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

STATE OF TEXAS, *Plaintiff,*	§	**IN THE DISTRICT COURT OF**
v.	§	
RETIREMENT VALUE, LLC, *ET AL.*, *Defendants,*	§	**TRAVIS COUNTY, TEXAS**
AND	§	
JAMES SETTLEMENT SERVICES, LLC, *ET AL.* *Third-Party Defendants*	§	**126th JUDICIAL DISTRICT**

RECEIVER ESPINOSA'S EIGHTH 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 Receiver of Retirement Value files this Eighth 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 used 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 or other regulatory authorities for running illegal investment schemes. 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 the 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 of the 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 recover against 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 with Richard H. "Dick" Gray 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. People and entities that promoted the scheme to Retirement Value and who participated or had the right to participate in control of Retirement Value:

(1) James Settlement Services, LLC is a Nevada Limited Liability Company. It has appeared in this matter and no further service of process is required.

(2) Ronald L. James is a California resident. He has appeared in this matter and no further service of process is required.

(3) Donald James is a California resident. He has appeared in this matter and no further service of process is required.

(4) Michael Beste is a New Mexico resident. He has appeared in this matter and no further service of process is required.

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

(1) Milkie/Ferguson Investments, Inc. is a Texas corporation with its principal office in Dallas, Texas. It has appeared in this matter and no further service of process is required. The individual officers and brokers working at Milkie Ferguson who were involved in the Retirement Value scam are also made defendants herein. They are:

(a) Edward Milkie is an individual residing in Dallas, Texas. He has appeared in this matter and no further service of process is required. He is the President and CEO of Milkie Ferguson.

(b) Dan Levin is an individual residing in Dallas, Texas. He has appeared in this matter and no further service of process is required.

(c) Manny Aizen is an individual residing in Dallas, Texas. He has appeared in this matter and no further service of process is required.

(d) Marco Lopez is an individual residing in Dallas, Texas. He has appeared in this matter and no further service of process is required.

(e) Scott Schroeder is an individual residing in Topanga, California. He has appeared in this matter and no further service of process is required. 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 has appeared in this matter and no further service of process is required.

(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. In the alternative, W. Neil ("Doc") Gallagher was the Licensee. He has appeared in this matter and no further service of process is required.

(3) Senior Retirement Planners, LLC is a Texas limited liability company with its principal office in Fort Worth, Texas. It has appeared in this matter and no further service of process is required.

(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 has appeared in this matter and no further service of process is required.

(4) Fellowship Financial, LLC is a Florida limited liability company with its principal office in Florida. It has appeared in this matter and no further service of process is required.

(a) Michael Eastham is the principal of Fellowship Financial LLC and the primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(5) Estate Protection Planning Corporation is a New York corporation with its principal office in New York. It has appeared in this matter and no further service of process is required.

(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 has appeared in this matter and no further service of process is required.

(6) Secured Financial Strategies, LLC is a dissolved Texas limited liability company with its principal place of business in Flower Mound, Texas. It has appeared in this matter and no further service of process is required.

(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 has appeared in this matter and no further service of process is required.

(b) Barbara H. Thorburn, is the wife of Reid H. Thorburn. She has appeared in this matter and no further service of process is required.

(c) Reid Thorburn, Trustee of the Reid H. & Barbara H. Thorburn Irrevocable Family Trust is liable for its role in the fraudulent transfer of Reid Thorburn's assets as described in

this pleading. It has appeared in this matter and no further service of process is required

(7) Brian R. Cervenka is an individual residing in Sugarland Texas. He has appeared in this matter and no further service of process is required.

(8) Niche Investment Group, LLC is a Texas limited liability company with its principal office in San Antonio, Texas. It has appeared in this matter and no further service of process is required.

(a) Damien Pechacek is a principal of Niche Investment Group, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and n further service of process is required.

(b) Shawn Cornett is a principal of Niche Investment Group, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(9) Razor Financial Services, LLC is a Texas limited liability company with its principal office in Mansfield, Texas. It has appeared in this matter and no further service of process is required.

(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 has appeared in this matter and no further service of process is required.

(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 has appeared in this matter and no further service of process is required.

(10) Senior Texan Estate Planning Services, LLC is a Texas limited liability company with its principal office in San Antonio, Texas. It has appeared in this matter and no further service of process is required.

(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 has appeared in this matter and no further service of process is required.

(11) Mike Ahlers is an individual residing in San Antonio, Texas. He has appeared in this matter and no further service of process is required.

(12) PC&S, LLC is a purported Texas Limited Liability Company. It has appeared in this matter and no further service of process is required.

(13) Global One Direct, LLC is a Texas limited liability company with its principal office in San Antonio, Texas. It has appeared in this matter and no further service of process is required .

(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. In the alternative, David A. Shields was the Licensee. He has appeared in this matter and no further service of process is required.

(14) Steven Feeken is an individual residing in Grapevine, Texas. He has appeared in this matter and no further service of process is required.

(15) First Covenant Financial Partners, LLC is a Delaware limited liability company. It has been served with process by serving its registered agent Delaware Intercorp, Inc., 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 has been served in this matter and no further service of process is required.

(16) David Dolph is an individual residing in Dallas, Texas. He has been served in this matter and no further service of process is required.

(17) Ronald R. Coleman is an individual residing in Dallas, Texas. He has appeared in this matter and no further service of process is required.

(18) Gary J. Lenahan is an individual residing in California. He has appeared in this matter and no further service of process is required.

(19) Mike Givilancz, Jr. is an individual residing in Weslaco, Texas. He has appeared in this matter and no further service of process is required.

(20) Michael A. Castellano is an individual residing in Cypress, Texas. He has appeared in this matter and no further service of process is required.

(21) John P. Fish is an individual residing in New Jersey. He has been served with process in this matter and no further service is required.

(22) Joel Franklin is an individual residing in Avinger, Texas. He has appeared in this matter and no further service of process is required.

(23) David Rice is an individual residing in Austin, Travis County, Texas. He has appeared in this matter and no further service of process is required.

(24) David Mata is an individual residing in Austin, Travis County, Texas. He has been served with process in this matter in accordance

with the Court's Order for Substitute Service and no further service is required.

(25) IAM Financial Services, Inc. is a Texas Corporation. It has been served with process in this matter by serving its registered agent David J. Herzog and no further service is required.

(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 has been served with process in this matter and no further service is required.

(26) Arvin Gowens is an individual residing in California. He has been served with process in this matter and no further service is required.

(27) Carl Gottuso is an individual residing in Carona, California. He has been served in this matter and no further service of process is required.

(28) Joanne Marie Kleppe is an individual living in California. She has been served with process in this matter and no further service is required.

(29) Robert Kleppe is an individual living in California. He has been served with process in this matter and no further service is required.

(30) Malcolm L. Campbell is an individual residing in California. He has been served with process in this matter and no further service is required.

(31) Alternative Solutions Insurance Services, Inc. is a California Corporation. It has appeared in this matter and no further service of process is required.

(a) Greg Chick is a principal of Alternative Solutions Insurance Services, Inc. and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(32) Anthony Heuermann is an individual residing in Spring, Texas. He has been served with process in this matter and no further service is required.

(33) Brenda Kay Martin is an individual residing in Fontana, California. She has been served with process in this matter and no further service is required.

(34) Capitol Financial Group is a Texas corporation. It has been served with process in this matter and no further service is required.

(a) James Dunn is a principal of Capitol Financial Group and a primary individual acting on its behalf with respect to

Retirement Value. He has been served with process in this matter and no further service is required.

(35) Colin Boddicker is an individual residing in Dallas, Texas. He has been served with process in this matter and no further service is required.

(36) Creative Wealth Designs, LLC is a Washington corporation. It has appeared in this matter and no further service of process is required.

(a) Walter C. Young is a principal of Creative Wealth Designs, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(37) Dan Glazier is an individual residing in Tega Cay, South Carolina. He has been served with process in this matter and no further service is required.

(38) Don Forrest Wissner is an individual residing in Alvin. He has appeared in this matter and no further service of process is required.

(39) Douglas Berkey is and individual residing in Sarasota, Florida. He has been served with process in this matter and no further service is required.

(40) Eagle Estate Group is a Washington corporation. It has been served with process in this matter and no further service is required.

(a) Richard Brasmer is a principal of Eagle Estate Group and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(41) Emil L. Laskowski, Jr. is an individual residing in San Antonio, Texas. He has been served with process in this matter and no further service is required.

(42) Eric Lopez is an individual residing in Mansfield, Texas. He has been served with process in this matter and no further service is required.

(43) Fendz Assett Management is a Florida corporation. It has been served with process in this matter and no further service is required.

(a) Joe Fernandez is a principal of Fendz Assett Management and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(44) First Capital Advisers, LLC is a Texas corporation. It has been served with process in this matter and no further service is required.

(a) Billy Sparkman is a principal of First Capital Advisers, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(45) Frederick William Rust is an individual residing in Grand Prairie, Texas. He has appeared in this matter and no further service of process is required.

(46) Gary Oliver is an individual residing in Mt. Pleasant, Texas. He has appeared in this matter and no further service of process is required.

(47) Gloria Jane Young is an individual residing in Berkeley Springs, West Virginia. She has been served with process in this matter and no further service is required.

(48) Hal Partenheimer is an individual residing in Trophy Club, Texas. He has been served with process in this matter and no further service is required.

(49) Harry J. Vance is an individual residing in Gadsden, Alabama. He has been served with process in this matter and no further service is required.

(50) Harvest Planning, LLC is a New York corporation. It has appeared in this matter and no further service of process is required.

(a) Andrew D'Agostino is a principal of Harvest Planning, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(51) Hodge Financial, lnc. is a Texas corporation. lt has been served with process in this matter and no further service is required.

(a) John Hodge is a principal of Hodge Financial, lnc. and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(52) James Craig Orr is an individual residing in Arlington, Texas. He has appeared in this matter and no further service of process is required.

(53) James J. Strizak is an individual residing in San Antonio, Texas. He has appeared in this matter and no further service of process is required.

(54) Jeff Mejia is an individual residing in Columbia, Missouri. He has appeared in this matter and no further service of process is required.

(55) Jerry Neal Orr is an individual residing in Taylorsville, North Carolina. He has appeared in this matter and no further service of process is required.

(56) John Todd Reagan is an individual residing in Dallas, Texas. He has appeared in this matter and no further service of process is required.

(57) John E. Hoskins is an individual residing in St. Charles, Texas. He has appeared in this matter and no further service of process is required.

(58) Justin Martin is an individual residing in Arlington, Texas. He has been served with process in this matter and no further service is required.

(59) Katie Hensley is an individual residing in New Braunfels, Texas. She has appeared in this matter and no further service of process is required.

(60) Kenneth J. Franco is an individual residing in Folsom, California. He has appeared in this matter and no further service of process is required.

(61) Kenneth P. Petticolas is an individual residing in Hayden, Idaho. He has been served with process in this matter and no further service is required.

(62) Larry Lowder is an individual residing in Wayne, Pennsylvania. He has been served with process in this matter and no further service is required.

(63) Life Assurance, LLC is a Texas corporation. It has been served with process in this matter and no further service is required.

(a) Stanley Morikawa is a principal of Life Assurance, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(64) Lighthouse Capital Presentation is a California corporation. It has appeared in this matter and no further service of process is required.

(a) Clement Ng is a principal of Lighthouse Capital Presentation and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(65) Marie Petry is an individual residing in Watervliet, New York. She has been served with process in this matter and no further service is required.

(66) Mark J. Smith is an individual residing in Aledo, Texas. He has appeared in this matter and no further service of process is required.

(67) Martha A. Lepere is an individual residing in Dana Point, California. She has been served with process in this matter and no further service is required.

(68) Michael D. Morrow is an individual residing in Colorado Springs, Colorado. He has been served with process in this matter and no further service is required.

(69) Michael William Sylkatis is an individual residing in Shreveport, Louisiana. He has been served with process in this matter and no further service is required.

(70) Michael Woods is an individual residing in Flower Mound, Texas. He has appeared in this matter and no further service of process is required.

(71) Milks and Milks is a Florida corporation. It has appeared in this matter and no further service of process is required.

(a) Benjamin Milks is a principal of IGB Financial and a primary individual acting on its behalf with respect to Retirement Value. He has appeared in this matter and no further service of process is required.

(72) Pam Friske is an individual residing in Salt Lake City, Utah. She has been served with process in this matter and no further service is required.

(73) Raymon G. Chadwick, Jr. is an individual residing in Grand Prairie, Texas. He has appeared in this matter and no further service of process is required.

(74) Real Talk Network is a Colorado corporation. It has been served with process in this matter and no further service is required.

(a) David Burke is a principal of Real Talk Network and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(b) Douglas Mittelstadt is a principal of Real Talk Network and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(75) Richard E. Evans is an individual residing in San Antonio, Texas. He has appeared in this matter and no further service of process is required.

(76) Robert F. Knox is an individual residing in Texarkana, Texas. He has appeared in this matter and no further service of process is required.

(77) Ron Thompson is an individual residing in Palm Coast, Florida. He has been served with process in this matter and no further service is required.

(78) Ryan J. Carr is an individual residing in Franklinville, New Jersey. He has been served with process in this matter and no further service is required.

(79) Sam L. Hensley is an individual residing in Bandera, Texas. He has appeared in this matter and no further service of process is required.

(80) Stephen G. McIntyre is an individual residing in Dayton, West Virginia. He has been served with process in this matter and no further service is required.

(81) Stephen W. Horn is an individual residing in Sherman, Texas. He has been served with process in this matter and no further service is required.

(82) Steven J. Skijus is an individual residing in Tampa, Florida. He has appeared in this matter and no further service of process is required.

(83) Stonehurst Securities, Inc. is a California corporation that has been served with process in this matter and no further service is required.

(a) Phillip P. Borup is a principal of Stonehurst Securities, Inc. and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process and not further service of process is required.

(84) T. C. Weston is an individual residing in Cleburne, Texas. He has appeared in this matter and no further service of process is required.

(85) Terry Pipenhagen is an individual residing in Orlando, Florida. He has been served with process in this matter and no further service is required.

(86) Timothy E. Tullos is an individual residing in Bogalusa, Louisiana. He has been served with process in this matter and no further service is required.

(87) Tommy Ventures, LLC is a Utah corporation. It has been served with process in this matter and no further service is required.

(a) Eric Smith is a principal of Tommy Ventures, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service is required.

(88) Tony L. Adkison is an individual residing in Mansfield, Texas. He has appeared in this matter and no further service of process is required.

(89) Victor Maria Cruz is an individual residing in Seattle, Washington. He has been served with process in this matter and no further service is required.

(90) Walter C. Young is an individual residing in Seattle, Washington. He has appeared in this matter and no further service of process is required.

(91) Wealth Integrated Network, LLC is a Florida Corporation. It has been serviced in this matter and no further service of process is required.

(a) Gary Martin is a principal of Wealth Integrated Network, LLC and a primary individual acting on its behalf with respect to Retirement Value. He has been served with process in this matter and no further service of process is required.

(92) Wesley Davidson is an individual residing in Grapevine, Texas. He has appeared in this matter and no further service of process is required.

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 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 David Rice and David Mata are both 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 David Rice 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. This lawsuit was filed on May 5, 2010 in the name of the State of Texas by the Attorney General of Texas, acting at the request of the Deputy Securities Commissioner of Texas and acting within the scope of his official duties and under authority of the Texas Securities Act and the Texas Deceptive Trade Practices Act. The Court issued a Temporary Restraining Order and appointed Eduardo S. Espinosa as Receiver on May 5, 2010. On May 28, 2010, the Court entered a temporary injunction, upon finding that the State of Texas would probably prevail upon final hearing of the action in proving that Defendants Retirement Value and Gray violated the Texas Securities Act by selling unregistered securities to the public, selling securities through unregistered securities dealers, salesmen, and agents, and committing fraud and fraudulent practices in connection with the sale of securities. The Court also found that the State of Texas would likely prevail on its claim that Defendants Retirement Value and Grey had engaged in

false or misleading or deceptive acts or practices in the conduct of trade or commerce in violation of the Texas Deceptive Trade Practices Act ("DTPA"). The Court determined that it was necessary to appoint a receiver "to conduct the affairs of Retirement Value, LLC ... for the benefit of investors should restitution and disgorgement be granted" under the Texas Securities Act or the DTPA. The order enjoined Defendant Retirement Value, LLC and its representatives from, among other things, dissipating assets, destroying records, selling securities, or communicating with investors and customers.

13. The appointment of the Receiver was made at the request of the State of Texas acting through the Texas Attorney General and the Texas State Securities Commissioner. The Receiver is empowered with the obligation to "effect fair restitution if possible, from assets under control of the Receiver, according to a plan to be approved by the Court after a diligent investigation has been made into the identity of the investor-victims, the amounts they paid to Defendants Retirement Value or Gray, any amounts already paid by Defendants Retirement Value or Gray to the investor-victims, and the circumstances under which their dealings with Retirement Value or Gray arose." One of the Receiver's primary obligations is "[t]o assist the State Securities Board and the Attorney General in their investigation of Defendants Retirement Value's or Gray's violations of the Securities Act." The Receiver is an agent of this Court and is uniquely empowered and obligated to assist the State of Texas in its investigation of the fraudulent securities scheme perpetrated by Grey and the other Defendants.

14. 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 restitution 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.

15. 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

16. 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%).

17. Michael Beste specializes in facilitating the acquisition of life insurance policies for life settlement investment vehicles. From April 17, 2000 through April 30, 2006 Beste was the President of the Institutional Investor Division of Life Partners Holdings, Inc. Life Partners

focuses exclusively on life settlements. After leaving Life Partners, Beste continued to focus on putting together institutional life settlement deals. He holds himself out as an expert in life settlements. It was Mr. Beste who came up with the idea of a retail life settlement product to compete with what Life Partners was offering.

18. Ronald ("Ron") James and his son Donald ("Don") James are in the business of buying life insurance policies from the insureds or brokers 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."

19. Beste had worked with the James Defendants on other deals and knew them well. Beste approached Ron James with his idea for a retail product. Ron James told Beste that he knew someone, namely Dick Gray, with retail experience that could market the product Beste had devised.

20. Ron James knew Gray as a result of their previous participation in other fraudulent schemes. The James Defendants sold policies to Secure Investment Services ("SIS"), which was sued by the SEC in 2007. The suit resulted in the appointment of a receiver and an injunction based on SIS's fraudulent sale of investments in life settlement contracts that were securities. Gray had been a sales agent for SIS. The James Defendants also sold policies to Secure Investment Services of Texas, a successor of SIS which was also shut down by the SEC as a Ponzi scheme. It was as a result of these schemes that Ron James and Gray became acquainted. The James Defendants had also been selling policies to Hill Country Funding, another entity owned by Gray.

21. Ron James called Gray and told him about the idea for a new company to sell retail investments in life settlements. The James Defendants and Beste worked with Gray 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, Beste and Gray formed what was effectively a partnership or joint venture. The James Defendants and Beste played a direct part in how the Retirement Value program was structured, the way it went to market, what it was trying to do and how it was doing it. Gray has testified under oath that "Ron James, Don James, and Mike Beste had an intimate, direct hand to play in virtually everything Retirement Value did."

22. At all relevant times, Gray, the James Defendants and Beste participated or had the right to participate in control of Retirement Value. All actions of Retirement Value alleged below were done either by, at the instructions of or subject to the supervision or control of Gray, the James Defendants and Beste. Gray was not nearly as knowledgeable about life settlements as the James Defendants and Beste. As a result, the James Defendants and Beste guided and advised Gray on all key issues relating to Retirement Value. Gray, the James Defendants, and Beste communicated frequently about Retirement value, sometimes multiple occasions on the same day. As Gray testified: "Everything that had to do with the company, Mike Beste and Ron James knew about."

23. 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. Beste and the James Defendants assisted in the recruitment of licensees by identifying potential targets for recruitment and working with Gray to convince the potential licensees to sell Retirement Value's investment product.

II. The Nature of the Investment

24. 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.

25. 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 died. 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

26. 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.

27. 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.

28. 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.

29. Although Kiesling Porter was purported to be an escrow agent, it was actually an agent of Retirement Value. Its 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.

30. 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 "Loan" and contains the usual features of a note. The non-qualified investment contract is not denominated as a loan 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.

31. 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 investors, as intended by the Defendants, viewed the RSLIPP as an investment. 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

32. 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 disclosed 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.

The Investors Were Not Irrevocable Co-Beneficiaries

33. 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 policy 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.

Investor Funds Were Not Held in Escrow

34. 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.

35. 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.

36. 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).

37. Far from being true escrow accounts, the accounts at Wells Fargo were merely business checking accounts that were nicknamed "escrow accounts." Donald James, Gray, Rogers, and other Defendants attended the July 2009 licensee meeting where Whitney Giles, a Wells Fargo representative, referred to the accounts as "escrow accounts" when addressing all the attendees. None of the Defendants corrected Ms. Giles or any of the other speakers who told the audience that the accounts were "escrow accounts" and were designed to protect client money. Nor did any of the Defendants attempt to correct Retirement Value's marketing material which erroneously – and fraudulently -- referred to the checking accounts as escrow accounts.

38. 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 "escrow" 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 "escrow" accounts for other policies. This example is typical of Retirement Value's handling of such 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."

39. 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 "escrow" 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 "escrow" 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.

40. 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 "escrow" accounts. According to Retirement Value's records, it paid $4,290,000 to purchase policy PL1140. Kiesling Porter disbursed $3,290,000 from various reserve "escrow" 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.

41. The purchase price for PL1140, 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 PL1140 but actually used to purchase other policies. The Receiver cannot determine which of the funds sent to Pacific Northwest to purchase the PL1140 policy were actually used for that purpose.

42. Of the funds sent to Pacific Northwest to purchase the PL1140 policy, only a small percentage actually came from the reserve "escrow" 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%
MM1025-112009-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 PL1140 came from the appropriate account. The remaining 81.8% came from Retirement Value's operating account and from thirteen different reserve "escrow" accounts.

43. Instead of using the funds in the PL1140 reserve "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 "escrow" 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.

44. The treatment of the PLI140 reserve "escrow" account is not an isolated incident but is, in fact, typical of the treatment of all such accounts. In addition to the account for policy PLI140, the Receiver reviewed two other reserve "escrow" accounts – the account for policy LFG740-071509-RL and the 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 "escrow" 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 "escrow" account dedicated to policy AXA091. The remaining $1,077,899 (82.9%) came from eight other reserve "escrow" accounts. Kiesling Porter disbursed $1,359,904 from the AXA091 reserve "escrow" 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.

45. 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.

46. 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.

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

47. 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.

48. 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.

49. 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.

50. 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 and broker-dealer representatives.

C. Life Expectancy Calculations

51. 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.

52. 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.

53. 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.

54. 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 dicd). 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 cstimated the probability of death prior to 30 months after the median life expectancy at less than 85%.

55. 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 Kindncss' 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 predccessor, 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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%

61. 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.

62. 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.

63. An independent actuarial firm hired by the Receiver has determined that the portfolio of policies owned by Retirement Value had a market value between $5.3 million and $8.3 million. Compare this to the $28.9 million that Retirement Value paid for the policies, and it is relatively clear that Retirement Value significantly overpaid for the policies.

D. Insufficient Reserves

64. 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.

65. 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.

66. 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.

67. 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.

68. 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 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 were only $15.3 million.[3]

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

[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

69. 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 had sufficient reserves to maintain the policy in force for the insured's life expectancy. In other words, each policy had less than (often, significantly less than) a 50/50 chance of maturing before the premium reserves are exhausted.

70. 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

71. 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 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

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the Receiver that are not dedicated to any particular policy or funds received in relation to PLI140-111109-DM.

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 lose their entire investment.

72. 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

73. 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 because the life settlement investments they were selling were securities which had not been registered and because they were also Ponzi schemes. Upon information and belief, Elizabeth Gray also sold investments in SIS and ASA through her association with Hill Country Funding. Both the James Defendants and Beste were aware of Dick Gray's regulatory history and background but participated in the decision not to disclose it.

74. The James Defendants have a similarly checkered history. They sold policies to at least Secured Investment Services, American Settlement Associates, AGAP Life Offerings, LLC and Hill Country Funding in addition to Retirement Value. All five of these companies have been shut down by different regulators (SEC, TSSB, TDI) for being illegal scams. James provided Midwest Medical LE's for each of these companies. None of this was disclosed to the investor-victims.

G. Defendants Failed to Disclose the Regulatory Risks

75. 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

76. 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.

77. This too was the goal of Dick Gray and Ronald James when they started Retirement Value. Institutional 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 appear to have shorter life expectancies in order to market the program to less sophisticated investors.

I. Exorbitant and Unconscionable Fees and Commissions

78. All of the Third-Party Defendants also conspired to breach the fiduciary duties they and the officers of Retirement Value owed to Retirement Value by using Retirement Value to pay themselves exorbitant and unconscionable fees and commissions in violation of the Texas Securities Act. The Texas Securities Act defines "fraud" to include "gaining through the sale of a security of an underwriting or promotion fee or profit, selling or managing commission or

profit, so gross or exorbitant as to be unconscionable" and engaging in a scheme to obtain such profit. Tex. Civ. Stat. Ann. Art. 581-4(F). James Settlement Services collected in excess of $28 million for which it delivered polices to Retirement Value which at the time were worth less than $6.5 million. James Defendants and Beste insisted on using fraudulent, deceptively-short life expectancies because they knew that using more accurate life expectancies would preclude them from earning the 300% to 1000% mark-up they were realizing on these policies. In doing so, the James Defendants committed fraud in violation of the Texas Securities Act. Similarly, the Licensees obtained 16% commissions while commissions on investments normally paid only 3-5% commissions. Retirement Value's officers also caused it to make fees averaging 13% which they then funneled to themselves as salaries and, in the case of the owners, distributions.

IV. Additional Facts Concerning James Defendants and Beste

79. Ronald James is the key player in this whole scheme. He, together with Mike Beste, conceived Retirement Value and talked Dick Gray into starting it. In or about 2008, the James Defendants and Beste determined that a life settlement company, Beste's former employer, was making large profits by purchasing life insurance policies from insureds using market-standard life expectancy calculations and then reselling the policies to investors at an inflated price using a much shorter life expectancy. While the James Defendants publicly described this practice as fraudulent, they worked in secret to replicate it. The James Defendants had access to insurance policies and to a life expectancy provider, Midwest Medical Review, willing to provide life expectancy calculations well short of industry standard. Beste understood the investment product and knew many of the sale agents needed to market the investment to unsuspecting consumers. What they lacked was someone to act as a front – to be the public face of the scam and to deflect enforcement actions and liability away from themselves. Enter Dick Gray.

80. Ron James knew Gray from their mutual involvement in several previous life settlement scams, including Secure Investment Services (shutdown as a Ponzi scheme by the SEC), American Settlement Associates (shutdown as a Ponzi scheme by the SEC) and Hill Country Funding (shut down as an investment scam by the TSSB and Texas Attorney General). The James Defendants, Beste and Gray agreed to form Retirement Value to market the investment product they would create together. In keeping with his role as the "front man" for the venture, Gray would be the public face for Retirement Value. The James Defendants and Beste, while retaining control over the overall scheme, would not have a public role in Retirement Value. Instead, their involvement would be largely hidden from view. The James Defendants would be compensated for their participation in the scheme through the sale of policies to Retirement Value at an excessive markup created by the use of the non-standard LEs. Beste would receive his share (which turned out to be at least $600,000) from the James Defendants' cut. And, Retirement Value would receive about 14% of the dollars invested. Gray was unaware of the extent to which the proceeds of the fraud were divided unequally between him and the James Defendants.

81. As part of their participation in the overall fraudulent scheme, the James Defendants and Beste played a key role in the organization and operation of Retirement Value. For example:

A. The James Defendants and Beste assisted in the formation of RV, by determining the state of organization, the name of the company, and the decision to organize as a limited liability company;

B. The James Defendants and Beste identified the leading licensees from a competing firm and recruited these licensees to sell investments in life settlement contracts on behalf of Retirement Value;

C. The James Defendants and Beste were part of communications with licensees, and attended and spoke at licensee meetings;

D. The James Defendants and Beste assisted licensees in making sales including speaking to or otherwise communicating directly with potential investors;

E. The James Defendants and Beste were involved in managerial decisions, including the hiring and firing of employees, the promotion of employees, the retention of outside consultants and the use of materials to market the investments in life settlement contracts; and

F. The James Defendants provided Retirement Value a $5 million interest-free line of credit that was used to purchase life insurance policies from the James Defendants.

G. The James Defendants supplied the Midwest Medical life expectancy certificates that were used to promote the scheme.

82. The James Defendants and Beste were aware of legal and regulatory issues that affected the RSLIP Program. For example, the James Defendants and Beste were included on electronic mails and involved in discussions that addressed legal actions brought by or on behalf of law enforcement and regulatory agencies against companies engaging in the sale of investments in life settlement contracts, opinions and warnings by attorneys that the RSLIP Program was a security, and the treatment of the RSLIP Program by securities regulators in various states across the country. In addition, the James Defendants were aware of regulatory actions deeming similar investments to that offered by Retirement Value to be securities. Despite all of this Ron James repeatedly told Dick Gray not to needlessly worry about the "regulatory climate." All the while, the James Defendants knew full well that the regulatory authorities would find the RSLIPP was a security.

83. The James Defendants and Beste 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 and Beste knew the scheme depended on the shorter life expectancy calculation that could only be obtained from Midwest

Medical. The James Defendants and Beste continued to defend and promote the use of Midwest Medical despite knowing that the SEC had accused it of providing fraudulently short life expectancies and despite the fact that the Texas Department of Insurance had told Retirement Value that using Midwest Medical would be considered a deceptive act. The James Defendants and Beste knew that misrepresentations were being made to investors about Midwest Medical. Further, they encouraged Gray to continue to falsely promote Midwest Medical as a reputable and accurate provider of life expectancy calculations and to take steps to prevent potential investors from learning the truth about Midwest Medical.

84. The James Defendants, with significant assistance from Beste, were the key link in the chain between Retirement Value and Midwest Medical. They were well aware that Midwest Medical's life expectancy numbers were significantly shorter than those of reputable competitors. Yet, they made sure that Retirement Value used Midwest Medical and its fraudulent numbers in order to create a huge spread between what the James Defendants paid for the policies and what they were sold to Retirement Value for. The James Defendants and Beste recruited Gray to set up Retirement Value in order to create a larger market to sell the James Defendants' life insurance policies and to provide Beste a referral source for future institutional investors. The James Defendants and Beste also assisted Defendant Gray in misleading investors about the accuracy of the Midwest Medical's life expectancy estimates. James was Midwest Medical's dominant, if not only, client. As Dick Gray has subsequently admitted, James told him the scheme would never have worked without the lower numbers from Midwest Medical. The James Defendants and Beste knew that all along.

85. Many potential investors refused to invest with Retirement Value when their own research revealed Midwest Medical's reputation for underestimating life expectancies and

George Kindness' federal conviction. Retirement Value's use of Midwest Medical eventually affected the marketability of the RSLIP Program, and Gray therefore repeatedly requested that they use a different company to provide estimates of the life expectancies of insured. The James Defendants and Beste repeatedly defended Midwest Medical and insisted that Gray continue to use Midwest Medical to estimate the life expectancies of insureds. For example, Ronald James sent an electronic mail message to Gray and explained therein as follows:

> Your email has an almost plaintive tone to it....Mike Beste, Don James, and I have set you up with a business model that you have executed brilliantly. Your LE [life expectancy] provider is Midwest Medical.
>
> Don't change course in midstream, don't let the tail wag the dog, don't compromise a wildly successful business model for the fleeting promise of 'new reps' from a tail wagger with his own agenda
>
> **OR YOU WILL END UP ON THE WRONG SIDE OF THE RIVER**. (Emphasis in original).

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

87. The James Defendants used the understated life expectancies provided by Midwest Medical in order to inflate the price of the life insurance policies that they sold to Retirement Value. This scheme ensured that they were able to generate significant profits. For

example, the James Defendants bought policy number LFG006-103009-JC for $39,000 and then sold it to Retirement Value a few days later for $390,000. They bought policy number LLI899-102209-AT for $80,000 and then sold it to Retirement Value for $900,000 30 days later.

88. As referenced earlier in this petition, other firms estimated the life expectancies of insureds at or around the same time that Midwest Medical estimated the life expectancies of the same insureds. The evaluations by other firms were 2.5 times longer than those estimated by Midwest Medical. Ron James ultimately told Gray that "the math won't work with any other LE provider," or words to that effect.

89. Beginning no later than September 2009 and continuing to March 2010, the James Defendants paid Beste 1.5% of the face value of each life insurance policy sold to Retirement Value or at least $600,000. Retirement Value also paid an additional $50,000 to Beste.

90. The James Defendants realized at least $13.8 million in profit derived from the sale of thirty-nine life insurance policies to Retirement Value. Moreover, the James Defendants may have earned as much as $20 million from the sale of these and other life insurance policies to Retirement Value.

V. Additional Facts Concerning the Licensees

A. The Licensees Had Been Put on Notice

91. 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 broker-dealer representatives – 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 policies 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.

92. 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 policies, 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."

93. In addition to warnings from NASD, the North American Securities Administrators Association listed viatical and life settlement programs as one its top 10 investment scams.

94. All of these warnings were certainly prophetic with respect to Retirement Value. Unfortunately, the Licensees ignored them. Frankly, though, none of this is rockct 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.

95. 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 an 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

96. 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.

97. 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, which Licensees could attend live or watch on DVDs. 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 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

98. 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.

99. 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.

100. 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.

101. 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.

102. 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." Beste 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."

103. 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 Beste 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 lost

several sales as a result of investors learning about Midwest Medical and its legal issues on their own.

104. 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.

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

VI. Damages

110. 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.

111. Defendants, purposefully ignoring common sense and decency, not to mention their legal duties to Retirement Value and the investors, caused all of this harm. Defendants 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 many times what they were really worth. Beste was getting 1.5% of the face amount of each of those policies. 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.

112. The trial court ordered the Receiver to "effect fair restitution if possible, from assets under control of the Receiver, according to a plan to be approved by the Court after a diligent investigation has been made into the identity of the investor-victims, the amounts they paid to Defendants Retirement Value or Gray, any amounts already paid by Defendants Retirement Value or Gray to the investor-victims, and the circumstances under which their dealings with Retirement Value or Gray arose." The court also ordered "Retirement Value to make restitution in the amount of $77.6 million to persons who purchased the unregistered securities." (2/21/13 Order on Plaintiff's Motion for Partial Summary Judgment Against Defendant Retirement Value, LLC.) The Receiver is thus required to provide restitution to the investors on a dollar for dollar basis, if possible, to the full amount of money each investor invested. Thus, the Receiver is seeking in damages the full amount the investors have provided to Retirement Value, plus pre- and post-judgment interest, attorneys' fees, and court costs, and less offsets.

113. The investors invested a total of approximately $77.6 with Retirement Value. Retirement Value was placed into Receivership on May 5, 2010 and no further investor money was taken after that date. Interest at the legal rate of 6.00% from May 5, 2010 to March 1, 2013 is $13,151,610. Attorneys' fees are 37.5% of the total damages, or $34,031,854. The

Receivership Estate has recovered approximately $2,285,900.59 gross from settling defendants. Thus, damages, less credit for settling defendants as of March 1, 2013, total to approximately $122,497,564. Interest continues to accrue. In the event the court determines that the present value of the policies on hand should be deducted from the total damages, that amount is approximately $8,482,673 as of the current trial setting in October 2013.

114. The Conspiring Defendants – as identified below, and which includes the James Defendants and Beste -- are jointly and severally liable for the full amount that Retirement Value has been ordered to pay in restitution to investors. All Licensee Defendants who are not also Conspiring Defendants are liable for the total amount of commission they received.

115. In the alternative, the Conspiring Defendants are jointly and severally liable for the out of pocket expenses of Retirement Value, or approximately $54 million plus interest, attorneys' fees and the costs of the receivership. In the further alternative, all Conspiring Defendants who are Licensees are liable for the total amount of commission they each received.

116. As to all Defendants, in addition to damages, the Receiver also seeks punitive damages, court costs, pre- and post-judgment interest, and attorneys' fees in amounts to be determined by the trier of fact.

VII. Retirement Value was Insolvent

117. 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.

118. 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.

119. 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.

120. 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.

121. 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. Furthermore, Retirement Value's model made no allowance for the payment of taxes on the proceeds of the policies when they matured.

122. 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.

123. 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, Beste and the James Defendants were fully aware that the Midwest Medical calculations were unreasonably short. Retirement Value's officers and employees agreed to overpay the James Defendants for their assistance in creating the fraudulent scheme.

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

125. Of the $77 million that Retirement Value obtained as loans from investors, Retirement Value diverted $5.5 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)	181,727.97
Catherine Gray (2009-10)	27,083.33
Dick Gray, Licensee	31,246
Total	**$2,978,257.30**

Wendy Rogers	
Dividends (10/6/09 to 3/5/10)	$688,000
2010 Tax Prepayment	149,800
Wendy Rogers salary (2009-10)	110,440.95
Wendy Rogers, Licensee	12,300
Total	**$960,540.95**

Bruce Collins	
Disbursements from Income Statement (2010)	$81,500
B Collins, Licensee	43,390
Collins Marketing, Licensee	469,799
Total	**$594,689.00**

David and Elizabeth Gray	
Disbursements from Income Statement (2010)	$364,543.32
Dividends (2009)	579,307
Commissions	1,500
Total	**$945,350.32**

126. 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.

127. 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.

128. 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 THE THIRD-PARTY DEFENDANTS

VIII. Breach of Fiduciary Duty, Conspiracy to Breach Fiduciary Duty, and Aiding and Abetting Breach of Fiduciary Duty

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

130. Gray and Rogers and the other officers and employees of Retirement Value owed Retirement Value a fiduciary duty. All of the acts of Gray and Rogers complained of herein were committed by each in bad faith and not in the exercise of reasonable business judgment.

Gray and Rogers willfully 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 violate the Texas Deceptive Trade Practices Act;

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

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

g. 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;

h. 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;

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

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

k. 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;

l. 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

m. 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.

131. The Licensees, as agents for Retirement Value, also owed Retirement Value a fiduciary duty. The James Defendants and Beste also owed Retirement Value a fiduciary duty by virtue of their special relationship with Retirement Value and by virtue of the fact they were effectively partners or members of a joint venture with Gray or Retirement Value. 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, but did not do so and breached their fiduciary duties as a result.

132. Ronald James, Donald James, James Settlement Services, Michael Beste, Milkie/Ferguson Investments, Inc., Edward Milkie, Dan Levin, Manny Aizen, Scott Schroeder, Marco Lopez, Gallagher Financial Group, Inc., W. Neil "Doc" Gallagher, Ronald Coleman, Steve Feeken, Wesley Davidson, Senior Retirement Planners, LLC, James Poe, Fellowship Financial, LLC, Michael Eastham, Terry Pipenhagen, Estate Protection Planning Corporation, Salvatore Magaraci, Secured Financial Strategies, LLC, Michael Woods, Reid Thorburn, Brian Cervenka, Niche Investment Group, PC&S, LLC, Shawn Cornett, Damien Pechacek, Mike Ahlers, Razor Financial Services, LLC, James Ikey, Bridy Ikey, Global One Direct, David Shields, First Covenant Financial Partners, LLC, Paul Brost, Senior Texan Estate Planning, and William Evans (the "Conspiring Defendants") entered into an agreement to cause Gray, Rogers, the Licensees (including those who have settled), the James Defendants, and Beste 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 Gray about setting up the scheme and continued at least until Retirement Value was put in receivership. Ronald James and Gray planned all along

to pin the liabilities on Retirement Value while they, and the other Conspiring Defendants, enriched themselves by taking commissions, fees and other payments out on the front end.

133. Ronald James and Gray, with the help and agreement of the other Conspiring 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, and making material omissions. They also illegally sold unregistered securities to the investor victims and engaged in the other improper acts and omissions described herein. Those actions and omissions were in breach of the fiduciary duties that were owed to Retirement Value.

134. The Conspiring Defendants knew of the false and misleading statements, and material omissions, and the other improper acts and omissions described herein. They also knew that the RSLIPP was an unregistered security. The object of the conspiracy was to sell the RSLIPP through a series of false and misleading statements, and material omissions. All Conspiring Defendants had a meeting of the minds and agreed to this common object and course of action. In the furtherance of the unlawful object, the overt acts herein described were committed, including the sale of the RSLIPP and the resulting profits enjoyed by conspirators. The Conspiring Defendants all benefitted while Retirement Value was left holding the bag.

135. Gray, Rogers, other officers, employees, and agents (including Licensees) of Retirement Value, the James Defendants and Beste, and all of the Defendants (including Conspiring Defendants) violated their fiduciary duties to Retirement Value:

a. By violating the Texas Securities Act, resulting in liability for Retirement Value;

b. By violating the Texas Deceptive Trade Practices Act, resulting in liability for Retirement Value;

c. By "gaining through the sale of a security of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be

unconscionable" and engaging in a scheme to obtain such profit, such acts defined as fraud in violation of the Texas Securities Act (Tex. Civ. Stat. Ann. Art. 581-4(F);

d. By failing to ensure the transactions in question were fair and equitable to Retirement Value;

e. By failing to make reasonable use of the confidence that Retirement Value placed in them;

f. By failing to act in the utmost good faith and exercise the most scrupulous honesty toward Retirement Value;

g. By failing to place the interests of RV before their own;

h. By using the advantage of their position to gain benefit for themselves, at the expense of RV;

i. By placing themselves in a position where their self-interest might conflict with their obligations as fiduciaries; and

j. By failing to fully and fairly disclose all important information to RV concerning the transactions.

136. The James Defendants and Beste also violated their fiduciary duties in at least the following additional respects:

a. By selling the policies to Retirement Value at grossly inflated prices knowing, as they did, of the problems described above with the life expectancy reports from Midwest Medical; and

b. By failing to disclose the very real and significant risk that the entire program would be shut down by regulators as involving the illegal sale of a security.

137. As a result of the breaches of fiduciary duties described above, Gray, Rogers, other officers, employees, and agents (including Licensees) of Retirement Value, the James Defendants and Beste, and all of the Defendants (including Conspiring Defendants) 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.

138. The Conspiring Defendants engaged in affirmative acts to further the goals of the conspiracy. The Conspiring 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. Chapter 33 of the Texas Civil Practices & Remedies Code is inapplicable to civil conspiracy. The Conspiring Defendants are liable for the actions of the other conspirators regardless of whether such Defendants were aware of those actions or not, because those actions were taken in furtherance of the conspiracy.

139. The Conspiring Defendants also aided and abetted Gray, Rogers, the other officers, employees, and agents of Retirement Value in breaching their fiduciary duties owed to Retirement Value. The Conspiring Defendants knowingly participated in, assisted, encouraged, and aided and abetted the breach of fiduciary duties of Gray, Rogers, and the other officers, employees, and agents of Retirement Value by helping them violate the Texas Securities Act and Texas Deceptive Trade Practices Act and engage in the acts and omissions described above, resulting in damages to Retirement Value. The Conspiring Defendants were aware of the existence of a fiduciary relationship between Gray, Rogers, the other officers, employees and agents of Retirement Value, and the other Conspiring Defendants, on the one hand, and Retirement Value, on the other, and were aware of their own participation in the former's breach of fiduciary duty. The Conspiring Defendants intended to assist these parties in breaching their fiduciary duties, and their aiding or abetting was a substantial factor in such breach of fiduciary duties. The Conspiring Defendants provided substantial assistance to the other conspirators in breaching fiduciary duties owed to Retirement Value by the acts and omissions described above. The acts and omissions of the Conspiring Defendants in aiding and abetting the other

conspirators were not privileged. The Conspiring Defendants possessed general awareness that their role was part of an overall activity that was improper and aided and abetted Gray and others in the face of a perceived risk that their assistance would facilitate untruthful or illegal activity. The Conspiring Defendants also had actual awareness of Gray and others conspirators' wrongdoing conducted through Retirement Value. The Conspiring Defendants acted with reckless disregard for the truth of the representations made by Gray and other Conspiring Defendants to investors. In addition to being liable for their own breach of fiduciary duties owed to Retirement Value, and liable as co-conspirators, the Conspiring Defendants are also jointly and severally liable for the breach of fiduciary duties perpetrated by Gray, Rogers, and the other officers, employees, and agents of Retirement Value because they aided and abetted such breach of fiduciary duties.

140. Defendants' breach of fiduciary duties, Gray's and Rogers' breach of fiduciary duties, and the Conspiring Defendants' aiding and abetting breach of fiduciary duties and participation in the conspiracy to breach fiduciary duties proximately caused 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. The Conspiring Defendants are thus jointly and severally liable for all of those damages, without regard to whether such 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 the Conspiring Defendants for the harm caused by their breach of fiduciary duty, conspiracy to breach fiduciary duty, and aiding and abetting breach of fiduciary duty. *See* Section VI, *Damages*, incorporated herein by reference.

IX. 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.

146. The Licensees are liable to Retirement Value through the indemnity clause for the Licensees' breaches of the Licensee Agreement. In the alternative that the Licensee Agreement is found to be unenforceable or subject to rescission, the Licensees are required to return their ill-gotten commissions to Retirement Value.

A. Sale of Unregistered Securities

147. 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.

148. 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.

149. 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.

150. 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.

151. 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.

152. 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.

153. 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.

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.

B. 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 therefore, are 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 broker-dealer representatives were violating FINRA rules in selling these securities.

i. 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.

C. 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, and thereby breached the Licensee Agreements.

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.

D. 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 representative (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 representative'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 representative lacks essential information as to an issuer or its securities, the representative is obligated to disclose that fact as well as the risks arising from the representative'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.

E. 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. The Licensees Defendants who are also Conspiring Defendants are jointly and severally liable for the full amount that Retirement Value has been ordered to pay in restitution to investors. All Licensee Defendants who are not also Conspiring Defendants are liable for the total amount of commission they received. *See* Section VI, *Damages*, incorporated herein by reference.

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.

X. 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 the Licensees even though it had no obligation to do so and the Licensees had no right to be paid. Accordingly, the Licensees are in possession of funds belonging to Retirement Value under circumstances in which it would be inequitable for the Licensees to retain those funds. The Receiver is therefore entitled to return of the $1,729,342.62 from Milkie/Ferguson, $1,413,114.40 from Gallagher Financial Group, Inc., $485,564.13 from Sr. Retirement Planners, LLC, $421,517.05 from Fellowship Financial, LLC, $388,589.11 from Estate Protection Planning Corporation, $300,782.47 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, $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, $76,524.41 from Mike Givilancz, Jr., $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, $5,600 from David Rice, $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 James Defendants, Beste or the other Defendants, including but not limited to any profits, sales proceeds, fees, commissions, salaries and bonuses. The James Defendants and Beste hold money that in equity and good conscience belongs to the receivership estate. The James Defendants and Beste knew that the LE's provided my Midwest Medical were unreliable and short. The James Defendants failed to disclose (and encouraged Gray and others at Retirement Value not to disclose) that market life expectancies prepared by reputable companies were much longer. The James Defendants used these understated life expectancies provided by Midwest Medical in order to inflate the price of the life insurance policies that they sold to Retirement Value with the knowledge and intent that these fraudulent valuations would be passed on to the investors. These acts ensured that the scheme would generate significant money for the schemers. The sales price between James Settlement Services and Retirement Value was merely a device to divide the profits of the scheme among the conspirators. It was set by the James Defendants in such a manner that they would be able to pay Beste his share of the proceeds while retaining the lion's share for themselves. For example, the James Defendants bought policy number LFG006-103009-JC for $39,000 and then sold it to Retirement Value a few days later for $390,000. They bought policy number LL1899-102209-AT for $80,000 and then sold it to Retirement Value for $900,000 30 days later. The price paid by the James Defendants reflects a market transaction and a market price. The price at which the policies were transferred to Retirement Value was

fraudulent designed to obtain additional funds from the investors which would be split among the conspirators.

180. The James Defendants grossly overcharged RV and enriched themselves by using unreliable life expectancy reports from Midwest Medical that consistently reported life expectancies that were less than half of what more legitimate providers calculated. The James Defendants and Beste knew that the use of a different firm to provide more accurate life expectancies of insureds would preclude the James Defendants from earning 300% to 1,000% mark-up on policies sold, so they did not disclose those more legitimate reports. As referenced earlier in this petition, other firms estimated the life expectancies of insureds at or around the same time that Midwest Medical estimated the life expectancies of the same insureds. The evaluations by other firms were 2.5 times longer than those estimated by Midwest Medical. Ron James ultimately told Gray that "the math won't work with any other LE provider," or words to that effect. The math certainly worked for James and Beste, James made an estimated $19 to $20 million in profit and Beste made an estimated $650,000 as a result of the scheme, earning 1.5% of the face value of every policy James sold to RV and receiving another $50,000 from RV. This money should, in equity, be returned to the receivership estate. 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.

XI. Fraudulent Transfer

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

182. 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., $485,564.13 to Sr. Retirement Planners, LLC, $421,517.05 to Fellowship

Financial, LLC, $388,589.11 to Estate Protection Planning Corporation, $300,782.47 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, $132,879.96 to PC&S, LLC, $123,957.75 to Global One Direct, LLC, $119,009.91 to Steven Feeken, $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, $76,524.41 to Mike Givilancz, Jr., $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, $5,600 to David Rice, $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.

183. Also out of the $77 million received from investors, Retirement Value paid $28,902,092 to the James Defendants for the purchase of policies. The prices paid by Retirement Value are not reasonably related to the actual market value of the policies it purchased. Instead, the James Defendants artificially inflated the "price" of the policies using unreliable and short LE's from Midwest Medical. The artificial increase created by the James Defendants' manipulation of the LEs allowed the James Defendants to receive up to 1000% mark up. For example, the James Defendants purchased a policy at its market value of $39,000 and then sold it to RV a few days later for $390,000 with the knowledge and intent that this false valuation

would be passed on to the investors. In this manner, the James Defendants received large sums of money for their participation in the Retirement Value scheme.

184. As discussed above, the prices paid to the James Defendants for the policies they sold Retirement Value were grossly excessive. The "sales price" between Retirement Value and the James Defendants exceeded the fair market value of the policies by $19-$20 million. Moreover, the sales transaction between James Settlement and Retirement Value was nothing more than a subterfuge to remove money from Retirement Value and to place it outside the reach of the investors who were being defrauded.

185. Beste received, indirectly, at least $650,000 from Retirement Value. These payments are nothing more than Beste's take from the fraudulent scheme. In any event, Beste provided no value for the $650,000 he received. His role was to assist and guide Retirement Value, its officers and licensees in the commission of fraud – a "service" which is legally valueless. The payment of millions of dollars paid to Defendants, including the James Defendants and Beste, 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, including the James Defendants and Beste, were all insiders. The Receiver is therefore entitled to avoid these transfers. The Receiver seeks the return of any payments made

to Defendants, including the James Defendants and Beste, and for a constructive trust to be imposed on any property acquired by Defendants, including the James Defendants and Beste, with the proceeds of the payments.

186. The Receiver is also entitled to avoid all payments to Defendants, including the James Defendants and Beste, including but not limited to any profits, sales proceeds, fees, commissions, salaries and bonuses, as fraudulent transfers.

187. 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.

XII. Negligence

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

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

190. As described in the petition, above, the James Defendants and Beste assumed an intimate role in RV's creation and operations and owed Retirement Value a duty to use reasonable care in the performance of their duties.

191. James and Beste set Gray up with the RV business model. They knew Gray lacked the experience and knowledge of the life settlement business to run RV on his own. That is why they chose him. They wanted to have someone running RV they could influence and control and they exercised that influence and control regularly. Gray and Rogers looked to Beste

and James for advice on all important aspects of Retirement Value. Beste and James gave them advice, which RV followed. In the words of Dick Gray, Beste's role was "hands on, day-to-day." "Ron James, Don James, and Mike Beste had an intimate, direct hand to play in virtually everything Retirement Value did." "Everything that had to do with the company, Mike Beste and Ron James knew about." Gray further testified: "Ron James was the guru who knew how to do this, it mattered greatly to me what he advised me. And I can't think of very many things he proposed to me that I opposed or didn't implement." Ron James had "a great deal of operational control without any formal equity." Retirement Value "repeatedly defer[red] to Ron James and rel[ied] heavily on Ron James and what he recommended." Gray testified: "[I]f Ron James sneezed, I caught cold." Beste and the James Defendants were Retirement Value's partners who played an intimate role in Retirement Value's creation and operation.

192. The James Defendants and Beste designed RV's business model (including relying on Midwest Medical LE's), helped recruit licensees, assisted licensees in making sales, provided a line of credit to RV to purchase policies (albeit at a greatly inflated price), and were involved in managerial decisions, including the hiring and firing of employees, the promotion of employees, the retention of outside consultants, and the use of materials to market the investments.

193. Accepting these responsibilities, the James Defendants and Beste had a duty to use reasonable care in carrying out these responsibilities. For example, they chose to be involved in the creation of marketing materials for the investments and therefore had a duty to use reasonable care with regard to the preparation of marketing materials. They breached this duty by failing to correct RV when the marketing material contained material misstatements and

omissions, and in fact, the James Defendants encouraged and tricked RV into making misstatements and omissions.

194. As another example, Ronald James lied to Dick Gray about the meaning of the Hess Report, a deliberate misrepresentation that Gray passed on to RV's licensees. 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. Ron James falsely claimed to RV that the Hess Report study showed that Midwest Medical had an actual to expected performance of 92%. In doing so, James breached his duty of reasonable care owed to RV.

195. The James Defendants' and Beste's negligence was the proximate cause of both actual and consequential damages to the Receivership Estate.

XIII. Punitive Damages

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

197. 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.

198. 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.

XIV. Recovery of Attorneys' Fees

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

200. 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.

201. 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.

202. 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 and the Texas Deceptive Trade Practices Act by all Defendants and by Defendants' aiding in and conspiracy to commit fraud and securities fraud.

XV. Fraud

203. 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. The Receiver is also entitled to bring a suit for fraud on behalf of Retirement Value against the James Defendants and Beste based on their wrongful conduct described herein, particularly that conduct surrounding Midwest Medical.

204. 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 and Beste for the sums they were paid on the insurance policies or otherwise.

205. 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.

XVI. Fraudulent Transfer by Reid Thorburn, Barbara Thorburn, and the Family Trust

206. Reid Thorburn went to work making himself judgment proof almost immediately upon becoming aware of the investigation into Retirement Value by the state regulatory authorities. He and his wife, Barbara H. Thorburn created "The Reid H. & Barbara H. Thorburn Irrevocable Family Trust" on March 1, 2010 for the purported benefit of his four adult children. Mr. Thorburn named himself as trustee with his wife as the successor trustee. The trust was established with an initial contribution of $1.00. Then, on May 11, 2010, less than one week after the State of Texas filed this suit against Retirement Value and shut it down, Mr. Thorburn transferred his interest in two time share condominiums in Vail, Colorado, a half-acre lot on the Guadalupe River, and an oil and gas lease that was paying him a monthly royalty into the trust. These assets constituted all of the material assets Mr. Thorburn owned that were not judgment proof. Mr. Thorburn had also met with the Receiver on May 6 or 7, 2010.

207. Reid Thorburn, Barbara H. Thorburn, and the Reid H. & Barbara H. Thorburn Irrevocable Family Trust ("Thorburn Defendants") made one or more transfers of assets that were fraudulent as to Retirement Value and made in violation of the Texas Uniform Fraudulent Transfer Act ("TUFTA"), Tex. Bus. & Comm. Code § 24.001 *et seq.* The Thornburn Defendants made the transfers with the actual intent to hinder, delay or defraud creditors. The

Thornburn Defendants conspired and aided and abetted the fraudulent transfer described herein and are jointly and severally liable to the Receiver. The Receiver seeks the avoidance of the fraudulent transfers or obligations, damages, and any other remedies available under Tex. Bus. & Comm. Code § 24.008 as the circumstances may require including but not limited to an injunction prohibiting further transfer of assets by the debtor or transferee, the appointment of a receiver to take charge of assets transferred or other property of the transferee, and attachment or other provisional remedy against the asset transferred or other property of the transferee. The Receiver seeks cancellation of the documents evidencing transfer as well as the avoidance of the transfer of the following, without limitation: (i) Time Span Estate No. 17 in unit 5202 of Evergreen at Streamside, Eagle County, Colorado; (ii) Time Span Estate No. 37 in unit 5408 of Evergreen at Streamside, Eagle County, Colorado; (iii) a 0.4594-acre tract, located at 446 Riverview, Guadalupe County, Texas, and (iv) an oil and gas lease covering 43.019 acre tract, James Ware Survey A-859, Johnson County, Texas. These transfers should be declared void as to Retirement Value and set aside. The Receiver also seeks recovery of his costs and attorney's fees pursuant to Tex. Bus. & Comm. Code § 24.013.

IN PARI DELICTO IS NOT A DEFENSE

208. *In pari delicto* is no defense to the Receiver's claims. Under Texas law, the doctrine of *in pari delicto* does not apply to receivers. In the alternative, the application of *in pari delicto* would be inequitable and would violate public policy, *in pari delicto* does not apply because the fraudsters' conduct cannot be imputed to RV under the adverse interest exception, and *in pari delicto* does not apply because the sole actor exception to the adverse interest exception does not apply because the fraudsters were never "sole" actors.

JURY DEMAND

209. The Receiver requests a jury trial.

CONDITIONS PRECEDENT

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

NO FEDERAL CLAIMS

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

212. The conduct described above was the proximate cause of at least $77,000,000 in damages to Retirement Value and/or the Receivership estate.

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 damages, avoidance and cancellation of fraudulent transfers as described herein, 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 foregoing document has been forwarded to all counsel of record herein by:

- ☒ U.S. Mail, First Class (as to Ackels, Lanahan, Williams, and D'Agostino only)
- ☐ Certified Mail (return receipt requested)
- ☐ Facsimile
- ☐ Federal Express Delivery
- ☐ Hand Delivery
- ☒ Electronic Service

on this the 18th day of March, 2013, to wit:

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