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COUNSEL FOR PETITIONING CREDITORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
§ **CASE NO. 11-35165-SGJ-7**
RETIREMENT VALUE, LLC, §
§ **INVOLUNTARY CHAPTER 7**
Debtor. § **PROCEEDING**
§

PETITIONING CREDITORS’ MOTION TO CONVERT CASE TO CHAPTER 11

TO THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Richard Stafford, Frank Marlow, Yvonne Staley, and Hugh Dunn (together, the “Petitioning Creditors”) hereby file this Motion to Convert Case to Chapter 11 (the “Motion to Convert”) pursuant to 11 U.S.C. § 706(b) and Fed. R. Bankr. P. 1017 and would respectfully show the Court as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for relief requested herein is Section 706(b) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 1017.

II. PROCEDURAL BACKGROUND

3. On August 12, 2011, the Petitioning Creditors filed an involuntary bankruptcy petition against Retirement Value, LLC (the “Alleged Debtor”) under Chapter 7, commencing this involuntary bankruptcy case.

4. Contemporaneously with the filing of the involuntary petition, the Petitioning Creditors filed their Emergency Motion for Appointment of Chapter 7 Interim Trustee (as amended, the “Trustee Motion”) [Docket No. 2] seeking the appointment of an interim Chapter 7 trustee during the involuntary gap period under Section 303(g) of the Bankruptcy Code.

5. On August 19, 2011, the Petitioning Creditors filed an Amended Involuntary Petition purporting to change the Chapter under which the involuntary case was filed from Chapter 7 to Chapter 11 of the Bankruptcy Code.

6. Also on August 19, 2011, the Petitioning Creditors filed their Amended Emergency Motion for Appointment of Interim Trustee [Docket No. 22] seeking the appointment of an interim trustee under Section 1104 of the Bankruptcy Code.

7. On August 22, 2011, the Court held a hearing on the Petitioning Creditor’s Trustee Motion and the Receiver’s Expedited Motion for Interim and Final Relief Pursuant to 11 U.S.C. § 543(d) from Turnover of Property, or, Alternatively, for Abstention Pursuant to 11

U.S.C. § 305(a) (the “Relief Motion”) [Docket No. 17], at which hearing the Court carried consideration of the two motions to a continued setting on September 27, 2011.

III. FACTUAL BACKGROUND

A. The Retirement Value Business Model

8. Retirement Value, LLC was in the business of selling investment products based on life insurance policies that it purchased. Retirement Value received approximately \$77.6 million from more than 900 note holders, including the Petitioning Creditors, promising to repay them approximately \$125 million. The proceeds of the debt were used to acquire 48 insurance policies at a purchase price of approximately \$28 million and establish a premium reserve of approximately \$25 million.

9. Each of Retirement Value’s investment products was structured as a loan to Retirement Value, whereby, in exchange for the note holder’s promise to provide Retirement Value with funds to acquire life insurance policies, Retirement Value promised to pay a fixed sum of money upon the maturity of the life insurance policies. The amount that Retirement Value agreed to pay was tied to the calculated life expectancy of insureds under life insurance policies that Retirement Value purchased. In all instances, Retirement Value agreed to pay a return of 16.5% simple interest per year for the insured’s calculated life expectancy. The date on which the insured under the policy died set the date that the investment matured and the date upon which Retirement Value would be required to repay the loan. The loan’s maturity date did not affect the amount of money that Retirement Value was obligated to pay the note holder, except that note holders were entitled to a return of unused premiums, if any. Each note holder was allowed to allocate his or her investment so that it was matched with a rotating portfolio of life insurance policies maintained by Retirement Value.

B. The State Court Appointment of the Receiver

10. By selling unregistered investments in resale life insurance policies, Retirement Value allegedly violated the registration requirements of the Securities Act of 1933 and the Blue Sky Laws of Texas and the other states in which it sold investments, under which an investment in resale life insurance policies is considered to be a security.

11. In May 2010, the Texas State Securities Board issued a Cease and Desist Order halting all of Retirement Value's operations. On May 5, 2010, the 126th Judicial District Court of Travis County, Texas appointed Mr. Eduardo S. Espinosa, a Dallas attorney, as receiver over Retirement Value's estate (the "Receiver") pursuant to the First Amended Temporary Restraining Order and Order Appointing Receiver in the cause numbered D-1-GV-10-000454 and styled *State of Texas v. Retirement Value, LLC, Richard H. "Dick" Gray, and Bruce Collins, Defendants, and Keisling, Porter & Free, P.C., Relief Defendant* (the "Retirement Value Lawsuit"). The Receiver continued to serve as the court-appointed receiver over Retirement Value's assets under the Agreed Temporary Injunction Order entered in the Retirement Value Lawsuit on May 28, 2010 until the filing of the involuntary bankruptcy petition before this Court.

C. The Receiver's Management of Retirement Value's Assets & Proposed Plan of Reorganization

12. The Receiver was charged with the duty to: take control of Retirement Value's property, assets, books, records, and physical premises; conduct and manage the business affairs of Retirement Value; notify note holders; assist the State Securities Board and the State Attorney General in its investigations of Retirement Value's violations of applicable securities laws; and to effect fair restitution, if possible, from the assets under his control according to a plan to be approved by the Travis County court. The assets under the Receiver's control are comprised

almost exclusively of money paid by note holders, including the Petitioning Creditors, to purchase life insurance policies and pay premiums, augmented by the proceeds of a large insurance policy that matured after the appointment of the Receiver.

13. After conducting his investigations and publishing his results in reports filed on July 28, 2010 and April 30, 2011, the Receiver concluded that Retirement Value was insolvent.¹ See Affidavit of Eduardo S. Espinosa, dated July 29, 2011 (the “Espinosa Affidavit”), ¶7, attached hereto as **Exhibit A**.

14. The Receiver proposed a plan of reorganization (the “Plan”) in the Retirement Value Lawsuit that, among other things, seeks to reject key terms in the note holders’ loan agreements – including the coupling of the individual note holders’ contracts to pre-selected policy proceeds – and pay such note holders on a pro rata basis up to the amount of their claims, as funds become available for distribution. (Espinosa Affidavit, ¶19) A true and correct copy of the Receiver’s proposed Plan is attached hereto as **Exhibit B**. In explaining the effects of approving his proposed Plan, the Receiver specifically pronounced that “[n]o investor has an interest in or entitlement to the proceeds of any particular policy.” (Espinosa Affidavit, ¶19)

15. The Receiver’s Plan proposes to fund premium policy payments from existing reserves and proceeds from settlements obtained during the Receivership Lawsuit and make distributions to investors on a pro rata basis. The Receiver’s Plan does not contemplate an option for a buyer to purchase all or a portion of Retirement Value’s life insurance policy portfolio at a profit to the estate, and in fact, the Receiver failed to pursue offers made by various buyers because he considered them not to be credible.

¹ The Receiver continues to assert the Alleged Debtor’s insolvency. See Receiver’s Relief Motion, ¶21 (“The Alleged Debtor is insolvent.”).

16. The Petitioning Creditors believe that the value of Retirement Value's assets, particularly its portfolio of life insurance policies acquired with investor funds, may be better preserved for the benefit of Retirement Value's creditors if Retirement Value's involuntary bankruptcy case under Chapter 7 were converted to an involuntary bankruptcy case under Chapter 11. A Chapter 11 trustee will be better positioned to market Retirement Value's assets and entertain offers from qualified buyers to yield a higher return to the estate in the context of a controlled liquidation under Chapter 11, as opposed to an immediate liquidation under Chapter 7.

IV. ARGUMENT AND ANALYSIS

17. Section 706(b) of the Bankruptcy Code provides as follows:

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

11 U.S.C. §706(b) (emphasis added).

18. This Court may exercise its discretion to convert a case under Chapter 7 to a case under Chapter 11 where it finds that conversion will "most inure to the benefit of all parties in interest." *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1161 (5th Cir. 1988) (citing H.R. Rep. No. 595, 95 Cong., 1st Sess. at 380 (1977), reprinted in 1978 U.S. Code Cong. & Admin. News at 6336; *In re Graham*, 21 B.R. 235, 237 (Bank. N.D. Iowa W.D.1982)).

19. The benefits of conversion from Chapter 7 to Chapter 11 to all parties in interest warrant this Court's approval of the Petitioning Creditors' Motion to Convert. The unique nature of Retirement Value's assets does not lend itself to a quick liquidation at the hands of a Chapter 7 trustee. The Alleged Debtor's estate will realize significant gains if its assets are marketed according to the terms of a confirmed liquidation plan for a period of time sufficient to solicit the highest and best offers. There is also a benefit to the Alleged Debtor's estate if a court-approved

professional is allowed the opportunity to explore all potential avenues of repaying creditors that may have not received sufficient consideration by the Receiver.

20. Even the Receiver agrees, in his own pleadings, that a Chapter 7 liquidation would not return the benefit that a Chapter 11 liquidation could yield: “After analyzing the Alleged Debtor’s options, the Receiver adamantly disagrees that a fire-sale of the Alleged Debtor’s assets under chapter 7 of the Bankruptcy Code – including all the additional costs and delay associated with transitioning the estate to a new party – would benefit anyone.” (Receiver’s Relief Motion, ¶38)

WHEREFORE PREMISES CONSIDERED, the Petitioning Creditors request that this Court grant their Motion to Convert, enter an order converting this involuntary case from a case under Chapter 7 to a case under Chapter 11 of the Bankruptcy Code, and grant the Petitioning Creditors such other and further relief that they may show themselves to be entitled.

Dated: September 22, 2011.

Respectfully submitted,

/s/ Gerrit M. Pronske

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 22, 2011, I caused to be served the foregoing Motion upon the parties listed below via U.S. Mail and via the Court's electronic transmission service.

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