

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

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
RETIREMENT VALUE, LLC,	§	
RICHARD H. "DICK" GRAY, HILL	§	
COUNTRY FUNDING, LLC, a	§	
Texas Limited Liability Company,	§	
HILL COUNTRY FUNDING, a Nevada	§	TRAVIS COUNTY, TEXAS
Limited Liability Company, and	§	
WENDY ROGERS,	§	
	§	
Defendants,	§	
	§	
AND	§	
	§	
KIESLING, PORTER, KIESLING, &	§	
FREE, P.C.,	§	
	§	
Relief Defendant.	§	126 th JUDICIAL DISTRICT

**RECEIVER'S RESPONSE TO MOTION
FOR LEAVE TO FILE PLEA IN INTERVENTION**

Eduardo S. Espinosa, in his capacity as the court-appointed Receiver of Retirement Value, LLC, files his Response to the Motion for Leave to file Plea in Intervention.

SUMMARY

We are very close to ending this phase of the Receivership and moving forward with the next phase – distributing money to the investors and collecting on claims against the various players involved in this scam. At no little expense, the Receiver has prepared a Plan of Distribution that will repay the investors between 80% and 120% of their investment over time – an extraordinary result in a setting where a 40% recovery is usually considered to be a good result. At the very last minute, a group of six investors seeks to intervene with the stated purpose of redoing all that has been done of the last fifteen months.

As the Court is aware, there are three groups of Intervenors¹ who have been actively involved in this case for months. There is simply no need for a fourth group of investors to jump in at the last minute. The estate should not be put in the position of incurring the additional expense of re-litigating this case for the benefit of a small group of investors who elected to sit on their rights.

If this new group of investors wishes to assert an objection to the Plan of Distribution to be heard on August 15th with the rest of the Plan, the Receiver has no objection to them being allowed to do so. The Receiver, however, adamantly opposes allowing this fourth group of investors to hijack these proceedings at the last minute by filing a new set of claims, reopening discovery and otherwise re-litigating this case.

BACKGROUND

Fifteen months ago, the Receiver was charged by this Court with the responsibility “to effect fair restitution if possible, from assets under control of the Receiver, according to a plan to be approved by the Court.” Agreed TI at 6. As ordered, the Receiver made a diligent investigation into the identity of the investors, the amounts paid to Retirement Value and the circumstances of their dealings with Retirement Value. *Id.* Based on his investigation, the Receiver proposed a Plan of Distribution that would pay the investors on a pro rata basis between 80% and 120% of their investment with a 100% return being the most likely outcome. Because it requires that the policies owned by Retirement Value be held to maturity, the Plan will require many years to complete. However, the Receiver expects to make interim distributions to the investors with \$7.7 million to be distributed this year.

¹ Three sets of investors have timely intervened in this case: (1) Gary Cain, Barry Edelstein and Qvest III Master Fund, LLC intervened on July 30, 2010; (2) Grant W. Bejcek and Opal E. Bejcek intervened on October 25, 2010; and (3) Ladell Harrison, on behalf of Matthew C. Allen, Jr., Teddie J. Allen and the Matthew and Teddie Allen Charitable Remainder Annuity Trust intervened on January 21, 2011.

The Receiver's Plan is the result of nearly 18 months of litigation involving the State, three groups of investors who have already intervened and the Defendants. The Receiver has provided extensive discovery to the existing parties. He has produced copies of many thousands of pages of documents and gigabytes of electronic data (including a complete set of financial records for Retirement Value and Kiesling Porter). He has also made available to the parties some sixty boxes of records recovered from Retirement Value's offices as well as the most recent policy illustrations and life expectancy certificates on the insureds.

He and his counsel have also had extensive discussions with the State, the Intervenor and their counsel. These discussions began early in the case and have continued to this day. They have covered topics ranging from the nature of the investment, the state of the portfolio, Retirement Value's financial condition, the assets available to pay premiums, consolidation of the portfolio and a plan of distribution.

The Court has heard and denied a motion by the Bejceks that covered many of the issues at stake in the Receiver's Plan. The Bejceks moved the Court to require the Receiver to refund to them the full amount of their investment on the ground that their money remained in a segregated account and had not been used to buy policies, pay premiums or "compensate" the members of the scheme. In response, the Receiver argued that the controlling law required that all investors be treated ratably and disallowed the type of constructive trust that the Bejceks sought to impose. These very issues are at issue in the proposed Plan.

Having gone through more than a year of investigation, discovery, consultation, briefing and argument, we are nearing a point of closure. One phase of this case is nearing an end and another beginning. The Receiver has found a way to return most, if not all, of the investors' money; albeit over time. He is ready to begin distributions. Contingency fee counsel has been

retained to pursue the Receiver's claims against licensees and other third parties. A special receiver has been appointed to evaluate claims against Wells Fargo.

As we are approaching the finish line, a group of six investors, Frank Marlow, Richard Stafford, Hugh Dunn, David L. Hayden, Susan K. Hayden and Jack S. Hicks (the "Late Comers") move for leave to file their Plea in Intervention (the "Motion") seeking class treatment in order to re-litigate all that's occurred over the last fifteen months. The Receiver objects to the Intervenor's Motion because it was filed over two and a half months after the May 9, 2011 deadline for intervening and a year after the Receiver's Initial Report in which consolidation of the portfolio first was discussed; the Intervenor improperly seek to represent classes of investors that already are represented by other parties to this suit and which have interests adverse to their own; and the Intervenor are re-urging arguments made and decided adversely to the Bejcek Intervenor earlier this year.

ARGUMENT

I. The Intervenor has not demonstrated good cause to grant their Motion for Leave.

The Intervenor's fail to demonstrate that good cause exists to grant their motion at this late date. The Intervenor's motion comes two and a half months after the court-ordered deadline for intervention in this matter. The Intervenor do not explain their delay in seeking to intervene in this case, pointing only to the posting of the draft Plan of Distribution on May 18, 2011, after the May 9, 2011 court-ordered intervention deadline. Although the Intervenor now seek to challenge the Receiver's Plan of Distribution, information regarding the Receiver's plan to consolidate the portfolio has been available to all investors for over a year.

Over the course of the last year, the Receiver has repeatedly raised the issue of consolidating the portfolio.

- July 29, 2010, Receiver's Initial Report. "By collapsing the portfolio's segregated structure into a unified portfolio, we may be able to overcome some of the shortfalls in its premium reserves and maximize the return to the investors based on sound actuarial and management principals." Receiver's Initial Report at 27-28.
- August 11, 2010, Receiver's Webinar for Investors. The Receiver again discussed the need to collapse the portfolio and move investors from particular policies to a pro rata share of the entire estate in order to eliminate inequities and maximize the return to the investors.
- September 27, 2010, Receiver's Motion to Consolidate the Portfolio (posted on the Receiver's website).
- May 9, 2011, Receiver's April 30, 2011 Report. The Receiver provided an extensive discussion of the pros and cons of consolidating the portfolio and announced a proposed plan of distribution.
- May 18, 2011, Proposed Plan of Distribution (posted on the Receiver's website).

The Late Comers should not be heard to complain about not having information before the May 9, 2011 deadline to intervene because the Receiver publicized his intent to consolidate the portfolio since almost the beginning of this case.

II. The Late Comers Will Add Nothing but Additional Delay and Expense

The interests of the Late Comers are already adequately represented by the existing Intervenors. Each of the Late Comers is an investor in policy PLI140. Several of the existing Intervenors are also PLI140 investors. Intervenor Qvest III Master Fund, LLC is the largest single investor accounting for approximately 6% of the total amount invested. It is also the largest single investor in PLI140. Intervenors Gary Cain and Ladell Harrison are also PLI140 investors.

All of the Intervenors, including Cain, Harrison and Qvest III Master Fund, have been active participants in the case. They have requested and received discovery, attended mediations, taken depositions and discussed all of the issues involved in the case with the Receiver. By no means have they been aligned with the Receiver. They have litigated with the

Receiver as necessary and their input has been reflected in the decisions made by the Receiver.

There is simply no good reason – certainly the Late Comers offer none – to repeat what has occurred in this case over the last 15 months. Discovery has been taken, discussions held and plans developed with the input of the existing parties. The investors should not be put through the expense of having to this all over again with a dissident group of investors who sat on their hands for a full year.

We would also note that the Late Comers' interests are adverse to those of the non-PLI140 investors and to those of the March investors, such as the Bejceks. If the Bejceks were allowed a preferential distribution, then less money would be available to pay the claims of the non-PLI140 investors and the claims of the PLI140 investors that arise out of other policies. By the same token, immediate payment of the PLI140 investors would result in substantially smaller payment to the non-PLI140 investors.

CONCLUSION

The Intervenors' request to file their Plea in Intervention and Request for Class Action is untimely, they have not demonstrated good cause to support their Motion for Leave, improperly request to represent subclasses of investors already represented in this case and seek relief already denied to other intervenors. Accordingly, the Receiver respectfully requests that the Court deny the Intervenors' Motion for Leave to file Plea in Intervention and Request for Class Action.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above pleading has been served on the following via e-mail and certified mail return receipt requested, on this the 8th day of August 2011:

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