

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

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

**RV RECEIVER’S RESPONSE TO THE
HCF RECEIVER’S MOTION TO CONSOLIDATE THE RECEIVERSHIPS**

Eduardo S. Espinosa, in his capacity as the court-appointed Receiver of Retirement Value, LLC (the “RV Receiver”), files his response to the motion of Don Taylor, in his capacity as the court-appointed Receiver for the Hill Country Funding companies (the “HCF Receiver”) to consolidate the two receiverships.

SUMMARY

By his motion, the HCF Receiver has asked the Court to make Retirement Value and, by extension, its investor-victims responsible for the debts of HCF. There is no basis in Texas law to do so. The Texas Supreme Court has repeatedly held that the corporate veil between affiliated companies cannot be breached merely because it appears equitable to do so. Instead, the corporate veil between two entities may be pierced only upon a showing that the corporate form of the first entity was used by the second entity to perpetrate a wrong for the benefit of the second entity. The HCF Receiver has not and cannot show that Retirement Value used HCF's corporate form for such purposes. Accordingly, the HCF Receiver's motion should be denied.

FACTUAL BACKGROUND

Retirement Value and HCF operated separate scams involving investments in life settlements. Each scam operated independently of the other through legally distinct entities. The two scams operated in different time periods and were based on different financial instruments. The victims are largely different as well.¹ While it is unquestionable that Dick Gray and Wendy Rogers are recidivists² with respect to life settlement scams, there were two distinct scams perpetrated by Retirement Value and HCF – each a legally distinct entity.

Retirement Value and HCF were legally separate entities that operated independently throughout their operating history. HCF is comprised of two entities: a Texas limited liability company (“HCF-TX”) and a Nevada limited liability company (“HCF-NV”). Both entities were formed in February 2008 and, at all times, were owned by Dick and Catherine Gray. Excerpts from the November 8, 2010 Deposition of Richard Gray at 25-26, attached hereto as Exhibit A. Initially, all of HCF's business was conducted through HCF-NV. *Id.* Eventually, however,

¹ Only two HCF investors, a husband and wife, claim to be RV investors.

² State's Third Amended Petition at ¶ 25-26.

HCF-NV was dissolved and all of its assets transferred to HCF-TX. *Id.* at 29-30. HCF stopped marketing investments in late-2008 or early-2009 around the time of Retirement Value's formation. Excerpts from the July 15, 2011 Deposition of Wendy Rogers at 358, attached hereto as Exhibit B. Through the time it stopped marketing, HCF raised \$5.5 million from 76 investors.³

Retirement Value is a Texas limited liability company. It was formed in January 2009, began operations in April 2009 and was shut down in March 2010. Gray Dep. at 34, 84. Dick Gray, Catherine Gray, David Gray and Wendy Rogers were the initial owners. *Id.* at 44-45. At the time the receivership began, Retirement Value had about 20 employees and had sold \$77 million of investments to more than 900 investors.

While they had significant common ownership, Retirement Value and HCF operated independently of the other. Each had its own offices, its own bank accounts and its own assets. Gray Dep. at 31, 33; Rogers Dep. at 361. HCF had its offices in Dick Gray's home; whereas Retirement Value and its 20 employees were housed at offices that Retirement Value leased and later owned. HCF owned five policies of life insurance which were titled in its own name. Retirement Value owned 49 policies of life insurance which were titled in the name of Kiesling Porter, which held them for Retirement Value's benefit. Retirement Value had a bank account at First Commercial Bank and additional bank accounts at Wells Fargo in the name of Kiesling Porter, which held them for Retirement Value's benefit. Each entity maintained its own books and records.

This is not a case where a scam was perpetrated through various corporate shells. Instead, this is a case where two distinct scams were perpetrated at different times using different

³ This count does not include investors who purchased investments in SIS or ASA.

methods. HCF initially sold life settlement investments as an agent for Secure Investment Services, LLC (“SIS”) and for American Settlement Associates, LLC (“ASA”). Rogers Dep. at 369. Later, after SIS and ASA were determined to be Ponzi schemes, HCF sold life settlement investments for its own account. Most of the marketing of life settlement investments by HCF was performed by Dick Gray.⁴ *Id.* at 384. Gray Dep. at 286. Gray would place advertisements in local newspapers offering potential investors an extra 2% in interest on certificates of deposit through local banks. When potential investors would meet with him regarding the advertised offer, Gray would attempt to sell them a life settlement investment; initially from SIS, later from ASA, and finally from HCF. Rogers Dep. at 352-57.

The investments that HCF issued were based on one of five policies of life insurance purchased by HCF. The investor would acquire what Gray represented would be a fractional interest in a life insurance policy. The date by which the investment would be paid off was the earlier of the date the insured died or the “strike date” of bonds acquired by HCF to protect against the risk of the insureds living longer than expected. In one iteration of the investment, the investor would receive the full expected value of the investment upon maturity. In the other iteration, the investor received periodic payments of interest. In four of the five policies, the investors were made irrevocable beneficiaries of the policies either directly or through a trust set up for their benefit. HCF stopped marketing investments when Retirement Value began operations. Rogers Dep. at 358.

From its initial conception, Retirement Value was considered to be an entirely new and different venture from HCF. Gray describes Retirement Value as beginning with a telephone call from Ron James, who sold policies to HCF, proposing that Gray form a company in Texas to

⁴ Reid Thornburn was the only other person to receive commissions for selling investments through HCF. Rogers Dep. at 384. Gray would occasionally give Rogers a cut of the commissions he received. *Id.*

compete with Life Partners in Waco. Gray Dep. at 48. According to Gray, he would be moving from a retail business to a wholesale business. *Id.*

When I was operating -- when I was the manager of Hill Country Funding, I was dealing directly with the clients. It was a little boutique. It was really not a very big company. And on a day-to-day basis, I was selling to my clients. Whereas, at Retirement Value, except for a couple of really close friends, I never did any personal sales. It was through licensees. So, in that sense, we were sort of wholesaling to the people who did the retailing.

Id. at 48-49. When asked why he simply did not use HCF to do the new wholesale sales, Gray testified that the HCF investors had already committed money to HCF and their funds had been segregated as client funds. *Id.* at 211. He also noted that the “model was entirely different” – HCF’s investment provided a bond to protect against longevity risk and Retirement Value’s investment did not. *Id.*

Retirement Value did, in fact, operate in an entirely different manner than HCF. Rather than selling fractionalized interests as HCF purported to do, Retirement Value sold notes. Its investments were sold through a network of hundreds of sales agents and were marketed through websites, glossy brochures, cold calls and radio shows as a life settlement investment as opposed to the individual “bait and switch” tactic employed by Dick Gray at HCF. Retirement Value’s investors never acquired an interest in any policy and were never named (directly or indirectly) as irrevocable beneficiaries. Unlike HCF where money was paid directly to HCF and held in a single global account for all investments, investments in Retirement Value were paid to a purported escrow agent and were to be segregated by policy.⁵

There is no evidence of Gray and Rogers treated HCF and Retirement Value as anything other than separate entities. Gray has testified that he operated Retirement Value and HCF as

⁵ While the escrow turned out to be illusory and investments were commingled within the escrow accounts, the promise of an escrow and segregated accounts were a significant difference between HCF and Retirement Value.

separate businesses. Each company had its own offices. Gray Dep. at 30.31. Each paid its own expenses. To the extent, expenses or facilities were shared, Gray kept track of what expense was properly charged to which company and paid accordingly. *Id.* at 33. HCF did enter into a lease for a copier which was used by Retirement Value. However, Retirement Value paid all of the costs related to the copier.⁶ HCF and Retirement Value did not loan money to one another. Rogers Dep. at 361.

An examination of the accounting records of HCF and Retirement Value show that the companies did occasionally share expenses. However, the records also show that Retirement Value reimbursed HCF in full for any expenses paid on its behalf. The total of these reimbursed expenses was only \$26,000. In addition, there is no evidence that HCF money was ever transferred to Retirement Value.

There is evidence that Retirement Value transferred money to HCF. All of the money that RV transferred to HCF was either returned to Retirement Value or secreted at Special Acquisitions. The first such transfer occurred in late-February 2010 – long after HCF ceased active operations. The chart below summarizes the transfers as well as the account balance of the relevant HCF bank account:

Date	From RV to HCF	From HCF to RV	From HCF to Special Acq.
2/23/2010	\$600,000		
2/26/2010	\$300,000		
3/05/2010		\$800,000	
3/26/2010	\$1,000,000		
3/30/2010			\$1,075,000
4/13/2010		\$24,893.79	

⁶ The RV Receiver has already agreed that this lease is a debt of Retirement Value and will be paid on the same basis as other pre-suit trade creditors.

Notably, the total dollars out from Retirement Value to HCF (\$1,900,000) is equal to the total dollars out from HCF to Retirement Value and Special Acquisitions (1,899,893.79) except for \$106.21 that remained with HCF.

Allowing the HCF investors to participate in the Retirement Value estate will reduce the recovery available to the Retirement Value investors. Assuming the estates are combined, Retirement Value will face \$5.5 million in additional claims from the direct HCF investors and additional claims in an unknown amount from those investors who invested through HCF in ASA and SIS. However, the assets that would be added to the Retirement Value estate would be worth considerably less than the additional claims. Assuming that the fair market value of the five policies owned by HCF is 4.6% of face, which is equal to that of the Retirement Value policies and that the proceeds of the policies are available to be shared pro rata, then HCF would bring into the estate some \$310,500 in policies and less than \$200,000 in cash for a total value of \$510,500. Using the liquidation numbers from the RV Receiver's April 2011 report, the Retirement Value estate has \$77.8 million in claims and about \$34.7 million in assets, which provide for a liquidation return of \$0.45 per dollar invested. Adding the HCF claims and assets, increases the claims to \$83.3 million and the assets to \$35.2 million, reducing the return to the Retirement Value investors to \$0.42 per dollar invested – a loss of \$0.03 per dollar invested or 6.7%.

This dilution of the Retirement Value investors' return depends upon the HCF Receiver's ability to undo the irrevocable beneficiaries on four of the five policies that HCF owns. While the HCF Receiver believes that he can do so and most investors on two of the five policies suggest that they would be willing to release their irrevocable beneficiary status for the right deal, the irrevocable beneficiary designations remain in force and have not yet been released.

The facts, quite simply, do not support combining the estates as sought by the HCF Receiver. What the facts show instead is that HCF and Retirement Value, while perpetrating fraud on a variety of victims, perpetrated their fraud separately and independently. Moreover, there is no legal basis on which to consolidate the estates.

ARGUMENT AND AUTHORITIES

The HCF Receiver has asked the Court to impose liability on one set of innocent investor-victims for the harm done to another set of innocent investor-victims by a different entity. Retirement Value and HCF are separate legal entities. Their separate existence has meaning under Texas law and cannot be undone simply because to do so would benefit the HCF investors without causing too much pain (however that's measured) to the Retirement Value investors. There is no equitable principle under Texas law that allows the court simply to ignore the separate corporate existence of Retirement Value and HCF. Nor has the HCF Receiver established, or even alleged, the facts necessary to pierce the corporate veil between Retirement Value and HCF.

I. Texas Law Does Not Allow the Corporate Form to be Ignored on General Equitable Grounds

It is a bedrock principal of Texas law that individuals can incorporate a business and, thereby, shield themselves from the liabilities incurred by that business. *Willis v. Donnelly*, 199 S.W.3d 262, 271 (Tex. 2006). Similarly, affiliated corporations may be created in order to limit liability while pursuing common goals. *SSP Partners v. Gladstrong Investments (USA) Corp.*, 275 S.W.3d 444, 455 (Tex. 2008) (“Creation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law and is commonplace.”). The limited liability offered by the corporate form may not be set aside merely because it would somehow be fair or right some injustice. *Id.* This is particularly true in this case because the Court would not be

imposing liability on the owners of HCF or Retirement Value but on Retirement Value's investor-victims who are no less innocent than HCF's investor-victims.

Recognizing the importance of the corporate form, Texas law has imposed strict limits on the ability of parties and courts to pierce the corporate veil. In 1986, the Texas Supreme Court issued its opinion in *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1986) strictly limiting the ability to pierce the corporate veil to six defined circumstances – none of which is the general equitable principle relied upon by the HCF Receiver.⁷ *Id.* at 272. In *SSP Partners*, the Supreme Court confirmed that the six circumstances set forth in *Castleberry* were intended to be exclusive. *SSP Partners*, 275 S.W.3d at 454. Since *Castleberry* was decided, the Texas Legislature has further limited the circumstances in which the corporate veil may be pierced. *Id.* at 456; also TEX. BUS. ORG. CODE §§ 21.223, 21.224, 101.114. In the 20-plus years following *Castleberry*, the Texas Supreme Court has repeatedly rebuffed attempts to expand the circumstances in which the corporate veil may be pierced. *E.g.*, *Willis*, 199 S.W.3d at 273 (rejecting “implied ratification” theory which would impose liability on shareholder who benefited from corporate contract); *SSP Partners*, 275 S.W.3d at 456 (rejecting “single business enterprise” theory for imposing tort liability on affiliated corporation).

⁷ The veil piercing theories recognized in *Castleberry* are:

- (1) when the fiction is used as a means of perpetrating fraud;
- (2) where a corporation is organized and operated as a mere tool or business conduit of another corporation;
- (3) where the corporate fiction is resorted to as a means of evading an existing legal obligation;
- (4) where the corporate fiction is employed to achieve or perpetrate monopoly;
- (5) where the corporate fiction is used to circumvent a statute; and
- (6) where the corporate fiction is relied upon as a protection of crime or to justify wrong.

Castleberry, 721 S.W.2d at 272.

The HCF Receiver's argument – that money was commingled between HCF and Retirement Value and that HCF and Retirement Value were part of the same venture – is strongly reminiscent of the single business enterprise theory rejected in *SSP Partners*. A single business enterprise formed by two entities is characterized by the following factors first set out in *Paramount Petroleum Corp. v. Taylor Rental Center*, 712 S.W.2d 534 (Tex. App. – Houston [14th Dist.] 1986, writ ref'd n.r.e.): (1) common ownership; (2) shared offices and telephone numbers; (3) shared goals; (4) payment of the expenses of one by the other; (5) commingling of funds; (6) shared employees; and (7) similar names. *Id.* at 537. Notably, the HCF Receiver relies on many of these factors to argue that the Retirement Value and its investor-victims ought to be liable for the debts owed by HCF to its investor-victims. The *SSP Partners* court overruled *Paramount Petroleum* holding that the factors it identified were insufficient and largely irrelevant to the determination of whether there was sufficient abuse of the corporate form to make affiliated companies liable for each other's debts. *SSP Partners*, 275 S.W.3d at 456.

Here, the HCF Receiver does not argue that Retirement Value abused its corporate form or that of HCF to the detriment of HCF's investor-victims. Instead, he argues that ignoring the separate corporate existence of HCF and Retirement Value is equitable because the HCF investor-victims are no less innocent or damaged than those of Retirement Value and Retirement Value has more assets. In essence, his argument boils down to a subjective (and one sided) notion of fairness: combining the estates will help the HCF investor-victims and will not hurt the Retirement Value investor-victims too badly. While it has a certain surface appeal, the HCF Receiver's argument has no basis in Texas law. Indeed, as discussed above, it is directly contrary to the law as set forth by the Texas Supreme Court in *SSP Partners* and *Willis*.

Not surprisingly, the HCF Receiver does not rely on any Texas cases. Instead, he relies exclusively on federal cases. These cases simply do not support his argument. First of all, none of the cases addresses the requirements of Texas law for piercing the corporate veil. The Texas Business Organizations Code provides the exclusive means by which the corporate veils of Texas entities may be pierced. *SSP Partners*, 275 S.W.3d at 456; TEX. BUS. ORG. CODE § 21.224. This Court should not go beyond the strictures of Texas law.

Second, none of the federal cases cited by the HCF Receiver actually stands for a broad equitable power to simply ignore the corporate form. The first case cited by the HCF Receiver is *SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992). *Elliott* did not, in fact, hold that the corporate veil between several legal entities should be pierced. Instead, it noted in a footnote that the district court had treated all of the defendant entities as one entity, apparently without objection. *Elliott*, 953 F.2d at 1565 n.1. No party to the appeal challenged the district court's treatment of the separate entities and the *Elliott* court mentioned it no further.

The HCF Receiver's second case is *SEC v. Tyler*, 2003 WL 21281646 (N.D. Tex. 2003). In *Tyler*, as in *Elliott*, the court did not deal with the issue of piercing the corporate veil to allow creditors of one entity access to the assets of a second entity. The court in *Tyler* merely allowed all of the creditors of an entity to share pro rata in assets belonging to that entity and the individual fraudfeasor.⁸ *Tyler*, 2003 WL 21281646 at *6 (“Under such circumstances, the property and assets of AFS, Larry W. Tyler and the relief defendants should be pooled for the benefit of all AFS investors.”).

⁸ A relief defendant is a party holding assets that belong to the actual defendant. A relief defendant is not accused of wrongdoing, but a federal court may order such a person to turnover assets where that person (1) has received assets from the defendant, and (2) does not have an ownership interest in the assets. *Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009). In this case, Kiesling Porter was a relief defendant because it held funds belonging to Retirement Value in its role as the “escrow agent.”

The HCF Receiver also relies on *CFTC v. Eustace*, 2008 WL 471574 (E.D. Pa. 2008). In *Eustace*, the court dealt with the distribution of a substantial settlement from a lawsuit pursued by a receiver on behalf of two affiliated funds. The receiver proposed to split the proceeds between the two funds – 11% to the LP/Option fund and 89% to the Offshore fund. *Eustace*, 2008 WL 471574 at *3. Receivers of the Offshore fund (appointed by a different court) objected arguing that the entire settlement belonged to the Offshore fund. The court found the Offshore fund’s argument to be “extreme and unsupportable” because the LP/Option fund was a plaintiff in the case that was settled, paid its share of the expenses of the case and settled its claims against the defendant as well. *Id.* at *8.

The *Eustace* court also discussed some of the other factors supporting allowing both funds to share in the proceeds of the settlement. It noted that there was some commingling of money between the funds and that investors had been moved from one fund to the other. The court also noted that the investors were told at the time of investment that both funds shared assets and that the performance of the funds was reported jointly. Investors were also told when they invested that investors in both funds would share *pari passu* in the same pool of assets. The facts of *Eustace* are a far cry from those at issue here.

Moreover, it is not clear what, if any, legal principle the *Eustace* court relied upon. The court relied upon *SEC v. Elliott*, in which, as discussed above, no one objected to the piercing of the corporate veil among the defendants. The court also relied on *SEC v. Forex Asset Management*, 242 F.3d 325 (5th Cir. 2001). However, in *Forex Asset Management*, the Fifth Circuit expressly did not consider the propriety of combining the assets of multiple entities holding that appellants had waived any complaint to the combination by failing to object to it in the trial court. *Id.* at 332. The final case relied upon by the *Eustace* court is *CFTC v. Topworth*

International, Inc., 205 F.3d 1107 (9th Cir. 1999). In *Topworth*, the court did not rely on general equitable principles to breach the walls between affiliated entities but instead relied upon alter ego principles set forth in California law – the governing law for most of the entities.

In sum, there is no general equitable principle allowing this Court to ignore the separate legal existence of Retirement Value and HCF. Texas law specifically forbids it. And, the federal law cited by the HCF Receiver does not set forth any such principle. To the extent that the federal courts have discussed the legal basis for combining separate entities, they have relied upon state law.

This is, of course, a state court and not a federal court. It must follow the dictates of Texas law as set out by the Texas Supreme Court. In this area of the law, the Supreme Court has spoken clearly setting out exactly what must be proven before making one corporation responsible for the debts of another:

We have never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances. There must also be evidence of abuse, or as we said in *Castleberry*, injustice and inequity. By “injustice” and “inequity” we do not mean a subjective perception of unfairness by an individual judge or juror; rather, these words are used in *Castleberry* as shorthand references for the kinds of abuse, specifically identified, that the corporate structure should not shield—fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like. Such abuse is necessary before disregarding the existence of a corporation as a separate entity.

SSP Partners, 275 S.W.3d at 455. The HCF Receiver has not attempted to make the type of showing necessary to pierce the corporate veil under Texas law.

II. The Court Should Not Pierce the Corporate Veil between Retirement Value and HCF to Require the Investor-Victims of Retirement Value to Compensate the Investor-Victims of HCF

In his motion, the HCF Receiver has not made a single argument as to the propriety of piercing the corporate veil between Retirement Value and HCF under Texas law. He has not

even cited a single Texas case discussing veil piercing. Thus, we do not know on exactly what basis the HCF Receiver would contend that the veil should be pierced under Texas law. In this brief, the RV Receiver will not attempt to attempt to address arguments and theories that were not raised.

The RV Receiver would note, however, that none of the acknowledged theories for piercing the corporate veil are applicable to the relationship between Retirement Value and HCF. To pierce the corporate veil and make Retirement Value liable for the harm done by HCF to its investors, the HCF Receiver would have to show that Retirement Value practiced actual fraud against the HCF investor-victims.

Under § 21.223 of the Business Organizations Code,⁹ an affiliate of an entity is not liable for any matter relating to, or arising from a contractual obligation of that entity unless the affiliate “caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the oblige primarily for the direct personal benefit of the ... affiliate.” Each of the HCF investor-victims is party to a contract with HCF – the investment contract – out of which their claims arise. But for the investment contract, none of the HCF investor-victims would have a tort claim or claim under the Texas Securities Act. The limitations of § 21.223 apply where, as here, a tort claim arises out of or in connection with a contract between the plaintiff and the entity. *Menetti v. Chavers*, 874 S.W.2d 168, 173-74 (Tex. App. – San Antonio 1998, no pet.); *Texas-Ohio Gas, Inc. v. Mecom*, 28 S.W.3d 129, 137-38 (Tex. App. – Texarkana 2000, no pet.).

⁹ By its terms, § 21.223 applies to corporations and not to limited liability companies. The section of the Texas Limited Liability Company Law which covers the liability of members and affiliates of members, § 101.114, provides that members and their affiliates are simply not liable for the obligations of their LLC. Rather than view § 101.114 as an absolute bar to piercing the veil of LLCs, Texas courts have held that §§ 21.223 and 21.224 apply to LLCs as well as to corporations. *McCarthy v. Wani Venture AS*, 251 S.W.3d 573, 590 (Tex. App. – Houston [1st Dist.] 2007, pet. denied).

Retirement Value did not use the corporate form of HCF (or its own corporate form) to commit fraud against any of the HCF investor-victims. Nor did Dick Gray or Wendy Rogers. While Gray and Rogers surely committed fraud against the HCF investors, there is nothing to suggest that they used the corporate form of Retirement Value to perpetrate that fraud. As discussed above, both testified that they kept the two frauds separate. Moreover, Retirement Value did not even exist when most of the HCF investors were defrauded by Gray and Rogers. Moreover, there was no benefit to Retirement Value from the fraud practiced by HCF on its investors. As discussed above, no HCF money or assets were sent to Retirement Value. The only transfer of funds from HCF to Retirement Value was the return of funds originally delivered by HCF by Retirement Value.

CONCLUSION

Texas law does not recognize the general equitable principles relied upon by the HCF Receiver to pierce the corporate veil between affiliated entities. Quite simply, it is not sufficient under Texas law that piercing the veil would have some benefit to the creditors of one of the affiliates. Instead, to pierce the veil between Retirement Value and HCF and to combine the two estates, the HCF Receiver must meet the strict criteria for piercing the corporate veil set out by the Texas Legislature and the Texas Supreme Court. He has not and cannot do so. Accordingly, the motion to consolidate the estates should be denied.

Respectfully submitted,



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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 and e-mail on this the 21st day of November 2011:

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Michael D. Napoli

Exhibit A

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

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

 ORAL DEPOSITION OF
 RICHARD GRAY
 NOVEMBER 8, 2010

ORAL DEPOSITION OF RICHARD GRAY, produced as a witness at the instance of the Court-Appointed Receiver of Retirement Value, LLC, and duly sworn, was taken in the above-styled and numbered cause on the 8th day of November, 2010, from 9:30 a.m. to 4:55 p.m., before STEVEN STOGEL, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Clark, Thomas & Winters, P.C., 300 West 6th Street, 15th Floor, Austin, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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<p>1 A. No.</p> <p>2 Q. Have you ever held a securities license?</p> <p>3 A. No.</p> <p>4 Q. In March of 2007, after you stopped selling</p> <p>5 SIS, did you continue to sell life settlement products?</p> <p>6 A. Yes.</p> <p>7 Q. Through what entity?</p> <p>8 A. Well, at first, it was also called Secure</p> <p>9 Investment Services of Houston, and then they changed</p> <p>10 their name to American Settlement Associates.</p> <p>11 Q. And who was involved with American Settlement</p> <p>12 Associates?</p> <p>13 A. Well, there were two principals of that LLC.</p> <p>14 One was Charles Jordan, and the other was Kelly Gipson.</p> <p>15 Q. And Charles Jordan is sometimes called Chip</p> <p>16 Jordan?</p> <p>17 A. Chip, yes.</p> <p>18 Q. And what was the other principal's name?</p> <p>19 A. Kelly Gipson. I believe it's G-i-p-s-o-n.</p> <p>20 K-e-l-l-y. It's a man.</p> <p>21 Q. G-i-p-s-o-n?</p> <p>22 A. Yes.</p> <p>23 Q. How long did you sell for SIS -- I'm sorry --</p> <p>24 ASA?</p> <p>25 A. The first case was written in March of 2007.</p>	<p>1 A. Well, they came through Ron James. They came</p> <p>2 through James Settlement Services, but they were</p> <p>3 provided by Midwest Medical Review in Ohio.</p> <p>4 Q. How about SIS? Who did the LE reports?</p> <p>5 A. Midwest Medical Services.</p> <p>6 Q. And again, those were provided through --</p> <p>7 A. Through Ron James.</p> <p>8 Q. Of James Settlement Services?</p> <p>9 A. James Settlement Services, yes.</p> <p>10 Q. Have you -- did you make any sales for a</p> <p>11 company called A&O?</p> <p>12 A. No. Actually, I assisted Barnard-Donagan</p> <p>13 Insurance in being licensed with them or appointed with</p> <p>14 them, but no sales were ever transacted through that</p> <p>15 company.</p> <p>16 Q. And why not?</p> <p>17 A. We moved on and dealt with SIS instead.</p> <p>18 Q. How about ABC Viaticals?</p> <p>19 A. There was an appointment with</p> <p>20 Barnard-Donagan -- in other words, through -- I'll</p> <p>21 answer the question that you're asking, but the context</p> <p>22 in which I want to put it is the June of 2005 period</p> <p>23 through November 1st of 2005.</p> <p>24 As the vice president in charge of</p> <p>25 benefits and services, I was constantly searching for</p>
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<p>1 The last sale was either the last week of November or</p> <p>2 the -- the last week of November of 2007.</p> <p>3 Q. And why did you stop selling for ASA in</p> <p>4 November of 2007?</p> <p>5 A. To bring total control of that sales process</p> <p>6 under my own umbrella.</p> <p>7 Q. What happened to ASA or SIS of Houston?</p> <p>8 A. They allowed the policy to lapse on March 9th</p> <p>9 of this year.</p> <p>10 Q. Was there any regulatory action taken against</p> <p>11 ASA?</p> <p>12 A. Yes, through the SEC.</p> <p>13 Q. And ASA had just the one policy?</p> <p>14 A. I only participated with one fractional policy</p> <p>15 with them.</p> <p>16 Q. Were you aware of other policies that ASA sold</p> <p>17 on a fractional basis?</p> <p>18 A. No. Actually, I think they sold all of their</p> <p>19 other policies on a single-owner basis. But I -- that's</p> <p>20 my surmising. I don't know that for sure.</p> <p>21 Q. Who sold the policy to ASA?</p> <p>22 A. James Settlement Services.</p> <p>23 Q. And who --</p> <p>24 A. Ron James.</p> <p>25 Q. And who provided the life expectancy reports?</p>	<p>1 the best way for Barnard-Donagan Insurance to enter this</p> <p>2 asset class, and it was through a series of learning</p> <p>3 experiences, quite frankly. So Barnard-Donagan</p> <p>4 Insurance was appointed with ABC Viaticals, but it</p> <p>5 wasn't directly with them. It was through an agent in</p> <p>6 Putnam, Connecticut, who later said it was ABC. And</p> <p>7 then an Internet search revealed to us the trouble that</p> <p>8 they were in. So that appointment was canceled probably</p> <p>9 48 hours after it occurred.</p> <p>10 Then there was an appointment with A&O</p> <p>11 Resource Management in Houston. They actually came in</p> <p>12 August of 2005 and provided training to the agents at</p> <p>13 Barnard-Donagan Insurance, but no business was ever</p> <p>14 transacted because we moved in the direction of SIS in</p> <p>15 California.</p> <p>16 Q. Do you know who provided the policies for A&O?</p> <p>17 A. I don't.</p> <p>18 Q. How about ABC Viaticals?</p> <p>19 A. I don't.</p> <p>20 Q. When did you form Hill Country Funding?</p> <p>21 A. Hill Country Funding was formed in February of</p> <p>22 2008?</p> <p>23 Q. Now, there are two Hill Country Funding</p> <p>24 entities. There's a Nevada entity --</p> <p>25 A. Well, there were. There isn't now.</p>

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1 **Q. Okay. Hill Country Funding, the Nevada**
 2 **entity, when was that formed?**
 3 A. Hill Country Funding Texas was formed early in
 4 February -- the 6th or the 8th of February -- or 13th --
 5 13th of February. And then Hill Country Funding in
 6 Nevada I think was the 21st of February, about a week
 7 later.
 8 **Q. Of what year?**
 9 A. Of 2008.
 10 **Q. Why form a Texas entity and a Nevada entity?**
 11 A. It was at the recommendation of Ron James at
 12 James Settlement Services. He, I believe, is a Nevada
 13 company, owns property in Nevada. And he felt that I
 14 had been misguided in forming a Texas company. But for
 15 tax purposes and administrative processing purposes,
 16 either Delaware or Nevada would be preferable. So
 17 because he was a Nevada company, we elected Nevada.
 18 **Q. Who are the owners -- Hill Country Funding**
 19 **Nevada has been dissolved. Correct?**
 20 A. Yes.
 21 **Q. And when was that dissolved?**
 22 A. Well, it was dissolved over a period of weeks,
 23 but the final action I believe was February of this
 24 year, of 2010.
 25 **Q. Why dissolve Hill Country Funding Nevada?**

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1 A. It wasn't necessary any longer. We were no
 2 longer acquiring policies. We were trying to wind down
 3 Hill Country Funding activity and wrap it up and simply
 4 maintain the policies that were already owned, and that
 5 could easily be done right here in Texas. Retirement
 6 value is the dominant business activity.
 7 **Q. Well, Hill Country Funding's offices, the**
 8 **Nevada company, those were in Texas as well. Correct?**
 9 A. I'm sorry. I didn't --
 10 **Q. The Nevada company's offices, those were in**
 11 **Texas. Correct?**
 12 A. No. They were in Nevada.
 13 **Q. Who worked in Nevada?**
 14 A. We had an office arrangement in Nevada.
 15 Everything was officially done through an administrator
 16 there for us.
 17 **Q. Did Hill Country Funding have an employee in**
 18 **Nevada?**
 19 A. Yeah. The administrator that I just
 20 mentioned.
 21 **Q. And what was that administrator's name?**
 22 A. I forget. I can find it.
 23 **Q. Was it an employee or just an administration?**
 24 A. It was an administration.
 25 **Q. A company?**

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1 A. Yes.
 2 **Q. Prior to the formation of Retirement Value,**
 3 **you worked for Hill Country Funding. Correct?**
 4 A. I was Hill Country Funding, yes.
 5 **Q. And you were in Texas?**
 6 A. Yes.
 7 **Q. So what business was actually transacted in**
 8 **Nevada?**
 9 A. That's where all the policies were officially
 10 purchased and that's where the bonds were purchased.
 11 **Q. And why was all of that officially done in**
 12 **Nevada?**
 13 A. It just seemed the easiest way to do it, with
 14 Ron James being a Nevada company. And also for any tax
 15 implications, for any tax purposes.
 16 **Q. Who provided the tax advice to you at this**
 17 **point?**
 18 A. Well, we -- there wasn't a CPA involved. We
 19 just had a lawyer that we worked with from time to time.
 20 I did my own tax returns as Hill Country Funding.
 21 **Q. Who was the lawyer you worked with?**
 22 A. Well, we worked with two firms. We worked
 23 with Kiesling, Porter, Kiesling & Free, and we also
 24 worked with James Betterworth in New Braunfels.
 25 **Q. Okay. What work did Kiesling, Porter,**

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1 **Kiesling & Free do for Hill Country Funding?**
 2 A. Actually, Brent Free formed the initial LLC
 3 for Hill Country Funding.
 4 **Q. The Texas one or the Nevada one?**
 5 A. The Texas one. The Nevada one was structured
 6 through the adviser in Carson City.
 7 **Q. If all the policies were purchased by the**
 8 **Nevada company, how did -- well, who currently owns the**
 9 **Hill Country Funding policies, the Nevada company or the**
 10 **Texas company?**
 11 A. Hill Country -- there's a -- there was always
 12 one tax ID number. It was interesting that the IRS
 13 never differentiated between the two companies. So, for
 14 all practical purposes, we considered one a home office
 15 and one an operating office. So Hill Country Funding,
 16 LLC, owns the policies.
 17 **Q. Hill Country Funding, LLC, the Texas entity?**
 18 A. Uh-huh.
 19 **Q. You need to answer "yes" or "no"?**
 20 A. Yes.
 21 **Q. So, if the policies were purchased by the**
 22 **Nevada company, how did they end up in the Texas**
 23 **company?**
 24 A. You just do an address change.
 25 **Q. Let me ask you, is there any document that**

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<p>1 transfers ownership of the insurance policies from Hill 2 Country Funding, a Nevada LLC, to Hill Country Funding, 3 a Texas LLC? Does that document exist? 4 A. No. It was done as an address change. 5 Q. And by an address change, you mean you sent in 6 a change of address to -- 7 A. To the carriers, and so the premiums are -- 8 well, you would know this, because you get the premium 9 statements that we send to you through Mr. Bishop. So 10 the insurance companies all show Hill Country Funding, 11 LLC, at its current Texas address as the owner. And 12 that's where the billing comes, and that's how the 13 correspondence with the carriers takes place on those 14 five policies. 15 Q. Who are the owners of Hill Country Funding 16 Texas? 17 A. Richard Gray and Catherine Gray, my wife. 18 Q. Before its dissolution, who were the owners of 19 Hill Country Funding Nevada? 20 A. The same two people. 21 Q. Did your brother David ever have an ownership 22 interest in either the Texas or the Nevada entity? 23 A. No one else ever had any interest in any Hill 24 Country Funding entity except my wife and myself. 25 Q. Hill Country Funding, after the formation of</p>	<p>1 Q. All right. When did Hill Country Funding 2 enter into the Wells Fargo lease? 3 A. I don't remember, but it would have been early 4 on in the formation of Retirement Value. Sometime after 5 January of 2010 -- excuse me -- 2009. 6 Q. Were those leases ever transferred from 7 Hill -- in the name of Hill Country Funding to the name 8 of Retirement Value? 9 A. No. I think we explored that from time to 10 time, but it was never consummated. But Retirement 11 Value always paid the monthly bills. 12 Q. So Retirement Value paid the monthly bills for 13 the AT&T lines? 14 A. Uh-huh. 15 Q. And also paid the monthly bills for the Wells 16 Fargo? 17 A. Right. 18 Q. In Retirement Value's office, the photocopier 19 outside of Mr. Fry's office, that photocopier has a sign 20 on it that asks that the users enter a code if they want 21 to use it for Retirement Value -- 22 A. Right. 23 Q. -- and a code if they want to use it for Hill 24 Country Funding. 25 A. Right.</p>
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<p>1 Retirement Value -- did Retirement Value and Hill 2 Country Funding share offices? 3 A. No. 4 Q. Did Retirement Value pay expenses for Hill 5 Country Funding? 6 A. No. Retirement Value paid expenses for items 7 that Hill Country Funding acquired for Retirement Value, 8 because Retirement Value had no creditworthiness at that 9 time when it started up. 10 Q. Hill Country Funding entered into contracts 11 with service providers. Correct? 12 A. Uh-huh. Yes. 13 Q. Which contracts did Hill Country Funding enter 14 into for the benefit of Retirement Value? 15 A. There were two principal ones. One was a 16 series of phone numbers, Internet numbers, Internet 17 access numbers, fax numbers with AT&T. 18 Q. Uh-huh. 19 A. And an equipment leasing arrangement with 20 Wells Fargo Equipment or Wells Fargo Financial Services 21 for a certain number of copiers. 22 Q. Now, Retirement Value had separate accounts 23 with AT&T. Is that correct? 24 A. Ultimately there were additional accounts set 25 up. I lost track of those because you control those.</p>	<p>1 Q. Why was that done? 2 A. Well, you've already answered your own 3 question. Some copies were made for Hill Country 4 Funding, but they were minimal, but they were carried as 5 a separate item. 6 Q. And those -- and Hill Country Funding paid for 7 those copies? 8 A. I don't remember -- I don't know that we did, 9 actually. Am I allowed to comment? I see the thrust of 10 your questioning, but the simple fact of the matter is 11 that the preponderance of every dollar involved in the 12 AT&T transactions and the Wells Fargo transactions were 13 for the benefit of Retirement Value. 14 Q. But -- 15 A. And Retirement Value accordingly paid the 16 bills. And as receiver, you've steadfastly refused to 17 pay those bills that became a Retirement Value 18 obligation. 19 Q. And you understand that since those leases are 20 in the name of Hill Country Funding, we don't view that 21 as a Retirement Value obligation? 22 A. And that is a matter of disagreement to be 23 resolved. But when you're spending hundreds of 24 thousands of dollars on your fees, I don't appreciate it 25 that Wells Fargo and AT&T are left to come after me for</p>

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1 \$25,000 of legitimate Retirement Value money.
 2 **Q. So the office that Hill Country Funding had in**
 3 **Nevada, was that its own office, or was that an office**
 4 **sharing arrangement?**
 5 A. It was an office sharing arrangement. There
 6 was a monthly lease payment that Hill Country Funding
 7 paid.
 8 **Q. And did you ever visit that office?**
 9 A. I visited it once briefly during a trip to --
 10 actually, I think it was after the arrangement had
 11 ended, but only once in Carson City.
 12 **Q. And whatever mail was received at the office**
 13 **was forwarded to Hill Country Funding?**
 14 A. Yes.
 15 **Q. The Texas office?**
 16 A. Yes.
 17 **Q. Retirement Value was founded in January of**
 18 **2009. Is that correct?**
 19 A. Yes.
 20 **Q. And it is a Texas entity. Is that correct?**
 21 A. Yes, it is.
 22 **Q. Why didn't you make -- why didn't you make**
 23 **Retirement Value a Nevada entity?**
 24 A. There wasn't any need to at that point. We
 25 were buying policies in an entirely different marketing

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1 program. It just seemed that there wasn't any need to
 2 do that.
 3 **Q. What was the perceived need to buy policies in**
 4 **Nevada?**
 5 A. I think it was just newness on my part and
 6 nervousness about where I would buy the policies. Once
 7 I had a comfort level with buying policies through James
 8 Settlement Services, there seemed no need to have two
 9 different companies or two locations or two entities.
 10 **Q. Well, what I don't understand, and hopefully**
 11 **you can explain it to me, is what is the advantage of**
 12 **buying the policies in the name of a Nevada company and**
 13 **having them sent to the shared office space in Nevada?**
 14 A. Frankly, I think your question is an important
 15 and a fair one, and it turned out that in my view there
 16 was no advantage. There may have been a perceived
 17 advantage, but I don't think we ever realized a true
 18 advantage. And that was one of the main reasons for
 19 canceling it.
 20 **Q. What was the perceived advantage?**
 21 A. I'm not sure that I know. I was following Ron
 22 James' advice at James Settlement Services, as I did in
 23 establishing all these companies.
 24 **Q. You had been in business for yourself for a**
 25 **number of years prior to the time you met Ron James.**

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1 **Correct?**
 2 A. Uh-huh.
 3 **Q. You need to answer "yes" or "no."**
 4 A. Yes. Yes.
 5 **Q. When did you meet Mr. James?**
 6 A. I don't recall the first time I met him, but
 7 there were several in person visits at his offices in
 8 Lafayette, California. I would have to say that the
 9 face-to-face visits didn't -- the first face-to-face
 10 visit would have been a Hill Country Funding timeline
 11 thing, so sometime after early 2008.
 12 **Q. When were you first -- when did you first**
 13 **speak with Mr. James, whether or not in person?**
 14 A. Late December of 2007 or early January of
 15 2008. And the reason was we were transitioning away
 16 from ASA in Houston. We weren't going to deal with them
 17 any longer. And my wife and I decided to market this
 18 asset class directly on our own, and we wanted to
 19 acquire -- Ron James was the only source I knew.
 20 **Q. Who introduced you to Mr. James or gave you**
 21 **his phone number?**
 22 A. Well, I first learned of his name from the
 23 owners of Secure Investment Services in Redding. The
 24 phone number itself came from Chip Jordan.
 25 **Q. And you contacted Mr. James to inquire about**

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1 **purchasing policies?**
 2 A. Yes.
 3 **Q. As of the time that you contacted him, had you**
 4 **done any research on Mr. James?**
 5 A. He's hard to research. And that's not a
 6 facetious answer. You know --
 7 **Q. No, no.**
 8 A. -- you understand what I'm saying. He's hard
 9 to research. So most of the research was what I had
 10 heard about him and learned about him from Don Newhouse,
 11 who was the head of SIS in California, and from Chip
 12 Jordan and just other people that I dealt with in that
 13 fairly closed community. But there's not a lot
 14 available on Ron James other than what he tells you
 15 himself.
 16 **Q. And we're going to get into that.**
 17 A. Yes.
 18 **Q. So you spoke to Mr. James. You inquired as to**
 19 **the purchase of insurance policies?**
 20 A. Well, it was simply a question of, you know,
 21 "Here is who I am. You know me and my reputation. I'm
 22 going to be a small player in the market. Will you sell
 23 to me? Am I worthy of coming to you as a policy
 24 source?"
 25 And his answer was, "Yes."

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1 the father and the son -- is AGAP of Texas in, I think,
 2 Plano, Texas. The reason that I know that that's the
 3 case was I basically helped Chuck Madden get into the
 4 business with his son Jeff.
 5 The only other -- well, the other person
 6 that Ron James and James Settlement Services deals with
 7 that I have personal knowledge, because I've met with
 8 them and interacted with them all, is with Mike Beste.
 9 Mike Beste is based in Santa Fe, New Mexico. His
 10 company is called Vertical Capital Holdings. And
 11 although he buys from some other sources, James
 12 Settlement Services is the primary source of the
 13 policies that Mike Beste markets to institutional
 14 players, including, I believe, the \$50 million they sold
 15 to the state of Pennsylvania for the employee trust
 16 fund.
 17 **Q. Now, that sale to the state of Pennsylvania,**
 18 **you know of that --**
 19 A. Only indirectly. I haven't talked to the
 20 Treasurer of the state of Pennsylvania. So it's based
 21 on what Mike Beste has told me, what Ron James has told
 22 me.
 23 Now, what is a matter of public record is
 24 that James Settlement Services also provided the
 25 policies for a \$64 million securitized offering that was

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1 arranged by Mike Beste and Steve Nasser and Neal Sebbard
 2 who are Coit Financial in San Francisco. And that I
 3 think was finalized and put together in the fourth
 4 quarter of 2007, but it was successfully marketed in the
 5 first quarter of 2008. I've actually got documents on
 6 that company and how it was formed.
 7 **Q. And those documents reveal James Settlement**
 8 **Services' involvement?**
 9 A. No, I can't say that. I can't say that.
 10 Those documents were shared with me as we began working
 11 with James Settlement Services and Coit Financial and
 12 Mike Beste at Retirement Value to bring a Reg D offering
 13 to market to bring a security --
 14 **Q. And this would be the Absolute Beta project?**
 15 A. Yes.
 16 **Q. Is that sometimes called Project Genesis?**
 17 A. I don't -- we -- no. Or internally we may
 18 have referred to it as Genesis. Maybe Genesis was what
 19 came after Absolute Beta. I --
 20 **Q. Okay.**
 21 A. I don't know.
 22 **Q. Okay. Retirement Value is a Texas entity.**
 23 **Correct?**
 24 A. Yes.
 25 **Q. And who are its current members?**

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1 A. Its current members are three; Richard Gray,
 2 Catherine Gray, with a C, and Wendy Rogers.
 3 **Q. And how much does Richard Gray own?**
 4 A. Richard Gray -- my wife and I, between us are
 5 80 percent. Wendy is 20. Kate is 25. So what am I,
 6 55? 55 percent.
 7 **Q. Yeah.**
 8 A. Yeah.
 9 **Q. And is it member managed or manager managed?**
 10 A. I'm not sure I understand the question,
 11 actually.
 12 **Q. Do you understand that there are two ways a**
 13 **limited liability company can be set up? It can be set**
 14 **up to be managed by all of its members, or it can be**
 15 **managed more like a corporation with managers.**
 16 A. I'm a member and I was president. Wendy is a
 17 member, and she was vice president. My wife is a
 18 member, and she was secretary/treasurer.
 19 **Q. Okay.**
 20 A. I don't know if that answers the question.
 21 **Q. Do you recall having a title with the company**
 22 **of Manager 1?**
 23 A. Probably I was in the paperwork.
 24 **Q. And then Ms. Rogers would be Manager 2?**
 25 A. I don't remember. Honestly, I don't remember.

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1 **Q. Was your brother David ever a manager of**
 2 **Retirement Value?**
 3 A. He was a member, as was his wife Elizabeth.
 4 When we started out, David had 10 percent and Betsy had
 5 10 percent. Wendy had 20, and then Kate and I had the
 6 balance. And then just through some disagreeable
 7 interactions with my sister-in-law, we removed Betsy
 8 from having any ownership of the company, and then David
 9 had 20 percent as a result of that. And then, on
 10 October 16th of 2009 -- interestingly enough, because of
 11 interaction with Ron James, I fired my brother and took
 12 his 20 percent back.
 13 **Q. You've referred to your sister-in-law**
 14 **Elizabeth as Betsy?**
 15 A. Yes.
 16 **Q. Is she sometimes referred to as Liz?**
 17 A. Yeah. Yeah.
 18 **Q. Okay. Retirement Value has a Subchapter S**
 19 **election?**
 20 A. Uh-huh.
 21 **Q. Why was that done?**
 22 A. I don't know. On the advice of an attorney
 23 and a CPA. It was done for tax purposes to pass it
 24 through on a K-1 basis. Those were things I deferred to
 25 those professionals on.

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<p>1 Q. Okay. Who recommended the Subchapter S 2 election?</p> <p>3 A. Probably it was Jeff Albrecht at Sol 4 Schwartz & Associates in San Antonio. He's the CPA and 5 is the president of that firm.</p> <p>6 Q. You said there was an attorney. Is that 7 Mr. Bettersworth?</p> <p>8 A. Yes, Bettersworth was involved.</p> <p>9 Q. Was Kiesling Porter or Mr. Free involved in 10 the creation of Retirement Value?</p> <p>11 A. I don't remember, actually.</p> <p>12 Q. Well, you remember that --</p> <p>13 A. I remember that Kiesling helped with the 14 original Hill Country Funding paperwork for the -- 15 frankly, I'm not sure that I remember why Bettersworth 16 didn't, because Bettersworth has worked with me for four 17 or five years.</p> <p>18 Q. Did Retirement Value -- who else provided tax 19 advice to Retirement Value?</p> <p>20 A. Well, we -- in October of 2009, we brought 21 Frank Fry of Austin in as kind of a staff accountant.</p> <p>22 Q. Uh-huh.</p> <p>23 A. And so we had a division of labors. We had 24 Mr. Fry involved on a day-to-day basis, you know, doing 25 the bookkeeping and tax work, and then we reserved Sol</p>	<p>1 Q. Okay. Explain to me how Retirement Value came 2 to be. Did Mr. James introduce the concept to you?</p> <p>3 A. Yes. And as challenging as it is for me, I'll 4 try brevity. September of 2009 -- I think it was early 5 September of 2009, I received kind of an unsolicited 6 inbound phone call from Ron James telling me that he had 7 a business proposition that he wanted to discuss with me 8 if I had an interest, and we talked for about 20 9 minutes. And it was during that visit that he proposed 10 that we start -- we didn't know what we were going to 11 call it, but that we start an entity to be sort of 12 wholesale rather than retail, that we envision going on 13 a much larger scale, a much larger basis with life 14 settlements. And even in that very first visit, he made 15 it very specifically clear that his intent was to help 16 me establish a company in Texas that would compete with 17 Life Partners in Waco.</p> <p>18 Q. Well, Life Partners in Waco, they sell retail, 19 right, to individuals?</p> <p>20 A. Well, yeah. We've had this hang-up before 21 that I haven't clarified; retail versus wholesale. When 22 I was operating -- when I was the manager of Hill 23 Country Funding, I was dealing directly with the 24 clients. It was a little boutique. It was really not a 25 very big company. And on a day-to-day basis, I was</p>
<p>Page 47</p> <p>1 Schwartz & Associates for, you know, broader projects 2 such as audits and things like that rather than 3 day-to-day things.</p> <p>4 Q. Did Hill Country Funding, either Nevada or 5 Texas, do you know if that had a Subchapter S election?</p> <p>6 A. That was sole proprietorship.</p> <p>7 Q. Hill Country Funding Nevada?</p> <p>8 A. Yeah.</p> <p>9 Q. It was an LLC. It was a Texas LLC and --</p> <p>10 A. Yes. But for tax purposes, I elected to treat 11 it as a sole proprietor for tax purposes.</p> <p>12 Q. And so that was a -- an LLC is a tax 13 transparent entity. Right? The members pay the taxes?</p> <p>14 A. Right.</p> <p>15 Q. And what did you understand the advantage of 16 the sub S election to be?</p> <p>17 A. I don't understand that I understood an 18 advantage. I was simply told that's the way to do it, 19 so we did it that way.</p> <p>20 Q. And you believe that was Mr. Albrecht?</p> <p>21 A. Yeah.</p> <p>22 Q. All right. You told me a little bit earlier, 23 and you've told me before, that Retirement Value exists 24 because of Ron James?</p> <p>25 A. That's an accurate statement, yes, sir.</p>	<p>Page 49</p> <p>1 selling to my clients. Whereas, at Retirement Value, 2 except for a couple of really close friends, I never did 3 any personal sales. It was through licensees. So, in 4 that sense, we were sort of wholesaling to the people 5 who did the retailing. That's the only way in which I'm 6 using those words.</p> <p>7 Q. Okay.</p> <p>8 A. The net outcome was no different. It was a 9 fractionalizing of policies. But it was done on a 10 much -- it was intended to be done on a much larger 11 scale.</p> <p>12 Q. Okay. And why -- why Life Partners? Why was 13 that the target that you --</p> <p>14 A. I know you don't ask facetious questions --</p> <p>15 Q. No, no, no.</p> <p>16 A. -- so I'll treat it as a serious question. 17 But, you know, they're the 800-pound gorilla in the 18 industry. As of today, they've been at it, what, 20 19 years? I think their sales volume in 2008 was 20 \$324,000,000, and a lot of it was retail -- and most of 21 it was retail. Only portions of it were, you know, 22 institutional sales.</p> <p>23 I suppose the other reason for targeting 24 them is that Ron James made it clear in that initial 25 conversation in September of 2009 that he had a person</p>

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1 our model, showed him how we were going to operate,
 2 showed him the comp structure -- the commission
 3 structure, and gave him first refusal on coming onboard
 4 with us and working with us instead of Life Partners.
 5 **Q. Okay.**
 6 A. And I would just have to go through notes that
 7 are in my office still in New Braunfels or other things
 8 that you have that I don't any longer have to
 9 reconstruct the names. But there are two -- at that
 10 time, there were two players at Life Partners that
 11 represented the bulk of their business, and -- I think
 12 Jim Sibelius is one name that comes to mind. I just
 13 absolutely cannot grab the other guy's name. Sorry.
 14 **Q. That's okay. I may be able to help you with**
 15 **that.**
 16 A. Yeah. Okay.
 17 (Exhibit Nos. 2 and 3 marked)
 18 **Q. (By Mr. Napoli) Let me show you what I've**
 19 **marked as Exhibit 2 and Exhibit 3.**
 20 A. Okay. This shows the role that I described
 21 earlier in our time together this morning of -- Don
 22 James was more the behind the scenes -- I guess the
 23 hacker, you almost want to say.
 24 **Q. Were you being facetious, or is there**
 25 **something --**

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1 A. Don is the technical -- he's the techno jock
 2 out there. You know, Ron James is -- his dad is the
 3 marketer. Don is the behind the scenes guy, and --
 4 anyway.
 5 **Q. What I wanted to point out to you about these**
 6 **two documents, Exhibit 2 and Exhibit 3, Exhibit 2 is an**
 7 **email from Ron James to you. Correct?**
 8 A. Yes.
 9 **Q. It's dated February 18th of 2009?**
 10 A. Yes.
 11 **Q. And it's from -- and he writes -- Mr. James**
 12 **writes, "Dick, Don found you another LPI licensee."**
 13 **And then No. 3 is RVR011262?**
 14 A. Correct.
 15 **Q. And it's also -- it's an email from Ron James**
 16 **to you. Correct?**
 17 A. Yes.
 18 **Q. And the cc, dgray, is that you, or is that**
 19 **your brother David?**
 20 A. No. D is David Gray. R is for Richard. R.
 21 Gray is me. D. Gray is my brother David.
 22 **Q. Okay. And again, this is June 30th, 2009.**
 23 **"Don has found a knew LPI licensee." Do these documents**
 24 **help --**
 25 A. Certainly.

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1 **Q. -- refresh your recollection that indeed Ron**
 2 **James was assisting Retirement Value in identifying**
 3 **potential licensees?**
 4 A. Yes.
 5 **Q. Do you recall other instances where Ron James**
 6 **or Don James or even Mike Beste, for that matter, had**
 7 **identified other licensees that you -- Retirement Value**
 8 **should be approaching?**
 9 A. The only two -- as we took our break, the only
 10 two that I can remember that Mike Beste referred me to
 11 were two brothers named Barnhart, B-a-r-n-h-a-r-t, Rick
 12 Barnhart. Never became a licensee. He's in the Dallas
 13 area. I think he has a furniture wholesale business.
 14 But his son, Gary Barnhart, in Prague did
 15 become a licensee, but I don't know that we ever
 16 received any business. It was sort of developing. He
 17 was developing the business in that part of the world
 18 and did become a licensee. But those are the only two
 19 that I can think of from Mike Beste.
 20 Now that you've refreshed my memory,
 21 quite frankly there may have been others from Ron James
 22 But I would not have dealt with these directly. We
 23 would have farmed those out. You know, like Mike
 24 McDermott as kind of a master licensee might have been
 25 given these people to contact to see if he could bring

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1 them into his organization. So there may be others, but
 2 I don't recall.
 3 **Q. Well, as of -- who recruited Mike McDermott,**
 4 **then?**
 5 A. I did. We did. Retirement Value did.
 6 **Q. Well, I mean, I guess specifically which**
 7 **person at Retirement Value?**
 8 A. It was always a combined effort. I mean,
 9 Wendy and I drove up to Waco to meet him. He drove down
 10 from Dallas to meet us in Waco.
 11 **Q. When did you guys recruit Mr. McDermott?**
 12 A. Well, he was one of the first ones. I think
 13 he signed up officially April 1st.
 14 **Q. Okay. So, in February of 2009, when Ron is**
 15 **sending you a -- one more LPI license, who would have**
 16 **followed up with that? Which person?**
 17 A. I would have probably given it -- I don't
 18 know.
 19 **Q. I mean, in Retirement Value, who was kind of**
 20 **in charge of recruiting new licensees at this early**
 21 **stage?**
 22 A. I was. I would have been doing that.
 23 **Q. And that's one of your strengths is this sort**
 24 **of marketing effort. Right?**
 25 A. We hope, yes.

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1 account. They were always distinguished.
 2 **Q. Okay. And my point, I guess, is that the**
 3 **control of those funds, though, rested --**
 4 A. Always rested with me.
 5 **Q. With you?**
 6 A. Yes.
 7 **Q. All right.**
 8 A. Or my wife.
 9 **Q. And did you have any complaints that were**
 10 **raised, either by the State or any of your customers,**
 11 **with regard to your being in control of those funds?**
 12 A. Never.
 13 **Q. At Hill Country Funding, after you took your**
 14 **commission out, were there -- was there an amount of**
 15 **funds that was set aside, then, to pay future premiums?**
 16 A. Absolutely. That was the client account.
 17 **Q. Okay. And was it similar to RV in that you**
 18 **would try and create a purchase price that would then**
 19 **preserve LE plus 24?**
 20 A. No. We didn't need LE plus 24 at Hill Country
 21 Funding because we had the bond to kick in at the
 22 expiration of LE. Entirely different model.
 23 **Q. Okay. Now, that was in February of 2008. My**
 24 **understanding is that you got the phone call in**
 25 **September of 2008 from Mr. James --**

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1 A. To start Retirement Value.
 2 **Q. -- to start -- yes.**
 3 **And was there a reason why you didn't**
 4 **just take Hill Country Funding and change its model into**
 5 **what Mr. James was proposing or -- I guess the question**
 6 **is: Why start a new -- a whole new entity?**
 7 A. Well, the model was entirely different. We
 8 also had, you know, clients and -- and -- I mean, Hill
 9 Country Funding, as of today, has 76 clients accumulated
 10 over that period of time.
 11 And so the model was entirely different.
 12 It involved a bond, rather than a straight portfolio.
 13 The monies were already committed. They were already
 14 segmented or segregated as client funds. There -- the
 15 blunt answer to your question -- and this addresses an
 16 issue that we still have to face with the State -- is
 17 that Hill Country Funding at no time had any
 18 relationship with Retirement Value, other than Dick Gray
 19 and Kate Gray loaned money to Retirement Value as a
 20 startup company to get going and those monies were paid
 21 back. There's no other relationship between the two
 22 companies, the models, the monies, the clients, or
 23 anything else.
 24 **Q. I'm not sure that your answer answered my**
 25 **question. Let me go at it this way.**

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1 A. Okay.
 2 **Q. Who suggested that -- rather than you or the**
 3 **company holding client funds, that an outside, either,**
 4 **law firm or outside entity hold those funds?**
 5 A. Well, the Life Partners model suggested that
 6 to us because they used Dunnam & Dunnam as an escrow
 7 agent. In other words, in creating Retirement Value, we
 8 were trying -- as you heard from this afternoon and as
 9 you know from prior discussions, we were trying to
 10 create a model very, very similar to -- if not
 11 identical, to Life Partners with improvements.
 12 And Life Partners had an escrow agent
 13 separate from itself. Hill Country Funding didn't and
 14 never has had, but Retirement Value did from day one.
 15 **Q. Okay. And then who made the decision that it**
 16 **would be a law firm that would hold the funds?**
 17 A. I don't recall. It -- probably I did or Wendy
 18 and I together did, because we already had such -- what
 19 we thought was a very positive and still believe was a
 20 positive relationship with Kiesling, the largest law
 21 firm in New Braunfels, and with a good tax background
 22 and --
 23 **Q. My question, first, was just simply: Who**
 24 **decided to use a law firm versus a bank and their trust**
 25 **department or a CPA or some other entity?**

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1 A. The truthful answer to that question is I
 2 don't know, but the corollary answer is that I would
 3 have made that decision, probably in consultation with
 4 Wendy Rogers, just to use a law firm. I don't --
 5 **Q. Okay.**
 6 A. I don't recall the discussion or if we even
 7 considered other options.
 8 **Q. Now my next question is: Were there any other**
 9 **law firms that were considered or approached other than**
 10 **the Kiesling law firm?**
 11 A. No, not to -- yeah, I would have asked James
 12 Betterworth if he wanted to do it. And he felt that he
 13 was too small to take that on or didn't have the
 14 standing and --
 15 **Q. Well, let me -- I'm not --**
 16 A. Yeah.
 17 **Q. I want to know facts. Did you ask**
 18 **Mr. Betterworth if they would do it?**
 19 A. For that question, my answer would be, "Yes."
 20 And he said, "No."
 21 **Q. Okay. And did he tell you why he didn't do**
 22 **it?**
 23 A. Well, again, size and staff and capability.
 24 **Q. Okay. So Mr. Betterworth -- was that the**
 25 **first choice and then Kiesling law firm was the second**

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1 **law firm have access to the purchase agreements between**
 2 **RV and James Settlement Services for a particular**
 3 **policy?**
 4 A. I don't recall. There would have been no
 5 reason for them to be withheld from them, but I don't
 6 know if there was ever a routine sharing of those
 7 purchase agreements with Kiesling. I just don't -- I
 8 just don't really remember that point.
 9 **Q. Okay. With Hill Country Funding, did you have**
 10 **a selling arrangement where you had licensees?**
 11 A. No, sir.
 12 **Q. Whose idea was it to have a selling**
 13 **arrangement that would include licensees?**
 14 A. It was just part of the way we developed the
 15 model in our effort to mimic what Life Partners was
 16 doing.
 17 **Q. Okay. "We" being --**
 18 A. "We" being Dick Gray, Wendy Rogers, Kate Gray,
 19 anybody that participated, including Ron James and his
 20 son, Don, and Mike Beste.
 21 **Q. Okay. Now, I know Mr. Napoli asked you**
 22 **questions about this, but I still don't understand the**
 23 **difference between a master license and a licensee. So**
 24 **I'd like to slow down and make sure I got it.**
 25 A. Okay.

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1 **Q. How many master licensees were there of RV?**
 2 A. Officially, there were six.
 3 **Q. Who were they?**
 4 A. Let's see if I can remember this in addition
 5 to Tim Harper's name. Michael McDermott, Gary Oliver,
 6 Barnard-Donagan Insurance, the -- the Fellowship
 7 Financial Services in Florida, and -- it's going to
 8 trail off after those four. It was -- it was a -- it
 9 was a designation that fairly soon became useless and
 10 almost irrelevant.
 11 **Q. What was initially --**
 12 A. The intent -- the intent was to say these are
 13 the first guys who said yes to us and were given the
 14 highest commission contract that we -- that we started
 15 out with when we began as a company.
 16 **Q. What was the commission rate that these master**
 17 **licensees got?**
 18 A. 16 percent of client money.
 19 **Q. I want to make sure understand what "client**
 20 **money" means. Client money is not -- is client money**
 21 **the 50,000 that I sent in?**
 22 A. Yes.
 23 **Q. Okay. As opposed to the 1 percent for the**
 24 **Kiesling law firm, which was -- was it based on client**
 25 **money?**

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1 A. It -- no, sir. It was based on face amount,
 2 but it was paid out based on client money. In other
 3 words, if -- if we were -- if we had a \$10 million
 4 policy and we were selling \$5 million of that to
 5 clients, then Kiesling would have to be paid 2 percent
 6 of client money to equal 1 percent of face.
 7 **Q. Okay. So with Kiesling, it was 1 percent of**
 8 **the actual policy --**
 9 A. Itself.
 10 **Q. -- regardless of whether -- let me make sure I**
 11 **understand.**
 12 **Let's say that you have a \$10 million**
 13 **policy, but you were only subscribed a million dollars**
 14 **of it --**
 15 A. Right.
 16 **Q. -- would Kiesling get paid 1 percent of**
 17 **10 million?**
 18 A. No, sir. They -- the answer I gave you to a
 19 question some time ago didn't allow for complexity of
 20 the transaction. If you submitted five -- \$50,000 to
 21 Retirement Value as a -- as an investor participant and
 22 you elected to participate in all ten policies then
 23 available on the portfolio, the amount of -- the
 24 percentage that Kiesling would be paid of your money was
 25 different for each of the ten policies. It was always

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1 1 percent of face, but each policy was --
 2 **Q. Okay. But I guess if a \$1 million policy is**
 3 **fully subscribed --**
 4 A. At that point Kiesling received 1 percent of
 5 \$1 million when it was fully subscribed.
 6 **Q. Okay. Now let's -- back to the master**
 7 **licensees. Do the licensees, then, as opposed to a**
 8 **master licensee, get paid a different commission?**
 9 A. Yes. Only because anybody who wasn't a master
 10 licensee, by definition, was -- was under a master
 11 licensee.
 12 **Q. Okay. So, if I called you up in 2009 and**
 13 **said, "I really want to be a licensee of RV," would you**
 14 **then assign me to a master licensee to work under?**
 15 A. Yes. If I was -- if we were -- and we were,
 16 inasmuch as we could, intending to honor the role of a
 17 master licensee, I wouldn't sign you up directly. I
 18 would refer you to a Mike McDermott or a Barnard-Donagan
 19 or --
 20 **Q. Okay. And then --**
 21 A. Excuse me. Add Reid Thorburn,
 22 T-h-o-r-b-u-r-n. R-e-i-d is his first name. He was
 23 another master licensee.
 24 **Q. Okay.**
 25 A. So we have got five out of the six. I'm

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1 by _____;

2 That the amount of time used by each party is as

3 follows:

4 Mr. Michael D. Napoli, 04:00

5 Mr. Geoff Weisbart, 02:18

6 That pursuant to information given to the

7 deposition officer at the time said testimony was taken,

8 the following includes counsel for all parties of

9 record:

10 Mr. Jack Hohengarten, Attorney for Plaintiff

11 Mr. Michael D. Napoli, Attorney for Court-Appointed

12 Receiver of Retirement Value, LLC

13 Mr. Barry Bishop, Attorney for Defendants, Richard

14 H. "Dick" Gray and Wendy Rogers

15 Mr. Matthew G. Nielsen, Attorney for Relief

16 Defendant, Kiesling, Porter, Kiesling & Free, P.C.

17 Mr. Geoff Weisbart, Attorney for Intervenors

18 I further certify that I am neither counsel for,

19 related to, nor employed by any of the parties or

20 attorneys to the action in which this testimony was

21 taken, and further that I am not financially or

22 otherwise interested in the outcome of this action.

23 Further certification requirements pursuant to Rule

24 203 of TRCP will be certified to after they have

25 occurred.

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the

3 deposition officer on _____;

4 If returned, the attached Changes and Signature

5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered

7 to _____, Custodial Attorney;

8 That \$ _____ is the deposition officer's

9 charges to the Court-Appointed Receiver of Retirement

10 Value, LLC, for preparing the original deposition

11 transcript and any copies of exhibits;

12 That the deposition was delivered in accordance

13 with Rule 203.3, and that a copy of this certificate was

14 served on all parties shown herein on _____ and

15 filed with the Clerk.

16 Certified to by me this the _____ day of

17 _____, 2010.

18

19 _____

20 Steven Stogel

21 CSR 6174

22 Expiration Date: December 31, 2010

23 Firm No.: Dallas: 69 Houston: 373

24 1-888-656-DEPO

25

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1 Certified to by me this the _____ day of

2 _____, 2010.

3

4

5 Steven Stogel

6 CSR 6174

7 Expiration Date: December 31, 2010

8 Firm No.: Dallas: 69 Houston: 373

9 1-888-656-DEPO

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AUTHENTIC COPY
 The original certified E-Transcript
 file was electronically signed
 using RealLegal technology.

Exhibit B

1 NO. D-1-GV-10-000454
 2 STATE OF TEXAS, IN THE DISTRICT COURT OF
 3 Plaintiff,
 4 VS.
 5 RETIREMENT VALUE, LLC, RICHARD
 6 H. "DICK" GRAY, HILL COUNTRY
 7 FUNDING, LLC, A TEXAS LIMITED
 8 LIABILITY COMPANY, HILL TRAVIS COUNTY, TEXAS
 9 COUNTRY FUNDING, A NEVADA
 10 LIMITED LIABILITY COMPANY,
 11 AND WENDY ROGERS,
 12 Defendants,
 13 AND
 14 KIESLING, PORTER, KIESLING
 15 & FREE, P.C.,
 16 Relief Defendant 126TH JUDICIAL DISTRICT

17 ORAL AND VIDEOTAPED DEPOSITION OF
 18 WENDY ROGERS
 19 JULY 15, 2011
 20 VOLUME 2

21 ORAL AND VIDEOTAPED DEPOSITION OF WENDY
 22 ROGERS, produced as a witness at the instance of the
 23 Plaintiff, and duly sworn, was taken in the
 24 above-styled and numbered cause on July 15, 2011, from
 25 9:37 A.M. to 4:20 P.M. before Sherri Santman Fisher,
 CSR in and for the State of Texas, reported by machine
 shorthand, at the offices of K&L Gates, 111 Congress
 Avenue, Suite 900, Austin, Texas, pursuant to the Texas
 Rules of Civil Procedure and the provisions stated in
 the record or attached hereto.

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1 APPEARANCES

2 FOR THE PLAINTIFF:

3 Jennifer S. Jackson
 4 Assistant Attorney General
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 6 Austin, Texas 78701

7 FOR THE RECEIVER FOR RETIREMENT VALUE, LLC:

8 Michael D. Napoli
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16 FOR THE RECEIVER FOR HILL COUNTRY FUNDING:

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 18 Taylor Dunham
 19 301 Congress Avenue, Suite 1050
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21 FOR THE INTERVENORS GARY CAIN, BARRY EDELSTEIN, AND
 22 QVEST MASTER FUND III:

23 Geoffrey D. Weisbart
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 New Braunfels, Texas 78132

Also Present:
 Letha Sparks
 Alexis Goldate
 Al Rodriguez, Videographer

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1 involved.
2 Q. And why were the funds put in an HCF account?
3 A. We just no longer wanted them in the
4 Retirement Value operating account; and since they were
5 already earmarked to pool for SIS clients which were
6 marketed through Hill Country Funding, I guess,
7 that's -- it just made sense to do it that way.
8 Q. Could you describe the marketing for Hill
9 Country Funding for me?
10 A. A lot of the marketing was done through a CD
11 bonus program. Dick would check the -- at
12 BankRate.com, the daily rates, or however often they
13 were posted, and would see what the highest CD rates
14 were on a six-month or one-year CD and then tack on
15 another percent or whatever he felt would make it
16 attractive and that's the rate that he would market
17 then in the business section of the San Antonio Express
18 News. So --
19 Q. And did you have any participating -- did you
20 participate at all in the -- any marketing decisions
21 for Hill Country Funding?
22 A. Not really. I mean, I was just an employee.
23 I was a part-time employee, worked for Dick out of my
24 home for Hill Country Funding. So, no, he made the
25 decisions and went with it. I don't -- he coordinated

coordinated his calendar that way.
I would also make follow-up phone calls
to people to confirm their appointments. I think I
might have even sent out letters on behalf of Dick to
just thank them for coming to the appointment, sent out
birthday cards to Hill Country clients saying Happy
Birthday and --
Q. Did you -- did you provide any substantive
information to them about the investments?
A. I would let them know that we had -- you know,
they had called in about the CD, the CD rate. I
probably did on occasion, if people had additional
questions about it, would let them -- I'm trying to
think if I even went that far. It was more -- my
purpose to contact them was just to let them know
about -- or was just to schedule the appointment.
So they already -- it was -- it wasn't
necessarily to give them any information about the life
settlement program or the CD itself because I wouldn't
necessarily know which bank it was with or anything
like that. But if people did start asking questions
about what it was and if Dick did any other -- anything
else, insurance or annuities or anything like that,
then I probably did get into different product
discussions.

1 with the San Antonio Express News on the ads.
2 Q. Were there any marketing brochures or anything
3 like that developed?
4 A. No brochures. He did have some one-page
5 sheets that had the -- I think we called it the bonded
6 life settlement program, I think, is what it was
7 called. So he had some sheets with the details of that
8 specific life insurance policy on, you know,
9 single-page flyers that -- the flyers weren't mailed
10 out or posted anywhere. It was what he would use
11 during the sales presentations with the clients that
12 would come in.
13 Q. And he would do those one on one?
14 A. Yes.
15 Q. And would you -- were you present at any of
16 them?
17 A. No. Because they were usually held at the
18 office in San Antonio.
19 Q. And did you have any communication with Hill
20 Country investors?
21 A. I did, yes. I would typically call to -- when
22 people would respond to the ad in the San Antonio
23 Express News, I would call them back and, you know,
24 acknowledge that we received their phone call. I would
25 schedule the appointments with Mr. Gray and just

Q. Okay. So let's -- did you send any written
materials to them, any letters, other than the birthday
cards and the "Thank you for coming to the
appointment"?
A. Yes. I would send out periodic updates if we
would -- at least tried to do so on an annual basis, I
believe. If Dick would pay a premium on a policy, if
we got the confirmation of the premium payment, I would
send that to clients. Annually I would try to get a
verification of coverage or some sort of confirmation
that the policy was still in force, premiums were up to
date, try to communicate that to the clients with a
letter.
I would also like if somebody did
purchase a CD through Dick -- which he sold a lot of
CD's. He paid a lot of bonus money out. And I don't
know what the dollar amount is, but I mean, he --
Q. And when you say CD's, you're referring to an
interest in the life settlement, right?
A. No. No. Dick -- for example, if he went onto
BankRate.com and saw Bank of America had a one-year CD
rate of three percent and they were the highest on Bank
Rate that day, then Dick would and could go and say,
"Okay. We're going to market a CD for four percent
for a year."

1 And so the client would come in and he
 2 would explain to them and had a spreadsheet where he
 3 would take them through, "Okay. Here's the Bank of
 4 America CD for three percent, is what the CD rate is.
 5 I'm giving you a bonus, an up-front bonus, for the one
 6 percent on top of the CD." And he would write a check
 7 to the client right then for the one percent
 8 difference.
 9 So they would then apply online right
 10 then with Bank of America for a CD and he would deposit
 11 their money or help them wire their money to the Bank
 12 of America CD for three percent. And -- yeah.
 13 Q. But that's not the -- that's not, you know,
 14 the bonded Model 1 or Model 2 that you explained to
 15 me.
 16 A. No, it's not. No, it's not. That's how he
 17 marketed. So -- so when he would market, that was
 18 the -- I guess the --
 19 Q. So he would draw people in with the CD sale.
 20 A. Correct.
 21 Q. And then introduce them to the HCF product.
 22 A. That's correct. He would say, "This is what
 23 you came in to see me about today." He would lay it
 24 out to them. And then he would say, "Okay. Now, this
 25 is that option. And I'm willing to honor that.

Funding?
 A. No. I was only an associate.
 Q. Did you ever meet with James Betterworth on
 behalf of HCF?
 A. During the time frame where we were marketing
 Hill Country Funding, no. No, I didn't.
 Q. When did you stop marketing Hill Country
 Funding?
 A. When Retirement Value started. Even though
 there was still some participation left on the last
 policy that Hill Country Funding had, that was not
 actively marketed anymore.
 Q. Okay. What was Richard Gray's position at
 HCF?
 A. President and owner.
 Q. And did HCF have any other employees besides
 you?
 A. At one point Liz Gray was an associate,
 Elizabeth Gray, his sister-in-law; and she would go
 into the office in San Antonio and take appointments
 and do phone -- make phone calls, you know, return
 phone calls and stuff like that. But -- so I would
 schedule appointments with her as well if Dick was not
 available.
 Q. So I kind of want to understand the business

1 However, can I please educate you on these other
 2 options," and so then would get into the life
 3 settlement -- the bonded life settlement options.
 4 Q. Okay. And these settled life insurance
 5 policies, you purchased them from -- HCF purchased them
 6 from James Settlement Services?
 7 A. Yes.
 8 Q. And in the flyers that you handed out, were
 9 there life expectancies listed there?
 10 A. I'm pretty sure that Dick would have included
 11 the life expectancy on there because that would have
 12 driven the calculation of somebody's return.
 13 Q. And those life expectancies, were they based
 14 on Midwest Medical certificates?
 15 A. Yes.
 16 Q. And these are the same certificates that were
 17 used to support the representations made in the
 18 Retirement Value marketing brochures?
 19 A. Yes.
 20 Q. And did you do any -- did you ever participate
 21 at all in purchasing the life insurance policies for
 22 HCF?
 23 A. No. I would not have had any authority to
 24 sign on behalf of Hill Country Funding.
 25 Q. Were you ever an officer of Hill Country

model a little bit more.
 A. Okay.
 Q. You would get money in, use it to purchase the
 life insurance policy, right?
 A. Are you talking about money in from the
 clients?
 Q. Yes, from HCF investors.
 A. So they made the decision "I want to do the
 bonded life settlement program and here's my hundred
 thousand dollars" or whatever. Okay.
 Q. Uh-huh.
 A. Okay.
 Q. And then you used that money to purchase the
 life insurance policy. And where else did that money
 go?
 A. It was my understanding that Dick would
 take -- it was made out to Hill Country Funding. Dick
 would -- Dick had a -- a client account for Hill
 Country Funding. He had two accounts for Hill Country
 Funding, a client account and an operating account.
 In the client account, he would deposit
 the hundred thousand dollars that came in from that
 client. That money, a portion of it would go to
 purchase the policy. A portion of it would go to his
 commissions. A portion would go to Contract Servicing

1 for death tracking. If it was qualified money, Dick
2 would pay for their application fee out of the
3 operating account, I think. He just covered that check
4 usually. A portion of it would go to premiums.
5 Q. And then how -- where would the money come
6 from to pay these interest payments in the second model
7 that you described?
8 A. That's a great question. I know at one point
9 he had an agreement with Bruce Barnard at
10 Barnard-Donagan Insurance. Bruce was going to loan
11 him -- I'm not sure what the dollar amount was, but
12 Bruce was going to loan him enough money to pay
13 interest to people for a specific policy, I believe.
14 It was like -- here's the example. Let's
15 say Dick needed \$30,000 to pay interest to the clients
16 on Policy XYZ. So Bruce was willing to put up the
17 30,000 to pay interest and Dick was able to possibly --
18 they were talking about assigning a portion of the
19 death benefit to Bruce to get paid back.
20 So it was just -- it was a -- but I
21 probably should have said I don't know because I don't
22 recall exactly how he accounted for the interest
23 payments.
24 Q. But this is what you recollect? Where's that
25 information that you --

one-million-dollar transfer on March -- no, no, no.
Okay. Back in December -- this date is not ringing a
bell, but the million dollars clicked. Back in
December there was the -- never mind. I'm getting that
data confused. At one point Retirement Value sent a
million dollars to Kiesling, but that wasn't from Hill
Country Funding. I'm sorry.
Q. Do you know -- remember where that was from?
A. That would have had to have been from the
Retirement Value operating account. But that was in
December. So never mind.
Q. Did anyone else make commissions on Hill
Country Funding investments?
A. It would have been Dick, Liz, which is
Elizabeth Gray, and then there were some instances
where Dick would give me 10 percent, or something like
that, commissions on a case.
Q. And why would he do that?
A. That would have been in like special instances
if -- I'm thinking of a specific client who -- like if
he -- some of the clients that did do CD's, I kept a
record of when those CD's would mature. So if they
matured in 12 months, then I would contact those
clients, "Your CD is maturing here, you know, coming up
to the 12-month maturity date. I just wanted to let

1 A. That was one of the options. And I don't know
2 if he built it into the model to where the monies used
3 from other people was a possibility to be used for
4 interest. That could have -- interest could have been
5 one of the things on the list that incoming money was
6 used to pay.
7 Q. Okay. Did HCF money ever go to any RV
8 accounts?
9 A. I don't believe so.
10 Q. Were there any loans made from HCF to RV?
11 A. If there were, that would have been something
12 Dick would have done back way in the beginning. But I
13 am not aware of any.
14 Q. "Way in the beginning," you mean the
15 beginning --
16 A. The beginning of RV.
17 Q. Yeah.
18 A. I know Dick loaned a lot of personal money to
19 Retirement Value, but I don't know about the Hill
20 Country Funding money. I do know, though, based
21 upon -- here it is. In Exhibit 56 -- I'm sorry. Maybe
22 it wasn't. It was a QuickBooks spreadsheet. Did I
23 just miss it? Oh, thank you. Exhibit 57.
24 Q. 57?
25 A. Yes. On page one, you see there was a

you know that here's our CD rate that we're offering
right now. Here is also -- I know Mr. Gray probably
visited with you about the bonded life settlement
option. Here's what we're offering -- what he's
offering at this point with this product."
And so if I was able to schedule an
appointment with somebody like that with Dick, he would
fill out the paperwork, make the appointment, and then
would probably give me a percentage of the commissions
on that, on sales like that.
Q. Okay. And so this wasn't -- the initial
responses to the San Antonio ads, that's -- you
wouldn't get a 10 percent commission on that. It was
only after the fact when you had continued
conversations with them?
A. Right. It wasn't necessarily -- I don't
remember getting any commissions just because I
booked --
Q. The appointment?
A. -- an appointment on -- yeah. It was more of
if I had the initiative to contact with the CD maturity
is. I don't recall that if I did. I mean, I may have,
but I -- that was my job. That was -- I was getting
paid to make those appointments.
Q. And did you ever discuss Midwest Medical with

1 Q. You helped out?
2 A. -- my dad, you know, family, friends, stuff
3 like that. But --
4 Q. So the way that the investment worked, why it
5 was appealing was, you came in as an investor. You put
6 in your initial amount. And then at either life
7 expectancy or -- at maturity, I should say, either life
8 expectancy or when the bond would kick in -- right?
9 A. Well, at maturity, which was basically
10 determined off of the life expectancy, right.
11 Q. Then you would get a percentage of the
12 proceeds, right?
13 A. Correct. Well, Dick would set the return.
14 Some policies it was 16 percent, I think. Some it
15 might have been even 18. I don't know. It was -- it
16 was -- it was different for different policies. But --
17 so if somebody put a hundred thousand dollars in, he
18 would calculate that rate of return on that principal
19 for the length of the life expectancy.
20 I don't think it went through the date of
21 the bond. I don't know. I'm a little fuzzy on that,
22 those details. But there were -- the rate of return
23 was determined either over the life expectancy or the
24 life expectancy plus three months or six months,
25 whatever the bond elimination period was. I can't

A. American Settlement Associates? Hill Country
Funding did market the Klauck policy, yes. So the time
frame was Secure Investment Services, then American
Settlement Associates, then Hill Country Funding doing
their own policies.
Q. And Hill Country Funding marketed all these
policies -- marketed the products of SIS and ASA? Is
that what you're saying?
A. Texas Funding, First Security Trust, First
Security, the whole evolving into Hill Country Funding
would have been at the same time of the transition from
SIS to ASA.
Q. Did all these entities maintain separate bank
accounts?
A. Which ones? SIS, ASA, and Hill Country
Funding?
Q. Yes.
A. SIS, they -- I'm not sure how they set up
their bank accounts. They were in California. They
had -- they handled the policy premiums and all of
that.
American Settlement Associates, they were
supposed to have a client fiduciary account set up with
Christiana Bank, I believe, which was never done, hence
the not paying premiums and all of that mess. But --

1 remember.
2 Q. The due diligence that you discussed with
3 Mr. Napoli about -- the due diligence that was
4 conducted on the policies that were selected for
5 Retirement Value --
6 A. Yes.
7 Q. -- was there any -- was that the same as the
8 due diligence that was conducted for the Hill Country
9 Funding policies?
10 A. I'm sure Ron James did the same due diligence
11 on his end. As far as what Dick would have done on
12 behalf of Hill Country Funding, he was the one that
13 trained up Jeremy on what to do. You know, when Jeremy
14 came on, I mean, Dick sat with him a couple of days
15 showing him how to work with the insurance carriers and
16 getting the information he needed. So Dick probably
17 did do the same type of due diligence upon selecting
18 the policies.
19 Dick did all the calculations, too, as to
20 which policies were viable for the Hill Country Funding
21 model, you know, purchase prices versus premiums and
22 all of that.
23 Q. This other company that you mentioned, this
24 ASA, does that have any relation to Hill Country
25 Funding?

and they were located in Houston.
And Hill Country Funding had its own
client account and operating account. And the client
account was kept separate from the operating account.
The operating account only consisted of commissions
that -- if I'm remembering correctly, commissions that
Dick would have earned that would have gone to the
operating account -- like let's say the commissions
earned on a policy was 14 percent. Well, Dick would
maybe put X percent of that into the operating account
and then take home, for his income, another
percentage. So --
Q. Were -- do you know who the equity holders in
HCF were?
A. Dick Gray and Catherine Gray.
Q. And were any distributions made to them to
your knowledge?
A. I don't think formal distributions were made
except that, you know, when Dick would make a sale,
some of it would go into the Hill Country Funding
operating account and some would go to him as
commissions. There was -- I don't believe there were
any distributions from the Hill Country Funding
operating account, but I -- that's speculation.
Q. I want to introduce --

1 solicited clients for the HCF products that you know
 2 of?
 3 A. Reid Thorburn, who was a master licensee with
 4 Retirement Value. He was a joint master with Mike
 5 Woods; and Secure Financial Strategies, I believe, is
 6 what their master licensee agreement was under.
 7 Q. And would they have received commissions?
 8 A. Reid Thorburn would have received commissions
 9 personally from Hill Country Funding products that he
 10 sold. He sold products through SIS in California,
 11 through ASA in Houston, and through Hill Country
 12 Funding.
 13 Q. Okay. So I just want to clarify. Earlier I
 14 had asked you if anyone other than Dick Gray had
 15 received commissions and you mentioned that you had
 16 received 10 percent occasionally. Would that -- is
 17 that inaccurate or do you want to correct that or --
 18 A. Okay. I can add to the list Reid Thorburn.
 19 Q. Mr. Woods, Mike Woods?
 20 A. Oh, no. He was strictly Retirement Value.
 21 Q. He was strictly Retirement Value.
 22 So just Reid Thorburn. And would
 23 Mr. Hensley have received any?
 24 A. No. I believe he -- I don't believe he made
 25 any sales.

express concerns about the legitimacy of the bonds?
 A. There was always a question of, you know, the
 different players involved in the bonded life
 settlement structure. You know, of course, they had --
 they would always ask questions about Midwest Medical.
 They would ask questions about --
 Q. Who is "they"?
 A. "They" as in clients. And this is from, you
 know, I guess when I would talk to my family or
 whatever. But I mean, this would be more of Dick's
 area when he was actually selling the products. But I
 know he fielded questions about Midwest Medical. He
 fielded questions about the bonding company. I'm sure
 he fielded questions about where the accounts -- the
 Hill Country Funding account was held.
 Q. Did you overhear him being asked these
 questions and answering them or how is it that you know
 that he fielded these questions?
 A. He -- I mean, he talked constantly about how
 he made sales presentations and --
 Q. So he would tell you about this.
 A. Yes. Yes.
 Q. Okay. And what did he -- how would he respond
 to concerns about Midwest Medical?
 A. It was a lot of the same information we had

1 Q. Okay. And so you think maybe that was just
 2 the one presentation that he was going to put in?
 3 A. It was just a presentation. He never sold the
 4 product.
 5 Q. Okay.
 6 A. I'm trying to think if there's any others.
 7 There -- Scott Barnard might have. Now I'm
 8 speculating.
 9 Q. Why would you suspect that he might have?
 10 A. He and his wife are clients of Hill Country
 11 Funding. She actually may be on the Klauck policy, so
 12 he would have received commissions off of that sale.
 13 Q. You don't consider the Klauck policy an HCF
 14 policy, do you?
 15 A. No.
 16 Q. Do you consider it an ASA policy?
 17 A. Yes.
 18 Q. But when you talk about HCF clients, you're
 19 also talking about ASA clients? I'm just trying to get
 20 a clear picture.
 21 A. Totally. I do consider them HCF clients just
 22 because that product was sold to them by us for ASA --
 23 Q. I see.
 24 A. -- I guess, yeah.
 25 Q. Were concerns ever -- did you ever hear anyone

for RV. It was the -- you know, Dr. Kindness is an
 owner of Midwest Medical, but he doesn't actually have
 a hand in the determination of the life expectancies.
 This Midwest Medical is the LE provider of choice for
 our policy supplier. And he would -- I'm trying to
 think of what else he would say. A lot of the
 information was information he had collected from Ron
 James.
 Q. And you said that he told you that he fielded
 a lot of questions about this. So investors were
 interested in having this information before they made
 their investment in Hill Country Funding?
 A. Yes.
 Q. It was important to them?
 A. Well, the -- as far as Midwest Medical, yes,
 it was important because that would establish the
 timeline of what they were paid out. And it would
 establish how much they -- you know, they got paid.
 The longer, I guess -- well, it established the time
 frame.
 Q. And what kind of questions would he field
 regarding the bonding companies?
 A. Who they were, where they were from, do you
 think they're legit.
 Q. And how would he respond?

1 A. That he believed they were. There was
 2 actually -- I guess he was told that there was proof
 3 that Provident Capital Indemnity had paid out on
 4 claims. And that has since been established by the
 5 case with -- I think it's A&O Resources in Houston.
 6 They used Provident Capital Indemnity. Provident
 7 Capital has paid out on some bonds that matured. I
 8 think 11 million or something like that.
 9 Q. Did he ever relay any fact that you would --
 10 that would give you pause about the legitimacy of the
 11 bonding company?
 12 A. No. I mean, I -- we invested in it ourselves;
 13 so, you know, I thought it was legitimate enough to put
 14 our money into it.
 15 Q. Did you ask any questions about it?
 16 A. I think at the point of Hill Country Funding,
 17 he was working with Matthew Searle, who was supposedly
 18 putting him in touch with some reputable bonding
 19 companies that had financials that they had showed Dick
 20 that had -- I mean, that Matthew would substantiate
 21 that they were registered with the specific
 22 governmental institutions there in their countries
 23 where they were registered properly and things like
 24 that. So --
 25 Q. Were you concerned about why no U.S. companies
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1 were being sought?
 2 A. Well, yes. It was like why don't -- why
 3 aren't there any bonding companies in the United States
 4 doing what these companies do? And so there was that
 5 question. And I'm trying to think why -- now what the
 6 answer was to that. And so, yeah, that was -- that was
 7 a question.
 8 But we were also -- here was another
 9 thing that we were also told was, though, that these
 10 bonding companies were reinsured by -- which is where
 11 he got the word "bouquet". That they were reinsured by
 12 a bouquet of reinsurance type companies and among some
 13 of them it was like -- Lloyds of London was like a
 14 reinsurer of some of these bonding companies. It was
 15 names like that that just helped to --
 16 Q. And who made those representations?
 17 A. James Settlement Services. It was either
 18 through Ron James or through Matthew Searle that these
 19 names were coming to us.
 20 Q. And did you see any paperwork about the
 21 reinsurance?
 22 A. I want to say at one point I saw a list of the
 23 reinsurance companies.
 24 Q. But you didn't see any insurance policies
 25 themselves?
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A. I'm sorry?
 Q. You said that these -- the bonds were
 reinsured. You didn't see any actual contracts,
 right?
 A. No. I didn't, no.
 Q. Were you aware that when Hill Country Funding
 went into receivership, there was a significant
 deficiency in the amount of cash in its account such
 that the policies -- there wasn't enough money to
 maintain the premiums through just the life expectancy
 date?
 A. Well, I know that the Feferkorn policy was not
 fully subscribed; so, yes, therefore there would be
 what would -- there would be less money in there than
 needed to be to pay premiums to maturity.
 Q. Was the Feferkorn policy already purchased?
 A. Yes.
 Q. My understanding was -- oh, did you purchase
 the product -- did HCF purchase the policy before
 having the -- you would purchase the policy and then
 divvy it up? Is that how it would go? It wouldn't be
 you'd collect the investment and then purchase the
 policy.
 A. You know, Feferkorn might have been fully paid
 for when we got it because we had paid so much money to
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Glicken and, you know, the other one that was before
 Feferkorn. So there might have been enough money in
 the escrow accounts at Pacific Northwest Title to pay
 for Feferkorn at that point.
 But the practice -- the standard practice
 was client money would come in and probably 80 to 90
 percent of every dollar coming in would go initially to
 pay for the policy up front and then it would shift
 over to where a hundred -- you know, 80 to 90 percent
 of every dollar that came in would then go to the
 premium account for that policy -- the premium category
 for that account -- for that policy. Sorry.
 Q. So do you know how many insureds there were
 when -- on the HCF policies when it went into
 receivership?
 A. How many insureds?
 Q. Uh-huh.
 A. There was Feferkorn.
 Q. Lilly Segal?
 A. Lilly Segal. Yes. Thank you. She has, I
 believe, three policies.
 Q. And there were two policies that were
 purchased by Joyce Hipp; is that right?
 A. Yes.
 Q. Okay.
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I, WENDY ROGERS, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

WENDY ROGERS

#94346

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

Before me, _____, on this day personally appeared WENDY ROGERS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, A.D., 2011.

Notary Public in and for
the State of Texas

That the amount of time used by each party at the deposition is as follows:
Jennifer S. Jackson - 13 minutes
Michael D. Napoli - 3 hours, 21 minutes
Isabelle M. Antongiorgi - 1 hour, 13 minutes
Geoffrey D. Weisbart - 28 minutes
Wendy Rogers - 5 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

- Jennifer S. Jackson, Attorney for Plaintiff (512/475-4866)
- Michael D. Napoli, Attorney for the Receiver for Retirement Value, LLC (214/939-5500)
- John W. Thomas, Attorney for the Receiver for Retirement Value, LLC (512/495-1400)
- Isabelle M. Antongiorgi, Attorney for the Receiver for Hill Country Funding (512/473-2257)
- Geoffrey D. Weisbart, Attorney for Intervenor
- Gary Cain, Barry Edelstein, and Qvest Master Fund III (512/479-8888)
- Wendy Rogers, Pro Se

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have

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NO. D-1-GV-10-000454
STATE OF TEXAS, IN THE DISTRICT COURT OF
Plaintiff
VS.
RETIREMENT VALUE, LLC, ET AL,
Defendants TRAVIS COUNTY, TEXAS
AND
KIESLING, PORTER, KIESLING &
FREE, P.C.,
Relief Defendant 126TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
DEPOSITION OF WENDY ROGERS, VOLUME 2
JULY 15, 2011

I, SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, WENDY ROGERS, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____ to the witness or to the attorney for the witness for examination, signature, and return to me by _____;

occurred.
Certified to by me this 18th day of July, 2011.

SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 12-31-11
Sunbelt Reporting & Litigation Services
Firm Registration No. 87
1016 La Posada Drive, Suite 294
Austin, Texas 78752
(512) 465-9100

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition/errata sheet was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to _____, Custodial Attorney;

1 That \$ _____ is the deposition officer's
2 charges to the _____ for preparing
3 the original deposition transcript and any copies of
4 exhibits;

5 That the deposition was delivered in
6 accordance with Rule 203.3, and that a copy of this
7 certificate was served on all parties shown herein on
8 _____ and filed with the Clerk.

9 Certified to by me this ____ day of _____,
10 _____.

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16 _____
SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 12-31-11
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