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

STATE OF TEXAS,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	
	§	
RETIREMENT VALUE, LLC,	§	
RICHARD H. "DICK" GRAY,	§	
HILL COUNTRY FUNDING, LLC,	§	
a Texas Limited Liability Company,	§	
HILL COUNTRY FUNDING, a Nevada	§	
Limited Liability Company, and	§	
WENDY ROGERS,	§	
Defendants,	§	
	§	
AND	§	
	§	
KIESLING, PORTER, KIESLING,	§	**TRAVIS COUNTY, TEXAS**
& FREE, P.C.,	§	
Relief Defendant.	§	
	§	
AND	§	
	§	
JAMES SETTLEMENT SERVICES, LLC,	§	
RONALD L. JAMES, DONALD JAMES,	§	
MICHAEL BESTE, MILKIE/FERGUSON	§	
INVESTMENTS, INC., EDWARD MILKIE,	§	
DAN LEVIN, MANNY AIZEN, MARCO	§	
LOPEZ, GALLAGHER FINANCIAL	§	
GROUP, INC., W. NEIL ("DOC")	§	
GALLAGHER, MICHAEL MCDERMOTT,	§	
SENIOR RETIREMENT PLANNERS, LLC.	§	
JAMES POE, FELLOWSHIP FINANCIAL,	§	
LLC, MICHAEL EASTHAM, ESTATE	§	
PROTECTION PLANNING	§	
CORPORATION, SALVATORE	§	
MAGARACI, SECURED FINANCIAL	§	
STRATEGIES, LLC, REID H.	§	
THORBURN, BRIAN R. CERVENKA,	§	
NICHE INVESTMENT GROUP, LLC,	§	
EDMOND SANSING, DAMIEN	§	
PACHACEK, SHANE CORNETT,	§	
RAZOR FINANCIAL SERVICES, LLC,	§	
JAMES S. IKEY, BRIDY S. IKEY, SENIOR	§	**126th JUDICIAL DISTRICT**
TEXAN ESTATE PLANNING SERVICES,	§	

LLC, WILLIAM EVANS, MIKE AHLERS,	§
DARRILL S. BEEBE, PC&S, LLC,	§
GLOBAL ONE DIRECT, LLC, DAVID A.	§
SHIELDS, STEVEN FEEKEN, JOSEPH T.	§
DONNANTUONI, FIRST COVENANT	§
FINANCIAL PARTNERS, LLC, PAUL	§
BROST, DAVID DOLPH, RONALD R.	§
COLEMAN, CHARLES DAVID GRAY,	§
GARY J. LENAHAM, EARL BROWN,	§
MIOKE GIVILANCZ, JR.,	§
KIP HARTMAN, MICHAEL A.	§
CASTELLANO, JOHN P. FISH, JOEL	§
FRANKLIN, W. JUSTIN TITLE, DAVID	§
RICE, JAMES WILLIAM RASH, DAVID	§
MATA, IAM FINANCIAL SERVICES,	§
INC., AND DAVID J. HERZOG, SCOTT	§
SCHROEDER	§
Third-Party Defendants	§

RECEIVER'S THIRD AMENDED CROSS-CLAIM AND THIRD-PARTY CLAIM

Retirement Value, LLC, a Texas limited liability company ("Retirement Value") by and through Eduardo S. Espinosa in his capacity as Temporary Receiver of Retirement Value files this Third Amended Cross-Claim and Third-Party Claim and in support thereof would respectfully show the Court as follows:

SUMMARY OF THE CASE

1. Ronald James and Richard Gray set up Retirement Value as a way to shield themselves from liability for running a fraudulent investment scheme. Both men had been involved with several companies that were shut down through court orders obtained by the United States Securities and Exchange Commission for running illegal investment schemes in the past. Nonetheless, they conspired to run a similar scheme though Retirement Value. They sought to run the scheme through Retirement Value so they could escape personal responsibility and leave Retirement Value holding the bag for the liability they created. The other Defendants

conspired with and aided and abetted them in the fraudulent scheme. Each of the Defendants benefited from the scheme by taking thousands, and in several cases millions, of dollars in commissions, fees and other payments from Retirement Value. Retirement Value, however, was left with 100% of liability to investors and other creditors who were harmed by what was really Defendants' fraudulent scheme. Retirement Value was rendered insolvent by Defendants and their scheme and has no way to satisfy all of its obligations, including its obligation to return all tens of millions of dollars invested in the illegal sale of securities by people all over the country. This is a suit by the Receiver for Retirement Value to be indemnified by Defendants for all the liability they illegally created for Retirement Value.

DISCOVERY CONTROL PLAN

2. Discovery in this action is intended to be conducted under Level 3 OF TEX. R. CIV. PROC. 190.2.

THE PARTIES

3. Plaintiff Eduardo S. Espinosa sues in his capacity as the court-appointed Receiver for Retirement Value. Retirement Value was placed in receivership by order of this court at the request of the State of Texas. This court appointed Eduardo S. Espinosa as the Temporary Receiver of Retirement Value empowering him to file or defend any suit or claim that he, in his sole discretion, deems to be in the best interest of Retirement Value.

4. Defendants are those individuals and companies who worked together as part of a conspiracy to defraud the investor-victims of tens of millions of dollars and damage Retirement Value by exposing it to tens of millions of dollars in liabilities through the illegal sale of securities and the breach of fiduciary duties. The Defendants are:

a. Members, officers and employees of Retirement Value, each of whom owed Retirement Value a fiduciary duty:

(1) Cross-Claim Defendant Richard H. "Dick" Gray ("Gray") is a former officer, former manager and current member of Retirement Value. He has appeared in this matter and no further service of process is required.

(2) Cross-Claim Defendant Catherine Gray ("Mrs. Gray") is a member of Retirement Value and the wife of Gray. She has appeared in this matter and no further service of process is required.

(3) Cross-Claim Defendant Wendy Rogers ("Rogers") is a former officer, former manager and current member of Retirement Value. She has appeared in this matter and no further service of process is required.

b. People and entities that promoted the scheme to Retirement Value and exercised functional control over Retirement Value:

(1) James Settlement Services, LLC is a Nevada Limited Liability Company. It may be served with process on its registered agent for service, Laughlin Associates, Inc., 2533 N. Carson Street, Carson City, Nevada 89706.

(2) Ronald L. James is a California resident who may be served with process at 9 Burton Vista Court, Lafayette, California, 94549.

(3) Donald James is a California resident who may be served with process at 9 Burton Vista Court, Lafayette, California, 94549.

(4) Michael Beste is a New Mexico resident who may be served with process at 460 St. Michaels Drive, Suite 703, Santa Fe, New Mexico 87505.

c. Retirement Value's Licensees and their agents who sold the securities to the investor-victims and/or recruited other Licensees to sale the securities:

(1) Milkie/Ferguson Investments, Inc. is a Texas corporation with its principal office in Dallas, Texas. It may be served with process by serving its registered agent Edward Milkie at 8750 N. Central Expressway, Suite 1700, Dallas, Texas 75231-6449. The individual officers and brokers working at Milkie Ferguson who where involved in the Retirement Value scam are also made defendants herein. They are:

(a) Edward Milkie is an individual residing in Dallas, Texas who may be served with process at 8750 N. Central Expressway, Suite 1700, Dallas, Texas 75231-6449. He is the President and CEO of Milkie Ferguson.

(b) Dan Levin is an individual residing in Dallas, Texas who may be served with process at 8750 N. Central Expressway, Suite 1700, Dallas, Texas 75231-6449.

(c) Manny Aizen is an individual residing in Dallas, Texas who may be served with process at 8750 N. Central Expressway, Suite 1700, Dallas, Texas 75231-6449. Curtis Cole is an individual residing in Dallas, Texas who may be served with process at 8750 N. Central Expressway, Suite 1700, Dallas, Texas 75231-6449.

(d) Marco Lopez is an individual residing in Dallas, Texas who may be served with process at 8750 N. Central Expressway, Suite 1700, Dallas, Texas 75231-6449.

(e) Scott Schroeder is an individual residing in Topanga, California who may be served with process at 1579 Topanga Canyon Blvd., Topanga, California 90290. Although an employee of Milkie Ferguson, Schroeder was also individually a licensee of Retirement Value.

(2) Gallagher Financial Group, Inc. is a Texas corporation with its principal office in Hurst, Texas. It may be served with process by serving its registered agent W. Neil Gallagher at 1845 Precinct Line Road, Suite 215, Hurst, Texas 76054.

(a) W. Neil ("Doc") Gallagher is the principal of Gallagher Financial Group, Inc. and the primary individual acting on its behalf with respect to Retirement Value. He may be served

with process at 1845 Precinct Line Road, Suite 215, Hurst, Texas 76054.

(3) Michael McDermott is an individual residing in Dallas Texas. He may be served with process at 4007 Killion Dr., Dallas, Texas 75229.

(4) Senior Retirement Planners, LLC is a Texas limited liability company with its principal office in Fort Worth, Texas. It may be served with process by serving its registered agent James E. Poe at 8300 Deerwood Forest Drive, Benbrook, Texas 76126.

(a) James Poe is the principal of Senior Retirement Planners, LLC and the primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 6040 Camp Bowie Blvd., Suite 3, Fort Worth, Texas 76116.

(5) Fellowship Financial, LLC is a Florida limited liability company with its principal office in Florida. It may be served with process by serving its registered agent Michael Eastham at 393 Center Pointe Circle, #1461, Altamonte Springs, Florida 32701.

(a) Michael Eastham is the principal of Fellowship Financial LLC and the primary individual acting on its behalf with respect to Retirement Value. He may be served with process

at 393 Center Pointe Circle, #1461, Altamonte Springs, Florida 32701.

(6) Estate Protection Planning Corporation is a New York corporation with its principal office in New York. Estate Protection Planning Corporation does not have a registered agent for service of process. Process may be served through the Texas Secretary of State who may, in turn, serve the Chief Executive Officer of Estate Protection Planning Corporation, A. Kirsten Gallardo, at P.O. Box 1089, Huntington, New York, 11743.

(a) Salvatore Magaraci is the principal of Estate Protection Planning Corporation and the primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 150 Broadhollow Rd., Ste. 312, Melville, New York 11747.

(7) Secured Financial Strategies, LLC is a dissolved Texas limited liability company with its principal place of business in Flower Mound, Texas. It may be served with process by serving its registered agent Reid H. Thorburn at 320 East Faust Street, New Braunfels, Texas 78130.

(a) Reid H. Thorburn is the principal of Secured Financial Strategies, LLC and the primary individual acting on its behalf with respect to Retirement Value. He may be served

with process at 320 East Faust Street, New Braunfels, Texas 78130.

(8) Brian R. Cervenka is an individual residing in Sugarland Texas. He may be served with process at 2423 Stephens Grant Drive, Sugarland, Texas 77479.

(9) Niche Investment Group, LLC is a Texas limited liability company with its principal office in San Antonio, Texas. It may be served with process by serving its registered agent Edmond Sansing at 115 Red Fig Trail, San Antonio, Texas 78256.

(a) Edmond Sansing is a principal of Niche Investment Group, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 115 Red Fig Trail, San Antonio, Texas 78256, or at 105 Honey Bee Lane, San Antonio, Texas 78231.

(b) Damien Pachacek is a principal of Niche Investment Group, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 115 Red Fig Trail, San Antonio, Texas 78256, or at 320 Bentwood Drive, Boerne, Texas 78006.

(c) Shane Cornett is a principal of Niche Investment Group, LLC and a primary individual acting on its behalf with respect to

Retirement Value. He may be served with process at 115 Red Fig Trail, San Antonio, Texas 78256, or at 105 Honey Bee Lane, San Antonio, Texas 78231.

(10) Razor Financial Services, LLC is a Texas limited liability company with its principal office in Mansfield, Texas. It may be served with process by serving its registered agent James S. Ikey at 103 Bayonne Dr., Mansfield, Texas 76063.

(a) James S. Ikey is a principal of Razor Financial Services, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 103 Bayonne Dr., Mansfield, Texas 76063.

(b) Bridy S. Ikey is a principal of Razor Financial Services, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 103 Bayonne Dr., Mansfield, Texas 76063.

(11) Senior Texan Estate Planning Services, LLC is a Texas limited liability company with its principal office in San Antonio, Texas. It may be served with process by serving its registered agent William Evans at 11270 Woodridge Forrest, San Antonio, Texas 78249.

(a) William Evans is a principal of Senior Texan Estate Planning Services, LLC and a primary individual acting on its behalf

with respect to Retirement Value. He may be served with process at 11270 Woodridge Forrest, San Antonio, Texas 78249 or at 97069 Plymouth Rd., San Antonio, Texas 78216.

(12) Mike Ahlers is an individual residing in San Antonio, Texas. He may be served with process at 11467 Huebner Rd., Ste 180, San Antonio, Texas 78230.

(13) Darrill S. Beebe is an individual residing in Arlington, Texas. He may be served with process at 6532 Virginia Square, Arlington, Texas 76017.

(14) PC&S, LLC is a purported Texas Limited Liability Company, however, the Texas Secretary of State has no records of such a company ever existing. Thus, it was a d/b/a of the owners, Edmond Sansing, Damien Pachacek, and Shane Cornett and may be served with process through either one of them at the addresses indicated below.

(a) Edmond Sansing is a principal of PC&S, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 115 Red Fig Trail, San Antonio, Texas 78256, or at 105 Honey Bee Lane, San Antonio, Texas 78231.

(b) Damien Pachacek is a principal of PC&S, LLC and a primary individual acting on its behalf with respect to Retirement

Value. He may be served with process at 115 Red Fig Trail, San Antonio, Texas 78256, or at 320 Bentwood Drive, Boerne, Texas 78006.

(c) Shane Cornett is a principal of PC&S, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 115 Red Fig Trail, San Antonio, Texas 78256, or at 105 Honey Bee Lane, San Antonio, Texas 78231.

(15) Global One Direct, LLC is a Texas limited liability company with its principal office in San Antonio, Texas. It may be served with process by serving its registered agent David A. Shields at 9706 Plymouth Rd., San Antonio, Texas 78216 or at 97069 Plymouth Rd., San Antonio, Texas 78216 or at 27745 Riata Ridge, San Antonio, Texas 78261.

(a) David A. Shields is a principal of Global One Direct, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 9706 Plymouth Rd., San Antonio, Texas 78216 or at 97069 Plymouth Rd., San Antonio, Texas 78216 or at 27745 Riata Ridge, San Antonio, Texas 78261.

(16) Steven Feeken is an individual residing in Grapevine, Texas. He may be served with process at 1708 Hood Lane, Grapevine, Texas 76051.

(17) Joseph T. Donnantuoni is an individual residing in California. He may be served with process at 43631 Tirano Drive, Temecula, California 92592.

(18) First Covenant Financial Partners, LLC is aDelaware limited liability company. It may be served with process by serving its registered agent Delaware Intercorp, lnc., 113 Barksdale Professional Center, Newark, Delaware, 19711-3258.

(a) Paul Brost is a principal of First Covenant Financial Partners, LLC and a primary individual acting on its behalf with respect to Retirement Value. He may be served with process at 2700 Kirkwood Highway, Suite 200, Newark, Delaware 19711.

(19) David Dolph is an individual residing in Dallas, Texas. He may be served with process at 6212 Bluff Point, Dallas, Texas 75248.

(20) Ronald R. Coleman is an individual residing in Dallas, Texas. He may be served with process at 3030 LBJ Freeway, Suite 700, Dallas, Texas 75234.

(21) Charles David Gray is an individual residing in Henderson, Texas. He may be served with process at 121 N. Marshall Street, Henderson, Texas 75652.

(22) Gary J. Lenaham is an individual residing in California. He may be served with process at 25101 Linda Vista Drive, Laguna Hills, California 92653.

(23) Earl Brown is an individual residing in California. He may be served with process at 335 Riveria Drive, Costa Mesa, California 92627.

(24) Mioke Givilancz, Jr. is an individual residing in Weslaco, Texas. He may be served with process at 611 West 6th Street, Weslaco, Texas 78599.

(25) Kip Hartman is an individual residing in Utah. He may be served with process at 2246 N. University Park Blvd., Layon, Utah, 84041.

(26) Michael A. Castellano is an individual residing in Cypress, Texas. He may be served with process at 17614 Black Rose Trail, Cypress, Texas 77429.

(27) John P. Fish is an individual residing in New Jersey. He may be served with process at 2 Anchor Court, Hainsport, New Jersey, 08036.

(28) Joel Franklin is an individual residing in Avinger, Texas. He may be served with process at 680 Shadywood Lane, Avinger, Texas 75630.

(29) W. Justin Title is an individual residing in Austin, Travis County, Texas. He may be served with process at 11522 Kempwood Drive, Suite B, Austin, Texas 78750.

(30) David Rice is an individual residing in Austin, Travis County, Texas. He may be served with process at 1505 Betty Jo Drive, Austin, Texas 78704.

(31) James William Rash is an individual residing in Austin, Travis County, Texas. He may be served with process at 1704 Timber Ridge Drive, Austin, Texas 78741.

(32) David Mata is an individual residing in Austin, Travis County, Texas. He may be served with process at 3409 Carol Ann Drive, Austin, Texas 78723.

(33) IAM Financial Services, Inc. is a Texas Corporation. It may be served with process by serving its registered agent David J. Herzog at 8700 Commerce Park, Dr., Suite 125, Houston, Texas 77036-7423.

(a) David J. Herzog is a principal of IAM Financial Services, Inc. and a primary individual acting on its behalf with respect to

Retirement Value. He may be served with process at 8700 Commerce Park, Dr., Suite 125, Houston, Texas 77036-7423.

JURISDICTION AND VENUE

5. This court has subject-matter jurisdiction because the amount in controversy is in excess of the minimum jurisdictional level of this court. In addition to that, the receivership order provides that this court shall have exclusive jurisdiction over all matters involving the Receiver and the Receivership Estate. This action meets both of those requirements, as it is an action brought by the Receiver to recover assets for the Receivership Estate.

6. The court has personal jurisdiction over the Defendants as most of them are Texas Residents or Texas entities with their principal place of business in Texas. The court has personal jurisdiction over those Licensees who are not residents of Texas because each of them consented to jurisdiction in Texas in the Licensee Agreement they signed with Retirement Value.

7. In addition to jurisdiction based on consent, each of the Licensees as well as Beste and James Settlement Services contracted by mail or otherwise with Retirement Value, which was a Texas Resident, and either party was to perform the contract in whole or in part in Texas.

8. This court also has personal jurisdiction over the Licensees and the other Defendants who are not residents of Texas because they committed the torts described below in whole or in part in Texas. Defendants have enough minimum contacts with Texas such that maintenance of the suit here does not offend traditional notions of fair play and substantial justice. Defendants purposely directed their activities toward Texas or purposely availed themselves of the privileges of conducting activities in Texas; and, the controversy arises out of or is related to Defendants' contacts with Texas. At minimum, each Defendant should certainly have foreseen their actions would cause an injury in Texas.

9. Defendant James Settlement Services is also subject to the general jurisdiction of Texas courts because it has continuing and systematic contacts in Texas.

10. Venue is proper in Travis County. Venue is proper in Travis County pursuant to the terms of the receivership order that provides for exclusive jurisdiction in this court. In addition to that, Licensee Defendants W. Justin Title, David Rice, James William Rash, and David Mata are all residents of Travis County, Texas and all or a substantial part of the events or omissions giving rise to the claims against them occurred in Travis County. Thus, venue in Travis County is proper with respect to those Defendants pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002. Venue in Travis County is proper against the remaining Defendants pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.005 as the claims against them arise out of the same transaction, occurrence, or series of transactions or occurrences as those against W. Justin Title, David Rice, James William Rash, and David Mata. Venue is also proper in this court pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.062.

THE RECEIVERSHIP

11. Retirement Value was in the business of selling securities to the public based on life insurance policies (the "Resale Life Insurance Policy Program" or "RSLIPP") that it purchased. On March 29, 2010, the Securities Commissioner of Texas issued Emergency Cease and Desist Order ENF-10-CDO-1686 against Retirement Value, Bruce Collins (Retirement Value's COO), and Richard "Dick" Gray (Retirement Value's President and majority member) forbidding Retirement Value from continuing to sell securities through its Resale Life Insurance Policy Program. About a week later, on April 9, 2010, the Texas Commissioner of Insurance issued a cease and desist order forbidding Retirement Value from continuing to purchase policies.

12. On May 5, 2010, the State of Texas filed suit against Retirement Value, Dick Gray and Bruce Collins complaining that the defendants had violated the Texas securities laws and the Texas Deceptive Trade Practices Act by their sales of investments under the Resale Life Insurance Policy Program. Among other things, the State accuses Retirement Value, Gray and Collins of selling unregistered securities and committing fraud through various material misrepresentations and omissions in the sale of securities or investments under the Resale Life Insurance Policy Program. This court entered a temporary restraining order against Retirement Value and its principals and appointed Eduardo Espinosa as receiver for Retirement Value's business and assets. This court has subsequently issued a temporary injunction against Retirement Value continuing the appointment of Espinosa as the Receiver for Retirement Value.

13. The Receiver is obligated and empowered, among other things, (a) to collect, preserve and maintain the assets of the receivership, (b) to notify investor-victims of the Receivership proceedings, (c) to the extent possible, effect a fair rescission to the investor-victims from the receivership assets, (d) to take possession and control over all property and assets derived from Retirement Value's or Gray's fraudulent operations, (e) to recover by taking full legal control and ownership of assets or property acquired with funds derived from or obtained through Retirement Value's or Gray's investment scheme, whether directly or indirectly, (f) to file any lawsuits the Receiver deems necessary to carry out his duties, and (g) to exercise all equitable powers under the statutes and common law of Texas authorizing the appointment of a receiver.

14. The Receivership Assets have been exposed to tens of millions of dollars worth of liability because of Defendants' violation of securities laws, conspiracy to breach fiduciary duties, conspiracy to commit fraud and other wrongful conduct. Among other things, the

investor victims have sent a class demand to the Receiver seeking rescission of all of their investments in the unregistered securities, as well as consequential damages and attorneys' fees. Defendants are directly responsible for that liability of the Receivership Estate.

FACTUAL BACKGROUND

I. Organization of Retirement Value

15. Retirement Value was formed as a Texas limited liability company in January 2009. Its original members were Gray and Mrs. Gray, David and Elizabeth Gray and Rogers. Gray and Mrs. Gray owned 60% of the company, David and Elizabeth Gray owned 20% and Rogers owned 20%. In November 2009, Gray, Mrs. Gray and Rogers improperly caused Retirement Value to redeem the membership interest held by David and Elizabeth Gray. Following the improper redemption of the interests of David and Elizabeth Gray, the members of Retirement Value were Dick Gray (55%); Catherine Gray (25%) and Wendy Rogers (20%).

16. At all relevant times, Gray and Rogers (along with the James Defendants and Beste) controlled the operations of Retirement Value. They jointly approved the marketing materials used to sell the investments. Each participated in training sessions and other meetings by which sales agents were recruited and taught how to sell the investment. All actions of Retirement Value alleged below were done either by, at the instructions of or subject to the supervision of Gray and Rogers.

17. Ronald James and his son Donald are in the business of buying life insurance policies from the insureds and selling them to others. They do business under the name of James Settlement Services, LLC. Ronald James, Donald James and James Settlement Services, LLC are collectively referred to as "the James Defendants." Ronald James conceived the fraudulent and illegal investment scheme that is the subject of this suit. Ronald James talked Dick Gray into setting up Retirement Value and worked with him to design and implement the investment

scheme that is the subject of this lawsuit in order to create a greater market for the James Defendants to sell their policies to. The James Defendants played a direct part in how the Retirement Value program was structured, the way it was marketed, what it was trying to do and how it was doing it. Ronald James, in particular, was involved in the day-to-day operations of the company and had an intimate, direct hand to play in virtually everything Retirement Value did.

18. Mike Beste was also instrumental in designing and managing this investment scheme. He was a paid consultant for Retirement Value and also had ties to the James Defendants. He, together with Ronald James, was the primary force behind what Retirement Value did and how it was run on a daily basis. Beste played an intimate, direct, and hands-on role in everything Retirement Value did.

19. Retirement Value sold its securities through a group of agents which it called "Licensees." Milkie/Ferguson was the most highly compensated of Retirement Value's Licensees, receiving 18% of the funds invested by its customers in Retirement Value.

II. The Nature of the Investment

20. Defendants caused Retirement Value to operate a fraudulent investment scheme. It sold securities that were based on the anticipated proceeds of life insurance policies to be owned by Retirement Value. The securities were not registered as required by state securities law, and neither were many of the brokers who sold them.

21. Each of the securities was structured as a loan whereby the investors provided funds to Retirement Value in exchange for Retirement Value's promise to pay a fixed sum of money at an undetermined date in the future. The amount that Retirement Value agreed to pay was tied to the calculated life expectancy of insureds under a policy of life insurance to be purchased by Retirement Value. In all instances, Retirement Value agreed to pay a return of

16.5% per year for the insured's calculated life expectancy. Thus, Retirement Value would pay $18,800 on a $10,000 investment in a policy where the insured had a calculated life expectancy of 64 months. The loan to Retirement Value would mature on the date on which the insured under the policy actually dies. The date that the loan matured did not affect the amount of money that Retirement Value was obligated to pay the investor, except that investors were entitled to a return of unused premiums, if any. Each investor was allowed to select, from a rotating portfolio of ten policies maintained by Retirement Value, one or more life insurance policies to which to match his or her loan to Retirement Value. The investors never received an ownership interest in the insurance policies. Retirement Value was the sole owner. On average, Retirement Value owed its investors $16,944 for every $10,000 invested. Retirement Value also promised to reserve sufficient premiums to pay for the policies it purchased for two years beyond the respective insured's calculated life expectancy.

III. The Fraudulent Scheme

A. Sale of Unregistered Securities

22. Defendants engaged in, or caused others such as Retirement Value and Licensee Defendants recruited to engage in, the widespread sale of securities in violation of state securities laws. The RSLIPP is a security under the "blue sky" laws of Texas and the other states where it was sold. The RSLIPP was not, however, registered as required by any of these laws. Nor did Defendants sell the RSLIPP pursuant to any known exemption to such registration requirements. Instead, Defendants engaged in a general solicitation offering the program through radio shows airing in Texas and California or other means. Most of the Licensees were not licensed to sell securities.

23. An investment in the RSLIPP is an investment contract and, therefore, a security under the Texas Securities Act. It is a scheme involving an investment of money in a common

enterprise with profits to come solely from the efforts of others. There was a substantial investment of money in a common enterprise. The investors invested in excess of $77 million. Any gain by the investors depended upon Retirement Value's ability to pay.

24. Moreover, the investors are purely passive participants in the RSLIPP. Other than selecting which policy or policies out of the portfolio in which they chose to invest and tendering their funds, investors maintained a passive role in the investment and expected the profit to be derived solely from the efforts of Retirement Value. The structure of the program precluded the investors from having any managerial control over the investments. Each investor executed powers of attorney authorizing Retirement Value and the selling Licensee to act on the investor's behalf with respect to all aspects of the investment. Retirement Value was the owner of the life insurance policies, and Kiesling, Porter, Kiesling & Free PC ("Kiesling Porter") was the beneficiary. Retirement Value made all the significant decisions impacting the investment program, including which life insurance policies to purchase, the amount to pay for a given policy and the amount and frequency of premium payments. In addition, Retirement Value performed all of the duties necessary to manage the polices including negotiating the purchase of the policy, purchasing the policy, negotiating the premium payments to be made on the life insurance policies procuring the life expectancy of the insureds, making the premium payments on the policies, setting up and managing premium reserves, determining whether additional premiums are necessary to keep the policies in force and making those premium calls on investors, pursuing, administering, negotiating and collecting claims upon maturity of a policy, reselling the investor's investment in the program in the event an investor is unwilling to make the additional premium payment, and paying administrative costs, including commissions to its Licensees, fees payable to Kiesling Porter and funding its operations. These duties are the

essential managerial efforts required to make the investment program a successful enterprise. Accordingly, the investments in the RSLIPP are investment contracts and, thus, securities under state law.

25. Although Kiesling Porter was purported to be an escrow agent, they were actually an agent of Retirement Value. Their contract with Retirement Value made it clear that they had no duties to the investors, but only to Retirement Value. Retirement Value directly controlled all actions by Kiesling Porter.

26. In addition, the investments in the RSLIPP are notes or other evidence of indebtedness as defined under state securities laws. Retirement Value's investment contract for qualified funds is expressly called a "note" and contains the usual features of a note. The non-qualified investment contract is not denominated as a note but it calls for the investor to provide money to Retirement Value in exchange for a promise to repay that amount of money plus a fixed return and the RSLIPP operates the same for both qualified and unqualified investments. In its Licensee training seminars and email communications, Retirement Value repeatedly referred to all investments as loans and generally disavowed the intent to sell a portion of an insurance policy. Its marketing materials described the use of funds as "allow[ing] Retirement Value to purchase and to own insurance policies." Moreover, the investment is structured such that neither legal nor beneficial ownership of either the policies or the death benefit was ever transferred from Retirement Value. The investors have no legal or beneficial interest in the policies and are entitled to repayment of their investment regardless of whether any individual policy remains in place or was even purchased by Retirement Value.

27. Each of the investments was structured as a loan where the investors provided funds to Retirement Value in exchange for Retirement Value's promise to pay a fixed sum of

money at an undetermined date in the future. Retirement Value's purpose was to finance the investments in the life insurance policies, and the investors were interested primarily in the profit the note was expected to generate. The investments in the RSLIPP were offered to a broad segment of the public because they were advertised and sold throughout the state of Texas and other states, and raised over $77 million from over 900 investors in just over a 10-month period of time. The expectations of the investors also support a finding that the notes are securities. The investors were offered a fixed rate of return of 16.5% per year for the insured's calculated life expectancy, a maturity date set by the date on which the insured died, and the fact that when the loan matured it did not affect the amount of money Retirement Value was obligated to pay. Finally, there is no other regulatory system applicable to the investments sold by Retirement Value and the investments were neither insured nor collateralized. Thus, the investments in the RSLIPP are notes that are securities under state law.

B. Fraud in the Sale of Investments

28. Defendants caused Retirement Value to commit fraud in the sale of the RSLIPP. This fraud covered most aspects of the program from the structure of the investment, to the protections offered to the investors, to the potential return and to the risks of the investment. In addition, the checkered regulatory history of Dick Gray and other key actors was not discussed to investor-victims. Material misstatements and omissions were made to the investors regarding the sale of the RSLIPP which denied them the opportunity to make an informed decision. All of this conduct has resulted in Retirement Value being liable to the investors for rescission and damages. The scheme took in approximately $77 million from over 900 investor-victims and promised to pay them approximately $130 million.

1 The Investors Are Not Irrevocable Co-Beneficiaries

29. In its marketing materials and otherwise, Defendants represented that the investors would be "irrevocable co-beneficiaries" in the policies associated with their investments. This representation was blatantly false. No investor is or ever was listed as a beneficiary on any poliey of insurance acquired by Retirement Value. Instead, Kiesling Porter was the only named beneficiary under the policies. It, however, owed no contractual duty to the investors and was, itself, merely a revocable beneficiary. In short, the investors are not beneficiaries under the policies and have no contractual interest in any particular policy.

30. Gray and Rogers were well aware that the investors would not become irrevocable beneficiaries under the insurance policies acquired by Retirement Value. Both were actively involved in an affiliated company, Hill Country Funding, LLC, that sold investments in which investors actually did become irrevocable beneficiaries under policies of life insurance.

2 Investor Funds Were Not Held in Escrow

31. Defendants represented that all investor funds would be deposited in "escrow accounts" at Wells Fargo that would be managed by Kiesling Porter in its role as an "independent escrow agent" and that Retirement Value would not receive or handle investor money. In addition, Defendants represented that funds would be placed in safeguarded sub-accounts dedicated to each policy owned by Retirement Value and that funds in such sub-accounts would be used solely for the policy to which it was tied. Defendants described Kiesling Porter's role as "your Third Party Fiduciary," which would assure the safekeeping of investor money. Defendants made numerous representations about the role of Kiesling Porter as the "protector" of investor's funds.

32. These statements significantly misstate the role of Kiesling Porter and the nature of the premium reserve accounts. First, the funds loaned to Retirement Value by the investors

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

33. The "Master Escrow Agreement" between Kiesling Porter and Retirement Value does not satisfy this test. The only parties to the agreement were Kiesling Porter and Retirement Value. Further, Kiesling Porter agreed to "disburse funds as directed by Retirement [Value]" and that its liability was limited to transferring funds into sub-accounts "as directed by Retirement [Value]," paying premiums "upon written instruction by Retirement [Value];" and "disbursement of re-sale life insurance proceeds upon death of insured in accordance with the written instructions from Retirement [Value]." In other words, Kiesling Porter acted only as the agent of Retirement Value. And, far from acting as the investors' "Third Party Fiduciary," the written agreement between Retirement Value and Kiesling Porter expressly disavowed any duties to the investors.

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

Master Escrow Agreement at ¶ 23 (emphasis added).

34. Second, Retirement Value repeatedly commingled the funds held in the sub-accounts. Whenever Retirement Value needed money to pay an expense related to a policy, it pulled funds from whatever account it could find them regardless of their intended use. As an

example on March 25, 2010, Retirement Value directed Kiesling Porter to pay $552,384 towards the purchase of policy AVL180-030510-MR but to take the funds from the sub-accounts for the following policies:

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

Only $136,045 of the payment for the AVL180-030510-MR policy came from the correct sub-account. The remaining $416,339 came from reserve accounts for other policies. This example is typical of Retirement Value's handling of the reserve accounts. The Receiver has documented at least 84 instances where Retirement Value instructed Kiesling Porter to pay for a policy using funds reserved for other policies. Dick Gray testified that commingling of this sort was a routine practice "from the very beginning."

35. Because of the commingling of funds, there is no connection between the investor's selection of a policy and the use of his or her funds from the reserve accounts. Although investor funds can be traced into appropriate reserve accounts, the reserve accounts were not used for their intended purpose. Instead of using each reserve account to support its intended policy, Retirement Value used the accounts to pay amounts due on any of a number of other policies. As a result, a relatively small percentage of the funds purportedly reserved to pay the purchase price and premiums due on a particular policy were actually used for that policy.

36. The purchase of policy PLI140-111109-DM illustrates the lack of connection between the selection of a policy by an investor and the use of the investor's funds from the

reserve accounts. According to Retirement Value's records, it paid $4,290,000 to purchase policy PLI140. Kiesling Porter disbursed $3,290,000 from various reserve accounts to Pacific Northwest to purchase the policy. Retirement Value separately sent $1,000,000 from its operating account to Pacific Northwest on account of policy PL1140.

37. The purchase price for PLI140, according to the purchase agreement between Retirement Value and James Settlement Services, was only $2,360,000. Records provided by Pacific Northwest, confirm that $2,360,000 was applied to the PLI140 policy – leaving $1,930,000 "paid" on behalf of PLI140 but actually used to purchase other policies. The Receiver cannot determine which of the funds sent to Pacific Northwest to purchase the PLI140 policy were actually used for that purpose.

38. Of the funds sent to Pacific Northwest to purchase the PL1140 policy, only a small percentage actually came from the reserve account for that policy.

Funds Used for Policy PLI140-111109-DM		
Source of Funds	**Amount**	
LFG008-102909-RB	$ 206,669	4.8%
AXA091-012110-PC	$ 59,904	1.4%
SLA338-112009-CD	$ 188,269	4.4%
AXA994-011510-BD	$ 61,342	1.4%
GFG089-012110-RF	$ 36,173	0.8%
AXA729-112009-SF	$ 292,219	6.8%
ING15J-121409-AK	$ 63,064	1.5%
LFG248-012610-HM	$ 48,616	1.1%
PLI140-111109-DM	$ 779,967	18.2%
MMI025-112009-GR	$ 310,387	7.2%
LFG183-111109-MR	$ 403,488	9.4%
PLI980-111109-JS	$ 402,738	9.4%
LFG272-112009-PS	$ 128,446	3.0%
LL1899-102209-AT	$ 308,718	7.2%

RV Operating	$ 1,000,000	23.3%
	$4,290,000	

As the chart illustrates, only 18.2% of the funds that Retirement Value paid toward PLI140 came from the appropriate account. The remaining 81.8% came from Retirement Value's operating account and from thirteen different reserve accounts.

39. Instead of using the funds in the PLI140 escrow account to buy that policy, Retirement Value used them to purchase other policies. Kiesling Porter's records reflect that it disbursed $2,205,507 from the PLI140 reserve account for the purchase of policies. Of these funds, $779,967 went towards the purchase of policy PLI140 and the $1,425,540 went towards the purchase of other policies.

40. The treatment of the PLI140 reserve account is not an isolated incident but is, in fact, typical of the treatment of all of the reserve accounts. In addition to the reserve account for policy PLI140, the Receiver reviewed two other reserve accounts – the reserve account for policy LFG740-071509-RL and the reserve account for policy AXA091-012110-PC. Each account shows similar misuses of funds. The purchase price for policy LFG740 was $1,040,000 but both Pacific Northwest's records and Kiesling Porter's records show that $1,250,000 was actually paid for the policy. Of the $1,250,000 paid for the policy, only $10,000 (0.8%) came from the reserve account dedicated to policy LFG740. The remaining $1,240,000 (91.2%) came from fifteen other reserve accounts. Kiesling Porter disbursed $387,000 from the LFG740 reserve account to Pacific Northwest for the purchase of policies. Of that, only $10,000 went towards the purchase of LFG740. The remainder was used to purchase three other policies. The purchase price for policy AXA091 was $1,300,000, which was the amount that Kiesling Porter disbursed and Pacific Northwest applied for that purpose. Of the $1,300,000 paid for the policy,

only $222,101 (17.1%) came from the reserve account dedicated to policy AXA091. The remaining $1,077,899 (82.9%) came from eight other reserve accounts. Kiesling Porter disbursed $1,359,904 from the AXA091 reserve account for the purchase of policies. Of that, $222,101 went to purchase policy AXA091 and the remaining $1,137,803 was used to purchase twelve other policies.

41. In addition to directing Kiesling Porter to commingle funds, Retirement Value also allowed the James Defendants to direct Pacific Northwest to use funds directed to the purchase of one policy for the purchase of a different policy. As an example, Retirement Value sent in excess of $4 million to Pacific Northwest on account of policy PL1140-111109-DM. Of those funds, only $2.36 million was applied to that policy. In addition, there were a number of accounts at Pacific Northwest, which had positive balances even after the policy had been paid in full and delivered. In other instances, Pacific Northwest applied more to a given policy than the stated purchase price or than Retirement Value sent on account of that policy.

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

3 Defendants Overstated the Likely Return from the Investments and Understated the Likely Risks

43. In addition to misleading investors about the reserve accounts, Defendants also repeatedly gave investors false assurances as to the safety, high returns and small risk of the RSLIPP in order to induce them to invest in Retirement Value. The marketing materials – brochures, handouts, scripts for cold calls and PowerPoint presentations – Defendants used in selling the RSLIPP contained material misrepresentations and omissions.

44. The marketing materials provided projections as to the performance of investments in the RSLIPP. One brochure used by Defendants assumed a $100,000 investment in a policy for which the insured had a life expectancy of 70 months. It stated that the investment had a "total matured value" of $196,250 based on the 16.5% interest that Retirement Value was paying. Defendants also used additional projections in their sales efforts, predicting the performance of investments in the RSLIPP over time, including predictions of the investment's performance after the premium reserves were exhausted. In making these projections, Defendants assumed that the investors would respond to premium calls in accordance with their agreements.

45. The marketing materials used by Defendants contained a number of misrepresentations, which Defendants were or should have been aware of. First, the marketing materials misrepresented the likelihood that an insured would survive beyond the premium reserves. Second, the marketing materials misrepresented the premium cost that each investor would be expected to incur if the insured survived beyond the reserves. Third, the marketing materials misrepresented the risk to the investor if the insured survived beyond the premium reserves.

46. Throughout the entire time that Retirement Value was selling investments in the Re-Sale Life Insurance Policy Program, Defendants knew that the program was significantly more risky than represented and that the investors' money was not adequately protected. Licensee Gary Oliver with GoPro Retirement Value acknowledged that the regulators say "there is a lot of risk" associated with these life settlement transactions. Nevertheless, Defendants used misleading marketing materials with no corrective disclosures on their part. This conduct

violates the laws of Texas and the other states in which the investment was sold and it also violates the regulations of FINRA, which govern the conduct of all registered broker/dealers.

C. Life Expectancy Calculations

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

48. The marketing materials used by Defendants significantly misrepresented the insureds' likelihood of outliving their calculated life expectancy. The marketing materials represented that "90% of policies mature at or before projected LE" and that "95% of policies mature at or before LE plus 12 months." In other materials, Defendants represented that Midwest Medical was "accurate 95% of the time to LE" and had "98.5% accuracy within 12 months after expected LE." In still other materials, Defendants described Midwest Medical as having "a proven track-record of success that is unmatched in the industry." All in all, Defendants strove to and succeeded in creating an impression that it was a very low risk (1.5% to 5%) that the insureds would outlive the premium reserve.

49. The representations Defendants made as to the risk were wholly false. The life expectancy calculation used by Defendants and presented to the investors was Midwest Medical's calculation of the insured's median life expectancy. A "median life expectancy" is the point at which 50% of the people who are statistically similar to the insured are expected to have died and 50% are expected to remain alive. Thus, even if Midwest Medical was 100% accurate in its calculations (which it was not), there was at best a 50% likelihood that the insured would die at or before his or her life expectancy – not 90% or 95% as Defendants were representing.

50. Defendants did not disclose, and in fact hid, the use of a median life expectancy from the investors. As a general matter, investors were not provided with copies of the life expectancy certificates when they made their investment decisions. Instead, they were simply told the life expectancy without disclosure that it was a median or what it meant. After the investor's 10-day free look period expired, Defendants purported to provide the life expectancy certificates for the policies in which an investor invested. The full certificates are three pages long. The first two pages contain a narrative of the insured's health and a statement of the life expectancy. On the third page (often hidden from investors by Defendants), Midwest Medical provided its statistical analysis disclosing that the life expectancy calculation on the first two pages was a median. It also disclosed a life expectancy at an 85% confidence level (i.e., the point at which 85% of the people like the insured are expected to have died). On average Midwest Medical's 85% life expectancy was just over 30 months past the median life expectancy. In other words, Defendant's assertion that there was a 95%-98.5% probability that the insured would pass away within twelve months of the calculated life expectancy was contradicted by the Midwest Medical life expectancy certificates in the possession of Defendants, which estimated the probability of death prior to 30 months after the median life expectancy at less than 85%.

51. Even if Retirement Value had not misrepresented them, Midwest Medical's life expectancy calculations were unreliable. Midwest Medical and its owner, George Kindness, had a terrible reputation. Kindness is a felon, having pled guilty to misbranding drugs sold to cancer patients. Even the most minimal due diligence would have turned up the fact of Kindness' debarment by the FDA which found that he had sold an unapproved cancer drug by falsely claiming to have been conducting an FDA-approved drug efficacy experiment. In addition, the

SEC had accused Kindness and Midwest Medical's predecessor, AmScot Medical, of falsifying life expectancy calculations as part of fraudulent schemes to sell life insurance policies to investors. Public records also showed that investor victims of AmScot Medical had sued Kindness and his company and accused them of falsifying life expectancy calculations that caused a similar life settlement scheme to fail. Retirement Value's Dick Gray had been a sales agent for this scheme. The James Defendants were also involved with the AmScot scheme.

52. Defendants became aware that a number of investors were balking at completing investments after they Googled Midwest Medical and discovered all of the regulatory issues surrounding Kindness. This was clear proof of the materiality of this issue. Real people did care about Kindness and his past when making their investment decision.

53. For its part, Retirement Value changed its marketing materials (which Defendants also passed on to investors) to remove Midwest Medical's name and to represent that it used the longest of three independent life expectancy calculations that it obtained on each policy. This statement was untrue – Retirement Value used only Midwest Medical.

54. Midwest Medical's life expectancy calculations were neither credible nor reliable. The insured's life expectancy is a key component of the value of a life insurance policy and of the likelihood of success in an investment in a life settlement. In the course of its investigation, the State obtained a report by HessMorganHouse (the "*Hess Report*"), which was commissioned by Retirement Value and the James Defendants, on the accuracy of Midwest Medical's life expectancy calculations. The Hess Report showed that Midwest Medical's "actual-to-expected" performance was a miserable 42% as compared to the 90+% performance of the major providers. The Hess Report reviewed the 14,528 life expectancy certificates issued by Midwest Medical.

Based on Midwest Medical's predictions, the reviewers expected to observe that 3,319 subjects had died as of the study's effective date. Actually, only 1,395 people had died.

55. Ronald James, Rogers and Gray each falsely claimed that the Hess Report study showed that Midwest Medical had an actual to expected performance of 92%. James made these representations even though he knew they were false. Rogers and Gray made them even though they did not have the report in their possession and after receiving warnings that the descriptions of the report they had received were not reliable.

56. In addition, the State obtained life expectancy calculations by 21st Services and AVS Underwriting, LLC on many of the persons insured under policies owned by Retirement Value. Comparison of their calculations to those by Midwest Medical show that the life expectancies calculated by 21st and AVS, on the same individuals generated at or about the same time, were about 2½ times as long as those of Midwest Medical.

	Midwest Medical		21st	AVS	ISC
	(50%)	(85%)	(50%)	(50%)	(50%)
Portfolio Only Data	49	48	38	49	48
Average LE (in months)	52.43	83.69	121.03	134.67	123.98
%MM (50%)	--	160%	231%	257%	236%

57. Due to the questions raised by the State and to obtain the best possible information, the Receiver obtained his own life expectancy calculations from Insurance Strategies Services, LLC ("*ISC*"), another major provider of life expectancy calculations. These calculations were based on the most current medical information available from the insureds and their doctors. The ISC life expectancy calculations are comparable to those of AVS and 21st and more than twice as long as the median calculations provided by Midwest Medical.

58. As noted, the actual life expectancies of the insureds are significantly longer than represented by Defendants in the course of soliciting loans from the investors. That the life expectancies are slightly more than twice as long as originally stated creates two problems for the investor victims, as well as Retirement Value who is responsible to them for rescission and damages. First, the fair market value of the policies in the portfolio is significantly less than what Retirement Value paid for them. Second, the premium reserves are far too small to support the portfolio as currently structured.

59. An independent actuarial firm hired by the Receiver has determined that the portfolio of policies owned by Retirement Value has a market value between $5.3 million and $8.3 million. Compare this to the $26.5 million that Retirement Value paid for the policies, and it is relatively clear that Retirement Value significantly overpaid for the policies.

D. Insufficient Reserves

60. Defendants represented that Retirement Value would reserve sufficient funds to pay premiums on each policy for life expectancy plus 24 months, by which time they represented the insured on that policy had a greater than 98.5% chance of dying. This approach has a number of flaws for which Defendants are liable.

61. First, it completely ignores what a life expectancy calculation actually is. A person's life expectancy is not the date by which he is expected to die. It is the date by which 50% of the people similar to the insured are expected to have died. Thus, an insured has a 50% chance of dying prior to his life expectancy and a 50% chance of surviving beyond his life expectancy. Adding 24 months to the life expectancy does not raise the odds of the insured dying to 98.5%. In the aggregate, Midwest Medical's life expectancy certificates reflect that the policy portfolio has: (i) an average median life expectancy of 52.43 months; and (ii) an average 85% life expectancy of 83.69 months. Thus, according to Midwest Medical, it would take, on

average, 31.26 months (the difference between 83.69 months and 52.43 months) to increase the probability of death from 50% to 85%. By way of comparison, ISC's calculations, indicate that, on average for the portfolio, it requires an additional 68.1 months (from 123.98 months to 192.08 months) to go from a 50% probability to an 85% probability.

62. Second, Midwest Medical's life expectancy calculations are less than half as long as they should have been. To get even to life expectancy (the 50/50 mark) requires twice as long as anticipated. Assuming that Retirement Value accurately anticipated its premium costs and maintained the reserves that it said it would, it should have reserved on average 76 months[1] of premiums. ISC's median life expectancy is, on average, 124 months – some four years longer than Retirement Value's calculated reserves.

63. Third, Retirement Value underestimated the cost of maintaining the policies in force. The estimates that Retirement Value used to calculate its premium reserves were based on information provided by the James Defendants. As Retirement Value began to work with the insurance companies to calculate the cost of maintaining the insurance in force, it discovered that the estimates provided by James Settlement Services were unreliable. In addition, the cost of maintaining a universal life policy increases every year. As a result it will cost more to maintain a policy through years 6 through 10 than it will to maintain it for years 1 through 5. As the underlying insured ages, the increase in cost of insurance increases dramatically.

64. In short, Retirement Value did not reserve adequate funds to pay premiums for the Portfolio's policies. To better understand the magnitude of the reserve shortfall, the Receiver had his actuaries, L&E, determine how much money would be needed to maintain each policy in force until the life expectancy of the insured. Using information provided by the insurance

[1] Midwest Medical's average life expectancy calculation for the Portfolio was 52.43 months. Adding 24 months to the average equals 76 months.

companies, L&E was able to estimate the cost of maintaining the insurance in force until each insured's median life expectancy. It estimates the cost of maintaining the 48 remaining policies in force during the insured's life expectancy will be approximately $58 million.[2] Retirement Value's current premium reserves for those policies are only $15.3 million.[3]

65. In addition to computing the total reserve required to maintain each policy through the insureds' life expectancies, L&E also calculated how long each premium reserve account is expected to last using the anticipated premium costs for the applicable policy. No policy has sufficient reserves to maintain the policy in force for the insured's life expectancy. In other words, each policy has less than (often, significantly less than) a 50/50 chance of maturing before the premium reserves are exhausted.

66. The fraudulent life expectancy calculations and inadequate reserves combined with the exorbitant fees, commissions and returns paid to Defendants made the entire program doomed to fail from the start. But, again, that was the whole point of the scheme – make lots of money for Defendants on the front end but leave Retirement Value holding the bag for all the liability when it finally collapsed.

E. Risk on Non-Payment by Other Investors

67. Defendants failed to disclose the risk of loss if the other investors on a policy failed to pay their share of the premiums after life expectancy plus 24 months. While Retirement Value's debt to any investor who defaulted on its obligation to pay in more money to cover its

[2] This estimate does not include any costs related to PLI140-111109-DM because that policy matured on November 2, 2010.

[3] These are actual reserves, so they do not include amounts under-reserved because Retirement Value acquired policies prior to being fully subscribed. This also does not include funds held by the Receiver that are not dedicated to any particular policy or funds received in relation to PLI140-111109-DM.

share of the premiums after life expectancy plus 24 months would be extinguished, Retirement Value remained liable to pay each investor who paid his or her share of the additional premiums. Thus, Retirement Value would have to: (i) solicit additional premiums from the non-defaulting investors; (ii) pay the premiums itself; or (iii) find a new investor to take over the defaulting investors' positions. Defendants made no disclosures regarding Retirement Value's ability to cover such shortfalls after life expectancy plus 24 months. As of the date Retirement Value was placed into receivership, Retirement Value had distributed substantially all available cash to Defendants and retained no reserves to cover such a contingency. Further, Retirement Value had no other means of repaying the investors, except for the proceeds from the life insurance policies. In any case, the success of the investment turned on Retirement Value's success in raising money and selling investments. If Retirement Value could not raise the funds necessary to cover a premium shortfall, whether by selling new investments or from another source, then the respective policy would lapse and even those investors who complied with their obligation to pay premiums past life expectancy plus 24 months would loose their entire investment.

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

F. Defendants Failed to Disclose the Regulatory History of Dick Gray and Other Key Players and their Involvement With Other Life Settlement Scams

69. In addition to its other misrepresentations, Defendants failed to disclose material information regarding the background of Dick Gray, the CEO and majority owner of Retirement Value. Undisclosed but highly material is Gray's history of regulatory trouble and his involvement with several notable life settlement scams. On January 25, 2007, the Texas

Banking Commissioner issued an Emergency Order to Cease and Desist Activity against Dick Gray dba First Security Trust because the Texas Department of Banking had not authorized Gray to operate a trust company in Texas or to use the word "trust" in the name of his business, and Gray was not properly licensed to operate a trust company in Texas. In September 2008, Dick Gray, individually and in his capacity as Managing Member of Hill Country Funding, LLC, filed an Undertaking with the Texas State Securities Commissioner whereby Gray agreed to rescind transactions made in connection with the fraudulent sale of bonded life settlement contracts purportedly secured by Provident Capital Indemnity, Ltd., and promised to comply with all provisions of the Texas Securities Act. Neither HCF nor Richard Gray fulfilled this undertaking. In June 2009, the Texas Department of Insurance filed a notice of hearing with the State Office of Administrative Hearings in Docket No. 454-09-4867C, which sought the revocation of Dick Gray's insurance license based in part on his conduct as a sales agent of Secure Investment Services, Inc. Moreover, Dick Gray sold life settlement investments on behalf of Secure Investment Services and American Settlement Associates. The SEC shut down both SIS and ASA as Ponzi schemes. Upon information and belief, Elizabeth Gray also sold investments in SIS and ASA through her association with Hill Country Funding. Both David and Elizabeth Gray were aware of Dick Gray's regulatory history and background but participated in the decision not to disclose it.

70. The James defendants have a similarly checkered history. They were the ones selling the policies in the SIS scam and they were also working with Gray on the Hill Country Funding program that was stopped. None of this was disclosed to the investor-victims.

G. Defendants Failed to Disclose the Regulatory Risks

71. Defendants knew or certainly should have known that there was a significant risk that the program would be shut down by regulators. In fact, that possibility was openly discussed in the Licensee meetings. It was clear that regulators were taking the position that programs such as this involved the sale of securities, and were shutting them down if they were not properly registered as such. Defendants failed to disclose anything about that risk to the investor victims.

H. Sales to Unsuitable Investors

72. Defendants sold the investment to investors they knew to be unsuitable for it. The RSLIPP was not a safe investment, suitable for average investors. Rather than limit sales of the RSLIPP to accredited investors – wealthy individuals and companies who have the sophistication to understand and the net worth to risk on a speculative investment, Defendants sold the RSLIPP primarily to ordinary investors. Defendants intentionally steered accredited investors away from Retirement Value into a different life settlement investment, and steered ordinary investors away from the other investment into Retirement Value. Why? Because the other investment would accept only accredited investors and Retirement Value would accept anybody. Rather than turn ordinary investors away (and lose commission income), Defendants used Retirement Value as a dumping ground for investors who would not qualify for other life settlement investments.

73. This too was the goal of Dick Gray and Ronald James when they started Retirement Value. The commercial and accredited investors are more interested in longer-term investments. Gray, the James Defendants and Michael Beste purposefully chose Midwest Medical over any of its credible competitors precisely so that they could have shorter life expectancies in order to market the program to less sophisticated investors.

IV. Additional Facts Concerning James Defendants

74. Ronald James is the key player in this whole scheme. He is the one who conceived Retirement Value and talked Dick Gray into starting it. He repeatedly told Dick Gray not to needlessly worry about the "regulatory climate." All the while, Ronald James knew full well that the regulatory authorities would find the RSLIPP was a security.

75. The James Defendants were also fully aware of the prior improprieties concerning Midwest Medical and Kindness, but actively worked to minimize their significance – even to the officers of Retirement Value. The James Defendants knew the scheme depended on the shorter life expectancy calculation that could only be obtained from Midwest Medical.

76. The James Defendants worked with Gray to create and run Retirement Value solely so they would have another outlet in which to sell their policies at inflated prices. At one point, Ronald James even threatened to stop selling Retirement Value more policies unless they paid him a higher purchase price. He was also constantly trying to get Retirement Value to pay him faster, even though he knew the only way Retirement Value could do that would be to inappropriately take money from the reserve accounts.

77. Finally, Ronald James was the key link in the chain between Retirement Value and Midwest Medical. James was well aware that Midwest Medical's life expectancy numbers were way below those of reputable competitors. Yet, he made sure that Retirement Value used Midwest Medical and its fraudulent numbers. That was no accident. James was Midwest Medical's dominant, if not only, client. As Dick Gray has subsequently admitted, the scheme would never have worked without the lower numbers from Midwest Medical. James knew that all along.

V. Additional Facts Concerning the Licensees

A. **The Licensees Had Been Put on Notice**

78. The National Association of Securities Dealers ("NASD") and the Financial Industry Regulator Authority ("FINRA") had, already sounded the alarm on life settlements to their members – which would include not only Milkie/Ferguson but also all other Licensees who were registered security brokers – long before the Retirement Value scam came around. NASD issued Notice to Members 06-38 in August of 2006. Among other things, it noted:

> NASD is concerned that aggressive marketing tactics, fueled by high commissions, may lead to inappropriate sales practices in connection with these transactions. . . . NASD is concerned that some of the marketing materials prepared by life settlement companies to encourage financial service providers, including broker-dealers, to recommend life settlements to their customers do not present a fair and balanced view of life settlements, and may encourage broker-dealers to recommend unsuitable transactions.

The NASD also reminded broker-dealers at that time of their obligations to do due diligence on the investment programs they were selling, to establish appropriate training and supervision to ensure compliance with all applicable State, Federal and NASD rules, and that it was inappropriate for any associated person to accept any compensation from anyone other than the member with which the person is associated. While Notice to Members 06-38 was primarily aimed at the situation where customers were being solicited to sell an existing life insurance policy, the Notice also said

> NASD is also concerned about the involvement of NASD members and associated persons in the subsequent marketing and sale of interests in life insurance polices for investment purposes. NASD notes that, depending on the circumstances, entities participating in the sale of marketing of interests in life insurance policies, variable or not, for investment purposes may trigger broker-dealer registration requirements under the Securities Exchange Act of 1934.

79. FINRA and NASD were even more forceful in July of 2009 with the issuance of Regulatory Notice 09-42. The Notice was a "reminder" of the obligations broker-dealers already had. That Notice specifically applied to investments in life settlements, such as the ones involved in the Retirement Value scam. That Notice stated, in part:

> The sale of investment products that are derivative of or based on life settlements – "related products" – is also likely to increase. For the purposes of this *Notice*, "related products" are defined as a security that is an interest in a single life policy, or a group or a pool of such policies, whether variable or not, such as an asset-backed security backed by life insurance policies, or a security where the obligation to pay interest or principal to the holder is contingent or partially contingent upon the death of one or more insured persons under life insurance polices, or a bonded or a guaranteed life settlement security based on one or more policies. Transactions in related products are also securities transactions that are subject to the federal securities laws and all applicable FINRA rules. FINRA is also concerned about investors who purchase these related products, as investors may not fully understand the risks of such investments. Retail investors may be attracted to related products that pay a higher yield that conventional investments or, in some cases, guarantee a return by a specific date, without being aware that generally, related products are illiquid investments and an investor may be unable to sell the investment, or may be forced to sell at a steep discount, if the investor needs the funds prior to maturity. Also, the yield on a related product may be adversely affected by the parties structuring the related product – by an inexpert or incomplete actuarial analysis or an incomplete assessment of the medical conditions of any insured(s) covered by any policy in which an investor has an interest, or by a failure to follow applicable law regarding life settlements that may result in legal challenges at the time a death benefit is payable.

The Notice reminded broker-dealers that "some investors may be unduly influenced by communications that are overly aggressive, not fair or balanced, or lack important information or disclosures" and that "NASD Rule 2210 prohibits firms from making any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public." The Notice further reminded the broker-dealers that they must file advertisements and sales literature concerning life settlements, that NASD Rule 2210's internal approval and record-keeping provisions applied to activities concerning life settlements – including the requirement that a registered principal approve all advertisements and sales literature prior to use, in writing. The Notice further stated "FINRA is concerned" that the customers were being charged excessive commissions on life settlement transactions and reiterated "its concern that the lure of very high commissions might lead firms and their associated persons to aggressively market such transactions and engage in other inappropriate sales practices" that it had previously issued in Notice 06-38. The Notice said inquiries to FINRA concerning life settlements

> often . . . reflect a firm's intention to charge commissions that exceeded, by 100 percent or more, any commission that FINRA historically has considered fair and reasonable. Firms are reminded that although the commission rules do not state specific commission amounts for a variable life settlement or any other security, most securities products are sold for commissions considerably less than five percent and those in excess of five percent are subject to heightened scrutiny.

The Notice concluded with the admonition that life settlement transactions "raise a number of unique regulatory and compliance issues" and that "among other things, firms must carefully and thoroughly address these issues and other relevant compliance matters in their policies and procedures, and supervision of such transactions and associated persons engaged in such transactions."

80. All of these warnings were certainly prophetic with respect to Retirement Value. Unfortunately, the Licensees ignored them. Frankly, though, none of this is rocket science. The information contained in the Notices were simply the steps that any prudent investment advisor in the role of the Licensees would take when tasked with advising folks on their retirement and other investments.

81. Other would-be Licensees raised questions and concerns about the scam, but not Defendants. One wrote a Licensee: "Retirement Value is very shady. At best, it's less than fair. At worst, it's a Ponzi scheme/outright fraud. I'm surprised someone felt confident enough to approach a firm of our stature and integrity with such a clearly deceitful offering." Another sent and email to a Licensee questioning how the program could guarantee "double market returns on an ongoing basis" and "double market compensation," and noting that if that were possible Ronald James "would be the rock star of Wall Street in this environment." Another potential Licensee also raised concerns and went so far as to say certain statements used by Defendants in marketing the program were "misleading" and contained a "typical phrase I have seen used with Ponzi schemes and such. A phrase that put a lot of people in jail." Another potential Licensee

said he had "grave concerns" after speaking to Dick Gray about Retirement Value, among which were concerns about the life expectancy numbers provided by Midwest Medial, the lack of separation and oversight between the James Defendants and Retirement Value, and the possibility that the entire program could be shut down by the regulators. Others also raised concerns about the lack of information concerning the James Defendants and the inability to do due diligence on them as a result.

B. The Licensees Knew They Were Illegally Selling Securities

82. It was because they were illegally selling unregistered securities that the officers and directors of Retirement Value engaged in what they called "our own best efforts at legal double-talk" to mask their illegal behavior. Examples of this included removing the words "loan" and "interest" from the contract documents for non-qualified investors, and using the term "Licensee" to describe the broker-dealers selling the RSLIPP. The Officers and Directors were telling Licensees in certain states to stay "under the radar" by keeping quiet about the program and to be sure there were "no loose words." Dick Gray, in an email to Licensee Gay Geurin, from Arkansas said: "You seem to appreciate as few do the delicate balance we are trying to strike here. The way we have structured this program as it evolved during the past four years we now are 'neither fish nor fowl.' If a regulator looks at everything as a round hole we are a square peg. If they have square in mind we are oval. There's no direct correlation to what they understand this to be about (and frankly most of them are totally clueless!)." Mike McDermott, one of the key Licensees, was directly involved in these communications.

83. Dick Gray and the other officials of Retirement Value, oddly enough, made all of the Defendants aware that the RSLIP would be viewed as a security. This issue was openly discussed at the regular Licensee meetings. Dick Gray told those attending one meeting that no attorney or regulator would agree that the product was not a security. He told them that

Retirement Value knew from the beginning that the regulators would challenge the product as being a security and that it was just a question of "when," not "if." They were told by a Retirement Value consultant at one such meeting that:

> Effective 2010, FINRA has declared anything having to do with a Life Settlement Policy where you are commingling someone's money is a security. The state of Texas, there is a definition, and you can try to skirt around it, but now that FINRA has taken that position, the state regulators will likely follow suit.

The Licensees were told they would have to "fly under the radar," "hide behind fig leaves," and engage in "legal double-talk" in order to try and avoid drawing the attention of the SEC and state securities regulators. They were actually told not to use the word "investment" and that: "Nobody in RV is 'selling' anything and the investors are not 'buying' anything. What RV is doing is inviting people to loan money in exchange for a rate of return so that RV can buy the policies." These meetings were also used to talk about what would happen when the investigations came and if cease and desist orders were issued. Dick Gray even told the Defendants at these meetings that Retirement Value's plan was to admit the product was a security when the investigations came and then work to salvage what they could of the business operation.

C. Milkie/Ferguson's Knowledge

84. Milkie/Ferguson repeated the misrepresentations concerning the escrow accounts even though its own due diligence demonstrated that the escrow arrangement did not provide adequate protection to investors. Milkie/Ferguson requested that Retirement Value replace the escrow relationship with a trust of which the investors would be beneficiaries in order to provide better protection for the investors. Although it agreed to make this change, Retirement Value never created the trust that Milkie/Ferguson believed was necessary to protect its clients. Nevertheless, Milkie/Ferguson continued to sell the RSLIPP.

85. Milkie/Ferguson was also aware of these misrepresentations concerning Midwest Medical and continued to use the marketing materials with no additional disclosures. From its first meeting with representatives of Retirement Value, Milkie/Ferguson was suspicious of the claims that Midwest Medical could predict an insured's death within 12 months with 98.5% accuracy. The other Licensees either were or should have been equally suspicious of these unbelievable claims. Milkie/Ferguson demanded due diligence materials regarding Midwest Medical and the opportunity to conduct its own due diligence; neither of which it received. Retirement Value also promised to provide the Licensees an audit of Midwest Medical's performance that would support the accuracy claims. This too was never provided, but that never stopped the Licensees from selling.

86. On September 2, 2009, Milkie/Ferguson's representative questioned Retirement Value about Midwest Medical identifying the SEC's accusations against George Kindness of falsifying life expectancy calculations and Kindness' felony conviction, as areas of concern. The very next day, Manny Aizen, a Senior Vice-President at Milkie/Ferguson, wrote Retirement Value to demand additional due diligence and access to Midwest Medical. Dick Gray responded by promising additional information on Midwest Medical and asking that Aizen deal only with him on issues regarding Midwest Medical.

87. More than a month later, on October 12, 2009, Milkie/Ferguson's representative wrote to Wendy Rogers of Retirement Value requesting documentation of Midwest Medical's track record and for information as to the credentials of the individuals at Midwest Medical calculating the life expectancies. Rogers responded by providing marketing literature from Midwest Medical and disclaiming any knowledge of the professional credentials of those working for Midwest Medical. When the Milkie/Ferguson representative responded by noting

that professional biographies and credentials should have been gathered as part of Retirement Value's own due diligence, Dick Gray responded by noting that Retirement Value conducted only minimal due diligence (one call, one visit, "I do not know who all the owners are and never have asked."), that Retirement Value had "no direct dealings with Midwest Medical," and that Midwest Medical did not want to be too closely associated with Retirement Value.

88. Also on October 12, 2009, Manny Aizen wrote to Dick Gray and Wendy Rogers (copying his boss, Edward Milkie, and Dan Levin of Milkie/Ferguson) asking that Retirement Value obtain a second, independent life expectancy calculation due to his concerns about "cheating on the LE." That evening, Dick Gray responded to Aizen, Milkie and Levin that "an additional LE source can be considered" but noting that an additional source would lead to a longer life expectancy calculation which "may be unacceptable to your clients, reducing sales." Mike Beste (a consultant to Retirement Value) also responded that "NONE of these LE providers has critical mass data indicating that they have any accuracy levels worth bragging about" and that, while cheating remains a risk, "the more overriding concern is that the LE's are just plain off."

89. In response, Milkie/Ferguson stopped questioning the life expectancy reports of Midwest Medical and Retirement Value's claims as to the their accuracy and simply passed them along to its clients. This was so even though Milkie/Ferguson was unable to complete its own due diligence, Retirement Value admitted that its due diligence was minimal at best and Retirement Value's consultant confirmed that there was no information to back up Retirement Value's claims as to Midwest Medical's accuracy. Milkie/Ferguson also did not disclose Kindness' felony conviction or the SEC's allegations against Kindness to its customers reasoning that these issues were simply irrelevant. It knew better, of course. Milkie/Ferguson continued to

receive questions from prospective investors who had learned of the issues surrounding Midwest Medical and it lost several sales as a result of investors learning about Midwest Medical and its legal issues on their own.

90. The other Licensees either were or certainly should have been alerted to possible improprieties concerning Midwest Medical in the same fashion that Milkie/Ferguson was. Yet, they kept irresponsibly selling this investment scheme.

91. The problems with Midwest Medical and Kindness were even discussed at the regular Licensee meetings. The Licensees were told that Kindness was a convicted felon, that he called himself a medical doctor when he wasn't, that the larger companies all looked down on Midwest Medical, that Midwest Medical used a different model than the other life expectancy companies used, that the SEC did not like Kindness, that he was "repeatedly crucified by the regulators," and that "the complaint is they are tainting the integrity of their reports to obtain a marketing objective, and their life expectancies are too short." This is not just a red flag to the Licensees. There were also red lights flashing, bells ringing and sirens blaring.

92. Milkie/Ferguson also passed on the misrepresentations that Retirement Value was obtaining life expectancies from companies other than Midwest Medical when Milkie/Ferguson knew that was not true.

93. Around the time that questions began to surface regarding Retirement Value's reliance on Midwest Medical, Milkie/Ferguson learned that Dick Gray had misrepresented his past and was the subject of a regulatory enforcement action by the Texas Department of Insurance. That is a fact that Defendants and the other Licensees either were aware of or should have been aware of.

94. On September 4, 2009, Curtis Cole who had been working with Milkie/Ferguson on its due diligence learned about Dick Gray's association with Secure Investment Services of Redding, California and the regulatory actions associated with it.[4]

> This confirms my worst potential nightmare for you guys.
> See the attached Enforcement Order from the TDI.
>
> Although this has not been settled before the judge, if Dick Gray did what it says here, this will be all over the internet for investors with Retirement Value, LLC to review.
>
> I was warned repeatedly about this guy and this confirms what I was told.
>
> As I recall, Dick Gray mentioned [he was] affiliated with several life settlement companies, but said that he NEVER transacted any business with them.
>
> It appears that was not correct.

Milkie/Ferguson questioned Gray about the TDI proceeding.

95. In response to Milkie/Ferguson's questions, Gray described the TDI Order as containing "false and unproven allegations" regarding the sale of unlicensed bonds and represented that it "may simply go away." Gray did not disclose that he had placed millions of dollars of client money in SIS, which turned out to be a Ponzi scheme. Milkie/Ferguson accepted Gray's statements at face value and made no further inquiries. It did not even bother to contact the TDI. Had Milkie/Ferguson done so, it would have learned that far from allowing the proceeding to "simply go away," the TDI was actively pursuing the matter. After Retirement Value was placed in receivership, Gray settled the TDI proceeding regarding SIS by surrendering his insurance license. Milkie/Ferguson did not inform its customers of Gray's involvement with SIS or the TDI proceeding against him.

[4] It was in the regulatory actions surrounding SIS that the SEC accused George Kindness of falsifying life expectancy calculations and disclosed that Kindness was a felon.

D. McDermott's Role

96. Michael McDermott signed up in early-April 2009 as one of the six "Master Licensees" for Retirement Value. His sales organization accounted for the overwhelming majority of sales, for which McDermott was paid approximately $1 million. Although he had direct contact with investors, McDermott's primary role was that of a recruiter and supporter of his downstream Licensees. McDermott was also heavily involved in Retirement Value's marketing efforts.

97. McDermott's involvement was pervasive. He was copied on most e-mails of significance and his input was sought on a variety of topics. As a result, McDermott was generally thought of as part of Retirement Value's leadership. In response to criticism of McDermott's heavy role in otherwise internal discussions by David Gray, Dick Gray responded:

> I am very sorry that the thought process I currently follow was not made "public" or has not been rather obvious to all. Mike McDermott IS "internal" and "private" for RV at this time. It's in the broader context of "if Richard fails to wake up one morning." At the moment, he is the ONLY person not now in NB or NJ that I want to know virtually everything we are doing, thinking and acting out.

Collins, the COO of Retirement Value, described McDermott as having "a leadership position with RV."

98. Michael McDermott created a number of documents which were used to recruit Licensees and, most likely, ended up in sales pitches to investors. As an example, McDermott sent an e-mail to Murphy Bradshaw, a prospective Licensee, claiming that (i) "RV offers participants higher returns and greater safety than the competition does;" (ii) "the life expectancies are calculated by an outside, independent, objective life expectancy reporting company with a proven track record of success that is unmatched in the industry – 98.5% accuracy 'in the money;'" and (iii) that "both the clients' principal and their gains are backed by

the full faith and credit of the most financially secure companies in the industry." This e-mail covers a recruiting flyer that McDermott gave to prospective Licensees.

99. McDermott's recruiting flyer expands on some of the representations made in the e-mail to Bradshaw. It describes the policies purchased by Retirement Value as having "passed a rigorous twenty-one point inspection process" and that "no STOLI policies are offered." It claims a "proven track record" representing that "less than 2% of cases mature more than one year beyond predicted LE'(s) based on a documented audit of 5,000 randomly selected cases." Other materials provided to Bradshaw note that "participants do not need to be accredited investors."

100. In addition to creating materials for use in recruiting Licensees, McDermott also convinced Retirement Value to remove references to Midwest Medical from its marketing materials. Mike Ferguson, a downstream Licensee in McDermott's organization, suggested eliminating references to Midwest Medical in materials given to Licensees and prospects to avoid problems caused by Midwest Medical's reputation and George Kindness' conviction "when due diligence is performed." McDermott agreed to pass this on to Retirement Value replying, "I understand your concerns, believe me. I spent three hours on phone calls the past two days saving business that was going off the tracks because of Kindness' public record." McDermott passed this suggestion on to Dick Gray and Wendy Rogers who eagerly accepted it.

101. As the e-mail correspondence between McDermott and Ferguson suggests, McDermott was very aware of the materiality of George Kindness' felony conviction and the questions raised by the SEC and others as to the reliability and honesty of Midwest Medical's LE projections. McDermott was part of the initial due diligence performed by Retirement Value on Midwest Medical. In May 2009, he traveled with Dick Gray to Cleveland to meet with George

Kindness and others at Midwest Medical. In August 2009, McDermott asked Midwest Medical to prepare statements explaining the conviction of Kindness and the relationship between Midwest and AmScot Medical (Kindness' former company which had also been convicted of a felony). No later than September of 2009, McDermott was informed that prospective clients and licensees were balking at investing with Retirement Value because of issues surrounding Kindness and Midwest Medical.

102. McDermott also knew and appreciated that Retirement Value had significant regulatory issues and was always at risk of regulatory action. As early as May 2009, Gray and McDermott were discussing Retirement Value's likely regulatory issues. Because of these issues, McDermott warned Gray to make sure that licensees and prospects did not approach their state regulatory agencies.

103. McDermott also advocated Retirement Value's attempts to engage in "stealth marketing" of its investment in states where the investment was unquestionably a security. On October 30, 2009, Dick Gray wrote an e-mail to Wendy Rogers, Mike McDermott and others explaining how Retirement Value should handle states in which its investment would be considered a security under local law. Suggesting that Licensees should market only to existing contacts, Gray noted

> And IF a licensee conducts business in these states very quietly on that basis, they need to understand [that] WE at RV had NO authority to tell them its okay to skirt the laws of that state – we only are coaching them on how to we think they can get business there quietly on a stealth-basis – with the chance to lay claim to the idea that we are "different" and we are "neither fish nor fowl" (I mean let's not fool our own selves thinking that we're doing any other than THAT in these states – so should this e-mail be on my hard-drive? My answer is – let's stop engaging in sophistry with each other . . .

McDermott responded, "Woo hoo! Brilliant idea!!! You rock! Let's roll, etc, etc, etc. ad infinitum, ad nauseum."

104. Although McDermott was primarily a recruiter, he appears to have had significant contact with prospective investors. As an example, McDermott made a presentation to the City of Rockwall in an attempt to convince them to invest pension funds in Retirement Value investment. He also assisted in closing other sales, particularly those who had learned of the issues surrounding Midwest Medical.

VI. Damages

105. As a result of the misconduct of Defendants, Retirement Value has become insolvent and unable to pay the claims of its creditors, including the investors. As a result, Retirement Value has been placed in receivership for the purpose of gathering funds to repay the investors and other creditors. Those investors have filed claims and demands with the Receiver for Retirement Value seeking to rescind their investment transactions and to recover their attorneys' fees and other damages. Those damages exceed $77 million.

106. Defendants purposefully ignoring common sense and decency caused all of this harm, not to mention their legal duties to Retirement Value and the investors. Defendants, instead, focused solely on enriching themselves with exorbitantly high commissions and fees. The James Defendants were making exorbitant fees by selling the policies to Retirement Value for way more than they were really worth. The Licensees were making extraordinarily high commissions of between 16% and 18% for selling the scheme to investors. These unusually high commissions were designed to fuel aggressive marketing tactics and certainly played a role in the inappropriate sales practices used in this scam. As Dick Gray admitted in an email, "agents are flocking to our model because of higher client returns and far higher agent commissions." The owners and officers of Retirement Value were making exorbitant profits. They noted in an email that they made $100,000 profit for every $725,000 taken from investors. The escrow agent was taking another 2% on every dollar invested. Documents from Retirement Value indicate that at

least 32% of every dollar invested went to pay fees and commissions (which doesn't count the over-priced cost of the policy). The investor was promised a 16.5% annual return on top of all those fees, not to mention the expenses. A huge portion of the client's investment was spent up front on these fees and expenses, thus the return on the net investment would have to be impossibly huge in order to net the investor a 16.5% annual return. On a $750,000 investment, for example, the commissions would be $130,500 to Milkie Ferguson, $100,000 to Retirement Value, and $14,500 to Kiesling Porter, which leaves only $480,000 for investment. The promised annual return, though, was $119,625 – which equates to a gross return of 25% the first year. Such returns are simply not possible (certainly not without extremely high risk), and Defendants knew it or certainly should have known it.

VII. Retirement Value was Insolvent

107. At all relevant times, Retirement Value was insolvent. The sum of its debts exceeded the fair value of all of its assets. Through the sale of investments in the RSLIPP, Retirement Value borrowed approximately $77 million from more than 900 investors promising to pay them approximately $130 million.

108. Retirement Value used funds received from investors to purchase insurance policies, to set up premium reserves, to pay administrative costs, including commissions to its Licensees, fees payable to Kiesling Porter, and to fund its operations. Retirement Value paid the Licensees a commission of no less than 16% of the money invested. The fee to Kiesling Porter worked out to be about 2% of the money invested. In addition, Retirement Value used about 14% to fund its overhead (expenses other than purchasing policies, premiums and fees to Licensees and Kiesling Porter). Approximately half of the money allocated to overhead was paid to the members of Retirement Value.

109. The only source that Retirement Value had for repaying the money owed to the investors was the proceeds of the policies that it purchased. Retirement Value significantly overpaid for the policies it purchased and failed to reserve sufficient funds to keep the policies in force through maturity. Because Retirement Value sold investments based on the proceeds of individual policies, the proceeds of policies that matured early could not be used as a source of funds to maintain the remaining policies in force.

110. The reserves were inadequate to maintain the policies in force until their reasonably expected maturities. The amount of the premium reserve for a given policy was calculated by Retirement Value based on the insured's median life expectancy plus 24 months and on a schedule of estimated premiums provided by the seller of the policies, James Settlement Services, LLC ("JSS"). JSS provided the life expectancy calculations, which were calculated by Midwest Medical. Because Retirement Value based its reserve calculation on the median life expectancy, there was a high probability that insureds would outlive the reserves even if Midwest Medical's calculations were correct.

111. Midwest Medical's calculations were not correct. They were unreasonably short. Retirement Value anticipated that life expectancy calculations by well-known and reputable underwriters would be 180% longer than those by Midwest Medical. Comparison of calculations on the same insureds by Midwest Medical to those by reputable companies shows that the calculations by the reputable companies were in fact more than 180% longer. Retirement Value has and at all times had insufficient funds on hand to meet these obligations.

112. Retirement Value did have the ability to call on the investors to pay their share of the premiums if the insured lived beyond the reserves. However, Retirement Value promised the investors that any future premium calls would be based on the annual premium paid when the

investment was made. Collecting premiums based on the annual premium paid when the investment was made would not generate sufficient funds to keep the policies in force. The policies are universal life policies – a key feature of which is that amount required to keep them in force increases over time. The premiums necessary to keep the policies in force at the time a premium call would be made are substantially higher than the premiums in effect at the time investors made their initial investment. Moreover, it is highly probable that a number of investors would fail to satisfy the premium call. If this happened, Retirement Value would have to make up the shortfall or lose the entire policy leaving it unable to pay. Retirement Value reserved no funds to meet either of these likely obligations.

113. The purchase price was set by the James Defendants at an amount that exceeded the fair market value of the policies that Retirement Value purchased. Although the price was arguably based on the life expectancy calculated by Midwest Medical, Retirement Value and the James Defendants were fully aware that the Midwest Medical calculations were unreasonably optimistic. Retirement Value's officers and employees agreed to overpay the James Defendants for their assistance in creating the fraudulent scheme.

114. During the entire time it was operational, Retirement Value was insolvent in that its debts always exceeded its assets.

115. Of the $77 million that Retirement Value obtained as loans from investors, Retirement Value diverted $5.4 million to its members and officers as follows:

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

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

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

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

116. In addition, Gray and Rogers caused Retirement Value to divert over $1 million to HCF-TX, a company owned and controlled by Dick and Catherine Gray. In a series of transactions occurring in February and March of 2010, Retirement Value and HCF-TX transferred significant sums of money between them. The net result of these transactions was the transfer of $1,150,000 from Retirement Value to HCF-TX.

117. On March 30, 2010 – the day that the Texas State Securities Board served its emergency cease and desist order on Retirement Value; Gray obtained a cashier's check drawn on the HCF-TX account at First Commercial Bank in the amount of $1,075,000 (all of which came from Retirement Value) and redirected another Retirement Value check in the amount of $75,000 payable to HCF-TX, and Rogers withdrew all of the funds remaining in Retirement Value's bank account ($342,000). They deposited these funds into an account at JP Morgan Chase in the name of Special Acquisitions, Inc., a Texas corporation ("Special Acquisitions"). Special Acquisitions was formed on March 30, 2010 by Carie Morales, a part-time employee of Retirement Value and a long-time friend of Rogers. Carie Morales was Special Acquisitions'

sole owner, officer and director. The sole signatory on the Special Acquisitions account at JP Morgan Chase was Ms. Morales. Gray and Rogers intentionally created a corporation, in which the public record did not reflect them as having any interest in; to hide Retirement Value's remaining assets from the State as it continued its investigation.

118. In November 2009, David and Elizabeth Gray entered into an agreement with Retirement Value (the "Membership Interest Transfer Agreement") under which Retirement Value would redeem their 20% membership interest for $1,200,000 payable over three years. At the time that the Membership Interest Transfer Agreement was executed, the membership interests held by Defendants were not reasonably worth $1,200,000. In fact, they were largely worthless. Retirement Value paid $231,155 to David and Elizabeth Gray in partial satisfaction of this obligation.

CAUSES OF ACTION AGAINST GRAY AND ROGERS

I. Breach of Fiduciary Duty by Gray and Rogers

119. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

120. As members, managers and officers, Gray and Rogers owed fiduciary duties of loyalty, good faith and due care to Retirement Value. As alleged more fully above, they willfully and intentionally breached the duties of loyalty and good faith to Retirement Value in at least the following respects:

a. Causing Retirement Value to conduct an unregistered sale of securities without an exemption from registration in violation of federal and state securities laws in Texas, Florida, California and elsewhere in order to increase sales so that more proceeds of the scheme could be diverted to themselves;

b. Causing Retirement Value to sell securities by virtue of numerous false representations and omissions of material fact in violation of federal and state securities laws in Texas, Florida, California and elsewhere in order to increase sales so that more proceeds of the scheme could be diverted to themselves;

c. Causing Retirement Value to commit a widespread fraudulent scheme in order to increase sales so that more proceeds of the scheme could be diverted to themselves;

d. Causing Retirement Value to pay commissions to unregistered salespersons in furtherance of their fraudulent scheme;

e. Causing Retirement Value to overpay for assets in furtherance of their fraudulent scheme;

f. Diverting funds from Retirement Value to HCF and Special Acquisitions in order to hide those funds from the State and to prevent them from being available to satisfy likely claims by the State and investors;

g. Causing Retirement Value to distribute the proceeds of the fraud to themselves and to David and Elizabeth Gray in violation of the Texas Business Organizations Code and without the adherence to any corporate formalities;

h. Misappropriating corporate assets for the benefit of themselves and their relatives;

i. Causing Retirement Value to maintain fraudulent and misleading financial records;

j. Causing Retirement Value to undertake more debt than it could reasonably afford to repay so that more proceeds of the scheme could be diverted to themselves;

k. Causing Retirement Value to instruct Kiesling Porter to misapply and mishandle investor funds so that the premium reserves that Retirement Value had promised to maintain were not maintained; and

l. Causing Retirement Value to establish artificially low premium reserves based on life expectancy and cost of insurance estimates that were known not to be reliable, accurate or credible in furtherance of their fraudulent scheme.

As a result of these breaches of duty, Gray and Rogers proximately caused damages to Retirement Value in excess of the minimum jurisdictional limits of this Court including without limitation, substantial liabilities to investors and the State of Texas as well as the complete destruction of Retirement Value's business. Because of the willful nature of their misconduct, the Receiver seeks punitive and exemplary damages as allowed by law. Their conduct was such that it violated Tex. Penal Code Ann. § 32.46 (securing execution of document by deception). Thus, the statutory caps on exemplary damages do not apply in this case.

121. As alleged fully above, Gray and Rogers violated their duty of care to Retirement Value in at least the following respects:

a. Causing Retirement Value to conduct an unregistered sale of securities without an exemption from registration in violation of federal and state securities laws in Texas, Florida, California and elsewhere;

b. Causing Retirement Value to sell securities by virtue of numerous false representations and omissions of material fact in violation of federal and state securities laws in Texas, Florida, California and elsewhere in order to increase sales;

c. Causing Retirement Value to pay commissions to unlicensed salespersons in order to increase sales;

d. Causing Retirement Value to commit a widespread fraudulent scheme in order to increase sales;

e. Causing Retirement Value to pay for assets in amounts known or reasonably expected to be in excess of their fair market value;

f. Failing to cause Retirement Value to engage in meaningful due diligence regarding the assets it was acquiring;

g. Causing Retirement Value to undertake more debt than it could reasonably afford to repay;

h. Causing Retirement Value to divert funds to HCF and Special Acquisitions in order to hide those funds from the State and to prevent them from being available to satisfy likely claims by the State and investors;

i. Failing to ensure that Retirement Value's books and records fairly and accurately represented its financial affairs and results from operations;

j. Causing Retirement Value to instruct Kiesling Porter to misapply and mishandle investor funds so that the premium reserves that Retirement Value had promised to maintain were not maintained; and

k. Causing Retirement Value to establish artificially low premium reserves based on life expectancy and cost of insurance estimates that were known not to be reliable, accurate or credible.

As a result of these breaches of duty, Gray and Rogers proximately caused damages to Retirement Value in excess of the minimum jurisdictional limits of this Court including without

limitation, substantial liabilities to investors and to the State of Texas as well as the complete destruction of Retirement Value's business.

122. All of the acts of Gray and Rogers eomplained of herein were committed by each in bad faith and not in the exercise of reasonable business judgment.

II. Refund of Distributions – Cash Payments as to Gray, Mrs. Gray and Rogers

123. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

124. Defendants received substantial sums in distributions from Retirement Value in 2009 and 2010. At the time that they received these distributions, Defendants were members of Retirement Value. At all relevant times, Retirement Value was insolvent in that its total liabilities exceeded its total assets. Pursuant to § 101.206 of the Texas Business Organizations Code, Retirement Value was prohibited from making these distributions.

125. Defendants knew that Retirement Value was insolvent when it made distributions to them. Retirement Value was member-managed such that each member had a role in the operation of the business and each was charged with its operation. Defendant Gray was a manager of Retirement Value and its CEO. Defendant Rogers was a manager of Retirement Value and an officer. Catherine Gray was the Secretary of Retirement Value and well informed as to its status.

126. Retirement Value is entitled to a refund of the funds distributed to Defendants.

III. Fraudulent Transfer

127. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

128. At all relevant times, Gray, Rogers and Mrs. Gray were "insiders," owners and control persons of Retirement Value. David Gray is Gray's brother and Defendant Elizabeth

Gray is his sister-in-law. At all relevant times, Retirement Value was insolvent. The sum of its debts exceeded the fair value of all of its assets.

129. None of the Defendants provided any value in exchange for the funds they received as distributions from Retirement Value.

130. The membership interests exchanged by David and Elizabeth Gray for Retirement Value's obligation to pay them $1.2 million as set forth in the Membership Interest Transfer Agreement were worth far less than $1.2 million.

131. The payment of distributions to the Defendants and to David and Elizabeth Gray was a violation of the Texas Uniform Fraudulent Transfer Act in that they were made by Retirement Value

a. with actual intent to hinder, delay, or defraud the creditors of Retirement Value;

b. without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Retirement Value (1) was engaged or was about to engage in a business or a transaction for which its remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (2) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due; or

c. without receiving a reasonably equivalent value in exchange for the transfer or obligation and Retirement Value was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The Receiver is therefore entitled to avoid these transfers. The Receiver seeks the return of any dividend payments made to the Grays and Rogers and for a constructive trust to be imposed on any property acquired by Defendants with the proceeds of the dividend payments. In addition, Gray and Rogers are jointly and severally liable for all payments and transfers to David and Elizabeth Gray.

1. The diversion of funds from Retirement Value to HCF and Special Acquisitions was a violation of the Texas Uniform Fraudulent Transfer Act in that they were made by Retirement Value

a. with actual intent to hinder, delay, or defraud the creditors of Retirement Value;

b. without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Retirement Value (1) was engaged or was about to engage in a business or a transaction for which its remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (2) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due; or

c. without receiving a reasonably equivalent value in exchange for the transfer or obligation and Retirement Value was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The Receiver is therefore entitled to avoid these transfers. The Receiver seeks the return of any funds diverted to HCF or Special Acquisitions and for a constructive trust to be imposed on any property acquired by such entities with the proceeds of the dividend payments. In addition, Gray and Rogers are jointly and severally liable for all payments and transfers to HCF or Special Acquisitions.

132. Retirement Value's execution of the Membership Interest Transfer Agreement and all payments made under it violated the Texas Uniform Fraudulent Transfer Act in that they were made by Retirement Value

a. with actual intent to hinder, delay, or defraud the creditors of Retirement Value;

b. without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Retirement Value (1) was engaged or was about to engage in a business or a transaction for which its remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (2) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due; or

c. without receiving a reasonably equivalent value in exchange for the transfer or obligation and Retirement Value was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The Receiver is therefore entitled to avoid the Membership Interest Transfer Agreement and any payments made under it. Gray and Rogers are jointly and severally liable for any damage caused to Retirement Value and to its creditors caused by the Membership Interest Transfer Agreement.

133. Even if the Membership Interest Transfer Agreement cannot be avoided, the payment by Retirement Value of $231,155 pursuant to it should be avoided because the payment was to insiders for an antecedent debt, Retirement Value was insolvent at that time, and the Defendants had reasonable cause to believe that Retirement Value was insolvent.

134. The Receiver has been required to hire the undersigned attorneys to bring this suit and to pay them a reasonable fee for which it is entitled to recover under the Texas Uniform Fraudulent Transfer Act.

CAUSES OF ACTION AGAINST THE THIRD-PARTY DEFENDANTS

I. Breach of Fiduciary Duty and Conspiracy to Breach Fiduciary Duties

135. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

136. Gray and Rogers and the other officers and employees of Retirement Value owed Retirement Value a fiduciary duty. The Licensees, as agents, for Retirement Value owed Retirement Value a fiduciary duty. The James Defendants and Beste owed Retirement Value a fiduciary duty by virtue of their special relationship with Retirement Value as well as Beste's position as a paid advisor to the company. As fiduciaries, they owed Retirement Value the duties of loyalty, good faith and due care. They were supposed to put the interests of Retirement Value above their own.

137. All of the Defendants entered into an agreement to cause those mentioned above to breach their fiduciary duties to Retirement Value. In fact, the breach of those duties was at the heart of the reason Ronald James talked Dick Gray into setting up Retirement Value. The conspiracy started when Ronald James first talked to Dick Gray about setting up the scheme and continued at least until Retirement Value was put in receivership. Ronald James and Dick Gray planned all along to pin the liabilities on Retirement Value while they, and the other Defendants, enriched themselves by taking commissions, fees and other payments out on the front end.

138. Ronald James and Dick Gray, with the help and agreement of Defendants, engaged in a general scheme to defraud the investor-victims and others by making false and misleading statements to investors and others, knowing the statements that were made were false. They also illegally sold unregistered securities to the investor victims and engaged in the other improper acts described above. Those actions were in breach of the fiduciary duties that were owed to Retirement Value.

139. Defendants engaged in affirmative acts to further the goals of the conspiracy. Defendants, therefore, are jointly and severally liable for all losses that were proximately caused by any member of the conspiracy as well as losses incurred after Defendants left the conspiracy – assuming such withdrawal from the conspiracy actually occurred. Defendants are liable for the actions of the other conspirators regardless of whether Defendants were aware of those actions or not, because those actions were taken in furtherance of the conspiracy.

140. Defendants' participation in this conspiracy to breach fiduciary duties was the proximate cause of damages to Retirement Value. Retirement Value is now liable to the investor victims for damages, attorneys' fees and for having to return to them all of the money they invested in Retirement Value. Defendants are thus jointly and severally liable for all of those

damages, without regard to whether Defendants participated in all aspects of the conspiracy with regard to every person or entity that was harmed in the case. Retirement Value, through the Receiver, is entitled to indemnity from Defendants for the harm caused by their breach of fiduciary duty and conspiracy to breach fiduciary duty.

II. Breach of the Licensee Agreement

141. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

142. The Licensees are each party to a Licensee Agreement with Retirement Value. Each Licensee promised to "deal honestly and truthfully in all interactions with its client-participants relating to" the RSLIPP and that it would recommend the investment only to suitable investors. Licensee Agreement at §§ 2.3, 2.4. Each Licensee further promised to "disclose the risks of re-sale life insurance policies to potential client-participants." *Id.* at § 2.5.

143. The Licensees warranted that each was "fully compliant with the laws of each and every jurisdiction in which it seeks client-participants for [Retirement Value's] re-sale life insurance policies under this Agreement." Licensee Agreement at § 2.9. Each Licensee also agreed that it would be responsible for complying with all federal, state and local laws as well as all rules and regulations governing its conduct. *Id.*

144. In the event that they failed to comply with the Licensee Agreement, the Licensees agreed to indemnify Retirement Value.

> Licensee hereby indemnifies Licensor for any and all damages, attorney's fees and any other costs resulting, in whole or in part, from Licensee's failure to comply with the obligations set forth under this Agreement or Licensee's failure to comply with all applicable laws in every jurisdiction in which he acts as Licensee for Licensor or any misrepresentations or omissions made by Licensee concerning client-participant involvement in re-sale life insurance policies under this Agreement.

Licensee Agreement at § 2.10.

145. The Licensees failed to deal honestly and fairly with the investors, failed to disclose all of the risks known to them of investing in the RSLIPP, failed to offer the RSLIPP to suitable investors only and failed to comply with all applicable laws, rules and regulations.

B. Sale of Unregistered Securities

146. By selling investments in the RSLIPP in and from Texas, the Licensees violated the Texas Securities Act and, accordingly, breached the Licensee Agreement. The RSLIPP is a security under Texas law and the laws of the other states where it was sold. Investments in the Resale Life Insurance Policy Program are an investment contract and therefore securities under the Texas Securities Act. In addition, the investments in the Resale Life Insurance Policy Program are securities because they are notes or other evidence of indebtedness.

147. As a security, the RSLIPP is required to either be registered or sold pursuant to an exemption to registration under state securities law. The RSLIPP was not registered as a security nor was it sold pursuant to any applicable exception to the registration requirements.

148. Despite the fact that the Licensees actively participated in soliciting investors, most of them did not register as required by the Texas Securities Act. Section 12 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, offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. No agent shall, on behalf of any dealer, sell, offer for sale, or make any sale of any securities within the state unless registered as an agent for that particular registered dealer under the provisions of this Act.

149. Section 33(A)(1) of the Texas Securities Act establishes liability for "a person who offers or sells" an unregistered security. The sale of any security in violation of the registration requirements of Texas law is subject to rescission. The investors have demanded rescission from Retirement Value. Accordingly, Retirement Value is obligated to rescind each

sale of investments in the RSLIPP made in or from Texas. Because the Licensees made these sales in violation of Texas law, they are liable to Retirement Value for the cost of the rescission and any damages Retirement Value suffers thereby.

150. By selling investments in the RSLIPP in and from California, Milkie/Ferguson and its agents and employees named herein as well as other Licensees violated the California Corporate Securities Law in addition to Texas law. The RSLIPP is a security under California law. It is a note, evidence of indebtedness, an investment contract or a life settlement contract or a fractionalized or pooled interest therein. As a security, the RSLIPP is required to either be registered or sold pursuant to an exemption to registration under California law. The sale of any security in violation of the registration requirements of California is subject to rescission. Accordingly, Retirement Value is obligated to rescind each sale of investments in the RSLIPP made in or from California. Because Milkie/Ferguson and its agents and employees named herein made these sales in violation of California law, they are liable to Retirement Value for the cost of the rescission and any damages Retirement Value suffers thereby.

151. By selling investments in the RSLIPP in and from Florida, Fellowship Financial LLC, and Michael Eastham violated the Florida Corporate Securities Law in addition to Texas law. The RSLIPP is a security under Florida law. It is a note, evidence of indebtedness, or an investment contract. Florida law specifically defines "a viatical settlement investment" to be a security. As a security, the RSLIPP is required to either be registered or sold pursuant to an exemption to registration under Florida law. The sale of any security in violation of the registration requirements of Florida is subject to rescission. Accordingly, Retirement Value is obligated to rescind each sale of investments in the RSLIPP made in or from Florida. Because Fellowship Financial LLC, and Michael Eastham made these sales in violation of Florida law,

they are liable to Retirement Value for the cost of the rescission and any damages Retirement Value suffers thereby.

152. By selling investments in the RSLIPP in and from Delaware, First Covenant Financial Partners, LLC and Paul Brost violated the Delaware Corporate Securities Law in addition to Texas law. The RSLIPP is a security under Delaware law. It is a note, evidence of indebtedness, or an investment contract. Delaware law specifically defines "a viatical settlement investment" to be a security. As a security, the RSLIPP is required to either be registered or sold pursuant to an exemption to registration under Delaware law. The sale of any security in violation of the registration requirements of Delaware is subject to rescission. Accordingly, Retirement Value is obligated to rescind each sale of investments in the RSLIPP made in or from Delaware. Because First Covenant Financial Partners, LLC and Paul Brost made these sales in violation of Delaware law, they are liable to Retirement Value for the cost of the rescission and any damages Retirement Value suffers thereby.

153. By selling investments in the RSLIPP in and from Utah, Kip Hartman violated the Utah Securities Law in addition to Texas law. The RSLIPP is a security under Utah law. It is a note, evidence of indebtedness, or an investment contract. Utah law specifically defines "a life settlement interest" to be a security. As a security, the RSLIPP is required to either be registered or sold pursuant to an exemption to registration under Utah law. The sale of any security in violation of the registration requirements of Utah is subject to rescission. Accordingly, Retirement Value is obligated to rescind each sale of investments in the RSLIPP made in or from Utah. Because Kip Hartman made these sales in violation of Utah law, he is liable to Retirement Value for the cost of the rescission and any damages Retirement Value suffers thereby.

154. By selling investments in the RSLIPP in and from New Jersey, John P. Fish violated the New Jersey Securities Law in addition to Texas law. The RSLIPP is a security under New Jersey law. It is a note, evidence of indebtedness, or an investment contract. New Jersey law specifically defines "a viatical investment" to be a security. As a security, the RSLIPP is required to either be registered or sold pursuant to an exemption to registration under New Jersey law. The sale of any security in violation of the registration requirements of New Jersey is subject to rescission. Accordingly, Retirement Value is obligated to rescind each sale of investments in the RSLIPP made in or from New Jersey. Because John P. Fish made these sales in violation of New Jersey law, he is liable to Retirement Value for the cost of the rescission and any damages Retirement Value suffers thereby.

C. State Securities Fraud

155. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

156. As alleged herein, the Licensees also committed fraud under the "Blue Sky" laws of Texas and various other states in which they operated. By committing fraud in violation of state securities laws, the Licensees breached the Licensee Agreements.

157. Under Texas law, a person offers or sells securities if he or she is any link in the chain of the selling process. Section 33A(2) of the Texas Securities Act establishes liability for "a person who offers or sells a security . . . by means of an untrue statement of a material fact or an omission to state a material fact" if that person "was any link in the chain of the selling process." *Lutheran Brotherhood v. Kidder Peabody & Co.,* 829 S.W.2d 300, 306 (Tex. App. -- Texarkana 1992), *writ granted, judgm't vacated w.r.m.,* 840 S.W.2d 384 (Tex. 1992), *citing, Brown v. Cole*, 291 S.W.2d 704 (1956). But for the Licensees' efforts, Retirement Value could not have successfully solicited investments from the investor-victims. The Licensees expected to

be paid for their services through agent commissions. Thus, the Licensees were "links in the chain of the selling process" for Retirement Value's unregistered securities and are, therefore, liable under section 33A of the Texas Securities Act.

158. As sellers of securities within the meaning of the Texas Securities Act, the Licensees are liable for all misrepresentations, omissions, commissions, and acts of securities fraud committed by others in the chain of sale as set forth herein or made in connection with the sale of securities. The Licensees are liable even if they did not know these misrepresentations or omissions were being made and/or did not know of the inaccuracy of the statements or the failure to disclose information.

159. Sections 4.F and 32 of the Texas Securities Act provide sanctions for the use of fraud and fraudulent practices in connection with offering Securities for sale. Section 4.F of the Securities Act defines fraud as follows:

> The terms "fraud" and "fraudulent practice" shall include any misrepresentations, in any manner, of any 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.

160. The material misrepresentations made to investors and for which the Licensees are liable include, but are not limited to:

a. The promise of low-risk, guaranteed fixed returns.

b. Retirement Value used investor funds for purposes unrelated to the purposes for which Licensees solicited those investor funds, including for the payment of premiums on policies other than the policy the investors had chosen.

c. That "90% of policies mature at or before projected LE."

d. That "95% of policies mature at or before LE plus 12 months."

e. That Midwest Medical was "accurate 95% of the time to LE."

f. That Midwest Medical had "98.5% accuracy within 12 months after expected LE."

g. That Midwest Medical had "a proven track-record of success that is unmatched in the industry."

h. That there was no danger state regulators or the SEC would shut the program down.

i. That it was an "unlikely event that the policy escrow sub-account managed by the Escrow Agent" would be depleted.

j. That Retirement Value took specific steps to safeguard the client money.

k. That the client money will not be used in any manner whatsoever other than as directed by the client

l. "Retirement Value, LLC never handles any Client-participant funds at any stage of this program."

m. "All Client-participant funds are managed by Kiesling, Porter, Kiesling & Free, P.C., a 40+ year-old law firm in New Braunfels, Texas, functioning as Escrow Agent."

n. "Premium payments will be escrowed to cover Life Expectancy ('LE') plus 24 months."

o. That the life expectancy figures were "thoroughly underwritten" by Midwest Medical.

p. That Midwest Medical was "an external, independent and totally-objective LE source"

q. That Midwest Medical was "very highly-rated among insurance professionals."

r. That the James Defendants would "execute formal policy purchase agreements to take ownership of each [policy]"

s. That the James Defendants would "re-sell some of those policies to [Retirement Value] after completion of their thorough due diligence."

t. "Our high policy purchase volume assures Retirement Value, LLC exceptionally low policy purchase prices – thereby increasing the margin or 'spread.' We pass through to Client-participants outstanding base-line targeted gains as a result of this lower overhead."

u. That it was "a true 'win-win' program."

v. That investors would receive "spectacularly high gains"

w. That "Client-participants in our re-sale life insurance policy program are 'irrevocable co-beneficiaries.'"

x. That the escrow agent "independently manages all monies used for your participation."

y. That the program run by Retirement Value was "legal."

z. That Retirement Value had "integrity, professionalism, an unyielding pursuit for compliance, and an unsurpassed focus on detail."

aa. That the James Defendants "had been selected to consult, underwrite, and perform the warehousing function for numerous funds involved in the management of public employee pensions and other international investment banking engagements."

bb. That the James Defendants "never have been a target of any regulatory inquiry or litigation."

cc. "Retirement Value, LLC assures the total safeguarding and preserving of your basis and targeted income by using an independent Escrow Agent, Kiesling, Porter, Kiesling & Free, P.C."

dd. "Retirement Value, LLC assures the total safeguarding and preserving of your money by using Kiesling, Porter, Kiesling & Free, P.C. in New Braunfels, Texas, a 40 + year-old law firm that functions as Escrow Agent to receive and process all funds for our re-sale life insurance policy cases."

ee. "At no time do any Client-participant funds come to, pass through, or get handled by anyone at Retirement Value, LLC.

ff. Retirement Value "is able to pay you such a high income on your funds."

gg. "All un-used premiums held in escrow by Kiesling, Porter, Kiesling & Free, P.C. are refunded to client participants."

161. The Licensees are also liable for failures to disclose material information to investors including, but not limited to, the following:

a. The true risks associated with the program.

b. That the use of the funds received from investors was actually controlled by Retirement Value, as opposed to the escrow agent.

c. That the escrow agent's agreement with Retirement Value provided that the escrow agent owed its duties to Retirement Value, not the investor victims.

d. The regulatory trouble Retirement Value's principal Dick Gray had been in.

e. The regulatory trouble Midwest Medical and its principal George Kindness had been in.

f. The criminal record of George Kindness, the principal of Midwest Medical.

g. That the program involved unregistered securities and broker/dealers.

h. That the program had a chance of being closed down by regulators.

162. Investors reasonably relied on these misrepresentations and omissions to their harm when they bought the Retirement Value securities. These misrepresentations were the proximate cause of actual damages to the investor victims. Moreover, investors reasonably relied on numerous misrepresentations and omissions of the Licensees for which the Licensees are also liable.

163. Because of the conduct of the Licensees and Retirement Value in violating the state securities laws and in committing securities fraud, the Licensees injured the receivership estate by proximately causing claims for rescission and damages that defrauded investors have against the receivership estate. The Receiver brings suit against the Licensees to the extent their actions damaged the receivership estate in the amount of the total allowable claims defrauded investors have against the receivership estate.

164. Other states, including California, Florida, Utah, New Jersey and Delaware have the same or similar provisions. The Licensees who were acting in those states are liable under those laws in addition to Texas law.

D. Aiding and Abetting Liability under State Securities Laws

165. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

166. As alleged herein, the Licensees also aided and abetted others in violations of the "Blue Sky" laws of Texas and various other states in which they operated. By aiding and abetting violation of state securities laws by others, the Licensees breached the Licensee Agreements.

167. The Licensees and other Defendants all conspired with each other to violate the state securities laws and aided and abetted each other in violating those laws. Each of the Licensees directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aided the violations of the state securities laws by Defendants by selling unregistered securities, making the misrepresentations and engaging in the other wrongful conduct outlined above. They are therefore jointly and severally liable for all of the harm caused to all of the victims of this scheme.

168. Other states, including California, Florida, Utah, New Jersey and Delaware have the same or similar provisions. The Licensees who were acting in those states are liable under those laws in addition to Texas law.

169. Because of the conduct of the Licensees by conspiring, aiding and abetting in the violation of state securities laws and in committing securities fraud, the Licensees injured the receivership estate by proximately causing claims for rescission and damages that defrauded investors have against the receivership estate. The Receiver brings suit against the Licensees to the extent their actions damaged the receivership estate in the amount of the total allowable claims defrauded investors have against the receivership estate.

E. Violation of FINRA Rules

170. The Licensees failed to comply with the rules and regulations of FINRA and, accordingly, breached the Licensee Agreements. For purposes of FINRA's rules and regulations, investments such as the RSLIPP are considered to be securities and subject to the

duties and obligations imposed on members of FINRA by its rules. Because the RSLIPP was not registered under either state or federal law, it could only be sold in a private placement.

171. Under FINRA's rules and regulations, a broker/dealer (such as the Licensees) engaged in a private placement has a duty to conduct a reasonable investigation concerning the security and the issuer. This duty emanates from the broker/dealer's "special relationship" to the customer, and from the fact that in recommending the security, the broker/dealer represents to the customer that a reasonable investigation has been made and that its recommendation rests on the conclusions based on its investigation. Here, the Licensees failed to conduct an appropriate investigation. They, at best, relied blindly on information provided to them by Retirement Value ignoring obvious "red flags" which mandated further inquiry. Despite never receiving satisfactory answers to the few questions they did ask, the Licensees continued onward, selling the RSLIPP to unsuspecting investors so that they could pocket 16-18% of their investment as a commission.

172. Where, as here, a broker/dealer lacks essential information as to an issuer or its securities, the broker/dealer is obligated to disclose that fact as well as the risks arising from the broker/dealer's incomplete investigation. Although it never received answers to questions it asked and knew there was no basis for many of Retirement Value's claims, the Licensees failed to inform their customers of these facts and, further, hid the bad information they did learn.

173. Further, the Licensees also had a duty to see that the offering of an unregistered security was done in accordance with recognized exemptions to registration under state and federal law. As alleged above, the Licensees wholly failed to do so.

F. Damages

174. As a result of the Licensees' breaches of contract, Retirement Value has suffered direct and consequential damages detailed herein in an amount in excess of the minimum

jurisdictional limits of this court. Those damages include the responsibility to rescind all of the sales that were made.

175. Retirement Value has complied with all of its obligations under the Licensee Agreements.

176. Because of the Licensees' breaches of contract, it has been necessary for the Receiver to retain counsel to prosecute this suit and to pay them a reasonable fee. Under § 38.001 of the Texas Civil Practice & Remedies Code, the Receiver is entitled to recover his attorneys' fees and costs.

III. Money Had and Received

177. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

178. Because the Licensees sold investments in the RSLIPP in violation of FINRA's rules and regulations and state law, they were not entitled to be paid a commission. Retirement Value did in fact pay commissions to Milkie/Ferguson in the amount of $1,739,207.42 even though it had no obligation to do so and Milkie/Ferguson had no right to be paid. Accordingly, Milkie/Ferguson is in possession of funds belonging to Retirement Value under circumstances in which it would be inequitable for Milkie/Ferguson to retain those funds. The Receiver is therefore entitled to return of the $1,739,207.42 from Milkie/Ferguson, $1,413,114.40 from Gallagher Financial Group, Inc., $999,079.30 from Michael McDermott, $485,564.13 from Sr. Retirement Planners, LLC, $421,517.05 from Fellowship Financial, LLC, $388,589.11 from Estate Protection Planning Corporation, $300,784.47 from Secured Financial Strategies, LLC, $261,825.96 from Brian R. Cervenka, $223,528.00 from Niche Investment, LLC, 167,788.72 from Razor Financial Services, LLC, $165,735.43 from Senior Texas Estate Planning Services, LLC, $153,169.58 from Mike Ahlers, $142,358.49 from Darrill S. Bebee, $132,879.96 from

PC&S, LLC, $123,957.75 from Global One Direct, LLC, $119,009.91 from Steven Feeken, $115,036.73 from Joseph T. Donnantuoni, $114,515.00 from First Covenant Financial Partners, LLC, $98,794.34 from David Dolph, $84,025.56 from Ronald R. Coleman, $81,230.83 from Charles David Gray, $77,715.64 from Gary J. Lenahan, $76,954.74 from Earl Brown, $76,524.41 from Mike Givilancz, Jr., $73,865.25 from Kip Hartman, $73,823.66 from Michael Castellano $64,900.00 from John P. Fish, $61,750.00 from Joel Franklin, $57,666.92 from William E. Evans, $5,950.00 from W. Justin Title, $5,600 from David Rice, $3,100.00 from James William Rash, $797.81 from David Mata, and $29,250.00 from IAM Financial Services, Inc.

179. The Receiver is also entitled to have the money it paid to the other Defendants, including but not limited to any fees, commissions, salaries and bonuses. Based on the conduct outlined above, Defendants are in possession of funds belonging to Retirement Value under circumstances in which it would be inequitable for Defendants to retain those funds.

IV. Fraudulent Transfer

180. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

181. Of the $77 million that Retirement Value obtained as loans from investors, Retirement Value diverted $1,729,342.62 to Milkie/Ferguson, $1,413,114.40 to Gallagher Financial Group, Inc., $999,079.30 to Michael McDermott, $485,564.13 to Sr. Retirement Planners, LLC, $421,517.05 to Fellowship Financial, LLC, $388,589.11 to Estate Protection Planning Corporation, $300,784.47 to Secured Financial Strategies, LLC, $261,825.96 to Brian R. Cervenka, $223,528.00 to Niche Investment, LLC, 167,788.72 to Razor Financial Services, LLC, $165,735.43 to Senior Texas Estate Planning Services, LLC, $153,169.58 to Mike Ahlers, $142,358.49 to Darrill S. Bebee, $132,879.96 to PC&S, LLC, $123,957.75 to Global One Direct,

LLC, $119,009.91 to Steven Feeken, $115,036.73 to Joseph T. Donnantuoni, $114,515.00 to First Covenant Financial Partners, LLC, $98,794.34 to David Dolph, $84,025.56 to Ronald R. Coleman, $81,230.83 to Charles David Gray, $77,715.64 to Gary J. Lenahan, $76,954.74 to Earl Brown, $76,524.41 to Mike Givilancz, Jr., $73,865.25 to Kip Hartman, $73,823.66 to Michael Castellano $64,900.00 to John P. Fish, $61,750.00 to Joel Franklin, $57,666.92 to William E. Evans, $5,950.00 to W. Justin Title, $5,600 to David Rice, $3,100.00 to James William Rash, $797.81 to David Mata, and $29,250.00 to IAM Financial Services, Inc.. The Licensees provided no value in exchange for the money they received from Retirement Value. Providing additional victims to Retirement Value's fraudulent scheme and, thereby, deepening Retirement Value's insolvency does not constitute valuable consideration sufficient to support the payments to the Licensees. In the alternative, a commission of 16-18% of the funds raised is grossly excessive.

182. As discussed above, the prices paid to the James Defendants for the policies they sold Retirement Value were grossly excessive.

183. The payment of millions of dollars paid to Defendants was a violation of the Texas Uniform Fraudulent Transfer Act in that they were made by Retirement Value:

a. with actual intent to hinder, delay, or defraud the creditors of Retirement Value;

b. without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Retirement Value (1) was engaged or was about to engage in a business or a transaction for which its remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (2) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due; or

c. without receiving a reasonably equivalent value in exchange for the transfer or obligation and Retirement Value was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Defendants were all insiders. The Receiver is therefore entitled to avoid these transfers. The Receiver seeks the return of any payments made to Defendants and for a constructive trust to be imposed on any property acquired by Defendants with the proceeds of the payments.

184. The Receiver is also entitled to avoid the payments to the other Defendants, including but not limited to any fees, commissions, salaries and bonuses, as fraudulent transfers.

185. The Receiver has been required to hire the undersigned attorneys to bring this suit and to pay them a reasonable fee for which they are entitled to recover under the Texas Uniform Fraudulent Transfer Act.

V. Negligence

186. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

187. Each of the Defendants owed Retirement Value a duty to use reasonable care in the performance of their duties. Defendants breached those duties by virtue of the acts and omissions described above and by failing to do sufficient due diligence to determine the program could not work as promised.

188. The failure to use reasonable care was the proximate cause of both actual and consequential damages to the Receivership Estate.

VI. Punitive Damages

189. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

190. Defendants demonstrated a willingness to participate actively in the sale of unregistered securities, the commission of securities fraud, gross negligence, and the breaching of fiduciary duties by making material misrepresentations and omissions, and aiding and abetting

in such actions. That grossly negligent, malicious, and fraudulent conduct makes an award of punitive damages appropriate.

191. Defendants' conduct was such that it violated Tex. Penal Code Ann. § 32.46 (securing execution of document by deception). Thus, the statutory caps on exemplary damages do not apply in this case.

VII. Recovery of Attorneys' Fees

192. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

193. The Receiver may recover attorneys' fees and costs pursuant to Tex. Civ. Prac. & Remedies Code Ann. § 38.001 *et. seq.* for the breach of contract claims. The Receiver may also recover its fees under the Uniform Fraudulent Transfer Act.

194. The Receiver has retained the law firm of George & Brothers, LLP to represent him in this case and has agreed to pay reasonable and necessary attorneys' fees.

195. The Receiver seeks his reasonable and necessary attorneys' fees, costs, and expenses resulting from this lawsuit, the filing of which was necessitated by the violation of the Texas Securities Act by all Defendants and by Defendants' aiding in and conspiracy to commit fraud and securities fraud.

VIII. Fraud

196. The receiver for an insolvent entity such as Retirement Value has a right to maintain a suit that is necessary to preserve the company's assets and to recover assets of which the company has been wrongfully deprived through fraud. The Receiver is entitled to bring such a suit on behalf of Retirement Value's creditors, including the investor victims, to recover assets wrongfully taken from Retirement Value.

197. The Receiver brings this action against Defendants to recover assets that would belong to the Receivership Estate but for the fraudulent and wrongful conduct of Defendants. The Receiver sues the Licensees to recover the commissions they were paid, and he sues the James Defendants for the sums they were paid on the insurance policies or otherwise.

198. The Receiver also brings this action against Defendants to recover the sums the Receivership Estate owes the investor victims by virtue of their common claim for rescission. This is a general claim against all members of the fraudulent conspiracy for the loss and liability the conspiracy created and to recover those sums so that claims of creditors and others may be satisfied, as opposed to individual claims for each investor concerning their specific circumstances. The actions of Defendants harmed the Receivership Estate on a dollar-for-dollar basis with respect to all the investor money they brought in. Each dollar brought in represented a dollar Retirement Value was required to return as rescission for Defendants' actions in selling unregistered securities. In fact, the harm to Retirement Value was multiplied because Defendants were paid commissions, fees and other monies.

JURY DEMAND

199. The Receiver requests a jury trial.

CONDITIONS PRECEDENT

200. All conditions precedent have been performed or have occurred.

NO FEDERAL CLAIMS

201. Nothing herein is intended to assert any claim under a federal statute, regulation, or common law.

202. The conduct described above was the proximate cause of at least $77,000,000 in damages to Retirement Value.

WHEREFORE, The Receiver requests that the Defendants be cited to appear and that he have judgment against Defendants for actual damages, consequential damages, a constructive trust, punitive damage, attorneys' fees, costs of suit, prejudgment and post-judgment interest, and all other relief to which he may be entitled.

Respectfully submitted,

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above pleading has been served on the following, via certified mail, return receipt requested and e-mail on this the 22nd day of August 2011:

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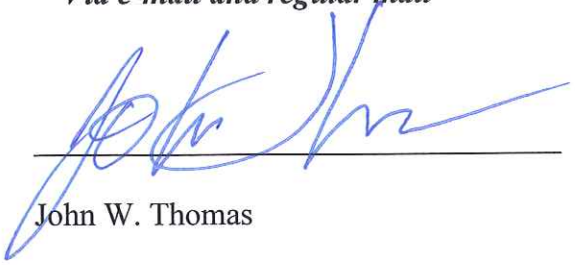

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