

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

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
RETIREMENT VALUE, LLC, et al,	§	
	§	
Defendants.	§	126 <sup>th</sup> JUDICIAL DISTRICT

### RECEIVER'S MOTION TO AUTHORIZE AGREEMENT WITH PRESTON VENTURES

Eduardo S. Espinosa, court-appointed receiver for Retirement Value, LLC, moves the Court to authorize him to enter into an agreement with Preston Ventures, the form of which is attached as Exhibit A, to share costs related to evidence necessary to establish the death of an insured.

#### BACKGROUND

It has been several years since the Receiver has requested substantive relief from the Court. Judge Triana, who handled this matter since its inception and was deeply familiar with the receivership, has been elevated to the court of appeals. Thus, some general background is appropriate.

#### **I. The State's enforcement action and the receivership**

The State sued Retirement Value and its principals, alleging that it was selling securities (derivative contracts based on life settlement contracts<sup>1</sup>) in violation of the anti-fraud and registration provisions of the Texas Securities Act. At

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<sup>1</sup> A "life settlement contract" is a life insurance policy on a third person held as an investment. The investor – here Retirement Value – owns the policy, is responsible for paying the premiums on it, and receives the death benefit when the insured dies.

the State's request, the Court appointed the Receiver and entered a temporary injunction.

At the time the State sued (May 2010), Retirement Value owned 54 life insurance policies insuring the lives of 46 persons for a total of \$142 million in death benefits.<sup>2</sup> The portfolio was worth approximately \$8 million at the time. Retirement Value sold what were essentially notes totaling \$142 million that were payable upon the death of the specific insureds. To fund the payment of the premiums required to keep the policies in force, Retirement Value purported to escrow sufficient funds to keep each policy in force for the insureds' lifetimes which it claimed that it could predict with a 95% accuracy. It represented that there was less than a 2% chance of an insured outliving the reserve on his or her policy.<sup>3</sup>

Retirement Value's representations regarding its reserve practices were false. None of the policy reserves were sufficient to fund any policy through the insured's median life expectancy – the point at which the insured had a 50% chance of dying. As structured, Retirement Value's notes were doomed to failure. The scope of the problem is illustrated by comparing Retirement Value's predictions with actual results. Retirement Value estimated that it would need approximately \$24 million to pay premiums for the lives of all 46 insureds. In fact, the Receiver has already paid \$52 million in premiums and two-thirds of the insureds remain alive.

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<sup>2</sup> This includes policies held by Retirement Value and by its affiliate, Hill Country Funding, LLC.

<sup>3</sup> The history of Retirement Value and the Receivership are set forth in the numerous reports that the Receiver has filed with the Court. If it wishes to review them, the Court can easily access the reports through the Receiver's website: <https://www.rvllcreceivership.com/investor-communications>.

After extensive analysis and consultation with actuaries and industry experts, the Receiver determined that if the investment were restructured so that the policies were pooled, then the reserves on hand would be sufficient. In this manner, the proceeds of policies that matured earlier would be available to pay premiums on the remaining policies. Under such a structure, the Receiver's actuaries calculated that the portfolio would pay investors the equivalent of 80% to 120% of the amount they invested.

After extensive litigation and negotiations with various groups of investors, the Receiver proposed several alternative plans by which the Receiver would monetize the life settlement contracts for the investors' benefit.<sup>4</sup> The Court selected a plan by which the Receiver would hold the policies to maturity using the proceeds of policies that matured sooner to pay premiums on those that remained in force. When the cash on hand exceed the reserves required to satisfy 97.5% of modelled circumstances, the Receiver would distribute the excess. Since the Court approved the Plan, the Receiver has made three distributions totaling \$11 million.

As of today, 37 policies covering 30 lives for \$89.5 million remain in force. This motion concerns four of these policies.

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<sup>4</sup> Investors and other interested parties were also allowed to submit plans, which several did.

## II. The LS policies

The estate holds four life settlement policies insuring a single life, LS,<sup>5</sup> for \$4.25 million. The Receiver understands that her son, HS, applied for and received a number of life insurance policies on LS's life totaling some tens of millions of dollars, which he sold to investors. Espinosa Affid. (Exhibit B) at ¶4. Four of these policies ended up in the estate. The four policies, which we will refer to as the "LS policies" are:

Internal Code	Carrier	Face Amount
HCF-JHL305-LS	John Hancock	\$ 750,000
HCF-JHL442-LS	John Hancock	\$ 1,500,000
HCF-SLF495-LS	Sun Life Financial	\$ 1,500,000
HCF-SLF652-LS	Sun Life Financial	\$ 500,000

LS was a resident of New York. She and her family are members of an Orthodox Jewish community in Brooklyn. This community is known to be insular and to shun outsiders – a factor that has substantially impeded the Receiver's efforts. Espinosa Affid. at ¶5.

In the Fall of 2019, the Receiver and his portfolio servicer, Asset Services Group ("ASG"), learned of rumors that LS had recently died. *Id.* at ¶6. ASG attempted to confirm whether LS was dead or alive without reaching a definite result. *Id.* at ¶¶6-7. On several occasions, ASG requested that HS assist in obtaining a death certificate as he was contractually obligated to do. HS did not

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<sup>5</sup> Pursuant to the Second Amended Confidentiality Stipulation and Agreed Protective Order as to Discovery Materials ("Confidentiality Order") entered by the Court on July 2, 2012, the name and other identifying information regarding an insured must be redacted. The insured and any policies on the insured are to be identified with the internal code used by Retirement Value. Confidentiality Order, ¶ 9(a).

respond to ASG's entreaties. *Id.* at ¶7. Despite this, the Receiver applied to the State of New York and City of New York for death certificates, but both reported that they had no record of LS's death. *Id.* at ¶8. Even though he did not have a death certificate, the Receiver filed death claims with the two insurers who agreed to suspend the requirement that the estate pay premiums on the LS policies. *Id.*

In addition to ASG's efforts, the Receiver conducted his own investigation seeking to determine whether LS was alive or dead; and, if dead, to obtain proof of her death. In the course of his investigation, the Receiver learned that LS's son, HS, was rumored to have told at least one owner of a policy on LS's life that he could "obtain" a death certificate in exchange for 50% of the policy proceeds.<sup>6</sup> *Id.* at ¶9.

The Receiver retained a private investigator in New York with experience conducting investigations in New York's Orthodox communities. *Id.* at ¶10. The investigator conducted a comprehensive background check on LS and HS. In addition, the investigator (i) interviewed LS's neighbors, people who did business with HS, and employees of a business she once owned; (ii) attempted to interview other family members; (iii) searched local graveyards; (iv) reviewed social media sites used by Orthodox congregations; and (v) performed a litigation search on HS. Espinosa Affid. at Exh. 1.

Despite this effort, the investigator was unable to determine definitively whether LS was dead or alive and, if dead, where she died. Some sources reported that LS had been ill and had moved to a nursing home (location unknown) a few

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<sup>6</sup> The Receiver's investigation also revealed that HS is a disbarred lawyer and convicted felon.

years ago. Other sources reported that HS had admitted to saying Kaddish for his mother.<sup>7</sup> *Id.*

Throughout this process, the Receiver maintained contact with various parties owning insurance on LS's life, as well as industry professionals. One of these professionals informed the Receiver that Preston Ventures had recently been able to establish LS's death and had obtained a death certificate. Espinosa Affid. at ¶11. The Receiver contacted Preston Ventures. *Id.*

### **III. The Preston Ventures cost sharing agreement**

Preston Ventures informed the Receiver that it had expended more than \$250,000 to track down LS and to establish her death. *Id.* at ¶12. According to Preston Ventures, LS moved to New Jersey and officially changed her name to SB in April 2017. LS (n/k/a SB) died in Brooklyn, New York in November 2018. *Id.* Preston Ventures obtained a death certificate from the City of New York establishing that SB died at HS's home. *Id.* Given (i) the lack of any reason for a 90+ year old woman to change her name in a state other than the one where she spent most of her life, (ii) HS's "offer" to other holders of policies on LS's life to provide proof of death in exchange for a substantial portion of the proceeds, and (iii) HS's criminal record, we believe that HS engineered his mother's name change in order to hide proof of her death so that he could sell it.

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<sup>7</sup> In Orthodox tradition, Kaddish is a prayer recited by a child during the 11 months following the burial of a parent. *The Mourner's Kaddish: a Memorial Prayer in Praise of God*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/kaddish-a-memorial-prayer-in-praise-of-god/> (last visited July 9, 2021).

While the publicly available information – the death certificate and announcement of name change from LS to SB – is significant, it is likely not enough to satisfy the insurers. *Id.* at ¶16. For example, the Receiver is still faced with the task of establishing that the LS who changed her name to SB in New Jersey was the same person as the insured and the same person who died in HS's home.<sup>8</sup> *Id.* Sun Life has already questioned these facts pointing out what it considers to be discrepancies in the death certificate. *Id.* Preston Ventures claims that it has additional information that establishes that LS and SB are the same person. *Id.* at ¶¶12-13.

Much of the evidence that Preston Ventures obtained is from the records of the New Jersey court that adjudicated LS's name change. Those records are currently sealed. The New Jersey court allowed Preston Ventures to access the records but entered an order limiting its use of the records to pursue claims on policies in which it has an interest. *Id.*

In order to compensate Preston Ventures for some of the costs it incurred gathering evidence useful to the Receiver and to comply with the New Jersey court's orders, the Receiver and Preston Ventures agreed that the Receiver would assign 2.5% – or \$106,250 – of the death benefit of the LS policies to Preston Ventures. In exchange, Preston Ventures would share the evidentiary record it amassed and otherwise assist the Receiver in establishing his death claims on the LS policies.

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<sup>8</sup> That SB f/k/a LS died in HS's home and that the decedent's permanent address mentioned on the death certificate matches the address LS gave to the New Jersey courts is strong evidence that we have the correct person. Espinosa Affid. at ¶14.

The full agreement between the Receiver and Preston Ventures is set forth on Exhibit A.

The proposed assignment is a reasonable deal for the estate. First, the Receiver needs the information and evidence that Preston Ventures has obtained. This evidence is crucial to proving that LS has died and that the Receiver is entitled to the \$4.25 million in death benefits. Espinosa Affid. at ¶16.

Second, the price is fair. Without Preston Ventures' assistance, the Receiver would have to independently replicate Preston Ventures' work. It would cost the estate at least \$100,000 to do so. To date, the Receiver has spent thousands of dollars in legal and investigatory fees to achieve rather minimal results. Based on the information that we uncovered, there was good reason to believe, but no proof, that LS died. That information was certainly sufficient to support additional work, which would have to have been undertaken to develop the evidence that Preston Ventures has established. *Id.* at ¶17.

Third, paying Preston Ventures is fair. We would not have known about the name change but for Preston Ventures. The Receiver would eventually have discovered it after spending a great deal more time and money than he had to date. *Id.* at ¶18.

#### ARGUMENT AND AUTHORITIES

A receiver acts not as an agent of a creditor or any other party but instead is an "officer of the court, the medium through which the court acts. He is a disinterested party, the representative and protector of the interests of all persons,



including creditors, shareholders and others, in the property in receivership.” *Security Trust Co. of Austin v. Lipscomb County*, 142 Tex. 572, 180 S.W.2d 151, 158 (Tex. 1944). Subject to the court’s control, a receiver may take charge of property, collect and compromise demands related to it, make transfers or “perform other acts in regard to the property as authorized by the court.” TEX. CIV. PRAC. & REM. CODE § 64.031. The court has broad discretion in supervising a receiver’s management of property. *L & M Oil Co. v. Richey*, 618 S.W.2d 956, 958 (Tex. Civ. App. – Eastland 1981, writ ref’d n.r.e.). The Court should exercise its discretion in favor of approving the contract with Preston Ventures.

While we have discovered no direct example of a similar agreement, the proposed agreement with Preston Ventures is analogous to a contingency fee agreement. In a contingency fee agreement, the client assigns a portion of the potential recovery to counsel in exchange for assistance in prosecuting a claim. The Preston Ventures agreement operates in the same way. The Receiver will assign a small portion of his potential recovery to Preston Ventures in exchange for its assistance with his claim on the LS policies.

Courts routinely approve contingency fee agreements. *See, e.g., Akin, Gump, Strauss, Hauer and Feld, L.L.P. v. E Court, Inc.*, 2003 WL 21025030, \*9 (Tex. App. – Austin May 8, 2003, no pet.)(mem. op.)(affirming trial court decision authorizing receiver to enter into contingency fee agreement). In so doing, the *Akin Gump* court held that the assignment of an interest in the proceeds of litigation did not constitute a sale of estate property. *Id.* This Court has approved several contingency

fee agreements in this case. And, a federal court in Texas has approved a similar contingency arrangement for necessary technical services in support of a software services contract. *SEC v. Narayan*, No. 3:16-cv-1417-M (N.D. Tex. Aug. 11, 2016).<sup>9</sup>

In this case, it makes sense to allow the Receiver to assign a small portion (2.5%) of the proceeds of the LS policies in exchange for cooperation and evidence necessary to complete the death claims on those policies. Without the evidence amassed by Preston Ventures, the Receiver would likely be unable to prove that LS has died and to recover the proceeds of the policies, which total \$4.25 million, without substantial additional cost. While the Receiver could replicate Preston Ventures' work, the price is less than it would cost the Receiver to do so.

ACCORDINGLY, the Receiver respectfully requests that the Court authorize him to enter into the contract with Preston Ventures that is attached as Exhibit A.

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<sup>9</sup> A copy of the order and motion are attached as Exhibit C. In the *Narayan* case, the receiver sought approval for an agreement with a consultant to provide technical services in connection with software provided by the receivership entity. The agreement with the consultant provided that it would receive a percentage of the net earned by the receivership entity from use of the software.

Respectfully submitted,

By: /s/ Michael D. Napoli

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**COUNSEL FOR EDUARDO S. ESPINOSA,  
RECEIVER**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record listed below, through the electronic filing manager if that counsel's e-mail address is on file or via e-mail, if not, on this 18<sup>th</sup> day of August 2021.

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JAMES, DON JAMES, AND JAMES SETTLEMENT  
SERVICES**

/s/ *Michael D. Napoli*  
Michael D. Napoli

# **EXHIBIT A**

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

STATE OF TEXAS,  
*Plaintiff*

v.

RETIREMENT VALUE, LLC, *ET. AL.*,  
*Defendants*

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§  
§  
§

IN THE DISTRICT COURT OF  
TRAVIS COUNTY, TEXAS  
126<sup>th</sup> JUDICIAL DISTRICT

**COST RECOVERY AGREEMENT**

This COST RECOVERY AGREEMENT ("**Agreement**") is made and entered into this August \_\_, 2021, by and among Eduardo S. Espinosa in his capacity as receiver (the "**Receiver**") of Retirement Value, LLC ( the "**Receivership**"); and Preston Ventures, whose address is 2014130, Aliso Viejo, CA 92656 ("**Preston**").

WHEREAS, included in the Receivership's portfolio of life settlement policies are four life settlement policies where one L.S. of Brooklyn New York is the measuring life (the "**Insured**"); (i) two issued by John Hancock with an aggregate face value of \$2,250,000 (the "**Hancock Policies**") and (ii) two issued by Sun Life n/k/a Delaware Life of New York with an aggregate face value of \$2,000,000 (the "**Sun Life Policies**" and collectively with the Hancock Policies, the "**Subject Policies**").

WHEREAS, among the life settlement assets serviced by Preston Ventures is also a life settlement policy on the Insured.

WHEREAS, the Insured is reputed to have passed away sometime between 2018 and 2019, but due largely to the Insured's son's intentional, nefarious efforts to conceal her death, the Insured's demise remained obfuscated and impossible to confirm; much less obtain a death certificate.

WHEREAS, prior to her demise, the Insured changed her name and other significant personal identifying information frustrating efforts to locate her or obtain a death certificate.

WHEREAS, the carriers will not process death benefit claims absence adequate proof of death, generally accepted as a death certificate.

WHEREAS, Preston has invested significant capital, time, energy, and resources to navigate the labyrinth created by the Insured's son, unravel the details of her demise, procure a death certificate and develop the evidentiary record connecting the decedent identified in the death certificate is the Insured (collectively, the "**Preston IP**").

WHEREAS, Preston is prepared to cooperate with the Receivership and share the Preston IP with the Receiver, provided Preston can recover some of the direct, third-party expenses it incurred in developing the Preston IP.

WHEREAS, it is impractical and inefficient for the Receiver to attempt replicate Preston's efforts rather than accept Preston's assistance and avail itself of the Preston IP.

NOW, THEREFORE, in consideration of the mutual promises and the covenants set forth herein, other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

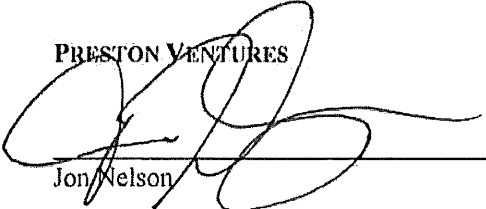
1. Consideration. The Receiver agrees to and, subject only to the Court's approval of this Agreement, does hereby grant unto Preston an interest in 2.5% of the Subject Policies death benefits, payable promptly as and when collected by the Receivership. The Receiver covenants to use his best efforts to seek the Court's approval.
2. Agreement to Cooperate: Subject only to the Court's approval of this Agreement, Preston agrees to assist the Receivership, at the Receivership's sole cost and expense, in filing the claims and obtaining a copy of the death certificate and providing such additional information as it possesses to demonstrate that such death certificate is the death certificate of the Insured..
3. Confidentiality. The Receiver (i) acknowledges the Preston IP's confidential nature; and (ii) agrees that he will use the Preston IP solely to enforce the Receiver's rights under the Subject Policies. The Receiver will not and will not allow his agents, advisors, employees or representatives to resell or otherwise distribute or publicize the Preston IP, except as expressly contemplated by this Agreement. Without limiting the foregoing, the Receivers shall not, and the Receiver shall cause each of his agents, advisors, employees and representatives to not, without the prior written consent of Preston in each instance, (i) disclose any Preston IP to any other person or entity, whether in writing or orally, (ii) provide any other person or entity with a copy of the death certificate of the Insured (other than the applicable issuing insurance companies of each of the Subject Policies, but solely to the extent necessary to collect the death benefits payable under the Subject Policies); or (iii) disclose to any person or entity the methods used to collect the death benefits under any of the Subject Policies.
4. Attorney's Fees. All parties to this Agreement will bear their own attorney's fees, expenses and costs in this lawsuit.
5. Reasonable Steps. The parties further warrant and represent that they will cooperate fully and execute any and all supplementary documents and to take such additional actions which reasonably may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
6. Severability and Governing Law. If any single section or clause of this Agreement should be found unenforceable, it shall be severed and the remaining sections and clauses shall be enforced in accordance with the intent of this Agreement. Texas law shall govern the validity and interpretation of this Agreement.
7. Waiver or Breach. The parties agree that one or more waivers or breaches of any covenant, term, or provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or provision, or as a waiver or breach of any other covenant, term, or provision.
8. Entire Agreement. This Agreement and its attached exhibit(s) contain the entire understanding between the parties and supersedes all prior agreements and understandings, oral or written, relating to the subject matter of this Agreement. The parties expressly acknowledge and agree that no provisions, representations, or warranties whatsoever were made, express or implied, other than those contained in this Agreement and its attached exhibit(s) and that they are not relying on any statement or communication from the other party other than those expressly contained in this Agreement in deciding to execute this Agreement. This Agreement shall not be modified, amended, or terminated unless such modification, amendment, or termination is executed in writing and signed by authorized representatives of the affected parties. The parties




hereby waive their right to make future oral agreements covering the same subject as this Agreement.

9. Construction. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party.
10. Other Acknowledgments. The Receiver and Preston, and each of them, hereby represent and certify that they (1) have had an opportunity to read all of this Agreement; (2) have been given a fair opportunity to, and have been advised to, discuss and negotiate the terms of this Agreement by and through their legal counsel; (3) have been given a reasonable time to consider the Agreement; (4) understand the provisions of this Agreement; (5) have had ample opportunity to seek and have received advice from an attorney or other advisors regarding this Agreement or have otherwise waived their right to do so; (6) have determined that it is in their best interest to enter into this Agreement; (7) have not been influenced to sign this Agreement by any statement or representation by the other party or its legal counsel or other representative not contained in this Agreement; (8) have had sufficient time to investigate the existence of the claims and other rights hereby released and have satisfied themselves with respect to the same based upon their investigation and the advice of counsel, (9) are fully authorized to execute this agreement in the capacities in which it is executed and (10) enter into this Agreement knowingly and voluntarily without coercion, duress, or fraud.
11. Valid Consideration. The Receiver and Preston agree that this Agreement is supported by good, valuable, and sufficient consideration.
12. Change of Facts. The Receiver and the Preston understand and agree that the facts in respect of which this Agreement is made may hereafter prove to be other than, or of different from the facts now known by either of them or believed by either of them to be true as set forth in this Agreement. The Receiver and the Preston expressly accept and assume the risk of the facts proving to be so different, and each of the them agrees that all of the terms of this Agreement shall be, in all respects, effective and binding, and not subject to termination or rescission by either of them due to any such difference in facts.
13. Multiple Counterparts. The parties agree that this Agreement may be signed in multiple counterparts, each of which shall be deemed an original for all purposes.

The Parties have executed this Agreement effective as of the date first written above.

PRESTON VENTURES  
  
Jon Nelson

RETIREMENT VALUE, LLC  
  
Eduardo S. Espinosa,  
in his capacity as Receiver

## **EXHIBIT B**

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
RETIREMENT VALUE, LLC, et al,	§	
	§	
Defendants.	§	126 <sup>th</sup> JUDICIAL DISTRICT

**AFFIDAVIT OF EDUARDO S. ESPINOSA**

BEFORE ME, the undersigned authority, on this day personally appeared Eduardo S. Espinosa, who is personally known to me, and after being duly sworn according to law, upon his/her oath duly deposed and said:

1. My name is Eduardo S. Espinosa. I am over the age of twenty-one (21) years, of sound mind, and fully competent to testify in this cause. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am a partner in the law firm of Akerman LLP. I was admitted to practice law in the State of Louisiana in 1996 and in the State of Texas in 1999. Prior to entering private practice, I was an Enforcement Attorney with the United States Securities and Exchange Commission, where I investigated violations of and enforced the antifraud provisions of the federal securities laws.

3. The Court appointed me as the receiver for Retirement Value, LLC, a Texas limited liability company ("Retirement Value"), a position in which I still serve.

4. As of May 2010 when I was appointed, Retirement Value and its affiliate, Hill Country Funding, LLC, owned 54 life insurance policies insuring the

lives of 46 persons for a total of \$142 million in death benefits. The estate currently has 37 policies covering 30 lives for \$89.5 million in force. Of those 37 policies, there are four covering the life of LS<sup>1</sup> (the “LS policies”).

Internal Code	Carrier	Face Amount
HCF-JHL305-LS	John Hancock	\$ 750,000
HCF-JHL442-LS	John Hancock	\$ 1,500,000
HCF-SLF495-LS	Sun Life Financial	\$ 1,500,000
HCF-SLF652-LS	Sun Life Financial	\$ 500,000

LS’s son, HS, obtained the LS policies and many others on LS’s life, totaling some tens of millions of dollars, and sold them to investors.

5. Based on my research and review of the records of Retirement Value and those created by my agents, including the documents underlying the LS policies, I have learned that LS resided in Brooklyn, New York for much of her life. She was a member of an Orthodox Jewish community there. As my team and I began to investigate her and her potential death, I learned that her community is insular and generally unwilling to speak with outsiders regarding its members.

6. In the Fall of 2019, my portfolio servicer, Asset Servicing Group (“ASG”), informed me that an insurer had told it that the insurer had heard that LS had died. ASG also told me that its routine efforts to identify insureds who had died had not identified LS as dead. Around this time, I spoke with others in the life

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<sup>1</sup> Pursuant to the Second Amended Confidentiality Stipulation and Agreed Protective Order as to Discovery Materials (“Confidentiality Order”) entered by the Court on July 2, 2012, the name and other identifying information regarding an insured must be redacted. The insured and any policies on the insured are to be identified with the internal code used by Retirement Value. Confidentiality Order, ¶ 9(a).

settlement industry whom I knew, or believed, held policies on LS. They too confirmed that they had also heard rumors of her death.

7. I asked ASG to further investigate these rumors and to research their databases and sources to determine whether she was dead or alive. ASG reported that they had done so and had attempted to contact LS's son, HS, who is listed in the documents related to her policy as a contact person and who is contractually obligated to assist us in obtaining a death certificate. HS did not respond to ASG.

8. I instructed ASG to apply to the State of New York and City of New York for death certificates, but both reported that they had no record of LS's death.<sup>2</sup> After several attempts to obtain a death certificate, I instructed ASG to file claims with Sun Life and John Hancock, the issuers of the LS policies. Based on the persistent rumors of her death, both insurers agreed to defer the payment of premiums on the LS policies. Sun Life recently lifted its premium deferral.<sup>3</sup>

9. In addition to ASG's work, I separately investigated the rumors of LS's death. I searched various databases to which I have access, conducted internet searches and spoke with those who owned policies on LS as well as industry professionals who service life settlement policies. In the course of this investigation, I heard a rumor that HS had offered to provide a death certificate in exchange for

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<sup>2</sup> In New York, the state maintains death records of those dying outside of New York City. For those dying in New York City, the city maintains the death records.

<sup>3</sup> Specifically, Sun Life informed me that if I did not pay approximately \$400,000 in past premiums by July 15, 2021, one its policies would be deemed to have lapsed in July 2019 and the other in August 2019. The policies would still pay if LS died before lapse date, which she appears to have done.

50 or so percent of the policy proceeds. I also saw a similar allegation made in a suit by another owner of a policy on LS against HS.

10. I retained a private investigator in New York with experience conducting investigations in New York's Orthodox communities. The investigator's report which details his work and results is attached as Exhibit 1 to my affidavit.<sup>4</sup> Despite the investigator's efforts, he too was unable to definitively say whether or not LS had died.

11. Through my contacts in the life settlement industry, I learned that Preston Ventures was servicing a policy on LS and it had been able to establish LS's death and to obtain a death certificate. I contacted Preston Ventures who confirmed that they had done so but that they had expended in excess of \$250,000 to do so.

12. Preston Ventures explained that LS moved to New Jersey and officially changed her name to SB in April 2017. LS (n/k/a SB) died in Brooklyn, New York in November 2018 at what my investigator determined to be HS's home. Preston Ventures obtained a death certificate from the City of New York. Preston Ventures also informed me that the records and evidence from LS's name change proceeding in New Jersey state court establish that the LS who is insured under the LS policies is same person as the SB who died in Brooklyn in 2018.

13. Preston Ventures explained that the court records from the name change are sealed but that they had received permission from the New Jersey court to obtain the sealed records. The court order limits their ability to use those records

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<sup>4</sup> In accordance with the Confidentiality Order, I have redacted identifying information regarding the insured and her family.

to the prosecution of claims under policies in which Preston Ventures has an interest.

14. I was able to confirm through public records that a LS had changed her name to SB in New Jersey. Preston Ventures provided me with a copy of the SB death certificate. Examining both records, I determined that the address that LS provided to the New Jersey court was the same address in New Jersey listed on the SB death certificate as the decedent's permanent address. Further, the death certificate states that the decedent's place of death is the address that my investigator established as HS's home.

15. After some negotiation, Preston Ventures and I agreed that I would exchange 2.5% of the death benefit of the LS policies if, as, and when paid for Preston Ventures' cooperation in our claim and access to the New Jersey court records. In this manner, Preston Ventures obtains an interest that allows us to use the evidence in compliance with the order of the New Jersey court. And, the estate does not have to pay unless it recovers on the LS policies. Based on the \$4.25 million death benefit of the LS policies, the payment to Preston Ventures should be a maximum of \$106,250. A copy of the proposed agreement with Preston Ventures is attached as Exhibit A to the motion.<sup>5</sup>

16. I recommend that the Court authorize me to enter into and consummate the Preston Ventures agreement. I believe that it is in the best interest of the estate for several reasons. First, we need the information and evidence that

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<sup>5</sup> In accordance with the Confidentiality Order, I have redacted identifying information regarding the insured and her family.

Preston Ventures has gathered. While the publicly available information – the death certificate and announcement of name change from LS to SB – is significant, it is likely not enough to satisfy the insurers. For example, I still face the task of establishing that the LS who changed her name to SB in New Jersey was the same person as the insured and that the same person who died in HS's home. Sun Life has already questioned these facts pointing out what it considers to be discrepancies in the death certificate.

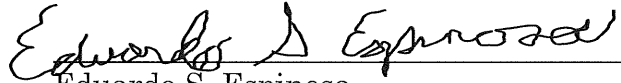
17. Second, Preston Ventures is asking the estate to compensate it for less than half of the costs that it incurred in gathering the evidence that we need to recover \$4.25 million in insurance benefits. It would have cost me close to \$250,000 to independently replicate the work that Preston Ventures did to identify the name change, locate and obtain access to the necessary evidence and find the death certificate. Even with the information already provided, I anticipate that the estate would spend more than the \$106,000 that Preston Ventures has requested. To date, I have spent thousands of dollars in legal and investigatory fees to achieve rather minimal results. Based on the information that we uncovered, there was good reason to believe, but no proof, that LS died. That information was certainly sufficient to support additional work, which would have to have been undertaken to develop the evidence that Preston Ventures has already developed.

18. Third, paying Preston Ventures is fair. We would not have known about the New Jersey name change but for Preston Ventures. I would likely have discovered it after spending a great deal more time and money than I had to date.

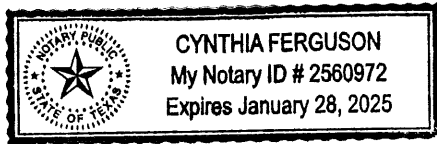


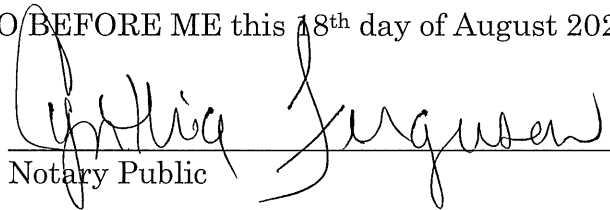
For these reasons, I recommend that the Court authorize me to enter into the proposed agreement with Preston Ventures.

**FURTHER AFFIANT SAYETH NOT.**

  
Eduardo S. Espinosa

SUBSCRIBED AND SWORN TO BEFORE ME this 18<sup>th</sup> day of August 2021.



  
Notary Public

## **Exhibit 1**



**GUARDIAN CONSULTING LLC**  
INVESTIGATIONS - SECURITY - INTELLIGENCE

Dec. 7, 2020

Michael Napoli, Esq.  
Akerman LLP  
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ATTORNEY CLIENT PRIVILEGED  
UNDER KOVEL et seq  
CREATED IN ANTICIPATION OF LITIGATION

**Report**

This is a report related to findings from an Oct. 23, 2020 engagement of Guardian Consulting, LLC (“Guardian” or “we”) by the Texas office of the law firm Akerman LLP (“Akerman”) on behalf of the firm’s client Eduardo S. Espinosa in his capacity as Court-Appointed Receiver for Retirement Value, LLC (“Receiver” or “Client”).

**Predication:**

Guardian was requested to make inquiries related to an individual known as L.S. , identified as “the insured” on of a number of life insurance policies totaling about \$5 million that are being held by the receiver. The focus of the engagement was to determine if L.S. has died and, if so, to identify official repositories that may be holding a death certificate or similar record to facilitate legal actions to obtain such documentation for presentation in court. We were informed that the subject’s son, H.S. , was the original owner and named beneficiary (“viator”) of the policies and that he is believed to have sold the beneficial rights to investors – “viatical settlement providers” - directly or through trusts in exchange for direct payments to him or to satisfy loans taken out on his behalf. (n.b. for industry terms see footnote.<sup>1</sup>) We have been told that H.S. has refused to cooperate with Akerman – as well as representatives of other beneficial holders of policies on L.S. that may exceed \$50 million - demanding a finder’s fee for information related to death certificates.

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<sup>1</sup> [https://www.nj.gov/dobi/division\\_consumers/insurance/viaticalsettlements.htm#1](https://www.nj.gov/dobi/division_consumers/insurance/viaticalsettlements.htm#1)



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**Executive Summary:**

- No death notices, obituaries or similar were identified with L.S. in a comprehensive search of dozens of websites related to Brooklyn Orthodox Jewish communities over the past decade. (n.b. After consulting with Jewish scholars and conducting independent research other spellings included L. as well as a variety of variations of S. including S.<sup>2)</sup>
- A review of cemetery websites, as well as related commercial sites like “Find a Grave,” identified no burial markers under the name “L.S.” or similar over the past eight years.
- No gravestone for L.S.’s late husband, S.S. (or similar) under his name and variations of S. as above was identified in the United States.
- As recently as March 2020, H.S. said that his mother had died within the prior 11 months (see below “interview with attorney Btzalel Hirschhorn”).
- H.S. has been involved in other litigation related to the sale of viatical instruments in which he has been repeatedly accused of fraud.
- H.S. provided a sworn affidavit in another case admitting that he induced his mother to sign legal documents authorizing a mortgage on her home that she didn’t understand and claiming that he had forged her name to legal documents and applied his wife’s expired notary stamp as signature verification.
- H.S. is named in a pending lawsuit in New York Supreme Court (Kings County, Index 518172/2020 WILMINGTON TRUST, N.A., as Securities Intermediary for Viva Capital Trust, and VIVA CAPITAL TRUST plaintiffs, v H.S. et al. See attached **Wilmington01.pdf**) alleging failure to fulfill legal obligation to inform a viatical service provider of his mother’s death and/or other medical information in relation to a \$3 million life insurance policy that names the Viva as beneficiary.
- That lawsuit alleges, without further documentation, that the Social Security Administration is continuing to pay benefits to L.S., not having been informed of her passing.
- H.S. has a history of forgery and defrauding people related to viatical schemes.
- Former neighbors have identified a “niece” who they said was the only regular visitor to L.S. before she was apparently sent to a nursing home. The niece has been identified, telephone number obtained, house visited. She has so far been uncooperative.

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<sup>2</sup> <https://en.wikipedia.org/wiki/S>.



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**Findings:**

The apparent disappearance of L.S. , born in 1926, is a complicated tale with two important background issues. First, the S. family are members of an Orthodox Jewish community that shuns outsiders and prefers to litigate before Rabbinical Courts. Second, there is a history of questionable activities by her son, H.S. , a disbarred lawyer and convicted felon, who was described by a lawyer involved in years of litigation against him as “a grifter.” (source: telephone call with Fred Stevens, Esq., partner at Klestadt Winters Jureller Southard & Stevens, New York City, attorney suing H.S. on behalf of Chapter 7 Trustee EDNY Bankruptcy Case 1-15-00151).

Guardian has been advised by Akerman that many millions of dollars in life insurance, divided into many policies, have been taken out on L.S. , initially by her son, H.S. . We have been told that many or most of those policies have been adjusted in such a way that final payouts will be made to investors with no familial relation to the S. clan (n.b. While there is no central data base for life insurance policies and payouts, it may be worth considering asking H.S. , if he becomes involved in a deposition, if there are other policies that named him as the beneficiary as well as details. That imagined insurance company may very well have death details).

As part of those transfers, H.S. and other relatives promised to provide to the investors timely, legal notice of L.S. 's passing. Akerman has informed Guardian that H.S. has refused to cooperate with their request for such legal notification.

Guardian conducted a comprehensive background review of L.S. .

She was born in 1926, apparently in Hungary, married S.S. , who died in 2003 at the age of 86.

Her most recent addresses include 1257 A 59<sup>th</sup> Street, Brooklyn, 11219, an apartment in a four-unit building (see attached photos identified as 1257pix) and 4115 Quentin Rd., Brooklyn, NY 11234, the address of her son, H.S. , and H.S. 's wife.

The 59<sup>th</sup> Street apartment was sold in January 2017 for \$983,000 to 1257 ABP LLC 955 46<sup>th</sup> Street, Brooklyn, 11219 with “Samuel Grunbaum” listed on the transfer papers as the “sole



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member.” H.S. represented his mother in the sale through a power of attorney (see deed: **59Streetdeed01**).

A Guardian operative visited the 59<sup>th</sup> Street premises Nov. 26, 2020 (see **59st....jpeg**). A woman in an adjacent building, who wouldn’t give her name, said she had lived in the neighborhood for more than 20 years and knew L.S. . The woman said L.S. was elderly and housebound from about 2014, visited only by domestic workers and nursing personnel. The only family member the women met was someone who identified herself as a “niece” by the name of C.S. (see below). The resident of the former S. apartment said she had lived there for over one year and had never met L.S. . The woman, dressed in traditional Orthodox garb of a long skirt, dark cardigan sweater and wig was cordial but refused to engage in conversation, saying she wasn’t sure if she and her husband owned or rented the apartment. “He handles everything,” she said, refusing to provide a telephone number for him before disappearing back into the apartment (n.b. while many Orthodox sects are patrilineal, subject matter experts tell Guardian that such claims are often offered to people making “official” inquiries).

C.S. ’s listed address is 1886 New York Ave., Brooklyn, NY 11210. A neighbor verified that L.S. lived in an upstairs apartment in the two-family wood frame house. A package for “C.S. ” was on the front porch. No one answered rings and knocks in four separate visits on Nov. 26 and Nov. 27 (n.b. the package on the porch spotted on Nov. 26 was gone the following day). C.S. answered the phone (347 604 1972) but refused to answer questions about L.S. , saying “My husband isn’t here.” See photos attached titled “C.S. l...” 1, 2 and 3. (see recommendations below).

Guardian conducted a range of social media searches focused on L.S. (and her relatives) as well as sites related to Orthodox Jewish congregations in Brooklyn.

The searches revealed past ownership in an entity called “Lilly’s Baking Company” also known as “Lilly’s Home Bakery” that was nominally owned by L.S. and located in the Dyker Heights section of Brooklyn. It was acquired by a company called “Brooklyn Brands” in 2015. Office workers at Brooklyn Brands (located in the Bronx) said that L.S. was not involved in the daily operation of the bakery in months preceding the acquisition (during the time of pre-purchased due diligence) and they recalled being informed that she had taken ill.

No social media (Facebook, Twitter etc.) was located related to L.S. . Searches of dozens of Orthodox congregations across Brooklyn revealed no membership nor record of death of L.S.

Guardian obtained LocatePLUS database searches on L.S. and her son H.S. . LocatePLUS is a private data aggregator that provides records to licensed private investigators



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from public and private databases including federal, state and local courts, licensing agencies, property records, consumer credit brokers and a variety of other sources ([www.locateplus.com](http://www.locateplus.com)).

The records include historic listing of telephones listed to L.S. and relatives as well as telephones listed to neighbors. Guardian contacted more than 50 of the numbers – the few that were still in service resulted in conversations with individuals who denied having any knowledge of the L.S. family.

Two exceptions:

David Grunwald (tel: 646 372 2541) who said he rented an apartment at 1257 59<sup>th</sup> Street from L.S. in 2015. He said he never met the woman and explained that the apartment was under receivership at the time. He said a real estate agent told him that L.S. had taken ill and was living in an unidentified nursing home. He did not recall the name of the agent.

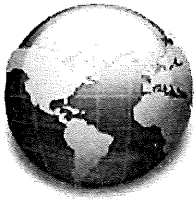
Eli Brieger (tel: 718 853 8350) said he lived in an adjoining unit in 2015 and has since moved, being replaced by a cousin. He said he saw L.S. in 2015 and that she was bed ridden and later moved, reportedly to a nursing home. Brieger moved out of the apartment in late 2015 and has had no contact with residents since.

Son:

L.S.'s son H.S. is a graduate of Columbia Law School who was admitted to practice in New York. He was disbarred in 1991, following his conviction for two counts of felony conspiracy for attempting to hire hitmen to murder the widow of his brother (who had been murdered by persons unknown) and the woman's father. (see attachment H.S. **isbar01**).

H.S., and his wife, Yochheved, have been involved in numerous lawsuits in U.S. District Court (EDNY), U.S. District Court in Miami and in New York State Supreme Court (Kings County).

One case in Brooklyn state court: H.S. vs. Quentin Manor index 526769/2019 (see attachment YS. **VQUENTINMANOR01.pdf**) is related to eviction proceeds against H.S. from an apartment at 4115 Quentin Rd., Brooklyn, NY 11234 (the suit, filed by Mrs. H.S., asked the court to block a defendant, "Quentin Manor LLC" from carrying out eviction). The attorney representing Quentin Manor, Btzalel Hirschhorn, Esq., (aka "Ben") of Shiryak, Bowman, Anderson, Gill & Kadochnikov LLP said in a phone conversation with Guardian Dec. 1, 2020 that he had frequent informal discussions with H.S. during the course of the proceedings, which started in December 2019 and concluded in



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March 2020. He stated that H.S. told him on more than one occasion in 2020 that he was saying Kaddish for his mother. The attorney, who is also an Orthodox Jew, said he did not enquire regarding further details but understood the monthly prayer was related to H.S.'s mother. Under Orthodox Jewish tradition, Kaddish is recited during the first 11 months after the death of a parent by their male children.<sup>3</sup>

In a telephone conversation in November, Attorney Fred Stevens (mentioned above) said that while he believed H.S. was a criminal, Stevens is convinced that H.S. is a strict adherent to Jewish custom and would likely follow all mandates of law, especially related to the death of a relative.

### Related Court Filing:

In a suit filed in New York State Supreme Court Kings County on Sept 25, 2020 (Index number 518172/2020, attached file **wilmington01.pdf**) Viva Capital Trust, a Delaware statutory trust, claims to be the beneficial owner of \$3 million of insurance on L.S. ("Preliminary Statement Section 1, Page 3") different policies than those supervised by the receiver in Texas. The suit also alleges Viva has possession of legally binding "designation letters" orders in which H.S. and others agreed to notify the nominal and beneficial owners of policies in the event of L.S.'s death (see attached **wilmingtonexf01.pdf**).

The pending lawsuit alleges that H.S. "has refused to provide Plaintiffs with contractually required information about the health and medial status of the Insured (L.S.) — most significantly, whether the Insured has passed away — which has prevented Plaintiffs from submitting a death claim on the Policy."

That lawsuit ("**wilmington01**") alleges L.S. has died and that H.S. had her "buried under a different name and is wrongfully collecting social security benefits." (paragraph 3, page 5)

The lawsuit further alleges that H.S. "is improperly demanding a substantial monetary payoff — including by seeking seven-figure payouts from other non-parties who own separate policies on the Insured's life — in exchange for information regarding his mother's death." (paragraph 3, page 5).

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<sup>3</sup> [https://www.chabad.org/library/article\\_cdo/aid/371079/jewish/What-Is-Kaddish.htm](https://www.chabad.org/library/article_cdo/aid/371079/jewish/What-Is-Kaddish.htm)





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### Forgery

There are several allegations against H.S. related to forgery in civil suits. One instance involves admissions that he forged his mother's name, and concocted an illegal notary, for court filings.

In the aforementioned court case before the U.S. Bankruptcy Court, Wilmington et al v H.S. et al EDNY, number 13-45519-nhl attorney Stevens told the court that in an action in NY State Supreme Court in July 2015 that he had taken over his mother's affairs:

**So, he (H.S. ) testified that with respect to this mortgage and his mother's house, that he had essentially put the papers -- and it was with respect to a loan that he took, not her, and that he had put the papers in front of her to sign and he doesn't think she knew what she was signing....**

**And that when there needed to be an affidavit submitted in connection with that action, he authored, with a lawyer, the affidavit, and he forged his mother's signature on the affidavit and he forged his wife's acknowledgement, as a notary, and he used a notary public stamp of his wife's. (see attachment H.S. 09092015 p 66)**

The transcript goes on to allege that H.S. 's wife's notary had expired and not been renewed before her stamp was used to validate L.S. 's signature.

Attorney Stevens filed a motion with the court in the same case that day alleging a number of misdeeds by H.S. including: forging the signature of a former associate to "essentially steal(ing) a cooperative apartment in Miami;" stealing over \$400,000 from a cancer patient in Israel in "some sort of Ponzi scheme," forging the signature of an elderly man in New Jersey related to a viatical scheme; stealing a check from a former attorney; and defrauding his mother by "having her unknowingly mortgage her home." (attachment sH. rothman.pdf page 3). In the same case, counsel filed papers from a related lawsuit in which H.S. failed to pay a commission to a broker in a real estate sale he failed to disclose to the bankruptcy court, a discovery lawyer Stevens said was made accidentally yet fortuitously (see attachment H.S. corcoran01.pdf)

### Another Forgery:

In 2014, the estate of Arnold Young sued H.S. for illegally inducing the elderly plaintiff into entering into a "Stranger Oriented Life Insurance" ("STOLI") policy valued at \$60 million that would ostensibly to provide assets to Young during his lifetime, increase the estate left to his children. H.S. alleged commit fraud, including allegations of forgery, that resulted in Young and his estate encumbering unexpected debt. (see attachment youngvH.S. 01.pdf). H.S.



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settled the case, without the filing of criminal charges, by paying the estate \$350,000 (see attachment **youngvH.S. 02.pdf**)

### **Recommendation:**

Guardian's findings are limited in scale by reasonable restrictions of scope and expenditure as set by Akerman.

While we cannot guarantee an outcome in any case, we have two proposed next steps.

The first is a more direct approach to C.S. by a female operative who was raised in an Orthodox Jewish household in Brooklyn. A neighbor said that C.S. was a regular visitor to L.S. and, from her perspective, was the only relative who visited over the course of more than two years. C.S. is a practicing "Physician's Assistant" with an active New York State license (see attachment **C.S., PA.pdf**) It would seem likely that C.S. would know details of her aunt's death and interment and might be convinced by a person from the same religious background to provide information. She refused to speak to a male from outside the community.

An alternative proposal is to contact the U.S. Postal Inspector and/or the Office of Inspector General of the Social Security Administration ("SSA") relating to alleged ongoing payments of Social Security benefits for L.S.'s account. We believe there is *prima facie* evidence that L.S. has died and that payments are continuing to be made in violation of law. We can supply filings from New York State Court including those allegations by the firm of Shulte Roth & Zabel as well as an affidavit from Guardian regarding the lawyer's claim that H.S. had been mourning his mother. Law enforcement can easily determine payments are still being made to L.S.'s accounts and, if so, would be likely to open a criminal case that would compel H.S., who has power of attorney over the account receiving L.S.'s monthly payments, to provide proof that she was alive or not.

Such request can be made by the receiver, or on behalf of the receiver by Akerman or by Guardian. Each strategy has merits. Our experience is that an inquiry from an investigator may more quickly reveal if the inquiry is worth pursuing (e.g. if monthly checks are still being processed for L.S. law enforcement would likely make further inquiries or if SSA has received notification of her passing, the receiver should be able to get confirmation in his capacity).



## **GUARDIAN CONSULTING LLC**

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I look forward to discussing the report as well as the possibility of further work on this important case.

Sincerely,

*James Mulvaney*

James Mulvaney, Director  
Guardian Consulting LLC

### **Point of Contact:**

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3 E. Evergreen Rd. Suite 1058

New City, New York 10956

Wire information upon request

# **EXHIBIT C**

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

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 3:16-cv-1417-M
	§	
ASH NARAYAN, THE TICKET	§	
RESERVE, INC. a/k/a FORWARD	§	
MARKET MEDIA, INC., RICHARD M.	§	
HARMON, and JOHN A. KAPTROSKY,	§	
	§	
Defendants.	§	

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**UNOPPOSED MOTION TO APPROVE  
RETENTION OF XSTREAM EXCITEMENT, INC.**

Michael D. Napoli, in his capacity as the Receiver for the Ticket Reserve, Inc. ("TTR"), Forward Market Media, Inc. ("FMM"), and Resource Acquisition Group, LLC, moves the Court to authorize him to retain xStream Excitement, Inc. ("xStream") to provide technical services in relation to the markets operated by FMM.

As discussed in his Initial Report, the Receiver is continuing to operate five forward option markets: College Football Playoffs, the Peach Bowl, the Fiesta Bowl, the Peach Bowl All-Access and Trump Hotels. These markets have historically generated several hundred thousand dollars in revenue for FMM. The Receiver believes that the markets can be operated profitably and that they will generate some revenue for the estate. *See* Initial Report [ECF #39-1] at 16, 25.

In addition, the continued operation of the markets supports the efforts of ShooWin, Inc. to launch its forward market business. The college football bowls have made it clear to the Receiver that the Receiver's willingness and ability to keep the current markets open is a necessary condition to their doing business with ShooWin. *Id.* at 20-21, 25-26. As previously discussed in the Initial Report, FMM granted ShooWin an exclusive license to exploit TTR's technology. This license represents the best and clearest path to monetize TTR's technology. *Id.* at 20-21, 26. Accordingly, the estate's success is tied to the success of ShooWin.

The Receiver, however, lacks the technical skill and the assets to operate the markets. The software running the markets requires considerable supervision and maintenance. When the Receiver took over, several of the markets – notably the Trump Hotel and Peach Bowl markets – were inoperative due to the lack of needed maintenance on the markets.<sup>1</sup> Software engineers and other technical persons are required to keep the markets operational.

In addition, there is an out-of-pocket cost to operate the markets. The software runs on servers provided by Amazon and use third-party computing products. FMM is responsible for these costs under its agreements with its clients. The Receiver expects that the out-of-pocket costs will be approximately \$5,000 per month.

The markets are highly seasonable. Most of the revenue in the football markets is earned as the college football season progresses. The Trump Hotel

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<sup>1</sup> xStream has repaired the software and all markets are currently operational.

market is tied to the Presidential election and inauguration. The revenue from that market is not expected until the election nears. The Receiver lacks the cash necessary to pay the out-of-pocket expenses much less to retain the software engineers necessary to keep the markets open until they begin to generate positive cash flow.

To successfully operate the markets, the Receiver needs xStream's assistance. xStream is a consulting company founded by several former employees of TTR. Among its members are the software engineers and other technical employees who created TTR's software. xStream has the technical expertise necessary to maintain and repair the software on which the markets run.<sup>2</sup> In addition, xStream has relationships with the college bowls that have and will continue to assist the Receiver in working with those clients.

xStream has agreed to finance the market's operating expenses and to a partial contingency fee. The agreement with xStream is largely as described in the Initial Report. Initial Report (ECF #39-1) at 17-18. As set out in greater detail in the Consulting Service Agreement (App. 001), xStream has agreed to (i) operate the markets including all required maintenance and repair; customer service; marketing and billing and (ii) front all expenses of operating the markets including paying for the Amazon cloud service and all other required vendors. Consulting Agreement at Exh. A (App. 0016-0018). The contract expires when the markets

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<sup>2</sup> Even without a contract in place, xStream has repaired all of the markets and is currently supporting the Receiver's efforts to keep the markets operational.

close – the date of the bowl games for the football markets and the Presidential inauguration for the Trump Hotel market. *Id.* at § 1.2 (App. 001).

In exchange, FMM will reimburse xStream for expenses and pay it a fee as follows:

- FMM will reimburse third-party expenses incurred by xStream from the royalties paid to FMM from the markets. All expenses must be approved by the Receiver prior to xStream incurring the expense. Consulting Agreement at § 2.3 (App. 002)
- FMM will pay a monthly Service Fee of \$14,714. The fee is paid from FMM's royalties from the markets after payment of expenses. Accrued by unpaid fees will be paid from future royalties. If at the end of the contract, FMM still owes a Service Fee, then xStream will have an administrative claim in the amount of the unpaid fee. *Id.* at § 2.1 (App. 002)
- FMM will pay xStream incentive compensation of 30% of the net royalties for the football markets and 60% of the net royalties paid on the Trump Hotel market. *Id.* at § 2.2 (App. 002).

The Service Fee represents a discount off of xStream's usual and customary charges.

The Receiver believes that the xStream consulting agreement is necessary to the operation of FMM's business and to the preservation of the value of the estate's assets. The price, reached after extensive negotiations, is reasonable. It allows the Receiver to pay for expenses and services as revenue becomes available to do so while compensating xStream for the risk that it is taking and incentivizing it to increase sales in the markets.

ACCORDINGLY, the Receiver respectfully requests that the Court approve the retention of xStream on the terms set forth in the attached Consulting Services Agreement.



Respectfully submitted,

By: /s/ Eduardo S. Espinosa  
Eduardo S. Espinosa  
State Bar No. 24010014

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**COUNSEL FOR MICHAEL D. NAPOLI,  
RECEIVER**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that he has conferred with counsel for all Parties of record. The SEC and Defendants are not opposed to the relief sought in this Motion.

/s/ Eduardo S. Espinosa  
Eduardo S. Espinosa

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 4, 2016, the foregoing document was electronically submitted to the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to all counsel of record.

/s/ Eduardo S. Espinosa  
Eduardo S. Espinosa

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

ASH NARAYAN, THE TICKET  
RESERVE, INC. a/k/a FORWARD  
MARKET MEDIA, INC., RICHARD M.  
HARMON, and JOHN A.  
KAPTROSKY,

Defendants.




Civil Action No. 3:16-cv-1417-M

## ORDER

Before the Court is the Receiver's Unopposed Motion to Employ xStream Excitement, Inc. [Docket Entry #51]. The Motion is **GRANTED**. The Receiver is authorized to retain xStream Excitement, Inc. to provide technical and other services to operate Forward Market Media's markets on the terms set forth in the Motion to Employ xStream Excitement, Inc.

SO ORDERED.

August 11, 2016.

  
BARBARA M. G. LYNN  
CHIEF JUDGE

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Associated Case Party: Retirement Value, LLC, et al

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