

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

STATE OF TEXAS,

Plaintiff,

v.

RETIREMENT VALUE, LLC,  
RICHARD H. "DICK" GRAY,  
HILL COUNTRY FUNDING, LLC, a  
Texas Limited Liability Company,  
HILL COUNTRY FUNDING, a  
Nevada Limited Liability Company, and  
WENDY ROGERS

Defendants,

AND

KIESLING, PORTER, KIESLING,  
& FREE, P.C.,

Relief Defendants.

IN THE DISTRICT COURT OF

126<sup>TH</sup> JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT:  
DEFENDANT WENDY ROGERS COMMITTED SECURITIES FRAUD**

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas, acting by and through its attorney of record, asks the Court to grant its motion for partial summary judgment because, as a matter of law, Defendant Wendy Rogers committed securities fraud.

**I. INTRODUCTION**

This case is an action by the State Securities Board (State) against Retirement Value and one of its officers, Wendy Rogers, for violations of the Texas Securities Act. This motion addresses only the State's arguments related to whether Defendant Wendy Rogers committed fraud.

Defendant Wendy Rogers was in charge of reviewing, approving, and distributing marketing materials on behalf of Retirement Value. Those marketing documents contained material misrepresentations of fact and omitted key pieces of information. Wendy Rogers participated in two primary categories of misrepresentations and omissions. First, she misrepresented the nature of the escrow agreement between Retirement Value and Kiesling, Porter, Kiesling, and Free, the escrow agent. Second, she misrepresented the accuracy of the Life Expectancy Certificates provided by Midwest Medical and omitted known information about the felony conviction of Midwest Medical's owner, George Mindness.

## II. SUMMARY JUDGMENT STANDARD

A Plaintiff is entitled to summary judgment if it proves all essential elements of the claim as a matter of law. *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986). A plaintiff must show there are no genuine issues of material fact. Tex. R. Civ. P. 166-A(c); *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215-16 (Tex. 2003).

## III. UNDISPUTED MATERIAL FACTS

1. Defendant Wendy Rogers was, at all relevant times, an officer and owner of Retirement Value. From its inception until April 1, 2010, she was Retirement Value's Vice President of Administration and Services. See Exhibit B, Wendy Rogers Resume<sup>1</sup>; Exhibit C, Retirement Value Marketing Brochure at 11. After April 1, 2010, Wendy Rogers was Retirement Value's Chief Executive Officer. Exhibit B, Wendy Rogers Resume.
2. As Vice President of Administration and Services, Defendant Rogers was responsible for and contributed personally to the development, and implementation of all marketing materials. Exhibit C, Retirement Value Marketing Brochure at 11; see also Exhibit A, Rogers Dep. at 14:20-15:4; July 1, 2011.
3. Wendy Rogers approved the marketing brochure statements about the escrow arrangement with Kiesling, Porter, Kiesling, and Free, P.C. ("Kiesling" or "Kiesling Porter"). Exhibit A, Rogers Dep. at 34:25-35:18.

---

All exhibits referenced herein were authenticated at the Videotaped Deposition of Wendy Rogers held on July 1, 2011 and July 19, 2011. Relevant portions of the deposition transcript are attached hereto as Exhibit A. Portions of the deposition transcript in which documents were marked and identified are attached as Exhibit N.

4. Wendy Rogers also approved the marketing brochure statements related to Midwest Medical Review, provider of Retirement Value's Life Expectancy certificates. Exhibit A, Rogers Dep. at 35:19-36:6.
5. Rogers frequently distributed Retirement Value marketing materials to licensees (sales agents). *E.g.* Exhibit A, Rogers Dep. at 59:9-23; 79:9-80:5; *see also* Exhibit L, email distributing materials to licensee.
6. In connection with the offer for sale and sale of investments in the RSLIP Program, the Defendants made many representations to investors with respect to the nature of Retirement Value's escrow arrangement with Kiesling Porter. Some of these representations and omissions included the following:
  - Kiesling Porter is a "third-party fiduciary" that functions as an "independent escrow agent," and that this arrangement "ensures the total safeguarding and preserving of [the] basis and targeted income." Exhibit C at 5, Retirement Value Marketing Brochure; *see also* Exhibit D at TSSB060036, Retirement Value PowerPoint Presentation.
  - Kiesling Porter "independently manages all monies used for your participation." Exhibit C, Retirement Value Marketing Brochure at 3.
  - Investor funds are used for the purchase of a policy or policies, payment of premiums, commissions, and fees associated with the specific life insurance policy or policies in which the investor purchases a beneficial interest. *See* Exhibit A, Rogers Dep. at 160:22-161:11.
  - Retirement Value and Rogers did not disclose that the Escrow Agreement required Kiesling Porter to "disburse the funds as directed by Retirement [Value]." Exhibit E, Escrow Agreement at ¶ 8.
  - Retirement Value and Rogers did not disclose that the Escrow Agreement stated clearly that "Kiesling shall rely solely on the information and instructions provided by Retirement [Value] in making the above distributions and shall not be required to make any independent or additional inquiries as to said distributions." *Id.* at ¶ 2.
  - Retirement Value and Rogers did not disclose that the Escrow Agreement expressly states that investors/participants are not third-party beneficiaries of the escrow agreement: "Neither Participants investing funds with Retirement nor Licensees are intended to nor shall they be a party to this Agreement or a third party beneficiary of this Agreement." *Id.* at ¶ 23.

- Retirement Value and Rogers did not disclose that the Escrow Agreement expressly disclaimed any duty from Kiesling Porter to investors/participants. “Kiesling has no responsibility, obligation or duties to such Participants....” *Id.* at ¶ 23.
7. In connection with the offer for sale and sale of investments in the RSLIP Program, Retirement Value and Wendy Rogers made material misrepresentations and omissions regarding the function of the escrow accounts. These misrepresentations and omissions include:
- Investor funds are used only for the purchase of a policy or policies, payment of premiums, commissions, and fees associated with the specific life insurance policy or policies in which the investor purchases a beneficial interest, and that such funds will *not* be used for fees associated with policies in which the investor is not participating. *See* Exhibit A, Rogers Dep. at 160:22-161:11.
  - Retirement Value and Rogers did not disclose that Investors’ funds would be used towards the purchase price or premium payment for policies in which the investor did not have a beneficial interest. *Id.*
  - Retirement Value and Rogers did not disclose that this commingling of funds resulted in an escrow sub-account shortfall of somewhere between \$1.3 million and \$2.6 million. Exhibit F, collection of e-mails regarding premium subaccount shortfall.
8. In connection with the offer for sale and sale of investments in the RSLIP Program, Retirement Value and Wendy Rogers made material misrepresentations and omissions regarding the Life Expectancy certificates and about Midwest Medical Review (“Midwest Medical”) and its owner, George Kindness. These misrepresentations and omissions include:
- Midwest Medical LE reports consisted of three pages, yet Retirement Value and Wendy Rogers only delivered the first two pages to Licensees and Investors. *See* Exhibit G, LE certificate; Exhibit A, Rogers Dep. at 80:25-81:9.
  - Retirement Value and Wendy Rogers touted Midwest Medical’s accuracy as “accurate 95% of the time to LE” and “98.5% accuracy within 12 months after expected LE.” Exhibit D, Retirement Value PowerPoint Presentation; Exhibit H-1, Rogers email to licensee.
  - In fact, the third page of the LE report itself contradicted these assertions, explaining that Midwest Medical’s LE reports provided only a median estimate at which point 50% of people similar to the insured would remain alive and 50% would have passed away. Exhibit G, LE certificate.



- Retirement Value and Wendy Rogers represented to investors that Midwest Medical was highly regarded among insurance professionals. Exhibit A, Rogers Dep. at 36:4-6; Exhibit I, Retirement Value Marketing Tri-Fold.
- In fact, Midwest Medical and its owner, George Kindness, had a terrible reputation in the industry, and Retirement Value and Wendy Rogers knew about that reputation. Exhibit H, collection of e-mails regarding Midwest Medical and George Kindness.
- In Wendy Rogers's own words, "Dr. Kindness and Midwest Medical has been an unfortunate marketing nightmare." Exhibit H-3.
- Midwest Medical's reputation was so bad that Retirement Value commissioned an independent analysis of Midwest's accuracy rate. Without ever seeing the report, a draft of the report, or any summary of the report, Wendy Rogers proclaimed that the report was "favorable." Exhibit H-6.
- The report showed, in fact, that Midwest Medical was accurate only 42% of the time. Exhibit J at 2, Hess Report (appendixes excluded).

#### IV. ARGUMENT AND AUTHORITIES

To show securities fraud, the State must prove that the Defendants (1) sold a security and (2) engaged in fraud or fraudulent practices as defined in Section 4.F of the Texas Securities Act in connection with the sale of that security. TEX. REV. CIV. STAT. ANN. Art 581-32.A (Vernon 2010).

##### *A. Defendants Sold a Security*

The Texas Securities Act broadly defines the terms "sale," "offer for sale," and "sell." Section 4.E provides that these terms "shall include every disposition, or attempt to dispose of a security for value." TEX. REV. CIV. STAT. ANN. Art 581-4.F (Vernon 2010). A seller may be any link in the chain of the selling process including any acts by which a sale is made. *See Brown v. Cote*, 291 S.W.2d 704, 708 (Tex. 1956); *see also Dean v. State*, 433 S.W.2d 173, 176-88 (Tex. Crim. Ct. App. 1968). Even persons who are "only an intermediary in the sales process can be

held liable for the full amount of each defrauded individual's net investment loss." *Shields v. State*, 27 S.W.3d 267, 274 (Tex.App.—Austin, 2000, no pet.).

The State has filed a Motion for Partial Summary Judgment on whether the product sold by Defendants Retirement Value, LLC and Wendy Rogers was a security. If the Court finds that this product was a security, it should proceed to decide whether Defendants sold or attempted to sell that security.

Defendant Wendy Rogers prepared, approved, and distributed marketing materials related to the offer and sale of Retirement Value's product. Exhibit C at 11, Retirement Value Marketing Brochure; *see also* Exhibit A, Rogers Dep. at 14:20-15:4 (created and reviewed marketing materials); 59:9-23 and 79:9-80:5 (distributed to licensees and others). This involvement constitutes the sale or offer for sale of securities. Because the sole product offered by Defendant Retirement Value was a security, any actions undertaken in an attempt to sell or offer that product constitute the sale or offer for sale of a security.

### ***B. Defendants Engaged in Fraud or Fraudulent Practices***

The Texas Securities Act defines the terms "fraud" and "fraudulent practice" to include "any misrepresentations, in any manner, of a relevant fact" and "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." TEX. REV. CIV. STAT. ANN. Art 581-4.F (Vernon 2010). "The [Securities Act] specifically states that intentionally failing to disclose a material fact constitutes fraud. The purpose of the Securities Act is to require sellers of the securities to be truthful and provide investors with all material facts." *Cook v. State*, 824 S.W.2d 634, 637 (Tex. App. Dallas 1991).

The Securities Act puts the burden to disclose squarely on the promoter. Investors are not required to ferret out material facts on their own or from a promoter when considering the purchase of security. Violations of the Securities Act are not result-oriented offenses.

The term “material fact” is not defined in the statute. Texas Courts have adopted and endorsed a definition adopted by the United States Supreme Court. Under Texas law, a fact is material if:

[T]here is a substantial likelihood that it would have assumed actual significance in the deliberations of a reasonable investor, in that it would have been viewed by the reasonable investor as significantly altering the total mix of available information used in deciding whether to invest.

*Bridwell v. State*, 804 S.W.2d 900, 903-4 (Tex. Crim. App. 1991)(adopting test set forth in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 442 (1976)).

Fraud occurs when a false and material assertion is made without some requisite degree of knowledge regarding its truth. See *Forncosa Plastics Corp. United States v. Presidio Eng'Rs & Contrs.*, 960 S.W.2d 41, 47 (Tex. 1998)(“A fraud cause of action requires ‘a material misrepresentation, which was false, and which was either known to be false when made or was asserted without knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused injury.’”)(quoting *Sears, Roebuck & Co. v. Meadows*, 877 S.W.2d 281, 282 (Tex. 1994)). In deciding how much knowledge is required to prevent an untimely false assertion from being considered fraudulent, Texas courts have settled on a recklessness standard. Accordingly, a false representation is fraudulent if it was made recklessly, without knowledge of its truth. *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507 (Tex. 1998). Representations “made without sufficient information or basis to support them” are reckless. *Matis v. Golden*, 228 S.W.3d 201 (Tex. App. –Waco 2007, no pet.)

Defendant Wendy Rogers participated in two primary categories of misrepresentations and omissions. First, she misrepresented the nature of the escrow agreement between Retirement Value and Kiesling, Porter, Kiesling, and Free, the escrow agent. Second, she misrepresented the accuracy of the Life Expectancy Certificates provided by Midwest Medical and omitted known information about the felony conviction of Midwest Medical's owner George Kindness.

**i. Misrepresentations and Omissions about the Escrow Agreement**

In its marketing materials, Retirement Value misrepresented the nature of the escrow agreement between Retirement Value and Kiesling Porter, the escrow agent.

In the marketing materials prepared and/or approved and distributed by Wendy Rogers, Retirement Value represented that all investor funds would be deposited in "escrow accounts" to be managed by Kiesling Porter in its role as "independent escrow agent" and "third-party fiduciary" and that Retirement Value would not receive or handle investor money. Exhibit C at 2, 5, Retirement Value Marketing Brochure.

These statements significantly misstate the role of Kiesling Porter and the nature of the Escrow Agreement. An escrow agreement requires at least three parties—the two parties to the transaction and the escrow agent. Further, 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 then owes fiduciary duties to both parties to release the escrowed property only upon the occurrence of the conditions set forth in the escrow agreement.

In fact, the Escrow Agreement in this case has only two parties, Retirement Value and Kiesling Porter. Exhibit E at ¶ 23, Escrow Agreement. Under the Escrow Agreement, Kiesling Porter agreed to "disburse funds as directed by Retirement [Value]" and Kiesling Porter's liability was limited to transferring funds into subaccounts "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 written instruction from Retirement [Value].” *Id.* at ¶¶ 6, 8. In short, Kiesling Porter acted only as *agent* for Retirement Value.

More importantly, the Escrow Agreement expressly states that Kiesling Porter owes no duty to anyone other than Defendant Retirement Value, and the Agreement specifically excludes investors as beneficiaries of the Escrow Agreement:

This Agreement is solely between Retirement [Value] and Kiesling. 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 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].

*Id.* at ¶ 23 (emphasis added).

Even more alarming is the fact that Kiesling Porter, at the direction of Retirement Value, repeatedly commingled the funds held in the sub-accounts, using funds purportedly escrowed to pay premiums on one policy to purchase other policies. This shuffling of funds resulted in a premium subaccount shortfall of between \$1.3 million and \$2.6 million dollars in the fall of 2009. Exhibit F, collection of emails regarding premium subaccount shortfall.

Defendant Wendy Rogers was aware that the Escrow Agreement did not protect investors in the manner represented in the marketing materials because she was aware of the commingling and the premium shortfall. Exhibit F, Collection of emails regarding shortfall (Rogers copied on emails), see *also* Exhibit A, Rogers Dep. at 159:2-160:15. In addition, Wendy Rogers acted with reckless disregard for the truth by failing to review the Escrow Agreement when she created and distributed marketing materials containing assertions about that Agreement. Exhibit A, Rogers Dep. 79:9-80:24; 142:8-14 (Rogers sent marketing brochures with knowledge they would be

distributed to licensees; brochures contained material misrepresentations about escrow agreement; Rogers admits she may not have read escrow agreement).

During her deposition, Wendy Rogers admitted that these misrepresentations and omissions were material. Wendy Rogers acknowledged that this commingling and shortfall is information investors would want to have. Exhibit A, Rogers Dep. at 159:22-161:15. Yet she did nothing to notify investors or licensees of the misappropriation of funds and continued to produce and approve marketing materials that perpetuated the misrepresentations discussed above.

The true nature of the Escrow Agreement is material because it affects the safety and security of investors' funds and contradicts the representations made by the Defendants. For example, as discussed further herein, the Defendants misappropriated investor funds for purposes contrary to the investors' agreement and consent. The actual terms of the Escrow Agreement did not afford investors the protections that Rogers touted in the Retirement Value marketing materials she created, reviewed, and distributed.

Defendants Retirement Value's and Rogers's misrepresentations and intentional omissions constitute securities fraud as a matter of law.

**ii. Misrepresentations and Omissions Regarding the Life Expectancy Reports, Midwest Medical's accuracy, and George Kindness's felony conviction**

Retirement Value's Life Expectancy Reports were provided by Midwest Medical through James Settlement Services. Retirement Value and Wendy Rogers made a number of material misrepresentations and intentional omissions regarding the Life Expectancy reports, Midwest Medical's reputation, and George Kindness's felony conviction.

**a. Misrepresentations and Omissions related to the Life Expectancy Reports**

Retirement Value used Life Expectancy (“LE”) reports provided by Midwest Medical through James Settlement Services. The LE reports consisted of three pages. See Exhibit G, LE certificate. The first two pages provided a narrative of the insured’s health and a statement of life expectancy. *Id.* The third page contained Midwest Medical’s statistical analysis. *Id.* This analysis disclosed that the LE discussed on the first two pages of the report is a median, meaning that approximately 50% of the people who are statistically similar to the insured are expected to have died at the life expectancy estimate, and 50% of people who are statistically similar to the insured are expected to still be 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.

Retirement Value and Wendy Rogers made affirmative misrepresentations and intentional omissions in its discussions of the LE reports. The marketing materials created, reviewed and distributed by Wendy Rogers stated that “90% of policies mature at or before projected LE” and that “95% of policies mature at or before LE plus 12 months.” Exhibit D, Retirement Value PowerPoint presentation; Exhibit H-1; Exhibit L. These statistics are contradicted by the LE reports themselves, which project that 50% of people statistically similar to the insured are expected to remain alive at LE. Exhibit G, LE certificate. This directly contradicts Retirement Value and Wendy Rogers’s assertions that 90% of insureds will pass away by LE and 95% will pass away by LE+12.

As an example, Bruce Collins, Retirement Value’s former Chief Operating Officer explained to Defendant Rogers and others:

Here's a mental picture.

You're sitting at a kitchen and going over the presentation. [Your] prospect asks 'do you have any statistics (a look back is fine) to support your LE projections?'

'I sure do Mr. Prosepect [sic]. Our look back confirms that we're at 50/50. No better than a coin toss; is that OK?'

'Perfect!' says Mr. Prospect. 'Write me up!' Needless to say you would politely be shown the door.

The very notion that 50/50 is a satisfactory outcome of this study is absurd. ...

Exhibit H-5.

Even though the third page of the LE reports contained these important statistics, Retirement Value and Wendy Rogers intentionally provided only the first two pages of the three-page LE report to licensees and investors. Exhibit A, Rogers Dep. at 80:25-81:9; 87:1-17. At her deposition, Ms. Rogers admitted that investors would likely want to know the information provided on the third page of the LE report, specifically that the LE report provided a median estimate. *Id.* at 70:22-71:3.

**b. Misrepresentations and Omissions related to Midwest Medical and George Kindness**

Retirement Value and Wendy Rogers repeatedly touted Midwest Medical as "highly regarded among life insurance professionals for several years." *E.g.* Exhibit I, Retirement Value Tri-Fold Brochure. However, Midwest Medical has a terrible reputation in the industry, and the Defendants were aware of this reputation. George Kindness, Midwest Medical's owner, was a convicted felon. Exhibit M, Indictment and Plea Bargain of George Kindness. Kindness and Midwest Medical's predecessor had previously been accused of falsifying life expectancy reports in connection with the sale of life insurance policies. *Id.*, see also Exhibit K at 14, Receiver's Initial Report. Wendy Rogers personally received or was copied on numerous e-mails, both internal and from licensees and investors, challenging Midwest Medical and George Kindness's



credibility. E.g. Exhibit H. Wendy Rogers herself referred to “Dr. Kindness and Midwest Medical are an unfortunate marketing nightmare....” Exhibit H-3.

Retirement Value was so concerned about Midwest Medical’s poor reputation and impact on sales that they commissioned a formal study to determine Midwest Medical’s actual accuracy rate. Exhibit A, Rogers Dep. at 98:14-20. The report was several months late, but Retirement Value and Wendy Rogers represented to licensees and investors that the report’s preliminary results showed a “favorable” accuracy rating, sometimes stating that the rate was 92%. Exhibit H-6, Email stating results are “favorable”; *see also* Exhibit A, Rogers Dep. at 105:17-106:6. In fact, the report showed that Midwest Medical was accurate only 42% of the time. Exhibit J at 2, Princeton/Hess Report.

Wendy Rogers was aware of Midwest Medical and George Kindness’s reputation and felony conviction when she approved and distributed marketing materials touting their high regard among insurance professionals. Exhibit A, Rogers Dep. at 37:22-38:4. Rogers admitted that this is information investors and licensees would want to have. *Id.* at 38:5-39:5. These intentional omissions constitute securities fraud.

## **V. CONCLUSION AND PRAYER**

For the reasons set forth above, the State asks this Court to grant its motion for partial summary judgment because, as a matter of law, the Defendants’ misrepresentations and intentional omissions made in relation to the sale or offer for sale of securities constitute security fraud.

Respectfully submitted,

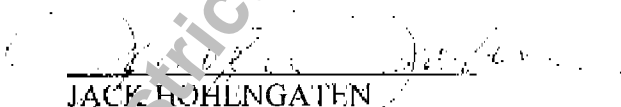
GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

BILL COBB  
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX  
Director of Defense Litigation

JEFF GRAHAM  
Chief, Financial and Tax Litigation Division

  
JACK HOHENGARTEN  
Assistant Attorney General  
State Bar No. 24050664  
JENNIFER S. JACKSON  
Assistant Attorney General  
State Bar No. 24060004  
Financial and Tax Litigation Division  
P.O. Box 12548  
Austin, Texas 78711 2548  
TEL: (512) 475 3503  
FAX: (512) 477 2348/480 8327  
jack.hohengarten@oag.state.tx.us

Attorneys for Plaintiff  
The State of Texas

## CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of July 2011, I served a copy of the above and foregoing document, Plaintiff's Motion for Partial Summary Judgment: Defendant Wendy Rogers Committed Securities Fraud, to the following counsel as indicated below:

Michael Napoli  
K&L Gates, LLP  
1717 Main Street, Suite 2800  
Dallas, Texas 75201  
Attorney for Eduardo Espinosa,  
Court-Appointed Receiver of Retirement Value, LLC

Via the court's e-filing system

David E. Dunham  
Taylor Dunham, LLP  
301 Congress Avenue, Suite 1050  
Austin, Texas 78701  
Attorney for Donald R. Taylor  
Court-Appointed Receiver of Hill Country  
Funding, LLC, a Texas Limited Liability  
Company; and Hill Country Funding, LLC  
a Nevada Limited Liability Company

Via the court's e-filing system

Wendy Rogers  
7310 1805  
1312 Havenwood Blvd.  
New Braunfels, TX 78132  
Pro Se Defendant

Via CMRRR No. 7004 1160 0000

and Email [jrrwlr@satx.rr.com](mailto:jrrwlr@satx.rr.com)

Richard H. Gray  
301 Main Plaza #349  
New Braunfels, TX 78130  
Pro Se Defendant

Via CMRRR 7004 1160 0000 7310 1836  
and Email [legalfight@yahoo.com](mailto:legalfight@yahoo.com)

Matthew G. Nielsen  
Spencer C. Berasch  
Andrews Kurth, LLP  
1717 Main Street, Suite 3700  
Dallas, Texas 75201  
Attorneys for Relief Defendant  
Kiesling Porter

Via the court's e-filing system

Terry Scarborough  
Hance Scarborough, LLP

Via the court's e-filing system

111 Congress Ave., Ste. 500  
Austin, Texas 78701  
Attorneys for Intervenor  
Dr. Gary Cain, B. Edelstein and  
Ovest III Master Fund, LLC

Patrick S. Richter  
Shannon, Gracey, Ratliff & Miller, LLP  
98 San Jacinto Blvd., Ste. 300  
Austin TX 78701-4245  
Attorney for Intervenor  
Grant W. and Opal E. Bejcek


Via the court's e-filing system

Alberto T. Garcia, III  
Garcia & Martinez, L.L.P  
5211 W. Mile 17½ Road  
Edinburg, Texas 78541  
Attorney for Intervenor  
Matthew C. Allen, Jr., Teddie J. Allen and  
The Matthew and Teddie Allen Charitable  
Remainder Annuity Trust

Via the court's e-filing system

Donald R. Taylor  
Taylor Dunham, LLP  
301 Congress Avenue, Suite 1050  
Austin, Texas 78701  
Receivers for Hill Country Funding, LLC,  
a Texas Limited Liability Company, and  
Hill Country Funding, LLC,  
a Nevada Limited Liability Company

Via the court's e-filing system

  
JACK HOHENGARTEN

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

**AFFIDAVIT OF JENNIFER S. JACKSON**

BEFORE ME, the undersigned authority, personally appeared Jennifer S. Jackson, who after being duly sworn, stated as follows:

1. "My name is Jennifer S. Jackson. I am over 18 years of age, of sound mind and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am an Assistant Attorney General in the Financial and Tax Litigation Division of the Office of the Attorney General of Texas.
3. I personally printed and compiled the attached excerpts from the Deposition of Wendy Rogers, taken on July 1, 2011 and July 15, 2011.
4. The excerpts attached hereto as Exhibit A are true and correct copies of the relevant portions of the deposition transcript.
5. In addition, I personally printed the attached copies of the following exhibits used at the Deposition of Wendy Rogers, which are true and correct copies of the originals used at the Deposition.
  - Motion Exhibit B, Deposition Exhibit 1, Resume of Wendy Rogers (marked and authenticated at Rogers Dep. 11:2-8);
  - Motion Exhibit C, Deposition Exhibit 4, Retirement Value Marketing Brochure (marked and authenticated at Rogers Dep. 24:22-25:4);
  - Motion Exhibit D, Deposition Exhibit 28, Retirement Value PowerPoint Presentation (marked and authenticated at Rogers Dep. 114:22-115:8);
  - Motion Exhibit E, Deposition Exhibit 37, Escrow Agreement (marked and authenticated at Rogers Dep. 143:14-144:1);
  - Motion Exhibit F, collection of emails regarding premium subaccount shortfall and commingling.
    - Motion Exhibit F-1, Deposition Exhibit 41 (marked and authenticated at Rogers Dep. 163:13-164:6);

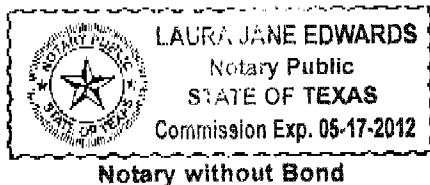
- Motion Exhibit F-2, Deposition Exhibit 42 (marked and authenticated at Rogers Dep. 166:25);
- Motion Exhibit F-3, Deposition Exhibit 43 (marked and authenticated at Rogers Dep. 171:24-172:3);
- Motion Exhibit F-4, Deposition Exhibit 46 (marked and authenticated at Rogers Dep. 181:24-182:12);
- Motion Exhibit F-5, Deposition Exhibit 63 (marked and authenticated at Rogers Dep. 427:8-17);
- Motion Exhibit F-6, Deposition Exhibit 65 (marked and authenticated at Rogers Dep. 427:8, 433:8-24);
- Motion Exhibit F-7, Deposition Exhibit 66 (marked and authenticated at Rogers Dep. 427:8, 437:10-14);
- Motion Exhibit G, Deposition Exhibit 16, Midwest Medical Review Life Expectancy Certificate (marked and authenticated at Rogers Dep. 64:4-8);
- Motion Exhibit H, collection of emails regarding Midwest Medical, George Kindness, and/or Hess-Princeton Report.
  - Motion Exhibit H-1, Deposition Exhibit 23 (marked and authenticated at Rogers Dep. 107:9-19);
  - Motion Exhibit H-2, Deposition Exhibit 20 (marked and authenticated at Rogers Dep. 87:18-88:9);
  - Motion Exhibit H-3, Deposition Exhibit 22 (marked and authenticated at Rogers Dep. 95:11-21);
  - Motion Exhibit H-4, Deposition Exhibit 25 (marked and authenticated at Rogers Dep. 107:15-25);
  - Motion Exhibit H-5, Deposition Exhibit 26 (marked and authenticated at Rogers Dep. 109:21-110:4);
  - Motion Exhibit H-6, Deposition Exhibit 30 (marked and authenticated at Rogers Dep. 119:23-120:1);
- Motion Exhibit I, Deposition Exhibit 19, Retirement Value Tri-Fold Brochure (marked and authenticated at Rogers Dep. 81:11-13);

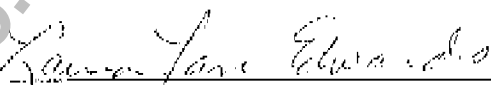
- Motion Exhibit J, Deposition Exhibit 24, "Hess" or "Princeton" Report, appendixes omitted (marked and authenticated at Rogers Dep. 104:3-19);
  - Motion Exhibit L, Deposition Exhibit 8, email from Wendy Rogers transmitting materials to send to licensee (marked and authenticated at Rogers Dep. 72:9-15);
  - Motion Exhibit M, Deposition Exhibit 8, Indictment and Plea Bargain of George Kindness (marked and authenticated at Rogers Dep. 39:6-13).
6. I also personally printed the deposition excerpts attached as Exhibit N, in which the documents identified in paragraph 5 above were marked and authenticated."

FURTHER AFFIANT SAITH NAUGHT.

  
JENNIFER S. JACKSON

SUBSCRIBED TO AND SWORN BEFORE ME by Jennifer S. Jackson on July 20, 2011.



  
Notary Public in and for the State of Texas  
My commission expires: 5/17/12

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

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

\*\*\*\*\*  
ORAL AND VIDEOTAPED DEPOSITION OF  
WENDY ROGERS  
July 1, 2011  
\*\*\*\*\*

PLAINTIFF'S  
EXHIBIT

A



1 ORAL DEPOSITION of WENDY ROGERS, produced as a  
2 witness at the instance of the Plaintiff, and duly  
3 sworn, was taken in the above-styled and numbered cause  
4 on the 1st of July, 2011, from 9:37 a.m. to 4:04 p.m.  
5 before Veronica E. Cherry, CSR in and for the State of  
6 Texas, reported by machine shorthand, at the offices of  
7 K&L Gates, LLP, 111 Congress Avenue, Austin, Texas,  
8 pursuant to the Texas Rules of Civil Procedure.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Hohengarten and  
Ms. Jennifer S. Jackson  
ATTORNEY GENERAL OF TEXAS  
Financial Litigation Division  
300 West 15th Street, 9th Floor  
Austin, Texas 78701

FOR THE PLAINTIFF

Ms. Alexis M. Goldate  
ENFORCEMENT ATTORNEY  
Enforcement Division  
300 West 15th Street, 9th Floor  
Austin, Texas 78701

APPEARING PRO SE:

Ms. Wendy Rogers  
1312 Havenwood Boulevard  
New Braunfels, Texas 78132

FOR THE RECEIVER RETIREMENT VALUE

Mr. Michael D. Napoli  
K&L GATES, LLP  
111 Congress Avenue  
Suite 900  
Austin, Texas 78701

FOR THE RECEIVER RETIREMENT VALUE

Mr. Geoffrey D. Weisbart  
HANCE SCARBOROUGH, LLP  
111 Congress Avenue  
Suite 500  
Austin, Texas 78701

FOR THE RECEIVER HILL COUNTRY FUNDING

Ms. Isabelle M. Antongiorgi  
TAYLOR DUNHAM, LLP  
301 Congress Avenue  
Suite 1050  
Austin, Texas 78701

1 FOR THE RECEIVER RETIREMENT VALUE:

Mr. John W. Thomas

2 GEORGE & BROTHERS, L.L.P.

114 W. 7th Street, Suite 1100

3 Austin, TX 78701

4 ALSO PRESENT: Al Rodriguez, Videographer

# ORAL AND VIDEOTAPED DEPOSITION OF WENDY ROGERS

Page 5

## INDEX

PAGE

Appearance

Examination by Mr. Hohengarten

9:37 a.m. - 4:04 p.m.

10:53 - 11:05 recess

11:46 - 12:41 lunch recess

2:56 - 3:07 recess

4:04 - 4:15 recess

Changes and Signature

Reporter's Certification

Reporter's Further Certification

202

204

205

## EXHIBITS

PAGE MARKED

Resume

Certificate of Formatio

Business Card

Real Value Marketing Brochure

Screenshots

E-mail

E-mail

Indictment

E-mail

E-mail

E-mail

E-mail

FAQ Sheet

E-mail

E-mail

Sunbelt Reporting & Litigation Services

Houston Austin Corpus Christi Dallas/Fort Worth East Texas San Antonio Bryan/College Station

ORAL AND VIDEOTAPED DEPOSITION OF WENDY ROGERS

Page 6

|    |    |   |     |
|----|----|---|-----|
| 1  | 16 | Midwest Medical Review<br>Life Expectancy Certificate | 64  |
| 2  | 17 | E-mail  | 71  |
| 3  | 18 | E-mail  | 79  |
| 4  | 19 | E-mail  | 81  |
| 5  | 20 | E-mail  | 87  |
| 6  | 21 | E-mail  | 94  |
| 7  | 22 | E-mail  | 95  |
| 8  | 23 | E-mail  | 102 |
| 9  | 24 | Midwest Medical Review Audit<br>and Analysis          | 104 |
| 10 | 25 | E-mail  | 107 |
| 11 | 26 | E-mail  | 109 |
| 12 | 27 | E-mail  | 113 |
| 13 | 28 | PowerPoint Presentation                               | 114 |
| 14 | 29 | Internal E-mail                                       | 119 |
| 15 | 30 | E-mail  | 119 |
| 16 | 31 | E-mail  | 121 |
| 17 | 32 | Non-qualified Participant Packet                      | 123 |
| 18 | 33 | Participation Packet                                  | 125 |
| 19 | 34 | E-mail  | 131 |
| 20 | 35 | E-mail  | 134 |
| 21 | 36 | E-mail  | 138 |
| 22 | 37 | Escrow Agreement                                      | 144 |
| 23 | 38 | E-mail  | 153 |
| 24 |    |   |     |
| 25 |    |   |     |

ORAL AND VIDEOTAPED DEPOSITION OF WENDY ROGERS

Page 7

|    |    |  |     |
|----|----|--|-----|
| 1  | 39 | Participation Packet for<br>Qualified Participants | 155 |
| 2  | 40 | E-mail   | 163 |
| 3  | 41 | E-mail   | 163 |
| 4  | 42 | E-mail   | 166 |
| 5  | 43 | E-mail   | 171 |
| 6  | 44 | E-mail   | 174 |
| 7  | 45 | E-mail   | 175 |
| 8  | 46 | E-mail   | 181 |
| 9  | 47 | Special Acquisitions                               | 184 |
| 10 | 48 | Emergency Cease and Desist Order                   | 185 |
| 11 | 49 | E-mail   | 192 |
| 12 | 50 | E-mail   | 195 |
| 13 | 51 | E-mail   | 199 |
| 14 |    |  |     |
| 15 |    |  |     |
| 16 |    |  |     |
| 17 |    |  |     |
| 18 |    |  |     |
| 19 |    |  |     |
| 20 |    |  |     |
| 21 |    |  |     |
| 22 |    |  |     |
| 23 |    |  |     |
| 24 |    |  |     |
| 25 |    |  |     |

1 Q. Among your duties as vice president at Retirement  
2 Value was to develop a wholesale model to market  
3 Retirement Value's product, correct?

4 A. I'm trying to decipher the meaning of wholesale  
5 there, wholesale versus retail, but, yes, it was to  
6 develop a model to market Retirement Value's product.

7 Q. Okay. And what -- what's the trouble you were  
8 having with wholesale, because I'm just looking at your  
9 resume here and going with that?

10 A. Oh, got you. Then yes.

11 Q. And when you say "wholesale," it was your  
12 understanding -- what meaning are you giving to  
13 wholesale?

14 A. Um, well, in -- in this regard, it means that we  
15 were not direct -- um, directly marketing to individual,  
16 um, clients, like we weren't advertising on TV,  
17 et cetera. I mean, we were -- it was basically through  
18 a network of licensees, so we weren't a direct retail  
19 outlet.

20 Q. Okay. Did your duties with respect to marketing  
21 also, um, include creating marketing materials, such as  
22 brochures?

23 A. Yes.

24 Q. Okay. Uh, did it include creating marketing  
25 materials, such as PowerPoint presentations?

1 A. Certain PowerPoint presentations, yes.

2 Q. Okay. And I take it that would also be true with  
3 respect to pamphlets?

4 A. Yes.

5 Q. And scripts that, uh, licensees were supposed to  
6 use in marketing RV's product?

7 A. Um, I don't believe that I ever wrote out a  
8 script. I think that was -- Tracy Moss created scripts  
9 when she came on board.

10 Q. And who was Tracy Moss?

11 A. Tracy Moss was, um, hired for the purpose of  
12 assisting the licensees with compliance in marketing  
13 their products.

14 Q. Okay. And who did she report to?

15 A. She reported to Dick Gray.

16 Q. Okay. Did she also report to you?

17 A. I don't believe so. I'm -- I'm not sure on that,  
18 though. I don't remember.

19 Q. Well, did you interact with her on a regular  
20 basis at Retirement Value?

21 A. No, not on a regular basis. She interacted with  
22 Dick more than she did with me.

23 Q. Okay. Would -- would it be fair to say you  
24 interacted with her some of the time regarding her  
25 duties?



1 A. Correct.

2 Q. And what is the purpose for sending your website  
3 designer a copy of the, uh, Retirement Value brochure?

4 A. Uh, to upload it to the marketing materials  
5 section.

6 Q. Of the -- of Retirement Value's website?

7 A. Yes. We had a section of the website that was  
8 password-protected.

9 Q. And was that a portion of the website that only  
10 the licensees could access?

11 A. Correct.

12 Q. Okay. And I gather that you reviewed this  
13 brochure before sending it to WebWeaverWoman Support?

14 A. Yes.

15 Q. And that you approved this brochure before  
16 sending it to WebWeaverWoman Support?

17 A. Yes.

18 Q. Okay. Did you have any information about how  
19 often this type of information was downloaded by  
20 Retirement Value's licensees?

21 A. No, I do not.

22 Q. Can you turn to the third page of this exhibit?

23 A. Third page of the exhibit or third page of the  
24 brochure?

25 Q. Third page of the exhibit, second page of the

1 brochure.

2 A. Okay.

3 Q. And do you see the language regarding Kiesling,  
4 Porter, Kiesling & Free?

5 A. Yes.

6 Q. And in this brochure, it's represented that  
7 Kiesling & Porter -- Kiesling & Porter, Kiesling & Free,  
8 P.C., functions as the escrow agent, correct?

9 A. Correct.

10 Q. And you approved that language, correct?

11 A. Correct.

12 Q. And there's also language that Retirement Value  
13 never handles any client participation -- participant  
14 funds at any stage of this program. Do you see that  
15 representation?

16 A. Yes.

17 Q. And you approved that representation as well?

18 A. Yes.

19 Q. And moving down this page, do you see the  
20 reference to Midwest Medical Review?

21 A. Yes.

22 Q. Did you approve the language with respect to  
23 Midwest Medical Review as well?

24 A. Yes.

25 Q. So you approved the language that described

1 A. Correct.

2 Q. And what is the purpose for sending your website  
3 designer a copy of the, uh, Retirement Value brochure?

4 A. Uh, to upload it to the marketing materials  
5 section.

6 Q. Of the -- of Retirement Value's website?

7 A. Yes. We had a section of the website that was  
8 password-protected.

9 Q. And was that a portion of the website that only  
10 the licensees could access?

11 A. Correct.

12 Q. Okay. And I gather that you reviewed this  
13 brochure before sending it to WebWeaverWoman Support?

14 A. Yes.

15 Q. And that you approved this brochure before  
16 sending it to WebWeaverWoman Support?

17 A. Yes.

18 Q. Okay. Did you have any information about how  
19 often this type of information was downloaded by  
20 Retirement Value's licensees?

21 A. No, I do not.

22 Q. Can you turn to the third page of this exhibit?

23 A. Third page of the exhibit or third page of the  
24 brochure?

25 Q. Third page of the exhibit, second page of the

1 brochure.

2 A. Okay.

3 Q. And do you see the language regarding Kiesling,  
4 Porter, Kiesling & Free?

5 A. Yes.

6 Q. And in this brochure, it's represented that  
7 Kiesling & Porter -- Kiesling & Porter, Kiesling & Free,  
8 P.C., functions as the escrow agent, correct?

9 A. Correct.

10 Q. And you approved that language, correct?

11 A. Correct.

12 Q. And there's also language that Retirement Value  
13 never handles any client participation -- participant  
14 funds at any stage of this program. Do you see that  
15 representation?

16 A. Yes.

17 Q. And you approved that representation as well?

18 A. Yes.

19 Q. And moving down this page, do you see the  
20 reference to Midwest Medical Review?

21 A. Yes.

22 Q. Did you approve the language with respect to  
23 Midwest Medical Review as well?

24 A. Yes.

25 Q. So you approved the language that described

1 Midwest Medical as an ex- -- external, independent and  
2 totally objective LE source, correct?

3 A. That is correct.

4 Q. And you described Midwest Medical Review as very  
5 highly regarded among insurance professionals, correct?

6 A. Correct.

7 Q. Okay. And when you described Midwest Medical in  
8 those terms, what information did you have to support,  
9 uh, that description?

10 A. Information we had received from James Settlement  
11 Services.

12 Q. Okay. And what information was that?

13 A. Um, not only have they used Midwest Medical and  
14 formerly Amscot Medical for their personal portfolio,  
15 ron and Don James own a very large life insurance --  
16 life settlement portfolio themselves, and so they've  
17 always used Midwest Medical for their LE underwriting on  
18 those cases as well as, um -- um, I believe it was --  
19 they've put together a large, um, securitized portfolio  
20 of life insurance policies with, uh, some investment  
21 bankers out of -- out of California.

22 Midwest Medical Review was one of the LE  
23 companies that the purchaser of that portfolio approved  
24 and allowed along with, um, the Pennsylvania -- I  
25 believe it's the -- the State of Pennsylvania. I'm not

1 sure. Anyway, that would be information that Ron James  
2 would have, but they put together a large portfolio that  
3 the state of Pennsylvania purchased, and Midwest Medical  
4 was one of the life expectancy underwriters for that  
5 portfolio as well.

6 Q. And what I'm trying to figure out is, did James  
7 Settlement send you the written information, or is this  
8 something that, uh, Ron or Don James just told you?

9 A. Um, this was information that was probably told  
10 to Dick and that -- and to me in personal interactions  
11 with them.

12 Q. Um, were you relying on anything else when you  
13 approved this language with Midwest Medical?

14 A. Uh, relying on Dick Gray's interaction --  
15 personal interaction with George Kindness at -- in Ohio  
16 with -- in a meeting he had with them, and this was --  
17 this was the feedback or the take-away that he had as  
18 well.

19 Q. Do you know how many meetings he had with  
20 George Kindness?

21 A. One in-person meeting.

22 Q. Um, and this document was basically sent to your  
23 web designer in August of 2009, correct, this brochure?

24 A. Correct.

25 Q. Okay. When you sent this information and

1 approved this information regarding Midwest Medical,  
2 were you aware that George Kindness was a convicted  
3 felon?

4 A. In August of '09, yes, I was aware.

5 Q. Okay. And don't you think that's the kind of  
6 information that, uh, a licensee or a potential investor  
7 would have wanted to have with respect to Midwest  
8 Medical?

9 A. That information was shared with licensees  
10 several times at several different marketing meetings.

11 MR. WEISBART: Objection. Nonresponsive.

12 MR. NAPOLI: He -- he asked you a specific  
13 question. I'm going to object to it because I'm not  
14 sure you answered it.

15 THE WITNESS: Oh, okay.

16 Q. (By Mr. Hohengarten) But you can -- let me see  
17 if I can even be more specific. My question is --

18 MR. HOHENGARTEN: Well, just go ahead and  
19 read the question back. That way we'll make sure that  
20 it's exactly the same question.

21 MR. WEISBART: (Requested text repeated.)

22 THE REPORTER: Thank you.

23 MR. HOHENGARTEN: Ditto.

24 THE WITNESS: Is she going to read it back?

25 THE REPORTER: He just --

1 information you would expect a licensee to pass along to  
2 a potential investor, correct?

3 A. It was something that could be provided to the  
4 li- -- yes, I would agree with that, yes.

5 Q. I mean, that's the only reason to provide it to  
6 licensees, right? It's a -- it's a selling point, isn't  
7 it.

8 A. Um, yes.

9 (Exhibit No. 15 marked for identification.)

10 Q. Can you identify Exhibit 15?

11 A. It is an e-mail from me to Mike McDermott.

12 Q. Okay. And you are sending him some marketing  
13 materials, correct?

14 A. Correct.

15 Q. Uh, and the date is December 14th, 2009, correct?

16 A. Correct.

17 Q. And there are several pieces of marketing  
18 materials that you're sending to Mike McDermott,  
19 correct?

20 A. Uh, yes.

21 Q. And we've already established that Mike McDermott  
22 is a master licensee for Retirement Value, correct?

23 A. Correct.

24 Q. All right. And the first piece of marketing  
25 materials that you sent to Mike McDermott is the Reasons



1 on that page, Reasons for Retirement Value, that you  
2 sent to Mike McDermott as potentially misleading or  
3 almost certainly misleading to a potential investor?

4 A. No, I do not see this as misleading.

5 Q. Okay. So you don't think a potential investor  
6 would need to understand that a life expectancy cannot  
7 be precisely determined for any specific person --

8 A. Oh --

9 Q. -- but, rather, is an average life expectancy for  
10 a large population of similar clinical and individual  
11 profiles? You don't think --

12 A. Absolutely.

13 Q. -- that it would be necessary for a potential  
14 investor to have that information as well?

15 A. Well, we always stated, you don't know exactly  
16 when a particular insured is going to pass away. That's  
17 something -- that's something that is in the marketing  
18 materials; you cannot predict with complete accuracy  
19 when that date is going to occur.

20 MR. HOHENGARTEN: Objection. Move to strike  
21 as nonresponsive.

22 Q. (By Mr. Hohengarten) My question was: With  
23 respect to Midwest Medical's accuracy rate, wouldn't a  
24 potential investor need to understand that it referred  
25 to -- uh, it could not refer to a specific person, but,

1 rather, a large population with similar clinical and  
2 individual profiles?

3 A. Yes.

4 (Exhibit No. 17 marked for identification.)

5 Q. (By Mr. Hohengarten) Can you identify  
6 Exhibit 17?

7 A. It's an e-mail from Mike Beste to Dick Gray,  
8 Ron James, and Don James.

9 Q. And you're copied on this e-mail, correct?

10 A. Correct.

11 Q. And what is the subject matter of this e-mail?

12 A. Some more on Midwest Medical.

13 Q. And on the second page of Exhibit 17, there is an  
14 e-mail from Dick Gray to Ron James, correct?

15 A. Correct.

16 Q. Okay. And in that e-mail, isn't Dick Gray asking  
17 Ron James: Is there no other way to make our model work  
18 at Retirement Value except using only Midwest Medical or  
19 the LE reports on policies we buy? Isn't that correct?

20 A. Yes.

21 Q. And why was Dick Gray e-mailing Ron James asking  
22 him if there was any other way that the RV model could  
23 work without using Midwest Medical?

24 A. Um, we were wanting to utilize other LE reporting  
25 companies. Um, Midwest Medical -- there was just too

1 bouquet?

2 A. Not at any given point yet. Not yet. So, let's  
3 say, in February, we received one, and that policy got  
4 sold out. Well, then, maybe only nine would have them.  
5 Not all ten that were on the portfolio would necessarily  
6 have other LEs at the time of the cease and desist. The  
7 goal was that all ten would, but -- that's what we were  
8 working towards.

9 (Exhibit No. 18 marked for identification.)

10 Q. Can you identify Exhibit 18?

11 A. It is an e-mail from me to Don James.

12 Q. And what's the subject matter of the e-mail?

13 A. It was our non-qualified paperwork, our 12-page  
14 handout, which was the large brochure and the RV  
15 brochure, which was the smaller tri-fold, I believe.

16 Q. Um, and what was the reason for sending this  
17 information to Don James?

18 A. For his review.

19 Q. Well, Don James had received an inquiry from a  
20 potential licensee, correct?

21 A. Oh, let me read through the e-mail. Okay. I'm  
22 sorry. Now, the question was?

23 Q. You sent this information to Don James because he  
24 had received an inquiry from a potential licensee,  
25 correct?

1 A. Correct.

2 Q. So you sent this information to Don James with  
3 the expectation that he would share it with licensees or  
4 potential licensees, correct?

5 A. Correct.

6 Q. And on the sixth page of this exhibit, there's a  
7 reference to Kiesling, Porter, Kiesling & Free, correct?  
8 Sixth page of the exhibit, not the brochure.

9 A. Um, correct.

10 Q. And Kiesling, Porter is touted as the escrow  
11 agent, the third-party fiduciary, correct?

12 A. Correct.

13 Q. And, uh, Retirement Value in this marketing  
14 material is assuring the total safeguarding and  
15 preserving of the money by using Kiesling, Porter,  
16 correct?

17 A. Correct.

18 Q. And you approved these advertising materials,  
19 correct?

20 A. Correct.

21 Q. At the time that you sent these materials to  
22 Don James in July of 2009, had you reviewed the escrow  
23 agreement between Retirement Value and Kiesling, Porter?

24 A. I do not know.

25 Q. Uh, in this packet that you sent to Don James,

1 about two or three pages after the information regarding  
2 Kiesling, Porter, there's the first page of a Midwest  
3 Medical Review Life Expectancy Certificate, correct?

4 A. Correct.

5 Q. And this is how the information regarding Midwest  
6 Medical was typically distributed, correct. With just  
7 the first or second page of a sample, Midwest Medical  
8 Life Expectancy Certificate?

9 A. Correct. This was a sample, yes.

10 Q. Okay.

11 (Exhibit No. 19 marked for identification.)

12 Q. Can you identify Exhibit 19?

13 A. It is our tri-fold brochure.

14 Q. And was that included in the materials that were  
15 forwarded to Don James in July of 2009?

16 A. It should have been. Now, whether it was this  
17 revision or not, I don't know.

18 Q. Okay. But something like Exhibit 19 would  
19 typically be distributed to licensees and potential  
20 licensees, correct?

21 A. Correct.

22 Q. And in all of the marketing materials, there was  
23 a reference to Kiesling, Porter, Kiesling & Free as the  
24 escrow agent, correct?

25 A. Correct.

1 Q. Now, you mentioned that you had talked to someone  
2 at Midwest Medical about receiving a clear copy of the  
3 third page of the LE certificate; did I understand you  
4 correctly?

5 A. Correct.

6 Q. Okay. And when did you start receiving clear  
7 copies of the third page of the LE certificate?

8 A. I am not sure.

9 Q. Was it in 2010?

10 A. It would have probably been the winter, turn of  
11 '09, '10. I'm not sure.

12 Q. Okay. And once you started receiving those clear  
13 third pages, did you ever include those third pages in  
14 the marketing materials that you distributed to  
15 licensees?

16 A. No. We only included the -- the one page. We --  
17 that's the room that we had in the brochure, so no. No.

18 (Exhibit No. 20 marked for identification.)

19 MR. HOHENGARTEN: Did you have a chance to  
20 mark Exhibit 20?

21 A. Yes.

22 Q. Okay. Could you look at Exhibit 20?

23 A. Okay.

24 Q. Okay. And could you describe it for the record  
25 just briefly?

1 A. Well, first of all, it's a surprise to me that  
2 this was completed February 22nd of 2010. The first I  
3 ever saw this report was when it was subpoenaed by the  
4 receiver's counsel from Hess.

5 Q. Okay. So it's your tes- --

6 A. So May or June.

7 Q. Okay. It's your testimony that you never saw  
8 this report until May or June of 2010?

9 A. Whenever the subpoena was issued and they finally  
10 received the report back from Hess. That's the first  
11 time I've ever seen it.

12 Q. Who paid for the report?

13 A. It was my understanding that Retirement Value  
14 paid \$10,000 to Ron James. The cost was a total of  
15 20,000, and I had thought Ron pitched in 10,000, but  
16 that's speculation.

17 Q. Did anyone ever relate to you verbally the  
18 results of the report before you reviewed the report  
19 itself?

20 A. Um, the first that I heard about results was when  
21 Dick Gray took a phone call from Ron James before one of  
22 our licensee marketing meetings estimate I believe in  
23 Dallas, and that may have been the one in February or  
24 March. It was the spring of 2010 and Ron James relayed  
25 that it -- the results came back at 92 percent.

1 Q. Um, and was that repeated by Dick Gray at the  
2 sales meeting?

3 A. Yes, I believe so.

4 Q. And that sales meeting would have been a meeting  
5 of licensees?

6 A. That's correct.

7 Q. Um, and can you turn to the first page of the  
8 report that is Exhibit 24?

9 A. First page of --

10 Q. The Life Expectancy -- after the title. Do you  
11 see, uh, below the summary, the first page below the  
12 summary, the sentence: Based on our analysis of the  
13 data and results, HMM has determined that Midwest  
14 Medical's actual-to-expected life expectancy estimate  
15 ratio over calendar years 2004 through 2009 is  
16 42 percent. Do you see that language?

17 A. Yes, I do.

18 Q. Um, so if this report is correct, the  
19 representation regarding Midwest Medical's accuracy  
20 rates in all of your marketing materials would be false,  
21 correct?

22 A. Well, you have to define what the 42 percent is  
23 when compared to the 95 percent at LE.

24 Q. Well, what is the 42 percent, or do you know?

25 A. I am not real sure. I don't know if it's an



1 responsibility to the investors, as was voiced by  
2 Brent Free at the meetings. Um, upon -- however, upon  
3 reviewing the escrow agreement with the understanding  
4 that I have now after the Cease and Desist and with  
5 commentary from the State of Texas and from your office,  
6 I now see how the escrow agreement does not look like it  
7 obligates Kiesling in that manner.

8 Q. When is the first time you reviewed the escrow  
9 agreement between Retirement Value and Kiesling, Porter?

10 A. I don't know that I've ever reviewed the first  
11 draft of it. I'm trying to remember if that was just  
12 signed by Dick or if I had the opportunity to sign it.  
13 The first time that I actually reviewed the escrow  
14 agreement -- does it show?

15 Q. Um, it's signed by Richard Gray. And I'm just  
16 trying to find out, and you can give me a range, the  
17 approximate time period when you first reviewed the  
18 executed escrow agreement between Retirement Value and  
19 Kiesling, Porter.

20 A. Um, that would have to be, probably, in the past  
21 six months. I reviewed the second draft when we -- when  
22 we were look- -- let me back up. Let me back up. Brent  
23 gave us a second draft because we were going to  
24 reestablish the escrow agreement at our one-year  
25 anniversary, which would have been in March or April.

1 year two, if that makes sense.

2 Q. It's true, is it not, that even though the  
3 marketing materials continued to represent this total  
4 safety, you were aware of the fact that there was  
5 commingling among the subaccounts, correct?

6 A. The -- what do you mean by "commingling"?

7 Q. That, uh, moneys that were supposed to be used  
8 exclusively to pay premiums on a particular policy that  
9 the investor had invested in were, in fact, being used  
10 to purchase new policies, policies that were unrelated  
11 to the particular, uh -- uh, policies that that investor  
12 had invested in.

13 A. Yes.

14 Q. Okay. And, in fact, that commingling started  
15 from almost the very beginning, did it not?

16 A. It could have. I don't know. I was not involved  
17 with the accounts or how the accounts were handled.

18 Q. Well, when did you first become aware of the  
19 commingling?

20 A. Um, I -- I don't know.

21 Q. 2009?

22 A. It probably would have been at some point in  
23 2009, yes.

24 Q. Okay. And so the representations that the  
25 investors', uh, investment moneys were totally

1 safeguarded in these escrow subaccounts was false,  
2 correct?

3 A. I disagree with that. No.

4 Q. Okay.

5 A. All investor money was always used to pay  
6 premiums or to purchase policies.

7 Q. But the investors' money was not always used to  
8 pay premiums on the policies in which they had invested,  
9 correct?

10 A. Correct. At the end of the day, though, when all  
11 investor money was received for that specific account --  
12 or for that specific policy, when it was fully  
13 subscribed, all moneys would have been backfilled and  
14 been in there to fill the account to the appropriate  
15 premium level that it should have been at LE plus 24.

16 Q. Don't you think it would have been important for  
17 an investor to know that, um, their money, which was  
18 supposed to be tied to a particular policy was, in fact,  
19 being used to purchase new policies and policies that  
20 that investor was not, um, involved in or invested in?

21 A. Well, that money would have been, um, rebalanced.

22 Q. Well, that wasn't my question. Wouldn't an  
23 investor have wanted to know that his or her money might  
24 be used to purchase other policies or new policies that  
25 that investor had not invested in?

1 A. Yes.

2 Q. Okay. That would have been something important  
3 to know, correct?

4 A. Yes.

5 Q. And the marketing materials suggested that that  
6 could not happen because of the existence of these  
7 escrow subaccounts, correct?

8 A. Correct.

9 Q. Because Kiesling, Porter was not going to let it  
10 happen, correct?

11 A. Correct.

12 Q. And Retirement Value was not going to have an  
13 opportunity at any time to handle those investment  
14 moneys, correct?

15 A. Correct.

16 Q. And under the escrow agent that we just reviewed,  
17 that was blatantly false, correct?

18 A. What was blatantly false?

19 Q. The fact that Retirement Value was not going to,  
20 at any point, have an opportunity to handle the money  
21 because Kiesling, Porter was going to send the money  
22 wherever Retirement Value directed it to send the money,  
23 correct?

24 A. I disagree with that.

25 Q. Oh, you don't -- you disagree with the assertion



## Wendy Rogers, MBA

President

Years of Experience  
11

### Education

B.S. Agribusiness  
Texas A&M University  
Summa Cum Laude  
1998

Master of Business  
Administration  
University of Houston  
at Victoria  
2004

### Registrations/ Certifications

Group 1 Life Insurance  
License  
#977455

### Affiliations

National Association  
of Professional Women

### Professional Experience

Mrs. Rogers has thirteen years of experience in the banking industry as well as in various capacities in the financial services industry. She has previously held her Securities License as well as a Registered Investment Advisor license. She has now transitioned that experience to the utility coordination services company—JR Utilities.

### Business Experience

**Retirement Value, LLC, New Braunfels, Texas**  
*CEO*

April 2010-May 2010

*Vice President, Administration & Services*

Feb. 2006-Mar. 2010

- Partnered with professional colleagues to create a re-sale life insurance program
- Assisted with back office duties to process retail client paperwork
- Developed a wholesale model to market our product through a network of licensees
- Created online forms through Adobe Acrobat and wrote auto-fillable formulas utilizing JavaScript
- Formed, managed and streamlined several departments (licensing, client services, policy servicing, and finance)
- Interviewed candidates and hired employees for all of our departments

**Barnard-Duggan Insurance, Seguin, Texas**

*Retirement and Estate Planning Partner*

Nov. 2004-Jan. 2006

- Scheduled and organized marketing seminars in The Valley to target the winter Texas market
- Followed-up with prospective clients through the pipeline from seminar attendee to valued client
- Tracked insurance/investment applications through their respective completion processes
- Assisted three financial service providers with marketing to their various prospective clients

**JPMorgan Chase Bank, New Braunfels, Texas**

*Personal Banker, Bank Officer*

June 2001-Oct. 2004

- Developed relationships with a portfolio of 400+ clients
- Managed approximately \$40 million in banking and investment assets
- Proactively profiled clients, identified specific needs, and scheduled appointments between clients and a Personal Financial Advisor
- Focused on client retention and expansion by exceeding expectations through customer satisfaction
- Cannon Financial Institute training on trusts and financial planning concepts

**Business Experience (continued)**

**Tanglewood Financial Services, Inc., Houston, Texas**

*Financial Services Assistant*

June 2000-June 2001

- Helped to start this financial services subsidiary of Bank of Tanglewood from the ground up
- Laid the groundwork for unique business processes to better serve our customers
- Offered a high level of customer service through brokerage services, insurance products, and banking services
- Analyzed individuals' and estates' assets by utilizing Morningstar
- Placed stock, mutual fund, and annuity trades online; opened brokerage accounts
- Facilitated and coordinated the relationships between bank customers and the President of Tanglewood Financial Services

**Calderwood Financial Strategies, Inc., Houston, Texas**

*Financial Planning Professional*

Nov. 1999-June 2000

**Phoenix Financial Associates, Houston, Texas**

*Technical Support/Planning Assistant*

- Implemented the strategies behind business and individual financial planning
- Interacted with a team of advisors, CPA's, and lawyers to develop planning models
- Personally serviced client accounts from filling out applications to delivering policies to affluent clients
- Worked with the owner/manager one-on-one to put together client presentations; attended various client appointments with him
- Analyzed existing clients' insurance portfolios to determine additional needs

**Prudential Financial Planning Services, Houston, Texas**

*Planning Assistant*

Oct. 1999-Nov. 1999

- Mastered financial planning software
- Processed financial plans and product implementation
- Updated financial planner compliance library

*Marketing Assistant*

Jan. 1999-Oct. 1999

- Assisted advisors with developing a marketing strategy to expand their client portfolio
- Generated a weekly advisor activity tracking report for the management team
- Interviewed prospective financial planner candidates in a role-playing format



## Re-Sale Life Insurance Policies

**Retirement Value, LLC**  
707 North Walnut Avenue  
New Braunfels, TX 78130

PO Box 310635  
New Braunfels, TX 78131

Phone: 830-624-8858  
Fax: 830-609-6063

RV@retirementvalue.com  
www.retirementvalue.com

The information contained in this handout does not  
constitute investment advice, and is not an offer to sell or a  
solicitation to buy any security or any insurance product.

PLAINTIFF'S  
EXHIBIT

C

Δ π EXHIBIT 4

Deposition *Ryan*

Date *7/11* Rpt. *Via*

www.dpi.com



Thank you for the privilege of allowing us to share our proprietary re-sale life insurance policy program with you. We believe both prospective Licensees and prospective Client-participants will want to know:

- All Client-participant funds are deposited in escrow accounts at **Wells Fargo Bank, NA** with a rich, storied, near-mythic legacy dating back to 1852. Naturally, their agreement to accept our deposits cannot be interpreted as and is not an endorsement of our program.
- 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. Retirement Value, LLC never handles any Client-participant funds at any stage of this program.
- Premium payments will be escrowed to cover **Life Expectancy ("LE") plus 24 months**. This means if an Insured has an LE of 60 months, premiums will be escrowed for 84 months and upon the death of the Insured, all un-used premiums will be distributed on a pro-rata basis to all Client-participants in addition to the return of their initial basis plus expected gains.
- The fundamental data required in any Life Expectancy Report is thoroughly underwritten by and provided to us by as many as three (3) independent and totally objective LE sources. We always select the longest.
- The re-sale policies exhibited by Retirement Value, LLC as immediately available for Client-participant selection are exactly that – they are available immediately. Each case in our "portfolio" has been sourced from a policy aggregator who has been buying policies in the life insurance Secondary Market for over 15 years. On average, he and his staff review \$500 million in face amount / death benefit each week to make their selections; then execute formal policy purchase agreements to take ownership of each case; finally re-sell some of those policies to us after completion of their thorough due diligence.
- For potential Licensees reading this summary sheet – our policy source promises us up to \$30 million in face amount each week if needed, thus assuring your ability to meet the demands of even your very largest individual and institutional Client-participants.
- 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.

We welcome this special opportunity to introduce you to a true "win-win" program and look forward to the privilege of serving you. Thank you for allowing us to "visit" with you this way!

Dick Gray  
President / CEO  
Retirement Value, LLC





## Re-Sale Life Insurance Policies

## An Overview

There really are no mysteries about or any complicated moving parts with re-sale life insurance policies owned by **Retirement Value, LLC**. We buy the death benefit of a life insurance policy at a deep-discount from the full "face amount". This "spread" or leveraging of our funds generates significant gains upon the passing of the insured - in which you participate on a pro-rata basis. This decades-old idea is just that straight-forward. Nothing more; nothing less!

Simply put, for almost twenty years "retail" or individual financial decision-makers have been able to enjoy the same spectacularly high gains previously realized for decades by only the very wealthy or institutional / "wholesale" players in the secondary market for life insurance. These profit levels from the "spread" in such cases have been realized ever since selling the "death benefit" within a life insurance policy to an assignee was declared "legal" by the U. S. Supreme Court in 1911.

Client-participants in our re-sale life insurance policy program are "irrevocable co-beneficiaries". As an irrevocable co-beneficiary, upon maturity of the policy due to the death of the insured, you receive a pro-rata distribution of the death benefit. All policies in which you participate have been sold by individuals or companies who no longer wanted or needed the policy. The specific amount you receive at maturity is determined by your original participation amount plus your base-line targeted gain.

**HERE'S THE BOTTOM LINE:** When an insured passes away, you are re-paid your original participation amount plus a gain, which we call your "base-line targeted gain". Your total at maturity could be higher. If there are any unused premiums to be refunded, these payments are made to you by **Kiesling, Porten, Kiesling & Free, P.C.**, our Escrow Agent — a 40+ year-old Texas law firm that independently manages all monies used for your participation.

## Re-Sale Life Insurance Policies

## Legal Foundation

One of the questions most frequently asked by someone considering participation in a re-sale life insurance policy is: "Is this legal?" Justice Oliver Wendell Holmes, Jr. [b. 1841 d. 1935] of the U.S. Supreme Court [appointed December 8, 1902, by President Theodore Roosevelt] answered 'Yes' when he penned the majority opinion for **GRIGSBY V. RUSSELL**, 222 U.S. 149 (1911) December 4, 1911. Justice Holmes stated with clarity on behalf of the entire high bench:

*"... it is desirable to give life policies the ordinary characteristics of property; to deny the right to sell... is to diminish appreciably the value of the contract in the owner's hands. It has been decided that a valid policy is not avoided by the cessation of the insurable interest..."*

**FOR 2008 THE RE-SALE LIFE INSURANCE MARKET WAS VALUED AT OVER \$12 BILLION.**

## Re-Sale Life Insurance Policies

## Financing Entity

Retirement Value ("RV") was selected by their exclusive Policy Financing entity to penetrate the re-sale market for reasons of integrity, professionalism, an unyielding pursuit for compliance, and an unsurpassed focus on detail.

RV's Financing Entity is one of the earliest participants in the Life Settlement market and has been one of the most consistent and largest private partakers since 1995. They were one of the leading estate planners and producers for the most prominent Life Insurance Issuers in the US throughout the 1980s and 1990s and their entry into Life Settlements was by pure accident (as is the case with most of history's innovations). No one "created" Life Settlements; they just happened.

Their entry was a result of one of his estate planning clients wanting to let a policy lapse due to money constraints. Concerned about his client's plight, he went and met with her. She conveyed her financial situation and he offered her a substantial sum of money on the spot. The client was ecstatic as this was an option not previously open to her or anyone at that time. Leaving with the policy he'd just bought and wondering aloud "what have I just done?" - this may have been the first "Life Settlement" ever transacted.

Since that date, they became active planners in developing the first wave of policies for secondary harvest. This came about as the result of many years as a prominent estate planner and seeing and analyzing the various life products on the market for the benefit of his prominent and wealthy clientele. The policies that were first presented (after contestability) were from life insurers that had been strategically selected for several characteristics, one of them being the lowest cost of insurance ("COI" charge). This led to a rapid increase in policies being written across a wide spectrum of elderly in the US as they went on road-shows across America to present the Life Settlement option for increasing life insurance sales.

Since then the Financing Entity has 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. They never have been a target of any regulatory inquiry or litigation.

RV's Financing Entity has provided prefunded, policy warehousing at 0% interest for the re-sale life insurance policies we offer to clients.



## Re-Sale Life Insurance Policies

## Escrow Agent

Safeguarding and preserving both a Client-participant's basis and targeted income in a re-sale life insurance policy are essential components of our program. **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.**

### OUR ESCROW AGENT AS THIRD-PARTY FIDUCIARY

**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.

The Escrow Agent also pays all premiums due on all policies and refunds to you on a pro-rata basis any un-used premiums remaining in escrow when the Insured passes away.

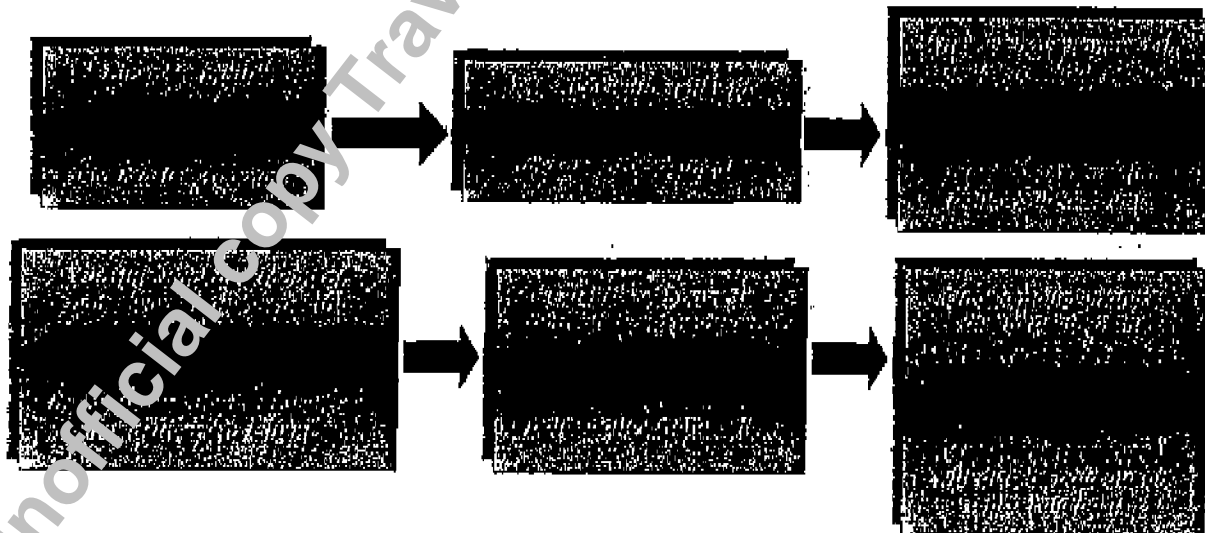
All monies processed by **Kiesling, Porter, Kiesling & Free, P.C.** are deposited in escrow accounts held at **Wells Fargo Bank, N.A.** in New Braunfels, Texas. Kiesling as Escrow Agent is independently bonded by a licensed bond carrier.

At no time do any Client-participant funds come to, pass through, or get handled by anyone at **Retirement Value, LLC**. Also, participants in our re-sale life insurance policy program receive reports on a regular basis from **Retirement Value, LLC** and the Escrow Agent to verify that the proper premiums have been paid and the policies remain in-force.

## Re-Sale Life Insurance Policies

## What Happens Next?

Once the paperwork is mailed in, what can your Clients expect?



## Re-Sale Life Insurance Policies

## "The Spread"

### TOP OF "THE SPREAD" = INCOME

All death benefit pay-outs from the re-sale policies are paid only to **Kiesling, Porter, Kiesling & Free, P.C.** as beneficiary to protect you.

### BOTTOM OF "THE SPREAD" = EXPENSES

- Cost of buying the policy
- Ongoing premium payments to maintain the policy
- Application fees for qualified funds accounts
- Escrow Agent fees and bank costs
- Administrative and referral fees

Re-sale life insurance policies have few "moving parts". Client-participants are paid back all of their basis plus their pro-rata portion of "The Spread", or the difference between costs and the final pay-out when an insured dies.

Your funds allow **Retirement Value, LLC** to purchase and to own re-sale life insurance policies that already have been sold to a policy aggregator by the original policy owner(s) or the original insured(s). "The Spread" shows graphically how **Retirement Value, LLC** is able to pay you such a high income on your funds. Pay-back of all monies in a re-sale life insurance program occurs when the insured passes away. All un-used premiums held in escrow by **Kiesling, Porter, Kiesling & Free, P.C.** are refunded to Client-participants.





## Re-Sale Life Insurance Policies

## Life Expectancies

All life expectancy (LE) underwriting reports are a well-informed combination of art, science, and statistics. All life expectancy reports are carefully crafted, deliberate estimates, driven by the medical records provided. Therefore, it should not be surprising that there can be significant variations even when similar statistical methodologies are employed. What follows is a specific example:

For the same 79-year old male, based on the same medical history, **Retirement Value, LLC** received three evaluations, and each was different. One was for 47 months; another for 49 months; and a third report was for 67 months.

The important point is that **Retirement Value, LLC** selected the 67-month evaluation and added an additional 24 months of premium in the escrow account to protect our clients. How did this protect our clients? By choosing the longest available LE timeline and still adding 24 additional months of premium to the premium escrow account, **Retirement Value, LLC** reduced as much as reasonable the future risk of a premium call.

LE Source #1

### Life Expectancy Certificate

Subject: [REDACTED] D.O.B: 12/31/1930  
Evaluation date: 02/12/2010 Smoking Status: Former smoker  
Age: 79 S.S. #: [REDACTED]  
Gender: Male

Life Expectancy 67 Months

LE Source #2

### LIFE EXPECTANCY CERTIFICATE

Case: 25012

Certificate Date: 2/12/2010  
Insured: [REDACTED]

Requested By: Client 1  
Date of Birth: 12/31/1930  
Age: 79 Gender: M  
Life Style: Non Smoker  
SSN: Not Available

**Median Life Expectancy for this Patient is 47 Months, 3.9 years**  
(The above Median Life Expectancy is based on information provided and is an ESTIMATION of longevity only!)

LE Source #3

### Life Expectancy Certificate

DATE: 10/26/2009 PATIENT: [REDACTED]  
SSN: [REDACTED] D.O.B.: 12/31/1930  
AGE: 79 SEX: MALE

Given the Age of the Subject and his Medical Management with

Compliance, his projected LE would be 49 Months on available information. This does not mean that Mr. [REDACTED] will not die sooner nor live longer than the time frame indicated. Clearly the factors outlined above have mortality implications.

TSSB 060008



# RETIREMENT VALUE, LLC

Last updated: 07-26-2010

## FOR REFERENCE ONLY:

Current 10-case Portfolio available for client participation



| POLICY CODE      | POLICY DEATH BENEFIT FACE AMOUNT | ISSUING INSURANCE CARRIER | INSURED GENDER | INSURED AGE IN YEARS | PROJECTED LIFE EXPECTANCY | LE REPORT DATE | AVAILABLE FOR PARTICIPATION AS OF 7/26/2010 | Current LE in Years                 | Total LE in Years |
|------------------|----------------------------------|---------------------------|----------------|----------------------|---------------------------|----------------|---|-------------------------------------|-------------------|
| LFG081-021710-RG | \$1,260,000                      | Lincoln Financial         | FEMALE         | 80                   | 64 months                 | 12/23/2009     | \$1,171,300                                 | 16.50%                              | 22.860%           |
| LBLM1-021710-SW  | \$2,085,000                      | Lincoln Benefit           | MALE           | 77                   | 60 months                 | 1/27/2010      | \$1,701,200                                 | 16.50%                              | 23.820%           |
| LBL918-022410-RW | \$1,000,000                      | Lincoln Benefit           | MALE           | 73                   | 51 months                 | 2/11/2010      | \$1,122,700                                 | 16.50%                              | 18.300%           |
| AXA335-022410-PS | \$3,000,000                      | AXA Equitable             | MALE           | 74                   | 47 months                 | 2/18/2010      | \$1,513,500                                 | 16.50%                              | 17.340%           |
| LFG117-021710-HW | \$2,000,000                      | Lincoln Financial         | FEMALE         | 80                   | 52 months                 | 1/19/2010      | \$1,171,300                                 | 16.50%                              | 22.860%           |
| LFG248-012610-HM | \$3,000,000                      | Lincoln Financial         | FEMALE         | 76                   | 52 months                 | 1/26/2010      | \$1,171,300                                 | 16.50%                              | 22.860%           |
| AXA091-012110-PC | \$5,000,000                      | AXA Equitable             | FEMALE         | 81                   | 45 months                 | 12/18/2009     | \$1,171,300                                 | 16.50%                              | 22.860%           |
| LFG183-111109-MR | \$5,000,000                      | Lincoln National          | FEMALE         | 82                   | 40 months                 | 10/30/2009     | \$1,171,300                                 | 16.50%                              | 22.860%           |
| PLI140-111109-DW | \$10,000,000                     | Pacific Life              | MALE           | 83                   | 38 months                 | 11/11/2009     | \$1,171,300                                 | 16.50%                              | 22.860%           |
| AGL130-012110-PM | \$2,000,000                      | American General          | MALE           | 88                   | 33 months                 | 1/11/2010      | \$1,171,300                                 | 16.50%                              | 22.860%           |
|                  | <b>\$34,336,000</b>              |                           |                |                      |                           |                | <b>\$14,473,600</b>                         | *16.5% annually x total LE in years |                   |

Sample of a recent portfolio.

NOT FDIC/NCUA INSURED • NO BANK/CREDIT UNION GUARANTEE • NOT A DEPOSIT • NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY • MAY REQUIRE ADDITIONAL CONTRIBUTIONS



**RETIREMENT VALUE, LLC**

men participation example and base-line expected income during ten years

**Client:** Incumbent: 15.5% sample 2004-2005

of mutual and reserve fund premiums of

collected through month 57

Client's expected income - extended and adjusted for a period of ten years

5.10.000 22.000.000,00 - 2.157,00

|          |                  |          |
|----------|------------------|----------|
| 1.0.3.38 | per Department 2 | 1.0.3.38 |
|----------|------------------|----------|

**Total return at maturity**

STATE OF THE FACTS BACKGROUND = 5.12.2016

Annual pro-rata premium share = ST member

| Alt. Res.<br>res. of<br>Year 1 | Alt. Res.<br>res. of<br>Year 2 | Alt. Res.<br>res. of<br>Year 3 | Alt. Res.<br>res. of<br>Year 4 | Alt. Res.<br>res. of<br>Year 5 | Alt. Res.<br>res. of<br>Year 6 | Alt. Res.<br>res. of<br>Year 7 | Alt. Res.<br>res. of<br>Year 8 | Alt. Res.<br>res. of<br>Year 9 | Alt. Res.<br>res. of<br>Year 10 |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---------------------------------|
| Alt. Res.<br>res. of<br>Year 1 | Alt. Res.<br>res. of<br>Year 2 | Alt. Res.<br>res. of<br>Year 3 | Alt. Res.<br>res. of<br>Year 4 | Alt. Res.<br>res. of<br>Year 5 | Alt. Res.<br>res. of<br>Year 6 | Alt. Res.<br>res. of<br>Year 7 | Alt. Res.<br>res. of<br>Year 8 | Alt. Res.<br>res. of<br>Year 9 | Alt. Res.<br>res. of<br>Year 10 |

**District**

Co. D.

**THE**

David

THE  
FLOOR  
IS  
A  
T  
R  
A  
P

[illegible]

cial

Office:





## Re-Sale Life Insurance Policies

## Our Management Team

### **Dick Gray** – Founder / President / CEO

Mr. Gray has held these positions since company start-up and remains very active in guiding the public presentation of the proprietary re-sale life insurance policy model he helped pioneer. Dick has helped clients make wise money decisions in hard financial times for the past 35 years and has been a licensed insurance agent for over 18 years. Personal participation in the re-sale life insurance policies for his own retirement planning reinforces his credibility when assisting numerous clients in doing the same. After earning an A. B. degree in political science and a Master of Divinity degree — and prior to the start of his business career — Dick proudly completed four years of U.S. Army active duty as a Chaplain, which included 13 months of decorated field duty in Viet Nam.

### **Wendy Rogers** – Vice President, Administration and Services

Mrs. Rogers supervises our Client Services Department while contributing personally to the development, design and implementation of all marketing and print materials; she also coordinates all computer and information technology needs. Wendy manages the massive data accumulation an operation like ours generates and assures client privacy, while providing timely on-line access for licensees and clients alike to all information needed for a satisfying business relationship with us. She combines 10 years of service in the insurance, financial planning, and banking industries with several years of re-sale policy sales experience. Wendy's B.S. in Agribusiness was earned at Texas A&M University – College Station, and she also has earned a Masters of Business Administration.

### **Bruce Collins** – Chief Operating Officer

Mr. Collins brings to this crucial position many years of success and achievement in the general financial services industry, including work as a registered rep, and over five years of directly-relevant success within our re-sale / life settlement industry as a Master Licensee and top-level player for our product line with another company. Mr. Collins coordinates all Licensee administration, policy-making decisions, and implementing execution for all "field" activities. He currently holds a Series 62, 6, and 7 licensing. Mr. Collins resides in Grand Prairie, TX, placing him at the financial epicenter of so much of the explosive growth and success at Retirement Value, LLC.

### **Katie Hensley** – Director of Finance

Mrs. Hensley is the primary point of contact for all Licensee commission matters at Retirement Value, LLC. Ongoing administration of all commissions and invoicing of all commission payments to the Escrow Agent; coordinating development of sales hierarchies; placing client funds on the specific policies your Clients select; recommending new policies to be placed on the bouquet — these are just a few of the duties she performs efficiently and accurately. Katie holds a Bachelor of Business Administration from Texas A&M University-Kingsville.

### **Jeremy Gray** – Director of Policy Administration

Mr. Gray coordinates all policy acquisition and is the point of contact between our policy supplier and Kiesling, Porter, Kiesling & Free, P.C. He also maintains constant communication with all life insurance carriers that have issued policies that Retirement Value currently owns. He continually negotiates premium payments to cover the cost of insurance with these carriers for each policy and invoices the premium payments through our Escrow Agent to be paid to the appropriate insurance carriers.

### **DeAnne Lewis** – Manager of Client Services

Mrs. Lewis and her expanding staff "scrubs" all in-bound client paperwork sent to us by the Escrow Agent. She coordinates the flow of all applications with the Licensees, Escrow Agent, and the selected Custodian for all qualified funds. Mrs. Lewis joined our team with over 6 years of experience in the legal field with the two largest law firms in Austin, Texas, both as a Word Processing Supervisor and as a Legal Secretary in Insurance Defense litigation.

## FRANKLIN TEMPLETON FIXED INCOME INVESTMENT INSIGHT

## An Introduction to the Life Settlements Asset Class

## KEY HIGHLIGHTS

- Life settlements may offer investors the potential for diversification and attractive returns
- The asset class offers investors the opportunity to allocate capital to an asset class with historically low correlation to traditional equity and fixed income
- The market has grown in potential to an estimated \$240 to \$600 billion

Life settlements represent the rapidly developing secondary market for life insurance policies issued in the United States.

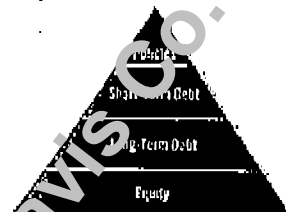
## INVESTMENT CHARACTERISTICS

Investors are attracted to the market due to the following primary investment characteristics:

**Attractive Expected Returns**—The asset class offers the potential for attractive returns relative to investment grade fixed income assets, due in part to it being a new and developing capital marketplace. Projected returns may be similar to those that investors can expect to achieve in other higher-risk asset classes, including equity markets.

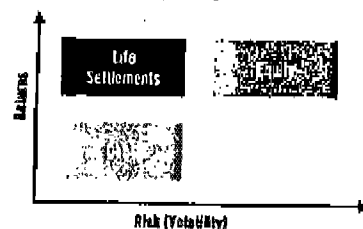
**High Credit Quality**—Life policies typically sit at the top of the capital structure of investment grade insurance companies. This makes them attractive to investors with high credit quality constraints in their investment guidelines.

Chart 1: Policies are Typically at the Top of the Capital Structure



**Low Correlation of Return**—Historically, the asset class returns have lower exposure to economic and financial market cycles. Thus, life settlements may provide portfolio diversification benefits relative to a traditional asset mix.

Chart 2: Life Settlements May Offer Attractive Returns with Lower Risk than Traditional Asset Classes



1. Source: Bloomberg, Franklin Templeton Investments, 9/30/06.

## THE DEVELOPING MARKET

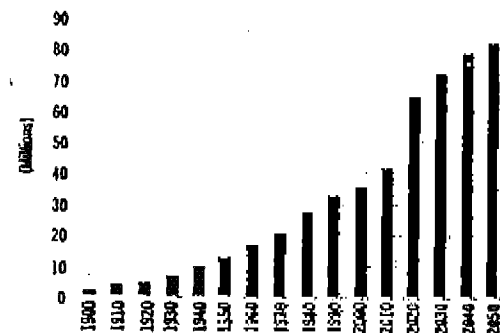
Processes and technology came together in the late 1990s, allowing for more efficient transfer of life policies. At the same time, a growing, older segment of Americans found themselves holding life insurance policies that they no longer needed. The life settlements market developed and began to provide liquidity to the broader population. Though individuals have many reasons for exiting their policies, few are aware of the life settlements marketplace and either accept the cash surrender value from the insurance company (often between a quarter and a half of what can be found in the life settlement market) or let the policy lapse. The fundamental reason for the rapid growth of the life settlements market is consumer value. The life settlements investor can pay more than cash surrender value and still expect a competitive internal rate of return (IRR) on their investment.

In recent years, the life settlements market has developed to give competitive market pricing, rather than just the cash surrender value, to policyholders for insurance policies they may no longer want or need. In the life settlement transaction, a policyholder sells a life insurance policy to an investor. The investor pays the subsequent premiums and is entitled to receive the policy's benefit upon the demise of the insured.

We believe that regulation, demographics and a low national savings rate will drive the expansion of supply to the life settlement market. The demographic wave of the baby boomer generation—those born in the U.S. between 1945 and 1965—is well known. This generation is now moving towards retirement with minimal savings relative to expected post-retirement expenditures. The cohort of those 65 or older is expected to grow at a rate of three times that of the general population. As this cohort grows, those wanting or needing to sell life insurance will grow as well.

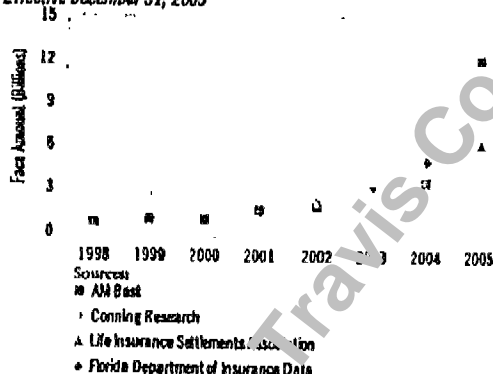
According to the 2005 American Council of Life Insurers Fact Book, there is about \$16 trillion worth of face value of life insurance in the United States. While the United States life insurance market accounts for almost 30% of the worldwide market, only a portion of the total \$16 trillion of outstanding life insurance in the United States is suitable for a life settlement transaction. Estimates place the U.S. life settlement market potential between \$240 and \$600 billion.

**Chart 3: The Market of Policies Available for Sale is Increasing Due to Demographic Trends**  
65-Plus Population by Year



Sources: U.S. Census Bureau, 1996; Dychtwald, Tarcher/Putnam Publishing, 1999

**Chart 4: The Estimated Size of the Life Settlement Marketplace is Growing**  
Effective December 31, 2005



#### ASSET CLASS RISK AND THE INVESTMENT PROCESS

An effective life settlement investment process integrates several key investment and risk management functions. These include maximizing the opportunity set of available investments through a policy acquisition network. Life settlements investment research should include the analysis of complex instruments with uncertain cash flows, insurance company credit risk, health care trends and biotechnology industry developments. Finally, robust portfolio and risk management systems tailored specifically to the life settlement asset class are required to monitor and effectively manage life settlement portfolios. Failure to properly manage the cash flow, insurance company credit

and healthcare/biotechnology risks will potentially result in permanent loss of capital.

#### Inputs Into the Life Settlement Valuation Process

- Actuarial tables derived from life settlement population
- Minimum cost of insurance
- Mortality debits
- Policy structure
- Credit spreads
- Conditional credit default frequency specific to policy obligations
- Recovery rates adjusted for state guaranty levels
- Life settlement risk premiums

#### Opportunity Set and Asset Acquisition

Investment managers use a network of life settlement brokers and providers to intermediate the sale of life insurance policies by policyholders wishing to sell them to investors wishing to buy them. Successful managers will continue to expand relationships across this developing industry to remain informed when suitable policies are being brought to market. As a part of its initial review, the investment manager considers available policies, associated policy illustrations, medical records and life expectancy underwriting reports relating to the underlying insureds in order to arrive at a valuation. In the asset acquisition phase of the program, the investment manager relies on internally developed pricing and valuation models.

#### Portfolio and Risk Management

As the portfolio is assembled, risk is monitored and managed on the existing investments. At the same time, selected assets are segregated and set aside in a premium reserve with the aim of maintaining sufficient cash flow to meet ongoing expected premium payments on the portfolio of policies. The investment manager seeks to minimize the premiums paid to an insurance company, while returning the most money back to investors as it flows in, without jeopardizing the premium reserve required to keep un-matured policies in force.

The cost of premiums due on the life settlements is minimized because of a particular feature of universal life policies that allows policyholders to set the premium level to achieve their desired level of cash value accumulation. By obtaining policy illustrations from the insurance company that issues each life settlement, the manager can "reverse engineer" the policy illustration to calculate the projected minimum amount of premium required. The investment manager repeats this process on an annual basis, since cash flows are typically subject to change based on changes in the interest rate environment.

The premium reserve level for each year is estimated by matching the net present value of future premiums to a desired confidence level, with a certain portion assumed to come from future death benefits. As policy benefits come in, the premium reserve is filled to the stated level and the surplus passed back to the investor. The premium reserve is invested principally in high quality, short-term debt.

Chart 5: Relative to Other U.S. Fixed Income Investments, Life Settlements May Offer Attractive Target IRRs Over a Long-Term Horizon  
As of May 31, 2006



The successful manager will construct a diversified portfolio of life settlements. In particular, these investment opportunities have the potential to capture life insurance policies primarily issued by highly-rated insurance companies. Investments should be diversified across key industry impairment classifications, credit counterparties, and demographic profiles. The developing market for life settlements offers investors the opportunity to allocate capital to a high quality, attractive return asset class that has low historical correlations to traditional equity and fixed income financial markets.

1. Sources: Bloomberg, Franklin Templeton Investments, 9.30.06. Market information on life settlements provided by Milestone Managers and Providers, LLC and Berkshire Settlements, Inc., and assumes a 10% discount rate.

#### Important Information

This article reflects the analysis and opinions of Franklin Templeton's Fixed Income Group, an affiliate of Franklin Templeton Institutional, as of November 2006. Because market and economic conditions are often subject to rapid change, the analysis and opinions provided may change without notice. The analysis and opinions may not be relied upon as investment advice.

Statements of fact are from sources considered reliable, but no representation or warranty is made as to their completeness or accuracy. There is no assurance that the employment of this strategy would result in the intended target IRR being achieved.

This material is intended for the use of investment consultants and other institutional/professional investors only, and is not directed at private individuals.

Franklin Templeton Institutional  
600 Fifth Avenue  
New York, NY 10020  
franklintempletoninstitutional.com

Franklin Templeton Investment Management Limited  
The Adelphi  
1-11 John Adam Street  
London WC2N 6HT

Franklin Templeton Investments (Asia) Limited  
17/F, Chater House  
8 Connaught Road Central  
Hong Kong

Franklin Templeton Investments Australia Limited  
Level 25, 360 Collins Street  
Melbourne, Victoria 3000  
Australia

Franklin Templeton Investments Japan Limited  
Kanematsu Building, 6th Floor (4-1)  
Kyobashi 2-chome Chuo-ku  
Tokyo 104-0031



72474

# Midwest Medical Review, LLC

## Life Expectancy Certificate

AGL73L-31909-WK

DATE: 1/12/2009

PATIENT: [REDACTED]

SSN: [REDACTED]

D.O.B.: 3/13/1932

AGE: 77

SEX: MALE

### PRIMARY DIAGNOSIS:

Hyperlipidemia, Fatigue, Osteoarthritis, Sciatica, Benign Prostatic Hypertrophy, Eczema, and Psoriasis

### SUMMARY OF DIAGNOSES & RISK STRATIFICATION

Subject is a 77 year old, 146 lb Caucasian male found to have ongoing medical diagnoses, which currently do not indicate a life threatening scenario. His medical history is significant for Cardiovascular Risk Factors in the absence of Cardiovascular Disease. These include Age, Male Gender, Hyperlipidemia, Fatigue, and Inflammatory Processes. He had a normal ECG and Bruce Protocol Cardiac Exercise Study from 1990. He has Osteoarthritis. He has a history of Sciatica and Herniated Disc (10/96). He is S/P Cervical Fracture with Central Cord Compression. He is S/P Motor Vehicle Accident with neck injury (5/93). He has a history of Benign Prostatic Hypertrophy. He is managed for Eczema and Psoriasis. Surgical History includes Cervical Spinal Fusion Surgery. His Lipid Studies from 2/03 include Cholesterol 215 mg/dl, Triglycerides 514 mg/dl, HDL-Cholesterol 45 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.78. His Lipid Studies from 10/07 include Cholesterol 219 mg/dl, Triglycerides 506 mg/dl, HDL-Cholesterol 44 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.98. His Lipid Studies from 8/07 include Cholesterol 294 mg/dl, Triglycerides 613 mg/dl, HDL-Cholesterol 40 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 7.35. His Lipid Studies from 4/06 include Cholesterol 148 mg/dl, Triglycerides 197 mg/dl, HDL-Cholesterol 62 mg/dl, LDL-Cholesterol 47 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 2.39. His Lipid Studies from 12/05 include Cholesterol 156 mg/dl, Triglycerides 401 mg/dl, HDL-Cholesterol 45 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 3.47. His Lipid Studies from 5/04 include Cholesterol 181 mg/dl, Triglycerides 325 mg/dl, HDL-Cholesterol 46 mg/dl, LDL-Cholesterol 70 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 3.93. His Lipid Studies from 12/03 include Cholesterol 208 mg/dl, Triglycerides 452 mg/dl, HDL-Cholesterol 50 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.16. Social and Family History are not available. Medications Listed include Crestor, Vytorin, Allegra, Finasteride, Lovastatin, Celebrex, Lipitor, Aleve, Advil, Seldane, Zantac, Iscalog, Skelaxin, and Ultravate Cream. Given the Age of the Subject and his Medical Management with Compliance, his projected LE would be 70 Months on available information.

This Review was compiled solely for JAMES INSURANCE and may not be used by any other company.

|                   |                                   |
|-------------------|-----------------------------------|
| EXHIBIT <u>16</u> |                                   |
| Dependent         | <u>Bogers</u>                     |
| Date              | <u>7/1/11</u> Rptr. <u>      </u> |
| www.nerproux.com  |                                   |

Unofficial copy Travis Co. District Clerk Velva L. Price

Signed: GLENN S. CHAPMAN, M.D., DIRECTOR OF MEDICAL REVIEWS

Please note: A Life Expectancy cannot be precisely determined for any specific patient, but rather is the average life expectancy of a large group of patients with similar clinical and individual profiles. No one can guarantee or warrant the accuracy of any patient's precise life expectancy. The information contained in this estimate is privileged and confidential information for the use of the individual or entity named.



# MIDWEST MEDICAL REVIEW, LLC

AGL73L-31909-WK

Subject: [REDACTED] Report Date: (valid 90 days) 01/12/2009  
SSN: [REDACTED] Gender: Male  
DOB: 08/13/1938 Smoking status: N/A  
Age: (Nearest Birthday) 77 Race: Caucasian  
Height: N/A Weight: 146 lbs

This subject has ongoing medical diagnoses which do not currently indicate a life-threatening scenario

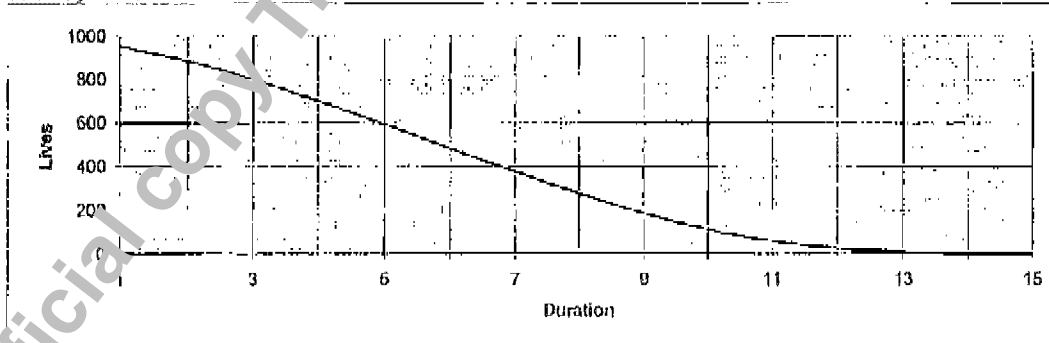
Med-Actuarial Median LE\*: 5.86 Years or 70 Months  
85% Mortality\*: 9.49 Years or 114 Months  
Mortality Multiplier\*: 5.50

\*Based on MMR / UIC Berkeley-Max-Munch Mortality Database

\* Applies to 2008 VBT Primary Tables (AMR), Select & Ultimate Male/Female, Single/All, Senior, Non-Smokers/Smokers

| Duration | Lives | Accum Deaths | Duration | Lives | Accum Deaths | Duration | Lives | Accum Deaths |
|----------|-------|--------------|----------|-------|--------------|----------|-------|--------------|
| 1        | 954   | 46           | 17       |       |              | 33       |       |              |
| 2        | 887   | 113          | 18       |       |              | 34       |       |              |
| 3        | 803   | 197          | 19       |       |              | 35       |       |              |
| 4        | 704   | 296          | 20       |       |              | 36       |       |              |
| 5        | 598   | 404          | 21       |       |              | 37       |       |              |
| 6        | 485   | 515          | 22       |       |              | 38       |       |              |
| 7        | 377   | 623          | 23       |       |              | 39       |       |              |
| 8        | 278   | 722          | 24       |       |              | 40       |       |              |
| 9        | 186   | 814          | 25       |       |              | 41       |       |              |
| 10       | 112   | 888          | 26       |       |              | 42       |       |              |
| 11       | 58    | 942          | 27       |       |              | 43       |       |              |
| 12       | 25    | 975          | 28       |       |              | 44       |       |              |
| 13       | 8     | 992          | 29       |       |              | 45       |       |              |
| 14       | 2     | 998          | 30       |       |              | 46       |       |              |
| 15       | 0     | 1000         | 31       |       |              | 47       |       |              |
| 16       |       |              | 32       |       |              | 48       |       |              |

Mortality Chart:



Please note: A Life Expectancy cannot be precisely determined for any specific person, but rather is the average life expectancy of a large population with similar clinical and individual profiles. No one can guarantee or warrant the accuracy of any individual's precise life expectancy. This information contained in this document is privileged and confidential information for the use of the individual or entity named.

Insured-specific information may be considered confidential under local, state or federal laws. Life expectancy information provided to a client company by Midwest Medical Review LLC may not be disclosed to any third parties or used in any manner which may violate any applicable laws including but not limited to HIPAA. Life Expectancy Certificates received from parties other than directly from Midwest Medical Review LLC cannot be guaranteed authentic.

# Resale Life Insurance Policies



Presented By:

**John Smith – Smith Inc.**  
A Licensee Of Retirement Value, LLC.

PLAINTIFF'S  
EXHIBIT

D

$\Delta \pi$  EXHIBIT 23

Deponent Rogers

Date 7/1/11 Pm, \_\_\_\_\_

WWW.DEPOBOOK.COM

RETIRED  
VALUATION  
FOR EXTRA SECURE FUTURE



## What is Re-Sale Life Insurance?

Re-Sale Life Insurance is the re-sale of life insurance policies that have already been acquired from the original insured or owner by a private investor and are now being re-sold. Retirement Value uses client funds to purchase Re-Sale Life Insurance policies.

Price

## Characteristics of Re-Sale Life:

- Policies are purchased at a deep discount in relation to the "face amount" or death benefit.
- Those insured by these policies typically are well advanced in years and have a "Life Expectancy" of 3-10 years.
- Policies are with large well-known companies with (A-) ratings or higher.

Clerk Velva L. Price

## Legal Basis

The life insurance contract that is sold is treated as "personal property."

Based on the 1911 U.S. Supreme Court case *Grigsby v. Russell* in which the Court ruled that

"...it is desirable to give life policies the ordinary characteristics of property to deny the right to sell... is to diminish appreciably the value of the contract in the owner's hands. It has been decided that a valid policy is not avoided by the cessation of the insurable interest."

# The RV Process

1

Facilitate the re-sale of these life policies for both individual and institutional clients.

2

Identify & organize a diversified bouquet of policies that fit the criteria of participants.

3

Execute all necessary legal & administrative documents for clients through our Escrow Agent.

**Achieves total transparency for the process.**

## Parties Involved in the Process

Wells Fargo Bank, N.A. since 1952. Where all the Escrow Account deposits are held.

Next, Prior, Mesing & Free, P.C. for 40+ years, law firm functioning as the Escrow Agent.

Next, the Escrow Agent for over 5+ years- external, independent, and totally objective timekeeper.

Policy source is a unimake (unimake) with over 14 years of experience in Life Settlement.

## Overview

Retirement Value, LLC uses your funds to purchase re-sale life insurance policies at a deep discount compared to the face value of death benefit.

Retirement Value, LLC becomes the "owner" of each policy.

Participants become "irrevocable co-beneficiaries"

**\*TOTAL ASSET "GROWTH"  
COULD BE HIGHER IF THERE ARE  
ANY UNUSED PREMIUMS TO BE  
REFUNDED AT MATURITY.**

Upon the death of the Insured, you receive a pro-rata distribution of the death benefit based upon your original participation amount plus your "base-line expected gain".

## Handling Premium Payments Participants' Funds

- 1 Escrow Agent functions as your Third-Party Fiduciary - Kiesling, Porter, Kiesling & Free, P.C.
- 2 Pays all premiums due on all policies.
- 3 The Main Escrow Account and all policy sub-accounts are held at Wells Fargo Bank, N.A.
- 4 NO Participant funds are handled and/or ever deposited by Retirement Value, LLC.



# Base-line Income to Client

## YOUR ASSET GROWTH

- All death-benefit payouts are paid to that policy's Sub-Account to be disbursed by the Escrow Agent.
- Traditional simple annual growth is 16.5%.

## EXPENSES

- Cost of buying the policy
- Ongoing premium payments to keep policy in force
- Application fees for qualified funds' accounts
- Escrow Agent fees and bank costs
- Administrative fees, including commissions



## **RV Criteria for Policies**

- "A-" rated or better Life carriers with fully funded reserves.
- Insured's LE typically is 36-72 months as determined by a third-party underwriter, currently Mid-West Medical Review, LLC.
- Total acquisition can be made at a deep discount versus "face amount".

## Risk Consideration

Retirement Values' model is based on many known factors, but the LE is not one of them - the LE is a scientific projection.

RV uses Midwest Medical Review, LLC in Cincinnati, OH as their independent, third-party underwriter.

Midwest Medical Review, LLC is one of the two largest active Life Expectancy firms.

RV is the ONLY model that sets aside premium payments for:

**(LE > 24 MONTHS)**

*[This insures that RV's projections missing target LE is less than 2%]*

\*Based on 14,700 cases written - and based on a random sample of 5,000 cases, Midwest is accurate 97% of the time to LE.

\*Midwest is 97.5% accuracy within 12 months after expected LE.

# Risk Consideration

[illegible]

## STIMULI

[illegible]

Retirement Value, LLC.

Last updated: XX-XX-XXXX

A SIGNED COPY OF THIS FORM MUST ACCOMPANY APPLICATION

(Our 10-case bouquet available for client participation)

| State SS med. pay / 101<br>for each case IF NOT<br>"normal" benefits | POLICY CODE      | ISSUING<br>INSURANCE<br>CARRIER | INSURED<br>GENDER | INSURED<br>AGE IN<br>YEARS | PROJECT<br>LIFE<br>EXPECTANCY | Annual expected<br>base-line income<br>for Participants | Total expected<br>base-line income<br>for Participants * |
|--|------------------|---------------------------------|-------------------|----------------------------|-------------------------------|---|--|
|  | LNL177-031909-MC | Lincoln National                | MALE              | 77                         | 70 months                     | 16.5%   | 96.35%   |
|  | LNL177-031909-MC | American General                | FEMALE            | 77                         | 70 months                     | 16.5%   | 95.25%   |
|  | LNL177-031909-MC | AXA Equitable                   | MALE              | 77                         | 69 months                     | 16.5%   | 94.88%   |
|  | LNL177-031909-MC | John Hancock                    | FEMALE            | 78                         | 60 months                     | 16.5%   | 82.50%   |
|  | LNL177-031909-MC | Lincoln National                | MALE              | 79                         | 55 months                     | 16.5%   | 75.63%   |
|  | LNL177-031909-MC | Lincoln National                | MALE              | 78                         | 54 months                     | 16.5%   | 74.25%   |
|  | LNL177-031909-MC | Mass Mutual                     | MALE              | 79                         | 47 months                     | 16.5%   | 64.63%   |
|  | LNL177-031909-MC | Lincoln National                | FEMALE            | 82                         | 42 months                     | 16.5%   | 57.75%   |
|  | LNL177-031909-MC | Old Mutual Life                 | MALE              | 9                          | 40 months                     | 16.5%   | 55.00%   |
|  | LNL177-031909-MC | Pacific Life                    | MALE              | 77                         | 37 months                     | 16.5%   | 50.88%   |

\*Gain = 16.5 x LE in years

- I ) I/ WE elect to place my / our total \$ \_\_\_\_\_ participation in EQUAL PORTIONS among all ten (10) portfolios listed for this bouquet  
I ) I/ WE elect to place my / our total \$ \_\_\_\_\_ participation in SELECTED AMOUNTS noted in rows 1 - 10 at the amount left on this bouquet

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_  
Printed name \_\_\_\_\_  
Participant Signature \_\_\_\_\_ Date \_\_\_\_\_  
Printed name \_\_\_\_\_

Licentee as witness \_\_\_\_\_  
Licentee printed name \_\_\_\_\_  
Licentee code # \_\_\_\_\_



**"Bouquet of 10"<sup>TM</sup>**  
**Current Policies**  
**Available**



## FAQS

### 1. How am I notified of my participation?

All clients receive initial confirmation of their transactions as soon as they are completed. Then qualified clients receive a quarterly statement from the custodian. Non-qualified clients receive annual statements. Also, RV very soon will implement a client web portal for the clients to go online and view their accounts at any time.

### 2. Who handles the monetary transactions? Is my money safe?

Only our Escrow Agent handles all the money. RV does not nor handle any of the money.

### 3. How quickly are my accounts activated?

RV's turn-around time is currently 10 banking days, the fastest in the industry!

### 4. What states are currently approved?

We have a department that continually evaluates the laws now in force. However, it is the ultimate decision of the licensee to do their own due diligence & compliance. We will assist any way we can.

### 5. What are my options upon maturity of a policy?

You can add your gain back into your agreement OR request a payout.

### 6. Why haven't I heard about this concept before now?

This concept has been available for decades to high-end companies like Berkshire Hathaway (Warren Buffett's Company). It has only recently opened up to individuals.

### 7. Are the policies safe?

All policies are fully backed by the insurance carriers we deal with. A-rated and better companies, which are the strongest and fully funded with assets.

**Who We Are...**

Unofficial copy Travis Co. District Clerk Velda L. Price

**Questions?**

Unofficial copy Travis Co. District Clerk Velva L. Price



**MASTER ESCROW AGREEMENT**  
**By and Between**  
**RETIREMENT VALUE, LLC**  
**And**  
**The Law Firm of**  
**KIESLING, PORTER, KIESLING & FREE, P.C.**

This Escrow Agreement is entered into on this the 10<sup>th</sup> day of March, 2009 by and between Retirement Value, LLC of 457 Landa Street, #B, New Braunfels, Texas 78130 ("Retirement") and Kiesling, Porter, Kiesling & Free, PC of 348 East San Antonio Street, New Braunfels, Texas 78130 ("Kiesling" or "Escrow Agent").

**RECITALS**

WHEREAS, Retirement is, or will be, the owner of certain re-sale life insurance policies; and,

WHEREAS, Retirement desires to fund its transactions for said re-sale of life insurance policies by accepting funds from various Participants; and

WHEREAS, Retirement has requested Kiesling to act as Escrow Agent in this matter; and

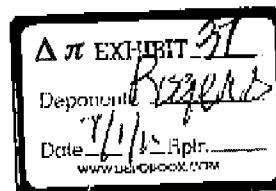
WHEREAS, Kiesling is agreeable to act as Escrow Agent upon the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. Retirement, at its sole costs and expense, intends to, and shall, from time to time, secure Participants to become pro-rata irrevocable co-beneficiaries in the proceeds of the re-sale life insurance policies owned or to be owned by Retirement (hereinafter "Participants"). As part of said transactions, the Participants shall direct Retirement to deposit all funds with Escrow Agent, who shall hold said funds in accordance with this agreement in an escrow account at Wells Fargo Bank in New Braunfels, Texas or at such other Banking institution as may be mutually agreed upon between Retirement and Kiesling. Such Escrow Account is not required to be an interest earning account, Unless otherwise provided in this Agreement.
2. Retirement shall give written instructions to Escrow Agent directing Escrow Agent to take any of the following actions:

**CONFIDENTIAL PURSUANT TO SECTION 28 OF SECURITIES KPKF0026787**  
**ACT AND GOVERNMENT CODE CHAPTER 552**



- a. pay escrow fees, bank fees, federal express fees, and other administrative fees or costs, including but not limited to commissions.
- b. transfer the balance of such funds to separate escrow accounts for each re-sale life insurance policy in which Participant has elected to participate.
- c. pay for the purchase of the re-sale life insurance policies until the full purchase price stated in the Policy Purchase Agreement has been met.
- d. pay premiums from each separate escrow account for the re-sale life insurance policies.

The instructions from Retirement shall include the phone number, wire instructions and address of the person or entity to which funds shall be sent; the dates on which each payment is due; the exact dollar amount of each such payment; and any other information requested by Kiesling. Aside from the above distributions and distributions of any interest earned on the escrow accounts, no distributions shall be made or allowed under this Agreement until such time as each policy matures due to the death of the insured. Upon the payment of the policy purchase price, Kiesling will follow up with a fax to the entity or person receiving such wire. The fax will state the amount of the wire sent and the list of internal policy numbers to which such funds apply.

Kiesling shall rely solely on the information and instructions provided by Retirement in making the above distributions and shall not be required to make any independent or additional inquiries as to said distributions.

3. Retirement shall cause to be delivered with each transaction:
  - a. A copy of the execution policy selection form.
  - b. A copy of the "insurance bouquet" form which shows the policies selected by the participant.
  - c. A copy of the Client Policy Purchase Agreement (non-qualified funds) or the Agency Loan Agreement (Qualified funds) to collateralize all participation amounts as irrevocable co-beneficiaries of the policy proceeds.
  - d. A copy of a Power of Attorney in which the Participant gives Retirement the authority to instruct Escrow Agent regarding the funds deposited with Escrow Agent.
  - e. A copy of the Power of Attorney giving Retirement's licensee the authority to act on his behalf.
  - f. Any other documents reasonably requested by Kiesling.
4. Retirement shall additionally cause to be delivered, as available:

- a. Policy Purchase Agreement confirming the purchase by Retirement of each re-sale life insurance policy from the policy source.
  - b. Proof of ownership by Retirement of each re-sale life insurance policy immediately upon issue by each insurance carrier.
  - c. An executed Change of beneficiary form naming Kiesling as the beneficiary of the re-sale life insurance policy;
  - d. The Original policy;
  - e. Percentage of balance or amount due to Participant for each re-sale life insurance policy upon death of insured;
  - f. Address and contact information for each Participant or other person to whom funds are to be issued;
  - g. Any waiver of conflict of prior representation agreement as required by Kiesling.
  - h. Retirement shall review and verify the accuracy of all the documents referenced in this Escrow Agreement.
5. All funds to be distributed by Kiesling shall be held until the funds are considered "good funds" at the sole discretion of Kiesling. If there are any questions about the funds, Kiesling shall hold the funds until it is verified that the funds are in the Escrow Account and cannot be withdrawn by any third party.
  6. Kiesling shall deliver to Retirement a list of Participants whose funds have become "good" no less than once a week. Upon request by Retirement, Kiesling shall further deliver to Retirement an update on the balance in the account available for distribution.
  7. Retirement shall hire a service which shall track the death of each insured. Upon the death of any insured Retirement shall timely notify Kiesling and provide a certified Death Certificate of the insured, with instructions for making the claim against the policy of which such person was the insured. Within five days of funds being received by Kiesling from the insurance company, Kiesling will notify Retirement in writing and request further instructions. Retirement shall direct Kiesling in writing as to the disbursement of the funds, including but not limited to payment of any commissions, fees and expenses and distribution to Participants in accordance with their pro-rated irrevocable co-beneficiary participation in the re-sale life insurance policy proceeds. Included in such instructions shall be contact information for each person or entity to whom funds are being disbursed and information required to be placed on any 1099. In the event the insured shall become deceased prior to the change in Beneficiary or before funds are received by Kiesling, Kiesling shall be held harmless, indemnified by Retirement and relieved from any duty hereunder other than return of funds held by Kiesling as directed, in writing, by

Retirement. No funds shall be distributed until such funds are determined to be "good funds" by Kiesling. Kiesling shall file all required 1099s.

If an insurance company does not pay as requested, Kiesling shall not be required to negotiate, mediate, arbitrate or litigate with any company, but shall assign all claims against such company to Retirement who may then take any action Retirement deems necessary against such company. Retirement shall defend, hold harmless, and indemnify Kiesling against any and all Participant claims or causes of action arising from nonpayment by an insurance company.

5. The parties hereto acknowledge and understand that Kiesling cannot close any escrow and complete any such transaction until fully executed escrow instructions and all other necessary documents have been delivered to Kiesling. Kiesling is hereby held harmless from all liability and responsibility in regard to any transaction or any delays in the closing of such transaction in the event that such documents are not delivered to Kiesling immediately upon execution for completion of closing. Kiesling shall be held harmless from any liability in the event ownership/beneficiary transfer documents for any re-sale life insurance policies are not returned to Kiesling and are filed outside this escrow by principals and/or brokers.
6. The liability of Kiesling shall be limited to the transfer of funds into a separate escrow account for each re-sale life insurance policy as directed by Retirement; payment of monthly, quarterly or annual premiums from funds available in the respective separate escrow accounts upon written instruction from Retirement; and disbursement of re-sale life insurance policy proceeds upon death of insured in accordance with written instruction from Retirement. Kiesling shall have no liability if the change of beneficiary or other documents required to be filed by Retirement are not received, rejected and/or not filed by the insurance company. It shall be the responsibility of Retirement to verify any filings.
7. It shall be the responsibility of Retirement to verify premium amounts and due dates and provide notice to pay premiums to Kiesling no later than five business days prior to such due dates. If any of the accounts from which premiums, policy payment, commissions, payments to Participant or other costs are due are insufficient to pay such amounts, it is the sole responsibility of Retirement to supply additional funds to Kiesling to make such payments.
8. Kiesling is directed to hold the funds in escrow and disburse the funds as directed by Retirement. At no time shall Kiesling be required to make any analyses, prepare or file reports or perform any method of research regarding laws, regulations, or laws through any Federal, state, county,

city, or other regulating jurisdiction against the subject policies, the same being the sole responsibility and obligation of Retirement. Retirement hereby agrees to defend, indemnify, and hold harmless Kiesling, its employees, directors, officers and stockholders, and pay any and all costs and fees associated with any legal costs arising out of or caused by inaccurate or omitted research by Retirement.

9. Kiesling shall have no liability regarding any forgeries or false impersonations of any person or party in connection with the instructions delivered to Kiesling, on any or all re-sale life insurance policies, death certificates or other documents delivered to Kiesling.
10. This product is not a security. Participants in re-sale life insurance policies are not acquiring any interest in a security. If in the future this ever should change, or re-sale life insurance policies ever are declared to be a security in any form, Retirement shall, at its sole cost and expense satisfy such declaration and then verify to Escrow Agent that such securities are properly registered or do not require registration. Kiesling is hereby held harmless and indemnified from all liability and responsibility for verifying the registration or validity of any securities.
11. Retirement herein acknowledges that it has been advised by Kiesling to contact its attorney for approval and determination of adequacy regarding this Agreement for protection of its legal rights. No representation is made by Kiesling as to the legal sufficiency, tax effect or tax consequences regarding this Agreement or any matter related hereto or the business conducted by Retirement. Retirement agrees to hold Kiesling harmless from and indemnify Kiesling as to any liability in this regard. Retirement acknowledges and represents that it has or will have determined the suitability of participation in its program(s) for each participant. Retirement represents to Kiesling that each party shall be an Institutional Investor, an accredited investor or a person of sufficient net worth and financial sophistication to participate. The determination of suitability of each participant shall be the sole responsibility of Retirement. Kiesling shall have no liability in this regard.
12. Kiesling agrees to participate in an audit conducted by a third party Certified Public Accountant with all costs of such audit being paid by Retirement. In the event Federal or State law, or Retirement request Kiesling to be required to acquire a bond, all such costs will be paid by Retirement.
13. In the event of a conflict between these instructions and any other instructions received from a third party or a lender, these instructions shall control as to Kiesling.

13. Kiesling shall prepare a settlement statement and release upon the maturity of the individual policy and receipt of the respective life insurance proceeds. The settlement statement shall show the policy proceeds, the initial investment of each Participant, the distribution amount to each Participant, the distribution amount to Retirement and any other distributions coming directly out of the proceeds of the policy. Kiesling shall deduct from the amount collected any payments or fees paid by Kiesling pursuant to these instructions which have not been previously paid and as indicated on the settlement statement. Kiesling shall have no liability or responsibility for the accuracy of the information furnished by other persons or the failure to adjust items not designated in writing. Additional items which may become due for any reason shall be paid to Kiesling by the party owing such amounts within three business days upon demand from Kiesling. Kiesling shall not be liable for payment of any fees or costs not specifically disclosed on the settlement statement executed simultaneously therewith. Payment of any sales, withholding, state, federal, or transfer taxes (collectively "taxes") shall be handled and paid by Retirement outside this escrow, unless otherwise required by Federal or State Law, in which event such taxes shall be paid prior to any distribution being made. Notification or payment to any creditor or vendor not disclosed by the parties prior to closing shall be handled outside this escrow and Kiesling shall have no liability in this regard. If any written instructions necessary to complete the transactions set forth above are given to Kiesling by anyone other than the undersigned parties, including but not limited to Participants, such instructions are presumed to be invalid and shall not be followed by Kiesling without the express written consent of Retirement. Retirement shall defend, indemnify and hold Kiesling harmless from not following instructions from such third parties.
14. In exchange for the services provided by Kiesling as set forth herein, Kiesling will be paid an annual fee of \$250.00 per re-sale life insurance policy for the first twenty-five policies from the funds deposited with Kiesling. Each additional re-sale life insurance policy in excess of twenty-five per year on which funds are deposited will incur an annual fee of \$100.00 for each policy. Such fees will be paid upon receipt of good funds from the last participant in each policy with such fees being deducted directly from the respective separate escrow accounts established by Kiesling. In addition, as additional consideration for the services provided hereunder, upon the initial deposit of funds, Kiesling shall receive an amount equal to one percent (1%) of the face amount of the re-sale life insurance policy for which such funds are being deposited.
15. In the event of Kiesling's desire to cancel this escrow agreement, the cancelling party will promptly notify the other party in writing of such cancellation. Kiesling shall then comply with such notice and, to the

extent funds are available pay all amounts owed hereunder and then deposit with a third party escrow agent as directed by Retirement all remaining monies and/or documents. Any deficiency shall be paid by Retirement. All annual fees on the respective re-sale life insurance policies will be prorated on a 360 day year. Should any dispute arise between the Retirement and Participants, and/or any other party, concerning the property or funds involved in this transaction, Kiesling may, in its sole discretion, hold all documents and funds in their existing status pending resolution of the dispute, or join in or commence a court action, deposit the money and documents held by it with the court, and require parties to answer and litigate their several claims and rights among themselves. Retirement agrees to pay Kiesling's costs, expenses and reasonable attorney's fees incurred in any legal action arising out of or in connection with the transaction or these instructions, whether such suit is instituted by Kiesling, the parties, or any other person. Upon commencement of an interpleader action and the deposit of all funds and documents of the parties, Kiesling shall be fully released and discharged from all obligations to further perform any duties or obligations otherwise imposed by the terms of this Agreement as to that re-sale life insurance policy and/or Participant.

17. Kiesling's duties are limited to those specifically set out in this agreement. Kiesling shall incur no liability to anyone except for willful misconduct so long as Kiesling acts in good faith. Retirement releases Kiesling from any act done or omitted in good faith in the performance of Kiesling duties. In the event of a conflict between these instructions and any other documents, this Agreement shall control as to Kiesling.
18. All funds received in this escrow will be deposited in an escrow account belonging to Kiesling at the Wells Fargo Bank in New Braunfels, Texas or at such other bank as is agreeable to Kiesling.
19. Unless otherwise directed, Kiesling will make all disbursements by check sent by regular U.S. mail or, at Kiesling's discretion and/or upon direction by Retirement, by wire or delivery service. The parties acknowledge that the funds deposited in this escrow are insured only to the limit provided by the Federal Deposit Insurance Corporation, if any, and that Kiesling has no responsibility for the safe keeping of funds or obligation for the investment of such funds by the depository bank. At the request of Retirement, Kiesling will authorize Bank to invest such funds in Money Markets, Treasury Bills or other government backed securities in accordance with Retirement's instructions. Kiesling assumes no obligations, responsibility or liability with respect to such investments made at Retirement's instructions, including any responsibility for losses, including but not limited to those losses not covered by the Federal Deposit Insurance Corporation, or lack of funds sufficient to pay expenses

or premiums for such re-sale life insurance policies as a result of such directed investments by Retirement, and Retirement shall indemnify, defend and hold Kiesling harmless from any loss, decrease in value or lack of funds due to investment of the Escrowed monies.

20. After seven years from the distribution of the funds in an account, Kiesling may destroy all records, agreements and instruments relating to such account, including all documentation and accounting information.
21. Both parties represent that Kiesling is not required to obtain any licenses or permits to hold and distribute the funds in escrow as required under this Agreement. If at any time Kiesling is required to obtain a license or permit in order to continue to hold and/or distribute the funds as required herein, then such license or permit shall be obtained and the cost of the same shall be reimbursed to Kiesling by Retirement or, at Kiesling's discretion, prorated among the separate policy accounts, within thirty days after demand for such payment is made.
21. These instructions may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute the same instrument which may be efficiently evidenced by one counterpart. Execution of these instructions at different times and places by the parties shall not affect the validity hereof. The parties further agree that facsimile and/or electronic signatures shall be legal and binding. These instructions are effective upon execution by all parties. A facsimile copy of a signed original or a e-mail from Retirement of any instructions to Kiesling, transmitted electronically or electronically to and received by Kiesling in this escrow, may be received and acted on, in Kiesling's discretion, as an original.
22. Time is of the essence for these instructions.
23. This Agreement is solely between Retirement and Kiesling. Neither Participants investing funds with Retirement nor Licensees are intended to be nor shall they be a party to this Agreement or a third party beneficiary of this Agreement. Kiesling has no responsibility, obligations or duties to such Participants and will have no contact with such Participants other than the receipt of funds and transfer of such funds as directed by Retirement. Any and all requests by Participants shall be referred to Retirement. Retirement agrees to indemnify, defend, and hold Kiesling harmless from any liability in this regard.
24. As used herein, the term "re-sale life insurance policies" are defined as those policies covering the life of a third party but owned by a non-related party.



25. This Agreement contains the entire agreement of the parties and cannot be changed except by their written agreement.
26. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and venue shall be in the courts of Comal County, Texas.
27. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
28. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday or State or federal legal holiday, then such date shall be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.
29. In any matter in which Retirement is required to defend Kiesling, Retirement shall do so at Retirement's sole expense, with an attorney chosen by Kiesling. Further Retirement shall pay all fees, costs and expenses, including but not limited to attorney fees and expenses as well as the hourly law wages of Kiesling while Kiesling participates in such matter.
30. THE PARTIES HERETO ARE AWARE THAT THIS DOCUMENT IS A LEGALLY BINDING AGREEMENT. EACH PARTY SHOULD CONSULT ITS ATTORNEY PRIOR TO EXECUTION OF SAME. THIS DOCUMENT SHALL NOT BE CONSTRUED AGAINST THE DRAFTER.

RETIREMENT VALUE, LLC

By: Richard H. Gray  
Printed Name: RICHARD H. GRAY  
Title: PRESIDENT

KIESLING, PORTER, KIESLING & FREE, P.C.

By: Bob V. Kiesling  
BOB V. KIESLING, President

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Sunday, October 11, 2009 8:09 AM  
**To:** JISERVCS@aol.com  
**Cc:** don.james1@comcast.net; 'Michael Beste' <mbeste@msn.com>; dgray@retirementvalue.com; Wendy Rogers <wrogers@retirementvalue.com>; Katie Hensley <khensley@retirementvalue.com>; Jeremy Gray <jgray@retirementvalue.com>; bwfree@sbcglobal.net; 'Kristen Quinney Porter' <kdq@sbcglobal.net>; 'Jeff Albrecht' <jeffa@ssacpa.com>  
**Subject:** "Accounting" update

---

Ron:

With help and policy data supplied by yourself, Kiesling and files developed by David, Katie and Jeremy - as well as superb spreadsheeting and detective work by David and Katie, we were able to isolate certain key figures in our program - especially the current net premium escrow account short-fall of \$1,232,449 for all fully-subscribed cases. This is the true net number after we allowed for all net monies still on hand for these fully-subscribed accounts. This is a figure we absolutely will have to rescue or extract from other in-bound funds to "balance the books" year-end for the audit planned on the Kiesling Escrow Agent functions. This appears also to represent the net capitalization short-fall you and I have discussed that the RV owners will need to make up after we roll over into 2010.

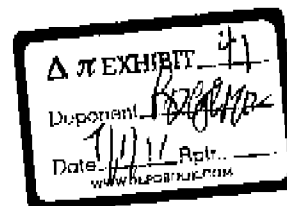
Meanwhile, to echo David's e-mail request from last week, as Mike Beste works on the possible line-of-credit, it will be helpful for RV to know the scope of the essential help you've provided in bringing all of the bouquet policies to the table. So far (counting the \$560,000 we released for wiring last Friday) Kiesling has sent Jan Mann \$7,804,125 to apply to policy purchase.

As of this moment, though, how much have you advanced on our behalf in the form of options and payments - and on which cases? We need to learn the approximate scope of this operation by adding both ends together so we can predict a time when your astoundingly generous start-up offer no longer will be needed - either because we are re-investing RV monies or using other premium financing sources.

Thanks, Ron!

Dick

**CONFIDENTIALITY NOTICE --** The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.



RVR017054

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Sunday, November 15, 2009 7:03 PM  
**To:** 'Wendy Rogers' <wrogers@retirementvalue.com>; 'Katie Hensley' <khensley@retirementvalue.com>; 'Jeremy Gray' <jgray@retirementvalue.com>; 'Marisa Kane' <mkane@retirementvalue.com>  
**Cc:** 'Ron James' <jiservcs@aol.com>; 'Don James' <don.james1@comcast.net>; 'Brent Free' <bwfrees@sbcbglobal.net>; 'Kristen Quinney Porter' <kdq@sbcbglobal.net>; jeffa@ssacpa.com; 'Michael Beste' <mbeste@msn.com>  
**Subject:** FW: Totals for incoming funds  
**Attach:** SecureZIP Attachments.ZIP

---

Thank you to all of you for getting a "fix" on this net \$\$ of about \$1.3 million or \$1.4 million current premium short-fall. That is something we can fix rather quickly, ideally well, well before the new year-end date of 04-30-2010. In this manner:

1. Now add in the net dollar amounts already taken from two other NO. 1 fully-subscribed policies for purposes other than THAT specific case.
2. Defining that added total tells us the true total need to fix the premium short-fall ASAP.
3. We now "draw a line in the sand" and immediately disburse only the actual percentages from each case pre-determined for premiums, purchase, fees, commissions, etc. so no policy ever again rolls over into any use for any other case. This becomes our ongoing RV variation on the LPHI Waco "accumulate and buy" model. Please calculate what that net % is for each case for each proper use as a % of client money or % of face – whatever number assures the proper distribution of monies in the correct pre-determined "buckets".
4. Then with RV owner equity and / or the creative financing model preliminarily advanced Friday by Jeremy we'll fill those premium pots ASAP; fully keep our promise to clients; and honor / answer promptly the very deep professional concerns at both Kiesling and Sol Schwartz & Associates.

Again, thank you all very, very much.

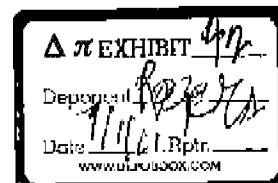
Dick Gray  
President / CEO  
Retirement Value, LLC  
457 Landa Street, Suite B, New Braunfels, TX 78130  
P.O. Box 310635, New Braunfels, TX 78131-0635  
(830) 624-8858 ofc (866) 498-4644 fax (210) 397-3333 mobile  
rgray@retirementvalue.com

**CONFIDENTIALITY NOTICE** – The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

---

**From:** Katie Hensley [mailto:khensley@retirementvalue.com]  
**Sent:** Sunday, November 15, 2009 6:14 PM  
**To:** 'Jeremy Gray'  
**Cc:** 'Dick Gray'; 'Wendy Rogers'; 'Marisa Kane'  
**Subject:** RE: Totals for incoming funds

I tried my best, but since we got home from Dallas sooner than we originally planned I went ahead and figured out the numbers today. Attached is a spreadsheet that lists the total amount of inbound funds for all the fully subscribed policies. The last column is the total amount of inbound funds minus the misc. fees, commissions for RV, and commissions for Kiesling. Please let me know if you need any additional information.



RVR011963

Thank you for your patience.

Katie Hensley

Director of Licensee Services and Administration  
Retirement Value, LLC

**From:** Jeremy Gray [mailto:jgray@retirementvalue.com]

**Sent:** Sunday, November 15, 2009 4:28 PM

**To:** 'Katie Hensley'

**Cc:** 'Dick Gray'; 'Wendy Rogers'; 'Marisa Kane'

**Subject:** RE: Totals for incoming funds

Glad to see you're unplugging from work for family time- balance is very important!!

Although Charles sent me the first batch of 12 PPE forms with the "claw back" column Saturday afternoon and I spent a good deal of time attempting to mathematically decipher and audit our numbers, I still do NOT have absolute certainty or confirmation on:

- 1) The accuracy of our Total Premium LE+24 numbers (despite Dick's great explanation of his technique last week- I will need 20-30 more minutes ASAP doing an in-person case by case analysis with him before the baton is handed off to me permanently)-I am NOT getting consistency...
- 2) Although the first two policy "claw back" numbers I ran matched ours, it went south" pretty quickly after that- (GEIGELE, for example, is \$127K off our numbers)- the numbers DON'T match (even closely). Charles will be sending me the remaining claw back forms Mon or Tues and I will require from him, a more thorough explanation than Ron attempted to give me late last week.

This is my long-winded way of saying, although it would be great to get the inbound data from you, do it only as you are able- I still clearly have my work cut out for me, and am postponing my Monday 9am meeting with Brent, as that time would be better used on Wednesday or Thursday, based on where I am....

Talk soon!

-Jer

**From:** Katie Hensley [mailto:khensley@retirementvalue.com]

**Sent:** Saturday, November 14, 2009 10:10 PM

**To:** 'Jeremy Gray'; 'Marisa Kane'

**Cc:** 'Wendy Rogers'; 'Dick Gray'

**Subject:** Totals for incoming funds

Jeremy and Marisa,

I ended up going to Dallas this weekend for my husband's family reunion. I left all my work at home because I knew I would want to work while I was here. We will not be home until late tomorrow evening. Therefore, I will not be able to get you the updated numbers of inbound funds until Monday. I will work on it first thing Monday morning and will do my best to have the numbers to you all by Monday afternoon.

Thank you in advance for your patience,

Katie Hensley

**Retirement Value, LLC**

Director of Licensee Services and Administration

Office Phone: (830) 624-8858 ext. 202

Office Fax: (830) 609-5002

Direct Fax: (866) 889-3701

CONFIDENTIALITY NOTICE -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged. It is intended only for the exclusive use of the addressee. If the reader of this message is not the intended recipient,

RVR011964

or an employee of the agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of federal criminal law.

Unofficial copy Travis Co. District Clerk Velva L. Price

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Sunday, November 15, 2009 7:03 PM  
**To:** 'Wendy Rogers' <wrogers@retirementvalue.com>; 'Katie Hensley' <khensley@retirementvalue.com>; 'Jeremy Gray' <jgray@retirementvalue.com>; 'Marisa Kane' <mkane@retirementvalue.com>  
**Cc:** 'Ron James' <jiservcs@aol.com>; 'Don James' <don.james1@comcast.net>; 'Brent Free' <bwfrees@sbcbglobal.net>; 'Kristen Quinney Porter' <kdq@sbcbglobal.net>; jeffa@ssacpa.com; 'Michael Beste' <mbeste@msn.com>  
**Subject:** FW: Totals for incoming funds  
**Attach:** SecureZIP Attachments.ZIP

---

Thank you to all of you for getting a "fix" on this net \$\$ of about \$1.3 million or \$1.4 million current premium short-fall. That is something we can fix rather quickly, ideally well, well before the new year-end date of 04-30-2010. In this manner:

1. Now add in the net dollar amounts already taken from two other NOT fully-subscribed policies for purposes other than THAT specific case.
2. Defining that added total tells us the true total need to fix the premium short-fall ASAP.
3. We now "draw a line in the sand" and immediately disburse only the actual percentages from each case pre-determined for premiums, purchase, fees, commissions, etc. so no policy ever again rolls over into any use for any other case. This becomes our ongoing RV variation on the LPHI Waco "accumulate and buy" model. Please calculate what that net % is for each case for each proper use as a % of client money or % of face – whatever number assures the proper distribution of monies into the correct pre-determined "buckets".
4. Then with RV owner equity and / or the creative financing model preliminarily advanced Friday by Jeremy we'll fill those premium pots ASAP; fully keep our promises to clients; and honor / answer promptly the very deep professional concerns at both Kiesling and Sol Schwartz & Associates.

Again, thank you all very, very much.

Dick Gray  
President / CEO  
Retirement Value, LLC  
457 Landa Street, Suite B, New Braunfels, TX 78130  
P.O. Box 310635, New Braunfels, TX 78131-0635  
(830) 624-8858 ofc. (866) 498-4644 fax (210) 392-3170 mobile  
rgray@retirementvalue.com

**CONFIDENTIALITY NOTICE** – The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** Katie Hensley [mailto:khensley@retirementvalue.com]  
**Sent:** Sunday, November 15, 2009 6:14 PM  
**To:** 'Jeremy Gray'  
**Cc:** 'Dick Gray'; 'Wendy Rogers'; 'Marisa Kane'  
**Subject:** RE: Totals for incoming funds

I tried my best, but since we got home from Dallas sooner than we originally planned I went ahead and figured out the numbers today. Attached is a spreadsheet that lists the total amount of inbound funds for all the fully subscribed policies. The last column is the total amount of inbound funds minus the misc. fees, commissions for RV, and commissions for Kiesling. Please let me know if you need any additional information.



RVR011963

Thank you for your patience.

Katie Hensley

Director of Licensee Services and Administration --  
Retirement Value, LLC

**From:** Jeremy Gray [mailto:jgray@retirementvalue.com]

**Sent:** Sunday, November 15, 2009 4:28 PM

**To:** 'Katie Hensley'

**Cc:** 'Dick Gray'; 'Wendy Rogers'; 'Marisa Kane'

**Subject:** RE: Totals for incoming funds

Glad to see you're unplugging from work for family time- balance is very important!!

Although Charles sent me the first batch of 12 PPE forms with the "claw back" column Saturday afternoon and I spent a good deal of time attempting to mathematically decipher and audit our numbers, I still do NOT have absolute certainty or confirmation on:

1) The accuracy of our Total Premium LE+24 numbers (despite Dick's great explanation of his technique last week- I will need 20-30 more minutes ASAP doing an in-person case by case analysis with him before the baton is handed off to me permanently)-I am NOT getting consistency...

2) Although the first two policy "claw back" numbers I ran matched ours, it "went south" pretty quickly after that- (GEIGELE, for example, is \$127K off our numbers)- the numbers DON'T match (even closely). Charles will be sending me the remaining claw back forms Mon or Tues and I will require from him, a more thorough explanation than Ron attempted to give me late last week.

This is my long-winded way of saying, although it would be great to get the inbound data from you, do it only as you are able- I still clearly have my work cut out for me, and am postponing my Monday 9am meeting with Brent, as that time would be better used on Wednesday or Thursday, based on where I am....

Talk soon!

-Jer

**From:** Katie Hensley [mailto:khensley@retirementvalue.com]

**Sent:** Saturday, November 14, 2009 10:10 PM

**To:** 'Jeremy Gray'; 'Marisa Kane'

**Cc:** 'Wendy Rogers'; 'Dick Gray'

**Subject:** Totals for incoming funds

Jeremy and Marisa,

I ended up going to Dallas this weekend for my husband's family reunion. I left all my work at home because I knew I would want to work while I was here. We will not be home until late tomorrow evening. Therefore, I will not be able to get you the updated numbers of inbound funds until Monday. I will work on it first thing Monday morning and will do my best to have the numbers to you all by Monday afternoon.

Thank you in advance for your patience,

Katie Hensley

**Retirement Value, LLC**

Director of Licensee Services and Administration

Office Phone: (830) 624-8858 ext. 202

Office Fax: (830) 609-5002

Direct Fax: (866) 889-3701

**CONFIDENTIALITY NOTICE --** The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged. It is intended only for the exclusive use of the addressee. If the reader of this message is not the intended recipient,

RVR011964

or an employee of the agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of federal criminal law.

Unofficial copy Travis Co. District Clerk Velva L. Price



**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Wednesday, November 18, 2009 7:05 AM  
**To:** JISERVCS@aol.com  
**Cc:** 'Wendy Rogers' <wrogers@retirementvalue.com>; 'Katie Hensley' <khensley@retirementvalue.com>; 'Jeremy Gray' <jgray@retirementvalue.com>; kgtx94@gmail.com; 'Brent Free' <bwfree@sbcglobal.net>; 'Kristen Quinney Porter' <kdq@sbcglobal.net>  
**Subject:** RE: DISBURSEMENT

---

Ron:

Please let me ask for right now what I know Jeremy will ask to see – a breakdown on which policies have been financed with the \$8 million and how much has been spent for each policy.

I will be back in the office Thursday after my return from this Seattle trip – and we will then have an opportunity as well as an urgent need to sort these numbers to meet your wire-transfer request. In the mean time, this may be the time at which RV needs to start buying some or at least start paying for some policies directly from RV funds.

Also, to give you a frank sneak-preview of some ideas we floated at a meeting late last week, it looks as though the net short-fall on the premium accounts is about \$1.3 million or so. An idea was to approach money sources through you based on all the contacts you have worldwide – or even approach you directly about that short-fall. We're not looking for a free-ride on that \$1.3 million (and with the policy purchasing front money close to \$8 million, then we ought not to be getting a "free ride" on those monies either at this point!).

Anyway, Jeremy's idea, which I thought was excellent, was to borrow that \$1.3 million in one lump-sum, pay back the premium accounts – and pay off that loan with interest during a 12-month period by adding the principal and interest on a pro-rata basis to each policy purchase price until the debt was satisfied 12 months out – but the premium accounts could get closer to being in-balance immediately, which is our necessary immediate goal here at RV.

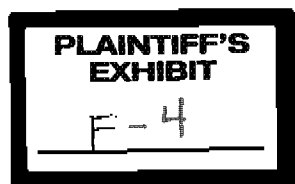
I have not even worked out the math yet. You and Don likely have some computer models that could calculate this immediately.

I guess a quick-and-dirty model might be something like \$1,300,000 + 20% (using annual interest-rate numbers Mike Beste has been using) for 12 months = \$1,560,000 to be paid back on \$1,300,000 borrowed. Assume a \$100,000,000 client year during the next 12 months = about a \$240,000,000 face amount year +/- during the next 12 months. If to-date our AVERAGE policy-purchase price has been 18.675% of face, and I think that's about it from memory, then ADD TO THE PURCHASE PRICE OF EACH POLICY THE AMOUNT NEEDED TO PAY THIS LOAN-WITH-INTEREST IN-FULL WITHIN THE NEXT 12 MONTHS. Would that work? .0065 added to each face amount \$1 over the next 12 months for \$240,000,000 of face seems to equal \$1,560,000 – unless I have misplaced a period or comma.

Also, it likely is time to talk about paying you interest on the policy front-money. Your initial offer September 2008 and spent by you "in spreads" since then has been more than generous – it was essential to our start-up and initial survival. Being as little-capitalized as we were – and as we remain.

But for you to be fronting up to \$8 million now interest-free – even with the profits you make on the sales to us – strikes me as being out-of-balance at this point in time. Please do not for even a fleeting moment misunderstand this is ingratitude, because I believe you know me better than that by now.

Yes I will share this concern with you in precisely this way for the very first time – because there is so very much at stake in decisions we all make in the next 30 days.



RVR011951

I feel a building conflict-of-interest pressure on OUR end in deciding what's best to absolutely fix this premium-funding issue versus each obligation we face in making the weekly wire-transfer dollar amounts you need.

I will feel no less pressure to raise funds if we are paying you interest on the \$8 million. But I will feel a whole lot less guilt telling you we can't send you \$1 million or \$960 in any given week - because we need to divert \$350,000, say, to balancing premium accounts - I'd feel a lot more comfortable with THAT value equation and talking openly about it IF the premium financing funds were an interest-bearing note rather than totally the beneficence of Ron James and James Settlement Services.

I'd say those of us on THIS end of this e-mail exchange would say 100% it's time to thank you beyond words for your generous kick-off offers of help for RV's start-up and begin immediately to move to a more business-like arrangement in which we are hauling our own freight. Thank you, Ron!

Dick

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

---

**From:** JISERVCS@aol.com [mailto:JISERVCS@aol.com]  
**Sent:** Tuesday, November 17, 2009 5:35 PM  
**To:** rgray@retirementvalue.com  
**Cc:** don.james1@comcast.net  
**Subject:** DISBURSEMENT

Dick,

The disbursement for this week will be \$1,042,000.

1. \$492,000 for Laura Murphy
2. \$550,000 for David McKay

The open line of credit is currently exceeding \$8,000,000.

Ron James

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Wednesday, October 7, 2009 3:31 AM  
**To:** 'Kristen Quinney Porter' <kdq@sbcglobal.net>; bwfree@sbcglobal.net; 'Jeff Albrecht' <jeffa@ssacpa.com>; JISERVCS@aol.com; don.james1@comcast.net; 'Michael Best' <mbeste@msn.com>  
**Cc:** 'David Gray' <dgray@retirementvalue.com>; 'Wendy Rogers' <wrogers@retirementvalue.com>; khensley@retirementvalue.com; jgray@retirementvalue.com; kgtx94@gmail.com; tmoss@retirementvalue.com  
**Subject:** I propose an afternoon meeting Friday the 7th

---

1. Effective immediately and until further notice I must personally approve every distribution from the Wells Fargo master escrow account and each Wells Fargo escrow sub-account. Even distributions to pay licensee commissions or our own overrides at RV must be reviewed with me by Katie before any distribution request is sent to Kiesling for action. No client funds are to be distributed by Kiesling as Escrow Agent to any one for any purpose without my personal prior review and okay. Every proposed distribution will be reviewed to determine how it impacts our absolute, inflexible requirement to have every escrow sub-account FOR FULLY-SUBSCRIBED POLICIES in-balance for premiums on-hand or clearly shown to be in-bound NLT December 31<sup>st</sup>.

2. I propose a meeting at the Kiesling offices at 2 p.m. this Friday the 7<sup>th</sup> - or any other time after 2 p.m. Friday the 7<sup>th</sup> at the general convenience of all the players.

At that meeting I want to review by spreadsheet case-by-case every policy now determined to be "fully subscribed" that has been removed from the bouquet. The spreadsheet(s) must show on a by-policy basis:

- Total premiums originally calculated to be set aside for each fully-subscribed policy on the basis of "LE + 24 months"
- Minus any premiums paid to-date on each fully-subscribed policy
- Premium funds now on deposit and held by Kiesling in the escrow sub-account at Wells Fargo for each fully-subscribed policy
- Premiums still expected to be collected from all inbound / in-process client funds not yet posted at Wells Fargo for each fully-subscribed policy
- Therefore, by-policy, the true current net premium short-fall if any for each fully-subscribed policy
- Interactive spreadsheets would be ideal so with each premium-related transaction we plot the most current status of any short-fall's "at a glance"

It is more than unacceptable – it is professionally unconscionable that all of us collectively have not yet been able to offer each other a definitive and precise "yes" on this urgent matter after talking about it for weeks. This must end. Now.

Show me the data. Give me the facts. Tell me how I can help. Draw me in to what part I must play personally between now and Friday afternoon, regardless of the hours I need to work at this with you all - to have a "fix" on this. Now.

The meeting at Kiesling Thursday the 1<sup>st</sup> was the first indication ever to RV that more than minimum funds appeared to be retained by Kiesling in any escrow sub-account. In preparation for that meeting on the 1<sup>st</sup> and based on data available to RV at the time, David had calculated a deficit of \$2.6 million for premiums on fully-subscribed accounts. Yet the net net appears to be much lower than \$2.6 million based on the Kiesling internal report showing heretofore-unknown-to-RV plus-balances in several policy escrow sub-accounts. The net short-fall may be far less, perhaps as little as \$1.3 million.

Yet now it's almost another week later since the meeting of the 1<sup>st</sup> – and we at RV still do not know for sure the exact net situation or true picture regarding the single most crucial component of our professional and fiduciary credibility – and legal responsibility! **PLEASE** - let's get this "fixed". Now.

Dick Gray  
President / CEO  
Retirement Value, LLC  
157 Landa Street, Suite B, New Braunfels, TX 78130  
P.O. Box 310635, New Braunfels, TX 78131-0635  
(830) 624-8858 ofc (866) 498-4644 fax (210) 392-3550 mobile

PLAINTIFF'S  
EXHIBIT

F-5

DEPOSITION  
EXHIBIT

Rogers 123  
S. FISHER 7-15-11

RVR004949

[rgray@retirementvalue.com](mailto:rgray@retirementvalue.com)

CONFIDENTIALITY NOTICE -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

Unofficial copy Travis Co. District Clerk Velva L. Price

RVR004950

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Monday, October 19, 2009 4:14 AM  
**To:** 'Wendy Rogers' <wrogers@retirementvalue.com>; 'Katie Hensley' <khensley@retirementvalue.com>; 'Jeremy Gray' <jgray@retirementvalue.com>  
**Cc:** bwfree@sbcglobal.net; 'Kristen Quinney Porter' <kdq@sbcglobal.net>  
**Subject:** FW: Updated Spreadsheet of Fully Subscribed Policies  
**Attach:** SecureZIP Attachments.ZIP

---

The crucial issue is NOT the reduction in the amount in-bound by \$441,109 - that not only will not happen, we all can be grateful it HAS happened since it means there are dollars coming in to fill those premium sub-accounts.

The essential question to ask is: has every net dollar of that in-bound "fully-subscribed account" money gone toward those premiums accounts? Put differently - have we been careful NOT to send a single dollar of THAT net money to Jan Mann for ANY policy?

Meanwhile we still need to find that \$1.2+/- million to roll into fully-subscribed accounts by 12-31-09 - recognizing that with each NEW fully-subscribed account the premium issue widens.

Are we having fun yet?

Dick

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

---

**From:** Katie Hensley [mailto:khensley@retirementvalue.com]  
**Sent:** Sunday, October 18, 2009 7:57 PM  
**To:** 'Dick Gray'; 'Jeremy Gray'; 'Wendy Rogers'  
**Subject:** Updated Spreadsheet of Fully Subscribed Policies

I have updated the Total Amount of \$\$ Inbound on the attached spreadsheet. It is \$441,109 less than the first report.

Jeremy - has the status of the "No Ownership" policies changed or has any premium payments been made since this spreadsheet was created? If so, please let me know so I can update those columns as well. Thanks!

Please let me know if you have any questions.

Thank you,

Katie Hensley  
**Retirement Value, LLC**  
Director of Licensee Services and Administration  
Office Phone (830) 624-8858 ext. 202  
Office Fax: (830) 609-5002  
Direct Fax: (866) 889-3701

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged. It is



RVR008660

intended only for the exclusive use of the addressee. If the reader of this message is not the intended recipient, or an employee of the agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of federal criminal law.

Unofficial copy Travis Co. District Clerk Velda L. Price

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Wednesday, December 2, 2009 3:55 AM  
**To:** jiservcs@aol.com  
**Cc:** Don James <don.james1@comcast.net>; mbest@msn.com; Wendy Rogers <wrogers@retirementvalue.com>; Jeremy Gray <jgray@retirementvalue.com>  
**Subject:** RE: Wednesday's opportunity

---

Ron:

I, too, expect we will have a very fruitful discussion Thursday but only if there is some even small opportunity for mutual candor.

The \$1 million sent to you was not "floating capital" or "excess retained earnings" heading toward the owners' pockets - it came out of the \$1.9 million premium short-fall set-aside. ...caused by the way we have paid you for policies to-date. ...not even covered by "accrual accounting" which no one on this end supports, not the accountants, not the attorneys, no one. ...and paid because of a forced-choice of either lose McKay or leave premiums uncovered. A choice between bottom-line sins.

We fully recognize we would not even be in business but for you and Don and Mike - especially JSS as the astounding benefactor you have been and are right now.

Yet every deal has its "price". My brother was a poor fit for the position he took with the company and for that I must take full responsibility. But he got fired because of a conversation with you in which you persuaded him to buy Corley and send money on Corley after he and I had a thorough discussion on why we would not buy Corley. And now we are in the horribly bitter-sweet situation in which no one on our end wants to receive your phone calls any more because of their abusive, bullying approach.

Still, I, too, expect Thursday will be fruitful.

Dick Gray  
President / CEO  
Retirement Value, LLC  
457 Landa Street, Suite B, New Braunfels, TX 78130  
P.O. Box 310635, New Braunfels, TX 78131-0635  
(830) 624-8858 ofc (866) 498-4644 fax (210) 301-3500 mobile  
rgray@retirementvalue.com

**CONFIDENTIALITY NOTICE** - The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an addressee responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** jiservcs@aol.com [mailto:jiservcs@aol.com]  
**Sent:** Tuesday, December 01, 2009 10:43 PM  
**To:** rgray@retirementvalue.com  
**Subject:** RE: Wednesday's opportunity

Dick

Your wire transfer today helped to save the McKay policy.

It is now on firm ground.



Rogers (66)  
S. FISHER 7-15-11

RVR003284

I think the McKay policy, \$10,000,000, was too large a chunk to swallow at this stage in the development of RV.

We will focus on smaller policies for the foreseeable future or at least until RV is re-capitalized.

Your lack of capital is turning out to be a much greater problem than I or Mike or Don ever imagined. Of course, we never expected you would grow as rapidly as you have. We presumed it would be more gradual and your Retained Earnings would slowly capitalize the company. That is not the case.

I don't think a meeting Wednesday afternoon is necessary. You will be meeting with Mike and Steve in the evening and I have to go to the hospital to visit with Brenda in the afternoon.

As a start-up company it is most important to remember that your suppliers come first, Licensees (money), JSS (policies) Klesling (premium reserves). You come in Last Place because the future is all yours.

In other words, it is not necessary for you to keep large sums of money in your General Account but to keep your premium account and your suppliers covered. You have a daily cash flow that covers all infrastructure expenses.

I expect we will have a very fruitful Thursday session!!

Ron James



# Midwest Medical Review, LLC

## Life Expectancy Certificate

AGI 73L-31909-WK

DATE: 1/12/2009

PATIENT: [REDACTED]

SSN: [REDACTED]

D.O.B.: 3/13/1932

AGE: 77

SEX: MALE

### PRIMARY DIAGNOSIS:

Hyperlipidemia, Fatigue, Osteoarthritis, Sciatica, Benign Prostatic Hypertrophy, Eczema, and Psoriasis

### SUMMARY OF DIAGNOSES & RISK STRATIFICATION

Subject is a 77 year old, 146 lb Caucasian male found to have ongoing medical diagnoses, which currently do not indicate a life threatening scenario. His medical history is significant for Cardiovascular Risk Factors in the absence of Cardiovascular Disease. These include Age, Male Gender, Hyperlipidemia, Fatigue, and Inflammatory Processes. He had a normal ECG and Bruce Protocol Cardiac Exercise Study from 1990. He has Osteoarthritis. He has a history of Sciatica and Herniated Disc (10/96). He is S/P Cervical Fracture with Central Cord Compression. He is S/P Motor Vehicle Accident with neck injury (5/93). He has a history of Benign Prostatic Hypertrophy. He is managed for Eczema and Psoriasis. Surgical History includes Cervical Spinal Fusion Surgery. His Lipid Studies from 5/98 include Cholesterol 215 mg/dl, Triglycerides 514 mg/dl, HDL-Cholesterol 45 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.78. His Lipid Studies from 10/07 include Cholesterol 219 mg/dl, Triglycerides 506 mg/dl, HDL-Cholesterol 44 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.98. His Lipid Studies from 8/07 include Cholesterol 294 mg/dl, Triglycerides 613 mg/dl, HDL-Cholesterol 40 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 7.35. His Lipid Studies from 4/06 include Cholesterol 148 mg/dl, Triglycerides 197 mg/dl, HDL-Cholesterol 62 mg/dl, LDL-Cholesterol 47 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 2.39. His Lipid Studies from 12/05 include Cholesterol 156 mg/dl, Triglycerides 401 mg/dl, HDL-Cholesterol 45 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 3.47. His Lipid Studies from 5/04 include Cholesterol 181 mg/dl, Triglycerides 325 mg/dl, HDL-Cholesterol 46 mg/dl, LDL-Cholesterol 70 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 3.93. His Lipid Studies from 12/03 include Cholesterol 208 mg/dl, Triglycerides 452 mg/dl, HDL-Cholesterol 50 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.16. Social and Family History are not available. Medications Listed include Crestor, Vytorin, Allegra, Finasteride, Lovastatin, Celebrex, Lipitor, Aleve, Advil, Seldane, Zantac, Kenalog, Skelaxin, and Ultravate Cream. Given the Age of the Subject and his Medical Management with Compliance, his projected LE would be 70 Months on available information.

This Review was compiled solely for JAMES INSURANCE and may not be used by any other company.

PLAINTIFF'S  
EXHIBIT

G

EXHIBIT 11

Deposition: [REDACTED]

Date: 7/1/11 Rpt.:

www.verumok.com

*Chapman*  
Signed: GLENN S. CHAPMAN, M.D., DIRECTOR OF MEDICAL REVIEWS

Please note: A Life Expectancy cannot be precisely determined for any specific patient, but rather is the average life expectancy of a large group of patients with similar clinical and individual profiles. No one can guarantee or warrant the accuracy of any patient's precise life expectancy. The information contained in this facsimile is privileged and confidential information for the use of the individual or entity named.

Unofficial copy Travis Co. District Clerk Velva L. Price



# MIDWEST MEDICAL REVIEW, LLC

AGL73L-31909-WK

Subject: [REDACTED] Report Date: (Valid 90 days) 01/12/2009  
SSN: [REDACTED] Gender: Male  
DOB: 03/13/1938 Smoking status: N/A  
Age: (Nearest Birthday) 77 Race: Caucasian  
Height: N/A Weight: 146 lbs

This subject has ongoing medical diagnoses which do not currently indicate a life-threatening scenario

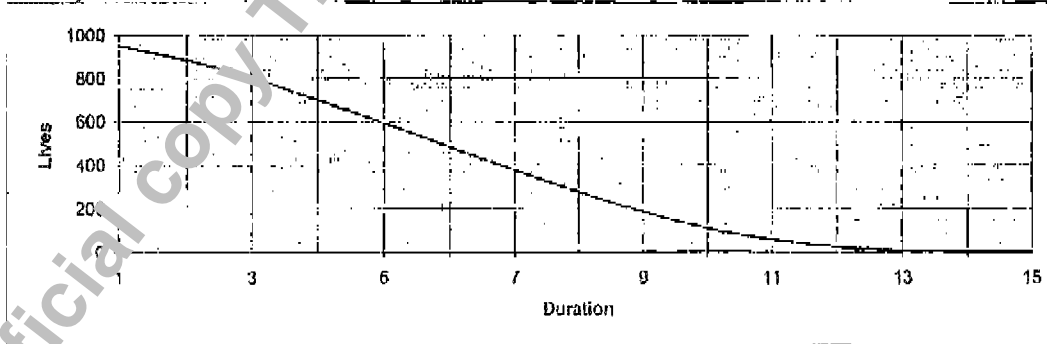
Med-Actuarial Median LE\*: 5.86 Years or 70 Months  
85% Mortality\*: 9.49 Years or 114 Months  
Mortality Multiplier\*: 5.50

\*Based on MMR / UC Berkeley-Max Planck Mortality Database.

\*Applies to 2008 VDT Primary Tables (ANB), Select & Ultimate, Male/Female, Smoker/Non-Smoker. See illustration below.

| Duration | Lives | Accum Deaths | Duration | Lives | Accum Deaths | Duration | Lives | Accum Deaths |
|----------|-------|--------------|----------|-------|--------------|----------|-------|--------------|
| 1        | 954   | 48           | 17       |       |              | 33       |       |              |
| 2        | 887   | 113          | 18       |       |              | 34       |       |              |
| 3        | 803   | 197          | 19       |       |              | 35       |       |              |
| 4        | 704   | 296          | 20       |       |              | 36       |       |              |
| 5        | 598   | 404          | 21       |       |              | 37       |       |              |
| 6        | 485   | 516          | 22       |       |              | 38       |       |              |
| 7        | 377   | 623          | 23       |       |              | 39       |       |              |
| 8        | 278   | 722          | 24       |       |              | 40       |       |              |
| 9        | 186   | 814          | 25       |       |              | 41       |       |              |
| 10       | 112   | 888          | 26       |       |              | 42       |       |              |
| 11       | 58    | 942          | 27       |       |              | 43       |       |              |
| 12       | 25    | 976          | 28       |       |              | 44       |       |              |
| 13       | 8     | 992          | 29       |       |              | 45       |       |              |
| 14       | 2     | 998          | 30       |       |              | 46       |       |              |
| 15       | 0     | 1000         | 31       |       |              | 47       |       |              |
| 16       |       |              | 32       |       |              | 48       |       |              |

Mortality Chart:



Please note: A Life Expectancy cannot be precisely determined for any specific person, but rather is the average life expectancy of a large population with similar clinical and individual profiles. No one can guarantee or warrant the accuracy of any individual's precise life expectancy. The information contained in this document is privileged and confidential information for the use of the individual or entity named.

Insured-specific information may be considered confidential under local, state or federal laws. Life expectancy information provided to a client company by Midwest Medical Review LLC may not be disclosed to any third parties or used in any manner which may violate any applicable laws including but not limited to HIPAA. Life Expectancy Certificates received from parties other than directly from Midwest Medical Review LLC cannot be guaranteed authentic.

**From:** Wendy Rogers <wrogers@retirementvalue.com>  
**Sent:** Tuesday, January 26, 2010 3:17 PM  
**To:** 'Kendall Gray' <kgray@retirementvalue.com>; 'Ernie Bilodeau' <EBilodeau@whiteknightfinancial.com>  
**Subject:** RE: Quick Question

---

Ernie, please see my responses below in red

Wendy Rogers  
Vice President, Administration & Services  
(830) 624-8858 office  
(210) 363-2910 cell

**CONFIDENTIALITY NOTICE** – The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** Kendall Gray [mailto:kgray@retirementvalue.com]  
**Sent:** Tuesday, January 26, 2010 9:43 AM  
**To:** 'Ernie Bilodeau'  
**Cc:** 'Wendy Rogers'  
**Subject:** RE: Quick Question

Hi Ernie,

I am going to forward this email on to Wendy Rogers, who should be able to shed some light on your questions.

Thanks!

*Kendall E. Gray*

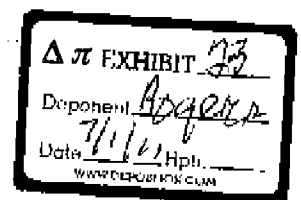
Manager of Licensee Administration  
Retirement Value, LLC  
457 Landa Street, Suite B  
New Braunfels, TX 78130  
P: (830) 624-8858  
F: (830) 609-5002  
kgray@retirementvalue.com

**From:** Ernie Bilodeau [mailto:EBilodeau@whiteknightfinancial.com]  
**Sent:** Tuesday, January 26, 2010 6:22 AM  
**To:** Kendall Gray (Retirement Value)  
**Subject:** Quick Question

Good morning Kendall,

Not sure who I would normally forward questions to, but hopeful you will be able to point me in the right direction.

After my second meeting with a potential client late last week where she told me she recently lost \$70K in a real estate investment where she didn't do enough research. Because of that loss, she had a couple of requests/questions before she is ready to move forward:



RVR010476

1. She is asking for more information/data on our track record. I did share the following data from Midwest, but she is hoping for a bit more. The "more" will come in approx. 3 weeks. We are having an external auditing firm in Princeton, NJ analyze all 18,000 LE's written by Midwest Medical. We'll pass along the results to the field as soon as we receive them.

*"Based on 14,700 cases written – and based on a random sample of 5,000 cases:*

- *Midwest is accurate 95% of the time to LE*
- *Midwest is 98.5% accuracy within 12 months past LE"*

2. She plans to take money out of one or more of her existing IRA accounts and move to a self directed IRA. They always ask what the money will be used for when she submits the paperwork... How should she answer that? Well, her existing custodian may allow her to custody our product. Do you know the name of the custodian? If that's the case, she may not have to move the funds at all. We can discuss this option.

I believe she is planning on a qualified account and is hopeful she will be able to use her existing self directed IRA. We haven't gone into much detail about that yet.

Thank You,

Ernie Bilodeau

**White Knight Financial LLC**

Bradenton / Sarasota 941-580-9700  
Tampa / Brandon 813-423-1002

*Alternative Financial Strategies*

**From:** Dick Gray <rgray@retirementvalue.com>  
**Sent:** Tuesday, November 17, 2009 8:52 AM  
**To:** don.james1@comcast.net  
**Cc:** 'Ronald James' <jiservcs@aol.com>; 'Michael Beste' <mbeste@msn.com>; 'Wendy Rogers' <wrogers@retirementvalue.com>; bcollins@retirementvalue.com; 'Mike McDermott' <sendmegoodnews@yahoo.com>; 'Katie Hensley' <khensley@retirementvalue.com>; 'Jeremy Gray' <jgray@retirementvalue.com>; 'Brent Free' <bwfree@sbcglobal.net>; 'Kristen Quinney Porter' <kdq@sbcglobal.net>  
**Subject:** RE: FW: SEC Complaint - Dr Kindness

---

See red comments below.

Look, it's time to declare a truce here on Kindness.

I think everyone one in this e-mail circuit is in agreement that he screwed up, got caught, paid his price – but that the regulatory world in which we all operate makes it hard form him to live that down and for us to move on. My own “glass house” is large enough that I don't even throw SAND at others let alone rocks. But the facts are the facts. His screw-up years ago still haunts the process – our process and your process – and casts enough doubt on the outcomes to be an ongoing issue, even if it is only among the small-minded. Some small-minded people have a lot of money to invest! If we all were totally thrilled with Kindness and MWMR we would not be spending 20 grand on a report from Princeton and we would not be hoping for a successful Plan B source as an alternate to Kindness and MWMR.

So let's not beat up on each other or talk about America's Cup races and crew positions. Let's talk about what matters: sound LE reports from a source that does not constantly present uncertainty just like an IED that can explode at any time unexpectedly to injure troops in Iraq or Afghanistan.

Dick Gray  
President / CEO  
Retirement Value, LLC  
457 Landa Street, Suite B, New Braunfels, TX 78130  
P.O. Box 310635, New Braunfels, TX 78131-0635  
(830) 624-8858 ofc (866) 498-4644 fax (210) 392-3550 mobile  
rgray@retirementvalue.com

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** Donald James [mailto:don.james1@comcast.net]  
**Sent:** Tuesday, November 17, 2009 10:27 AM  
**To:** Dick Gray  
**Cc:** Ronald James, Michael Beste  
**Subject:** Re: FW: SEC Complaint - Dr Kindness

Dick,

That analysis has been our stance since the first time this was ever uttered as an objection. We took the position that you can't make everyone happy all of the time, NEXT.

Here's something that seems at odds "As Bruce Collins puts it so succinctly, George Kindness once had some clear-cut choices to make (*those choices were TO LIE ABOUT BEING AN MD OR NOT TO LIE ABOUT BEING AN MD?*); made the



RVR011959

wrong choices (compared to what alternatives TELLING THE TRUTH OR NOT TELLING THE TRUTH); and WE still are 'paying' for that (actions of Kindness KINDNESS – without A to the left there never could have been a B or C to the right the SEC complaint against AFS/SIS?)."

Dr (yes he's a Dr and PhD) Kindness has not pressed his signature to an LE in a very long time. At this point, it reminds me of an old Sex Pistols Album released after they broke up.. "Flogging a Dead Horse". His serum situation...surely a misstep.

AFS and SIS in regards to MMR.....had nothing to do with Kindness. We all are paying for the scammers in the industry or the mismanaged Life Settlement entities....ala Mutual Benefit, LPHI getting their head handed to them in Colorado and aforementioned AFS/SIS.

The SEC complaint, actually stepped onto a slippery slope in regards to LEs and it would have been easy for someone with a rudimentary statistics/quant knowledge to dispel their assertion. Certainly if Amscot/MMR were implicated, there would have been a defense lodged and the LEs substantiated.

Innuendo is innuendo, those whom can't discern that, aren't good prospects... EXT. \$500k in the scope of things is....not worth tacking away from the wind.

As a passionate fan of America's cup racing and New Zealand's efforts to rip it from the hands of multi-billionaires through innovation and the best crews on the face of the earth (yes all of the other teams have Kiwi crews..Oracle/Ellison, Alinghi/Bernesto) and a disciple of GE discipline I like sailing job descriptions. You can assign similar tasks to your NB contingent.

Our collective brain trust would relate to actors 14-17. At the end of the day.....Bowman, Mid-Bow, Grinders, Trimmers etc....don't run the show, because they don't have all of the available information nor the perspective to capture the win.

Dick Gray wrote:

RV is blessed to have thoughtful, professional and articulate Master Licensees such as Mike McDermott capable of doing and willing to do such an analysis to calm the doubtful. And we all are in agreement that he should not have to do such a thing; but he does have to and he did. As Bruce Collins puts it so succinctly, George Kindness once had some clear-cut choices to make; made the wrong choices, and WE still are 'paying' for that. Which is why there's now a Plan B in motion. No amount of explanation or rationalization or defense of Kindness wipes out the fact that he is a liability for RV at this time.

Dick Gray  
President / CEO  
Retirement Value, LLC  
457 Landa Street, Suite B, New Braunfels, TX 78130  
P.O. Box 310635, New Braunfels, TX 78130-0635  
(830) 624-8858 ofc (866) 498-4644 toll (210) 392-3550 mobile  
[rgray@retirementvalue.com](mailto:rgray@retirementvalue.com)

**CONFIDENTIALITY NOTICE** – The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

---

**From:** Mike McDermott [<mailto:sendmegoodnews@yahoo.com>]

**Sent:** Monday, November 16, 2009 2:18 PM

**To:** [james@razorfinancial.com](mailto:james@razorfinancial.com)

**CC:** Bruce Collins; Dick Gray

**Subject:** SEC Complaint - Dr Kindness

James,

I have attached the SEC Complaint that your prospect read and suggest you print it for reference as you read this email.

When a regulatory agency files a complaint they throw everything against the wall, including the kitchen sink, in the hope that some of it will stick.

An example is the FDA's earlier complaint filed against Dr. Kindness in 2003. They alleged twenty-one counts of wrong-doing by Dr. Kindness and ultimately found him guilty of just one - failing to put dosage instructions ON THE BOTTLE LABEL of his cancer-fighting serum. (attached) It did not matter to the FDA that the dosage instructions from Dr. Kindness ran fifty-six pages of typed instructions and could not physically be placed on a bottle's label.

In regulators' minds, a rule is a rule.

Although this complaint was not filed against Midwest Medical Review (MMR) or Dr Kindness, it raised questions about the veracity of the Life Expectancy (LE) reports issued by MMR, whom our exclusive policy provider uses to determine a fair price for policies he purchases for resale.

A careful analysis of the complaint may provide you with some ammunition to allay your prospect's concerns about participating in policies that rely upon MMR's LE report.

In their complaint, filed in 2007, the SEC **alleges** the following against the defendants, AFS & SIS:

1. That AFS began selling policies in 2001 (Section 12)
2. That SIS began selling policies in 2005 (Section 25)
3. That AFS & SIS sold 40 policies between 2001 and 2007 (Section 11.)
4. That LE's of the insureds were between three and six years (Section 14)
5. That 20 insureds had outlived their LE, some by as many as two or three years. (Section 30)

#### Analysis

Using the SEC's dateline, AFS and SIS sold forty policies over a period of six years (2001 to 2007)

If policies typically carried LE's of three to six years, as stated by the SEC, it would be mathematically impossible for half of those policies to have endured for two to three years beyond predicted LE in 2007, when the complaint was filed.

For that to have occurred twenty policies of the forty total sold between 2001 and 2007, would have to have been sold in 2001 and 2002, and all twenty would have had to had LE's of just three years. That is hardly possible. As in most new businesses, it takes awhile for a new business to get rolling. 50% of a company's sales over a six-year existence from start to finish, don't occur in the first partial year it begins to operate.

Further, it would be impossible for **ANY** of the forty policies sold between 2001 and 2007, to have endured for three years beyond predicted LE when this complaint was filed in 2007, if the original predicted LE's were for four, five, or six years as the SEC complaint itself admits existed. All would have to have been three year life expectancies.

In short, the math just doesn't work. For the SEC's allegations to be accurate, 50% of the sales from 2001 to 2007, would have to have occurred in 2001 & 2002, the start-up years, and 100% of those sales would have had to come from policies that had either a three year or four year LE, exclusively - a scenario that is completely far-fetched.



However, because of concerns over the allegations cited in the SEC complaint, a totally independent audit on MMR, conducted by a Princeton, NJ, firm is in the final prep stages – and it is expected to be available in about two weeks. If your client can defer a final decision – and is willing to incorporate the details of “the Princeton Review” into his final decision - RV would be most grateful.

I hope this helps. I will be available to speak to your prospect if you deem that to be appropriate.

Thanks for all your efforts on behalf of RV and your team.

Mike

Donald James  
Managing Member  
James Group Int'l LLC  
925-683-5501 Mobile  
925-299-2802 Office  
925-299-2806 Fax  
[don@kiwisurfer.co.nz](mailto:don@kiwisurfer.co.nz)

CONFIDENTIALITY: This e-mail message, including any attachments, is intended only for use  
ELECTRONIC TRANSACTIONS: Notwithstanding the Uniform Electronic Transactions Act or the a

**From:** Wendy Rogers <wrogers@retirementvalue.com>  
**Sent:** Thursday, January 21, 2010 3:20 PM  
**To:** 'Kevin Schneider' <kschneider67@msn.com>  
**Subject:** RE: George Kindness "convicted Felon"/MidWest Medical????

---

You're welcome!

Wendy Rogers  
Vice President, Administration & Services  
(830) 624-8858 office  
(210) 363-2910 cell

CONFIDENTIALITY NOTICE -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** Kevin Schneider [mailto:kschneider67@msn.com]  
**Sent:** Thursday, January 21, 2010 2:23 PM  
**To:** Wendy Rogers  
**Subject:** RE: George Kindness "convicted Felon"/MidWest Medical????

Thank You!

Kevin J. Schneider  
(703) 307-2688

---

**From:** wrogers@retirementvalue.com  
**To:** kschneider67@msn.com  
**CC:** jrs2bbs@aol.com  
**Subject:** RE: George Kindness "convicted Felon"/MidWest Medical????  
**Date:** Thu, 21 Jan 2010 13:59:39 -0600

Kevin,

The issue with Dr. Kindness and Midwest Medical has been an unfortunate marketing nightmare. However, this does not negate the fact that their life expectancy prediction methodology is second-to-none.

We should have preliminary numbers from the Princeton report in the next 2 weeks and the final report in 4. We will definitely alert the field when these items become available.

Have a great day!

Wendy Rogers  
Vice President, Administration & Services  
(830) 624-8858 office  
(210) 363-2910 cell



RVR021103

CONFIDENTIALITY NOTICE -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** Kevin Schneider [mailto:kschneider67@msn.com]  
**Sent:** Thursday, January 21, 2010 12:50 PM  
**To:** wrogers@retirementvalue.com  
**Cc:** DAD  
**Subject:** RE: George Kindness "convicted Felon"/MidWest Medical?????

Hello Wendy,  
Thank You for your response. Please let me know when the independent audit of MMR is complete by the firm in Princeton, NJ.  
My Father said that before he moves forward with the purchase of resale life, he would like to see the results of that report.  
My father also was interested in becoming an agent as well, so we both are excited about the Retirement Value opportunity, its just when things like this occur it can make potential clients and recruits uneasy.  
Thank you again for your fast response and We are looking forward to see the results of the audit.  
Thank You,  
Kevin

Kevin J. Schneider  
(703) 307-2688  
Delray Beach, FL

---

**From:** wrogers@retirementvalue.com  
**To:** mikeahlers.marketing@gmail.com; kschneider67@msn.com  
**Subject:** RE: George Kindness "convicted Felon"/MidWest Medical?????  
**Date:** Thu, 21 Jan 2010 11:16:33 -0600

Kevin,

I've included some information below for you. First of all, the ponzi scheme in California had NOTHING to do with George Kindness. Here's some information learned from a visit with Dr. George Kindness in person by Dick Gray and one of our sales leaders in the field. Also, Dr. Kindness IS an MD in Scotland....not in the US. Please call me so we can discuss further.

We also have a licensee who actually used Dr. Kindness' cancer treatment on a large tumor he had in his abdomen. After treatment, the cancer is gone. He is obviously completely "sold" on Midwest Medical:

When a regulatory agency files a complaint they throw everything against the wall, including the kitchen sink, in the hope that some of it will stick.

An example is the FDA's earlier complaint filed against Dr. Kindness in 2003. They alleged twenty-one counts of wrong-doing by Dr. Kindness and ultimately found him guilty of just one - failing to put dosage instructions ON THE BOTTLE LABEL of his cancer-fighting serum. (attached) It did not matter to the FDA that the dosage instructions from Dr. Kindness ran fifty-six pages of typed instructions and could not physically be placed on a bottle's label.

In regulators' minds, a rule is a rule.

Although this complaint was not filed against Midwest Medical Review (MMR) or Dr Kindness, it raised questions about the veracity of the Life Expectancy (LE) reports issued by MMR, whom our exclusive policy provider uses to determine a fair price for policies he purchases for resale.

A careful analysis of the complaint may provide you with some ammunition to allay your prospect's concerns about participating in policies that rely upon MMR's LE reports.

In their complaint, filed in 2007, the SEC **alleges** the following against the defendants, AFS & SIS:

1. That AFS began selling policies in 2001 (Section 2)
2. That SIS began selling policies in 2005 (Section 35)
3. That AFS & SIS sold 40 policies between 2001 and 2007 (Section 11.)
4. That LE's of the insureds were between three and six years (Section 14)
5. That 20 insureds had outlived their LE, some by as many as two or three years. (Section 30)

### **Analysis**

Using the SEC's dateline, AFS and SIS sold forty policies over a period of six years (2001 to 2007)

If policies typically carried LE's of three to six years, as stated by the SEC, it would be mathematically impossible for half of those policies to have endured for two to three years beyond predicted LE in 2007, when the complaint was filed.

For that to have occurred, twenty policies of the forty total sold between 2001 and 2007, would have to have been sold in 2001 and 2002, and all twenty would have had to had LE's of just three years. That is hardly possible. As in most new businesses, it takes awhile for a new business to get rolling. 50% of a company's sales over a six-year existence from start to finish, don't occur in the first partial year it begins to operate.

Further, it would be impossible for **ANY** of the forty policies sold between 2001 and 2007, to have endured for three years beyond predicted LE when this complaint was filed in 2007, if the original predicted LE's were for four, five, or six years as the SEC complaint itself admits existed. All would have to have been three year life expectancies.

In short, the math just doesn't work. For the SEC's allegations to be accurate, 50% of the sales from 2001 to 2007, would have to have occurred in 2001 & 2002, the start-up years, and 100% of those sales would have had to come from policies that had either a three year or four year LE, exclusively - a scenario that is completely far-fetched.

However, because of concerns over the allegations cited in the SEC complaint, a totally independent audit on MMR, conducted by a Princeton, NJ, firm is in the final stages - and it is expected to be available in about two weeks. If your client can defer a final decision - and is willing to incorporate the details of "the Princeton Review" into his final decision - RV would be most grateful.

Wendy Rogers  
Vice President, Administration & Services  
(830) 624-8858 office  
(210) 363-2910 cell

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

**From:** mike ahlers [mailto:mikeahlers.marketing@gmail.com]  
**Sent:** Wednesday, January 20, 2010 7:32 PM

**To:** Kevin Schneider  
**Cc:** wrogers@retirementvalue.com  
**Subject:** Re: George Kindness "convicted Felon"/MidWest Medical?????

Kevin,

Attached is the Midwest Medical Review presentation that speaks to their methodology and accuracy. Per Wendy Rogers (Retirement Value, LLC's Vice President) this is for agent use only and not intended for clients or prospects.

Mike Ahlers

On Wed, Jan 20, 2010 at 5:05 PM, Kevin Schneider <kschneider67@msn.com> wrote:

Dear Mike,

Please let me know whats going on?

Kevin J. Schneider  
(703) 307-2688

I was about to go over to Naples, FL tomorrow and sell my father the Retirement Value resale life. I called the phone number provided by the website of Midwest Medical Review it gave a voice mail box number and no indication of the name of the company (513) 771-3172, I have googled information on Midwest Medical review and George Kindness and this is what I got below. I don't understand how Retirement Value would do business with a company like Midwest Medical. Let me know what is going on. Please

Midwest Medical Review: Midwest Medical Review, LLC Company Profile - Located in ... - 2 visits - 2:34pm incorporated

[PDF]

**Complaint: Secure Investment Services, Inc., American Financial ... Names: George Kindness**

1. Incorporated by George Kindness, Midwest Medical Review, LLC is located at 11258 Cornell Park Dr Ste 600 Cincinnati, OH 45242. Midwest Medical Review, LLC was incorporated on Wednesday, April 25, 2007 in the State of FL and is currently active. C T Corporation System represents Midwest Medical Review, LLC as their registered agent.

Source: Public Record data - Department of State - Division of Corporations

2.

28. Defendants have not disclosed to investors or potential investors that Kindness is not a medical doctor, that he and AmScot have criminal records, and that Midwest is a

continuation of AmScot's operation. These undisclosed facts indicate that AmScot and Midwest life expectancy estimates are unreliable; that investors may have to wait longer for returns; and that policies may lapse from lack of funds to make

premium payments and investors will lose their entire investment.

On July 6, 2005, George Kindness, on behalf of himself and Amscot Medical Labs, pleaded guilty to one count of being aided and abetted in the introduction of a misbranded drug (an alleged cancer vaccine) into interstate commerce with intent to mislead. The plea agreement, reproduced below, settles charges filed in 2003. According to the indictment:

- Kindness, who resides in Middletown, Ohio, has been Amscot's president, part-owner, and laboratory director since 1992.
- In 1999, the FDA discovered that Amscot had been making "vaccines" from blood and tumor tissues of cancer patients and shipping them to an unidentified co-conspirator who used them to treat patients.
- After the FDA informed Kindness that such treatment was illegal without investigative new drug (IND) approval, an application was submitted.
- The FDA never approved the IND, but the treatment continued.
- The FDA also learned that the co-conspirator was treating patients with a similar vaccine called Theracine, which also lacked FDA approval.
- In 1999, Kindness falsely represented to an FDA inspector that he had an MD degree.
- Throughout 2000, Amscot continued to prepare and ship Theracine vaccines.
- In 2001, the United States District Court for the Southern District of Ohio issued a permanent injunction prohibiting Kindness and Amscot from manufacturing, processing, packing, labeling, promoting, and distributing Theracine, any similar drug or any biologic product, or any other "new" drug.

Kindness is part of a network that has helped chelation therapists and other mavericks pretend to be doing legitimate research.

\*\*\*\*

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. George Kindness from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. FDA bases this order on a finding that Mr.

Kindness was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the act. After being given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, Mr. Kindness failed to request a hearing. Mr. Kindness's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

**DATES:** This order is effective November 24, 2008.

**ADDRESSES:** Submit applications for termination of debarment to the Division of Dockets Management (HFA- 305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. FOR

## IN THE UNITED STATES DISTRICT COURT

Kevin J. Schneider  
(703) 307-2688

Hotmail: Powerful Free email with security by Microsoft. Get it now.

Hotmail: Trusted email with Microsoft's powerful SPAM protection. Sign up now.

Hotmail: Trusted email with powerful SPAM protection. Sign up now.

Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)

Hotmail: Free, trusted and rich email service. [Get it now.](#)

**From:** Dick Gray <gray@retirementvalue.com>  
**Sent:** Saturday, December 19, 2009 3:10 PM  
**To:** jjserves@aol.com  
**Cc:** Don James <don.james1@comcast.net>; Michael Beste <mbeste@msn.com>  
**Bcc:** Wendy Rogers <wrogers@retirementvalue.com>; Bruce Collins <bcollins@retirementvalue.com>; Hensley <khensley@retirementvalue.com>; Jeremy Gray <jgray@retirementvalue.com>; Scott L. Baker <scottlbaker@sbcglobal.net>; bwfree@sbcglobal.net  
**Subject:** Midwest Medical Review

---

Good afternoon, Ron:

1<sup>st</sup>, about the wire transfers for December -- all of us on this end are very grateful for Jeremy's policy-payment distribution idea, Marisa's spread-sheeting / calculating and the cooperation of the folks at Kinsling in helping us send you a little over \$3 million so far in December. Perhaps Jeremy has told you we'd like to be able to make the total \$3.5 million before 12-31. Then on to January...!

Frankly, being in that wire-transfer pressure-cooker was not the right time to bring up Midwest Medical again. I'll do so now.

Our great hope, like yours, is that the "Princeton Report" whenever it is released will thoroughly confirm George Kindness' numbers; validate his system; and explain your great faith in outcomes determined by MWMR. We look forward eagerly to being able to share data with our licensees and clients that reassures them about the decisions they've made and the policies on which their decisions were made.

To talk in military terms, though, we intend to use the Princeton Report as a "screening action" to mask what we feel must be a very steady "retreat" away from any reliance on MWMR reports for our policies. This is not a new topic in our relationship and so is not "news" to you. What is different now is the emphasis we'll place on this objective and the urgency of achieving it.

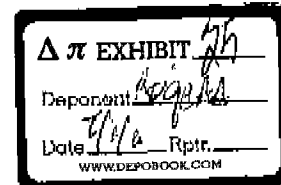
We are grateful for the progress reported in having a new LE source and encouraged by the early reports of their accuracy (compared with MWMR, which we assume to be accurate). Going forward, relying more and more on this new LE source or an alternate LE source will be a very important development in our public stance with both licensees and clients -- not to mention regulators.

In fact, it may be wise for us to buy the LE reports from this new source directly - to foster and maintain the appearance as well as the reality of a certain independence here at RV during policy acquisition. We'd always compare notes -- the MWMR report and our independent report.

Anyway, there has always been pressure in this direction from the retail market and as we grow -- both in the number of licensees AND their sophistication -- the pressure is increasing not decreasing. As one attorney in Connecticut who is a brand new licensee told us in conference call Wednesday, "RV's objective must be to protect RV not defend George Kindness".

Thanks!

Dick



**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic

RVR014190



transmission is a violation of Federal criminal law.

Unofficial copy Travis Co. District Clerk Velva L. Price

**From:** bcollins@retirementvalue.com  
**Sent:** Saturday, February 13, 2010 3:03 PM  
**To:** rgray@retirementvalue.com; Jeremy Gray <jgray@retirementvalue.com>; Wendy Rogers <wrogers@retirementvalue.com>; Katie Hensley <khensley@retirementvalue.com>  
**Cc:** Carie Morales <cmorales@retirementvalue.com>; Diana Cass <dcass@retirementvalue.com>; Scott Barnard <valerieb@igbweb.com>  
**Subject:** RE: [FWD: Re: [FWD: Breaking News]]  
**Attach:** mmr.pdf

---

Here's a mental picture.

You're sitting at a kitchen and going over the presentation. You're prospect asks "do you have any statistics (a look back is fine) to support your LE projections?"

"I sure do Mr. Prospect. Our look back confirms that we're at 50/50. No better than a coin toss; is that OK?"

"Perfect!" says Mr. Prospect. "Write me up!" Needless to say you would politely be shown the door.

The very notion that 50/50 is a satisfactory outcome of this study is absurd. Our strategic partners (JSS, Mike Beste, etc.) simply must get their "head in the game" insofar as understanding that the prospect could care less what they think. RVs success is based on the prospect's perception of us, not our strategic partner's perception of them.

Here's what we know for sure.

LPI knows we use MMR

LPI has a copy of MMR's brochure stating their accuracy claims

George Kindness is a convicted felon

LPI will have a copy of the LE audit shortly after it is released or at a minimum they will know the results.

Anything less than 80% which can be verified will be a disconnect between MMR's brochure and the facts.

I've read Don's e-mail and my response is the same as any client would have...nice try. The **only thing** that will justify MMR's LE's is an audit of their LE's by a reputable company through an untainted process of compilation and release. Given GK's background even that may not work, but it will help.

If you're playing cards in order to collect the chips you have to do more than declare yourself the winner. You must show the hand and prove it.

I'll be at the new office (WOW!) Wed. morning.

**Bruce G. Collins**  
**Chief Operating Officer**  
**Retirement Value, LLC**  
**457 Linda St. Suite B**  
**New Braunfels, TX 78130**  
**Office 830-624-8858**  
**FAX 830-609-5002**

**214-732-5422\* Use Cell Phone**

**As iron sharpens iron, man sharpens man. It is accepting the possibility of hearing the word "no"**

**which creates the opportunity to hear the word "yes." See 3-5 prospects this week.**



----- Original Message -----

Subject: [FWD: Re: [FWD: Breaking News]]

From: rgray@retirementvalue.com

Date: Sat, February 13, 2010 4:28 am

To: wrogers@retirementvalue.com, bcollins@retirementvalue.com, khensley@retirementvalue.com, jgray@retirementvalue.com, cmorales@retirementvalue.com, dcass@retirementvalue.com, "Scott " <scottb@igbweb.com>

FYI...

----- Original Message -----

Subject: Re: [FWD: Breaking News]

From: Donald James <don.james1@comcast.net>

Date: Fri, February 12, 2010 9:47 am

To: rgray@retirementvalue.com

Cc: Mike Beste <mbeste@msn.com>, Ron James <jiservcs@aol.com>

To all,

The whole point of statistics is that you don't have to TAKE EVERY DATA POINT. Stats is about drawing RANDOM SAMPLES and through various tools like regression analysis to get a high Rsq, Null hypothesis testing etc.....you end up with the same result as if you did grab all data points. So I'd drum someone on the head with that

BTW if the data shows 50% correlation at LE...IT's PERFECT. 80% maturity by LE suggests that LEs are too long and vice versa. I unraveled the 21st services accuracy fallacy 5+ yrs ago with far less data and they were forced to pull their claims. Their data actually showed that their LEs were off by close to 34 months and were longer than actual....at that point it also justified MMR LEs!! 21st has dropped all claims of LE accuracy since.

Having Kindness as the gate keeper, we might as well see if we can get Dr Cassidy to come in-house for us too.

Don

rgray@retirementvalue.com wrote:

> Thanks, Don.

>

> \*\_Notes\_ to all -\_\*

>

> It really is "piss or get off the pot" time for George Kindness and

> Jim Hess for this "Princeton Report". We have our next sales meeting

> Thursday, February 18th (less than a week away) in New Braunfels. I

> cannot - and will not - make any more excuses for Hess or Kindness.

> My credibility will be only modestly higher than mud if I once again

> have to stand at the podium and make lame excuses for these guys.

>

> Out of frustration with the process, you know that Jeremy has been

> dealing directly with Jim Hess for progress reports. Hess is in a

> dead-heat with Scott Baker for the "most-often-delayed-outcome of the  
> year".  
>  
> We told them weeks ago that a one or two sentence extract would  
> suffice - still nothing.  
>  
> "After reviewing 13,871 of 18,297 LE reports provided during a 14 year  
> period by various companies owned by George Kindness, we find the  
> correlation of outcomes to expecteds to be in the mid-80% range -  
> final report to follow upon the conclusion of our total review" would  
> carry us for MONTHS.  
>  
> Now the latest wrinkle is that Hess said Kindness will not allow the  
> timely release of the report on a DIRECT basis to ANY of us - but it  
> must filter through Kindness first. Which now taints the entire  
> process \*\_unless there is independent confirmation from Hess that we  
> are getting from Kindness word-for-word what Kindness received from  
> Hess\_\*.  
>  
> It is not OUR fault that Kindness has once already admitted to  
> wrong-doing with important reports and documents! For months we have  
> been telling licensees and clients (and regulators) there is NO  
> correlation between his FDA-driven felony plea-conviction and the  
> integrity of his LE reports. Now all of a sudden there will be a  
> DIRECT CORRELATION between that FDA-driven felony plea-conviction and  
> THIS report. Kindness will be angry over this twist and  
> interpretation on my part - but no amount of anger or self-righteous  
> indignation on his part can change the fact that I am right on  
> target. Just as we approach the finish line of our concerted effort  
> to assist him with the resurrection of his professional reputation he  
> appears ready to unravel the process and hurt himself and hurt us  
> further.  
>  
> Just how soon can we have a 3rd LE source on-line to join Clarity  
> Evaluations in totally leaving Mike vest behind?  
>  
> Dick  
>  
>  
> ----- Original Message -----  
> Subject: Re: [FWD: Breaking News]  
> From: don.james@comcast.net  
> Date: Thu, February 11, 2010 9:06 pm  
> To: "Dick Gray," <rgray@retirementvalue.com>  
> Cc: "Mike Peete" <mbeste@msn.com>, "Ron James" <jiservcs@aol.com>  
>  
> Dick,  
>  
> This "best practices" has been a fractured exercise to say the  
> least and an effort by Fasano to push his "brand" as a late comer  
> to the game. 21st were hostile to the process and I don't think  
> A/S is folded in either. Much of it was about them preserving  
> their respective IPs. LISA captures members that are glad handers  
> and low execution % players that command a minority (as a  
> collective) of market participants and volume. It's a consensus  
> aggregator.  
>



>  
>  
> February 11, 2010  
>  
> <[http://click.icptrack.com/icp/relay.php?  
r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%  
2Fwww.thevoiceoftheindustry.com%2Fconference](http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.thevoiceoftheindustry.com%2Fconference)>www.thevoiceoftheindustry.com%  
2Fconference">[http://click.icptrack.com/icp/relay.php?  
r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%  
2Fwww.thevoiceoftheindustry.com%2Fconference](http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.thevoiceoftheindustry.com%2Fconference)>

>  
>  
>  
> Agreement Reached on  
> Final Piece of LE Best Practices

>  
> //

>  
>  
>  
> By Jim Connolly  
> An actuarial table that will create a benchmark for life  
> expectancy providers is now finalized and will be  
> officially released on schedule at the end of March,  
> according to Scott Gibson, chair of a subgroup working on  
> the project.  
>  
> The subgroup's work is the final piece of a Best Practices  
> effort initiated by the \*Life Insurance Settlement  
> Association,\* Orlando, Fla., and spearheaded by Michael  
> Fasano, CEO and president of \*Fasano Associates\*,  
> Washington, an LE provider.  
>  
> The group's charge was to create a table that was a  
> baseline for all LE providers who could then adjust it  
> according to how they develop their own actual to expected  
> life ratios. What is being developed is a table with a  
> good slope which will provide a "measuring stick so that  
> good comparative measures can be made," according to  
> Gibson who is a consulting actuary in \*Lewis & Ellis's\*  
> Dallas office.  
>  
> The first step in the process will occur by February 19  
> when all LE providers submit data for the table, according  
> to Gibson. That data may be new, refreshed or existing  
> data, he adds. The data will then be compiled and a table  
> developed, Gibson explains. Completion of that table is  
> expected by the end of February, Gibson continues. Both  
> the table and an accompanying report are expected to be  
> released by the end of March, he adds. The table could be  
> updated annually if needed, Gibson continues.

> Fasano said that the completion of the table is "very good  
> for LISA and for the industry." The subgroup's work was  
> able to get everyone on the same page so that a table  
> could be developed, he adds.  
>

- > After the table becomes publicly available, no later than
- > March 30, the Best Practices committee and the subgroup
- > that developed the table will remain in case additional
- > work is needed at a later point, Fasano says.
- >
- > The timing is important, according to Fasano, who says
- > that the combination of Best Practices including the
- > finalized table will give investors and potential
- > investors who are going to be at the Trade Mission renewed
- > confidence in the life settlement industry. The Trade
- > Mission is an educational effort designed to teach
- > investors and potential investors about the life
- > settlement industry. The three city Mission will run from
- > February 23-26 in London, Luxembourg City and Zurich.
- >
- > The Best Practices effort and the new table will allow
- > investors to make informed decisions on both LEs and the
- > pricing of policies that they purchase, Fasano says. "It
- > will give them "meaningful and comparable information on
- > the accuracy of LE providers," he adds.

> \* \*

> \*JIM CONNOLLY\*

> -----

> Managing Editor

> Life Settlement Review

> <<http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.lifesettlementreview.com%2F%2Fwww.lifesettlementreview.com%2F%2Fhttp://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.lifesettlementreview.com%2F%2F>>

> -----

> <[http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.summitliveevents.com%2F%2Fwww.summitliveevents.com%2F%2Fhttp://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.summitliveevents.com%2F%2Fwww.summitliveevents.com%2F%2Fhttp://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.summitliveevents.com%2F%2Fwww.summitliveevents.com%2F%2F](http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.summitliveevents.com%2F%2Fwww.summitliveevents.com%2F%2Fhttp://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.summitliveevents.com%2F%2Fwww.summitliveevents.com%2F%2Fhttp://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.summitliveevents.com%2F%2F)>

- >
- > **\*Latest News and Top Stories \***
- >
- > In depth life settlement news and hot issue articles.
- >
- > **\*Legislative Affairs\***
- >
- > Comprehensive coverage of legislative and regulatory developments.
- >
- > **\*Business Briefs\***
- >
- > Business and investment news alerts.
- >
- > **\*Publisher's Note\***
- >
- > Opinion and news analysis from the editors at Life Settlement Review.
- >
- > **\*Guest Commentary \***
- >
- > Guest editorial column written by today's leading industry professionals.
- >
- > **\*Industry Leader Profiles \***
- >
- > An exclusive interview with a top life settlement expert.
- >
- > **\*Business Advisor\***
- >
- > Helpful management tips and tools.
- >
- > **\*Company Profiles\***
- >
- > A close up look at key players within the life settlement industry.
- >
- > **\*Classifieds\***
- >
- > Company announcements, employment ads and upcoming event notices.
- >
- > -----
- >
- > **\*NEW WEBSITE! \***
- >
- > The Life Settlement Review website has a brand new look. Come see our redesigned layout. Each issue's exclusive content is available online to subscribers. A full PDF version is also available online.
- >
- >
- > -----
- >
- > **\*SUBSCRIPTION\***
- >
- > Please visit the Life Settlement Review website



> <[http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.lifesettlementreview.com%2Findex.php%3Foption%3Dcom\\_acctexp%26task%3Dsubscribe](http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.lifesettlementreview.com%2Findex.php%3Foption%3Dcom_acctexp%26task%3Dsubscribe)>www.lifesettlementreview.com%2Findex.php%3Foption%3Dcom\_acctexp%26task%3Dsubscribe">[http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.lifesettlementreview.com%2Findex.php%3Foption%3Dcom\\_acctexp%26task%3Dsubscribe](http://click.icptrack.com/icp/relay.php?r=8990783&msgid=175122&act=BZU1&c=155823&destination=http%3A%2F%2Fwww.lifesettlementreview.com%2Findex.php%3Foption%3Dcom_acctexp%26task%3Dsubscribe)>  
> for subscription details.  
>  
>  
>  
> -----  
> © 2010. Life Settlement Review. All rights reserved.  
>  
>  
> Disclaimer  
> This message may contain information that is privileged,  
> confidential and exempt from disclosure under applicable law.  
> If you are not the intended recipient (or authorized to act on  
> behalf of the intended recipient) of this message, you may not  
> disclose, forward, distribute, copy, or use this message or  
> its contents. If you have received this communication in  
> error, please notify us immediately by return e-mail and  
> delete the original message from your e-mail system.  
>  
> The Life Insurance Settlement Association is committed to  
> strictly adhering to the letter and spirit of the anti-trust  
> laws. Under no circumstances shall discussions via electronic  
> mail, or any other form of communication, be used as a means  
> for anyone to reach any understanding - express or implied -  
> that restricts competition or, in any way, impairs the ability  
> of participants in the industry to exercise independent  
> judgment regarding matters affecting competition. Thank you.  
>  
>  
>  
> This message was sent from Managing Editor - Jim Connolly to  
> rgray@retirementvalue.com. It was sent from: LISA, Life  
> Settlement Review, 1011 East Colonial Dr., Suite 500, Orlando,  
> Florida 32803. You can modify/update your subscription via the  
> link below.  
>  
> Email Marketing by <<http://www.icontact.com/a.pl/144186>>  
> iContact - Try It Free! <<http://www.icontact.com/a.pl/144186>>  
>  
>  
> Manage your subscription  
> <<http://app.icontact.com/icp/mmail-mprofile.pl?r=8990783&l=1165&s=BZU1&m=175122&c=155823>>  
> <<http://app.icontact.com/icp/sub/forward?m=175122&s=8990783&c=BZU1&cid=155823>>

--  
Donald James

Managing Member  
James Group Int'l LLC  
925-683-5501 Mobile  
925-299-2802 Office  
925-299-2806 Fax  
don@kiwisurfer.co.nz

**CONFIDENTIALITY:** This e-mail message, including any attachments, is intended only for use by the person(s) to whom it is addressed and may contain information that is legally privileged, confidential or otherwise exempt from disclosure under applicable law. If you are not the intended recipient of this e-mail message or the person responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication, and any attachments hereto, is legally prohibited. If you have received this communication in error, please immediately notify us by either reply e-mail or telephone at (925) 683 5501 and permanently delete the original and any copy of this e-mail communication, including any attachments, and any printout thereof.

**ELECTRONIC TRANSACTIONS:** Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary hereinabove, this e-mail communication, its contents and any attachments hereto, are not intended to represent an offer or acceptance to enter into a contract and are not otherwise intended to bind the sender, any of its clients, or any other person or entity.

**From:** Wendy Rogers <wrogers@retirementvalue.com>  
**Sent:** Friday, February 26, 2010 12:04 PM  
**To:** 'Steve Kenney' <steve.kenney@yahoo.com>  
**Subject:** RE: Updated RV Paperwork and Portfolio 2-25-2010

---

Yes, we have preliminary numbers to be sent out. I can say they were "favorable". Be looking for the email over the next few days.

Thanks!

Wendy Rogers  
Vice President, Administration & Services  
(830) 624-8858 office  
(210) 363-2910 cell

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

---

**From:** Steve Kenney [mailto:steve.kenney@yahoo.com]  
**Sent:** Friday, February 26, 2010 9:06 AM  
**To:** Wendy Rogers  
**Subject:** Re: Updated RV Paperwork and Portfolio 2-25-2010

Thanks for the update Wendy. Is there any word about the independent review that was done on MMR?

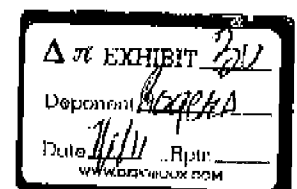
Steve

---

**From:** Wendy Rogers <wrogers@retirementvalue.com>  
**To:** "steve.kenney@yahoo.com" <steve.kenney@yahoo.com>  
**Sent:** Thu, February 25, 2010 10:16:28 PM  
**Subject:** Updated RV Paperwork and Portfolio 2-25-2010



ATTENTION:



RVR016074

The following policies are no longer available:  
LLI899-102209-AT (64 months)  
AXA994-011510-BD (51 months)

New policies in the portfolio:  
LBL918-022410-RW (57 months)  
AXA335-022410-PS (57 months)

OTHER CHANGES--All fields on the Exhibit A have been switched to "Read Only" so that the only column that you can manipulate is the column where you enter the Client's participation/loan amount.

REMINDER--Participation minimums are \$25,000 per client, with a minimum of \$5,000 per policy. Exceptions will be made for clients that have policy maturities with competitors' programs. Please include a cover letter in those instances. Any other exception requests must be made and approved through Wendy Rogers PRIOR TO YOU SUBMITTING THE PAPERWORK.

RV QUALIFIED PAPERWORK--I have updated the Fee Schedule located at the end of the Retirement Value Qualified Paperwork so you can see a side-by-side comparison of the fees. **I have also added the wiring instructions for the two custodians.**

**As a reminder, prior to visiting with a client, please check the website for the latest paperwork/portfolio.**

Thank you for all you do!  
Wendy Rogers  
Vice President, Administration & Services  
(830) 624-8858

At Retirement Value, LLC, you will find the most thorough, fair, permit re-sale life insurance policy program available anywhere. There is no equal!

Your "base-line capital gain" is higher here than with other purveyors of this "art" or with any other asset class of comparable risk.

Give us a call—by experience, client satisfaction, second to none, based on our recognition of the professional privilege to serve you.

Whether you speak with our more of 500 associates or our tier 1 sales, the integrity and complete disclosure of our business practices will become apparent.

We do not just sell a concept that gives you high gains—we put our professional reputations on the line for you every day.

RETIREMENT

VALUE, LLC

## What Exactly Is a "Re-Sale Life Insurance Policy"?

Your local Retirement Value, LLC licensee is:

PLAINTIFF'S  
EXHIBIT

I

Δ π EXHIBIT

Depositor: *Quigley*

Date: *11/11/11* File: *11/11/11*

WWW.REPROMO.COM

## What Exactly Is a "Re-Sale Life Insurance Policy"?

Retirement Value, LLC uses client funds to purchase re-sale life insurance policies from a private investor who already has acquired them from their original owners. All our re-sale life policies are purchased at a deep discount compared to the "face amount" or death benefit. When an insured passes away, the full death benefit is paid to the Escrow Agent as the sole beneficiary. The Escrow Agent then distributes all policy proceeds according to your pro-rata participation amount. Yes, it really is that simple!

### REPUTATIONS AT STAKE

All Retirement Value, LLC re-sale life policies are scrubbed at least two times in a rigorous, due-diligence process to assure their legitimacy. Once by the private investor before he purchases them and a final review by Retirement Value, LLC.

All participant funds are deposited in and held in escrow accounts at Wells Fargo Bank, N.A. Of course, the agreement by Wells Fargo Bank, N.A. to be the depository for your funds cannot be interpreted as their endorsement of our re-sale life insurance policy program.

William, Porter, Kiesling & Free, P.C., a 40-year old law firm in New Braunfels, Texas, is your Escrow Agent who manages all client funds. All client funds are handled at all times by the Escrow Agent as a protection for our clients.

All policies are purchased from America's oldest and most financially sound life insurance carriers, issued by such household names as MetLife, John Hancock, Transamerica, and others—and every carrier is rated "A" or higher by A.M. Best rating company.

Every life expectancy (LE) Review is fully underwritten and issued by Midwest Medical Review, LLC. This affords you an external, totally objective basis on which to assess the LEs for all the insureds—utilizing reports that have been highly regarded among life insurance professionals for over 21 years.

### THE NATURE OF THIS ASSET CLASS

Re-sale policies work very simply. Your profit, or what we call the "base-line capital gain," is derived from "The Spread"—it is based upon the difference between the death benefit (DB) when the insured passes away and the total cost of the policy, premium payments, and various administrative fees. The stated 16.5% annually also is dependent upon the life expectancy (LE) of the insured. The longer the LE, the higher the total gain is derived from the "base-line capital gain" and vice versa.

### THE LEGAL FOUNDATION

The death benefit of a life insurance policy can be sold to other assignees like all other personal property. The U.S. Supreme Court ruling on this matter was made on December 4, 1911 and still remains the precedent today.

### WHY RETIREMENT VALUE, LLC?

One of many key features that distinguishes our program from all others is a vital protection of your funds. We escrow enough premiums to last 24 months LONGER THAN the life expectancy of the insured. This greatly reduces the possibility you will be asked to pay a pro-rata share of future premiums. Upon the death of the insured, all unearned premiums are repaid to you, pro-rata, and a pro-rata basis.



Your "base-line capital gain" is:  
A Simple 16.5% Annually

Review our Expected Outcomes:

**More protected out for 10 years**

"Face Amount" immediately available

Over \$41 Million

"Current Discount" immediately available:

10 Policies

### EXAMPLE:

- A simple 16.5% annually during a 70-month life expectancy (LE) would equate to a 56.25% "base-line capital gain" on your initial participation amount.
- A \$100,000 participation x .9625 = \$96,250 base-line capital gain at policy maturity or a total matured value of \$196,250.
- If an insured passes away prior to the end of the LE, the matured value will increase because all earned premiums are refunded to participants in a pro-rata basis in addition to the payment of base-line capital gains.
- If an insured lives longer than 24 months after the LE, the net matured value will decrease due to the need for participants to pay a pro-rata share of future premiums after LE + 24 months for each policy in-force.

## BUSINESS RECORDS AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared the herein named Affiant, who, being by me duly sworn, deposed as follows.

I.

My name is James L. Hess. I am the Affiant for this Business Records Affidavit, and I am of sound mind, capable of making this affidavit, and personally acquainted with the following stated facts:

II.

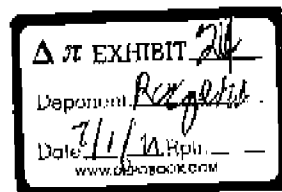
I am the Custodian of Records for HessMorganHouse, LLC, hereinafter referred to as the "Business."

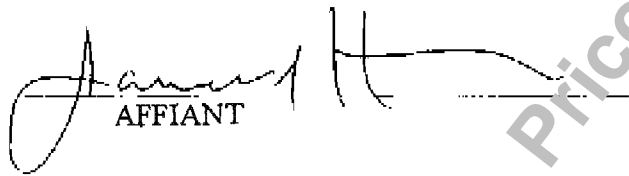
III.

Attached hereto are 55 pages of records that have been kept by the said Business in the regular course of business, and it was in the regular course of business for the said Business for an employee or representative of the said Business with personal knowledge of the act, event, or condition recorded to make memoranda and/or records, and/or to transmit information thereof to be included in said memoranda and/or records; and said memoranda and/or records were made at or near the time of the acts, events, or conditions recorded, or reasonably soon thereafter.

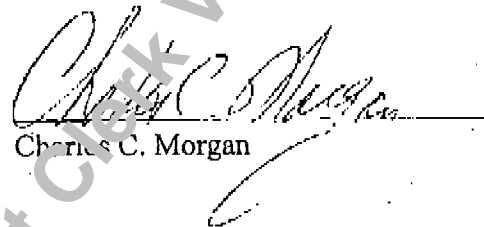
IV.

The records attached hereto are records of said business, are exact duplicates of the originals, and have not been modified, altered, or amended in any manner. It is the rule of said Business to not permit the originals to leave the Business.



  
AFFIANT

SWORN TO AND SUBSCRIBED before me, this 23rd day of April, 2014

  
Charles C. Morgan

ATTORNEY AT LAW in and for  
The State of New Jersey



WAIVER

The undersigned, the person designated to be summoned or his authorized agent, hereby acknowledges receipt of a true copy of this subpoena to Jim Hess, FSA, HessMorganHouse, LLC, P. O. Box 2172, Princeton, New Jersey 08543-2172, issued on April 16, 2010, and voluntarily accepts same and waives service thereof by a Sheriff, Constable or authorized representative of the Securities Commissioner of Texas.

West Windsor Township, Mercer County, New Jersey  
City, County, State

Dated this 23rd day of April, 2010.

Charles C. Morgan

Signature

RE: ALL BOOKS AND RECORDS RELATING TO: MIDWEST MEDICAL REVIEW, LLC, INCLUDING, BUT NOT LIMITED TO, ANY REPORTS INVOLVING AN ANALYSIS OF LIFE EXPECTANCY ESTIMATES, INTERNAL PROCESSES, AND DATA RETENTION

Midwest Medical Review, LLC  
Life Expectancy Audit and Analysis  
February 22, 2010

Confidential—Draft—For Discussion Purposes Only

TSSB 070060

## MMR Life Expectancy Audit and Analysis

As part of its ongoing effort to ensure the most accurate Life Expectancy Estimates possible, Midwest Medical Review, LLC (MMR) has retained HMH Consulting (HMH) to perform a detailed audit of MMR Life Expectancy Estimate processes and analysis of its results. HMH's audit has included a thorough review of data recordkeeping procedures, a detailed actuarial analysis of observed experience under MMR's cases compared to the MMR's historical Life Expectancy Estimates, and a quantification of the accuracy of MMR's Life Expectancy Estimates using various actuarial models and inputs. This report outlines the findings of our audit and provides the results of HMH's actual-to-expected life expectancy ratio analysis.

### Summary

Based on our analysis of the data and results, HMH has determined that MMR's actual-to-expected Life Expectancy Estimate ratio over calendar years 2004 through 2009 is 42%. In other words, the number of observed deaths among the 14,528 MMR Life Expectancy Estimates that have been included in our study have been 42% of the actuarial expectation, where the actuarial expectation has been determined on the assumption that the MMR Median Life Expectancy Estimates have been accurate (in particular, there have been 1,395 observed deaths vs. 3,319 actuarially expected deaths<sup>1</sup>).

Additional breakdown of the analysis of the actual-to-expected ratios of the MMR Life Expectancy Estimates, by underwriting year and life expectancy duration, is included in Appendix 1.

In the course of our audit we have uncovered a number of recordkeeping issues which are discussed in this report and detailed in Appendix 2. As a result of these recordkeeping issues, we have made various assumptions and adjustments to our calculations, including disregarding a number of case records. (All of our assumptions and data adjustments are identified and explained herein.) While we believe that the actual-to-expected ratios that HMH has calculated are as accurate as can be produced given the quality of the available data, it is likely that a different result would have been obtained if all records had been complete, accurate and usable.

### Median Life Expectancy

Median life expectancy is the time period by which 50% of a cohort of individuals, all with the same age, sex and medical characteristics, is expected to die.

<sup>1</sup> The number of "observed deaths" and "expected deaths" has been adjusted, as explained later in this report, to recognize items such as the time lag in identifying deaths and the effects of various recordkeeping issues.

For each of its life expectancy cases, MMR actuarially determines a predicted median life expectancy, on an individual basis, giving full consideration to the details of the medical record provided with that case. Based on information in the medical file, the expectation of survival is determined by modifying an underlying mortality table, with various adjustments made to the table based on MMR's evaluation of the subject's medical file. The modified mortality table then becomes the basis for the development of a "survivorship curve" which is a projection of the probability of continuing survivorship at each moment of time subsequent to the date of the date of the Life Expectancy Estimate determination; the point in time at which the survivorship curve has a value of 50% is then the subject's median life expectancy, and the period of time from the date of determination to median life expectancy (generally expressed in months) then becomes the Life Expectancy Estimate.

### **Actual-to-Expected Life Expectancy Ratios**

One very simplistic approach to viewing the accuracy of MMR's Life Expectancy Estimates is to examine only those cases where the subject individual's attained age is greater than the Median Life Expectancy Estimate.<sup>2</sup> The expectation is that at least 50% of these individuals would be deceased, with an increasingly greater percentage of the case subjects being expected to have died as the average age of the case subjects moves further and further past the median life expectancy date.

As of December 31, 2009, there were 2,602 Life Expectancy Estimate records aged beyond MMR's Median Life Expectancy Estimate.<sup>3</sup> Therefore, without even taking into account the extent to which these 2,602 cases are aged beyond predicted median life expectancy, we would expect to observe at least 1,301 deaths among these cases. However, only 554 deaths have been observed, implying a maximum actual-to-expected ratio of 42.5%.<sup>3</sup> (It should be noted that the ratio produced under this simplistic approach is not an "actual-to-expected" ratio.)

Compared to the simplistic approach of looking only at those cases that have aged beyond median life expectancy, an actuarially determined actual-to-expected life expectancy ratio provides a more precise measure of the historical accuracy of a block of Life Expectancy Estimates.

At any given time, for any given group of Life Expectancy Estimate cases, the actuarially determined actual-to-expected ratio is equal to the actual number of deaths that have occurred among those cases to date, divided by the number of deaths that would be expected to have occurred among those cases assuming that the Life Expectancy Estimates were accurate (and assuming that survivorship patterns of the group of case subjects exactly followed the pattern

<sup>2</sup> For individuals who are deceased as of the date of our study, "attained age" is the age that would have been attained as of that date if the individual was still living.

<sup>3</sup> The statistics for the life expectancy ratio for the records that have aged beyond their median life expectancy has not been adjusted to recognize items such as the time lag in identifying deaths and the effects of various recordkeeping issues. If such adjustments were to be made, the ratio would be approximately 55%.

predicted by the projected survivorship curves). The closer the ratio is to 1.0, the greater the evidence that the Life Expectancy Estimates were accurate.

We have computed actual-to-expected life expectancy ratios in the aggregate for all of MMR's cases with usable records, covering the period from the beginning of 2004 through the end of 2009.<sup>4</sup> In addition to the aggregate actual-to-expected ratios, we have subdivided the cases in order to determine actual-to-expected life expectancy ratios for (1) all cases cumulatively as of the end of each calendar year 2004 through 2009, (2) all cases completed within each calendar year 2004 through 2009, and (3) all cases within median life expectancy bands of 24 to 36 months width.<sup>5</sup> The results of our actual-to-expected life expectancy ratio analysis are detailed in the Appendix 1.

It should be noted that HMH's actual-to-expected life expectancy ratio analysis of MMR's cases has been hampered because the actuarial distribution of deaths forecast by MMR for the majority of estimates is not available as part of MMR's electronically filed case records. Therefore, we do not have access to the adjusted survivorship curves that formed the basis for MMR's Median Life Expectancy Estimate and which are a fundamental component of the actual-to-expected ratios. Nonetheless HMH has been able to make a number of assumptions and approximations (described herein) that we believe provide the basis for a reasonably reliable and accurate development of actual-to-expected analysis.

#### **Calculation Methodology and Adjustments**

For purposes of the HMH actual-to-expected analysis of the MMR cases, MMR provided their records for the period January, 2004 through November 11, 2009. These records included, for each case subject: name, Social Security number, sex, birth date, age at date of life expectancy determination, MMR's Median Life Expectancy Estimate (in months), case completion date and, if applicable, case cancellation date.

HMH went through a process of detailed data reconciliation and data "cleaning" to remove any records which HMH could identify as having clearly invalid data. Records removed included incomplete records, canceled records, and records with identifiably faulty Social Security numbers. There were 1,194 records that were found to be incomplete, and 436 records were determined to have faulty Social Security numbers. All of these records were eliminated from the HMH actual-to-expected analysis. In some cases, HMH determined that more than one record existed for the same life; based on HMH's conversations with MMR it is HMH's understanding that each Life Expectancy Estimate was determined on an independent basis, and HMH therefore concluded that no adjustment need be made for these cases.

<sup>4</sup> Year 2009 includes cases only through November 11, 2009.

<sup>5</sup> For example, Life Expectancy Estimates of 0 to 24 months formed the first band, Life Expectancy Estimates of 25 to 48 months formed the next band, etc.

As noted, the projected survivorship curve (representing probabilities of survivorship for each point in time after the case completion date) was not available for all Life Expectancy Estimate cases. It is MMR's current practice to provide, for each of its cases, the survivorship curve developed by modifying the 2008 Select and Ultimate, Smoker/Non-Smoker Valuation Basic Table; for cases where no survivorship curve was available HMH fit a curve based on the 2008 Select and Ultimate Smoker Unknown Valuation Basic Table<sup>6</sup> such that the median life expectancy implied by the curve matched MMR's Median Life Expectancy Estimate.

Once the data was cleaned to the extent possible, HMH ran a "Social Security sweep" to determine any deaths that have occurred among individuals included in the database. The sweep uses the Social Security numbers recorded on the subject case records to identify deceased individuals and compares them to Social Security numbers of individuals whose deaths have been reported to the Social Security Administration and various other government agencies (the government database of deaths includes virtually every American adult death).

It is important to note that there is a time lag in reporting deaths to the various government agencies, and this time lag can vary depending upon circumstances. Therefore, for purposes of calculating actual-to-expected life expectancy ratios, we have made an assumption regarding the lag in order to account for deaths that have occurred but have not yet been reported. To adjust for the reporting lag, the number of observed deaths in each of calendar years 2004 through 2007 was increased by 5% and the number of deaths in calendar years 2008 and 2009 was increased by 7.5% and 15% respectively. This adjustment is somewhat arbitrary, but based on our experience running Social Security sweeps covering many thousands of lives over a period of many years, we believe that the magnitude of the adjustment is appropriate.

Finally, the Social Security sweep identified a number of deaths of individuals with Social Security numbers recorded in MMR's database but where the name or other fundamental identifying information did not match the MMR record. In fact, we have determined that approximately 22.3% of the Social Security numbers that were identified as belonging to deceased individuals did not match the MMR records. To correct for error introduced by the presence of incorrect Social Security numbers in the MMR records, we have assumed that 22.3% of the surviving cases had invalid Social Security numbers, so the number of expected deaths for the surviving cases was reduced by 22.3%.

### **Statistical Significance and Credibility**

In analyzing the actual-to-expected life expectancy ratios, it is important to determine whether differences from expected results are statistically significant and whether there is sufficient data

---

<sup>6</sup> Smoker status was not available for the cases for which HMH needed to develop survivorship curves. The 2008 Select and Ultimate Smoker Unknown Valuation Basic Table is based on the assumption that 85% of the population are nonsmokers.

to ensure that the ratios are statistically credible. Small sample size (number of cases), a small number of expected deaths, or a small number of actual deaths can contribute to less credible results by increasing relative statistical variability and thereby decreasing the reliability of the results.

One measure of statistical significance is standard deviation. Standard deviation is useful in determining the likelihood that results differing from expected are due to mere statistical variability as opposed to being the result of errors in the development of the Life Expectancy Estimates. The Central Limit Theorem states that about 95% of all observed values should fall within two standard deviations of the expected result and almost 100% of the observed values should fall within 3 standard deviations of the expected result.

The magnitude of standard deviation in relation to the expected value is an indication of the extent to which variability in the actual results might be explainable as being the result of normal statistical variability. For example, for an analysis of actual to expected deaths where the actuarially expected number of deaths is 100, a standard deviation of 5 would signify that, if the only factor causing deviation from expected results is statistical variation, there is 95% probability that the number of actual deaths would be between 90 and 110. If the standard deviation was 15, however, the 95 % probability range of statistical variation in the number of actual deaths becomes 70 to 130, obviously a much wider range of possible outcomes.

A large standard deviation relative to expected value results in a wide range of statistically plausible outcomes. That wide range of statistically plausible outcomes can easily hide differences that are not merely the result of statistical variation but rather have been introduced as the result of process inaccuracies or inadequacies (for example, errors introduced because of bad data or inappropriate assumptions). Furthermore, small sample size (number of cases), a small number of expected deaths, or a small number of actual deaths can contribute to less credible results by increasing relative statistical variability and thereby decreasing the reliability of the results.

Calculated actual-to-expected life expectancy ratios should not be considered to be "credible" unless the ratio has been based upon observation of a large enough group of cases over a long enough period of time that the number of expected deaths is reasonably large, and the standard deviation of expected deaths is reasonably small. Hence, as MMR's aggregate data is broken down and analyzed by LE bands and underwriting year, the credibility of the data can be compromised because the number of cases analyzed is reduced.

While there is not necessarily an objective approach to determining whether a particular actual-to-expected life expectancy ratio has been based on a quantity of data sufficient to lend "credibility," it is HMM's opinion that any cohorts with less than 50 expected deaths do not have sufficient data to produce a credible actual-to-expected ratio.

## Conclusion

Based on MMR's Life Expectancy Estimates, the expected number of deaths as of December 31, 2009 for the total block of business is 3,319 and the standard deviation is 49. Using fundamental statistical analysis techniques, HHM has determined that, if MMR's Life Expectancy Estimates have been correct, there is a 95% probability (with reasonable credibility) that the actual number of observed deaths would have been between 3,221 and 3,416, and the actual-to-expected ratio would have been between 97% and 103%. In fact, the actual number of deaths was 1,395 (more than 39 standard deviations less than the expected value) and the actual-to-expected ratio is 42%.

On the surface, there seems to be clear evidence that MMR's Life Expectancy Estimates have not been accurate and that there is strong tendency for MMR's Median Life Expectancy Estimates to be too short. However, given the large number of data issues<sup>7</sup> uncovered in the course of the HHM audit and analysis, we believe that the results of our statistical analysis cannot be considered to be fully reliable.

In order to have the basis for both a meaningful calculation of actual-to-expected ratios and a thorough actuarial analysis of MMR's process and results, there needs to be developed a clean, usable database. On a going forward basis, this should involve (1) taking whatever steps might be possible to assure that data provided to MMR is accurate, (2) instituting checks to ensure error-free input of data by MMR, and (3) maintaining all pertinent information with respect to each Life Expectancy Estimate case in an accessible database. With respect to existing records, it may be worthwhile for MMR to go through a process of checking all data for accuracy and correcting all identified inaccuracies, although to the extent inaccuracies in existing data are due to poor quality data being submitted to MMR, it may be difficult or even impossible to "clean" existing data records.

James L. Hess<sup>8</sup>

Principal and Consulting Actuary

Aimee L. Viola<sup>9</sup>

Principal and Consulting Actuary

<sup>7</sup> In addition to the observations included in the body of this report, see Appendix 2 for a detailed discussion of data issues.

<sup>8</sup> I, James Hess, am Principal and Consulting Actuary of HHM Consulting. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

<sup>9</sup> I, Aimee Viola, am Principal and Consulting Actuary of HHM Consulting. I am a fellow of the Conference of Consulting Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.



## Appendix 1—Actual-to-Expected Life Expectancy Ratio

| Actual-to-Expected Ratio as of the Year Ending (Raw Data): |       |       |       |        |        |                    |
|--|-------|-------|-------|--------|--------|--------------------|
|  | 2004  | 2005  | 2006  | 2007   | 2008   | 2009 <sup>10</sup> |
| Count  | 1,951 | 4,103 | 7,942 | 11,583 | 13,688 | 14,528             |
| Expected Deaths  | 67    | 323   | 830   | 1,658  | 2,768  | 4,091              |
| Actual Deaths  | 20    | 87    | 244   | 502    | 894    | 1,282              |
| Actual-to-Expected Ratio                                   | 30%   | 27%   | 29%   | 30%    | 32%    | 31%                |

| Adjusted Actual-to-Expected Ratio as of the Year Ending: |          |            |            |                |                |                |
|--|----------|------------|------------|----------------|----------------|----------------|
|  | 2004     | 2005       | 2006       | 2007           | 2008           | 2009           |
| Count  | 1,520    | 3,207      | 6,225      | 9,112          | 10,835         | 11,574         |
| Adjusted Expected Deaths                                 | 56       | 267        | 684        | 1,259          | 2,256          | 3,319          |
| Adjusted Actual Deaths                                   | 21       | 91         | 256        | 527            | 949            | 1,395          |
| Actual-to-Expected Ratio                                 | 38%      | 34%        | 37%        | 39%            | 42%            | 42%            |
| Standard Deviation of Expected Deaths                    | 7        | 16         | 25         | 34             | 42             | 49             |
| 95% Probability Range of Expected Deaths                 | 41 to 70 | 236 to 298 | 635 to 734 | 1,291 to 1,427 | 2,171 to 2,341 | 3,221 to 3,416 |

<sup>10</sup> Includes cases completed by November 11, 2009

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

STATE OF TEXAS,

Plaintiff,

v.

RETIREMENT VALUE, LLC,  
RICHARD H. "DICK" GRAY, HILL  
COUNTRY FUNDING, LLC, a  
Texas Limited Liability Company,  
HILL COUNTRY FUNDING, a Nevada  
Limited Liability Company, and  
WENDY ROGERS,

Defendants,

AND

KIESLING, PORTER, KIESLING, &  
FREE, P.C.,

Relief Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>th</sup> JUDICIAL DISTRICT

**NOTICE OF FILING OF RECEIVER'S INITIAL REPORT**

Eduardo S. Espinosa, court-appointed temporary receiver for Retirement Value, LLC, hereby provides notice that he is filing the attached Initial Report of Eduardo S. Espinosa, temporary receiver for Retirement Value, LLC and Appendix of Exhibits in Support of the Initial Report.

The Initial Report provides an overview of the operation of the receivership since the Receiver was appointed on May 5, 2010. In the Initial Report, the Receiver discusses his investigation to date, the preliminary results of that investigation, the financial condition of Retirement Value and the status of the portfolio of insurance policies acquired with investor funds.

PLAINTIFF'S  
EXHIBIT

12

The Initial Report and Appendix of Exhibits have been served on all parties to this case and posted to the Receiver's website ([www.rvllreceivership.com](http://www.rvllreceivership.com)). In an effort to save costs, the Receiver will not mail a copy of the Interim Report and exhibits to the more than 900 known investors. Instead, the Receiver will notify the investors that the Interim Report has been filed and ask that they investors download a copy from the website. The Receiver will mail a copy of the Interim Report and Appendix of Exhibits upon request to investors who are unable to access it on the website.

Respectfully submitted,



Michael L. Napoli  
State Bar No. 14803400  
K&L Gates LLP  
1717 Main Street, Suite 2800  
Dallas, Texas 75201  
214.939.5500  
214.939.5849 (telecopy)  
[michael.Napoli@klgates.com](mailto:michael.Napoli@klgates.com)

ATTORNEYS FOR THE COURT-APPOINTED  
RECEIVER OF RETIREMENT VALUE, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above pleading has been served on the following, via certified mail, return receipt requested on this the 28<sup>th</sup> day of July 2010:

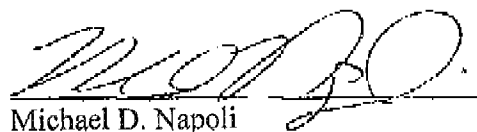
Kara Kennedy  
Jennifer Jackson  
Financial Litigation Division  
300 W. 15<sup>th</sup> Street, Sixth Floor  
PO Box 12548  
Austin, TX 78711-2548

Jay Thompson  
Kevin F. Lee  
Thompson, Coe, Cousins, & Jones, L.L.P.  
701 Brazos, Suite 1500  
Austin, Texas 78701

Spencer C. Barasch  
Matthew G. Nielsen  
Ted Gilman  
Andrews Kurth, LLP  
1717 Main Street, Suite 3700  
Dallas, TX 75201

John K. Schwartz  
James E. Davis  
Jon L. Gillum  
Locke Lord Bissell & Liddell, LLP  
100 Congress Ave., Suite 300  
Austin, Texas 78701

Barry Bishop  
Clark, Thomas & Winters, P.C.  
P. O. Box 1148  
Austin, Texas 78767

  
Michael D. Napoli

**INITIAL REPORT**

**OF**

**EDUARDO S. ESPINOSA,  
TEMPORARY RECEIVER**

**FOR**

**RETIREMENT VALUE, LLC  
A TEXAS LIMITED LIABILITY COMPANY**

**As of  
July 28, 2010**

**Issued in connection with  
that certain matter pending before the  
126<sup>th</sup> District Court of Travis County, Texas,  
Cause Number D-1-GV-10-000454**

|      |  |    |
|------|--|----|
| I.   | Background and Status of the State's Suit.....   | 1  |
| II.  | The Appointment of the Receiver.....   | 2  |
| III. | The Receiver's Investigation .....   | 3  |
| A.   | Nature of the Investment.....  | 4  |
| B.   | Use of Investor Funds by Retirement Value.....   | 5  |
| C.   | Fraud in the Sale of Investments.....  | 7  |
| 1.   | The Investors Are Not Irrevocable Co-Beneficiaries .....   | 8  |
| 2.   | Investor Funds Were Not Held in Escrow .....   | 8  |
| 3.   | Retirement Value Overstated the Likely Return from the Investments<br>and Understated the Likely Risks ..... | 11 |
| 4.   | Retirement Value failed to disclose the risk of regulatory action.....                                       | 19 |
| 5.   | Other Issues.....  | 19 |
| IV.  | Actions to Preserve and Protect the Estate .....   | 20 |
| A.   | Cash and cash equivalents .....  | 21 |
| B.   | Policies.....  | 22 |
| C.   | Professional Advisors .....  | 23 |
| 1.   | Asset Servicing Group. ....  | 23 |
| 2.   | Lewis & Ellis. ....  | 24 |
| 3.   | EXD LLP.....   | 25 |
| D.   | Issues Confronting the Portfolio's Administration.....   | 25 |
| 1.   | Portfolio Value.....   | 25 |
| 2.   | Insufficient Premium Reserves. ....  | 26 |
| 3.   | The portfolio structure .....  | 27 |
| V.   | Conclusions.....   | 28 |

**INITIAL REPORT OF EDUARDO S. ESPINOSA,  
TEMPORARY RECEIVER FOR RETIREMENT VALUE, LLC**

On May 5, 2010, the 126<sup>th</sup> Judicial District Court of Travis County, Texas (the "Court") appointed Eduardo S. Espinosa as the temporary receiver for Retirement Value, LLC, a Texas limited liability company. Since then, my team and I have been engaged in: (a) gathering and preserving Retirement Value's assets; (b) investigating claims against Retirement Value by investors and others; and (c) investigating Retirement Value's potential claims against its principals and other participants in its Re-Sale Life Insurance Policy Program. We have also spoken or corresponded with many of the investors. However, because there are more than 900 investors, it is not possible for us to communicate with each investor, individually. This report updates the investors, the Court and the public as to the status of the Receivership.

**I. Background and Status of the State's Suit**

On May 5, 2010, the State of Texas filed suit against Retirement Value, Gray and Collins alleging that they were selling unregistered securities, engaging in securities fraud and violating the Texas Deceptive Trade Practices Act. Among other things, the State sought the appointment of a receiver for Retirement Value, the issuance of temporary and permanent injunctions against the defendants and restitution for the losses suffered by investors. The State subsequently amended its suit to include Wendy Rogers as a defendant, and to seek a receivership over Hill Country Funding, LLC, a Texas limited liability company ("HCF-TX"), and Hill Country Funding, LLC, a Nevada limited liability company ("HCF-NV"), each a Retirement Value affiliate.

On May 28, 2010, the Court entered, by agreement of the parties, a temporary injunction against Gray and Retirement Value and continued the Receiver's appointment. The temporary

injunction and the receivership will remain in place until the end of the trial of this matter, which is currently scheduled for February 28, 2011.

Bruce Collins has agreed to the entry of a permanent injunction which the Court entered on June 17, 2010. He has also entered into a settlement with the Receiver under which Collins transferred approximately \$319,000 in cash and other assets to the Receiver. On June 17, 2010, the Court approved the settlement between Collins and the Receiver.

## **II. The Appointment of the Receiver**

Whenever there are allegations of fraud in an investment context, particularly if there are assets remaining in the estate, the State will usually seek the appointment of a receiver to preserve the assets and protect them from being dissipated by the individuals accused of fraud. The Receiver's duties include: (a) collecting and preserving the receivership assets; (b) notifying the investor-victims of these proceedings; (c) attempting to effect fair restitution to the investor-victims based on a plan to be approved by the court; and (d) assisting the State in its investigation of the Defendants and those who dealt with them.

The Receiver has retained the law firm of K&L Gates, LLP to represent him in connection with this case, to assist him in the performance of his duties and to prosecute or defend litigation on behalf of Retirement Value. The Receiver is a partner in K&L Gates. He has also retained the following professionals:

- ERD, LLC to act as the Receiver's accountants and to prepare the Receivership's books and records;
- Asset Servicing Group to act as a portfolio manager for Retirement Value's policies and to advise the Receiver on how to maximize the policies' value; and
- Lewis & Ellis to provide actuarial consulting as to the portfolio's value and the funds necessary to keep the policies in force.



The fees of the Receiver, K&L Gates and the other professionals employed by the Receiver are subject to the approval of the Court.

### **III. The Receiver's Investigation**

Once appointed, the Receiver instituted an investigation into the business and assets of Retirement Value and its affiliates. The investigation is intended to: (1) determine Retirement Value's current status and to assess the investors' claims against it, (2) identify, gather and protect any assets belonging to Retirement Value; and (3) to uncover and prosecute viable claims against members, officers, licensees and others who have done business with Retirement Value.

The investigation, although well under way, is not complete. To date, we have interviewed most of Retirement Value's employees, including Dick Gray, Wendy Rogers and Bruce Collins as well as key employees of Kiesling Porter. We have also spoken with many investors and licensees to gain their perspectives on the investment offered by Retirement Value. In addition, we have spoken with representatives of each bank known to have done business with Retirement Value as well as representatives of the insurance companies which have issued policies owned by Retirement Value. We have also spoken with Ron James of James Settlement Services, which sold the policies to Retirement Value.

We have searched Retirement Value's offices for the purpose of gathering and examining records relating to the operations of Retirement Value. We have also obtained and reviewed the accounting records maintained by Retirement Value and Kiesling Porter as well as banking and other financial records. In addition, we have gathered some 236 gigabytes of data (if printed, that would be roughly about 14 million pages of information) from Retirement Value's computers. In addition, we have obtained access to substantial additional Retirement Value data stored by various vendors. With the assistance of the Texas Department of Insurance, we have

also gathered additional documents and records from the insurance companies. We have also reviewed recordings of Retirement Value's monthly sales meetings and calls with licensees.

As a result of the investigation, we have been able to reach certain preliminary conclusions as to the business conduct of Retirement Value.

**A. Nature of the Investment**

From April 2009 through March 29, 2010, Retirement Value raised approximately \$77 million from more than 900 investors through the sale of investments in its Re-Sale Life Insurance Policy Program.

Each of the investments was structured as a loan to Retirement Value, whereby the investors provided Retirement Value with funds 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 life insurance policies purportedly owned by Retirement Value. In all instances, Retirement Value agreed to pay a return of 16.5% simple interest 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 date on which the insured under the policy died set the date that the investment matured and when 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 investor, except that investors were entitled to a return of unused premiums, if any. Each investor was allowed to select a life insurance policy or policies to which to tie his or her investment from a rotating portfolio of ten policies maintained by Retirement Value. Investor Agreement – Qualified (Exh. A-1); Investor Agreement – Non-Qualified (Exh. A-2).<sup>1</sup>

---

<sup>1</sup> The exhibits to this report are contained in the Appendix to the Initial Report.

## **B. Use of Investor Funds by Retirement Value**

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. The amount of the premium reserve for a given policy was calculated by Retirement Value based on: (i) the life expectancy of the insured, as calculated by Midwest Medical, plus 24 months; and (ii) a schedule of estimated premiums provided by the seller of the policies, James Settlement Services, LLC.<sup>2</sup> Retirement Value paid Kiesling Porter a fee equal to 1% of the face value of each policy and the licensees a commission of no less than 16% of the money invested. Any money not allocated towards purchasing the policies, establishing premium reserves or paying administrative costs was immediately released by Kiesling Porter to Retirement Value.

All money paid by investors was received by and held in accounts administered by Kiesling Porter. On any given investment, after funds cleared and the 10-day free look period expired,<sup>3</sup> Retirement Value would instruct Kiesling Porter as to the distribution of the funds. Based on instructions received from Retirement Value, Kiesling distributed money to the licensees involved in the particular investment, to Retirement Value's operating account and to itself as payment for its fee. The remaining funds were placed in sub-accounts dedicated to the particular policies in which the investor invested.

As of May 5, 2010 – the date that the TRO was entered, Retirement Value had distributed the following amounts:

---

<sup>2</sup> This schedule was an estimate. It did not reflect the premiums actually due on the policies or ultimately paid by Retirement Value.

<sup>3</sup> The 10 day free look commenced running upon Kiesling Porter's receipt of executed documents or funds from the investor, whichever came first. Accordingly, the 10 day free look period often ran contemporaneously with the funds clearing process.

| <u>Recipient</u>  | <u>Amount</u>   |
|---|-----------------|
| James Settlement Services, LLC<br>(via Pacific Northwest Title) | \$27,939,063.00 |
| Retirement Value, LLC Operating                                 | \$10,251,508.49 |
| Kiesling, Porter, Kiesling & Free PC                            | \$1,275,666.48  |
| Licensees   | \$12,796,389.76 |

KPKF Accounting Record Excerpts – Vendor Distributions (Exh. B). Retirement Value used the remaining funds to pay premiums and to fund the premium reserve accounts. There are approximately \$23 million remaining in the various reserve accounts.

The Defendants or members of their immediate families received the following amounts from Retirement Value prior to the issuance of the TRO:

| <u>Dick and Catherine Gray</u> |                    | <u>Wendy Rogers</u>             |                  |
|--------------------------------|--------------------|---------------------------------|------------------|
| Dividends (10/6/09 to 3/5/10)  | \$2,139,000        | Dividends (10/6/09 to 3/5/10)   | \$688,000        |
| 2010 Tax Prepayment            | 599,200            | 2010 Tax Prepayment             | 149,800          |
| Dick Gray salary (2009-10)     | 210,574            | Wendy Rogers salary (2009-10)   | 133,693          |
| C Gray (2009-10)               | 45,833             | Wendy Rogers, Licensee          | 12,300           |
| Dick Gray, Licensee            | 13,400             |                                 |                  |
| <b>Total</b>                   | <b>\$3,000,007</b> | <b>Total</b>                    | <b>\$983,793</b> |
| <u>Bruce Collins</u>           |                    | <u>David and Elizabeth Gray</u> |                  |
| Honorarium as COO              | \$75,000           | Buyout Agreement (2010)         | \$231,155        |
| B Collins, Licensee            | 43,390             | Dividends (2009)                | 579,307          |
| Collins Marketing, Licensee    | 469,799            |                                 |                  |
| <b>Total</b>                   | <b>\$588,189</b>   | <b>Total</b>                    | <b>\$810,462</b> |

RV & KPKF Accounting Record Excerpts – Insiders (Exh.C).

Retirement Value also diverted 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

<sup>1</sup> David Gray is the brother of Dick Gray and a former member (owner) of Retirement Value. Elizabeth Gray is David Gray's wife.

them. The net result of these transactions was the transfer of \$1,150,000 from Retirement Value to HCF-TX. RV Accounting Record Excerpts – RV to HCF (Exh. D). Dick Gray explained these transfers as money that he intended to use to reimburse previous investors whom he had convinced to invest in a Ponzi scheme operated by Secure Investment Services, Inc.

On March 30, 2010 – the day that the Texas State Securities Board served its emergency cease and desist order on Retirement Value, Dick Gray obtained a cashier's check drawn on the HCF-TX account at First Commercial Bank in the amount of \$1,071,000<sup>5</sup> and withdrew all of the funds remaining in Retirement Value's bank account (\$342,000). He deposited these funds into an account at JP Morgan Chase in the name of Special Acquisitions, Inc., a Texas corporation ("Special Acquisitions"). *Id.* Special Acquisitions was formed on March 30, 2010 by Carie Morales, a part-time employee of Retirement Value and a long-time friend of Wendy Rogers. According to state records and the statements of Ms. Morales and Ms. Rogers, Carie Morales was Special Acquisitions' sole owner, officer and director. Special Acquisitions Formation Records (Exh. E). The signatories on the Special Acquisitions account at JP Morgan Chase were Ms. Rogers and 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. The Receiver discovered this account during the search of Retirement Value's offices on May 5 and immediately took steps to seize these funds

#### **C. Fraud in the Sale of Investments**

The investigation to date has uncovered substantial evidence of fraud in the sale of investments by Retirement Value and its licensees in the Re-Sale Life Insurance Policy Program.

---

<sup>5</sup> This money is directly traceable to the \$1,150,000 transferred from Retirement Value.

This fraud covers most aspects of the program from the structure of the investment, the protections offered to the investors to the potential return and risks of the investment. Material misstatements and omissions were made to the investors regarding the Re-Sale Life Insurance Policy Program, denying them the opportunity to make an informed investment decision. Quite simply, the investors have not received the investment that they were promised.

1. The Investors Are Not Irrevocable Co-Beneficiaries

The investors were promised that they would be “irrevocable co-beneficiaries” in the policies associated with their investments. RV Marketing Materials (Exh. F) at F-1, p.3, F-2, p.3, F-5, p.4, F-6, p.7. 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 have no contractual interest in or lien on the proceeds of the policies. And, Retirement Value had no contractual obligation to maintain the policies, particularly beyond the calculated life expectancy plus 24 months.

2. Investor Funds Were Not Held in Escrow

The “escrow accounts” into which the investor’s money was deposited were not true escrows. Retirement Value and its licensees<sup>6</sup> represented that all investor funds would be deposited in “escrow accounts” 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. *Id.* at F-1, p.2, 5, F-2, p.2, 5. In addition, Retirement Value represented that funds would be placed in sub-accounts tied to each policy owned by Retirement Value. Retirement Value described Kiesling Porter’s role as “your Third Party Fiduciary,” which would assure the

---

<sup>6</sup> According to Dick Gray and corroborated by records reviewed in the investigation, Retirement Value approved the promotional materials used by the licensees and created some materials for use by the licensees.

safe-keeping of investor money. *Id.* at F-6, p.8. Retirement Value made numerous comments about the role of Kiesling Porter as the “protector” of the investor’s funds. *Id.* at F-1, p.5, F-2, p.5. For example, at the July 2009 licensee meeting, Dick Gray described Kiesling Porter’s role as “representing the money and protecting the money and protecting you from us in a sense.” July 2009 Meeting, Disk 2; Transcript (Exh. G) at 2. Although Brent Free of Kiesling Porter was present, he did not contradict this statement. Later at the July 2009 meeting, Free described Kiesling Porter’s role, “Our job is to safe guard the money and as the anti drug campaign used to say ‘just say no.’ ... Our job as escrow agents is...as I said is to make sure the money is safe” *Id.* at 9.<sup>7</sup>

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.

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. Master Escrow Agreement (Exh. H) at ¶ 23. Further, Kiesling Porter agreed to “disburse funds as directed by Retirement [Value]” and that its liability was limited to transferring funds into sub-

<sup>7</sup> At this point, Free also vouched for Gray, Retirement Value and the Program. *See* July 2009 Meeting, Disk 2 (Transcript at 8)(“[W]hen we talked with Dick about this about a year ago he explained what it was and we did as much research as we could and we felt very comfortable with him in the whole process.”).

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 written instruction from Retirement [Value].” Master Escrow Agreement at ¶¶ 6, 8. In other words, Kiesling Porter acted only as the agent of Retirement Value. And, far from acting as the investors’ “Third Party Fiduciary,” 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).

Second, Retirement Value (with the acquiescence of Kiesling Porter) repeatedly commingled the funds held in the sub-accounts. Retirement Value routinely directed Kiesling Porter to take funds out of a sub-account dedicated to one policy to pay the purchase price owed to James Settlement Services on a second policy. As an example on March 25, 2010, Retirement Value directed Kiesling Porter to pay \$552,384 towards the purchase of policy AVL180-030510-MR<sup>8</sup> but to take the funds from the sub-accounts for the following policies:

| <u>From the account for policy</u> | <u>Amount</u>    |
|------------------------------------|------------------|
| 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                   | <u>\$123,659</u> |
| <b>Total</b>                       | <b>\$552,384</b> |

<sup>8</sup> To preserve the insureds’ privacy, we are using the policy codes used by Retirement Value to sell the investments.



Only \$136,045 of the payment for the AVL180-030510-MR policy came from the correct sub-account. The remaining \$416,339 came from accounts that were to be set aside solely to pay expenses related to other policies. Kiesling Porter followed these instructions, without comment. Copies of Retirement Value's instructions to Kiesling Porter and Kiesling Porter's transmittal to Pacific Northwest, redacted to protect the underlying insured privacy, are attached hereto as Exhibits I-1 and I-2, respectively. Retirement Value directed Kiesling Porter to commingle funds in this manner on at least 50 separate occasions from November 2009 through March 2010.

As a result of the frequent use of funds dedicated to one policy to pay expenses related to a second policy, Kiesling Porter was required to "re-balance" the sub-accounts from time to time. KPKF Accounting Record Excerpts – Rebalancing (Exh. J). As of the date of the TRO, some sub-accounts were over funded in relation to what is expected to be in those accounts while many others are under funded by that measure.<sup>9</sup> Premium Reserve Calculation (Exh. K).

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

3. Retirement Value Overstated the Likely Return from the Investments and Understated the Likely Risks

When selling the investment, Retirement Value provided the investors with charts showing the return on an investment in a given policy over time. As an example, the "Client Participation Example and Base Line Targeted Income During Ten Years" Chart for policy PL140-111109-DM, is attached hereto as Exhibit L-1. The chart represented that the policy had

---

<sup>9</sup> This is an entirely separate issue from the under funding of all accounts due to the miscalculation of life expectancies by Midwest Medical and the underestimation of premiums due on the policies when setting the original reserve amounts.

a face value of \$10,000,000 with an annual premium of \$399,702 and that the insured's life expectancy was 38 months. An investment of \$10,000 would have a base line return of \$15,225. Assuming that the insured died at month 38,<sup>10</sup> the investment would return \$16,442 representing the base line return of \$15,225 plus unused premiums of \$1,217 for an annualized return of 18.41%. If the insured survived to LE+24 or 62 months, the investment would return \$15,225 for an annualized return of 9.50%.

The chart also reflects Retirement Value's predictions for the investment's performance beyond LE +24. In making this prediction, Retirement Value assumed that the investors would respond to premium calls in accordance with their agreements. In the chart, Retirement Value represented that each investor would be required to pay an annual premium of \$608.55 per \$10,000 invested in the policy.

In connection with the use of these charts, Retirement Value made a number of misrepresentations. First, Retirement Value misrepresented the likelihood that an insured would survive beyond LE+24. Second, it misrepresented the premium cost that each investor would be expected to incur if the insured survived beyond Third, Retirement Value misrepresented the risk to the investor if the insured survived beyond LE+24.

#### *Life Expectancy Calculations*

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 Re-Sale Life Insurance Program. If the insured lives 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.

---

<sup>10</sup> Retirement Value's projections assume that the investment in a given policy would be made on the date of the life expectancy certificate provided by Midwest Medical.

Retirement Value significantly misrepresented the insureds' likelihood of outliving their calculated life expectancy. In its written materials, Retirement Value represented that "90% of policies mature at or before projected LE" and that "95% of policies mature at or before LE plus 12 months." Marketing Materials (Exh. F) at F-1, pp. 8,10. In other materials, Retirement Value represented that Midwest Medical was "accurate 95% of the time to LE" and had "98.5% accuracy within 12 months after expected LE." *Id.* at F-6, p.11. In conversations with the undercover investigator for the State Securities Board, Dick Gray represented that 95% of the insureds would die within 24 months of the life expectancy calculated by Retirement Value. Transcript of "Cody Walker" Call (Exh. M) at 6. All in all, Retirement Value 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.

Retirement Value's representations as to this risk are wholly false. The life expectancy calculation used by Retirement Value and presented to the investors was Midwest Medical's calculation of the insured's median life expectancy. It 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.

Retirement Value did not disclose, and in fact hid, its use of a median life expectancy from the investors. As a general matter, Retirement Value did not provide investors with copies of the life expectancy certificates when the investors made their investment decisions. Instead, it simply stated a life expectancy without disclosing that it was a median or explaining what that meant. After the investor's 10-day free look period expired, Retirement Value purported to

provide the life expectancy certificates for the policies in which an investor invested. However, in many cases, Retirement Value provided only the first two pages of the three-page life expectancy certificate provided by Midwest Medical.<sup>11</sup> The first two pages contain a narrative of the insured's health and a statement of the life expectancy. On the third page (the page often hidden by Retirement Value), Midwest Medical provided its statistical analysis. This analysis discloses that the life expectancy shown on the first two pages was a median. It also discloses a life expectancy at an 85% confidence level (i.e., the point at which 85% of the people like the insured are expected to have died). On average Midwest Medical's 85% life expectancy was just over LE+30. In other words, Retirement Value's assertion that there was a 95%-98.5% probability that the insured would pass away within LE+24 is contradicted by the Midwest Medical life expectancy certificates in its possession, which estimate the probability of death prior to LE+30 at less than 85%.

Even if RV had not misrepresented them, Midwest Medical's life expectancy calculations are unreliable. Midwest Medical has a very poor reputation and a history of regulatory problems. Its owner, George Hindness, is a convicted felon. He and Midwest Medical's predecessor, AmScot Medical, were accused of falsifying life expectancy calculations as part of fraudulent schemes to sell life insurance policies to investors. Retirement Value was aware of these issues with Midwest Medical and failed to disclose them to investors. Moreover, Retirement Value knew that Midwest Medical's life expectancy calculations were shorter than those provided by more reputable companies. When Dick Gray and Jeremy Gray were interviewed, they told the Receiver those life expectancy calculations provided by better known

---

<sup>11</sup> The Life Expectancy Certificate for policy AGL73L-031909-WK (Exh. N) is attached as an example.

life expectancy providers (such as AVS and Fasano) were at least 180% longer than those provided by Midwest Medical.

In the course of its investigation, the State of Texas obtained life expectancy calculations by 21<sup>st</sup> 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 21<sup>st</sup> and AVS, on the same individuals generated at or about the same time, were about 2½ times as long. To further illustrate the disparity between Midwest Medical and the more reputable providers, we compared Midwest Medical's 85% life expectancy certificates with 21<sup>st</sup> and AVS median life expectancies for the same individuals. As you can see from the table below,<sup>12</sup> even the average of Midwest Medical's 85% calculations is significantly below the average of the median life expectancies provided by the more reputable providers.

|                           | Midwest Medical<br>(50%) | Midwest Medical<br>(85%) | 21 <sup>st</sup><br>(50%) | AVS<br>(50%) |
|---------------------------|--------------------------|--------------------------|---------------------------|--------------|
| All data points           | 53                       | 52                       | 40                        | 52           |
| Average LE                | 52.42                    | 83.83                    | 120.85                    | 133.77       |
| Data points in Common     | 40                       | 39                       | 40                        | 40           |
| Average LE<br>(in months) | 52.55                    | 83.69                    | 120.85                    | 134.65       |
| % MM (50%)                | -                        | 159%                     | 230%                      | 256%         |
| % MM (85%)                | -                        | -                        | 144%                      | 161%         |

Attached as Exhibit L-2, is a modified version of Retirement Value's "Client Participation Example and Base Line Targeted Income During Ten Years" chart for policy PL1140-11109-DM. It is modified to superimpose 21<sup>st</sup> Services' and AVS's median life expectancies (and 21<sup>st</sup> Services 85% calculation) and to reflect the anticipated effect of a more reasonable but longer life expectancy on the underlying investment. In this instance, the insured's

<sup>12</sup> The underlying data is shown on Exhibit O.

median life expectancy extends well beyond the 38 months reported by Midwest Medical or the 62 months of LE+24. In fact the insured's median life expectancy exceeds Retirement Value's LE+24 by 4-5 years. Thus, there is a significant probability (more than 50%) that the insured will live beyond LE+24 and that the investors would have to cover significant premiums for many years beyond LE+24. Failure to do so is not only a default for that investor, but places at risk the other investors who participated in that policy. *See*: Section III.C. c, below.

In addition, the State obtained a report by HMH Consulting on Midwest Medical's performance as an estimator of life expectancies. This report showed that Midwest Medical's Actual to Expected Performance to be 42%.<sup>13</sup> HMH reviewed 14,528 the life expectancy certificates issued by Midwest Medical. Based on Midwest Medical's predictions, HMH expected to observe that 3,319 subjects had died as of the study's effective date. Actually, only 1,395 people had died. As a general standard, a life expectancy underwriter's actual to expected performance should be between 90% (too short) and 110% (too long), with 100% considered perfect. As an example, 21<sup>st</sup> Services reports that an independent auditor calculated its actual to expected performance at 98.1%. 21<sup>st</sup> Services Press Release (Exh. P).

Further, Retirement Value misrepresented where it obtained life expectancy calculations and how it used them. Retirement Value represented in writing and in oral communications with potential investors that it used the longest of three independent life expectancy calculations. Marketing Materials (Exh. F) at F-1, p.2; Transcript of "Cody Walker" Call (Exh. M) at 5. Retirement Value did not in fact obtain any life expectancy calculation, but rather relied exclusively on Midwest Medical's certificate which was provided by James Settlement Services.

---

<sup>13</sup> When describing the HMH Report to the TSSB's undercover investigator, Dick Gray misrepresented that Hess concluded that Midwest Medical's actual to expected performance was 92%. Transcript of "Cody Walker" Call (Exh. M) at 4

Contrary to its representations, Retirement Value did not obtain any life expectancy calculations and clearly did not use the longest of three calculations.

b. *Premium Cost*

Retirement Value disclosed that if the underlying insured survived LE+24, each investor would have to cover its pro rata portion of the premiums. However, as previously mentioned, Retirement Value falsely led investors to expect that there was only a 1.5%-5% chance that an insured would survive beyond LE+24. Moreover, Retirement Value also misrepresented the cost of maintaining the policy in force after the premium reserves expired at LE+24. Client Participation Example (Exh. L-1). In its projections to investors, Retirement Value represented that the premiums paid by the investors after the expiration of LE+24 would be the same as the premiums paid prior to LE+24. This representation was false. In a universal life policy, which is the only type of policy that Retirement Value purchased, the cost of insurance – the amount of money that must be paid each month to keep the policy in force – rises each year. As the underlying insured ages, this increase in cost of insurance increases dramatically.

When an insurance company sells a universal life policy, it typically sets a planned premium. The planned premium is substantially larger than the amount of money required to keep the policy in force initially. The excess cash is deposited with the insurance company and earns interest. In later years when the cost of insurance exceeds the planned premium, there should be sufficient cash value in the policy to pay the difference between the planned premium and the cost of maintaining the policy.

Retirement Value, like most life settlement companies, paid only the amount necessary to maintain the policy in force until the next premium payment was due. As a routine matter, Retirement Value engaged in premium optimization – working with the insurance company to determine the minimum payment need to keep the policy in force until the next premium is due.

In this manner, the current amount required to maintain the policy is reduced at the expense of the cash value which would otherwise subsidize the cost of insurance in later years. As a result, the premiums needed to keep the policies in force after LE+24 would be substantially higher than those estimated at the time of investment.

c. *Risk on Non-Payment by Other Investors*

Retirement Value failed to disclose the risk of loss, if the other investors on a policy failed to pay their share of the post-LE+24 premiums. While Retirement Value's debt to any investor who defaulted on its portion of a post LE+24 premium would be extinguished, Retirement Value remained liable to pay each investor who paid his or her share of the additional premiums. However, Retirement Value would be able to do so only if it were able to keep the policy in force. 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. Retirement Value made no disclosures regarding its own credibility or ability to cover such post-LE+24 premium shortfalls. As of the date of the TRO, Retirement Value had distributed substantially all surplus cash to its owners and retained no reserves to cover such a contingency.<sup>14</sup> RV Accounting Records Excerpt – Balance Sheet (Exh. Q)<sup>15</sup> 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 on the investment turned on Retirement Value's success in raising money and selling investments. If Retirement Value could

---

<sup>14</sup> There was only \$118,000 in Retirement Value's bank account as of the date of May 5, 2010, when the account was seized by the Receiver.

<sup>15</sup> The balance sheet attached as Exhibit Q was printed directly from Retirement Value's accounting records and reflects its assets and liabilities as such records were maintained by Retirement Value. This balance sheet is inaccurate and incomplete in that it fails to reflect either the liabilities associated with Retirement Value's debt to the investors or the current value of insurance policies owned by Retirement Value.



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 LE + 24 would lose their entire investment.

Retirement Value did not disclose this risk to the investors. Nor did Retirement Value 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.

4. Retirement Value failed to disclose the risk of regulatory action.

Retirement Value received repeated warnings from multiple sources that its Re-Sale Life Insurance Program constituted or was likely to constitute a security under the Texas Securities Act. Given the probability that Retirement Value's Re-Sale Life Insurance Program would constitute a security, Retirement Value should have (i) registered its offering; (ii) offered the Program pursuant to an exemption from registration; or (iii) disclosed to investors that the investment could be subject to the securities laws, but that it was not being offered in compliance with those laws. It did none of these. By failing to do so, Retirement Value denied the investors the opportunity to make an informed investment decision.

5. Other Issues

a. *Retirement Value released funds from escrow before acquiring policies.*

Retirement Value entered into Policy Purchase Agreements with James Settlement Services with respect to each policy that it acquired or planned to acquire. The Policy Purchase Agreements called for the purchase price to be placed in escrow at Pacific Northwest Title in Oregon to be exchanged for the policy when it was delivered by James Settlement Services. Sample Policy Purchase Agreement (Exh. R). Retirement Value would routinely instruct

Kiesling Porter to distribute funds, as they were received from investors, to Pacific Northwest. As discussed previously, in many cases these funds were taken from sub-accounts other than that dedicated to the policy being purchased. As soon as a deposit was made at Pacific Northwest, Retirement Value authorized Pacific Northwest to release those funds to James Settlement Services even though the full purchase price had not been raised from investors and the policy had not been delivered by James Settlement Services. Escrow Releases (Exh. S). As a result, Retirement Value lost any protection provided by the escrow arrangement with James Settlement Services and Pacific Northwest.

b. *Failed to adequately reserve for the policies*

Commencing in the 4th quarter of 2009, Retirement Value accelerated payments for the purchase price to James Settlement Services by shorting the premium reserves from early subscribers to a policy and making it up from the late subscribers. Thus, Retirement Value acquired policies from James Settlement Services before Retirement Value had established adequate reserves to pay premiums for LE+24. If Retirement Value was unable to continue selling investments as happened at the end of March 2010, it would be unable to raise the funds necessary to fund the reserve accounts.

**IV. Actions to Preserve and Protect the Estate**

Since being appointed, the Receiver has acted to protect and preserve the assets of Retirement Value. We have secured Retirement Value's business premises, its computing facilities, its records and its bank accounts. In addition, the Receiver and his agents have been in contact with every insurance company which has issued a policy of life insurance owned by Retirement Value and all banks with which Retirement Value, Gray or Rogers are known to have done business with.

**A. Cash and cash equivalents**

Retirement Value's assets consist primarily of cash and short term securities, insurance policies and a building located in New Braunfels. In addition, Retirement Value has claims against its officers, members, licensees and others arising out of the receipt of funds from Retirement Value and misconduct related to its business. Pursuant to the powers granted to him by the Court, the Receiver has seized \$25,463,772.69 in cash and securities as follows:

| Entity                            | RV Assets     | 3rd Parties  | Total         |
|-----------------------------------|---------------|--------------|---------------|
| Retirement Value                  | 118,379.23    |              | 118,379.23    |
| Kiesling, Porter, Kiesling & Free |               |              | -             |
| Bank Accounts                     | 11,374,732.74 |              | 11,374,732.74 |
| Investment Accounts               | 11,737,806.83 |              | 11,737,806.83 |
| Special Acquisition Inc           |               | 1,231,925.00 | 1,231,925.00  |
| Richard H. Dick Gray              |               | 263,912.24   | 263,912.24    |
| Wendy Rogers                      |               | 204,168.86   | 204,168.86    |
| Bruce Collins                     |               |              | -             |
| Collins Marketing                 |               | 158,228.13   | 158,228.13    |
| Hill Country Funding              |               | 374,619.66   | 374,619.66    |
|                                   | 23,230,918.80 | 2,232,853.89 | 25,463,772.69 |

Please note that this chart represents the value of these accounts as of the time that they were seized by the Receiver and not their value as of the date of this Initial Report. Funds in the KPK&F premium reserve accounts have been used to pay premiums due on the insurance policies. Funds in the Retirement Value and Special Acquisition accounts have been used to pay expenses such as the mortgage on Retirement Value's office building, payroll for Retirement Value employees<sup>16</sup> and utility bills.<sup>17</sup>

<sup>16</sup> The Receiver terminated the employment of all Retirement Value employees in May 2010.

<sup>17</sup> As of the date of this Initial Report, neither the Receiver nor his counsel has been paid. As directed by the Court in the Temporary Injunction, the Receiver and his counsel will submit their bills to the Court for approval. We anticipate that the monies recovered by the Receiver (including the \$1.2 million from Special Acquisitions) will be sufficient to pay the costs of administering the Receivership.

## B. Policies

Retirement Value also owns 41 policies of life insurance with a total face value of \$118,250,000. All of these policies are in-force and premiums are being paid on them as they become due. There are an additional 12 policies (listed below) with a face value of \$36,085,000 that were in the process of being transferred from James Settlement Services to Retirement Value as of the date the cease and desist orders were issued. There is also \$559,304 on deposit in escrow accounts at Pacific Northwest related to purchase agreements between Retirement Value and James Settlement Services, \$489,497 is associated with the disputed policies and the balance is associated with fully consummated transaction.

| Policy            | Face Amount         | Purchase Price     | PP Paid            | PP Balance Due     |
|-------------------|---------------------|--------------------|--------------------|--------------------|
| GLG089-012110-RF  | \$1,000,000         | \$295,000          | \$295,000          | \$ -               |
| AGL76L-12810-WS   | \$3,000,000         | \$653,300          | \$653,300          | \$ -               |
| LFG3248-012610-HM | \$3,000,000         | \$805,000          | \$761,077          | \$ 43,923          |
| LFG311-031210-HM  | \$5,000,000         | \$1,400,000        | \$987,775          | \$412,225          |
| AVL180-030510-MR  | \$5,000,000         | \$1,050,000        | \$641,104          | \$408,896          |
| LFG735-022410-AS  | \$5,000,000         | \$1,100,000        | \$659,784          | \$440,216          |
| AXA091-012110-PC  | \$5,000,000         | \$1,300,000        | \$1,300,000        | \$ -               |
| AXA777-012310-TP  | \$1,000,000         | \$100,000          | \$100,000          | \$ -               |
| AXA335-022410-PS  | \$3,000,000         | \$565,000          | \$565,000          | \$ -               |
| LFG117-021710-HW  | \$2,000,000         | \$459,000          | \$459,000          | \$ -               |
| LBL15J-021710-FW  | \$2,085,000         | \$420,000          | \$420,000          | \$ -               |
| LBL918021710-RW   | \$1,000,000         | \$208,750          | \$208,750          | \$ -               |
|                   | <b>\$36,085,000</b> | <b>\$8,356,050</b> | <b>\$7,050,790</b> | <b>\$1,305,260</b> |

As of the date of this Initial Report, the Receiver and James Settlement Services have reached a tentative agreement whereby: (i) James Settlement Services and Retirement Value will jointly instruct Pacific Northwest to release the \$559,304 remaining in escrow to Retirement Value; (ii) Retirement Value will relinquish its interest in GLG089-012110-RF, AGL76L-12810-WS, AXA777-012310-TP, LBL918021710-RW; and (iii) James Settlement Services will deliver the

remaining policies to Retirement Value. The Texas State Securities Board and Texas Department of Insurance have assured the Receiver that they do not consider the completion of these transactions as a violation of the existing cease-and-desist orders.

Please note that prior to the Receiver's appointment, Retirement Value abandoned its right to acquire JHL383-03161-GR, JHL633-031210-CT, AXA826-032410-CD and AXA036-03161-PC.

**C. Professional Advisors**

The Receiver has retained Asset Servicing Group ("ASG") to act as portfolio manager, and Lewis & Ellis, Inc. ("L&E") to act as actuarial consultants. ASG and L&E will jointly undertake to review and evaluate the portfolio and to advise the Receiver as to its value and the premiums needed to maintain it in force until maturity. The Receiver has also engaged the services of BKD, LLP to provide accounting services for the estate and maintain the Receiverships financial books and records.

**1. Asset Servicing Group.**

The Receiver has ASG to act as portfolio manager for the 41 policies of life insurance owned by Retirement Value and for the 8 policies that the Receiver anticipates will be delivered by James Settlement Services. ASG will provide Policy Administration (payment of premiums, correspondence with insurers), Death Tracking, Claims Processing, Verification of Policies, Premium Optimization, and Policy Valuation services. These services are essential to the proper maintenance and management of the portfolio. The fees charged by ASG are the result of negotiation and represent a discount off of ASG's standard rates.

ASG is well qualified to act as portfolio manager. It is actively involved in the management of portfolios of life insurance policies and currently has approximately 6,000 policies under management. ASG has acted in this capacity for court-appointed receivers on

numerous occasions. ASG is a member of the two principal trade associations for the life settlement industry, the Life Insurance Settlement Association and the Institutional Life Markets Association.

Tom Moran, ASG's principal, is highly respected in the life settlement industry. He has in excess of 30 years experience with insurance, the last 12 of which are exclusively with life settlements. Over the last 8 years, Mr. Moran, personally, has been appointed as receiver or conservator for life settlement companies by courts on several occasions and has extensive experience in dealing with distressed portfolios of policies.

The Receiver and his counsel researched various potential portfolio managers and conducted due diligence into the background, reputation and competency of ASG and Mr. Moran. Based on this research and due diligence, the Receiver is satisfied that ASG is the best candidate available to provide these services.

2. Lewis & Ellis, Inc.

L&E will provide an actuarial analysis of the portfolio's anticipated cash flows. This analysis is necessary to enable the Receiver to accurately value the portfolio and maximize its value. The principal actuary working on the portfolio will be Scott Gibson. Mr. Gibson is a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. In addition, he has extensive experience in the life settlement industry and has served on the board of directors of the Life Insurance Settlement Association.

The Receiver and his counsel researched actuarial consultants and conducted due diligence into the background, reputation and competency of Mr. Gibson and L&E. In addition, the Receiver obtained bids from other actuaries. Based on his research and due diligence, the Receiver is satisfied that L&E is the best candidate available.

L&E has agreed to provide an actuarial analysis of the policies at a fixed rate of \$300 per policy. L&E will provide additional services at base hourly rates as set forth in its engagement agreement with the Receiver. L&E has requested and the Receiver has agreed to pay a refundable retainer of \$6,000 against which L&E will bill. The fees charged by L&E are the result of negotiation resulting in a discount off of L&E's initial bid.

3. BKD LLP.

The Receiver has retained BKD, LLP to provide accounting services for the estate. In addition to maintaining the books of the receivership and preparing necessary tax filings, BKD will also restate the books of Retirement Value to more accurately reflect the company's true financial condition. This will require, among other things, consolidating the financial records maintained by Kiesling Porter Kiesling and Frieson on behalf of Retirement Value with those maintained directly by Retirement Value. BKD has requested and the Receiver has agreed to pay a refundable retainer of \$5,000 against which BKD will bill.

**D. Issues Confronting the Portfolio's Administration**

Based on information available to date, the portfolio is confronted by three significant issues: (1) we anticipate that the fair market Retirement Value's policy portfolio cannot be liquidated; (2) Retirement Value's failure to adequately reserve sufficient funds to pay premiums through the policies' reasonably expected maturity; and (3) the portfolio's structure.

Portfolio Value.

Retirement Value paid over \$28 million for its portfolio of insurance policies. The market value of a life insurance policy is largely determined by the insured's life expectancy. Because the Midwest Medical life expectancy certificates relied on by Retirement Value underestimated the life expectancy of the insureds to a significant degree, Retirement Value likely overpaid for these policies. Further, the life settlement market has a limited number of

players, most of which are hoping to acquire the policies from a distressed seller, at a discount. Thus, any liquidation of the portfolio at this point in time would likely be for significantly less than Retirement Value paid for the policies. Though the portfolio does face certain long and short term challenges, there are several alternatives available to a fire-sale liquidation of the policies, all of which are being assessed and some of which may prove attractive.

2. Insufficient Premium Reserves.

This problem arises in large part because the premium reserves were based on the median life expectancies calculated by Midwest Medical. As discussed previously, these calculations are far too short, leading Retirement Value to make insufficient reserves for premiums. In addition, Retirement Value's mishandling of funds has led to premium shortfalls in specific accounts. The use of funds set aside for one policy to fund expenses related to a different policy depleted the fund available for the first policy. While Retirement Value doubtless intended to use funds from future investments to replenish these accounts, this source of replenishment ended with the TSSB's cease and desist order in March 2010. Further, Retirement Value routinely would disburse funds to pay James Settlement Services for policies before completely satisfying the premium reserve. As a result, Retirement Value purchased policies without having fully funded the premium reserves.

The following table<sup>18</sup> shows the portfolio's shortfalls based on the life expectancy calculations available to the Receiver.

---

<sup>18</sup> The underlying data is shown on Exhibit T.



|  | Actual Reserve | Midwest Medical | 21st         | Ass          |
|--|----------------|-----------------|--------------|--------------|
| Observations                           |                | 53              | 40           | 52           |
| Calculated reserves                    |                | \$25,246,794    | \$33,830,592 | \$44,540,785 |
| Avg Per Policy                         |                | \$476,355       | \$845,765    | \$856,746    |
| Premiums For LE(50)<br>for 53 Policies | \$24,345,935   | \$25,246,794    | \$44,825,354 | \$45,407,531 |
| Shortfall                              | ..             | \$900,858       | \$20,479,598 | \$21,061,595 |

Please note that this chart actually underestimates the problem because it based on the assumption that premiums needed to maintain the policies will remain level. As previously discussed, the cost of insurance and hence the premiums will increase over time. Because the exact amount of the increase is not known at this time, the Receiver has provided this chart for illustrative purposes.

### 3. The portfolio structure

The portfolio's structure issue further exacerbates the inadequacy of premium reserves. Retirement Value's Re-Sale Program was designed as a series of individual investments associated with individual policies. In other words, when an insured dies the corresponding loan matures and Retirement Value is supposed to use 100% of the insurance proceeds to satisfy its debt, but only as to those investors who facilitated Retirement Value's purchase of that particular policy. Accordingly, any early maturities would not generate any of the funds that are needed to support the premium payment on policies that are slower to mature. This structure epitomizes an inherent inequity in the estate. If adhered to, certain investors would receive a distribution from Retirement Value's assets to the detriment of Retirement Values remaining investors.

We anticipate that the vast majority of the policies will mature significantly after the LE+24 calculated by Midwest Medical and Retirement Value. 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 investor-victims based on sound actuarial

and management principles. With ASG's and L&E's assistance, we are analyzing this opportunity in order to establish a plan pursuant to maximize the value of the portfolio. When a plan is finalized, it will be submitted to the Court for approval.

## **V. Conclusions**

The Receiver has been put in place to preserve Retirement Value's assets for the benefit of the investors. The Receiver has already identified over \$2.2 million that were outside of Retirement Value's pool of investor funds and recovered in excess of \$1.5 million of that.

Retirement Value misrepresented material characteristics of its Re-Sale Life Insurance Program, including, among other things: the investors' interest in the underlying policies; the segregation, safety and control of the investors' funds; the investments' anticipated maturity; by downplaying the significant probability of premium beyond LE+24, the investor's reasonably expected cost; the investments' anticipated rate of return; the uncertainty associated with Retirement Value's ability to legally market, and by failing to undertake any due diligence or otherwise adhere to the processes established in its own marketing materials, the value of the underlying policies.

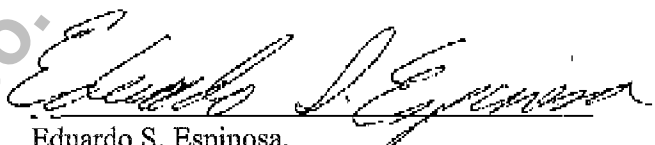
The Receiver has assembled a team of professionals, accountants, actuaries, lawyers and portfolio managers to administer Retirement Value's estate in the most efficient manner possible. This team of professionals is dedicated to maximizing the portfolio's return, by using their respective skills to execute the portfolio's and the estate's administrative functions in the most efficient and cost-effective manner.

Contrary to widespread rumors, the Receiver is not liquidating the portfolio. The portfolio itself is being preserved and maintained. Policy premiums are being paid as they come due. The Receiver's professional advisors are assessing the portfolio at the individual policy basis and at the portfolio level. Once their assessments have been completed, we will proceed to

formulate a plan of operation that will maximize the Receiver's ability to make restitution to the investors. The details of such a plan will be submitted to the Court for approval prior to implementation.

The Receiver is periodically mailing updates to the investors. However, in order to minimize the cost and effort associated with frequent mailings, the Receiver has also established a website at "www.rvllcreceivership.com" to post information regarding this matter, such as: recently issued Court orders, frequently asked questions, and copies of the correspondence with the investors. In addition, the Receiver is will host a internet-based call to discuss the status of this case and his investigation. Investors who do not have internet access will be able to dial in and listen to the presentation. The details of this call will be distributed separately.

Respectfully submitted,

  
Eduardo S. Espinosa,  
Receiver for Retirement Value, LLC

**From:** Wendy Rogers <wrogers@retirementvalue.com>  
**Sent:** Thursday, July 30, 2009 7:04 PM  
**To:** 'Donald James' <don.james1@comcast.net>  
**Subject:** RE: Potential Licensee and Complete Packet request  
**Attach:** Complete 07-29 Client Non-Qualified Paperwork--FINAL.pdf, Complete 12-page Handout 06-29-09.pdf, RV Brochure-email version.pdf

---

Don,

I am sending you the REVISED tri-fold, the OLD 12-page handout (still in the editing stages of the 12-page handout's revisions), and the latest version of the Non-qualified paperwork. I'm sending you the auto-fillable forms instead of the plain one....

Let me know if there's anything else you need.

Thanks!

Wendy Rogers  
Director of Special Services  
(830) 624-8858 office  
(210) 363-2910 cell

**CONFIDENTIALITY NOTICE** -- The documents and information accompanying this electronic transmission contain information belonging to Retirement Value, LLC which is confidential and/or legally privileged under Federal privacy laws. It is intended only for the exclusive use of the addressee. If the reader of the message is not the intended recipient, or the agent or employee of an agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please notify us by telephone immediately. Unauthorized interception of this electronic transmission is a violation of Federal criminal law.

-----Original Message-----

From: Donald James [mailto:[don.james1@comcast.net](mailto:don.james1@comcast.net)]  
Sent: Thursday, July 30, 2009 3:02 PM  
To: Donald James; wrogers@retirementvalue.com  
Subject: Potential Licensee and Complete Packet request

Good afternoon Wendy,

I have just finished a call with Dick about a potential licensee here in CA. He's an investment banker whom we have dealt with for over 4 yrs and he may have another avenue of investment funds to direct towards RV LLC.

On that front, Dick suggested I receive the electronic version of the REVISED Tri-Fold and 12 page brochure plus a complete Non-Qualified Packet. I will forward it to him, follow-up and monitor.

Any questions or concerns please ask.

Thank you in advance for your attention to this request.  
Cheers,

--  
Donald James  
Managing Member  
James Group Int'l LLC  
925-683-5501 Mobile  
925-299-2802 Office  
925-299-2806 Fax  
[don@kiwisurfer.co.nz](mailto:don@kiwisurfer.co.nz)



RVR019512

**CONFIDENTIALITY:** This e-mail message, including any attachments, is intended only for use by the person(s) to whom it is addressed and may contain information that is legally privileged, confidential or otherwise exempt from disclosure under applicable law. If you are not the intended recipient of this e-mail message or the person responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication, and any attachments hereto, is legally prohibited. If you have received this communication in error, please immediately notify us by either reply e-mail or telephone at (925) 683 5501 and permanently delete the original and any copy of this e-mail communication, including any attachments, and any printout thereof.

**ELECTRONIC TRANSACTIONS:** Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary hereinabove, this e-mail communication, its contents and any attachments hereto, are not intended to represent an offer or acceptance to enter into a contract and are not otherwise intended to bind the sender, any of its clients, or any other person or entity.

RETIREMENT VALUE, LLC



## Re-Sale Life Insurance Policies

RETIREMENT VALUE, LLC

457 Landa Street, Suite B  
New Braunfels, TX 78130

PO Box 31003  
New Braunfels, TX 78131

Phone: 830-624-8858  
210-832-8040  
Fax: 866-498-4644

[www.retirementvalue.com](http://www.retirementvalue.com)  
[rv@retirementvalue.com](mailto:rv@retirementvalue.com)



RVR019537



Thank you for the privilege of allowing us to share our proprietary *re-sale life insurance policy* program with you. We believe *both* prospective Licensees *and* prospective Client-participants will want to know:

- All Client-participant funds are deposited in escrow accounts at **Wells Fargo Bank, NA** with a rich, storied, near-mythic legacy dating back to 1852. Naturally, their agreement to accept our deposits cannot be interpreted as and is not an endorsement of our program.
- 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. Retirement Value, LLC never "touches" any Client-participant funds at any stage of this program.
- Premium payments will be escrowed to cover **Life Expectancy ("LE") plus 24 months**. So if an insured has an LE of 60 months, premiums will be escrowed for 84 months – and upon the death of the insured, all un-used premiums will be distributed on a pro-rata basis to all Client-participants in addition to the return of their initial basis plus expected income.
- The fundamental data required in any Life Expectancy Report is thoroughly underwritten by and provided to us through **Midwest Medical Review, LLC** - an external, independent and totally-objective LE source very highly-regarded among insurance professionals.
- The re-sale policies exhibited by Retirement Value, LLC as immediately available for Client-participant selection are exactly that – they are **available immediately**. Each case in our "bouquet" has been sourced from a private investor who has been buying policies in the life insurance Secondary Market for over 14 years. On average, he and his staff review \$500 million in face amount / death benefit each week to make their selections; then execute formal policy purchase agreements to take ownership of each case; finally **re-sell** some of those policies to us after completion of their thorough due diligence.
- For potential **Licensees** reading this summary sheet – our policy source promises us up to \$30 million in face amount each week if needed, thus assuring your ability to meet the demands of even your very largest individual and institutional Client-participants.
- 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 expected incomes as a result of this lower overhead.

We welcome this special opportunity to introduce you to a true "win-win" program and look forward to the privilege of serving you. Thank you for allowing us to "visit" with you this way!

  
Dick Gray  
President / CEO  
RETIREMENT VALUE, LLC



## **Re-Sale Life Insurance Policies**

### **An Overview**

There really are no mysteries about or any complicated moving parts with re-sale life insurance policies owned by **RETIREMENT VALUE, LLC**. We buy the death benefit of a life insurance policy at a deep-discount from the full "face amount". This "spread" or leveraging of our funds generates significant net income upon the passing of the insured - in which you participate on a pro-rata basis. This decades-old idea is just that straight-forward. Nothing more; nothing less!

Simply put, for almost twenty years "retail" or individual financial decision-makers have been able to enjoy the same spectacularly high gains previously realized for decades by only the very wealthy or by institutional / "wholesale" players in the secondary market for life insurance. These profit levels from the "spread" in such cases have been realized ever since selling the "death benefit" within a life insurance policy to an assignee was declared "legal" by the U. S. Supreme Court in 1911.

Client-participants in our re-sale life insurance policy program are "irrevocable co-beneficiaries". As an irrevocable co-beneficiary, upon maturity of the policy due to the death of the insured, you receive a pro-rata distribution of the death benefit. All policies in which you participate have been sold by individuals or companies who no longer wanted or needed the policy. The specific amount you receive at maturity is determined by the percent of your participation in the policy.

**Here's the bottom-line:** When an insured passes away, you are re-paid your original participation amount plus income which we call your "base-line expected income". Your total income could be higher if there are any un-used premiums to be refunded. These payments are made to you by **Kiesling, Porter, Kiesling & Free, P.C.**, our Escrow Agent — a 40+ year-old Texas law firm that independently manages all monies used for your participation.

**To learn more about this decades-old idea, please  
contact your local Retirement Value, LLC Licensee  
or call us at (830) 624-8858 to learn who that person is.**





## **Re-Sale Life Insurance Policies**

### **Legal Foundation**

One of the questions most frequently asked by someone considering participation in a re-sale life insurance policy is: **"Is this legal?"** Justice Oliver Wendell Holmes, Jr. [b.1841 d.1935] of the U.S. Supreme Court [appointed December 8, 1902, by President Theodore Roosevelt] answered 'Yes' when he penned the majority opinion for GRIGSBY V. RUSSELL, 222 U.S. 149 (1911) December 4, 1911. Holmes stated with clarity on behalf of the entire high bench:

**"...it is desirable to give life policies the ordinary characteristics of property; to deny the right to sell...is to diminish appreciably the value of the contract in the owner's hands. It has been decided that a valid policy is not avoided by the cessation of the insurable interest..."**

**Put in plain, every-day language, yes! The death benefit of a life insurance policy can be sold for a profit like any personal property such as a house, ranch lands, a horse, or a truck.**

This is exactly what John C. Burchard of Tennessee did back in 1911. He had a life insurance policy on which he made two payments, was past-due making a third payment; and needed a surgery. He sold his policy to the surgeon for \$100 in exchange for the medical care he needed. When Mr. Burchard died, the life insurance company [upon suit by the widow, Lillian Burchard, and the executor of Mr. Burchard's estate, R. L. Russell] paid the death benefit to a court rather than to Dr. A. H. Grigsby, the new owner, pending resolution of the dispute in court. Dr. Grigsby sued to recover the death benefit he felt was rightfully his since he was the then-owner of the policy; was the re-named beneficiary of the policy; and had been paying the premiums on the policy. Dr. Grigsby won the suit; he was paid the death benefit; and a solid basis was established in case-law for the legal standing of a new "assignee" as the beneficiary of a re-sale policy.

From this Supreme Court decision in December 1911 we can trace the infant beginnings of what today is called the "Secondary Market" in the life insurance industry – which all began with a \$100 transaction. No mention is made of the death benefit amount itself, since the death benefit amount, large or small, was not the legal point at issue in this suit.

**For 2008 the re-sale life insurance market was valued at over \$12 billion.**

**To learn more about this decades-old idea, please  
Contact your local Retirement Value, LLC Licensee  
or call us at (830) 624-8858 to learn who that person is.**



## **Re-Sale Life Insurance Policies** **Safe Premium Payments**

**Safeguarding and preserving** both a Client-participant's basis and expected income in a re-sale life insurance policy are essential components of our program. RETIREMENT VALUE, LLC assures the **total safeguarding and preserving** of your basis and expected income by using an independent Escrow Agent, **Kiesling, Porter, Kiesling & Free, P.C.**

### **Our Escrow Agent as Third Party Fiduciary**

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.

The Escrow Agent also pays all premiums due on all policies **and** refunds to you on a pro-rata basis any un-used premiums remaining in escrow when the insured passes away.

All monies processed by **Kiesling, Porter, Kiesling & Free, P.C.** are deposited in escrow accounts held at **Wells Fargo Bank, N.A.** in New Braunfels, Texas.

**At no time** do any Client-participant funds come to, pass through, or get handled by anyone at Retirement Value, LLC. Also, participants in our re-sale life insurance policy program receive reports on a regular basis from RETIREMENT VALUE, LLC and the Escrow Agent to verify that the proper premiums have been paid and the policies remain in-force.

**To learn more about this decades-old idea, please  
contact your local Retirement Value, LLC Licensee  
or call us at (830) 624-8858 to learn who that person is.**



## **Re-Sale Life Insurance Policies**

### **"The Spread"**

#### **TOP OF "THE SPREAD" = INCOME**

*All death benefit pay-outs from the re-sale policies are paid only to Kiesling, Porter, Kiesling & Free, P.C. as beneficiary to protect you.*

### **THE SPREAD**

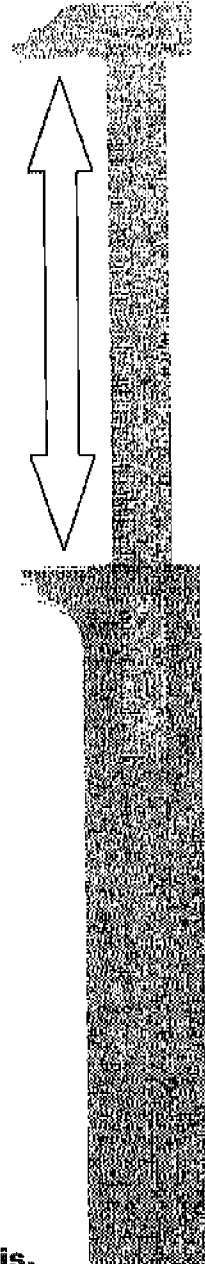
#### **BOTTOM OF "THE SPREAD" = EXPENSES**

- Cost of buying the policy
- Ongoing premium payments to maintain the policy
- Application fees for qualified-funds accounts
- Escrow Agent fees and bank costs
- Administrative fees, including commissions

Re-sale life insurance policies have few "moving parts". Client-participants are paid back all of their basis plus their pro-rata portion of "The Spread" or the difference between costs and the final pay-out when an insured dies.

Your funds allow RETIREMENT VALUE, LLC to purchase and to own re-sale life insurance policies that already have been sold to a private investor by the original policy owner(s) or the original insured(s). "The Spread" shows graphically how RETIREMENT VALUE, LLC is able to pay you such a high income on your funds. Pay-back of all monies in a re-sale life insurance program occurs when the insured passes away. All un-used premiums held in escrow by Kiesling, Porter, Kiesling & Free, P.C. are returned to Client-participants.

**To learn more about this decades-old idea, please contact your local Retirement Value, LLC Licensee or call us at (830) 624-8858 to learn who that person is.**



# Midwest Medical Review, LLC

## Life Expectancy Certificate

DATE: 3/25/2009

PATIENT: LNL789-031909-EK

SSN:

D.O.B.: 9/5/1927

AGE: 82

SEX: FEMALE

### PRIMARY DIAGNOSIS:

Hypertensive Heart Disease, Hypertension, Dyslipidemia, Overweight, Shortness of Breath, Colon Polyp, Dysphagia, and Osteopenia

### SUMMARY OF DIAGNOSES & RISK STRATIFICATION

Subject is an 82 year old, 5' 6" 182 lb Caucasian female found to have ongoing medical diagnoses, which currently do not indicate a life threatening scenario. Her medical history is significant for Hypertensive Heart Disease. Her Cardiac Comorbidities include Age, Postmenopausal Female, Hypertension, Overweight, Shortness of Breath, Dyslipidemia, and Inflammatory Processes. She has a history of Supraventricular Tachycardia following dental procedure. She has a history of Sinus Bradycardia with Non-specific ST - T wave changes. Her ECG from 2/08 showed sinus rhythm with occasional supraventricular premature complexes and possible left atrial enlargement. Her Stress Test from 4/05 showed an ejection fraction of 72% and was negative for ischemia. She has a history of being intolerant to statin medication. She has a history of a Colon Polyp, Dysphagia, and Gastroenteritis. She has a history of Osteopenia which responded to therapy. She has a history of a Right Breast Hemangioma. She has a history of Uterine Prolapse with secondary Cystocele and Rectocele. Her Mammogram from 7/07 was with benign findings. Her Pap test from 8/07 was negative for malignancy. She has a history of Shingles. Surgical History includes Partial Vaginal Hysterectomy (2002), Breast Biopsy with benign findings (6/06), Tonsillectomy, and Colonoscopy S/P Polypectomy. Her Lipid Studies from 7/08 include Cholesterol 224 mg/dl, Triglycerides 101 mg/dl, HDL-Cholesterol 69 mg/dl, LDL-Cholesterol 144 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 3.3. Her Lipid Studies from 6/07 include Cholesterol 238 mg/dl, Triglycerides 126 mg/dl, HDL-Cholesterol 58 mg/dl, LDL-Cholesterol 141 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.1. Her Lipid Studies from 7/06 include Cholesterol 271 mg/dl, Triglycerides 100 mg/dl, HDL-Cholesterol 65 mg/dl, LDL-Cholesterol 186 mg/dl, and Cholesterol/HDL-Cholesterol Risk Ratio 4.2. Family History includes Father died age 80 Coronary Artery Disease and Mother died age 80 Coronary Artery Disease. Social History includes Married with 2 children, negative for tobacco and alcohol, and age appropriate exercise. Medications Listed include Aspirin, Antibiotics, Crestor, Celebrex, Benicar, Lipid, Omnicor, Lipitor, Welchol, Zocor, Zetia, Toprol XL, and Vitamins/Supplements. Given the Age of the Subject and her Medical Management with Compliance, her projected LE would be 42 Months on available information. This does not mean that Ms. \_\_\_\_\_ will not die sooner nor live longer than the time frame indicated. Clearly the factors outlined above have mortality implications.

This Review was compiled solely for  
other company.

and may not be used by any

Signed:  **GLENN S. CHAPMAN, M.D., DIRECTOR OF MEDICAL REVIEWS**

Please note: A Life Expectancy cannot be precisely determined for any specific patient, but rather is the average life expectancy of a large group of patients with similar clinical and individual profiles. No one can guarantee or warrant the accuracy of any patient's precise life expectancy. The information contained in this document is privileged and confidential information for the use of the individual or entity named.

RVR019543

# RETIREMENT VALUE, LLC

Last updated: 06-28-2008

A SPENT COPY OF THIS DOCUMENT IS ACCORDING TO AFRICA

Our 10-case bouquet available for client participation

| POLICY CODE      | POLICY DEATH BENEFIT FACE AMOUNT | ISSUING INSURANCE CARRIER | INSURED AGE IN YEARS | INSURED GENDER | PROJECTED LIFE EXPECTANCY | Annual expected death benefit for Participants | Total expected death benefit for Participants |
|------------------|----------------------------------|---------------------------|----------------------|----------------|---------------------------|--|---|
| LNL17-031909-MC  | \$1,500,000                      | Lincoln National          | 77                   | MALE           | 70 months                 | 16.50%   | 36.25%  |
| AGL75L-031909-L  | \$3,000,000                      | American General          | 77                   | MALE           | 70 months                 | 16.50%   | 86.25%  |
| AXA804-031909-RM | \$1,500,000                      | AXA Equitable             | 77                   | MALE           | 69 months                 | 16.50%   | 34.38%  |
| LNL591-031909-DH | \$1,000,000                      | Lincoln National          | 79                   | MALE           | 55 months                 | 16.50%   | 15.55%  |
| SLA534-031909-LC | \$650,000                        | Sun Life Assurance        | 81                   | FEMALE         | 54 months                 | 16.50%   | 14.25%  |
| LBL188-031909-NL | \$750,000                        | Lincoln National          | 78                   | MALE           | 54 months                 | 16.50%   | 14.25%  |
| ANB52-031909-HD  | \$5,000,000                      | American National         | 78                   | MALE           | 53 months                 | 16.50%   | 72.38%  |
| LNL052-031909-GW | \$715,000                        | Lincoln National          | 82                   | FEMALE         | 52 months                 | 16.50%   | 14.25%  |
| ING282-031909-AU | \$2,000,000                      | ING Life                  | 81                   | MALE           | 43 months                 | 16.50%   | 58.15%  |
| OML255-031909-RL | \$2,300,000                      | OM Mutual Life            | 79                   | MALE           | 10 months                 | 16.50%   | 55.38%  |
|                  | \$21,115,000                     |                           |                      |                |                           |  |   |

\*16.5% annually x total LE in months

( ) I / WE elect to place my / our total \$ participation in EQUAL PORTIONS among all (10) policies listed for this bouquet  
 ( ) I / WE elect to place my / our total \$ participation in SELECTED AMOUNTS noted in column 10 at the upper left on this bouquet

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Printed name \_\_\_\_\_  
 Participant Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Printed name \_\_\_\_\_

Licensee as witness \_\_\_\_\_  
 Licensee printed name \_\_\_\_\_  
 Licensee code # \_\_\_\_\_

Retirement Value, LLC has executed a Policy Purchase Agreement for every policy in this bouquet. For every policy, the carrier will complete the policy until the carrier completes the policy change of beneficiary in their business records. If any of these policies are withdrawn or sold out, they will be replaced for need by the policyholder's contribution. For higher client value, the carrier will be replaced for need by the policyholder's contribution.

Participant's Name

Participant's Address

**Retirement V.I.V., LLC** - Client participation example and base-line expected income during ten years

Case: AGL73-031909-UK Page 17 of 70-month Life Expectancy w/ \$3,000,000 face amount and annual premiums of \$82,000 collected through month 94

Client income: 16.5% simple annual income during the 70-month Life Expectancy = 96.25% base-line expected income -extended and adjusted for a period of ten years

Spouse: Client base-line expected income = simple annual income @ 16.5% x a Life Expectancy of 70 months - plus pro-rata premium refunds - minus pro-rata premium payments

Assumptions: \$10,000 participant in x 1.9625 = \$19,625 total return at maturity = 0.6542% share of the face amount = \$405.58 annual pro-rata premium share > 94 months

| At the end of Year 1  | At the end of Year 2 | At the end of Year 3 | At the end of Year 4 | At the end of Year 5 | At the end of Year 6 | At the end of Year 7 | At the end of Year 8 | At the end of Year 9 | At the end of Year 10 |
|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| 123.96%   | 113.91%              | 115.85%              | 111.80%              | 103.69%              | 99.63%               | 95.57%               | 91.51%               | 87.45%               | 83.39%                |
| \$22,386  | \$21,931             | \$21,585             | \$21,180             | \$20,369             | \$19,963             | \$19,557             | \$19,151             | \$18,745             | \$18,339              |
| <p>Client income is better than the "base-line expected income" of 16.5% all the way through because of the pro-rata refund of the premium payments in the account.</p> <p>Pro-rata were collected in the 24 months &gt; 94 months - part of "pro-rata" basis</p> |                      |                      |                      |                      |                      |                      |                      |                      |                       |
| 59.95%  | 59.95%               | 59.95%               | 59.95%               | 59.95%               | 59.95%               | 59.95%               | 59.95%               | 59.95%               | 59.95%                |
| \$21,994  | \$21,994             | \$21,994             | \$21,994             | \$21,994             | \$21,994             | \$21,994             | \$21,994             | \$21,994             | \$21,994              |
| 38.62%  | 38.62%               | 38.62%               | 38.62%               | 38.62%               | 38.62%               | 38.62%               | 38.62%               | 38.62%               | 38.62%                |
| \$21,585  | \$21,585             | \$21,585             | \$21,585             | \$21,585             | \$21,585             | \$21,585             | \$21,585             | \$21,585             | \$21,585              |
| 27.95%  | 27.95%               | 27.95%               | 27.95%               | 27.95%               | 27.95%               | 27.95%               | 27.95%               | 27.95%               | 27.95%                |
| \$21,180  | \$21,180             | \$21,180             | \$21,180             | \$21,180             | \$21,180             | \$21,180             | \$21,180             | \$21,180             | \$21,180              |
| 17.85%  | 17.85%               | 17.85%               | 17.85%               | 17.85%               | 17.85%               | 17.85%               | 17.85%               | 17.85%               | 17.85%                |
| \$20,436  | \$20,436             | \$20,436             | \$20,436             | \$20,436             | \$20,436             | \$20,436             | \$20,436             | \$20,436             | \$20,436              |
| 14.23%  | 14.23%               | 14.23%               | 14.23%               | 14.23%               | 14.23%               | 14.23%               | 14.23%               | 14.23%               | 14.23%                |
| \$19,963  | \$19,963             | \$19,963             | \$19,963             | \$19,963             | \$19,963             | \$19,963             | \$19,963             | \$19,963             | \$19,963              |

\* This example is only for illustration purposes and does not represent an actual investment. The actual results may vary. The actual results may vary due to market conditions and the actual results may vary due to the actual results of the investment.

| Retirement Plan, LLC - Client participation example and base-line expected income during ten years   |                      |                      |                    |                      |                      |                      |                      |                      |                       |
|--|----------------------|----------------------|--------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| Case: OMI-46-031909-4 (Page 2) @ 40-month Life Expectancy w/ \$2,000,000 face amount and annual premiums of \$89,000 collected through month 64  |                      |                      |                    |                      |                      |                      |                      |                      |                       |
| Client income: 16.5% simple annual income during the 40-month Life Expectancy = 55.00% base-line expected income - extended and adjusted for a period of ten years   |                      |                      |                    |                      |                      |                      |                      |                      |                       |
| Basis: Client base-line expected income = simple annual income @ 16.5% x a Life Expectancy of 40 months - plus pro-rata premium refunds / minus pro-rata premium payments  |                      |                      |                    |                      |                      |                      |                      |                      |                       |
| Assumptions: \$10,000 participation x 1.5500 = \$15,500 total return at maturity = 9.7750% share of the face amount = \$899.75 annual pro-rata premium share > 64 months   |                      |                      |                    |                      |                      |                      |                      |                      |                       |
| At the end of Year 1   | At the end of Year 2 | At the end of Year 3 | 1 Sep 1 Month      | At the end of Year 4 | At the end of Year 5 | At the end of Year 6 | At the end of Year 7 | At the end of Year 8 | At the end of Year 10 |
| 84.89%<br>\$16,489   | 77.99%<br>\$17,799   | 71.09%<br>\$17,109   | 64.20%<br>\$16,420 | 57.30%<br>\$15,730   | 50.40%<br>\$15,040   | 43.50%<br>\$14,350   | 36.61%<br>\$13,661   | 29.71%<br>\$12,971   | 22.81%<br>\$12,281    |
| <p>Client income is higher than the base-line expected income of 55.00% all the way through year five because of the extended distribution of 24 months after year five in the reserve account for the insured only.</p> <p>Premiums were collected for all the 24 months &gt; 16.5% of the face amount of \$2,000,000.</p>  |                      |                      |                    |                      |                      |                      |                      |                      |                       |
| 33.00%<br>\$17,799   | 23.70%<br>\$17,109   | 15.65%<br>\$16,420   | 11.46%<br>\$15,730 | 8.40%<br>\$15,040    | 6.14%<br>\$14,350    | 4.58%<br>\$13,661    | 3.19%<br>\$12,971    | 1.99%<br>\$12,281    | 0.99%<br>\$11,591     |
| <p>At the end of year 10 we have a residual premium of \$1,550.00 (16.5% of \$2,000,000) for the 10 years of the insured. This is the amount of the insured's premium that is not paid for the 10 years of the insured.</p> <p>Example: If the insured dies at the end of year 10, the insured's premium of \$1,550.00 will be paid for the 10 years of the insured.</p> |                      |                      |                    |                      |                      |                      |                      |                      |                       |



## Our Management Team

**Dick Gray - Founder / President / CEO** - Mr. Gray has held these positions since company start-up and remains very active in guiding the public presentation of the proprietary re-sale life insurance policy model he helped pioneer. Dick has helped clients make wise money decisions in hard financial times for the past 35 years and has been a licensed insurance agent for over 18 years. Personal participation in the re-sale life insurance policies for his own retirement planning reinforces his credibility when assisting numerous clients in doing the same. After earning an A. B. degree in political science and a Master of Divinity degree - and prior to the start of his business career - Dick proudly completed four years of U.S. Army active duty as a Chaplain, which included 13 months of decorated field duty in Viet Nam.

**David Gray - Chief Financial Officer** - Mr. Gray joined Retirement Value, LLC early in 2009 as Chief Financial Officer to continue on-location in Texas nearly two-years of long-distance contributions to our company. David earned his B.S. in Business Administration and strengthens Retirement Value, LLC's management team with 35 years of international construction industry accountancy and administration-oversight experience. His oversight of all financial transactions, voluminous recordkeeping and ongoing policy service as the fiduciary for Retirement Value, LLC has one focus only - safety of client funds. This requires daily interaction with our Escrow Agent and "real time" monitoring of numerous escrow accounts, deposits and disbursements.

**Wendy Rogers - Director of Special Services** - Mrs. Rogers supervises all our marketing activity while contributing personally to the development, design and implementation of all marketing and print materials; coordinates all computer and information technology needs. Wendy manages the massive data accumulation an operation like ours generates and assures client privacy - while providing timely on-line access for licensees and clients alike to all information needed for a satisfying business relationship with us. She combines 10 years of service in the insurance, financial planning, and banking industries with several years of re-sale policy sales experience. Wendy's B.S. in Agribusiness was earned at Texas A&M University - College Station, and she also has earned a Masters of Business Administration.

**Liz Gray - Compliance Officer** - Mrs. Gray coordinates our state-by-state compliance with current and evolving rules and regulations governing our business activity. This requires Liz to maintain current data on regulatory issues and interface on a day-to-day basis with federal and state regulatory agencies, industry professional associations such as the Life Insurance Settlement Association and our retained regulatory attorneys. Liz is, like all of our key staff members, a personal participant in re-sale policies and has assisted her own clients with this idea since October 2007. She brings to this crucial position over 20 years of experience as a paralegal and special legal assistant, including several years of supporting senior partners in the largest law firm in Washington, D.C.

**Tracy Moss - Manager of Licensee Development** - Ms. Moss coordinates, conducts and standardizes materials for telephone conference calls, webinars and field training for Licensees as well as oversee regulatory compliance among Licensees at the field level. Tracy performs these tasks from and travel from her current home-base in New Jersey. Tracy serves the needs of licensees based on over 20 years of experience as an insurance agent and as a sales manager, marketer and trainer within both the carrier and Field Marketing Organization segments of our industry. She earned her B.A. degree in Pre-Law & Sociology at Temple University in Philadelphia; received her L.L.T.C.F. designation while at Prudential Insurance Company; and has attended law school at Widener University.

**Katie Hensley - Manager of Licensee Services** - Mrs. Hensley is the primary point of contact for all Licensee matters at Retirement Value, LLC. Initial Licensing enrollment; ongoing administration of all commissions and authorizing of all commission payments; processing orders for all marketing materials and supplies; coordinating development of sales hierarchies; and between on compliance issues; ordering and administering all Licensee marketing materials - if it impacts Licensees and their relationship with Retirement Value, LLC Katie is in charge of that activity. Katie holds a Bachelor of Business Administration from Texas A&M University-Kingsville.

**DeAnne Lewis - Manager of Client Services** - Mrs. Lewis has quickly proved her value to the clients of Retirement Value, LLC and was rapidly promoted to Office Manager from receptionist and then to Manager of Client Services. Her expanding staff "scrubs" all in-bound client paperwork sent to us by the Escrow Agent and she coordinates the flow of all applications with the Escrow Agent and with the selected Custodian for all qualified funds. If we were a shipping company instead of a financial wholesaler, DeAnne's title would be "Traffic Manager".



Place  
Stamp  
Here

Unofficial copy Travis Co. District Clerk Velva L. Price





457 Landu Street, Suite B, New Braunfels, TX 78130 ♦ Phones: (830) 624-8858 / (210) 832-9040 ♦ Fax: (866) 498-4644 ♦ [www.retirementvalue.com](http://www.retirementvalue.com)

### **Check List for Non-Qualified Participation**

#### **Complete set of documents found online through Retirement Value, LLC:**

- \_\_\_\_\_ 1. Policy Participation Agreement
- \_\_\_\_\_ 2. Exhibit A
- \_\_\_\_\_ 3. Participant's Suitability Form (one for each Participant)
- \_\_\_\_\_ 4. Disclosure Acknowledgment (one for each Participant)
- \_\_\_\_\_ 5. Limited Power of Attorney (Client for RV, LLC)
- \_\_\_\_\_ 6. Special Power of Attorney (Client for Licensee)
- \_\_\_\_\_ 7. Form W-9 (please have Participant sign)
- \_\_\_\_\_ 8. Refer to Current 10-Case Brokerage Spreadsheet to verify amount of participation available for Client (download latest spreadsheet from [www.retirementvalue.com](http://www.retirementvalue.com) website)

#### **Items to be included from Client-Participant when completing forms:**

- \_\_\_\_\_ 9. 3-45% of Driver's License or other government-issued PHOTO ID  
(current driver's license – if current address is different, a letter of explanation is required)
- \_\_\_\_\_ 10. If Participant is a Trust or another entity, copies of at least the declaration page(s) and the signature pages(s).
- \_\_\_\_\_ 11. All checks are made payable to "Kiesling, Porter, Kiesling and Free, P.C., Escrow Account" and in the memo section of the check put FBO and the Participant's name (funds will be deposited at Wells Fargo Bank, N.A.)

Mail ALL paperwork to Kiesling, Porter, Kiesling and Free, P.C.  
348 East San Antonio Street,  
New Braunfels, TX 78130

[Please fill out all forms completely and call with any questions – (830) 624-8858]



457 Landa Street, Suite B, New Braunfels, TX 78130 ♦ Phones: (830) 624-8858 / (210) 832-9040 ♦ Fax: (866) 498-4644 ♦ [www.retirementvalue.com](http://www.retirementvalue.com)

## POLICY PARTICIPATION AGREEMENT

This Agreement is being entered into by and between:

Participant: \_\_\_\_\_  
(hereinafter referred to in the singular "Participant")

Address: \_\_\_\_\_  
(Street address) (City) (State) (Zip code)

Phone No.: \_\_\_\_\_ Cell No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

SSN: \_\_\_\_\_ DOB: \_\_\_\_\_ Marital Status: ☐ Single ☐ Married  
MM/DD/YYYY ☐ Divorced ☐ Widow(er)

Joint Participant (if any): \_\_\_\_\_  
(hereinafter referred to in the singular "Participant")

Address: \_\_\_\_\_  
(Street address) (City) (State) (Zip code)

Phone No.: \_\_\_\_\_ Cell No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

SSN: \_\_\_\_\_ DOB: \_\_\_\_\_ Marital Status: ☐ Single ☐ Married  
MM/DD/YYYY ☐ Divorced ☐ Widow(er)

and Retirement Value, LLC, a Texas limited liability company, whose principal address is 457 Landa Street, Suite B, New Braunfels, Texas 78130 (mailing address: P.O. Box 310635, New Braunfels, Texas 78131) (hereinafter referred to as "Agent").

WHEREAS, Agent is in the business of acquiring sole-ownership in re-sale life insurance policies acquired from various re-sale life insurance policy sources;

WHEREAS, Participant desires to facilitate acquisition by the Agent of one or more re-sale life insurance policies and participate on a pro-rata basis as an irrevocable co-beneficiary;

WHEREAS, Participant approves and adopts the standard(s) used by Agent to evaluate and qualify re-sale life insurance policies for Agent's investment purchase as sole owner of said re-sale life insurance policies;

WHEREAS, both parties understand and agree that the relationship of the Participant to the Agent is to provide funding to facilitate the acquisition of re-sale life insurance policies; and

WHEREAS, both parties understand and agree that this model of participation in a re-sale life insurance policy is not considered to be a security and therefore participation in a re-sale life insurance policy is not construed as the sale of a security by the Agent or the purchase of a security by the Participant.

NOW, THEREFORE, both parties wish to enter into a mutual agreement in which the Client will assist the Agent in acquiring, purchasing and becoming sole owner of certain re-sale life insurance policies through participation. The Client's participation is protected through and by an irrevocable co-beneficiary status in one or more re-sale life insurance policies pursuant to the Participant's instructions as set forth in Exhibit A of this Agreement.

#### **I. General Disclosure Statement - Terms of Agreement**

1.1 **Agreement.** You are entering into an Agreement whereby you will become a Participant in a re-sale life insurance policy(ies) of which Agent will be the sole owner and for which the law firm of Kiesling, Porter, Kiesling & Free, P.C., located at 348 East San Antonio Street, New Braunfels, Texas 78130 (hereinafter referred to as "Escrow Agent"), will become the Escrow Agent. As a Participant in a re-sale life insurance policy you will acquire a safeguarded irrevocable co-beneficiary status in the death benefit based upon your initial participation or basis plus a base-line expected gain paid for the use of your funds during the time outlined in this Agreement. Your participation in a policy will fund the following activities: (a) purchase of a re-sale life insurance policy(ies) by Agent; (b) payment of premiums by the Escrow Agent to maintain at all times the in-force status of the re-sale life insurance policy(ies) after purchase; (c) payment of administrative costs and fees associated with this transaction, including a "death tracking" service, commissions, Escrow Agent and bank fees, and interest payments as needed.

1.2 **Effective Date.** This Agreement shall not be effective until funds are transferred from Participant and received into the Escrow Account maintained by Escrow Agent at Wells Fargo, Bank, N.A., and the Agreement has been approved by Agent on a reasonable and timely basis.

1.3 **Insured.** The person whose life insurance policy has been sold is called the Insured and this person remains the Insured on a re-sale life insurance policy but no longer is the beneficiary for that policy. The Insured and his / her designated beneficiaries have given up all rights and interests in the re-sale life insurance policy. The Insured typically is of advanced age with a Life Expectancy ("LE") of between 3 and 10 years.

1.4 **Maturity.** Maturity of a policy is when the Insured passes away and written notice has been received by the Agent.

1.5 Policy Model. Re-sale life insurance policies are policies that have been sold already in the open market by the original Insured or the original owner, with the Agent as the new policy owner purchasing the death benefit of a life insurance policy at a discount to the "face value" or death benefit of the policy. The resale life insurance policy model developed by Agent is a private transaction in which one investor (Agent) buys policies from another investor (the policy supplier).

1.6 Policy Election. You may elect to be the irrevocable co-beneficiary for an entire re-sale life insurance policy, participate in only one policy, or spread your participation over several policies of your choosing. If you participate in one or more policies, understand that the Agent may obtain the balance of the purchase price and other associated costs, fees and expenses from additional participants. When the Insured passes away, you will receive the base-line expected gain for your pro-rata participation on that policy.

1.7 Policy Replacement. Understand it is possible that at the time you elect participation in any re-sale life insurance policy it may have been fully subscribed already. In this situation, Agent will notify your Licensee immediately and will, pursuant to the terms of this Agreement, offer a replacement policy of a similar or greater total value based on the policy face amount and the Life Expectancy of the Insured.

1.8 Net Income. Understand that no one can predict with 100% accuracy the actual Life Expectancy of the Insured. Some factors that may affect the accuracy of an LE prediction are: (a) the experience and qualification of the medical personnel setting the LE; (b) the nature of the Insured's illness(es) or health condition(s); (c) future improvements in medical treatment(s) and cures. In this context, your net earnings may vary substantially from the base-line expected gain because true net earnings will be higher if the Insured passes away earlier than the expected LE or it will be lower if the Insured passes away later than the expected LE. If the Insured passes away earlier than expected, you also will receive a pro-rata refund of your portion of the premium escrow amounts which were not used to pay premiums.

1.9 Tax Consequences. This transaction may have tax consequences for you. You are agreeing to participate with a sum of money upon which Agent will pay a base-line expected gain in accordance with this Agreement. The net earnings you receive will, in most cases, if not all, be considered a taxable gain to you. You will need to consult with your tax advisor regarding this transaction so that you completely understand the tax implications of the transaction.

1.10 Non-Liquid. Monies used for participation are not liquid during the entire term outlined in the Policy Participation Agreement. Therefore, great care should be exercised and great caution observed in determining a proper, balanced participation amount for use in this re-sale life insurance policy transaction.

1.11 Participant's Demise. Please note, especially, that if the Participant passes away during the term of this Agreement, alternate or contingent beneficiaries will inherit or acquire this Agreement. However, said Agreement must remain in force until maturity due either to: (a) the passing of the Insured or (b) pay-out by the insurer. The policy does not become a "cash disbursement" in the hands of any Participant or heir(s) until maturity occurs. The death of the Insured – not the death of the Participant – determines the maturity date of this transaction.

1.12 Full Disbursement. Whenever maturity occurs due to the passing of the Insured, even if the Insured's passing is prior to the expiration of the calculated LE, Participant will receive a full net disbursement of their original participation plus expected gains for the full term of this Agreement and will not be paid only a pro-rated partial return. Example: if the entire term of the policy is 48 months and the policy matures after 12 months due to the death of the Insured, the full 48-month expected gain will be paid to the Participant, as well as a pro-rata share of any unused premiums remaining in the escrow sub-account for that policy.

1.13 Premium Escrow Sub-account. In the event that the Insured lives beyond the Life Expectancy period plus twenty-four (24) months and the premium escrow sub-account has been depleted, then upon the depletion of said premium escrow sub-account, Participant will be contacted and requested, on a pro-rata share basis, to pay future premiums until the Insured passes away. If a contingent co-beneficiary(ies) has inherited the policy(ies) upon the passing of the Participant, the contingent co-beneficiary(ies) will be contacted and it will be the responsibility of the contingent co-beneficiary(ies) to pay future premiums in accordance with this paragraph. Failure of Participant to make premium payments into the premium escrow sub-account under these circumstances will result in total forfeiture of all their participation in this policy and will result in the loss of both the original basis amount and all base-line expected gain. In the event this occurs, Agent will then have the license to offer Participant's pro-rata portion in the policy to another person for payment of the necessary premium contribution amount. Participant also acknowledges Retirement Value, LLC or its Licensee provided very specific dollar amounts to illustrate this potential future risk.

Participant

Participant



## II. Affirmative Representations of Agent

2.1 The Agent is a viable company whose business activities include the purchase of re-sale life insurance policies. Agent has no prior knowledge of your investment experience or your financial wherewithal to fund this transaction. Your decision to enter into this transaction will be based on your own independent investigation, but Agent takes the following specific steps to safeguard the monies you advance for this transaction:

- (a) Only insurance carriers rated "A-" or better by A.M. Best are used for re-sale life insurance policies;
- (b) All funds are maintained in or pass through the Escrow Agent and are deposited in a cash or cash equivalent account with Wells Fargo, N.A., 1000 North Walnut Street, New Braunfels, Texas 78130 (hereinafter the "Escrow Account") in an FDIC-Insured account, to be used for the purpose of purchasing the re-sale life insurance policy and the payment of premiums and other necessary payments peculiar to the Agent taking ownership of a policy. Notwithstanding, re-sale life insurance policies are not endorsed by any bank; outcomes are not guaranteed by any bank; and, this is not an FDIC-Insured financial transaction;
- (c) Funds used to purchase any re-sale life insurance policy noted in this Agreement are transferred to and exclusively handled by Pacific Northwest Title Company of Oregon, 111 Southwest Columbia Avenue, Suite 200, Portland, Oregon 97201;

- (d) Monies accumulated for paying all premiums due for each of the re-sale life insurance policies are maintained in an escrow sub-account at Wells Fargo Bank, N.A. and administered by the Escrow Agent;
- (e) Interest from all Escrow Accounts will be the property of the Agent, being part of the Agent's fee structure and will not be owned by or distributed to Participant; and
- (f) Agent or its Escrow Agent will not in any way use Participant's participation money in any manner whatsoever other than what is directed by the Participant in this Agreement.

2.2 During the Term of this Agreement, Agent shall:

- (a) provide to Participant all documentation pertinent to the Participant's co-beneficiary interest in the policy;
- (b) provide a copy of this Agreement to the designated Escrow Agent; and
- (c) create and maintain accurate records on Participant that pertain to the participation in the policy and from time to time, as appropriate, provide reports to Participant.

2.3 No Additional Duties. Except as set forth in paragraph 2.2, Agent shall have no other duties or obligations to Participant other than to use reasonable efforts to assist Participant if requested.

2.4 Right to Grant Additional Interest. Agent may grant to additional Participants an interest in the policy, provided that Agent will not allow the combined interest to exceed the face amount or death benefit of the policy.

### **III. Affirmative Representations, Rights & Obligations of Participant**

3.1 Participant hereby confirms that he / she has read and understands the above. Participant further hereby confirms that \_\_\_\_\_ (Licensee) has explained fully a re-sale life insurance policy transaction together with all associated risks.

3.2 Free Will. Participant acknowledges that he / she has carefully examined his / her financial resources, investment objectives, and tolerance for risk and that after considering the benefits and risks associated with this transaction, Participant freely elected to enter into this transaction with Agent.

3.3 Due Diligence. Participant represents and warrants that Participant is sufficiently sophisticated in financial matters of this type to make an independent, informed, wise and balanced decision to participate in a re-sale life insurance policy and that this matter was thoroughly reviewed with his / her Retirement Value, LLC Licensee and Participant has had the opportunity to obtain such additional information necessary to verify the accuracy of the information contained herein and satisfy his / her due diligence efforts on this transaction in order for him / her to evaluate the merits and risks of this Agreement. Participant further represents and warrants that Participant has access to professional investment advice, has adequate means of providing for current and future financial needs and possible contingencies,

has no need for liquidity for these funds, is able to bear the risk of an interest in a policy(ies) for an indeterminate period of time, could afford a complete loss of this participation and is committing to a participation which bears a reasonable relationship to Participant's total net worth.

Participant

Participant

INITIAL HERE

3.4 Confidentiality. Participant will maintain the confidentiality of all medical and insurance information received in connection with participation on a policy(ies) and the Agent's purchase of the re-sale life insurance policy(ies) at issue in this transaction.

3.5 No Contact With Insured. Participant agrees not to contact the insured third-party named in the policy, and acknowledges that, under Texas law, only Agent (if Agent is a 'provider'), or the Agent's designee, can contact Insured to determine health status.

3.6 Buy and Hold. Participant understands and agrees that this Agreement is of a "buy and hold" nature; that there is no offer made or any offer implied of liquidity during the entire period of Agreement; that Agent offers no buy-back guarantee; that the Participant understands that even upon his / her death, a contingent beneficiary(ies) "inherit(s)" this Agreement but must wait for its full maturity before realizing any "cash distribution" from this re-sale life insurance policy program.

3.7 Waiver of Right to Disclosure. Participant waives any right of disclosure that Participant may possess from Agent relating to Agent's fees paid to its policy supplier, any broker, attorney, and / or necessary service company(ies), accountant(s) or consultant(s) in the acquisition of the policy.

3.8 Ownership Status. Participant represents and warrants that he / she will retain sole ownership in the pro-rata status in the policies that he / she is selecting and that Participant will not sell, assign or distribute his / her portion in said policies to any other person or entity.

3.9 Reliance on Agent or Licensee. Participant represents and warrants that he / she has not relied on Agent exclusively for any legal, tax or investment advice whether expressly stated, inferred or assumed, any statements, representations or warranties, whether verbal or in writing, made by Agent, its Licensees or employees, with respect to his / her decision to enter into this transaction. For example, if Participant lives in a community property state, the special, legal, and tax requirements of that state must be fully met with the assistance of their own advisors.

3.10 No Guarantee. Agent has not provided or guaranteed any of the following: (i) a specific return on investment; (ii) a specific amount to be paid to Participant, (iii) a "buy back" guarantee, or (iv) a specific date of Maturity.

3.11 Accuracy. Participant further represents that the information contained herein is true, complete and accurate and may be relied on by Agent in entering into the transaction described herein.

#### IV. Miscellaneous

4.1 Venue. Venue for any lawsuit arising out of this Agreement shall be in Comal County, Texas and, in the case of federal jurisdiction, in the United States District Court for the Western District of Texas, San Antonio Division.



4.2 Amendment. The terms and conditions of this Agreement may only be amended by a written instrument signed by the Parties.

4.3 No Waiver. Except as expressly provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any other rights or remedies provided by law or otherwise. Failure by a Party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such Party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. A waiver may only occur pursuant to the express written permission of an authorized officer of the Party against whom the waiver is asserted.

4.4 Severability. In the event any term, condition, or provision of this Agreement is declared or found by a court of competent jurisdiction to be illegal, unenforceable, or void, the Parties shall endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such amendments, such invalid term, condition, or provision shall be severed from the remaining terms, conditions, and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

4.5 Assignment. Except as otherwise provided herein, neither this Agreement nor any rights granted hereunder may be assigned or otherwise transferred by any Party, in whole or in part, whether voluntarily or by operation of law. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

4.6 Notices. Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by facsimile, and addressed as follows:

To Participant:

At the address for Participant as specified  
on page 1 of this Agreement

To Agent:

Retirement Value, LLC  
457 Landa Street, Suite B  
New Braunfels, Texas 78130  
Fax: (866) 498-4644

Mailing Address:

Retirement Value, LLC  
P.O. Box 310635  
New Braunfels, Texas 78131

Either Party may amend its address by written notice to the other Party in accordance with this section. Notices will be deemed to have been given at the time of actual receipt.

4.8 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties and supersedes and cancels, revokes, and rescinds all previous negotiations, agreements, and commitments, whether oral or in writing, with respect to the subject matter described herein, and neither party shall be bound by any term, clause, provision, or condition save

as expressly provided in this Agreement or as duly set forth in writing as a subsequent amendment to this Agreement, signed by duly authorized officers of each Party.

### **Mutual Agreement**

The Parties agree that this transaction will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Participant(s) and Agent agree that all claims, disputes, controversies, differences or other matters in question arising out of the relationship between Participant and Agent (and its officers, directors, agents and / or employees), related to this Agreement, or otherwise, shall be settled finally, completely and conclusively by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, by one or more arbitrators, chosen in accordance with the Rules. The decision of the arbitrator(s) shall be final and binding on all parties. Any arbitration held in accordance with this paragraph shall be private and confidential. On request of either party, the record of the proceeding shall be sealed and may not be disclosed except insofar, and only insofar, as may be necessary to enforce the award of the arbitrator(s). The prevailing party shall be entitled to recover all reasonable and necessary attorney's fees and costs from the non-prevailing party.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20 09.

**Participant:**

**Participant:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Participant's Name (Print)

\_\_\_\_\_  
Print Participant's Name (Print)

**RETIREMENT VALUE, LLC**  
a Texas limited liability company

By: \_\_\_\_\_  
Member

Dated: \_\_\_\_\_

|                      |                 |
|----------------------|-----------------|
| Licensee Information |                 |
| Name                 | Licensee Number |
| Fel                  | Fax             |
| Cell                 |                 |

## EXHIBIT A

Participant Name \_\_\_\_\_ Date \_\_\_\_\_  
 Joint Participant Name \_\_\_\_\_ Date \_\_\_\_\_

### Irrevocable Co-Beneficial Status to Protect Participation Funds

Participant desires to assist Agent to acquire, purchase and become sole owner of certain re-sale life insurance policies; will participate using \_\_\_\_\_ Dollars (US\$) \_\_\_\_\_  
 and agrees to participate with said funds to cover all costs associated with the following re-sale life insurance policies to be owned by Agent:

| R.V. LLC Policy Code | Policy Face \$ | Issuing Carrier   | Insured   | CLIENT PARTICIPATION | 16.5% | 12 mos | Base-line Expected Gain | VALUE AT MATURITY |
|----------------------|----------------|-------------------|-----------|----------------------|-------|--------|-------------------------|-------------------|
| LNL177-031909-WK     | \$1,500,000    | Lincoln National  | 70 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| AGL73L-031909-WK     | \$3,000,000    | American General  | 70 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| AXA804-031909-RM     | \$4,500,000    | AXA Equitable     | 68 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| AGL66L-071509-LB     | \$750,000      | American General  | 64 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| TRA281-071509-RJ     | \$1,500,000    | Transamerica      | 56 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| ING201-071509-AG     | \$5,000,000    | ING Life          | 55 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| LNL591-031909-DH     | \$1,000,000    | Lincoln National  | 55 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| AN1852-031909-HO     | \$5,000,000    | American National | 53 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| ING283-031909-AI     | \$2,000,000    | ING Life          | 43 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |
| OIML446-031909-RL    | \$2,000,000    | Old Mutual Life   | 40 months | \$0.00               | 16.5% | 12     | \$0.00                  | \$0.00            |

EVERY policy must show a dollar amount, even if the amount is \$0.00. Please INITIAL to the left of your participation election in the box below.

☐ I/We elect to place my/our total \$ \_\_\_\_\_ participation in EQUAL PORTIONS among all ten (10) policies listed for this booklet.  
☐ I/We elect to place my/our total \$ \_\_\_\_\_ participation in SELECTED AMOUNTS noted in the Exhibit above.

Retirement Value LLC has executed a Policy Purchase Agreement for every policy in this booklet. However, the sellers and withdrawal policies right until the insurance carrier complete the ownership change officially in their home-office records. If any of these policies are withdrawn or sold out, they will be replaced immediately with policies of comparable or higher client value.



457 Linda Street, Suite B, New Braunfels, TX 78130 ♦ Phone: (830) 624-8858 / (210) 832-9040 ♦ Fax: (866) 498-4644 ♦ [www.retirementvalue.com](http://www.retirementvalue.com)

## CONTINGENCY CO-BENEFICIARY DECLARATION FORM

NOTE: In the event of the death of the Participant and an irrevocable contingent co-beneficiary is notified by the Agent of their co-beneficiary status in a re-sale life insurance policy, said contingent co-beneficiary will produce to Agent a copy of a government issued ID, *i.e.*, driver's license, passport, as well as Form W-9 or Form W-8BEN. No payout of proceeds from a matured policy will be given to any contingent co-beneficiary without proper identification on file with the Agent.

|                          |                           |                 |  |                          |    |
|--------------------------|---------------------------|-----------------|--|--------------------------|----|
| Name:                    |                           |                 |  | Percentage of Ownership: | 0% |
| Address:                 |                           |                 |  |                          |    |
| City, State, Zip Code:   |                           |                 |  |                          |    |
| SS #:                    | DOB:                      | E-mail Address: |  |                          |    |
| Relation to Participant: | If Trust – date of Trust: |                 |  |                          |    |

|                          |                           |                 |  |                          |    |
|--------------------------|---------------------------|-----------------|--|--------------------------|----|
| Name:                    |                           |                 |  | Percentage of Ownership: | 0% |
| Address:                 |                           |                 |  |                          |    |
| City, State, Zip Code:   |                           |                 |  |                          |    |
| SS #:                    | DOB:                      | E-mail Address: |  |                          |    |
| Relation to Participant: | If Trust – date of Trust: |                 |  |                          |    |

|                          |                           |                 |  |                          |    |
|--------------------------|---------------------------|-----------------|--|--------------------------|----|
| Name:                    |                           |                 |  | Percentage of Ownership: | 0% |
| Address:                 |                           |                 |  |                          |    |
| City, State, Zip Code:   |                           |                 |  |                          |    |
| SS #:                    | DOB:                      | E-mail Address: |  |                          |    |
| Relation to Participant: | If Trust – date of Trust: |                 |  |                          |    |

|                          |                           |                 |  |                          |    |
|--------------------------|---------------------------|-----------------|--|--------------------------|----|
| Name:                    |                           |                 |  | Percentage of Ownership: | 0% |
| Address:                 |                           |                 |  |                          |    |
| City, State, Zip Code:   |                           |                 |  |                          |    |
| SS #:                    | DOB:                      | E-mail Address: |  |                          |    |
| Relation to Participant: | If Trust – date of Trust: |                 |  |                          |    |



457 Land# Street, Suite B, New Brunnfels, TX 78130 • Phones: (830) 674-8858 / (210) 832-9040 • Fax: (866) 998-4644 • [www.retirementvalue.com](http://www.retirementvalue.com)

The selected Irrevocable Contingent Co-Beneficiary(ies) will receive payouts at the percentages designated on ALL POLICIES SELECTED unless Participant otherwise notes. Please submit an additional copy of this form IF there will be different Irrevocable Contingent Co-Beneficiaries designated for other policies.

**Participant must designate one of the following:**

- ☐ If a Contingent Co-Beneficiary has died before the maturity of this policy, the estate of the Contingent Co-Beneficiary will receive the proceeds from the matured policy; or
- ☐ If a Contingent Co-Beneficiary has died before the maturity of this policy, that Contingent Co-Beneficiary's percentage of proceeds in the matured policy will be evenly distributed between or among the remaining Contingent Co-Beneficiary(ies).

As Participant in this re-sale life insurance policy, or on my demise I do hereby designate the above-named Contingent Beneficiary(ies) as holding an irrevocable Contingent Co-Beneficial interest in the policies listed above, and I do hereby transfer and assign irrevocably all right, title and interest in said policy to such Contingent Co-Beneficiary(ies). This designation will become effective only if the Agent is notified of Participant's death and a certified death certificate is provided to Agent.

**Participant:**

**Joint Participant:**

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**RETIREMENT VALUE, LLC**

a Texas limited liability company

By: \_\_\_\_\_

Member

Dated: \_\_\_\_\_



457 Lundy Street, Suite B, New Braunfels, TX 78130 • Phone: (830) 624-8858 / (210) 832-9040 • Fax: (830) 498-4644 • www.retirementvalue.com

## PARTICIPANT SUITABILITY FORM – ONE FOR EACH PARTICIPANT\*

### Client-Participant information:

Name: \_\_\_\_\_

(Individual Name / Trust / Company)

If Trust – date of Trust: \_\_\_\_\_

Spouse's Name: \_\_\_\_\_

I am of sound mind and am able to determine on my own that participating in this program is a correct use of a portion of my net worth. I can afford to participate in this program knowing that my participation is illiquid for an indeterminate period of time. I feel that I have sufficient knowledge and experience in business and financial matters to determine whether or not this is a good use of a portion of my funds.

Please initial each line below that applies to you:

### Investing Experience:

- \_\_\_\_\_ I have the experience to analyze and determine whether participation in certain investments is suitable for me.
- \_\_\_\_\_ If I feel it necessary, I will consult with a financial advisor before making any decisions.
- \_\_\_\_\_ I have in the past or presently am invested in stocks, bonds, and / or mutual funds traded on a national security exchange.
- \_\_\_\_\_ I have in the past or presently am invested in commodities or future contracts.
- \_\_\_\_\_ I have participated in other re-sale life insurance policies.
- \_\_\_\_\_ I have a relationship with partners or companies that invest in real estate.
- \_\_\_\_\_ I have other types of investments other than above.

|  |   |  |                                     |
|--|---|--|-------------------------------------|
| Individual Annual Income                               | <input type="checkbox"/> \$50,000-\$150,000 | <input type="checkbox"/> \$150,000-\$250,000 | <input type="checkbox"/> \$250,000+ |
| Total Household Income                                 | <input type="checkbox"/> \$50,000-\$150,000 | <input type="checkbox"/> \$150,000-\$250,000 | <input type="checkbox"/> \$250,000+ |
| Approximate Net Worth<br>(Excluding primary residence) | <input type="checkbox"/> \$50,000-\$150,000 | <input type="checkbox"/> \$150,000-\$250,000 | <input type="checkbox"/> \$250,000+ |

This section to be completed ONLY if an ADVISOR other than Retirement Value, LLC or its Licensed Broker/Agent is assisting with this application.

- ☐ I have a professional advisor who is not affiliated with Retirement Value, LLC in any way and who has sufficient knowledge in business and financial matters to advise me in connection with my participation in this product and to determine that this is a viable option for a portion of my money.

Professional Advisor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Title: \_\_\_\_\_

☐ This section to be completed ONLY if Participant is a TRUST.

As the Trustee of a Trust, the Trust is interested in participating in the re-sale life insurance policies offered by Retirement Value, LLC and in receiving a pro-rata irrevocable co-beneficiary share of the death benefit of one or more of the policies for the Trust. I represent the following (please check any and all statements that pertain to you):

- ☐ I represent and warrant that I have full authority to enter into any agreement on behalf of the Trust. I am able to determine that participating in this program is a correct use of a portion of the net worth of the Trust. The Trust can afford to participate in this program knowing that the participation is illicit for an indeterminate period of time. I feel that I have sufficient knowledge and experience in business and financial matters to determine whether or not this is a good use of a portion of the Trust's funds.

- ☐ The Trust has a professional advisor who is not affiliated with Retirement Value, LLC in any way and who has sufficient knowledge in business and financial matters to advise me in connection with the Trust's participation in this product and to determine that this is a viable financial option for the Trust.

Professional Advisor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Title: \_\_\_\_\_

## REPRESENTATIONS AND WARRANTIES

I represent that I have carefully read and examined the Policy Participation Agreement and determined that participation in one or more re-sale life insurance policies is appropriate and suitable for me. I understand the risks involved as explained by our Licensee. Understanding that participation in a re-sale life insurance policy is not liquid, I have adequate means to provide for day-to-day financial needs and would be able to meet financial obligations without this monetary participation. I represent that I can bear the financial risk for an indefinite period of time. I represent and warrant that I have read this Suitability Form and represent and warrant that the information contained in it is true, correct and accurate and may be relied on by Retirement Value, LLC.



\_\_\_\_\_  
Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
\*Joint Participant (only if Spouse of above Participant)

\_\_\_\_\_  
Date





457 Landa Street, Suite B, New Braunfels, TX 78130 ♦ Phones: (830) 624-8858 / (210) 837-9040 ♦ Fax: (866) 498-4644 ♦ [www.retirementvalue.com](http://www.retirementvalue.com)

## **DISCLOSURE ACKNOWLEDGMENT**

*Please read carefully before initialing.*

1.     \_\_\_/\_\_\_     I have received and reviewed a Suitability Form and the Policy Participation Agreement describing the nature and risks associated with the participation in a re-sale life insurance policy.
2.     \_\_\_/\_\_\_     I understand the undersigned financial consultant\* (if such is signing) is my financial consultant, and is not an agent, employee, or representative of Retirement Value, LLC ("Retirement Value"). I further understand that any representations, advice, opinions or recommendations made by the undersigned financial consultant are his / hers alone and not the representations, advice, opinions or recommendations of Retirement Value, LLC.
3.     \_\_\_/\_\_\_     I understand that any projected base-line expected gain from this transaction is calculated based on an estimated life expectancy for the person insured under the policy; that the actual earnings may vary substantially from the base-line expected gain because the actual life of the insured almost certainly will be less than or greater than rather than exactly equal to the estimated life expectancy; the net actual earnings will be higher if the insured passes away earlier than the life expectancy and lower if the insured passes away later than the life expectancy – due to the pro-rata refund of un-used premiums or having had to pay a pro-rata share of premiums due.
4.     \_\_\_/\_\_\_     I understand that the insured in whose life insurance policy I am participating may outlive me, particularly if I am of advanced age.
5.     \_\_\_/\_\_\_     I have been advised to consult my own tax advisor regarding the tax consequences of participating in a re-sale life insurance policy.
6.     \_\_\_/\_\_\_     I understand and have been advised that I have the right to rescind or cancel my participation in any re-sale life insurance policy for ten (10) calendar days even after Retirement Value, LLC has received and accepted my application for participation and that if I elect to rescind my participation to receive a full refund of all initial participation funds without penalty or fee of any kind.

7. \_\_\_\_/\_\_\_\_ I understand that re-sale life insurance policies are illiquid, that I will not have access to the funds used to participate in the re-sale life insurance policies until the policies mature due to the death of the insured, and that no one can determine with exact certainty when any policy will mature. Accordingly, I have determined that I have sufficient liquid assets or other income to provide for daily and emergency needs and thus can bear the risk of participating in these re-sale life insurance policies and not having access to these funds for an indeterminate period of time.

8. \_\_\_\_ / All of my questions concerning the re-sale life insurance policies I am considering have been answered. I understand the risk involved and have decided to participate with the understanding that any earnings on these policies will be realized by my estate, heirs or devisees should I pass away before the insured.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_, 2009.

PARTICIPANT

PARTICIPANT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

FINANCIAL CONSULTANT\*

\_\_\_\_\_  
Signature

\* **NOT** a Retirement Value LLC Licensee.



457 Landis Street, Suite B, New Braunfels, TX 78130 ♦ Phone: (830) 624-8838 / (210) 832-9040 ♦ Fax: (866) 498-4644 ♦ [www.retirementvalue.com](http://www.retirementvalue.com)

**LIMITED POWER OF ATTORNEY**  
**RETIREMENT VALUE, LLC / CLIENT-PARTICIPANT**  
(Additional Powers of Attorney's required for each Participant)

This Power of Attorney is made by and between \_\_\_\_\_  
(hereinafter referred to as "Participant") and Retirement Value, LLC (hereinafter referred to as  
"Agent" or "Attorney in-fact") appointing Retirement Value, LLC as Participant's true and lawful  
Agent and Attorney-in-fact for transacting Participant's acquisition of an irrevocable co-beneficiary  
status in a re-sale life insurance policy(ies).

My Attorney-in-fact is hereby authorized to act for me in my name, place and stead, and for  
my use and benefit, and to do, execute, or to concur with persons jointly interested with myself therein  
in the doing or executing of all or any of the acts, deeds and things set forth below as if same were  
my acts and deeds. My Attorney-in-fact shall have the following powers:

1. A. Enter into any and all contracts, agreements or documents necessary to facilitate  
the purchase by the Agent of a re-sale life insurance policy or policies or certificate(s) if a group  
policy in which I shall acquire an irrevocable co-beneficiary status through a Policy Participation  
Agreement executed by me.

B. Complete, record and file any document(s) necessary for the transfer of ownership  
with the insurance carrier and / or irrevocable assignment of co-beneficiary status with the Escrow  
Agent of the purchased re-sale life insurance policy or certificate(s) if a group policy through a Policy  
Participation Agreement executed by me.

C. Concerning the disbursement of funds by the Escrow Agent, instruct and direct  
Escrow Agent in the funding or purchase of a policy or policies, payment of premiums to maintain  
said policy or policies in an in-force status, payment of any and all administrative, bank and escrow  
fees, including commissions, that are associated with the purchase of a re-sale life insurance policy or  
policies or certificate(s) if a group policy in which I shall acquire an irrevocable co-beneficiary status  
through a Policy Participation Agreement executed by me.

D. Do any and all other actions that may be necessary to facilitate the acquisition of a policy or policies designated by a Policy Participation Agreement executed by me.

E. Notify Participant of any additional premium monies needed if it becomes necessary for the Participant to contribute additional funds to keep the re-sale life insurance policy designated by a Policy Participation Agreement executed by me in-force.

F. Upon the death of any insured, obtain the death certificate and instruct the Escrow Agent as to the disbursement of the death benefit to the Participant or the Participant's designee.

G. If for whatever reason Escrow Agent resigns or terminates its contract with Agent, Agent can appoint another escrow agent to take its place and Agent can transfer all funds and related records to the successor escrow agent and the successor escrow agent shall then assume all duties and obligations of the Escrow Agent. The Escrow Agent shall have no liability for the successor escrow agent.

2. This Power of Attorney is for the sole purpose of designating Agent as the Participant's Attorney-in-fact for the purpose of purchasing a re-sale life insurance policy(ies) to be owned by the Agent, to facilitate the acquisition and maintaining of an irrevocable co-beneficiary standing by the Participant through the Escrow Agent with regard to said policy or policy(ies), and shall convey no other authority.

3. This Power of Attorney DOES NOT give license to Attorney-in-fact to change in any way the designation of the Participant's contingent irrevocable co-beneficiary(ies) for any re-sale life insurance policy designated by a Policy Participation Agreement executed by me.

4. This Power of Attorney DOES NOT give Agent authority to take any action to deny or deprive Participant of Participant's irrevocable co-beneficiary status in any policy or policies without specific instructions from Participant.

5. This Power of Attorney DOES NOT give Attorney-in-fact authority to disburse Participant's funds for any purpose not specifically delineated within this Power of Attorney.

6. This Power of Attorney may be terminated at any time by either party with written notice to that effect.

7. This Power of Attorney represents the entire and sole agreement between the Parties hereto with all provisions to be enforced as provided herein. No other representations, agreements or covenants, whether written or oral, shall govern this relationship.

**RETIREMENT VALUE, LLC**

a Texas limited liability company

**Participant**



By: \_\_\_\_\_  
Member

\_\_\_\_\_  
Signature

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Dated: \_\_\_\_\_

Unofficial copy Travis Co. District Clerk Velda L. Price



457 Landa Street, Suite B, New Braunfels, TX 78130 ♦ Phone: (830) 624-8858 / (210) 832-9040 ♦ Fax: (855) 498-4666 ♦ [www.retirementvalue.com](http://www.retirementvalue.com)

**SPECIAL POWER OF ATTORNEY**  
**LICENSEE / CLIENT-PARTICIPANT**

~~(Special Power of Attorney is required for each Participant)~~

The undersigned ("Client-participant") hereby appoints ("Licensee") as its Agent and Attorney-in-fact to review, evaluate, and direct Retirement Value, LLC ("Retirement Value") as to Client-participant's participation in a re-sale life insurance policy on the Client-participant's behalf. In all such participation, Retirement Value, LLC is authorized to follow the instructions of Client-participant's Agent in every respect concerning the Client-participant, and is authorized to act for the Client-participant and in the Client-participant's behalf in the same manner and with the same force and effect as Client-participant might or could with respect to any such participation, as well as with respect to all other things necessary or incidental to the furtherance or conduct of such participation or the maintenance or protection of any interest in any re-sale life insurance policy which Client-participant selects.

Client-participant hereby acknowledges that Retirement Value, LLC will rely on this authorization in taking instruction and direction from Client-participant's Agent on behalf of the Client-participant. Client-participant agrees to indemnify and hold Retirement Value, LLC harmless from any and all claims or damages whatsoever arising out of compliance with instructions or directions issued by Client-participant's Agent pursuant to Agent's authorization.

Retirement Value, LLC does not by implication or otherwise endorse the operational methods of Agent. Client-participant further understands that Retirement Value, LLC relies on the direction and instruction of Client-participant as to the selection and amount of any re-sale life insurance policy interest participated in and that, by granting this power to Client-participant's Agent to exercise Client-participant's rights of discretion and instruction to Retirement Value, LLC, Client-participant does so at its own risk.

Client-participant hereby ratifies and confirms any and all transactions with Retirement Value, LLC heretofore and hereafter made by Client-participant's Agent on behalf of the Client-participant.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which Retirement Value, LLC may have under any other agreement or agreements between the Client-participant and Retirement Value, LLC. This authorization and indemnity is continuing, and shall remain in full force and effect until revoked by the Client-participant via written notice addressed to and received by Retirement Value, LLC at 457 Landa Street, Suite B, New Braunfels, Texas 78130 (mailing address: P.O. Box 310635, New Braunfels, Texas 78131-0635). Any such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

This authorization and indemnity shall inure to the benefit of Retirement Value, LLC and any successors or assigns.

Client-participant understands fully the obligations which Client-participant has assumed by executing this Power of Attorney. Client-participant understands that Client-participant's Agent is not an agent, employee, partner or affiliate of Retirement Value, LLC and that Retirement Value, LLC is in no way responsible for any loss or damages occasioned by the actions or advice of the individual or organization named above.

**Licensee**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Dated: \_\_\_\_\_

**Client-Participant**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Dated: \_\_\_\_\_



## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership

☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....

☐ Other (see instructions) ▶

☐ Exempt  
payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the Instructions on page 4.

Sign  
Here

Signature of  
U.S. person ▶

SIGN HERE

Date ▶

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person and pay the withholding tax. **Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.**

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY

Robert R. Di Troia, Clerk  
U.S. DIST. COURT  
W.D. OF TN - MEMPHIS

03-204335 V  
GR. NO. \_\_\_\_\_

UNITED STATES OF AMERICA,

PLAINTIFF,

vs.

GEORGE KINDNESS,  
AND  
AMSCOT MEDICAL LABS, INC.  
(A CORPORATION)

DEFENDANTS.

18 U.S.C., § 2  
18 U.S.C., § 37  
21 U.S.C., § 321(a)  
21 U.S.C., § 333(a)(2)

INDICTMENT

THE GRAND JURY CHARGES

COUNT 1:

INTRODUCTION

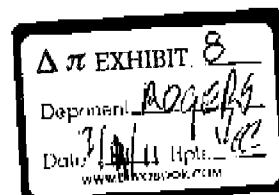
The Food, Drug, and Cosmetic Act

1. The United States Food and Drug Administration (hereinafter "FDA") is the federal agency within the United States Department of Health and Human Services (hereinafter "DHHS") charged with the responsibility for protecting the health and safety of the American public by ensuring that drugs are safe and effective for their intended uses before they may be legally marketed in interstate commerce. In order to legally market a drug in interstate commerce, the drug's manufacturer must comply with all applicable provisions of the Federal Food, Drug, and Cosmetic Act (hereinafter "the Act"), 21 U.S.C. § 321, et seq., and its implementing regulations.

2. The Act prohibits causing the introduction or delivery for introduction into

CERTIFIED TRUE COPY  
THOMAS M. GOULD, CLERK  
BY *Thomas M. Gould*  
DEPUTY CLERK

TSSB 090073



interstate commerce of misbranded drugs and introducing or delivering for introduction into interstate commerce misbranded drugs. 21 U.S.C. § 331(a).

3. The Act defines drugs to include articles intended for use in the cure, mitigation, treatment, or prevention of disease in man or other animals or intended to affect the structure or any function of the human body and components of such articles. 21 U.S.C. § 321(g). The term "drug" includes "articles intended for use as a component" of the drug. 21 U.S.C. § 321(g)(1)(D). "Components" are further defined to include "any ingredient intended for use in the manufacture of a drug product." 21 C.F.R. § 210.3(b)(3).

4. Certain autologous vaccines manufactured by Defendant AMSCOT MEDICAL LABS, INC., commonly known as Gene Activated Therapy (GAT) and Theracine, (hereinafter one or more of these substances are sometimes referred to generically as "Defendant AMSCOT's autologous vaccines") were intended for use in the cure, mitigation, treatment, or prevention of disease in man and were drugs within the meaning of the Act, 21 U.S.C. §§ 321(g)(1)(B);

5. Under the Act, a drug is deemed to be misbranded for any one of a number of reasons. Relevant to this indictment, a drug is misbranded if it fails to bear adequate directions for its use, 21 U.S.C. § 352(f)(1).

6. A drug is "adulterated" if: 1) if it has been prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or 2) if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good

manufacturing practice to assure that such drug meets the requirements of the Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess. 21 U.S.C. § 351(a)(2), (B) and (C).

#### **The Defendants**

7. Defendant GEORGE KINDNESS, currently a resident of Middletown, Ohio, was president and part-owner of Defendant AMSCOT MEDICAL LABS, INC., from January 2, 1992, to the date of this indictment. Defendant GEORGE KINDNESS has also been the lab director of Defendant AMSCOT from January 2, 1992, to present and active in the day-to-day operation of the business.

8. From on and after January 2, 1992, to the date of this indictment, Defendant AMSCOT MEDICAL LABS, INC. was an Ohio for-profit corporation part-owned and operated by Defendant GEORGE KINDNESS, with its principal place of business initially in Hamilton, OH and later in Cincinnati, OH.

#### **The Conspiracy Charge**

9. From in or about September 1997, through in or about April 2001 in the Western District of Tennessee, and elsewhere, defendants did knowingly and intentionally combine, conspire, confederate and agree together and with diverse other persons both known and unknown to the Grand Jury to violate laws of the United States, to wit, introducing and delivering and causing the introduction and delivery into interstate commerce of misbranded and adulterated drugs with the intent to defraud or mislead in violation of 21 U.S.C. §§ 331(a) and 333(a)(2).

10. On or about April 12 – 13, 1999, FDA conducted an inspection of Defendant AMSCOT, located at 11365 Williamson Road., Cincinnati, Ohio, pursuant to its regulatory authority, 21 U.S.C. 374. The FDA discovered that Defendant AMSCOT had been and was currently manufacturing autologous vaccines from cancer patients' own tumor tissue and blood samples. The vaccines were intended as a treatment for cancer. The patients were administered these vaccines. The vaccine was being administered to patients as part of a study known as the Gene Activated Therapy (GAT) study.

11. Unnamed co-conspirator 1 was the clinical investigator for the GAT study and had an office located in Memphis, Tennessee.

12. The FDA inspection revealed that unnamed co-conspirator 1 would prescribe the vaccine for the cancer patients. Unnamed co-conspirator 1 would extract or cause to be extracted a blood and/or tumor tissue sample from the patients and subsequently ship the samples in interstate commerce to Defendant AMSCOT. Defendant AMSCOT, under the direction of Defendant GEORGE KINDNESS, would process the blood and tumor samples into a finished vaccine. The vaccine was then shipped in interstate commerce from Defendant AMSCOT in Cincinnati to either unnamed co-conspirator 1 in Memphis or directly to patients and/or others in states other than Tennessee. Defendant AMSCOT and Defendant GEORGE KINDNESS were informed by FDA investigators during the inspection that the GAT study required an Investigational New Drug Application (IND) to be in effect. Defendant GEORGE KINDNESS was informed by FDA investigators that conducting the GAT study without an IND in effect was a violation of the Food, Drug, and Cosmetic Act.

13. On or about April 15, 1999, Defendant AMSCOT submitted an IND application for the GAT study to the FDA. Defendant AMSCOT was listed as the study sponsor and vaccine production site in the IND application. The IND for the GAT study was never approved by FDA.

14. On or about May 14, 1999, FDA placed the IND for the GAT study on clinical hold. A clinical hold requires that all clinical work requested under an IND is either delayed or suspended until the IND is approved. (See 21 CFR 312.42(a)).

15. On or about December 7 – 9, 1999, the FDA inspected unnamed co-conspirator 1's office in Memphis. The FDA learned that after the IND for the GAT study was placed on hold, unnamed co-conspirator 1 continued to treat patients taking part in the GAT study with the same autologous tumor vaccine manufactured by Defendant AMSCOT. The FDA also learned that unnamed co-conspirator 1 had treated patients with an almost identical vaccine called Theracine. Like the GAT study vaccine, the Theracine was also manufactured by Defendant AMSCOT. The FDA had neither received, evaluated nor approved an IND application for the study of the Theracine vaccine.

16. On or about May 2 – 10, 2000, the FDA inspected Defendant AMSCOT and found evidence that since June 1999 Defendant AMSCOT had been manufacturing Theracine. Defendant GEORGE KINDNESS acknowledged in a sworn statement to FDA investigators on May 10, 2000, that an IND for Theracine had not been submitted to the FDA. The inspection also revealed that 63 Theracine vaccines had been processed since November 14, 1999, all of which were shipped to unnamed co-conspirator 1 and others prior to performing sterility, endotoxin and mycoplasma testing.

### **OBJECTS OF THE CONSPIRACY**

17. It was the object of the conspiracy: (A) to produce and distribute in interstate commerce to health care professionals and consumers misbranded drugs, i.e. one or more autologous vaccines, with the intent to deceive or defraud, and (2) to produce and distribute in interstate commerce to health care professionals and consumers adulterated drugs, i.e. one or more of autologous vaccines, with the intent to deceive or defraud, in violation of 21 U.S.C., Section 331(a) and 333(a)(2).

### **OVERT ACTS**

18. In furtherance of the conspiracy and to effect the objects thereof, defendants and others known and unknown to the Grand Jury committed and caused to be committed the following overt acts, among others, in the Western District of Tennessee, and elsewhere:

A. On or about April 12, 1999 and during the course of FDA's inspection at Defendant AMSCOT, Defendant GEORGE KINDNESS falsely represented to FDA investigators that he had an M.D. in general medicine.

B. On or about January 5, 2000, unnamed co-conspirator 1 of Memphis, Tennessee, sent a blood sample and tumor biopsy drawn from patient GN to Defendant AMSCOT for the purpose of manufacturing an injectable biologic to be administered to patient GN for the treatment of cancer.

C. On or about January 12, 2000, certain employees at Defendant AMSCOT at the direction of Defendant AMSCOT owner Defendant GEORGE KINDNESS, processed the blood and tumor of patient GN into an injectable biologic

called Theracine.

D. On or about January 12, 2000, Defendant GEORGE KINDNESS caused to be transported via United Parcel Service ("UPS") the Theracine biologic manufactured from the blood and tumor of patient GN to unnamed co-conspirator 1 in Memphis for the purpose of administering it to patient GN for the treatment of cancer.

E. On or about January 6, 2000, unnamed co-conspirator 1 of Memphis, Tennessee, sent a blood sample and tumor biopsy drawn from patient KS to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient KS for the treatment of cancer.

F. On or about January 13, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS, processed the blood and tumor of patient KS into the injectable biologic Theracine.

G. On or about January 17, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine manufactured from the blood and tumor of patient KS to unnamed co-conspirator 1 in Memphis for the purpose of administering it to patient KS for the treatment of cancer.

H. On or about February 4, 2000, unnamed co-conspirator 1 of Memphis, Tennessee, sent a blood sample and tumor biopsy from patient KN to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient KN for the treatment of cancer.

I. On or about February 11, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS, processed the blood and tumor of patient KN into the injectable biologic Theracine.

J. On or about February 14, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient KN to unnamed co-conspirator 1 in Memphis for the purpose of treating patient KN for cancer.

K. On or about February 8, 2000, unnamed co-conspirator 1 in Memphis, Tennessee, caused to be transported to Defendant AMSCOT a blood sample and tumor biopsy from patient SW for the purpose of manufacturing Theracine to be administered to patient SW for the treatment of cancer.

L. On or about February 16, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient SW into the injectable biologic Theracine.

M. On or about February 16, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient SW to unnamed co-conspirator 1 in Memphis, Tennessee, for the purpose of administering the Theracine to patient SW for the treatment of cancer.

N. On or about February 21, 2000, unnamed co-conspirator 1 in Memphis caused a blood sample and tumor biopsy from patient YJ to be transported to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient YJ for the treatment of cancer.

O. On or about February 26, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient YJ into the injectable biologic Theracine.

P. On or about February 29, 2000, Defendant GEORGE KINDNESS



caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient YJ to unnamed co-conspirator 1 in Memphis for the purpose of administering the Theracine to patient YJ for the treatment of cancer.

Q. On or about February 21, 2000, unnamed co-conspirator 1 in Memphis caused a blood sample and tumor biopsy from patient RL to be transported to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient RL for the treatment of cancer.

R. On or about February 27, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient RL into the injectable biologic Theracine.

S. On or about February 29, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient RL to unnamed co-conspirator 1 in Memphis for the purpose of administering the Theracine to patient RL for the treatment of cancer.

T. On or about February 29, 2000, unnamed co-conspirator 1 in Memphis caused a blood sample and tumor biopsy from patient DP to be transported to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient DP for the treatment of cancer.

U. On or about March 8, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient DP into the injectable biologic Theracine.

V. On or about March 8, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of

patient DP to unnamed co-conspirator 1 in Memphis for the purpose of administering the Theracine to patient DP for the treatment of cancer.

W. On or about March 23, 2000, unnamed co-conspirator 1 in Memphis caused to be transported to Defendant AMSCOT a blood sample and tumor biopsy from patient SD for the purpose of manufacturing Theracine to be administered to patient SD for the treatment of cancer.

X. On or about March 31, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient SD into the injectable biologic Theracine.

Y. On or about April 3, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient SD to unnamed co-conspirator 1 in Memphis for the purpose of administering the Theracine to patient SD for the treatment of cancer.

Z. On or about March 28, 2000, unnamed co-conspirator 1 in Memphis caused to be transported to Defendant AMSCOT a blood sample and tumor biopsy from patient VM for the purpose of manufacturing Theracine to be administered to patient VM for the treatment of cancer.

AA. On or about April 5, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient VM into the injectable biologic Theracine.

BB. On or about April 5, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient VM to unnamed co-conspirator 1 in Memphis for the purpose of administering

the Theracine to patient VM for the treatment of cancer.

CC. On or about March 29, 2000, unnamed co-conspirator 1 in Memphis sent a blood sample and tumor biopsy from patient EP to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient EP for the treatment of cancer.

DD. On or about April 6, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient EP into the injectable biologic Theracine.

EE. On or about April 6, 2000, Defendant GEORGE KINDNESS caused to be transported via UPS the Theracine processed from the blood and tumor samples of patient EP to unnamed co-conspirator 1 in Memphis for the purpose of administering the Theracine to patient EP for the treatment of cancer.

FF. On or about June 7, 2000, unnamed co-conspirator 1 in Memphis caused to be transported a blood sample and tumor biopsy from patient GN to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient GN for the treatment of cancer.

GG. On or about June 19, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient GN into the injectable biologic Theracine.

HH. On or about June 27, 2000, Defendant AMSCOT transported via UPS the Theracine from the blood and tumor samples of patient GN to unnamed co-conspirator 1 in Memphis to be administered to patient GN for the treatment of cancer.

II. On or about June 13, 2000, unnamed co-conspirator 1 in Memphis

caused a blood sample and tumor biopsy from patient GK to be transported to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient GK for the treatment of cancer.

JJ. On or about June 21, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient GK into the injectable biologic Theracine.

KK. On or about June 28, 2000, Defendant GEORGE KINDNESS shipped Theracine processed from the blood and tumor samples of patient GK to unnamed co-conspirator 1 in Memphis for the purpose of administering it to patient GK for the treatment of cancer.

LL. On or about June 26, 2000, and July 5, 2000, Defendant GEORGE KINDNESS caused a Defendant AMSCOT employee to ship Theracine via UPS to unnamed co-conspirator 1 in Memphis.

MM. On or about June 30, 2000, unnamed co-conspirator 1 caused to be transported a blood sample and tumor biopsy from patient RB to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient RB for the treatment of cancer.

NN. On or about July 10, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient RB into the injectable biologic Theracine.

OO. On or about June 30, 2000, unnamed co-conspirator 1 in Memphis transported a blood sample and tumor biopsy from patient CH to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient CH for the

treatment of cancer.

PP. On or about July 10, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient CH into the injectable biologic Theracine.

QQ. On or about July 14, 2000, unnamed co-conspirator 1 in Memphis transported a blood sample and tumor biopsy from patient JM to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient JM for the treatment of cancer.

RR. On or about July 25, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient JM into the injectable biologic Theracine.

SS. On or about July 26, 2000, Defendant GEORGE KINDNESS provided the Theracine processed from the blood and tumor samples of patient JM to unnamed co-conspirator 1 in Memphis for the purpose of having it administered to patient JM for the treatment of cancer.

TT. On or about July 20, 2000, unnamed co-conspirator 1 in Memphis transported a blood sample and tumor biopsy from patient JS to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient JS for the treatment of cancer.

UU. On or about July 31, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient JS into the injectable biologic Theracine.

VV. On or about August 7, 2000, Defendant GEORGE KINDNESS caused

to be provided the Theracine processed from the blood and tumor samples of patient JS to unnamed co-conspirator 1 in Memphis for the purpose of administering it to patient JS for the treatment of cancer.

WW. On or about August 2, 2000, unnamed co-conspirator 1 in Memphis transported a blood sample and tumor biopsy from patient AF to Defendant AMSCOT for the purpose of manufacturing Theracine to be administered to patient AF for the treatment of cancer.

XX. On or about August 11, 2000, certain employees at Defendant AMSCOT at the direction of Defendant GEORGE KINDNESS processed the blood and tumor sample of patient AF into the injectable biologic Theracine.

YY. On or about August 18, 2000, Defendant GEORGE KINDNESS caused to be provided the Theracine processed from the blood and tumor samples of patient AF to unnamed co-conspirator 1 in Memphis for the purpose of administering it to patient JS for the treatment of cancer.

ZZ. On or about August 3, 2000, Defendant GEORGE KINDNESS caused to be shipped via UPS Theracine processed from the blood and tumor tissue of patient RL to unnamed co-conspirator 1 in Memphis for the purpose of administering the Theracine to patient RL for the treatment of cancer.

AAA. On or about November 3, 2000, and during the course of an FDA inspection of Defendant AMSCOT, Defendant GEORGE KINDNESS falsely stated to FDA investigators that he had only manufactured Theracine for previous Theracine patients and that he did not maintain certain records documenting the manufacture of Theracine batches after approximately May 10, 2000.

BBB. During the course of the FDA inspection of Defendant AMSCOT from on or about October 29 to November 3, 2000, Defendant GEORGE KINDNESS instructed a Defendant AMSCOT employee to conceal vaccine log pages documenting the manufacture of Theracine from after May 19, 2000, from the FDA investigators. The vaccine logs were not inspected by the FDA during the inspection.

All in violation of 18 U.S.C. § 371

**COUNTS 2 THROUGH 11**

19. The allegations as set forth in paragraphs 1 through 8 and 10 through 16 in Count 1 of this Indictment are incorporated by reference as if fully rewritten herein.

20. On or about the following dates as set forth for each count, within the Western District of Tennessee, and elsewhere, Defendant AMSCOT and Defendant GEORGE KINDNESS, being aided and abetted by others, known and unknown to the grand jury, did, with the intent to defraud and mislead, introduce and deliver for introduction into interstate commerce and cause to be introduced and delivered for introduction into interstate commerce, a drug that was misbranded within the meaning of 21 U.S.C. § 352(f)(1), in that its labeling did not bear adequate directions for use:

**Count Number**

**Date of Violation**

2

January 12, 2000

3

January 17, 2000

4

February 14, 2000

5

February 16, 2000

|    |                   |
|----|-------------------|
| 6  | February 29, 2000 |
| 7  | March 8, 2000     |
| 8  | April 3, 2000     |
| 9  | April 5, 2000     |
| 10 | April 6, 2000     |
| 11 | August 3, 2000    |

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(2) and 18 U.S.C. § 2.

**COUNTS 12 THROUGH 21**

21. The allegations as set forth above in this indictment in paragraphs 1 through 8 and 10 through 16 in Count 1 of this indictment are incorporated by reference as if fully rewritten herein.

22. On or about the following dates as set forth for each count, within the Western District of Tennessee, and elsewhere, Defendant AMSCOT and Defendant GEORGE KINDNESS, being aided and abetted, by persons known and unknown to the grand jury, did, with the intent to defraud and mislead, introduce and deliver for introduction into interstate commerce and cause to be introduced and delivered for introduction into interstate commerce, a drug that was adulterated within the meaning of 21 U.S.C. § 351(a)(2)(B), in the methods used in, and the facilities and controls used for, its manufacture, processing, packing and holding did not conform to and were not operated and administered in conformity with then current good manufacturing practices to assure that such drug met the requirements of the Act as to safety and had the identity and



strength, and met the quality and purity characteristics, which it was purported and represented to possess:

| <u>Count Number</u> | <u>Date of Violation</u> |
|---------------------|--------------------------|
| 12                  | January 12, 2000         |
| 13                  | January 17, 2000         |
| 14                  | February 14, 2000        |
| 15                  | February 16, 2000        |
| 16                  | February 25, 2000        |
| 17                  | March 8, 2000            |
| 18                  | April 1, 2000            |
| 19                  | April 5, 2000            |
| 20                  | April 6, 2000            |
| 21                  | August 3, 2000           |

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(2) and 18 U.S.C. § 2.

A TRUE BILL:

Carroll (Jim) L. Price  
Grand Jury Foreperson

DATED: 11-19-03

Lawrence J. Lawrence  
Assistant United States Attorney  
Western District of Tennessee

FILED IN OPEN COURT

DATE: 7/6/05

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

TIME: 1:45 PM

INITIALS: AK

UNITED STATES OF AMERICA,

PLAINTIFF,

vs.

CR. NO. 03-20431-B

GEORGE KINDNESS

AND

AMSCOT MEDICAL LABS, INC.,

DEFENDANTS.

PLEA AGREEMENT

The United States of America ("United States") and George Kindness ("Kindness") and Amscot Medical Labs, Inc., ("Amscot") the defendants in this action, hereby agree to the following terms, conditions and understanding.:

1. Defendant Kindness agrees to enter a plea of guilty to Count 11 of the indictment, to wit, being aided and abetted in the introduction of a misbranded drug into interstate commerce with the intent to mislead, the drug being misbranded within the meaning of 21 U.S.C. § 352(f)(1) in that its labeling did not bear adequate directions for use, in violation of 21 U.S.C. §§ 331(a) and 333(a)(2). The United States and defendant Kindness stipulate and agree that the factual basis for the guilty plea in this instance is contained in the Stipulation of Facts, which has been signed by both parties and is specifically incorporated herein as Exhibit A.

CERTIFIED TRUE COPY  
THOMAS M. GOULD, CLERK  
BY [Signature]  
DEPUTY CLERK

2. Defendant Amscot agrees to enter a plea of guilty to Count 11 of the indictment, to wit, being aided and abetted in the introduction of a misbranded drug into interstate commerce with the intent to mislead, the drug being misbranded within the meaning of 21 U.S.C. § 352(f)(1) in that its labeling did not bear adequate directions for use, in violation of 21 U.S.C. §§ 331(a) and 333(a)(2). The United States and defendant Amscot stipulate and agree that the factual basis for the guilty plea in this instance is contained in the Stipulation of Facts, which has been signed by both parties and is specifically incorporated herein as Exhibit A.

3. As to defendant Kindness, the parties agree that the maximum penalty for a violation of 21 U.S.C. §§ 331(a) and 333(a)(2) is imprisonment for no more than three (3) years, see 21 U.S.C. § 333(a)(2), a fine of no more than \$250,000.00, see 18 U.S.C. § 3571(b)(4), a period of supervised release of no more than one (1) year, see 18 U.S.C. § 3583(b)(3), and a mandatory special assessment of \$100.00, see 18 U.S.C. § 3013(a)(2)(A).

4. As to defendant Amscot, the parties agree that the maximum penalty for a violation of 21 U.S.C. §§ 331(a) and 333(a)(2) is imprisonment for no more than three (3) years, see 21 U.S.C. § 333(a)(2), a fine of no more than \$500,000.00, see 18 U.S.C. § 3571(c)(5), a period of supervised release of no more than one (1) year, see 18 U.S.C. § 3583(b)(3), and a mandatory special assessment of \$400.00, see 18 U.S.C. § 3013(a)(2)(B).

5. As to defendants Kindness and Amscot, the United States agrees that it will recommend the dismissal of counts 1 through 10 and 12 through 21 of the indictment, pursuant to Fed. R. Crim. P. 11(c)(1)(A), following sentencing in this case.

6. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend that defendant Kindness be sentenced to the low end of the applicable guideline sentencing range. The United States and Kindness further agree that this provision of the plea agreement shall not be binding upon the district court.

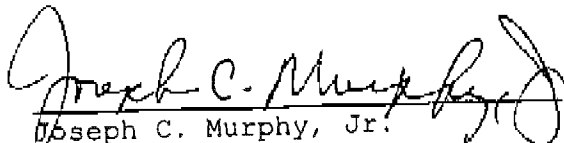
7. The United States agrees that if the defendants admit their guilt and comply with the provisions of United States Sentencing Guidelines § 3E1.1, it will not oppose the defendants receiving an appropriate reduction for acceptance of responsibility pursuant to United States Sentencing Guidelines § 3E1.1.

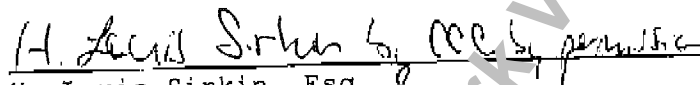
8. The parties hereto agree that the conduct described in Paragraph 8 of the Stipulation of Facts, which is attached hereto as Exhibit A, and which is attributable to defendant Kindness, does not constitute obstruction of justice as defined by United States Sentencing Guidelines § 3C1.1 in that the described conduct did not obstruct or impede the administration of justice during the course of the investigation and prosecution of this case.


9. The parties hereto agree that this agreement constitutes the parties' entire agreement and that this agreement may only be


amended in a writing signed by all the parties hereto.

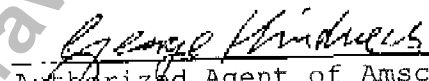
The undersigned parties do hereby consent and agree to the terms herein this 6th day of July, 2005.

  
Joseph C. Murphy, Jr.  
Assistant U.S. Attorney

  
H. Louis Sirkin, Esq.  
Attorney for Defendants  
George Kindness and Amscot Medical Labs, Inc.

  
Candace C. Crouse, Esq.  
Attorney for Defendants  
George Kindness and Amscot Medical Labs, Inc.

  
George Kindness  
Defendant

  
Authorized Agent of Amscot Medical Labs, Inc.

N:\JMurphy\Kindness, G\plea4.wpd

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

vs.

CR. NO. 03-20433-B

GEORGE KINDNESS

AND

AMSCOT MEDICAL LABS, INC.,

DEFENDANTS.

STIPULATION OF FACTS

The United States of America ("United States") and George Kindness ("Kindness") and Amscot Medical Labs, Inc., ("Amscot") the defendants in this action, hereby stipulate to the following facts:

1. Defendant Kindness is currently the president and part-owner of defendant Amscot Medical Labs, Inc., and has held the position of president of the corporation and been part-owner of the corporation since January, 1992. Kindness has been the lab director for Amscot and has been active in the day-to-day operation of the business since January, 1992.

2. Amscot is an Ohio corporation engaged in the business of performing laboratory medical tests of various types and kinds. It has also engaged in the business of producing certain "vaccines" as further described herein. Amscot is incorporated in the State of Ohio and its principal place of business has been



located in the Cincinnati, Ohio area at all times relevant to this case.

3. On April 12 and 13, 1999, the Food and Drug ("FDA") Administration conducted a regulatory inspection of defendant Amscot's lab facility, which was then located at 11365 Williamson Road, Cincinnati, Ohio. During the inspection FDA inspectors discovered that Amscot was producing autologous vaccines from blood and tumor samples provided to Amscot by a medical doctor practicing in Memphis, Tennessee. The vaccine was intended to treat cancer, and the blood and tumor samples were processed by Amscot into a vaccine which was specific as to each patient. Once the production process was complete, the vaccine was shipped from Cincinnati, Ohio, to Memphis, Tennessee, via interstate common carrier. Upon arrival in Memphis, the vaccine was delivered to a medical doctor and administered to patients.

4. The vaccine described in Paragraph 3, above, was part of a study known as the Gene Activated Therapy study or "GAT." During the FDA inspection of the Amscot facility in Cincinnati, Ohio, FDA inspectors informed defendants Kindness and Amscot that FDA rules and regulations required that an Investigatory New Drug Application had to be filed with the FDA in order for the GAT study to continue. Defendant Kindness was also advised by the FDA inspectors that conducting the GAT study without an IND was in effect a violation of the Food, Drug and Cosmetic Act.



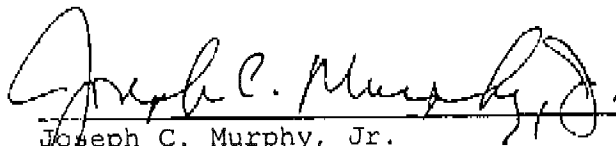
5. On or about April 15, 1999, defendant Amscot submitted an IND application to the FDA for the GAT study. The IND listed defendant Amscot as a sponsor and vaccine producer for the study. The IND was never approved by the FDA and the FDA placed a clinical hold on the GAT study. A clinical hold requires that all clinical work requested under the IND is either delayed or suspended until the IND is approved.

6. On December 7, 1999, through December 9, 1999, the FDA inspected the medical office of the medical doctor in Memphis, Tennessee, who had been receiving the GAT vaccines and administering them to his patients. During the inspection the FDA inspectors discovered that the medical doctor in Memphis, Tennessee, had treated some patients with Theracine, a vaccine produced by Amscot and which was almost identical to the GAT vaccine. The Theracine vaccine, just like the GAT vaccine, was manufactured from blood and tumor samples from a patient, and then injected into the patient. The FDA had never received or approved an IND for the Theracine vaccine. Kindness, through the employees of Amscot, directed the development and production of the Theracine vaccine at the Amscot lab.

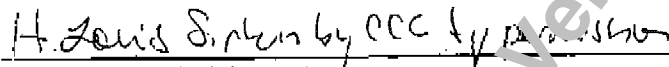
7. Title 21, United States Code, § 352(f)(1) provides that a drug is "misbranded" if it fails to bear adequate directions for its use. Title 21, Code of Federal Regulations, Part 201 requires, among other things, that the label on each bottle or vial containing an investigatory new drug include information identifying the drug, directions for use and the dosage.

8. On or about August 3, 2000, defendants Kinness and Amscot caused a container containing Theracine to be shipped from Cincinnati, Ohio, to Memphis, Tennessee, via United Parcel Service. The shipment was delivered to a United Parcel Service facility by an Amscot employee and the employee paid for the shipping out of employee's personal funds. Once the FDA had discovered that Amscot was continuing to produce a second autologous vaccine for which an IND had not been filed, Amscot began shipment of the vaccine outside the normal course of their business. Prior to the FDA's discovery of the shipment of the new vaccine, Amscot had shipped the vaccine directly from their offices using a company account. The Theracine vaccine had been produced by Amscot from blood and tumor samples provided by the medical doctor in Memphis, Tennessee, and was intended to be used to treat cancer. The label on the container of the Theracine vaccine did not include the identity of the drug, directions for use or the dosage.

The undersigned parties do hereby stipulate to the facts set forth herein this 6th day of July, 2005.



Joseph C. Murphy, Jr.  
Assistant U.S. Attorney



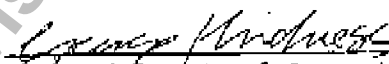
H. Louis Sirkin, Esq.  
Attorney for Defendants  
George Kindness and Amscot Medical Labs, Inc.



Candace C. Crouse, Esq.  
Attorney for Defendants  
George Kindness and Amscot Medical Labs, Inc.



George Kindness  
Defendant



Authorized Agent of Amscot Medical Labs, Inc.

N:\JMurphy\Kindness, G\StipofFact3.wpd

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE KINDNESS and AMSCOT  
MEDICAL LABS, INC.

Defendants.

Case No. CR03-20433BV

**WAIVER OF CONFLICT OF INTEREST  
OF AMSCOT MEDICAL LABS, INC.**

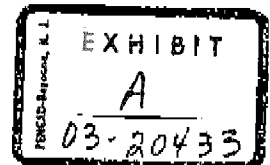
The undersigned, the President and the secretary of Amscot Medical Labs, Inc. ("Amscot"), hereby advise the Court that Amscot has been informed that it has the right to be represented by counsel independent of any obligations owed by the law firm of Sirkin, Pinales & Schwartz, LLP to Defendant, George Kindness, and while Amscot does not believe that a conflict of interest exists, Amscot hereby specifically waives its right to be represented by separate counsel in these proceedings.

George Kindness  
GEORGE KINDNESS,  
President of Amscot Medical Labs, Inc.

Date: 5<sup>th</sup> July 2005  
Sandra Kindness  
SANDRA KINDNESS,  
Secretary/Treasurer of Amscot Medical Labs, Inc.

Date: 7/5/05

G:\ML\10041 - FSS\conflict\waiver.wpd



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE KINDNESS and AMSCOT  
MEDICAL LABS, INC.

Defendants.

Case No. CR03-20433BV

WAIVER OF CONFLICT OF INTEREST  
OF GEORGE KINDNESS

I, George Kindness, Defendant in the above-captioned criminal action, hereby advise the Court that I have been informed that I have the right to be represented by counsel independent of any obligations owed by the law firm of Sirkin, Pinales & Schwartz, LLP to Defendant, Amscot Medical Labs, Inc., and while I do not believe that a conflict of interest exists, I hereby specifically waive my right to be represented by separate counsel in these proceedings.

George Kindness  
GEORGE KINDNESS

Date: 5<sup>th</sup> July 2005

G:\KINDNESS\conf\wnr2.wpd

**RESOLUTION AND DECLARATION  
OF  
AMSCOT MEDICAL LABS, INC.**

The undersigned, the President and the Secretary/Treasurer of Amscot Medical Labs, Inc. (the "Company"), in accordance with the laws of the State of Ohio, hereby take the following action, and adopt the following recitals and resolutions, effective as of the date hereof.

**DECLARATION OF GOOD STANDING**

WHEREAS, the Company is in good standing in the State of Ohio and shall take all steps necessary to maintain good standing in the State of Ohio.

**WRITTEN CONSENT AND RESOLUTION**

WHEREAS, the Company desires to plead guilty to Count 11 of the Indictment in the matter entitled *United States of America v. George Kindness and Amscot Medical Labs, Inc.*, Case No. 03-20433-B.

FURTHER, the Company authorizes George Kindness to execute any documents necessary to enter into the plea of guilty as stated above.

NOW, THEREFORE, BE IT RESOLVED, the Company shall consent to the plea of guilty to Count 11 of the Indictment in the matter entitled *United States of America v. George Kindness and Amscot Medical Labs, Inc.*, Case No. 03-20433-B, and authorizes George Kindness to represent the Company and to execute any documents necessary to enter into the plea of guilty as stated above.

Dated: 5th June 2005

George Kindness  
George Kindness, President

Dated: 7/1/05

Sandra Kindness  
Sandra Kindness, Secretary/Treasurer

GAH/KUK/ONESS/resolution.wpd

---

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE

---



## Notice of Distribution

This notice confirms a copy of the document docketed as number 64 in case 2:03-CR-20433 was distributed by fax, mail, or direct printing on July 7, 2005 to the parties listed.

---

US Marshals  
Memphis, TN

US Pretrial Office  
Memphis, TN

US Probation Office  
Memphis, TN

Honorable J. Breen  
US DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *[Signature]* D.C.

05 JUL -7 AM 8:35

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TN, MEMPHIS

UNITED STATES OF AMERICA,

Plaintiff,

VS.

GEORGE KINDNESS,  
AMSCOT MEDICAL LABS,

Defendants.

CR. NO. 03-20133-B

ORDER ON CHANGE OF PLEA  
AND SETTING

CERTIFIED TRUE COPY  
THOMAS M. GOULD, CLERK  
BY *[Signature]* DEPUTY CLERK

This cause came to be heard on July 6, 2005, the United States Attorney for this district, Joe Murphy, appearing for the Government and the defendant, George Kindness, appearing in person on his own behalf and as representative for Amscot Medical Labs, and with counsel, Candace Crouse, who represented the defendants.

With leave of the Court, the defendant withdrew the not guilty plea heretofore entered and entered a plea of guilty to Count 11 of the Indictment.

Plea colloquy was held and the Court accepted the guilty plea.

**SENTENCING** in this case is **SET** for **THURSDAY, OCTOBER 6, 2005, at 1:30 P.M.,**  
in **Courtroom No. 1, on the 11<sup>th</sup> floor** before **Judge J. Daniel Breen.**

Defendant is allowed to remain released on present bond.

ENTERED this the 6<sup>th</sup> day of July, 2005.

*[Signature]*  
J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

This document is in accordance with Rule 58 of the Federal Rules of Criminal Procedure. 7-7-05



---

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE

---



## Notice of Distribution

This notice confirms a copy of the document docketed as number 65 in case 2:03-CR-20433 was distributed by fax, mail, or direct printing on July 7, 2005 to the parties listed.

---

Joseph C. Murphy  
U.S. ATTORNEY'S OFFICE  
167 N. Main St.  
Ste. 800  
Memphis, TN 38103

H. Lewis Sirkin  
SIRKIN PINALES MEZIBOV & SCHWARTZ  
105 W. 4th Street  
Ste. 920  
Cincinnati, OH 45202

Candace C. Crouse  
105 West Fourth Street  
Suite 920  
Cincinnati, OH 45202--277

Martin S. Pinales  
105 West Fourth Street  
Ste. 920  
Cincinnati, OH 45202

Honorable J. Breen  
US DISTRICT COURT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION

UNITED STATES OF AMERICA

-v-

2:03CR20433-01-B

GEORGE KINDESS

H. Louis Sirkin, Retained  
Defense Attorney  
920 4<sup>th</sup> & Race Tower, 105 W. 4<sup>th</sup>  
Street  
Cincinnati, OH 45202-2776

CERTIFIED TRUE COPY  
THOMAS M. GOULDY, CLERK  
BY [Signature]  
DEPUTY CLERK

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant pleaded guilty to Count 11 of the Indictment on July 06, 2006. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

| <u>Title &amp; Section</u>                                  | <u>Nature of Offense</u>  | <u>Date<br/>Offense<br/>Concluded</u> | <u>Count<br/>Number</u> |
|---|---|---------------------------------------|-------------------------|
| 21 U.S.C. §§ 331 (a) and<br>333 (a)(2) and<br>18 U.S.C. § 2 | Aiding and Abetting introduction and<br>Delivery for Introduction into Interstate<br>Commerce a Misbranded Drug with<br>Intent to Mislead the Food and Drug<br>Administration | 08/03/2000                            | 11                      |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

Counts 1-10 and 12-21 are dismissed on the motion of the United States.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence:  
September 28, 2006

S/ J. Daniel Breen  
J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

September 29, 2006

Defendant's Date of Birth: 3/1/1947  
Defendant's Soc. Sec. No. 291-82-8932  
Deft's U.S. Marshal No.: none

Defendant's Mailing Address:  
7207 Stonebrook Court  
Middletown, OH 45044

Unofficial copy Travis Co. District Clerk Velda L. Price

## PROBATION

The defendant is hereby placed on probation for a term of **1 Year**.

While on probation, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a firearm, ammunition, destructive device, or dangerous weapons. The defendant shall also comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall comply with the following standard conditions that have been adopted by this court.

### STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
5. The defendant shall notify the probation officer **ten(10) days** prior to any change in residence or employment;
6. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
7. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered; The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
8. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
9. The defendant shall notify the probation officer within **72 hours** of being arrested or questioned by a law enforcement officer;
10. The defendant shall not enter into any agreement to act as an informer or a special agent of a law

enforcement agency without the permission of the court;

11. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
12. If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

### **ADDITIONAL CONDITIONS OF PROBATION**

The defendant shall also comply with the following additional conditions of probation:

1. Cooperate with DNA collection as directed by the Probation Officer.
2. Provide the Probation Officer with access to any requested financial information.
3. Defendant shall not represent himself as a medical doctor.

### **CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

#### **Total Assessment**

**\$100.00**

#### **Total Fine**

**\$1000.00**

#### **Total Restitution**

The Special Assessment shall be due immediately.

#### **FINE**

A Fine in the amount of \$ 1000.00 is imposed.

#### **RESTITUTION**

No Restitution was ordered.

### **SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

E. Special instructions regarding the payment of criminal monetary penalties:

Fine shall be payable through the U.S. Probation Office.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION

UNITED STATES OF AMERICA

-v-

GEORGE KINDESS

2:03CR20433-01-B  
(Redacted Version)

H. Louis Sirkin, Retained  
Defense Attorney  
920 4<sup>th</sup> & Race Tower, 105 W. 4<sup>th</sup>  
Street  
Cincinnati, OH 35202-2776

CERTIFIED TRUE COPY  
THOMAS M. GOULT, CLERK  
BY Michael Miller  
DEPUTY CLERK

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant pleaded guilty to Count 11 of the Indictment on July 06, 2006. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

| <u>Title &amp; Section</u>                                  | <u>Nature of Offense</u>  | <u>Date<br/>Offense<br/>Concluded</u> | <u>Count<br/>Number</u> |
|---|---|---------------------------------------|-------------------------|
| 21 U.S.C. §§ 331 (a) and<br>333 (a)(2) and<br>18 U.S.C. § 2 | Aiding and Abetting Introduction and<br>Delivery for Introduction Into Interstate<br>Commerce a Misbranded Drug with<br>Intent to Mislead the Food and Drug<br>Administration | 08/03/2000                            | 11                      |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1993.

Counts 1-10 and 12-21 are dismissed on the motion of the United States.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence:  
September 28, 2006

S/ J. Daniel Breen  
J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

September 29, 2006

Defendant's Date of Birth: 1947  
Defendant's Soc. Sec. No. xxx-xx-8932  
Deft's U.S. Marshal No.: none

Defendant's Mailing Address:

Middletown, OH

Unofficial copy Travis Co. District Clerk Velda L. Price



## PROBATION

The defendant is hereby placed on probation for a term of **1 Year**.

While on probation, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a firearm, ammunition, destructive device, or dangerous weapons. The defendant shall also comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall comply with the following standard conditions that have been adopted by this court.

### STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
5. The defendant shall notify the probation officer **ten(10) days prior** to any change in residence or employment;
6. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
7. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered; The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
8. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
9. The defendant shall notify the probation officer within **72 hours** of being arrested or questioned by a law enforcement officer;
10. The defendant shall not enter into any agreement to act as an informer or a special agent of a law

enforcement agency without the permission of the court;

11. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
12. If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

### **ADDITIONAL CONDITIONS OF PROBATION**

The defendant shall also comply with the following additional conditions of probation:

1. Cooperate with DNA collection as directed by the Probation Officer.
2. Provide the Probation Officer with access to any requested financial information.
3. Defendant shall not represent himself as a medical doctor.

### **CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

#### **Total Assessment**

**\$100.00**

#### **Total Fine**

**\$1000.00**

#### **Total Restitution**

The Special Assessment shall be due immediately.

#### **FINE**

A Fine in the amount of \$ 1000.00 is imposed.

#### **RESTITUTION**

No Restitution was ordered.

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

E. Special instructions regarding the payment of criminal monetary penalties:

Fine shall be payable through the U.S. Probation Office.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION

UNITED STATES OF AMERICA

-v-

2:03CR20433-02-B  
(Redacted Version)

AMSCOT MEDICAL LABS, INC.,  
A CORPORATION

H. Louis Sirkin, Retained  
Defense Attorney  
920 4<sup>th</sup> & Race Tower, 105 4<sup>th</sup> Street  
Cincinnati, OH 45202-2776

CERTIFIED TRUE COPY  
THOMAS M. GOULD, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant pleaded guilty to Count 11 of the Indictment on July 06, 2005. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

| <u>Title &amp; Section</u>                                  | <u>Nature of Offense</u>  | <u>Date<br/>Offense<br/>Concluded</u> | <u>Count<br/>Number</u> |
|---|---|---------------------------------------|-------------------------|
| 21 U.S.C. §§ 331 (a) and<br>333 (a)(2) and<br>18 U.S.C. § 2 | Aiding and Abetting Introduction and<br>Delivery for Introduction Into Interstate<br>Commerce a Misbranded Drug with<br>Intent to Mislead the Food and Drug<br>Administration | 08/03/2000                            | 11                      |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

Counts 1-10 and 12-21 are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence:  
September 28, 2006

S/ J. Daniel Breen  
J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

September 29, 2006

Defendant's Mailing Address:

Cincinnati, OH

Unofficial copy Travis Co. District Clerk Velda L. Price

## PROBATION

The defendant is hereby placed on probation for a term of **1 Year**.

While on probation, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a firearm, ammunition, destructive device, or dangerous weapons. The defendant shall also comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution.

The defendant shall comply with the following standard conditions that have been adopted by this court.

### STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthful all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
5. The defendant shall notify the probation officer **ten(10) days prior** to any change in residence or employment;
6. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
7. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered; The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
8. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
9. The defendant shall notify the probation officer within **72 hours** of being arrested or questioned by a law enforcement officer;
10. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
11. As directed by the probation officer, the defendant shall notify third parties of risks that may be

occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

12. If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

### **ADDITIONAL CONDITIONS OF PROBATION**

The defendant shall also comply with the following additional conditions of probation:

1. Make full financial disclosure to the Probation Officer.
2. Be prohibited from incurring any new credit charges or opening additional lines of credit without the prior approval of the Probation Officer unless the defendant is in compliance with the payment schedule.

### **CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

#### **Total Assessment**

**\$100.00**

#### **Total Fine**

**\$388,498.00**

#### **Total Restitution**

The Special Assessment shall be due immediately.

#### **FINE**

A Fine in the amount of \$ 388,498.00 is imposed.

#### **RESTITUTION**

No Restitution was ordered.

### **SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

**E. Special instructions regarding the payment of criminal monetary penalties:**

Defendant shall pay restitution in regular monthly installments of not less than 10% of gross monthly income. Interest requirement is waived. Defendant shall notify the U.S. Attorney and the Court of any material change in economic circumstances that may affect defendant's ability to pay restitution.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION

UNITED STATES OF AMERICA

-v-

2:03CR20433-02-B

AMSCOT MEDICAL LABS, INC.,  
A CORPORATION

H. Louis Sirkin, Retired  
Defense Attorney  
920 4<sup>th</sup> & Race Tower, 105 4<sup>th</sup> Street  
Cincinnati, OH 45202-2776

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant pleaded guilty to Count 11 of the Indictment on July 06, 2005. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

| <u>Title &amp; Section</u>                                  | <u>Nature of Offense</u>  | <u>Date<br/>Offense<br/>Concluded</u> | <u>Count<br/>Number</u> |
|---|---|---------------------------------------|-------------------------|
| 21 U.S.C. §§ 331 (a) and<br>333 (a)(2) and<br>18 U.S.C. § 2 | Aiding and Abetting Introduction and<br>Delivery for Introduction Into Interstate<br>Commerce a Misbranded Drug with<br>Intent to Mislead the Food and Drug<br>Administration | 08/03/2000                            | 11                      |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1995.

Counts 1-10 and 12-21 are dismissed on the motion of the United States.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence:  
September 28, 2006

S/ J. Daniel Breen  
J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

September 29, 2006

CERTIFIED TRUE COPY  
BY THOMAS M. GORMAN, CLERK  
DEPUTY CLERK

Defendant's Mailing Address:

11258 Cornell Park Drive  
Suite 600  
Cincinnati, OH 45242

Unofficial copy Travis Co. District Clerk Velda L. Price

1 A. Yes.

2 (Exhibit No. 1 marked for identification.)

3 Q. Let me hand you what's been marked Exhibit 1 and  
4 ask you to identify that for the record.

5 A. It is -- Exhibit 1 -- Wendy Rogers' resume.

6 Q. Is this current?

7 A. Um, I created this some time ago, so I -- I  
8 believe the information is the most current, but --

9 Q. What is JR Utilities?

10 A. JR Utilities is a utility coordination business  
11 that my husband and I began.

12 Q. And is that enterprise still going on?

13 A. Yes.

14 Q. Okay. Is it a corporation?

15 A. Um, it is an LLC, yes.

16 Q. And are you an officer?

17 A. I am the president and majority owner.

18 Q. Okay. And describe or elaborate on what  
19 JR Utilities does.

20 A. Um, we perform utility coordination functions.

21 The best way for me to describe it is, uh, an example --

22 um, for example, if, um, the Texas Department of

23 Insurance is going to do some construction on a roadway,

24 um, a utility coordination company would come in and

25 coordinate with all of the gas utilities, electric



1 A. Created as in formatting, yes. Creating the  
2 wording, no.

3 Q. Okay. And who created the wording?

4 A. The wording was, uh, originally drafted by, um, a  
5 combination of people. Dick Gray, um, drafted the  
6 majority of it and, um, Ron James drafted a section of  
7 it or Don James -- somebody from James Settlement  
8 Services drafted a section, um. And then, of course, I  
9 proofed and edited and did -- give input, so...

10 Q. And what kind of input did you give?

11 A. Um, trying to make the wording come across as  
12 clear as possible.

13 Q. Um, did you have a chance to finish all the  
14 people that were involved in, uh, creating and drafting  
15 the marketing materials?

16 A. Can I see the latest copy of the marketing  
17 material and I can tell you? Are you looking at a  
18 section?

19 Q. Uh, sure.

20 A. There may have been a section that was drafted by  
21 Bruce Colin. That's why I'm --

22 (Exhibit No. 4 marked for identification.)

23 THE WITNESS: Thank you.

24 Q. (By Mr. Hohengarten) Let's go ahead and mark  
25 that.

1 THE WITNESS: She did.

2 MR. HOHENGARTEN: Oh, okay.

3 A. It's Exhibit 4. This is the larger brochure, the  
4 Retirement Value marketing brochure.

5 Q. (By Mr. Hohengarten) Uh-huh. And when was this  
6 created?

7 A. There was a back cover. Is there a copy of that?  
8 The back cover would have the date on it.

9 Q. Uh, if you can tell by looking at it --

10 A. Okay. This is the most recent copy, which would  
11 have been created the first week in March of 2010.

12 Q. Okay. And who, again, are the, uh, persons who  
13 created Exhibit 4?

14 A. Dick Gray.

15 Q. Uh-huh.

16 A. Some of this wording was taken from the Life  
17 Partners marketing materials, Ron James and/or Don James  
18 with James Settlement Services. On the description of  
19 the management team, we allowed each person -- person to  
20 have input into their section.

21 Q. And what page was that on?

22 A. Um, it looks like it's Page 11.

23 Q. Okay. So, obviously, you would have had -- you  
24 would have contributed that section --

25 A. Yes. Yes.

1 THE WITNESS: Oh.

2 MR. WEISBART: Wouldn't that be the kind of  
3 information that a licensee or potential investor would  
4 like to know? Yes or no?

5 A. Yes.

6 (Exhibit No. 8 marked for identification.)

7 Q. (By Mr. Hohengarten) Can you describe Exhibit  
8 Number 7?

9 A. 8.

10 Q. 8. Thanks.

11 A. Um, it appears to be an indictment by the  
12 United States of America versus George Kindness and  
13 Amscot Medical Labs.

14 Q. And have you ever seen this document before?

15 A. I -- yes, I believe so.

16 Q. When did you first see this document?

17 A. One moment. Is this the document with the  
18 21 counts?

19 Q. I believe so, yes.

20 A. Okay. I cannot pinpoint a date.

21 Q. Can you give me a range?

22 A. It probably would have been shortly after or  
23 right around the time when Dick went to visit with  
24 George Kindness.

25 Q. Uh, and when was that?

1 A. I don't know. I -- I -- I'm -- I'm not trying to  
2 be difficult. I really don't understand the question  
3 or -- or it's -- or it's beyond my -- what I know, so...

4 (Exhibit No. 16 marked for identification.)

5 A. Oh, good.

6 Q. Can you describe Exhibit 16?

7 A. It's a Midwest Medical Review Life Expectancy  
8 Certificate.

9 Q. Okay. And this particular certificate has the  
10 third page, correct?

11 A. Correct.

12 Q. But we've established that most Retirement Value  
13 investors did not get the third page, correct?

14 A. Correct.

15 Q. Okay. And on the third page, at the very bottom,  
16 do you see the language that says: "A life expectancy  
17 cannot be precisely determined for any specific person"?  
18 Do you see that language?

19 A. I see that, yes.

20 Q. Okay. But, rather, it can be deter- -- the  
21 average life expectancy of a large population with  
22 similar clinical and individual profiles. You see that  
23 language?

24 A. Yes.

25 Q. And then do you see the -- the chart above that

1 bouquet?

2 A. Not at any given point yet. Not yet. So, let's  
3 say, in February, we received one, and that policy got  
4 sold out. Well, then, maybe only nine would have them.  
5 Not all ten that were on the portfolio would necessarily  
6 have other LEs at the time of the cease and desist. The  
7 goal was that all ten would, but -- that's what we were  
8 working towards.

9 (Exhibit No. 18 marked for identification.)

10 Q. Can you identify Exhibit 18?

11 A. It is an e-mail from me to Don James.

12 Q. And what's the subject matter of the e-mail?

13 A. It was our non-qualified paperwork, our 12-page  
14 handout, which was the large brochure and the RV  
15 brochure, which was the smaller tri-fold, I believe.

16 Q. Um, and what was the reason for sending this  
17 information to Don James?

18 A. For his review.

19 Q. Well, Don James had received an inquiry from a  
20 potential licensee, correct?

21 A. Oh, let me read through the e-mail. Okay. I'm  
22 sorry. Now, the question was?

23 Q. You sent this information to Don James because he  
24 had received an inquiry from a potential licensee,  
25 correct?



1 about two or three pages after the information regarding  
2 Kiesling, Porter, there's the first page of a Midwest  
3 Medical Review Life Expectancy Certificate, correct?

4 A. Correct.

5 Q. And this is how the information regarding Midwest  
6 Medical was typically distributed, correct, with just  
7 the first or second page of a sample, Midwest Medical  
8 Life Expectancy Certificate?

9 A. Correct. This was a sample, yes.

10 Q. Okay.

11 (Exhibit No. 19 marked for identification.)

12 Q. Can you identify Exhibit 19?

13 A. It is our tri-fold brochure.

14 Q. And was that included in the materials that were  
15 forwarded to Don James in July of 2009?

16 A. It should have been. Now, whether it was this  
17 revision or not, I don't know.

18 Q. Okay. But something like Exhibit 19 would  
19 typically be distributed to licensees and potential  
20 licensees, correct?

21 A. Correct.

22 Q. And in all of the marketing materials, there was  
23 a reference to Kiesling, Porter, Kiesling & Free as the  
24 escrow agent, correct?

25 A. Correct.

1 Q. Now, you mentioned that you had talked to someone  
2 at Midwest Medical about receiving a clear copy of the  
3 third page of the LE certificate; did I understand you  
4 correctly?

5 A. Correct.

6 Q. Okay. And when did you start receiving clear  
7 copies of the third page of the LE certificate?

8 A. I am not sure.

9 Q. Was it in 2010?

10 A. It would have probably been the winter, turn of  
11 '09, '10. I'm not sure.

12 Q. Okay. And once you started receiving those clear  
13 third pages, did you ever include those third pages in  
14 the marketing materials that you distributed to  
15 licensees?

16 A. No. We only included the -- the one page. We --  
17 that's the room that we had in the brochure, so no. No.  
18 (Exhibit No. 20 marked for identification.)

19 MR. HOHENGARTEN: Did you have a chance to  
20 mark Exhibit 20?

21 A. Yes.

22 Q. Okay. Could you look at Exhibit 20?

23 A. Okay.

24 Q. Okay. And could you describe it for the record  
25 just briefly?

1 A. It's an e-mail from Dick Gray to Don James.

2 Q. And you're copied on the e-mail, correct?

3 A. Um, yes.

4 Q. And Mike Beste and Mike McDermott are copied on  
5 the e-mail as well, correct?

6 A. Yes.

7 Q. And the subject is the SEC  
8 complaint/Dr. Kindness, correct?

9 A. Correct.

10 Q. And in this e-mail, uh, Dick Gray is telling  
11 Don James, quote, My own glass house is large enough so  
12 that I don't even throw sand at others, let alone rocks.  
13 But -- still quoting -- the facts are the facts, closed  
14 quote. Do you see that language?

15 A. Yes.

16 Q. And then he goes on to say, "If we all were  
17 totally thrilled with Kindness and Midwest Medical, we  
18 would not be spending 20 grand on a report from  
19 Princeton and we would not be hoping for a successful  
20 Plan B source as an alternate to Kindness and Midwest  
21 Medical," end of quote. Do you see that language?

22 A. Yes.

23 Q. And you were copied on this, correct?

24 A. Correct.

25 Q. And, also, Dick Gray says at the very beginning,

1 and I'm trying to remember the time frame of it, but was  
2 later, um, promoted to COO.

3 Q. And -- and during this time, Retirement Value is  
4 still not including any disclosure about George Kindness  
5 in its marketing materials, its printed marketing  
6 materials, correct?

7 A. The marketing materials to licensees, correct,  
8 yes. You said printed, right?

9 Q. Yes.

10 A. Yes.

11 (Exhibit No. 22 marked for identification.)

12 Q. Can you identify Exhibit 21?

13 THE REPORTER: 22.

14 Q. (By Mr. Hohengarten) 22.

15 A. It's an e-mail from me to Kevin Schneider.

16 Q. Who -- who is Kevin Schneider?

17 A. It appears to be that he is a potential licensee.

18 Q. Okay. And you have, uh, sent Mr. Schneider some  
19 information regarding, uh, George Kindness and Midwest  
20 Medical, correct?

21 A. That is correct.

22 Q. And you sent that information on January 21st,  
23 2010, correct? It's at the bottom of the first page of  
24 the exhibit.

25 A. Well, there -- there was a string of e-mails I

1 Mike Ahlers in support of your position that Midwest  
2 Medical's methodology was, uh, reliable and accurate,  
3 correct?

4 A. Correct.

5 Q. All right. And at the time you did that, did you  
6 have any doubts about the veracity and reliability of  
7 Midwest Medical's life expectancy certificates?

8 A. No. I still don't, no.

9 (Exhibit No. 23 marked for identification.)

10 Q. Can you identify Exhibit 23?

11 A. It's an e-mail from Wendy Rogers to Kendall Gray  
12 and Ernie Bilodeau.

13 Q. And who is Ernie Bilodeau?

14 A. Let me see.

15 Q. Is Ernie Bilodeau a licensee of Retirement Value?

16 A. He must be a licensee, yes.

17 Q. And he had made an inquiry to Kendall Gray at  
18 Retirement Value, correct?

19 A. Correct.

20 Q. And the inquiry was regarding Midwest Medical,  
21 correct?

22 A. Correct.

23 Q. Um, and in that initial e-mail, um,  
24 Ernie Bilodeau is telling Kendall Gray, of Retirement  
25 Value, that his client is requesting more information

1 We'll pass along the results to the field as soon as we  
2 receive them."

3 Q. And -- and what was the -- is the Princeton  
4 Report also referred to as the Hess Report?

5 A. Correct.

6 Q. Um, and -- and what was the, uh, result of the  
7 Hess Report?

8 A. We've never had them at this time. But that  
9 middle paragraph, I don't believe I would have inserted  
10 that. I believe that's him. That's what he shared.

11 (Exhibit No. 24 marked for identification.)

12 A. Are we moving to this one next?

13 Q. Yes. Have you ever seen Exhibit 24? And,  
14 really, if you could just skip the first three pages and  
15 tell me if you have seen this -- this exhibit starting  
16 at the fourth page of Exhibit 24, the page that's  
17 entitled "Midwest Medical Review, LLC, Life Expectancy  
18 Audit and Analysis."

19 A. Yes, I believe I have reviewed this audit.

20 Q. And did you receive it on February 22nd, 2010?

21 A. When?

22 Q. Did you receive this audit on February 22nd,  
23 2010?

24 A. Oh, no. No.

25 Q. When did you first review this report?

1 apples-to-apples comparison.

2 Q. And don't you think the 42 percent refers to the  
3 median and not any specific policyholder or insured?

4 A. If it's a life expectancy estimate ratio, I would  
5 think it would have to do with the median, but you're  
6 talking -- when you -- I -- I can't answer that  
7 question. I don't know.

8 Q. Okay. And further down in the report, uh, the  
9 author also notes: "In the course of the audit, we have  
10 uncovered a number of recordkeeping issues which are  
11 discussed in this report and detailed in Appendix 2."

12 Do you see that language?

13 A. I see it, yes.

14 Q. Okay.

15 (Exhibit No. 25 marked for identification.)

16 Q. Can you identify Exhibit 25?

17 A. It's an e-mail from Dick Gray to, uh, James  
18 Settlement Services or to -- to Ron James and copies  
19 Don James and Mike Beste.

20 Q. Um, and you're -- you're also blind-copied on  
21 this, are you not?

22 A. Yes, I am.

23 Q. And the subject, again, is Midwest Medical,  
24 correct?

25 A. Correct.

1 this is back in December, but if it did validate -- the  
2 methodology is sound methodology. It doesn't -- for me,  
3 it does not matter that Kindness did not put a pamphlet  
4 on a bottle and lied about it. If his methodology is  
5 sound, then I do not believe it would have been a good  
6 idea to get away from his life expectancy certificates  
7 or Midwest Medical life expectancy certificates.

8 Q. And based on your answer, I would take it, then,  
9 that you also disagreed with, uh, Dick Gray's assessment  
10 at the bottom of the e-mail that the retail market was  
11 growing in sophistication and pressure with respect to  
12 George Kindness and Midwest Medical was increasing, not  
13 decreasing?

14 A. Correct. I mean, he's smeared all over the  
15 Internet.

16 Q. At this time and when you received this e-mail,  
17 did you consider disclosing George Kindness'  
18 relationship to Midwest Medical in your marketing  
19 materials?

20 A. No.

21 (Exhibit No. 26 marked for identification.)

22 Q. Could you describe Exhibit 26 for the record?

23 A. It's an e-mail from Bruce Collins to Dick Gray,  
24 Jeremy Gray, Wendy Rogers and Katie Hensley.

25 Q. And is this Mr. Collins' description of the



1 information that has been obtained -- the new  
2 information that has been obtained regarding Midwest  
3 Medical?

4 A. It appears so, yes.

5 Q. Okay. And you understand -- do you understand  
6 what Mr. Collins is referring to when he says: "The  
7 very notion that 50/50 is a satisfactory outcome of this  
8 study is absurd." Do you know what that's referring to?

9 A. I believe Mr. Collins thinks that a 50/50 -- I  
10 mean, I'm speculating here, but I believe what he is  
11 thinking is that a 50/50 -- a 50 percent  
12 actual-to-expected accuracy rating is, in his mind, not  
13 satisfactory nor to a client.

14 Q. Okay.

15 A. I -- I'm speculating. I don't --

16 Q. So you're testifying that when you received this  
17 e-mail from Mr. Collins and he referred to a 50/50 --  
18 when he referred to the notion that 50/50 is a  
19 satisfactory outcome being absurd, you had no idea what  
20 he was referring to; is that your testimony?

21 A. My interpretation is that he's saying if that  
22 Hess Report comes back at 50 percent, that's not  
23 satisfactory.

24 Q. Well, what was your interpretation at the time  
25 you received this e-mail?

1 Q. No, not at all.

2 MR. NAPOLI: Actually, can we take a break?

3 MR. HOHENGARTEN: Sure.

4 THE VIDEOGRAPHER: 1:46, we're off the  
5 record.

6 (Recess from 1:46 to 1:59)

7 THE VIDEOGRAPHER: 1:59, we are on the  
8 record.

9 MR. HOHENGARTEN: Okay. Ms. Rogers, I did  
10 want to say that when we're finished with all of our  
11 questions, then if you want to make a statement, you'll  
12 have the opportunity to do so, because if you were  
13 represented by counsel, he would or she would have an  
14 opportunity --

15 THE WITNESS: Right.

16 MR. HOHENGARTEN: -- to ask you questions.

17 THE WITNESS: And there will be time for  
18 that today?

19 MR. HOHENGARTEN: No, there will definitely  
20 not be time for that today.

21 Uh, let's go ahead and mark this.

22 (Exhibit No. 28 marked for identification.)

23 Q. (By Mr. Hohengarten) And can you identify  
24 Exhibit 28?

25 A. It is a PowerPoint presentation.

1 Q. Is it a PowerPoint pre- -- presentation by  
2 Retirement Value?

3 A. Yes.

4 Q. And is it intended to be a PowerPoint  
5 presentation used by licensees?

6 A. Used by licensees --

7 Q. Yes.

8 A. -- yes.

9 Q. And did you approve this PowerPoint presentation?

10 A. This is a presentation that was put together by  
11 Tracy Moss and approved by Tracy Moss.

12 Q. Okay. So are you saying you did not have any  
13 input in it?

14 A. Not a whole lot, no.

15 Q. Okay. So you never approved this?

16 A. I -- I did not approve it, but I also did not  
17 disapprove it.

18 Q. Okay. Did you review it before it was used by  
19 Retirement Value and its licensees?

20 A. I believe it -- she did put it on the big screen  
21 one time and just ran through it to let us see what it  
22 looked like, but I think we were looking at it from an  
23 aesthetic point of view, not necessarily from a -- a --  
24 from a content point of view.

25 Q. Well, it's true, and that's because the

1 cobeneficiaries, correct?

2 A. That is correct.

3 Q. Okay.

4 (Exhibit No. 29 marked for identification.)

5 A. Is that one?

6 Q. Yes. Yes. I'm going to have her -- then you'll  
7 have a chance to clarify, if you need to.

8 Uh, with respect to Exhibit, uh, 29, is that  
9 true -- a true and correct copy of an internal e-mail  
10 from you to others at Retirement Value asking -- and  
11 licensees of Retirement Value asking for input regarding  
12 the PowerPoint presentation we've just been discussing?

13 A. Yes.

14 Q. And so you were circulating that to others at  
15 Retirement Value as well as to Retirement Value's  
16 licensees, correct?

17 A. Um, right. This -- yes. This was at the  
18 conclusion of either a master licensee meeting or a  
19 general marketing meeting, asked that -- apparently this  
20 topic came up, and so I've asked them to comment and  
21 critique upon it and they respond to Tracy, so she was  
22 the one in charge of the project.

23 (Exhibit No. 30 marked for identification.)

24 Q. Is Exhibit 30 an e-mail, uh, from you to  
25 Steve Kenny dated February 26th, 2010?

1 A. Yes.

2 Q. And who is Steve Kenny?

3 A. Uh, he must be a licensee with Retirement Value.

4 Q. All right. And is Steve Kenny inquiring about  
5 the results of what we've been referring to as the  
6 Princeton Report or the Hess Report?

7 A. Yes.

8 Q. And that was to determine the reliability and  
9 accuracy of Midwest Medical's life expectancy  
10 calculations, correct?

11 A. Correct.

12 Q. And he's asking you for, uh, the preliminary take  
13 on the results of that --

14 A. Uh-huh.

15 Q. -- report, correct?

16 A. Correct.

17 Q. And you told him that the preliminary results  
18 were, quote, favorable, closed quote, correct?

19 A. Correct.

20 Q. Okay. And you told him that because Ron James  
21 had told Dick Gray that over the telephone, correct?

22 A. Correct.

23 Q. Okay. And, at the time, you had never seen, uh,  
24 the Hess Report, correct?

25 A. Correct.

1 So we were -- I was reviewing a draft of the second  
2 revision, but I don't know that I have ever reviewed the  
3 first revision -- the first draft, the first --

4 Q. Okay. And -- and despite the fact that you had  
5 not reviewed the escrow agreement between Retirement  
6 Value and Kiesling, Porter, you were representing to  
7 licensees that participants had an irrevocable  
8 cobeneficiary status in a policy with respect to  
9 something that Kiesling had done or obligated itself to  
10 with respect to that investor or participant, correct?

11 A. Yes.

12 MS. JACKSON: What is the current number?

13 THE REPORTER: Thirty-seven.

14 (Exhibit No. 37 marked for identification.)

15 Q. (By Mr. Hohengarten) And did you ever ask to see  
16 the escrow agreement between Retirement Value and  
17 Kiesling, Porter when you were responding to these  
18 inquiries, uh, from investors regarding their  
19 irrevocable cobeneficiary status?

20 A. No. The escrow agreement was drafted by  
21 Kiesling & Porter who was an escrow agent, a well-known  
22 escrow agent in New Braunfels. I thought, them being  
23 attorneys, they knew what they were doing. Um,  
24 Dick Gray signed it, and we hit the ground running. I  
25 didn't even -- it did not occur to me to review the

1 document.

2 Q. Okay. And so what you were relying on when you  
3 made these representations to investors and licensees  
4 were the documents that you've already testified about  
5 in the participation packet, correct, the information --

6 A. That's right.

7 Q. -- packet, the information on Exhibit A? I'm  
8 just trying to confirm --

9 A. Okay.

10 Q. -- what information you were relying on when you  
11 told investors and licensees that investors were  
12 cobeneficiaries in the policy by virtue of something  
13 that Kiesling, Porter had obligated itself to do with  
14 respect to the investors.

15 A. It was my understanding, based upon our  
16 paperwork, based upon -- over the year that we were  
17 operating, Kiesling accepted these as the irrevocable  
18 cobeneficiary documents and paperwork to list people on,  
19 uh -- at their offices. Um --

20 Q. Okay.

21 A. -- yes.

22 Q. Can you turn to paragraph No. 23 of the Escrow  
23 Agreement, Exhibit 37?

24 A. You said Paragraph 23?

25 Q. Uh-huh. It's on Page 8.

1 premium accounts?

2 A. There was never a shortfall in the premium  
3 accounts.

4 (Exhibit No. 40 marked for identification.)

5 Q. Okay. Let's go to Exhibit 40, which you have in  
6 front of you. This is an e-mail from Dick Gray to  
7 Ron James, Don James, and Michael Beste, correct?

8 A. Yes.

9 Q. And you are cc'd on that e-mail, correct?

10 A. Correct.

11 Q. And it's dated January 23rd, 2010, correct?

12 A. Yes.

13 (Exhibit No. 41 marked for identification.)

14 Q. Take a look at Exhibit 41.

15 A. So --

16 Q. We'll come back to that one.

17 A. All right.

18 Q. This is a memo or -- excuse me -- an e-mail from  
19 Dick Gray to, uh, Ron James at James Settlement,  
20 correct?

21 A. Correct.

22 Q. And you've been copied on this e-mail along with  
23 several other people at Retirement Value, correct?

24 A. Correct.

25 Q. And the date is actually October of 2009,



1 correct?

2 A. Correct.

3 Q. And in that e-mail Dick Gray describes a  
4 shortfall of \$1,232,449, uh, in the premium escrow  
5 account, correct?

6 A. Correct.

7 Q. Okay. So is there anything you want to change  
8 about your previous answer that there was never a  
9 shortfall in the premium escrow accounts?

10 A. Nothing that I want to change about my previous  
11 testimony, no.

12 Q. Well, would you agree with me that there was, in  
13 fact, a shortfall in the premium escrow accounts at  
14 least as of October 2009?

15 A. Um, there was a shortfall on paper, yes, but  
16 not -- I'm sorry. Not on paper, but in the accounts.  
17 We still had a lot of moneys inbound for qualified --  
18 especially qualified money, but qualified and  
19 non-qualified moneys. And then this was the effect of  
20 Ron having us accelerate payments for certain policies,  
21 to purchase policies; therefore, effectively using  
22 premium money to purchase policies. So once client  
23 money would become inbound for the policies that were  
24 being purchased at this time, the money would have  
25 been -- would have backfilled into the premium accounts.

1 Value was using premiums in certain sub-escrow accounts  
2 designated for particular policies to purchase new  
3 policies, correct?

4 A. There was a combination of reasons.

5 Q. Was that one of the reasons?

6 A. One of the reasons, yes.

7 Q. And investors were not told that their investment  
8 moneys might be used to purchase new policies, correct?

9 A. Other new policies, correct.

10 Q. In fact, they were, uh, told through the  
11 marketing materials that their investment was going to  
12 sit in a subaccount that was tied to the particular  
13 policy or policies that they had invested in, correct?

14 A. That is correct.

15 Q. Don't you think that an investor or potential  
16 investor would have wanted to know that Retirement Value  
17 was, in fact, commingling among these sub-escrow  
18 accounts?

19 A. Possibly.

20 Q. Don't you think that that would be something  
21 that -- a material factor in investor -- in an  
22 investor's decision to invest in Retirement Value's  
23 product?

24 A. Probably.

25 (Exhibit No. 42 marked for identification.)

1 investor had invested in, correct?

2 A. Correct, we did not tell investors that.

3 Q. Despite the fact that you were representing to  
4 investors in your marketing materials their funds would  
5 be totally safeguarded in escrow subaccounts that were  
6 tied to the particular policy or policies that that  
7 investor had invested in, correct?

8 A. Correct.

9 Q. Okay. And that was -- wasn't that a very  
10 significant or substantial matter that this commingling  
11 was going on among the escrow subaccounts?

12 A. Well, that was the purpose of having the  
13 Saul Schwartz & Associates come in and do the audit, so  
14 every account, prior to that audit, was going to have LE  
15 plus 24, at least every fully subscribed policy, and,  
16 um -- so all of that was going to be rebalanced and that  
17 was documented in correspondence with Saul Schwartz and  
18 with Kiesling.

19 Q. Of course, but you never told any of the  
20 investors or licensees about the premium shortfall, did  
21 you?

22 A. Because there was no shortfall. There was money  
23 coming in to balance out the accounts.

24 (Exhibit No. 43 marked for identification.)

25 Q. In Exhibit 43, Dick Gray is sending you an e-mail

1 in which he discusses a 1.3 million or 1.4 million  
2 current premium shortfall; correct?

3 A. Correct.

4 Q. Okay. So it's still your testimony that there  
5 was no premium shortfall?

6 A. In the accounts, when you looked at the dollar  
7 amount of money in hand, it appeared to be this  
8 shortfall, yes; but this November 15th is prior to when  
9 we made the change of not giving qualified participants  
10 immediate access to be on policies. So we were  
11 crediting positions on policies for money that we  
12 weren't going to see for probably three or four months  
13 down the road. So, on paper, each policy was fully  
14 subscribed and fully funded; but in the accounts, they  
15 were short.

16 Q. Isn't it true that when you talk about backing  
17 and filling this premium shortfall, you are just talking  
18 about using new investor moneys that is designated for  
19 particular policies to try to make up a premium  
20 shortfall?

21 A. No, I'm -- I'm dis- -- I'm talking about moneys  
22 that have not yet come in. Some qualified moneys would  
23 take months before they came into the account.

24 Q. But you don't deny that there was commingling  
25 occurring among the, uh, escrow subaccounts, correct?

ORAL AND VIDEOTAPED DEPOSITION OF WENDY ROGERS

Page 427

1 Q. And it was never paid to licensees, et  
2 cetera.

3 A. Correct.

4 Q. I wanted just to -- I'm going to show you just  
5 several -- actually that's the only copy of that one.  
6 I'm going to show you three documents. I'm just going  
7 to have them marked.

8 (Exhibit Nos. 63, 64, 65, and 66 marked)

9 Q. (BY MR. NAPOLI) What's the exhibit number on  
10 the first of those?

11 A. 63.

12 Q. Exhibit 63, that's an October 7, 2009 e-mail  
13 from Mr. Gray to a host of people, including Kristen  
14 Porter and Brent Free at Kiesling-Porter.

15 A. Yes.

16 Q. You're copied on this, right?

17 A. Yes.

18 Q. As is David Gray?

19 A. Yes.

20 Q. And at the time David Gray was the chief  
21 financial officer?

22 A. Yes.

23 Q. So he would have been in charge of all of this  
24 bookkeeping stuff.

25 A. Yes.

1 A. A lot of e-mail back and forth, a lot of phone  
2 conversations with Jeremy and Ron, a lot of hanging up  
3 on him because of the belligerence and inappropriate  
4 language.

5 Q. I can only imagine.

6 Okay. The next exhibit is Exhibit --

7 A. 64.

8 Q. Exhibit 64, October 19, from Dick Gray to you  
9 and --

10 A. Yes.

11 Q. -- others, including Mr. Free and Ms. Porter  
12 at Kiesling, right?

13 A. Yes.

14 Q. And he's asking a question, "Has every net  
15 dollar of inbound fully subscribed account money gone  
16 toward those accounts," and basically saying, "Are we  
17 careful not to send that money to Jan?" And Jan Mann  
18 is -- Jan Mann is the escrow agent for the Retirement  
19 Value, James Settlement Service --

20 A. Right. Dick was wanting the fully subscribed  
21 subaccounts to backfill; and once that happened, it  
22 would basically freeze that, yes.

23 Q. And only use them for premiums?

24 A. Yes.

25 Q. And he says "Meanwhile we still need to find

1 A. Right.

2 Q. Okay.

3 A. We knew all of the money was there. It was  
4 just the accounting for it, the classification of it,  
5 the making sure it all balanced out. It was just a  
6 matter of time before everything got corrected.

7 Q. Okay. Let me -- I guess Exhibit 66 is the  
8 next one.

9 A. Okay.

10 Q. Exhibit 66?

11 A. Yes.

12 Q. From Mr. Gray to Mr. James. The  
13 j-i-s-e-r-v-i-c-e is Ron James, right?

14 A. Yes.

15 Q. And the first e-mail in the chain is from  
16 Mr. James to Mr. Gray on December 1. "Your wire  
17 transfer today helped to save the McKay policy."

18 A. So it was the McKay policy that needed the one  
19 million.

20 Q. So they paid a million dollars to save --

21 A. RV did, yes.

22 Q. Right. And that was paid not to Kiesling, but  
23 directly to Pacific Northwest.

24 A. Yes.

25 Q. And Mr. James goes on to chastise --