

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

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
RETIREMENT VALUE, LLC,	§	
RICHARD H. "DICK" GRAY, HILL	§	
COUNTRY FUNDING, LLC, HILL	§	
COUNTRY FUNDING, and	§	
WENDY ROGERS,	§	TRAVIS COUNTY, TEXAS
	§	
Defendants,	§	
	§	
and	§	
	§	
JAMES SETTLEMENT SERVICES,	§	
LLC, et al.,	§	
	§	
Third Party Defendants.	§	126 TH JUDICIAL DISTRICT

PLAINTIFF'S FOURTH AMENDED VERIFIED PETITION AND APPLICATION FOR INJUNCTIVE RELIEF, RESTITUTION, DISGORGEMENT OF ECONOMIC BENEFITS, AND OTHER EQUITABLE RELIEF AGAINST RONALD JAMES, DONALD JAMES, JAMES SETTLEMENT, LLC AND MICHAEL BESTE

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas, Plaintiff in the above-entitled and numbered cause (hereinafter referred to as the "State" or "Plaintiff"), acting by and through Greg Abbott, Attorney General of Texas, at the request of John Morgan, Securities Commissioner of the State of Texas (hereinafter referred to as the "Commissioner"), files this **Fourth Amended Petition and Application**, verified upon information and belief by the Commissioner, complaining of **Defendants Retirement Value, LLC, Hill Country Funding, LLC, a Texas Limited Liability Company, Hill Country Funding, a Nevada Limited Liability Company, Wendy Rogers, Ronald James, Donald James, James Settlement LLC, and Michael Beste**, and makes this application for injunctive relief, restitution, disgorgement, and other equitable relief (below, "Fourth Amended Petition").

Having joined Hill Country Funding, LLC, a Texas Limited Liability Company, Hill Country Funding, a Nevada Limited Liability Company (collectively referred to herein as "Hill Country Funding") and Wendy Rogers as Defendants, and having obtained the appointment of Donald R. Taylor as receiver for Hill Country Funding, having earlier obtained the appointment

of Eduardo S. Espinosa as receiver for Retirement Value, and having obtained the appointment of Janet Mortenson as Special Receiver for Retirement Value for the limited purpose of evaluating potential claims by the Retirement Value receivership estate against Wells Fargo Bank N.A., the State now amends its petition to assert claims against **Ronald James, Donald James, James Settlement LLC, and Michael Beste.**

The State requests that all injunctive relief previously granted 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 ("RV Receiver"), its appointment of Donald R. Taylor as Receiver for Hill Country Funding ("HCF Receiver"), and its appointment of Janet Mortenson as Special Receiver for Retirement Value, LLC ("Special Receiver").

In support of its amended petition, the State would show the Court the following:

DISCOVERY CONTROL PLAN

1. The amended Agreed Discovery Control Plan was signed and entered by court on February 1, 2012.

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, special receivership and other equitable relief at the request of the 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 2010) (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 "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 Fourth Amended Petition by serving same, via electronic filing with the court, on the attorney of record for the RV Receiver, 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 "Gray") is a natural person appearing in this lawsuit pro se. He was licensed as a General Lines Agent with the Texas Department of Insurance, and held qualifications in life, accident, health and HMO. He is 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 Fourth Amended Petition via electronic filing with this court. The State and the RV Receiver have reached a settlement with Gray.

5. **HILL COUNTRY FUNDING, LLC** (hereinafter referred to as “Hill Country Funding” or “HCF-Texas”) is a Texas Limited Liability Company owned, managed, and controlled by Gray, for which the Court appointed Donald R. Taylor of Taylor Dunham. The HCF Receiver may be served with this Fourth Amended Petition by serving same, via electronic filing with this court, on Donald Taylor and Jennifer Tatum at Taylor Dunham LLP, 301 Congress Avenue, Ste. 1050, Austin, Texas 78701.
6. **HILL COUNTRY FUNDING, LLC, a Nevada Limited Liability Company** (also hereinafter referred to as “Hill Country Funding” or “HCF-Nevada”) is a Nevada Limited Liability Company owned, managed, and controlled by Gray and his wife, Catherine Gray, formed on February 21, 2008 and purportedly dissolved on February 23, 2009, for which the Court appointed Donald R. Taylor of Taylor Dunham as receiver for HCF. The HCF Receiver may be served with this Fourth Amended Petition by serving same, via electronic filing with this court, on Donald Taylor and Jennifer Tatum at Taylor Dunham LLP, 301 Congress Avenue, Ste. 1050, Austin, Texas 78701.
7. **WENDY ROGERS** (hereinafter referred to as “Rogers”) is a natural person appearing in this lawsuit. She is a part owner, Managing Member, and former Chief Executive Officer and Vice President of Defendant Retirement Value. She may be **served** with this Fourth Amended Petition, by serving her attorney of record Bogdan Rentea, at Rentea & Associates, 1002 Rio Grande, Austin, Texas, 78701, via electronic filing with this court. The State, RV Receiver, and HCF Receiver have tentatively settled their claims against Rogers, but the settlement agreement has not been executed.
8. **RONALD JAMES, DONALD JAMES and JAMES SETTLEMENT SERVICES, LLC**: James Settlement Services, LLC (hereinafter referred to as “James Settlement Services”) is a Nevada Limited Liability Company, which has already appeared in this lawsuit. Ronald L. James is a California resident, who has already appeared in this lawsuit. Donald James is also a California resident, who has already appeared in this lawsuit. These defendants are referred to below, collectively, as the James Defendants. The James Defendants are in the business of buying life insurance policies from insureds and selling them to others for resale as unregistered securities. As shown in greater detail below, the James Defendants sold such life insurance policies to both Retirement Value and Hill Country Funding, and they were key players in the creation and operation of Retirement Value. The James Defendants may be served with this Fourth Amended Petition by serving same, via electronic filing with this court, on their attorneys of record Larry F. York and Nicholas P. Laurent, of the law firm McGinnis, Lochridge & Kilgore, L.L.P., 600 Congress Ave., Suite 2100, Austin, Texas 78701.
9. **MICHAEL BESTE** (“Beste”) is a New Mexico resident. He has appeared in this lawsuit, and may be served with this Fourth Amended Petition by serving same, via electronic filing with this court, on his attorneys of record Larry F. York and Nicholas P.

Laurent, of the law firm McGinnis, Lochridge & Kilgore, L.L.P., 600 Congress Ave., Suite 2100, Austin, Texas 78701. As shown in greater detail below, Beste was also a key player in the creation and operation of Retirement Value.

THE INTERVENORS

10. Dr. G. Cain, B. Edelstein and Qvest III Master Fund, LLC, are investors in Retirement Value, who may be served by serving this Fourth Amended Petition, via electronic filing with this court, on their attorney of record, Terry Scarborough and Geoffrey D. Weisbart, at Hance Scarborough, LLP, III Congress Avenue, Ste. 500, Austin TX 78701.
11. Grant W. Bejcek and Opal E. Bejcek are investors in Retirement Value, who may be served by serving this Fourth Amended Petition, via electronic filing with this court, on their attorney of record, Patrick S. Richter, Shannon, Gracey, Ratliff & Miller, LLP, 98 San Jacinto Blvd., Ste. 300, Austin TX 78701-4245.
12. Ladell Harrison, on behalf of Matthew C. Allen, Jr., Teddie J. Allen and The Matthew and Teddie Allen Charitable Remainder Annuity Trust, are investors in Retirement Value, who may be served by serving this Fourth Amended Petition, via electronic filing with this court, on their attorney of record Alberto T. Garcia III, Garcia & Martinez, LLP, 5211 W. Mile 17½ Rd., Edinburg, Texas 78541.

JURISDICTION

13. 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

14. 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

15. 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 the undersigned was of the opinion that there was good cause to believe 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 Defendants might

have evaded service of process, destroyed relevant records and secreted assets if prior notice of the suit had been given.

16. The State informed the attorneys for Defendants Gray and Hill Country Funding on June 16, 2010.

BACKGROUND OF THIS SUIT

17. 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 RV Receiver (“First Amended TRO”).
18. 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 RV Receiver”) which granted the State’s request for a temporary injunction against Defendants Retirement Value and Gray and also continued the appointment of Eduardo S. Espinosa of K&L Gates, LLP as the RV 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.
19. 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 RV Receiver and Defendant Collins for a permanent injunction and final judgment.
20. 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 so it could proceed to final judgment.
21. On June 24, 2010, the State filed its *First Amended Petition and Application* based upon additional facts learned since after the filing of its Original Petition that made it necessary to 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. (“First Amended Petition and Application”)
22. 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 Defendant 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"¹; and
 - I. Defendant Rogers and a friend from college, Carie Morales ("Morales"), were 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.
23. Information related to Defendants' fraudulent investment schemes and the use of investors' funds are described further in this verified Fourth Amended Petition.
24. On February 14, 2011, the State filed its *Second Amended Petition and Application for Receiver* requesting in addition to relief sought in its First Amended Petition and Application that Donald R. Taylor be appointed as Receiver for Hill Country Funding to conserve and protect the assets thereof for the benefit of its investors. ("Second Amended Petition and Application").

¹ 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.

25. On April 26, 2011, this court entered the Agreed Permanent Injunction Order and Order Appointing Donald R. Taylor as Receiver for Hill Country Funding, permanently enjoining Hill Country Funding and Gray in connection with Hill Country Funding (“Order Appointing HCF Receiver”).
26. On June 22, 2011, the State filed its Third Amended Petition and Application for Injunctive Relief, and other equitable relief, and Application for appointment of Janet Mortenson, as Special Receiver for Retirement Value for the limited purpose of evaluating potential claims against Wells Fargo Bank N.A. (“Third Amended Petition”).
27. Subsequently, the court entered its order appointing Mortenson as Special Receiver for Retirement Value.

HISTORY OF COMPANIES OPERATED BY GRAY AND ROGERS

28. 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.
29. 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 principal 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 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-Texas**, 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 Defendant **Hill Country Funding-Nevada**, 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 Hill Country Funding-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** 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.
30. 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 order² and the May 28, 2010 Defendant 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 herein.

² 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.

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

31. 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.
32. 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.
33. Investors in SIS were allegedly told their funds would be used to purchase interests in insurance policies that insured the lives of others and they would receive a return on their investment payable from the proceeds of the insurance policies upon the deaths of the insured.
34. Investors were also allegedly told 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.
35. 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").
36. 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.
37. 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 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

38. 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 (collectively "HCF Defendants") in the sale of investments in bonded life settlement contracts issued by SIS-Houston, also known as ASA.
39. 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 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.
40. 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.
41. Investors in ASA were allegedly told their funds would be used to purchase interests in insurance policies that insured the lives of others and they would receive a return on their investments payable from the proceeds of the insurance policies upon the deaths of the insured.
42. Investors were also allegedly told that Provident Capital Indemnity Ltd. had issued a bond that secured the investment.
43. During the time 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 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 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:
- 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.
44. 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.
45. 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

46. On February 7, 2008 and February 21, 2008, Defendant Gray formed Defendant **Hill Country Funding-Texas**, and Defendant **Hill Country Funding-Nevada** , respectively, and with the participation 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 ("Union Credit"), and Condor Guaranty, Inc. out of Freeport, Grand Bahama, Bahamas ("Condor").
47. 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 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.
48. 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 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:
- 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.
49. 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

50. While still operating Defendant Hill Country Funding, Defendants Gray and Rogers, along with others as detailed below, 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 more than \$65 million from over 800 investors through the sale of fraudulent investments in the death benefits of life insurance policies.
51. Investors were told 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.
52. RV Defendants, either directly or through a network of numerous unregistered salespersons, told investors 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 the insureds would die.

53. 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.
54. RV Defendants, directly or indirectly, made a number of representations to investors regarding what the life expectancy estimate means and 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 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.
55. 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 (the "RSLIP Program"). They also did not tell investors the life expectancies are obtained through Midwest Medical, a company controlled by a convicted felon who has provided similar life expectancies in other schemes that were eventually subject to regulatory action.
56. 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

57. 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 RSLIP Program.
58. RV Defendants told investors 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.

59. 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 Kiesling Porter Kiesling & Free ("Kiesling Porter") in its purported capacity as "an independent escrow agent" and "third party fiduciary". RV Defendants told investors the use of 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. 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.
60. 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.

61. 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 Defendant Retirement Value procured estimates provided by a third party or third parties to predict the date the insured will die. RV Defendants told investors 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 these life expectancy certificates were received by Defendant Retirement Value from the James Defendants 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 life expectancy. RV Defendants also told investors that 98.5% of insured die within twelve months of their life expectancy.

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

62. 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.
63. 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.
64. 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.

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

66. AVS Underwriting, LLC, and 21st 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.
67. RV defendants represented to investors that the life expectancy reports provided the date the insured will die. For example, RV Defendants told investors 95% of insureds die at or before their life expectancy. RV Defendants also told investors 98.5% of insured die within twelve months of their life expectancy.

**RV DEFENDANTS REPRESENTED KIESLING PORTER
AS THE “ESCROW AGENT”**

68. RV Defendants represented an essential component of the RSLIP Program is that 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, kiesling Porter owed no duty to anyone other than Defendant Retirement Value and investors were specifically excluded as beneficiaries to the Escrow Agreement
69. The Escrow Agreement between Defendant Retirement Value and Kiesling Porter sets forth, among other things, the following responsibilities and duties as it pertains to Kiesling Porter:

- A. 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. 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, including any investor;
 - C. 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. Kiesling Porter has no legal obligation to litigate any contestable matters that relate to the life insurance policies or the payment of claims thereon; and
 - F. 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.
70. RV Defendants represented to investors that Kiesling Porter deposited investor funds in separate policy escrow accounts to cover the specific policy purchase price and premium payments. However, the accounts were not held in "escrow" since Kiesling Porter owed no duty to anyone other than Defendant Retirement Value. Moreover, the RV Defendants co-mingled investor funds by using funds from one policy account to pay the purchase price or the premiums for other policies.
71. RV Defendants told investors that Kiesling Porter was 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 Kiesling Porter nor investors were listed as "irrevocable beneficiaries or irrevocable co-beneficiaries" on any of the policies and Defendant Retirement Value retained 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**

72. 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.

73. 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.
74. 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 was paid to or for the benefit of Gray, \$600,000.00 was paid to Collins, and almost \$1 million 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.

**ADDITIONAL FACTS IN SUPPORT OF CLAIMS AGAINST
DEFENDANTS RONALD L. JAMES, DONALD JAMES,
JAMES SETTLEMENT SERVICES, AND MICHAEL BESTE**

75. James Settlement Services LLC is controlled by Ronald James, which he operates with his son Donald James. Ronald James, Donald James and James Settlement Services, LLC are collectively referred to as “the James Defendants.” The James Defendants are in the business of buying life insurance policies from the original owners and selling the policies to others for resale.
76. The James Defendants sold policies to SIS, which was sued by the SEC in 2007. The suit resulted in the appointment of a receiver and an injunction based upon SIS’s fraudulent sale of investments in bonded life settlement contracts that constituted securities. These bonded life settlement contracts were predicated upon insurance policies with understated life expectancies affixed by Midwest Medical, a company controlled by George Kindness, a convicted felon.
77. Gray was a sales agent for SIS, and in that capacity he offered and sold investments in bonded life settlement contracts. During this time, he became acquainted with the James Defendants.

78. Despite the action by the SEC against SIS, beginning in 2008, the James Defendants sold life insurance policies to HCF. Midwest Medical was again responsible for providing estimates of the life expectancies of the insureds. HCF and Gray used these life insurance policies as part of the scheme to sell investments in bonded life settlement contracts.
79. The James Defendants became involved in the operations of HCF. Ronald James assisted Gray in forming HCF in Nevada to avoid the appearance of operating out of Texas. HCF and Gray were warned by the Texas State Securities Board that it was violating the Texas Securities Act and Gray agreed to an Undertaking requiring him to comply with the Texas Securities Act as noted earlier in this Fourth Amended Petition. However, HCF continued to sell investments in bonded life settlement contracts in violation of the Texas Securities Act and the James Defendants' involvement and control over Gray and his companies only grew stronger.
80. In or about 2009, Retirement Value was formed for the purpose of selling investments in life settlement contracts referred to herein as the RSLIP Program. The James Defendants, along with Beste, are responsible for conceiving the fraudulent scheme perpetrated by the RV Defendants as alleged herein and aided the RV Defendants in carrying out the scheme. The James Defendants and Beste recruited Gray to set up Retirement Value in order to create a larger market to sell the James Defendants' life insurance policies and to provide Beste a referral source for future institutional investors.
81. The James Defendants and Beste played a key role in the organization and operation of Retirement Value. For example:
 - A. The James Defendants and Beste assisted in the formation of RV, by determining the state of organization, the name of the company, and the decision to organize as a limited liability company,
 - B. The James Defendants and Beste identified the leading licensees from a competing firm and recruited these licensees to sell investments in life settlement contracts on behalf of Retirement Value,
 - C. The James Defendants and Beste were part of communications with licensees,
 - D. The James Defendants and Beste were involved in managerial decisions, including the hiring of employees, the promotion of employees, the retention of outside consultants and the use of materials used to market the investments in life settlement contracts, and
 - E. The James Defendants provided Retirement Value a \$5 million interest-free line of credit that was used to purchase life insurance policies from the James Defendants.

82. The James Defendants and Beste were aware of legal and regulatory issues that affected the RSLIP Program. For example the James Defendants and Beste were included on electronic mails and involved in discussions that addressed legal actions brought by or on behalf of law enforcement and regulatory agencies against companies engaging in the sale of investments in life settlement contracts, opinions and warnings by attorneys that the RSLIP Program was a security, and the treatment of the RSLIP Program by securities regulators in various states across the country.
83. The James Defendants and Beste also insisted that Retirement Value continue to use life expectancy reports provided by Midwest Medical despite the prior allegations and disclosures in the SEC lawsuit against SIS. The James Defendants and Beste also assisted Defendant Gray in misleading investors about the accuracy of the Midwest Medical's life expectancy estimates.
84. Many potential investors refused to invest with Retirement Value when their own research revealed Midwest Medical's reputation for underestimating life expectancies and George Kindness' federal conviction. Retirement Value's use of Midwest Medical eventually affected the marketability of the RSLIP Program, and Gray therefore repeatedly requested that they use a different company to provide estimates of the life expectancies of insured. The James Defendants and Beste repeatedly defended Midwest Medical and insisted that Gray continue to use Midwest Medical to estimate the life expectancies of insureds. For example, Ronald James sent an electronic mail message to Gray and explained therein as follows:

Your email has an almost plaintive tone to it....Mike Beste, Don James, and I have set you up with a business model that you have executed brilliantly. Your LE [life expectancy] provider is Midwest Medical.

Don't change course in midstream, don't let the tail wag the dog, don't compromise a wildly successful business model for the fleeting promise of 'new reps' from a tail wagger with his own agenda

OR YOU WILL END UP ON THE WRONG SIDE OF THE RIVER.
(Emphasis in original).

85. The use of understated life expectancies was a critical part of the fraud alleged herein because life expectancies are key components of the fair market value of investments in life settlement contracts. Investors are generally willing to pay more for investments in life settlement contracts with shorter life expectancies because these investments have a lesser estimated premium obligation and investors expect to realize a return after a shorter period of time. Conversely, investors are generally willing to pay less for investments in life settlement contracts with longer life expectancies because these investments have a greater estimated premium obligation and investors expect to realize a return after a longer period of time.

86. The James Defendants used the understated life expectancies provided by Midwest Medical in order to inflate the price of the life insurance policies that it sold to Retirement Value. This scheme ensured that they were able to generate significant profits. For example, the James Defendants bought policy number JP5580006 for \$39,000 and then sold it to Retirement Value a few days later for \$390,000. They bought policy number AU0896899 for \$80,000 and then sold it to Retirement Value for \$900,000 30 days later.
87. The James Defendants and Beste knew that the use of a different firm to provide more accurate life expectancies of insureds would preclude the James Defendants from earning 300% to 1,000% mark-up on policies sold. As referenced earlier in this petition, other firms estimated the life expectancies of insureds at or around the same time that Midwest Medical estimated the life expectancies of the same insureds. The evaluations by other firms were 2.5 times longer than those estimated by Midwest Medical. Ronald James ultimately told Gray that “the math won’t work with any other LE provider,” or words to that effect.
88. Beginning in September 2009 and continuing to March 2010, the James Defendants paid Beste approximately \$600,000, which equaled 1.5% of the face value of each life insurance policy sold to Retirement Value. Retirement Value also paid an additional \$50,000 in consulting fees to Beste for his work in designing and/or implementing the business model used by the company.
89. The James Defendants realized at least \$13.8 million in profit derived from the sale of thirty-nine life insurance policies to Retirement Value. Moreover, the James Defendants may have earned as much as \$20 million from the sale of these and other life insurance policies to Retirement Value.

ADDITIONAL FACTS IN SUPPORT OF CLAIMS AGAINST DEFENDANTS
HILL COUNTRY FUNDING AND WENDY ROGERS

90. After the State filed the Retirement Value Lawsuit on May 5, 2010, the State learned many of the following facts, which made it necessary to seek injunctive relief against Defendants Hill Country Funding and Rogers, as well as the disgorgement of economic benefits from 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.
 - 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.

- C. Defendant HCF-Nevada's "Supplemental Agreement" provides that a default exists, *inter alia*, if Defendant HCF-Nevada is dissolved.
- 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.
- E. Defendant HCF-Nevada was not re-incorporated in Texas, merged with or otherwise consolidated with Defendant HCF-Texas.
- 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.
- G. Other than the liquidation value of its policies and any claims to recover funds from HCF-Texas, 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.
- 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 below.
- I. Between February 23, 2010 and April 13, 2010, Defendant Retirement Value transferred \$1,922,767.29 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.
- 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. Before the appointment of the HCF Receiver, the RV Receiver had already, at the request of Gray, made quarterly premium payments in excess of \$35,000.00 on Defendant Hill Country Funding's policies.
- K. Defendant Hill Country Funding currently owes monthly interest payments to investors totaling almost \$5,000.00 per month.
- 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.
- M. Defendant Hill Country Funding had insufficient funds to meet its anticipated obligations for monthly interest payments and policy premiums for the benefit of

investors. If Defendant Hill Country Funding had continued to make the monthly interest payments to investors, as requested by Gray, and paid the insurance premiums to maintain the policies, it would have depleted its available funds. 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 still deplete its available funds. However, the earliest any funds from any of the bonds purportedly securing payment to investors would become available is January 2012.

- 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.
- 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.
- 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 in commissions from her sale of the RSLIP Program.
- 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.
- R. Defendants Gray and Rogers, together with Gray's wife, Catherine H. Gray, and Morales, formed Absolute Betah in Delaware on March 1, 2010.
- S. Morales, Defendant Rogers' friend she 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.
- T. 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.
- U. 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.

- V. 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.
- W. Special Acquisitions returned \$260,000 to Defendant Retirement Value during the month of April 2010.
- X. 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:
 - 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.
- Y. 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” therefore.

RV DEFENDANTS
OFFERED FOR SALE AND SOLD SECURITIES

- 91. 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).
- 92. Section 4.A of the Texas Securities Act defines the term “securities” to include investment contracts, notes, and evidences of indebtedness.
- 93. The investments in the RSLIP 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 investments in the RSLIP Program demonstrates that these investments are “investment contracts” and these instruments are therefore securities.
94. The investments in the RSLIP Program are securities in the form of “notes.”
- A. The United States Supreme Court adopted a “family resemblance” test to judge whether certain “notes” are securities, which begins with the rebuttable presumption that every note is a “security.” See Reves v. Ernst & Young, 494 U.S. 56 (1990). The *Reves* family resemblance test sets out the following four factors to be considered in determining the category into which a note fits, i.e., whether a note is an investment or represents part of a commercial transaction: (1) motivation of seller and buyer; (2) plan of distribution; (3) reasonable expectations of investing public; (4) other factors that reduce the risks, such as other regulatory frameworks covering the transactions.
 - B. An application of this definition to the investments in the RSLIP Program demonstrates that these investments are “notes” and these instruments are therefore securities.
95. The investments in the RSLIP Program are securities in the form of “evidences of indebtedness.”
- A. The Texas Securities Act also defines the term “security” to include an “evidence of indebtedness.” The Texas Supreme Court and the Texas Court of Criminal Appeals has defined the term “evidence 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); see also Thomas v. State, 919 S.W.2d 427, 432 (Tex.Cr.App. 1996).
 - B. An application of this definition to the investments in the RSLIP Program demonstrates that these investments are “evidences of indebtedness” and these instruments are therefore securities.

HCF OFFERED FOR SALE AND SOLD SECURITIES

96. 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).
97. Section 4.A of the Texas Securities Act defines the term “securities” to include bonds, evidences of indebtedness, and investment contracts.

98. 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 demonstrates that these investments are “investment contracts” and these instruments are therefore securities.
99. The investments in the HCF Bonded Program are securities in the form of “notes.”
- A. The United States Supreme Court adopted a “family resemblance” test to judge whether certain “notes” are securities, which begins with the rebuttable presumption that every note is a “security.” See Reves v. Ernst & Young, 494 U.S. 56 (1990). The *Reves* family resemblance test sets out the following four factors to be considered in determining the category into which a note fits, i.e., whether a note is an investment or represents part of a commercial transaction: (1) motivation of seller and buyer; (2) plan of distribution; (3) reasonable expectations of investing public; (4) other factors that reduce the risks, such as other regulatory frameworks covering the transactions.
 - B. An application of this definition to the investments in the HCF Bonded Program demonstrates that these investments are “notes” and these instruments are therefore securities.
100. 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 and the Texas Court of Criminal Appeals has defined the term “evidence 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); see also Thomas v. State, 919 S.W.2d 427, 432 (Tex.Cr.App. 1996).
 - B. An application of this definition to the investments in the HCF Bonded Program demonstrates that these investments are “evidences of indebtedness” and these instruments are therefore securities.
101. 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 that combines the features of both the fidelity and surety bond and, “which is given to secure payment and performance.”
- B. An application of this definition to the investments in the HCF Bonded Program demonstrates that these investments are “bonds” and these instruments are therefore.

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

- 102. 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. . . .

- 103. 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.
- 104. 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

- 105. 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.

106. Defendants and various sales agents were not registered as dealers, agents or salesmen required by Section 12.A of the Texas Securities Act.

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

107. 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.

108. 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. 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:
 - 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. George Kindness pleaded guilty to one count of the aforesaid indictment and is a convicted felon.
 - 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. The RV Defendants received certificates that certified the life expectancies from the James Defendants 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 life expectancy estimate 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.”
 - F. True and accurate information regarding the life expectancy estimates including, but not limited to, what a life expectancy estimate means.
109. 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%.”
110. In connection with the offer for sale and sale of the RSLIP Program, RV Defendants engaged in fraud by **misrepresenting relevant facts relating to life expectancy estimates, by** making representations indicating that the life expectancy report provides the anticipated date the insured will die. For example, 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.
111. 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-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 Texas Department of Insurance filed a Notice of Hearing against Defendant Gray based in part upon his conduct as an agent of SIS. The Texas Department of Insurance alleged therein:
- 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 SIS;
 - ii. Investors tendered approximately \$3 million to SIS 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. 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.

112. 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 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 Kiesling Porter and Defendant Retirement Value, such as:

i. 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. 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. 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. Kiesling Porter owes no duty to anyone other than Defendant Retirement Value except for willful misconduct,
- iv. The Escrow Agreement specifically excludes investors and licensees as parties or third-party beneficiaries to the agreement,
- v. 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. Defendant Retirement Value is responsible to litigate any contestable matters that relate to the life insurance policies or the payment of claims thereon,
- vii. 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. Any audit or bond requested of Kiesling Porter would be paid for by funds from Defendant Retirement Value, and
- ix. 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 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. Investors cannot be "irrevocable co-beneficiaries" if Kiesling Porter is not an irrevocable beneficiary,
- ii. Kiesling Porter owes no duty to investors as "irrevocable co-beneficiaries" pursuant to the terms of its Escrow Agreement with Defendant Retirement Value,

- iii. 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. Kiesling, Porter is not required to continue to serve as the escrow agent, or as the beneficiary of the policies, and it can relinquish its duties by canceling the Escrow Agreement at any time.
- E. 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 Kiesling Porter, or any information that would allow a prospective investor to assess or verify that Defendant Retirement Value and 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. True and accurate information regarding the life expectancy estimates.
- J. 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 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, fees, and profits to Retirement Value, and its agents in addition to the amount of investor funds used to acquire the life insurance policies and pay the policy premiums,
- K. Defendants Retirement Value routinely instructed 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
HCF DEFENDANTS' FRAUD AND
FRAUDULENT PRACTICES IN CONNECTION
WITH THE SALE OF SECURITIES

113. 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.

114. In connection with the offer for sale and sale of bonded life settlement contracts issued by Defendant Hill Country Funding, the HCF 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, Provident Capital Indemnity, Ltd, SIS, and ASA f/k/a SIS-Houston:**

- 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:
- 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:
 - 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.

115. In the HCF Bonded Program, HCF 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 Defendant 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 Defendant 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 Defendant 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 Defendant Hill Country Funding, or any information that will allow a prospective investor to assess or verify that Defendant Hill Country Funding will continue to operate through the maturity of investments in the HCF Bonded Program.
- D. Defendant Hill Country Funding was not maintaining sufficient capital, 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 therefore, the effectuation of medical reviews to predict a date of death, and any other fees or charges associated with the HCF Bonded Program.
- H. True and accurate information regarding the bonding companies including, but not limited to, the assets, liabilities or capitalization of the bonding companies that will allow prospective investors to assess or verify that the bonding companies will have the ability to pay investors their return or continue to operate through the maturity of the investment.

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

- 116. The preceding paragraphs are incorporated by reference to support this cause of action as if fully set forth herein.
- 117. Plaintiff has reason to believe the RV and HCF Defendants have engaged in and will continue to engage in the unlawful practices set forth herein. Plaintiff therefore has reason to believe these 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.

118. 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."
119. 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."
120. 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 that 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),
 - E. 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), and
 - F. 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).
121. 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.

122. As alleged herein, HCF and RV 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 19 through 77.

CAUSE OF ACTION NO. 6
VIOLATION OF TEXAS SECURITIES
ACT BY JAMES DEFENDANTS AND BESTE

123. The preceding paragraphs are incorporated by reference as if fully set forth herein.
124. The James Defendants and Beste with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided the RV Defendants and the Licensees in fraud or a fraudulent practice in connection with the sale of a security, or in making an offer containing a statement that is materially misleading or is otherwise likely to deceive the public, or in engaging in acts and practices that violate the Texas Securities Act. Such material aid by the James Defendants and Beste violated Tex. Civ. St. Art. 581-32(A).
125. The James Defendants with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided and abetted Hill Country Funding and those who sold the Hill Country Funding investment in fraud or a fraudulent practice in connection with the sale of a security, or in making an offer containing a statement that is materially misleading or is otherwise likely to deceive the public, or in engaging in acts and practices that violate the Texas Securities Act. Such material aid by the James Defendants violated Tex. Civ. St. Art. 581-32(A).
126. Section 32(B) of the Texas Securities Act authorizes the Attorney General to seek equitable relief against the James Defendants and Beste, including restitution, for defrauded investors. Section 32(B) provides as follows:

In addition to any other remedies, the Attorney General may, on the request of the Commissioner, either 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 and may seek the disgorgement of any economic benefit gained by a defendant through an act or practice that violates this Act or for which this Act provides the Commissioner or the Attorney General with a remedy. The court may grant any equitable relief that the court considers appropriate and may order the defendant to deliver to each victim of any act or practice that violates this Act or for which this Act provides the Commissioner or the Attorney General with a remedy the amount of money or the property that the defendant obtained from the victim, including any bonus, fee, commission, option, proceeds, or profit from or loss avoided through the sale of the security or through the rendering of services as an investment adviser or investment adviser representative, or any other tangible benefit.

Tex. Civ. St. Art. 581-32(B).

127. Based upon the conduct alleged herein, and pursuant to Section 32(B) of the Texas Securities Act, the State of Texas hereby seeks restitution for the victims of fraudulent practices and any other equitable relief the State of Texas may be justly entitled. In the alternative, the State of Texas seeks disgorgement of the approximately \$20 million in economic benefit gained by the James Defendants and the \$650,000 in economic benefit gained by Beste. The State of Texas also seeks to recover reasonable costs and expenses incurred in bringing this action. Tex. Civ. St. Art. 581-32(D).
128. The State of Texas also seeks civil penalties against the James Defendants and Beste under Section 32(C) of the Texas Securities Act. The civil penalties sought are (1) the greater of: (A) \$20,000 per violation; or (B) the gross amount of any economic benefit gained by the person or company as a result of the commission of the act or practice; and (2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than \$250,000. Tex. Civ. St. Art. 581-32(C). The State of Texas seeks an order against the James Defendants and Defendant Beste for civil penalties as authorized by this section in the amount of approximately \$20,250,000 against the James Defendants and \$900,000 against Beste. These civil penalties are in addition to the other damages sought above.

NEED FOR INJUNCTIVE RELIEF

129. All paragraphs above are incorporated by reference as if fully set forth herein.
130. 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.

131. 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 permanent injunctions enjoining Defendants, including Beste and the James 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.
132. 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.
133. 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.

CONTINUING NEED FOR RECEIVERS

134. All paragraphs above are incorporated by reference as if fully set forth herein.
135. 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.

136. In its amended petitions, the State also sought the appointment of a temporary receiver for Defendant Hill Country Funding and this court entered the Order Appointing HCF Receiver on April 26, 2011.

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 HCF Defendants have engaged in fraud in connection with the sale securities and a receiver is necessary to insure that investor funds are accounted for, conserved and returned to investors.

137. RV Defendants and HCF Defendants 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.
138. The continuing the appointments of the RV Receiver, the HCF Receiver and the Special Receiver are therefore 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.
139. 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. Pursuant to the Order Appointing HCF Receiver, a receiver has already been appointed for Defendant Hill Country Funding. Pursuant to additional orders of the court, an Special Receiver for Retirement Value has been appointed to investigate potential claims against Wells Fargo, and if warranted, to prosecute such claims.

140. Unless all receivership relief is maintained, the funds and other property held by RV Defendants and HCF Defendants 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.
141. After final hearing, it is necessary to appoint permanent receivers for the affairs of Retirement Value and HCF. No adequate remedy is available at law.
142. In addition, pursuant to Section 17.47(d) of the DTPA, the court may make any orders necessary to restore money or property that 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 continuing appointments of receivers for Retirement Value and Hill Country Funding are necessary to restore money or property which RV Defendants and HCF Defendants and their agents acquired by their unlawful acts or practices.
143. 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.
144. **Eduardo S. Espinosa of K&L Gates, LLP**, is an attorney practicing in Dallas, Texas, and **has already been appointed to serve as Receiver** for Defendant Retirement Value in this case.
145. **Donald R. Taylor** of Taylor Dunham, LLP, is an attorney practicing in Austin, Texas, and **has already been appointed to serve as Receiver** for Defendant HCF.
146. **Janet Mortenson** an attorney practicing in Houston, Texas, **has already been appointed to serve as Special Receiver** for the purposes of evaluating potential claims against Wells Fargo Bank NA, filing claims as she deems appropriate, and overseeing the prosecution of said claims through trial, settlement or other resolution
147. 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 each Receiver identified above. In addition to the foregoing, the Receivers' appointments are also authorized by Section 64.001(a)(5) of the Civil Practice and Remedies Code.

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

148. The preceding paragraphs are incorporated by reference as if fully set forth herein.
149. Section 32.B of the Texas Securities Act authorizes the Attorney General to seek equitable relief against Defendant Rogers, 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.

150. Section 17.47(d) of the DTPA authorizes the court to make orders or judgment as necessary to compensate identifiable persons for actual damages.
151. 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 for the victims of fraudulent practices and any other equitable relief that the State of Texas may be justly entitled.

DISGORGEMENT OF ECONOMIC BENEFITS

152. The preceding paragraphs are incorporated by reference as if fully set forth herein.
153. Section 32.C of the Texas Securities Act authorizes the Attorney General to seek disgorgement of economic benefits gained by the James Defendants and Beste. 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.

154. 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.
155. 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 Defendants' agents disgorge economic benefits.

OTHER RELIEF

156. The preceding paragraphs are incorporated by reference as if fully set forth herein.
157. 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 HCF Defendants in connection with any loans made to third parties pursuant to the scheme and assets fraudulently transferred to third parties, and any proceeds therefrom.
158. 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.
159. 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.
160. 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.
161. 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:

162. The Court continue all injunctive relief previously granted.
163. The Court continue the receivership estates for Retirement Value and Hill Country Funding, and continue the appointments of the RV, HCF and Special Receiver.
164. The Court enter the following injunctive relief against the James Defendants and Beste.
 - 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. **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
 - H. **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.
165. Upon final hearing hereof, make permanent the orders directing the Receivers to take possession of the affairs of Defendant Retirement Value and Defendant Hill Country Funding and direct the Receivers to liquidate the affairs of Defendants as the facts and circumstances may require;
166. 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 Receivers, or against any receivership assets or any part thereof, and from asserting any claims against them, except in these proceedings.

167. Issue an order that none of the RV Defendants, HCF Defendants, 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.
168. Issue an order that no bond be required by the State of Texas.
169. Upon final hearing hereof, issue a permanent injunction, enjoining the RV Defendants, the HCF Defendants, the James Defendants and Beste 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.
170. Upon final hearing hereof, pursuant to Section 32.B of the Texas Securities Act and Section 17.47 of the DTPA, order that restitution, disgorgement or other equitable relief be made by Defendants 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.
171. 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.
172. 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.
173. 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.
174. 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.
175. Order Defendants to pay both pre-judgment and post-judgment interest on all awards of restitution, disgorgement or other equitable relief and civil penalties provided by law.

176. Grant such other and further relief, equitable and legal, to which the State of Texas may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Civil Litigation

JEFF M. GRAHAM
Chief, Financial and Tax Litigation Division

/s/ Jack Hohengarten

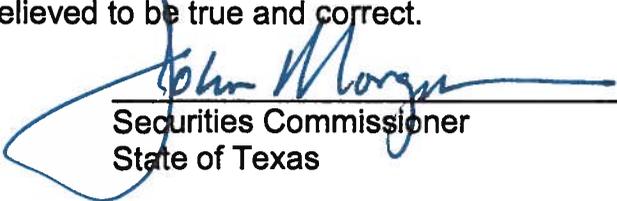
JACK HOHENGARTEN
Assistant Attorney General
State Bar No. 09812200
JENNIFER S. JACKSON
Assistant Attorney General
State Bar No. 24060004
Financial and Tax Litigation Division
P.O. Box 12548
Austin, Texas 78711 2548
TEL: (512) 475 3503
FAX: (512) 477 2348/480 8327
jack.hohengarten@texasattorneygeneral.gov
Attorneys for Plaintiff
The State of Texas

VERIFICATION

STATE OF TEXAS

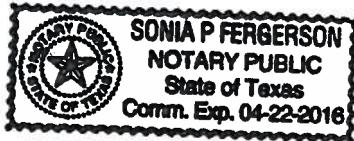
COUNTY OF TRAVIS

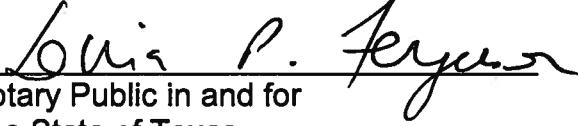
BEFORE ME, the undersigned authority, on this day personally appeared John Morgan, Securities Commissioner of the State of Texas, who, being by me first duly sworn, deposed and said that he has read the allegations in the foregoing fourth amended petition, and upon information and belief, each and every fact and matter stated in paragraphs 28 through 90 is believed to be true and correct.



Securities Commissioner
State of Texas

SUBSCRIBED AND SWORN to before me, this the 3rd day of July, 2012.





Notary Public in and for
The State of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by:

- U.S. Mail, First Class or
- Certified Mail (return receipt requested)
- Facsimile
- Federal Express Delivery
- Hand Delivery
- Electronic Service

on this the 6th day of July, 2012, to wit:

Michael Napoli
K&L Gates
1717 Main Street, Suite 2800
Dallas, Texas 75201
(214) 939-5500
(214) 939-5849 fax
michael.napoli@klgates.com
COUNSEL FOR THE RV RECEIVER

Geoffrey D. Weisbart
Mia L. Adams
WEISBART SPRINGER HAYES, LLP
212 Lavaca Street, Suite 200
Austin, Texas 78701
(512) 652-5780
(512) 682-2074 fax
gweisbart@wshllp.com
madams@wshllp.com
jblair@wshllp.com
COUNSEL FOR THE CAIN INTERVENORS

Patrick S. Richter
Sam Rosen
SHANNON GRACEY RATLIFF & MILLER
301 Congress Avenue, Suite 1500
Austin, Texas 78701
(512) 610-2714
(512) 499-8559 fax
prichter@shannongracey.com
srosen@shannongracey.com
COUNSEL FOR THE BEJCEK INTERVENORS

R. James George Jr.
John W. Thomas
John R. McConnell
GEORGE & BROTHERS, LLP
114 W Seventh, Suite 1100
Austin, Texas 78701-3015
(512) 495-1400
(512) 499-0094 fax
rjgeorge@georgeandbrothers.com
jthomas@georgeandbrothers.com
jmccconnell@georgeandbrothers.com
COUNSEL FOR RV RECEIVERS

Alberto T. Garcia III
Garcia & Martinez, llp
5211 W. Mile 17 ½ Road
Edinburg, Texas 78541
(956) 380-3700
(956) 380-3703 fax
albert@garmtzlaw.com
yoli@garmtzlaw.com
COUNSEL FOR THE HARRISON INTERVENORS

Eric J. Taube
HOHMANN TAUBE & SUMMERS, LLP
100 Congress Avenue, Suite 1800
Austin, Texas 78701
(512) 472-5997
(512) 472-5248 fax
erict@hts-law.com
COUNSEL FOR THE O'NEILL INTERVENORS

Richard H. Gray
Catherine Gray
301 Main Plaza, #349
New Braunfels, Texas 78130
(210) 392-3550
legalfoodfight@yahoo.com
PRO SE DEFENDANTS

Larry F. York
Nicholas P. Laurent
MCGINNIS LOCHRIDGE & KILGORE, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 495-6000
(512) 495-6093 fax
lyork@mcginnislaw.com
nlaurent@mcginnislaw.com
**COUNSEL FOR THIRD PARTY DEFENDANTS
BESTE, RON JAMES, DON JAMES, AND JAMES
SETTLEMENT SERVICES**

Robert L. Wright
ROBERT L. WRIGHT, P.C.
612 Eighth Avenue
Fort Worth, Texas 76104
(817) 850-0082
(817) 870-9101 fax
rwright@rlwpc.com
**COUNSEL FOR THIRD PARTY DEFENDANTS POE,
GIVILAN CZ, RICE, SENIOR RETIREMENT
PLANNERS, IKEY, RAZOR FINANCIAL SERVICES,
AHLERS, PACHACEK, CORNETT, PC&S, NICHE
INVESTMENTS, SANSING, LIGHTHOUSE, NG,
FRANCO, ALTERNATIVE SOLUTIONS INSURANCE,
CHICK, WESTON, SKIJUS, ALLIANCE OF
PROFESSIONALS FOR BUSINESS, INSCOE,
MILKS, MILKS & MILKS AND MARK SMITH**

Isabelle M. Antongiorgi
TAYLOR DUNHAM, LLP
301 Congress Avenue, Suite 1050
Austin, Texas 78701
(512) 473-2257
(512) 478-4409 fax
iantongiorgi@taylordunham.com
COUNSEL FOR HCF RECEIVER

David and Elizabeth Gray
4559 E. 107th Street
Tulsa, Oklahoma 74137
(301) 512-4131
esogray72@gmail.com
PRO SE THIRD PARTY DEFENDANT

Gerrit M. Pronske
Rakhee V. Patel
Melanie Goolsby
PRONSKE & PATEL, P.C.
2200 Ross Avenue, Suite 5350
Dallas, Texas 75201
(214) 658-6500
(214) 658-6509 fax
gpronske@pronskepatel.com
rpatel@pronskepatel.com
mgoolsby@pronskepatel.com
SPECIAL COUNSEL FOR MIKE BESTE

David R. Clouston
Christopher R. Richie
Leslye E. Moseley
SESSIONS FISHMAN NATHAN & ISRAEL LLC
900 Jackson Street, Suite 440
Dallas, Texas 75202
(214) 741-3001
(214) 741-3055 fax
dclouston@sessions-law.biz
criche@sessions-law.biz
lmoseley@sessions-law.biz
**COUNSEL FOR THIRD PARTY DEFENDANTS
LEVIN AND SCHROEDER**

Andrea S. Loveless
LOVELESS LAW FIRM, LLP
23121 Verdugo Drive, Suite 102
Laguna Hills, California 92653
(949) 679-4690
(949) 679-4696 fax
andrea@lovelesslawfirm.com
**COUNSEL FOR THIRD PARTY DEFENDANT
THOMAS MEAGLIA**

Bogdan Rentea
RENTEA & ASSOCIATES
1002 Rio Grande Street
Austin, Texas 78701
(512) 472-6291
(512) 472-6278
brentea@rentealaw.com
nleake@rentealaw.com
**COUNSEL FOR WENDY ROGERS AND THIRD
PARTY DEFENDANTS COLEMAN, GALLAGHER,
FEEKEN, GALLAGHER FINANCIAL, HARTMAN,
CASTELLANO, CERVENKA, FFLLC, EASTHAM,
GLOBAL DIRECT, SHIELDS, ESTATE PROTECTION
PLANNING CORPORATION, MAGARACI, MARCO
LOPEZ, REID THORBURN, THORBURN TRUST,
YOUNG, CREATIVE WEALTH DESIGNS,
CHADWICK, WOODS, DAVIDSON, SECURED
FINANCIAL STRATEGIES, LLC, AND THORBURN
FINANCIAL SERVICES**

Henry J. Ackels
ACKELS & ACKELS, LLP
3030 LBJ Freeway, Suite 1550
Dallas, Texas 75234
(214) 267-8600
(214) 267-8605 fax
henry@ackelslaw.com
**COUNSEL FOR THIRD PARTY DEFENDANTS
MILKIE/FERGUSON INVESTMENTS, MILKIE AND
AIZEN**

Todd A. Marquardt
MARQUARDT LAW FIRM
11919 Jones Maltsberger
San Antonio, Texas 78216
(210) 320-8800
(210) 247-9396 fax
todd@marquardtlawfirm.com
**COUNSEL FOR THIRD PARTY DEFENDANT JAMES
STRIZAK**

Michael W. O'Donnell
Dean V. Fleming
FULBRIGHT & JAWORSKI L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792
(210) 224-5575
(210) 270-7205 fax
modonnell@fulbright.com
dfleming@fulbright.com

Paul Trahan
Cristina C. Longoria
FULBRIGHT & JAWORSKI L.L.P.
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
(512) 474-5201
(512) 536-4598 fax
ptrahan@fulbright.com
clongoria@fulbright.com
**COUNSEL FOR WELLS FARGO THIRD PARTY
DEFENDANTS AND WHITNEY GILES**

Alexander S. Roig
ALLEN & ROIG, LLP
3003 N.W. Loop 410
San Antonio, Texas 78230
(210) 377-2529
(210) 240-1346 fax
allenroig@sbcglobal.net
**COUNSEL FOR THIRD PARTY DEFENDANTS
SENIOR TEXAS ESTATE PLANNING SERVICES,
WILLIAM EVANS, RICHARD EVANS AND DON
WISSNER**

Joseph Donnantuoni
15215 Berry Trail, #912
Dallas, Texas 75248
joeytd11@yahoo.com
PRO SE

Benjamin S. De Leon
Thomas P. Washburn
DE LEON & WASHBURN, P.C.
901 S. MoPac Expressway, Suite 230
Austin, Texas 78746
(512) 478-5308
(512) 482-8628 fax
bdeleon@dwlawtx.com
pwashburn@dwlawtx.com
**COUNSEL FOR THIRD PARTY DEFENDANT
MICHAEL McDERMOTT**

Jason W. Snell
Kimberly D. Culver
Cori R. Conner
THE SNELL LAW FIRM, PLLC
818 W. 10th Street
Austin, Texas 78701
(512) 477-5291
(512) 477-5294 fax
jsnell@snellfirm.com
kculver@snellfirm.com
cconner@snellfirm.com
**COUNSEL FOR THIRD PARTY DEFENDANT
SUSAN BLACK**

Noreen Cabrera
BAUGH DALTON CARLSTON & RYAN, LLC
717 North Harwood Street, Suite 2400
Dallas, Texas 75201
(214) 382-2562
(214) 382-2561 fax
ncabrera@baughdaltonlaw.com
**COUNSEL FOR THIRD PARTY DEFENDANT TONY
ADKISON**

Gary H. Oliver
1899 CR 3265
Mount Pleasant, Texas 75455
(903) 717-1546
goliver@goprrov.com
PRO SE

Gary J. Lenahan
228 Crawford Street
Beckley, West Virginia 25801
PRO SE

James Craig Orr, Jr.
HEYGOOD, ORR & PEARSON
2331 W. Northwest Highway, 2nd Floor
Dallas, Texas 75220
(214) 237-9001
(214) 237-9002 fax
jim@hop-law.com
**COUNSEL FOR THIRD PARTY DEFENDANTS
JAMES CRAIG ORR, JERRY NEAL ORR, JOHN
REAGAN AND FREDERICK RUST**

Milton G. Hammond
LAW OFFICE OF MILTON G. HAMMOND
6406 La Manga Drive
Dallas, Texas 75248
(214) 642-0881
(972) 782-4540 fax
mghammondlaw@gmail.com
**COUNSEL FOR THE MARLOW INTERVENORS AND
THIRD PARTY DEFENDANTS BROWN, HOSKINS
AND KNOX**

Jeff Mejia
2609 Gabrianna Court
Columbia, Missouri 65203
(913) 208-4884
jeffjmejia@yahoo.com
PRO SE

Andrew D'Agostino
Harvest Planning, LLC
41 Brook Street
West Sayville, New York 11796
PRO SE

Sam L. Hensley
P.O. Box 155
2415 Hwy 16N
Bandera, Texas 78003
(830) 796-8247
sam.hensley@sbcglobal.net
PRO SE

Byron Tyghe Williams
P.O. Box 88
Mentor, Ohio 44061-0088
(440) 209-9977
PRO SE

Matthew G. Nielsen
Spencer C. Barasch
ANDREWS & KURTH, LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
(214) 659-4400
(214) 659-4794 fax
matthewnielsen@andrewskurth.com
sbarasch@andrewskurth.com

David P. Whittlesey
Andrews & Kurth, llp
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9330
(512) 481-4930 fax
davidwhittlesey@andrewskurth.com
ATTORNEYS FOR KIESLING DEFENDANTS

/s/ Jack Hohengarten

JACK HOHENGARTEN