergency Cease and Desist Order ENF-10-CDO-1686 (hereinafter referred to as the "Securities Emergency Order"), styled In the Matter of Retirement Value et al. The Securities Commissioner found therein that Defendants Retirement Value Gray and Collins engaged in fraud in connection with the offer and sale of securities, offered for sale unregistered securities and offered for sale securities without being registered as a dealer or agent.
64. On April 9, 2010, the Insurance Commissioner entered Emergency Cease and Desist Order No. 10-0289 (hereinafter referred to as the "Insurance Emergency Order") against Defendants Retirement Value and Gray and Midwest Medical. The Insurance Commissioner found therein that the named parties committed fraudulent and dishonest acts and/or engaged in an unfair or deceptive act or practice in the business of insurance.
65. As of the entry of the Securities Emergency Order and the Insurance Emergency Order, Defendant Retirement Value received approximately \$65 million from over 800 investors who collectively made approximately 1100 investments in the RSLIP Program. Defendant Retirement Value used these funds in part as follows:
  - A. Defendant Retirement Value paid approximately \$9.3 million as commissions to unregistered sales agents;
  - B. Defendant Retirement Value, and subsequently the RV Defendants, retained approximately \$8.4 million in purported "profits", including more than \$3 million that was paid to or for the benefit of Gray; \$600,000.00 that was paid to Collins and almost \$1 million that was paid to or for the benefit of Rogers; and

- C. Defendant Retirement Value used \$20.2 million to acquire the life insurance policies, approximately \$1.2 million to pay life insurance premiums, almost \$1.3 million for escrow fees, and set aside approximately \$22 million to finish acquiring certain life insurance policies and to establish funds for future premium payments during the life expectancy of the insured plus twenty-four (24) months.

**FACTS IN SUPPORT OF JOINING DEFENDANTS  
HILL COUNTRY FUNDING AND WENDY ROGERS**

- 66. Since the State filed the Retirement Value Lawsuit on May 5, 2010, the undersigned has learned many of the following facts that make it necessary for the State to now seek injunctive relief against Defendants Hill Country Funding and Rogers, as well as the disgorgement of economic benefits from Defendant Rogers and the appointment of a Receiver for Defendant Hill Country Funding to conserve and protect the assets for the benefit of its investors:
  - A. Defendant HCF-Nevada entered into "Loan Agreements" and "Supplemental Agreements" with investors wherein it obligated itself to pay investors the principal amount loaned to HCF-Nevada plus interest upon the maturity thereof. See **Exhibit B-11**.
  - B. Defendant HCF-Nevada's "Loan Agreement" provides that an investor may declare the unpaid principal balance, earned interest and any other amounts owed on the agreement immediately due if Defendant HCF-Nevada defaults in the performance of an obligation in any instrument safeguarding or collateral to the agreement. See **Exhibit B-11**.
  - C. Defendant HCF-Nevada's "Supplemental Agreement" provides that a default exists, *inter alia*, if Defendant HCF-Nevada is dissolved. See **Exhibit B-11**.
  - D. On February 23, 2009, Defendant Gray dissolved Defendant HCF-Nevada and declared that all debts, obligations and liabilities had been paid and discharged or that adequate provisions had been made therefore. See **Exhibit C-2**.
  - E. Defendant HCF-Nevada was not re-incorporated in Texas, merged with or otherwise consolidated with Defendant HCF-Texas. See **Exhibit C** (Affidavit of Eduardo S. Espinosa).
  - F. Defendant HCF-Texas has assumed custody and control of all of Defendant HCF-Nevada's funds and the administration of the life

insurance policies Defendant HCF-Nevada purchased using funds loaned to it by investors. See **Exhibit C**.

- G. Other than the liquidation value of its policies and any claims to recover funds from Defendant HCF-Texas, Defendant HCF-Nevada has no funds with which to satisfy the investors demands should they exercise their right to accelerate payment based on Defendant HCF-Nevada's default. See **Exhibit C**.
- H. Defendants Hill Country Funding and Retirement Value were commonly owned and managed. In addition, the two companies co-mingled their assets and resources, including the sharing of office space, utilities, staff, supplies, and other business expenses in addition to the transfer of funds discussed in sub-paragraphs I and W below. See **Exhibit C**.
- I. Between February 23, 2010 and April 13, 2010, Defendant Retirement Value transferred \$2,075,000.00 to, and received \$824,893.79 back from, Defendant Hill Country Funding, thereby resulting in a net transfer of \$1,150,106.21 from Defendant Retirement Value to Defendant Hill Country Funding during that time period. See **Exhibit C**.
- J. Defendant Hill Country Funding currently still owns at least five (5) life insurance policies it purchased using investor funds for which premiums are or will become due within the next few months. The Receiver for Retirement Value has already, at the request of Gray, made quarterly premium payments in excess of \$35,000.00 on Defendant Hill Country Funding's policies. See **Exhibit C**.
- K. Defendant Hill Country Funding currently owes monthly interest payments to investors totaling almost \$5,000.00 per month. See **Exhibit C**.
- L. As of May 5, 2010, Defendant Hill Country Funding had approximately \$375,000 available to pay operating expenses, monthly interest payments due investors and premiums necessary to keep the five life insurance policies in force. See **Exhibit C**.
- M. Defendant Hill Country Funding has insufficient funds to meet its anticipated obligations for monthly interest payments and policy premiums for the benefit of investors. If Defendant Hill Country Funding makes the monthly interest payments to investors, as requested by Defendant Gray, and pays the insurance premiums to maintain the policies, it will deplete its available funds by or about May 2011. Or if Defendant Hill Country Funding does not make the monthly interest payments and pays only the premiums necessary to keep the policies in force, it will deplete its available funds by or about July 2011. However, the earliest any funds from any of the bonds purportedly securing payment to investors would

become available is January 2012, approximately six months after Defendant Hill Country Funding will have depleted its available funds and the life insurance policies will have lapsed. See **Exhibit C**.

- N. Defendants Gray and Rogers formed Defendant Retirement Value merely as a vehicle to continue to sell life settlement contracts, but without a bond. Defendants Gray and Rogers offered Defendant Retirement Value's RSLIP Program for sale to investors on Defendant Hill Country Funding's letterhead. See **Exhibit F**
- O. Defendant Rogers is a 20% interest owner and founding Managing Member of Defendant Retirement Value and has held the positions of Vice President and Chief Executive Officer. See **Exhibit C**.
- P. Almost \$1 million of Retirement Value funds were paid directly to or for the benefit of Defendant Rogers, including \$12,300.00 that was paid to her in commissions from her sale of the RSLIP Program. See **Exhibit C**.
- Q. Defendant Rogers executed, on behalf of Defendant Retirement Value, many of the informational and substantive documents that were delivered to the investor-victims at or about the time of their investment, including a "Welcome Packet" that was consistently delivered after the investors' 10-day "free look" period had expired. See **Exhibit C**.
- R. Defendants Gray and Rogers, together with Gray's wife, Catherine H. Gray, and Morales, formed Absolute Betah (which purportedly means "security" in Hebrew) in Delaware on March 1, 2010. See **Exhibit C**.
- S. Defendant Retirement Value's "policy aggregator", James Settlement Services, refused to do business with Defendant Gray following the Securities Emergency Order that was issued on March 29, 2010; and therefore Defendants Gray and Rogers had to abandon their plans to use Absolute Betah as the next company under which they would offer for sale and sell a "securitized product" involving the death benefits of life insurance policies. See **Exhibit C**.
- T. Morales, a friend Defendant Rogers met in college and a part-time employee of Defendant Retirement Value, set up a new company in the name of Special Acquisitions to take the place of Absolute Betah and under which Defendants Gray and Rogers intended to offer for sale and sell a "securitized product" involving the death benefits of life insurance policies. See **Exhibit C**.
- U. Special Acquisitions was incorporated by Morales on March 30, 2010, the day after the Securities Emergency Order was entered against Retirement Value, Gray and Collins. See **Exhibit G**.



- V. More than \$1 million of Retirement Value's funds were transferred to an account at Chase bank in the name of Special Acquisitions for which Defendant Rogers and Morales were the only signatories. See **Exhibit C**.
- W. Special Acquisitions opened a bank account at Chase Bank on March 31, 2010 with \$1,492,000 which was funded with \$1,075,000 from Defendant Hill Country Funding, \$75,000 from an as-yet unidentified source and \$342,000 from Defendant Retirement Value. See **Exhibit C**.
- X. Special Acquisitions returned \$260,000 to Defendant Retirement Value during the month of April 2010. See **Exhibit C**.
- Y. Defendant Rogers provided the Receiver for Defendant Retirement Value with the following three explanations as for the purpose of diverting more than \$1 million of Defendant Retirement Value funds to Special Acquisitions on March 30, 2010 (**Exhibit C**):
- 1) to fund a "war chest" so that money could be set aside for attorneys to fight the regulatory action brought by the Texas State Securities Board;
  - 2) to continue funding development of a "securitized" product; and
  - 3) to repay Defendant Gray's clients who had invested through Defendant Gray in bonded life settlements from SIS, a prior vehicle utilized to sell interest in the death benefits of life insurance policies that was sued by the United States Securities and Exchange Commission in August 2007 for, *inter alia*, operating a Ponzi scheme.
- Z. Defendants Gray and Rogers planned to create yet another entity by which they intended to continue selling an investment scheme, a "NON-security" if possible, after "jettison[ing]" Defendants Gray, Rogers and Collins and finding a suitable "composite replacement" therefor. See **Exhibit C-5**.

**DEFENDANTS RETIREMENT VALUE, GRAY AND ROGERS  
OFFERED FOR SALE AND SOLD SECURITIES**

67. The purpose of the Texas Securities Act is to protect investors. e.g., Texas Securities Act Section 10-1.B; Shields v. State, 27 S.W. 3d 267 (Tex. App. 2000).
68. Section 4.A of the Texas Securities Act defines the term "securities" to include investment contracts.

69. The investments in the RSLIP Program are securities in the form of "investment contracts." The Texas Securities Act provides that instruments that constitute "investment contracts" are securities. The Texas Supreme Court has defined the term "investment contracts" to be (1) investments of money or property into (2) a common enterprise with (3) the expectation of profit (4) to be derived from the essential managerial efforts of others. See Searcy v. Commercial Trading Corp., 560 S.W.2d 637, 640 (Tex. 1978).
70. An application of this definition to the investments in the RSLIP Program demonstrates that these investments are "investment contracts," and these instruments are therefore securities.

**DEFENDANTS HILL COUNTRY FUNDING, GRAY AND ROGERS  
OFFERED FOR SALE AND SOLD SECURITIES**

71. The purpose of the Texas Securities Act is to protect investors. e.g., Texas Securities Act Section 10-1.B; Shields v. State, 27 S.W. 3d 267 (Tex. App. 2000).
72. Section 4.A of the Texas Securities Act defines the term "securities" to include bonds, evidences of indebtedness, and investment contracts.
73. Investments in the HCF Bonded Program are securities in the form of "investment contracts."
- A. The Texas Securities Act provides that instruments that constitute "investment contracts" are securities. The Texas Supreme Court has defined the term "investment contracts" to be (1) investments of money or property into (2) a common enterprise with (3) the expectation of profit (4) to be derived from the essential managerial efforts of others. See Searcy v. Commercial Trading Corp., 560 S.W.2d 637, 640 (Tex. 1978).
- B. An application of this definition to the HCF Bonded Program the Hill Country Funding Defendants demonstrates that these investments are "investment contracts" and these instruments are therefore securities.
74. Investments in the HCF Bonded Program are securities in the form of "evidences of indebtedness."
- A. The Texas Securities Act provides that instruments that constitute "evidences of indebtedness" are securities. The Texas Supreme Court has defined the term "evidences of indebtedness" to be (1) all contractual obligations to pay in the future (2) for consideration presently received. See Searcy v. Commercial Trading Corp., 560 S.W.2d 637, 642 (Tex. 1978).

B. An application of this definition to the HCF Bonded Program offered for sale and sold by the Hill Country Funding Defendants demonstrates that these investments are “evidences of indebtedness” and these instruments are therefore securities.

75. Investments in the HCF Bonded Program are securities in the form of “bonds.”

A. The Texas Securities Act provides that instruments that constitute “bonds” are securities. The term bond is not specifically defined in the Texas Securities Act or in any relevant case law. Black’s Law Dictionary includes in its definition specific examples of bonds to include a “guarantee bond.” A guarantee bond is a type of bond which combines the features of both the fidelity and surety bond and “which is given to secure payment and performance.”

B. An analysis of this definition to HCF Bonded Program offered for sale and sold by the Hill Country Funding Defendants demonstrates that these investments are “bonds” and these instruments are therefore securities.

**CAUSE OF ACTION NO. 1**  
**DEFENDANTS OFFERED AND SOLD**  
**UNREGISTERED SECURITIES**

76. The Texas Securities Act prohibits the sale or offer for sale of unregistered securities. Section 7.A(1) of the Texas Securities Act provides:

No dealer, agent or salesman, shall sell or offer for sale any securities issued after September 6, 1955, except those which shall have been registered by Notification under subsection B or by Coordination under subsection C of this Section 7 and except those which come within the classes enumerated in Section 5 or Section 6 of the Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Commissioner. . . .

77. The RSLIP Program has not been registered with the Securities Commissioner and a permit has not been granted for the sale of such securities required by Section 7 of the Texas Securities Act. See **Exhibit B-4**.

78. The HCF Bonded Program has not been registered with the Securities Commissioner and a permit has not been granted for the sale of such securities required by Section 7 of the Texas Securities Act.

**CAUSE OF ACTION NO. 2**  
**DEFENDANTS WERE NOT REGISTERED**  
**TO OFFER OR SELL SECURITIES**

79. Section 12.A of the Texas Securities Act requires that all persons selling or offering to sell securities in Texas must be registered under the Act as follows:

Except as provided in Section 5 of this Act, no person, firm, corporation or dealer shall, directly or through agents or salesmen, offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. No salesman or agent shall, in behalf of any dealer, sell, offer for sale, or make sale of any securities within the state unless registered as a salesman or agent of a registered dealer under the provisions of this Act.

80. Defendants and various sales agents were not registered as dealers, agents or salesmen required by Section 12.A of the Texas Securities Act. See **Exhibits B-1, B-2 and B-3**.

**CAUSE OF ACTION NO. 3**  
**RV DEFENDANTS' FRAUD AND FRAUDULENT PRACTICES**  
**IN CONNECTION WITH THE SALE OF SECURITIES**

81. The use of fraud and fraudulent practices in connection with the offer for sale and sale of securities is prohibited by Sections 25-1 and 32.A of the Texas Securities Act. Section 4.F of the Texas Securities Act defines fraud and fraudulent practice as follows:

The term "fraud" or "fraudulent practice" shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; . . . provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

82. In connection with the offer for sale and sale of the RSLIP Program, RV Defendants engaged in fraud by **intentionally failing to disclose one or more of the following material facts relating to the estimated life expectancies of the insureds:**

- A. That the RV Defendants relied solely on life expectancy analyses procured from Midwest Medical, and therefore did not calculate the life expectancy of the insureds that were offered in the RSLIP Program by using the longest life expectancy analysis provided by up to three firms.

- B. True and accurate information about Midwest Medical, its officers and directors and their business repute and qualifications, including that:
    - i. George Kindness, the owner of Midwest Medical, was indicted for twenty-one crimes involving conspiracy and fraud in the introduction of misbranded and adulterated drugs into commerce, and
    - ii. That George Kindness pleaded guilty to one count of the aforesaid indictment and is a convicted felon, and
  - C. The extent and nature of any due diligence conducted in reviewing the accuracy of the life expectancies provided by Midwest Medical and George Kindness.
  - D. That the RV Defendants received certificates that certified the life expectancies from a third party and not directly from Midwest Medical, and that Midwest Medical issued a disclaimer for certificates not received directly from Midwest Medical.
  - E. Information relating to the consequences of the insured living past his or her estimated date of death and the utilization of a “premium call” to pay pro-rata obligations necessary to keep life insurance policies in force and effect, including without limitation, the consequences of other investors refusing or being unable to satisfy their obligations under a “premium call.”
83. In connection with the offer for sale and sale of the RSLIP Program, RV Defendants engaged in fraud by **misrepresenting one or more of the following relevant facts relating to the true accuracy, reliability or historical performance of Midwest Medical** in the analysis of medical records of insureds and/or the estimation of the life expectancy of insureds:
- A. RV Defendants, directly or indirectly, misrepresented, for example, that in excess of 90% of insureds die within their estimated life expectancy and that 98.5% of insureds die within their estimated life expectancy plus a term of twelve (12) months. However, Midwest Medical has been accused in other regulatory actions of providing life expectancies that are too short.
  - B. RV Defendants, directly or indirectly, misrepresented that setting aside premiums for the insured’s life expectancy plus 24 months “insur[ed] that Retirement Value’s projections missing target [life expectancy was] less than 2%.” However, there was at least a 15% chance, if not greater, that insureds would not die within the purported life expectancy plus a term of 24 months.

84. In connection with the offer for sale and sale of the RSLIP Program, RV Defendants engaged in fraud by **intentionally failing to disclose one or more of the following material facts relating to the business repute, qualifications and experience of Defendant Gray:**
- A. True and accurate information about Defendant Gray's sale of bonded life settlements through SIS, as well as true and accurate information related to SEC v. Secure Investment Services, Inc. et al., Case No. 2:07-cv-01724-LEW-CMK, in the Eastern District of California, Sacramento Division, which was based upon a complaint that alleged therein that:
    - i. The named defendants fraudulently sold bonded life settlement contracts in a ponzi scheme using bonds issued by Provident Capital Indemnity, Ltd., and
    - ii. The bonded life settlement contracts were predicated on life expectancy estimates provided in part by Midwest Medical and George Kindness, and the life expectancy estimates were falsely certified and unreliable.
  - B. That the Texas Department of Insurance filed a Notice of Hearing against Defendant Gray based in part upon his conduct as an agent of Secure Investment Services. The Texas Department of Insurance alleged therein that:
    - i. Beginning as early as 2005 and continuing through at least 2007, Defendant Gray sold approximately ninety-two investment in bonded life settlement contracts as an agent of Secure Investment Services,
    - ii. Investors tendered approximately \$3 million to Secure Investment Services for the purchase of these investments in bonded life settlements,
    - iii. Defendant Gray received in excess of \$400,000.00 in commissions for his sale of these bonded life settlement contracts, and
    - iv. Defendant Gray committed fraudulent or dishonest acts or practices as contemplated by TEX. INS. CODE ANN. § 4005.101 (b)(5) and issuing bonds without holding a General Property and Casualty License as required by TEX. INS. CODE ANN. Chapter 4051.
  - C. That Defendant Gray, both individually and in his capacity as Managing Member of Defendant Hill Country Funding, of which Defendant Rogers was an associate, thereafter sold investments in bonded life settlement contracts purportedly secured by Provident Capital Indemnity, Ltd, and

subsequently filed an Undertaking with the Securities Commissioner wherein he represented the following:

- i. Agreed to notify all persons who made loans or any form of investment with Defendant Hill County Funding, that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd. and advised them of the existence of Emergency Cease and Desist Orders entered by the Texas Department of Insurance and the Texas State Securities Board,
- ii. Agreed to offer to rescind any transactions with persons who made loans or any form of investment with Defendant Hill County Funding, that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and
- iii. Promised to comply with all provisions of the Texas Securities Act and to cooperate with any future inquiries by the Texas State Securities Board.

D. The underlying facts and circumstances described in SEC v. Secure Investment Services, Inc., et al., Case No. 2:07-cv-O1724-LEW-CMK, the aforementioned Notice of Hearing filed by the Texas Department of Insurance, and the facts and circumstances relating to the sale and subsequent rescission of investments through Defendant Hill Country Funding.

85. In connection with the offer for sale and sale of the RSLIP Program, RV Defendants engaged in fraud by **intentionally failing to disclose one or more of the following material facts relating to the safety, security or other risks associated with the RSLIP Program:**

- A. Information regarding the nature of the life insurance policies and the manner in which the life insurance policies are selected, including but not limited to, any controls or due diligence that are used to screen out said life insurance policies for "jet-issued policies," "wet-ink policies," "second-to-die policies," contestable policies or other types of life insurance policies that could impact the RSLIP Program.
- B. Information related to the legal effect and consequence of Defendant Retirement Value being named as the owner of the life insurance policies offered in the RSLIP program, such as:
  - i. The existence and nature of any legal obligations, contracts or controls that prevent Defendant Retirement Value from selling, transferring or assigning its ownership of the life insurance policies to a third party,

- ii. The existence and nature of any legal obligations, contracts or controls that prevent Defendant Retirement Value from changing the beneficiary of the life insurance policies to a party other than Relief Defendant Kiesling Porter, and
  - iii. The effect of the sale, transfer or assignment of the ownership of the life insurance policies and the effect of the change of beneficiary of the life insurance policies.
- C. Information relating to the legal effect and consequence of the terms of the Escrow Agreement entered into by and between Relief Defendant Kiesling Porter and Defendant Retirement Value, such as:
- i. The fact that Relief Defendant Kiesling Porter is not obligated to perform any independent, objective or fiduciary duties, and does not independently verify the purchase price, premiums or terms of the life insurance policies. Relief Defendant Kiesling Porter agreed to rely solely upon information, instructions and directions from Defendant Retirement Value, and is not obligated to make any independent inquiries as to the use of investor funds when paying escrow and administrative fees, commissions, purchase prices for policies, policy premiums, and distributions of death benefits,
  - ii. The fact that Relief Defendant Kiesling Porter is only obligated to follow Retirement Value's instructions for the use of investor funds even if it received conflicting instructions from any third party, including any investor,
  - iii. The fact that Relief Defendant Kiesling Porter owes no duty to anyone other than Defendant Retirement Value except for willful misconduct,
  - iv. The fact that the Escrow Agreement specifically excludes investors and licensees as parties or third-party beneficiaries to the agreement,
  - v. The fact that Relief Defendant Kiesling Porter has no legal obligation, ability or wherewithal to litigate any contestable matters that relate to the life insurance policies or the payment of claims thereon,
  - vi. The fact that Defendant Retirement Value is responsible to litigate any contestable matters that relate to the life insurance policies or the payment of claims thereon,



- vii. The fact that Defendant Retirement Value does not maintain sufficient capital, funds or other assets to pay for any litigation involving contestable matters relating to the life insurance policies or payments of claims thereon,
  - viii. The fact that any audit or bond requested of Relief Defendant Kiesling Porter would be paid for by funds from Defendant Retirement Value, and
  - ix. The fact that Relief Defendant Kiesling Porter is not required to continue to serve as the escrow agent and can relinquish its duties by canceling the Escrow Agreement at any time.
- D. Information relating to the legal effect and consequence of Relief Defendant Kiesling Porter being named only as a beneficiary, but not as an “irrevocable” beneficiary of the life insurance policies offered in the RSLIP Program, such as:
- i. The fact that investors cannot be “irrevocable co-beneficiaries” if Relief Defendant Kiesling Porter is not an irrevocable beneficiary,
  - ii. The fact that Relief Defendant Kiesling Porter owes no duty to investors as “irrevocable co-beneficiaries” pursuant to the terms of its Escrow Agreement with Defendant Retirement Value,
  - iii. The fact that Relief Defendant Kiesling Porter has no legal obligation, ability or wherewithal to litigate any contestable matters that relate to said life insurance policies or the payment of claims thereon, and
  - iv. The fact that Relief Defendant Kiesling, Porter is not required to continue to serve as the escrow agent, or as the beneficiary of the policies, and that it can relinquish its duties by canceling the Escrow Agreement at any time.
- E. The fact that the investors are not named as “irrevocable co-beneficiaries” or as any type of beneficiary with the insurance carriers; but rather, are completely unknown by the carriers, and are therefore not entitled to receive the death benefits of the life insurance policies from the issuing insurance carrier when the insured dies.
- F. The assets, liabilities or capitalization of Defendant Retirement Value and Relief Defendant Kiesling Porter, or any information that would allow a prospective investor to assess or verify that Defendant Retirement Value and Relief Defendant Kiesling Porter could continue to operate through the maturity of investments in the RSLIP Program.

- G. The identity of and information about the "Policy Financing Entity," the "Policy Aggregator," and persons and entities who perform managerial efforts in regard to the RSLIP Program.
- H. Information relating to the methodology used to track the insured and determine when he or she dies.
- I. A true and accurate accounting of the actual or anticipated use of investor funds, including but not limited to the amount of investor funds that will be used to pay commissions to sales agents, fees or profits to Retirement Value and its agents, and the salaries or other payments made to management, the effectuation of medical reviews to predict a date of death, the use of Relief Defendant Kiesling Porter as a purported "escrow agent" and any other fees or charges associated with the RSLIP Program. For example, disclosing to investors that 30-40% of investors' funds were used to pay commissions to sales agents, escrow and other fees, and profits to Retirement Value, in addition to the amount of investor funds used to acquire the life insurance policies and pay the policy premiums,
- J. The fact that Defendants Retirement Value routinely instructed Relief Defendants Kiesling Porter to use funds purportedly escrowed to pay the purchase price and premiums for one policy to pay portions of the purchase price and premiums for other policies.

**CAUSE OF ACTION NO. 4**  
**DEFENDANTS HILL COUNTRY FUNDING, GRAY AND ROGERS'**  
**FRAUD AND FRAUDULENT PRACTICES IN CONNECTION**  
**WITH THE SALE OF SECURITIES**

86. The use of fraud and fraudulent practices in connection with the offer for sale and sale of securities is prohibited by Sections 25-1 and 32.A of the Texas Securities Act. Section 4.F of the Texas Securities Act defines fraud and fraudulent practice as follows:

The term "fraud" or "fraudulent practice" shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; . . . provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

87. In connection with the offer for sale and sale of bonded life settlement contracts issued by Defendant Hill Country Funding, the Hill Country Defendants engaged

in fraud by intentionally failing to disclose one or more of the following material facts relating to the business reputes, qualifications and experience of Defendant Gray, Provident Capital Indemnity, Ltd, and SIS:

- A. True and accurate information about Defendant Gray's sale of bonded life settlements through SIS as well as true and accurate information related to SEC v. Secure Investment Services, Inc. et al., Case No. 2:07-cv-O1724-LEW-CMK, in the Eastern District of California, Sacramento Division, which was based upon a complaint that alleged therein that:
  - i. The named defendants fraudulently sold bonded life settlement contracts in a ponzi scheme using bonds issued by Provident Capital Indemnity, Ltd., and
  - ii. The bonded life settlement contracts were predicated on life expectancy estimates provided in part by Midwest Medical and George Kindness, and the life expectancy estimates were falsely certified and unreliable.
  
- B. The existence of Emergency Cease and Desist Orders entered by the Texas Department of Insurance and the Texas State Securities Board against Provident Capital Indemnity, Ltd., the bonding company that was purportedly securing some of the life settlement contracts:
  - i. On or around November 6, 2006, the Insurance Commissioner of Texas entered Emergency Cease and Desist Order No. 06-1154. The Insurance Commissioner found therein that Provident Capital Indemnity, Ltd., was engaging in the unauthorized business of insurance in Texas, the conduct was fraudulent, illegal, hazardous, and created an immediate danger to public safety, and that such conduct was designed to evade the insurance laws of the State of Texas.
  
  - ii. On or about January 17, 2008, the Securities Commissioner entered Emergency Cease and Desist Order No. ENF-08-CDO-1647, styled In the Matter of Provident Capital Indemnity, LTD, et al. The Securities Commissioner found, inter alia, that:
    - a. The bonded life settlement contract and bonds were "securities" as that term is defined in Section 4 of the Securities Act,
  
    - b. Provident Capital Indemnity, Ltd., made offers containing statements that were materially misleading or otherwise

likely to deceive the public and engaged in securities fraud, and

- c. Harold Maridon, a control person of Provident Capital Indemnity, Ltd., was previously convicted of conspiracy to commit mail and wire fraud in United States of America v. Harold Maridon, Cause No. 8:97CR-149-1, in the United States District Court, District of Nebraska.

88. In the HCF Bonded Program, Hill Country Defendants engaged in fraud by **intentionally failing to disclose one or more of the following material facts relating to the safety, security or other risks associated with the HCF Bonded Program:**

- A. Information regarding the nature of the life insurance policies and the manner in which the life insurance policies are selected, including but not limited to, any controls or due diligence that are used to screen out said life insurance policies for “jet-issued policies,” “wet-ink policies,” “second-to-die policies,” contestable policies or other types of life insurance policies that could impact the HCF Bonded Program.
- B. Information related to the legal effect and consequence of Hill Country Funding being named as the owner of the re-sale life insurance policies offered in the HCF Bonded program, such as:
  - i. The existence and nature of any legal obligations, contracts or controls that prevent Hill Country Funding from selling, transferring or assigning its ownership of the life insurance policies to a third party,
  - ii. The existence and nature of any legal obligations, contracts or controls that prevent Hill Country Funding from changing the beneficiary of the life insurance policies to anyone other than the investors, and
  - iii. The effect of the sale, transfer or assignment of the ownership of the life insurance policies and the effect of the change of beneficiary of the life insurance policies.
- C. The assets, liabilities or capitalization of Hill Country Funding, or any information that will allow a prospective investor to assess or verify that Hill Country Funding will continue to operate through the maturity of investments in the HCF Bonded Program.

- D. The fact that Hill Country Funding was not maintaining sufficient capital or funds to pay interest payments due investors and to pay the necessary premiums to maintain the re-sale life insurance policies.
- E. The identity of and information about the source of the re-sale insurance policies in the HCF Bonded Program.
- F. Information relating to the methodology used to track the insured and determine when he or she dies.
- G. A true and accurate accounting of the actual or anticipated use of investor funds, including but not limited to the amount of investor funds that would be used to pay commissions to sales agents, fees or profits to Defendant Hill Country Funding, SIS, SIS-Houston, or ASA, and any of their agents, or the amount of investor funds that would be used to acquire the re-sale life insurance policies and pay the policy premiums therefor, and any other fees or charges associated with the HCF Bonded Program.

**CAUSE OF ACTION NO. 5**  
**VIOLATION OF DECEPTIVE TRADE PRACTICES ACT**

- 89. Paragraphs 20 through 75 above are incorporated by reference to support this cause of action as if fully set forth herein.
- 90. Plaintiff has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth herein. Plaintiff therefore has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Accordingly, the Consumer Protection Division of the Office of the Attorney General believes and is of the opinion that these proceedings are in the public interest.
- 91. Section 17.45(6) of the DTPA defines "trade" and "commerce" to include "the advertising, offering for sale... or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state." Defendants have, at all times described herein, engaged in conduct that constitutes "trade" and "commerce."
- 92. Section 17.46(a) of the DTPA declares unlawful all "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce."

93. Section 17.46(b) of the DTPA defines "false, misleading or deceptive acts or practices" to include:
- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services pursuant to Section 17.46(b)(2),
  - B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another pursuant to Section 17.46(b)(3),
  - C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not pursuant to Section 17.46(b)(5),
  - D. Representing that goods or services are of a particular standard, quality of grade... if they are of another pursuant to Section 17.46(b)(7),
  - F. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law pursuant to Section 17.46(b)(12),
  - G. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed pursuant to Section 17.46(b)(24).
94. As alleged herein, Defendants have engaged in false, deceptive and misleading practices in violation of Section 17.46(a) of the DTPA through their offer for sale and sale of bonded life settlement contracts, viatical settlement contracts and life settlement contracts predicated upon the proceeds of life insurance policies.
95. As alleged herein, Defendants have engaged in false, deceptive and misleading practices in violation of Section 17.46(b)(2), (3), (5), (7), (12) and (24) when they engaged in the conduct alleged in paragraphs 20 through 75.

#### **NEED FOR INJUNCTIVE RELIEF**

96. Paragraphs 20 through 75 above are incorporated by reference as if fully set forth herein.

97. Section 32.A of the Texas Securities Act authorizes the Attorney General, upon the request of the Commissioner, to bring an action against certain persons to enjoin the continuation of certain practices. This section provides:

Whenever it shall appear to the Commissioner either upon complaint or otherwise, that any person has engaged or is about to engage in fraud or a fraudulent practice in connection with the sale of a security, has engaged or is about to engage in fraud or a fraudulent practice in the rendering of services as an investment adviser or investment adviser representative, has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public, or is engaging or is about to engage in an act or practice that violates this Act or a Board rule or order, the Attorney General may, on request by the Commissioner, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any person who, with intent to deceive or defraud or with reckless disregard for the truth or the law, has materially aided, is materially aiding, or is about to materially aid such person and any other person or persons heretofore concerned in or in any way participating in or about to participate in such acts or practices, to enjoin such person or company and such other person or persons from continuing such acts or practices or doing any act or acts in furtherance thereof. The Commissioner shall verify, on information and belief, the facts contained in an application for injunction under this section. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and the defendant's employees or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts complained of have been or are about to be committed, or a district court in Travis County shall have jurisdiction of any action brought under this section, and this provision shall be superior to any provision fixing the jurisdiction or venue with regard to suits for injunction. No bond for injunction shall be required of the Commissioner or Attorney General in any such proceeding.

98. Based upon the conduct alleged herein, and pursuant to Section 32.A of the Texas Securities Act, the State of Texas is praying for the issuance of temporary and permanent injunctions enjoining Defendants from acting as dealers, agents or salesmen in securities without complying with all dealer and salesman registration requirements of the Texas Securities Act; from selling securities that

have not been registered with the Securities Commissioner and enjoining Defendants from engaging in fraud and fraudulent practices in connection with the sale of securities, or from materially aiding any person in engaging in fraud and fraudulent practices in connection with the sale of securities.

99. Under Section 17.47(a) of the DTPA, whenever the Consumer Protection Division of the Office of the Attorney General has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful in Subchapter E of the DTPA, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.
100. In its Original Petition, the State sought and was granted immediate injunctive relief pursuant to Section 32.A of the Texas Securities Act and Section 17.47 of the DTPA, first in the form of temporary restraining order against Defendants Retirement Value, Gray and Collins, and thereafter, in the form of a temporary injunction against Defendants Retirement Value and Gray and Kiesling Porter, in its capacity as a Relief Defendant, pending a final hearing in this matter. The State seeks to make the temporary injunction against Defendants Retirement Value and Gray permanent injunctions to prohibit said Defendants from further engaging in fraud or fraudulent practices.
101. The State also seeks temporary injunctive relief pursuant to Section 32.A of the Texas Securities Act and Section 17.47(b) of the DTPA in the form of a temporary injunction against those Defendants for which a temporary restraining order or temporary injunction does not currently exist, including Defendant Hill Country Funding, its officers, directors, principals, partners, joint venturers, stockholders, employees, salesmen, agents, licensees, representatives, attorneys, and family members; and Defendant Wendy Rogers, and her partners, joint venturers, employees, salesmen, agents, licensees, representatives, attorneys, and family members, to prevent disposing of, transferring, pledging, concealing, or altering in any manner, any property, assets, books and records of Defendants Retirement Value or Hill Country Funding; and to protect any funds obtained from persons who have purchased securities described herein from Defendants or their salesmen, employees, agents or licensees, and any funds and other assets derived therefrom.
102. All injunctive relief sought in this case is available to the State of Texas as Plaintiff without bond pursuant to Section 32.A of the Texas Securities Act, Section 17.47(b) of the DTPA and Section 6.001 of the Civil Practice and Remedies Code.



### NEED FOR A RECEIVER

103. Paragraphs 20 through 75 above are incorporated by reference as if fully set forth herein.
104. In its Original Petition, the State sought, and was granted the appointment of a receiver for Defendant Retirement Value pursuant to the Gray TI and Order Appointing Receiver entered in this matter on May 28, 2010.
105. The State also seeks the appointment of a temporary receiver for Defendant Hill Country Funding, and upon a final hearing, the appointment of a permanent receiver therefor. Section 25-1 provides in part:

Whenever it shall appear to the Commissioner, either upon complaint or otherwise, that:

- (1) any person or company acting as a dealer, agent, investment adviser, investment adviser representative, or issuer (as defined in Section 4 of this Act), or an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer, whether or not required to be registered by the commissioner as in this Act provided, shall have engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;
- (2) such person or company shall have acted as a dealer, agent, investment adviser, investment adviser representative, or issuer or an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer in connection with such fraudulent practice; and
- (3) the appointment of a receiver for such person or company, or the assets of such a person or company is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the commissioner may request the attorney general to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

As alleged above, all of these requirements have been met for Defendant Retirement Value and for Defendant Hill Country Funding. RV Defendants and Defendant Hill Country Funding have engaged in fraud in connection with the sale of securities and a receiver is necessary to insure that investor funds are accounted for, conserved and returned to investors.

106. RV Defendants and Defendant Hill Country Funding have acted as dealers, salesmen, or issuers in the sale of securities and engaged in acts, transactions, practices, and courses of business declared by Section 32.A to be fraudulent practices in the offer for sale and sale of securities as described above.
107. The appointment of a receiver for Defendants Retirement Value and Hill Country Funding and the business operations thereof is necessary in order to conserve and protect whatever investor-derived assets remain for the benefit of Defendants Retirement Value and Hill Country Funding's customers, security holders, and other actual or potential claimants thereof.
108. Pursuant to the Gray TI and Order Appointing Receiver signed on May 28, 2010, a receiver has already been appointed for the funds and assets of Defendants Retirement Value and Gray. A receiver is also needed for the funds and assets of Defendants Hill Country Funding and Rogers, including any investment product they obtained through proceeds of investor-derived money, in order to conserve and protect said funds and assets for the benefit of the investors should restitution be granted in this case under Section 32.B of the Texas Securities Act.
109. Unless the receivership relief is granted, the appointment of the Receiver for Defendant Retirement Value maintained and a temporary receiver appointed for the assets and affairs of Defendants Hill Country Funding and Rogers, the funds and other property held by RV Defendants and Defendant Hill Country Funding will be dissipated and lost, to the immediate and irreparable harm of the persons who purchased the securities from same and to the harm of the general public. There is no adequate remedy at law.
110. For the aforementioned reasons, an order, after notice and hearing, appointing a temporary receiver for the assets and affairs of Defendant Hill Country Funding should be issued. After final hearing, it is necessary to appoint a permanent receiver for the affairs of Defendants Retirement Value and Hill Country Funding. No adequate remedy is available at law.
111. In addition, pursuant to Section 17.47(d) of the DTPA, the court may make any orders necessary to restore money or property which may have been acquired by means of any unlawful act or practice, which would include the appointment of a receiver under Section 64.001(a)(6) of the Texas Civil Practice & Remedies Code. As set forth in detail above, the appointment of a receiver for Defendants Retirement Value and Hill Country Funding is necessary to restore money or property which RV Defendants and Defendant Hill Country Funding and their agents acquired by their unlawful acts or practices.
112. All receivership relief sought in this case is available to the State of Texas as Plaintiff without bond under Section 25-1 of the Texas Securities Act and Section 6.001 of the Texas Civil Practice and Remedies Code.

113. **Eduardo S. Espinosa of K&L Gates, LLP**, is an attorney practicing in Dallas, Texas, and **has agreed and already been appointed to serve as Receiver** for Defendant Retirement Value in this case. Mr. Espinosa has also **agreed to serve as Receiver for Defendant Hill Country Funding** in this case if appointed by the Court. Mr. Espinosa has substantial experience, expertise and knowledge of the securities laws.
114. Pursuant to Section 25-1 of the Texas Securities Act and Section 17.47 of the DTPA, the State of Texas seeks to maintain the appointment of a Receiver for Retirement Value and to have a receiver appointed for Defendant Hill Country Funding, and seeks to have the bond previously posted by the Receiver for Defendant Retirement Value, in the amount of \$100.00, to be sufficient bond for his appointment as Receiver for Defendant Hill Country Funding.

**EQUITABLE RELIEF AND RESTITUTION**  
**FOR VICTIMS OF FRAUDULENT PRACTICES**

115. Paragraphs 20 through 75 above are incorporated by reference as if fully set forth herein.
116. Section 32.B of the Texas Securities Act authorizes the Attorney General to seek equitable relief, including restitution, for defrauded investors. Section 32.B provides as follows:
- The Attorney General may, in an action under Subsection A of this section or in a separate action in District Court, seek equitable relief, including restitution for a victim of fraudulent practices. The court may grant any equitable relief that the court considers appropriate and may order the defendant to deliver to the person defrauded the amount of money or the property that the defendant obtained from the person by the fraudulent practices.
117. Section 17.47(d) of the DTPA authorizes the court to make orders or judgment as necessary to compensate identifiable persons for actual damages.
118. Based upon the conduct alleged herein, and pursuant to Section 32.B of the Texas Securities Act and Section 17.47(d) of the DTPA, the State of Texas is seeking restitution and damages for the victims of fraudulent practices and any other equitable relief that the State of Texas may be justly entitled.

**DISGORGEMENT OF ECONOMIC BENEFITS**

119. Paragraphs 20 through 75 above are incorporated by reference as if fully set forth herein.

120. Section 32.C of the Texas Securities Act authorizes the Attorney General to seek disgorgement of economic benefits gained by Defendants. Section 32.C provides as follows:

In an action brought under this section for fraud or a fraudulent practice in connection with the sale of a security, the Attorney General may seek, for an aggrieved person, the disgorgement of any economic benefit gained by the defendant through the violation, including a bonus, fee, commission, option, proceeds, profit from or loss avoided through the sale of the security, or any other tangible benefit. The Attorney General may recover from an order of disgorgement obtained under this subsection reasonable costs and expenses incurred by the Attorney General in bringing the action.

121. Section 17.47(d) authorizes the court to make orders or judgments as necessary to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice.
122. Based upon the conduct alleged herein, and pursuant to Section 32.C of the Texas Securities Act and Section 17.47 of the DTPA, the State of Texas is seeking an order that the Defendants and Defendant's agents disgorge economic benefits.

#### OTHER RELIEF

123. Paragraphs 20 through 75 above are incorporated by reference as if fully set forth herein.
124. Further, the State seeks the imposition of a constructive trust and equitable lien with respect to assets of any kind obtained through the fraudulent scheme, including, but not limited to, all debts owing to RV Defendants and Defendant Hill Country Funding in connection with any loans made to third parties pursuant to the scheme and assets fraudulently transferred to third parties, and any proceeds therefrom.
125. Further, pursuant to Section 17.47(c) of the DTPA, the State of Texas seeks the payment of civil penalties from Defendants in the amount of (a) not more than \$20,000 per violation; and (b) an additional amount of not more than \$250,000 because the Defendants' acts and practices made the subject of this proceeding were calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred.

126. Pursuant to Section 402.006 of the Texas Government Code, the State of Texas seeks payment of reasonable and necessary attorney's fees and costs incurred in the prosecution of this case.
127. Pursuant to Section 32.C of the Texas Securities Act, the State of Texas seeks recovery of reasonable costs and expenses incurred by the Attorney General in bringing the action for disgorgement.
128. Pursuant to Section 32.A of the Texas Securities Act, the Attorney General may ask the Court to issue a subpoena requiring the appearance of any defendant and his employees or agents, or the production of documents, books and records.

### CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the State prays that:

129. The Court maintain the temporary injunction entered against Defendants Retirement Value and Gray and Kiesling Porter, in its capacity as Relief Defendant, pursuant to the terms of the Gray TI and Order Appointing Receiver signed on May 28, 2010.
130. The Court, render a temporary injunction order after notice and hearing and without bond by the Attorney General and Deputy Securities Commissioner, until determination of The State's Application for Permanent Injunction, or other order of the Court, **enjoining Defendants Hill Country Funding, LLC, a Texas Limited Liability Company, Hill Country Funding, a Nevada Limited Liability Company, (also collectively referred to herein as "Hill Country Funding") and Defendant Wendy Rogers** and their officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, licensees, representatives, attorneys, family members, **and others acting in concert with said Defendants** who receive actual notice of the Court's Order by personal service, facsimile transmission, or otherwise, from engaging in the following acts:
  - A. **Dissipation of Assets**. Disposing of, transferring, selling, assigning, negotiating, expending, encumbering, partitioning, canceling, concealing, secreting, disguising, pledging, or removing from the jurisdiction of this Court, any money, assets, notes, equipment, fixtures, receivables, expectancies, funds or other property or objects of value, whether real, personal, or mixed and whether tangible or intangible, wherever situated, belonging to, owned by, in the possession of, acquired by, or claimed in any respect, directly or contingently, by RV Defendants or Defendant Hill Country Funding, affiliated companies, and their officers, directors, principals, partners, joint venturers, successors, shareholders, employees,

salesmen, agents, licensees, representatives, attorneys, family members, and others acting in concert with or in behalf of RV Defendants or Defendant Hill Country Funding, or insofar as such property relates to, arises out of, or is derived from the sale of securities in connection with the business or operation of Defendants Retirement Value or Hill Country Funding;

- B. **Destruction or removal of books and records.** Disposing of, transferring, selling, assigning, canceling, concealing, altering, destroying, secreting, disguising, or pledging of the books, records, ledgers, journals, invoices, contracts, notes, leases, investors lists, investor files, investor subscription agreements, tax forms or advice, receipts, computer files, electronic information of any kind, materials, or any other documents or tangible items relating in any way to RV Defendants or Defendant Hill Country Funding or their affiliated companies and businesses, or relating in any manner whatsoever to the services or contracts relating to securities offered and sold by RV Defendants or Defendant Hill Country Funding which are now or which may come within or under the possession, custody, or control of RV Defendants or Defendant Hill Country Funding, their affiliated companies, agents, servants, officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, representatives, attorneys, family members, or any other person or entity acting in concert with or on behalf of RV Defendants or Defendant Hill Country Funding;
- C. **Selling securities.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, dealing in or distributing any securities, including investment contracts, in any way and by any manner or means, either directly or indirectly through agents, licensees, servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or on their behalf without complying with the securities registration requirements found in the Texas Securities Act;
- D. **Acting as an agent, dealer or salesman.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, holding seminars, dealing in or distributing any securities, including investment contracts, to investors in any way and by any manner or means, either directly or indirectly through agents, licensees, servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or in their behalf, without complying with all dealer and salesman registration requirements of the Texas Securities Act;
- E. **Engaging in fraud.** Engaging in any fraud or fraudulent practice in violation of the Texas Securities Act, the DTPA or other laws of Texas, including any misrepresentation of fact or omission of material facts;

- F. **Interfering with investigation.** Obstructing, hampering, seeking to delay, or interfering in any manner with any investigation of RV Defendants or Defendant Hill Country Funding's fraudulent operations conducted pursuant to the lawful authority of the Texas State Securities Board, the Office of the Attorney General, the Receiver, or any other law enforcement or governmental authority;
- G. **Communicating with Investors and Customers.** Contacting, via telephone, electronic mail or other written correspondence, or **otherwise communicating, in any way, directly or indirectly,** themselves or through their agents, licensees or representatives, with investors or customers of Defendant Retirement Value or Defendant Hill Country Funding without prior written approval from the Receiver requested herein;
- H. **Interfering with operation of trusts.** Interfering in any manner with or taking any action as trustee over any trust related in any way to Defendants Retirement Value or Hill Country Funding or related in any way to any securities issued, offered or sold by RV Defendants or Defendant Hill Country Funding, without the express written consent of the Receiver; and
- I. **Interfering with the Receiver or the Receivership Estate.** Interfering with, obstructing, or hampering the Receiver appointed under this Order, including accessing or using any web site, telephone, voice mail, or electronic mail account owned or used by Defendants Retirement Value or Hill Country Funding.

131. **Order any other entity or financial institution** holding money, property, assets or records of RV Defendants' or Defendant Hill Country Funding's investment schemes, to receive, by fax or personal service, notice of the signing of the temporary restraining order and receivership, and immediately take all necessary steps to prevent RV Defendants and Defendant Hill Country Funding from exercising any control over any money, to the extent such banks, entities and institutions are in possession or control of funds deposited or claimed by RV Defendants or Defendant Hill Country Funding, any certificates of deposit showing RV Defendants or Defendant Hill Country Funding as owner, claimant, or trustee, or any other asset or thing of value, including insurance policies owned, purchased or otherwise acquired by Defendants Retirement Value or Hill Country Funding.

132. Maintain the temporary injunction granted in the Gray TI and Order Appointing Receiver entered herein on May 28, 2010 which **enjoins Relief Defendant Kiesling Porter, as a Relief Defendant,** from canceling the Escrow Agreement by and between it and Defendant Retirement Value dated March 10, 2009, without the express written consent of the Receiver of an order of the court.

133. Maintain the appointment of Eduardo S. Espinosa of K&L Gates, LLP as the **Receiver for Defendant Retirement Value**, pursuant to the terms of the Gray TI and Order Appointing Receiver entered in this matter on May 28, 2010.
134. Issue an order, after notice and hearing, **appointing Eduardo S. Espinosa of K&L Gates, LLP, as Receiver for Defendant Hill Country Funding** to take charge of the assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated (within or without the State of Texas) of Defendant Hill Country Funding and for assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of Defendant Richard H. "Dick" Gray, or Defendant Wendy Rogers as appears to the Receiver to contain or be derived from proceeds of RV Defendants' or Defendant Hill Country Funding's sale of securities or used in furtherance thereof (collectively, the "Hill Country Receivership Assets"), and to conduct the business affairs of Defendants Retirement Value and Hill Country Funding with the following powers:
- A. To take possession of and control, to the extent another law enforcement entity has not done so by court order, over all property, records, and assets of whatever nature and wherever located (within and without the State of Texas) as appears to the Receiver, in his sole discretion, to be derived from RV Defendants' or Defendant Hill Country Funding's fraudulent operations or used in furtherance thereof, whether directly or indirectly; belonging to, claimed by, or controlled by RV Defendants or Defendant Hill Country Funding, including, but not limited to monies deposited by or on behalf of RV Defendants or Defendant Hill Country Funding, in any capacity, including "trustee," with any bank, savings and loan, credit union, securities dealer, clearing agent, or other depository; and interest in real estate owned or controlled by RV Defendants or Defendant Hill Country Funding in any capacity; any stock owned by RV Defendants or Defendant Hill Country Funding and the voting and other rights attaching thereto; any accounts receivable owed to RV Defendants or Defendant Hill Country Funding, and any interest or other return earned upon any of the foregoing.
- B. To take possession and control of all income payable to RV Defendants or Defendant Hill Country Funding from sources generated by or consisting in any regard of an account or asset purchased with derived funds;
- C. To take possession and control of all income payable to RV Defendants or Defendant Hill Country Funding from sources other than those generated by or consisting in any regard of an account or asset purchased with derived funds, until RV Defendants and Defendant Hill Country Funding demonstrate to the satisfaction of the receiver and the Texas State



Securities Board that such income is in no way derived from or connected with investor funds;

- D. To take possession of all financial records and other business records of RV Defendants or Defendant Hill Country Funding, including all computers and data storage devices to the extent these are not in the control of another law enforcement entity and, to the extent such records are in the control of another law enforcement agency, to work cooperatively with such agency;
- E. To enter, occupy and control the business premises of Defendants Retirement Value and Defendant Hill Country Funding at their business addresses, including, 707 N. Walnut, New Braunfels, Texas 78130 to the extent necessary to accomplish the purposes of this order;
- F. To take charge of, conduct, and manage all business and financial affairs of and on behalf of Defendants Retirement Value and Defendant Hill Country Funding, including, specifically, the power to act as Trustee of any trust over which RV Defendants or Defendant Hill Country Funding have control;
- G. To receive, collect, and open all mail directed to or delivered to any address or post office box used by Defendants Retirement Value or Defendant Hill Country Funding and to direct the post office and commercial delivery services to forward all such mail and deliveries to the Receiver's office;
- H. To sign checks, or other instruments withdrawing, depositing or transferring funds, or exercising any right over any account with respect to any depository account of RV Defendants and Defendant Hill Country Funding;
- I. To close and open accounts and transfer money from one bank, brokerage firm, or other financial institution to another, or one account to another, as necessary in the Receiver's sole discretion, and under terms the Receiver considers appropriate
- J. To negotiate, transfer, or redeem any deed, certificate, contract, lease, mortgage, instrument or security held by or in the name of RV Defendants or Defendant Hill Country Funding in any capacity, including "trustee";
- K. To hire, dismiss, direct, and control employees, agents, landlords, tenants, and independent contractors of Defendants Retirement Value and Defendant Hill Country Funding in any of their capacities;

- L. To identify, recover, and take control over all assets and property acquired or believed to be acquired with funds derived from or obtained through RV Defendants or Defendant Hill Country Funding, including the power to transfer or acquire any rights in real property to the extent necessary to protect and recover investor funds, and the power to sign, negotiate, transfer, sell, pledge, or otherwise dispose of any deed or evidence of an interest of Defendants in real property;
  - M. To dispose of any interest in real and personal property in which RV Defendants or Defendant Hill Country Funding have any record or beneficial interest, for the benefit of the investor-victims;
  - N. To file any lawsuits the Receiver deems necessary to carry out his duties herein;
  - O. To file, prosecute or defend any suit heretofore or hereinafter filed by or against RV Defendants or Defendant Hill Country Funding which may be deemed to be necessary by the Receiver and by the Texas State Securities Board in order to properly protect all interested parties or any property affected thereby, subject to further order by this Court;
  - P. To retain professional service providers as deemed reasonable and necessary by the receiver for the execution of the receiver's duties;
  - Q. To enter into contracts as necessary for the orderly administration of the receivership estate and to pay reasonable and necessary expenses incurred in connection with the foregoing duties out of the funds of the Receivership Estate
  - R. To advance his own funds, if necessary in his sole discretion, to pay any expense incurred in carrying out his responsibilities under the Court's orders and to reimburse himself immediately for any funds advanced;
  - S. To delegate to agents the authority to exercise any of the powers conferred on the Receiver by the Court's orders;
  - T. To file an accounting and a final report when he has concluded his duties under the Court's orders; and
  - U. To exercise all equitable powers under the statutes and common law of this State authorizing the appointment of a receiver.
135. Issue an order that all property and assets held and claimed by RV Defendants or Defendant Hill Country Funding, in any capacity, be placed in custodia legis as of the date of the appointment of the temporary receiver and the issuance of the temporary injunction herein;

136. Upon final hearing hereof, make permanent the order directing the receiver to take possession of the affairs of Defendants Retirement Value and Defendant Hill Country Funding and direct the Receiver to liquidate the affairs of Defendants as the facts and circumstances may require;
137. Issue an order that all persons be enjoined and restrained by the temporary injunction from interfering with these proceedings, and from commencing or prosecuting any action or appeal or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against the Receiver, or against any receivership assets or any part thereof, and from asserting any claims against them, except in these proceedings.
138. Issue an order that no party other than the Receiver appointed herein shall take any action as "Trustee" over any Defendant Retirement Value related Trust without the Receiver's written express consent.
139. Issue an order that no party other than the Receiver appointed herein shall take any action as "Trustee" over any Defendant Hill Country Funding related Trust without the Receiver's written express consent.
140. Issue an order that none of the RV Defendants, Defendant Hill Country Funding, nor any parties acting under their direction or control shall use any electronic or telephonic tools or devices to alter, inquire about, or transfer any money in any account over which they have any power, authority, interest or control.
141. Issue an order that no bond be required by the State of Texas.
142. Upon final hearing hereof, issue a permanent injunction, enjoining Defendants from acting as a dealer, agent, or salesman in securities without complying with all dealer and salesman registration requirements of the Texas Securities Act; from selling securities that have not been registered with the Securities Commissioner and enjoining Defendants from engaging in fraud and fraudulent practices in connection with the sale of securities in violation of the Texas Securities Act, or from engaging in, or materially aiding other persons in, any fraud or fraudulent practice in violation of the DTPA or other laws of Texas, including any misrepresentation of fact or omission of material facts.
143. Upon final hearing hereof, pursuant to Section 32.B of the Texas Securities Act and Section 17.47 of the DTPA, order that restitution be made to defrauded investors, identifiable at the final hearing, or, alternatively, to the bankruptcy trustee for the benefit of investors defrauded by the parties to any bankruptcy proceedings.

144. Upon final hearing hereof, order that the Defendants disgorge any economic benefit gained through the fraud and fraudulent practices alleged herein pursuant to Section 32.C of the Texas Securities Act and Section 17.47 of the DTPA.
145. Upon final hearing hereof, adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of not more than \$20,000 per violation of the DTPA plus an additional fine of not more than \$250,000 because the Defendants' acts and practice made the subject of this suit were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred.
146. Upon final hearing hereof, order that the Attorney General recover all reasonable costs and expenses incurred in bringing this action pursuant to Section 32.C of the Texas Securities Act.
147. Upon final hearing hereof, order that the State of Texas recover all investigative costs and all costs of this litigation and be awarded attorney's fees under Section 402.006, TEX. GOVT. CODE.
148. Order Defendants to pay both pre-judgment and post-judgment interest on all awards of restitution, damages and civil penalties, as provided by law.
149. Grant such other and further relief, equitable and legal, to which the State of Texas may be justly entitled.

Respectfully submitted,

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Attorney General

C. ANDREW WEBER  
First Assistant Attorney General

DAVID MORALES  
Deputy Attorney General for Civil Litigation

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Chief, Financial Litigation Division

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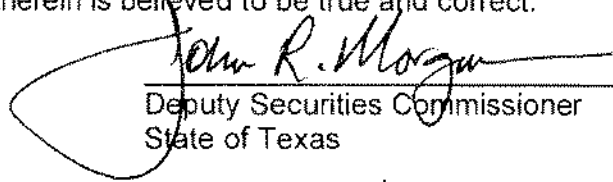
*Attorneys for Plaintiff State of Texas*

VERIFICATION

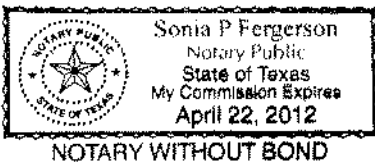
STATE OF TEXAS

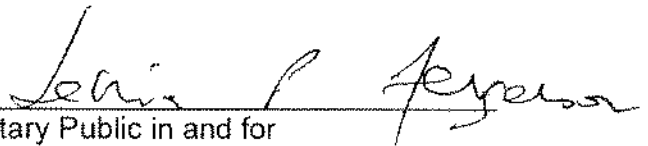
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared John R. Morgan, Deputy Securities Commissioner of the State of Texas, who, being by me first duly sworn, deposed and said that he has read the allegations in the foregoing first amended petition, and upon information and belief, each and every fact and matter stated in paragraphs 13 through 75 therein is believed to be true and correct.

  
Deputy Securities Commissioner  
State of Texas

SUBSCRIBED AND SWORN to before me, this the 23<sup>rd</sup> day of June, 2010.



  
Notary Public in and for  
The State of Texas

**CERTIFICATE OF SERVICE**

I, Kara L. Kennedy, do hereby certify that on this 24th day of June, 2010, I served a copy of the above and foregoing *Plaintiff's First Amended Verified Petition and Application for Injunctive Relief, Restitution, Disgorgement of Economic Benefits, Receivership, and Other Equitable Relief* on the following counsel:

Michael Napoli  
K&L Gates, LLP  
1717 Main Street, Suite 2800  
Dallas, Texas 75201  
*Attorney for Receiver of Retirement Value, LLC*

*Via Regular U.S. Mail  
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KARA L. KENNEDY