

THE STATE OF TEXAS  
 Plaintiff

v.

MEMORIAL SERVICE LIFE INSURANCE  
 COMPANY, LINCOLN MEMORIAL  
 LIFE INSURANCE COMPANY, AND  
 NATIONAL PREARRANGED  
 SERVICES, INC.

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

Filed in The District Court  
 of Travis County, Texas

JL SEP 22 2008  
 At J. J. J.  
 Amalia Rodriguez-Mendoza, Clerk

**ORDER APPOINTING LIQUIDATOR,  
 ORDER APPROVING LIQUIDATION PLAN  
 AND PERMANENT INJUNCTION**

On this day, the Court heard the *Application for Order of Liquidation and for Order Approving Plan of Liquidation* (the "Application") filed by the Special Deputy Receiver (the "SDR") of Memorial Service Life Insurance Company ("Memorial Service"), Lincoln Memorial Life Insurance Company ("Lincoln Memorial") and National Prearranged Services, Inc. ("NPS") (collectively, the "Defendants"). The SDR, the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association and the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") appeared by and through their respective counsel. Having considered the Application, evidence, arguments of counsel and the recommendation of the Special Master appointed in this proceeding, the Court issues this Order.

**I. FINDINGS OF FACT**

- 1.1. Defendants Memorial Service, Lincoln Memorial and NPS were properly notified of the hearing on the Application and did not file any objection.
- 1.2. Notice of the application was provided to all known parties in interest, as defined in TEX. INS. CODE § 443.004(a)(17), pursuant to TEX. INS. CODE § 443.007(d).

- 1.3 The Application was referred to the Special Master appointed in this proceeding pursuant to Rule 171 of the Texas Rules of Civil Procedure and the *Order of Reference to Master* entered by this Court on May 16, 2008.
- 1.4 Objections to the Application were filed by: (1) National Heritage Enterprises, Inc. and Forever Enterprises, Inc., (2) counsel for plaintiff in the action styled *James & Gahr Mortuary versus NPS, et al*, (3) the Kerrville Funeral Home, Grimes Funeral Chapels, Inc. Vaughan's Funeral Home and Pioneer Group Inc. d/b/a Shaffer Funeral Home and Shaffer Nichols Funeral Home Inc., (4) the Henneke Funeral Home and (5) the Denzer-Farison-Hottinger & Snyder Funeral Home (the "Objections").
- 1.5 The Special Master conducted a hearing on the Application on September 15, 2008. The objecting parties withdrew the Objections, the parties agreed to certain stipulations, and the Special Master recommended that the Application be approved.
- 1.6 Each of the Defendants are unable to pay all of their obligations when they are due, and do not have admitted assets at least equal to all of their liabilities. Further, Memorial Service and Lincoln Memorial do not meet the capital requirements for insurers under the Texas Insurance Code.
- 1.7 Further attempts to rehabilitate Defendants would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile.
- 1.8 The SDR has entered into a Liquidation Plan attached as Exhibit "A" to the Application with NOLHGA and the life and health insurance guaranty associations that have elected to participate in the Liquidation Plan ("Participating Associations"), subject to the approval of this Court.

## II. CONCLUSIONS OF LAW

- 2.1 The SDR is authorized to file the Application.
- 2.2 This Court has jurisdiction to hear the Application under TEX. INS. CODE § 443.005(c).
- 2.3 The notice of the Application meets the requirements of due process, and satisfies TEX. INS. CODE § 443.007. Accordingly, this Order shall be binding on all parties with an interest in the receivership estates of Defendants.
- 2.4 Any party in interest objecting to the Application has the burden under TEX. INS. CODE § 443.007 to show why the Application should not be approved.
- 2.5 Grounds have been established to place Defendants into liquidation under TEX. INS. CODE § 443.057. These grounds include, but are not limited to, the finding that Defendants are insolvent as defined in TEX. INS. CODE § 443.004(a)(13). In accordance with TEX. INS. CODE § 443.058, if such grounds are established, this Court shall issue an order of liquidation.
- 2.6 Defendants must be placed into liquidation, and the Commissioner of Insurance for the State of Texas (the "Commissioner") must be appointed as Liquidator of Defendants pursuant to TEX. INS. CODE § 443.151.
- 2.7 The Liquidator shall be vested by operation of law with title to all of Defendants' property as defined in TEX. INS. CODE § 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in share accounts or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether

owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendants, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendants (collectively, "Defendants' Property"). The Liquidator's title to Defendants' Property shall extend to all items owned by Defendants, regardless of the name in which such items are held.

- 2.8 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator is directed to take possession of Defendants' Property, wherever located.
- 2.9 The Liquidator may take action as he deems necessary or appropriate to perform his duties pursuant to TEX. INS. CODE § 443.151. The Liquidator shall have all the powers of Defendants' directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Liquidator or his designees.
- 2.10 Defendants and Defendants' agents shall be required to cooperate with the Liquidator pursuant to TEX. INS. CODE § 443.010.
- 2.11 The injunctive relief granted in the *Agreed Order Appointing Rehabilitator and Permanent Injunction* in this cause shall continue in full force and effect pursuant to TEX. INS. CODE § 443.008(a).
- 2.12 Pursuant to TEX. INS. CODE § 443.008, an automatic stay is in effect upon the commencement of the delinquency proceeding.
- 2.13 The proposed Liquidation Plan by and among the SDR, NOLHGA and the Participating Associations is in the best interests of Defendants' policyholders and creditors. The Liquidation Plan will facilitate the payment of claims by Participating Associations in accordance with the original purposes of the policies, effectuate the assignment of policy benefits to funeral providers that were designated as beneficiaries, and resolve claims

against the Receivership Estates. In the absence of the Liquidation Plan, significant impediments would exist with respect to the payment of claims by guaranty associations.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

### III. APPOINTMENT OF LIQUIDATOR

The Commissioner is appointed as Liquidator of Defendants, and granted the following duties and powers:

- 3.1 The Liquidator is granted and given all powers and authority under TEX. INS. CODE Chapter 443, and any and all other powers and authority under applicable statutes and the common law of this State.
- 3.2 Pursuant to TEX. INS. CODE § 443.151(a), title to all of Defendants' Property, including but not limited to all the assets and rights described in this *Order Appointing Liquidator*, *Order Approving Liquidation Plan and Permanent Injunction*, is vested in the Liquidator.
- 3.3 The Liquidator is authorized to take control and possession of Defendants' Property, wherever located, and remove all such property from Defendants' premises.
- 3.4 The Liquidator is vested with the rights of Defendants as customers of any financial institution. The Liquidator is authorized to withdraw Defendants' Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of Defendants, at his discretion.
- 3.5 The Liquidator is authorized to appoint a special deputy and retain any other professional, administrative, and clerical services as he deems necessary pursuant to TEX. INS. CODE § 443.154(a). The Liquidator is further authorized to set the compensation of such persons,

and to pay for such services from Defendants' funds pursuant to TEX. INS. CODE § 443.015(e).

- 3.6 The Liquidator is authorized to conduct Defendants' business, administer Defendants' operations, and enter into any contracts necessary to perform the Liquidator's duties, at his discretion pursuant to TEX. INS. CODE § 443.154.
- 3.7 The Liquidator is authorized to supervise, suspend, terminate, or dismiss any or all of the agents, employees, officers, and/or directors of Defendants' or retain such persons at his discretion, and compensate them as he deems necessary from Defendants' funds.
- 3.8 The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for Defendants.
- 3.9 The Liquidator is authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this Order.
- 3.10 The Liquidator is authorized to exclude any person from any property owned, leased or occupied by Defendants, at his discretion.
- 3.11 The Liquidator is authorized to assume or reject contracts with Defendants at his discretion pursuant to TEX. INS. CODE § 443.013.
- 3.12 Pursuant to TEX. INS. CODE § 443.008(m), the Commissioner is not required to file a bond.
- 3.13 The Liquidator is authorized to take any action to transfer policies of insurance pursuant to TEX. INS. CODE § 443.154(h).
- 3.14 In the event a successor is appointed to be the Commissioner, the successor shall become the Liquidator upon his appointment as Commissioner, and the former Commissioner shall be discharged as Liquidator as a matter of law.

3.15 The Liquidator's designees and any Special Deputy appointed under TEX. INS. CODE § 443.154(a) shall have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator.

#### IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendants, their affiliates and agents, including but not limited to:  
Defendants' current and former officers, trustees and directors (including but not limited to Randall J. Singer, Randall K. Sutton, George Wise, Brent D. Cassity, L. Keith Hale, Hans H. Dahl, Nekol Province, Anne M. Chrun, James M. Crawford, and Howard A. Wittner), owners (including but not limited to Brent Cassity, Forever Enterprises, Inc., National Heritage Enterprises, Inc., and the RBT Trust II), affiliates (including but not limited to Wise & Associates, Inc., Forever Memorial, Inc., Forever Network, Inc., Forever Illinois, Inc., Forever Georgia, Inc., Forever Preneed Insurance Agency, In., Heritage Research, Inc., Lincoln Memorial Services, Inc., National Cemetery Management Company, and National Cemetery Merchandise, Inc.), underwriters, managers, employees, managing general agents, local recording agents, third party administrators, representatives, associates, servants, adjusters, attorneys, accountants, contractors and other persons or entities those acting in concert with or on behalf of any persons or entities described above; and

Financial institutions, including but not limited to:  
any and all banks, savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions in the possession of any of Defendants' Property (including but not limited to Bremen Bank and Trust Company and Marshall & Isley Trust Company); and

All other parties, including but not limited to:  
policyholders, creditors, claimants, reinsurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against Defendants, or in possession of any of Defendants' Property, (including but not limited to the United States Postmaster).

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- 4.1 Doing, operating, or conducting Defendants' business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to Defendants, or exercising any direction, control, or influence over Defendants' business, or making any transactions on behalf of Defendants in any manner, except through the authority of the Liquidator or his designees;
- 4.2 Wasting, disposing of, converting, dissipating, using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, concealing, in any manner, or removing from this Court's jurisdiction or from Defendants' place of business, any of Defendants' Property, or any other items purchased by Defendants, or any items into which such property has been transferred, deposited or placed, or any other items owned by Defendants, wherever located, except through the authority of the Liquidator or his designees;
- 4.3 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendants, whether asserted or not, except through the authority of the Liquidator or his designees;
- 4.4 Doing anything, directly or indirectly, to prevent the Liquidator or his designees from gaining access to, acquiring, examining, or investigating any of Defendants' Property or any other property, books, documents, records, or other materials concerning Defendants' business, under whatever name they may be found;
- 4.5 Interfering with these proceedings or with the lawful acts of the Liquidator or his designees in any way;



- 4.6 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendants as prohibited by TEX. INS. CODE § 443.005(i);
- 4.7 Making any claim, charge or offset; commencing or prosecuting any action, appeal, arbitration, or administrative proceeding; obtaining any preference, judgment, attachment, garnishment, or other lien; making any levy against Defendants, Defendants' Property or any part thereof, or the Liquidator; except as permitted by TEX. INS. CODE Chapter 443.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or his designees the nature, amount, and location of any and all of the items listed above, including but not limited to Defendants' Property, and immediately surrender all such property to the Liquidator or his designees.

#### **V. AUTOMATIC STAY**

- 5.1 An automatic stay is in effect with respect to actions against Defendants or their property as provided by TEX. INS. CODE § 443.008(c). In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against Defendants is in effect for the duration of this proceeding, and the stay of actions against Defendants' property is in effect for as long as the property belongs to the receivership estate.

#### **VI. CONTINUATION OF COVERAGE**

- 6.1 In accordance with TEX. INS. CODE § 443.152(d), policies of life or health insurance or annuities or any portion thereof that are covered by a guaranty association shall continue in force for the period and under the terms provided for by any applicable guaranty association law, TEX. INS. CODE chapter 443 and the Liquidation Plan.

## VII. APPROVAL OF LIQUIDATION PLAN

- 7.1 The Liquidation Plan (including the Service and Early Access Agreement attached as Exhibit 3.2 thereto) by and among the SDR, NOLHGA and the Participating Associations (the "Parties") is approved in its entirety. All the terms and provisions of the Liquidation Plan are incorporated herein by reference and are approved as part of this Order regardless of whether such provisions are expressly identified in this Order.
- 7.2 The Liquidator and the SDR are authorized to take all steps necessary and appropriate to implement the Liquidation Plan.
- 7.3 The Liquidation Plan's designation and treatment of certain and specific insureds as owners of the insurance policies in lieu of NPS and/or a trustee are approved.
- 7.4 The Liquidation Plan's designation and treatment of certain and specific funeral homes as beneficiaries under certain life insurance policies in lieu of NPS and/or a trustee are approved.
- 7.5 The trust agreements with NPS related to the Preneed Funeral Contracts and related insurance policies need not be utilized in connection with the Liquidation Plan. In accordance with TEX. INS. CODE § 443.013(b) and § 443.059, the entry of this Order does not constitute a breach or an anticipatory breach of any trust agreement.
- 7.6 Pursuant to TEX. INS. CODE § 463.257, an 18-month moratorium is approved on surrenders, policy loans, changes in beneficiary or other policy terms or the exercise of any right to withdraw money from any "Standard" policy and/or annuity, as defined in the Liquidation Plan. The determination of whether a policy or annuity is categorized as "Standard" will be made as provided in the Liquidation Plan. In accordance with Paragraph 7.3 of the Liquidation Plan, such moratorium shall be subject to reasonable

hardship provisions appropriate under the circumstances, which shall be submitted to this Court for approval.

- 7.7 With respect to the Disputed Policies, the Participating Associations will recognize and pay the original face amount death benefit and provide no other benefits, in accordance with and subject to the Liquidation Plan, including the requirement for the payment of premiums as set forth therein.
- 7.8 After a Participating Association makes the death benefit payment contemplated under this Liquidation Plan, its obligation related in any way to such Covered Obligation shall be discharged as to all persons.
- 7.9 The Liquidation Plan's treatment of the Participating Associations' rights of subrogation and assignment is hereby approved, including but not limited to the Participating Associations' requirement of a signed assignment and release before benefits are paid.
- 7.10 The obligation of any funeral home or other burial service provider to deliver funeral/burial services and/or merchandise on behalf of the insured, annuitant or other person in accordance with the terms specified in the applicable Preneed Funeral Contract and subject to applicable state law, remains in full force and effect pursuant to contractual commitment and/or statutory mandate. These obligations are not released or diminished in any way as a result of the Liquidation Plan regardless of the amount and scope of coverage provided by a Participating Association for a Covered Obligation.
- 7.11 In accordance with Paragraph 11 the Liquidation Plan, the Participating Associations shall have complete and unrestricted access to information, data, liquidation strategies, and the like for any and all assets of Defendants, and meaningful input into the maintenance and liquidation of any and all assets of Defendants.

- 7.12 Within 120 days after entry of this Order, or if possible sooner, if requested by the Participating Associations after the Effective Date of the Liquidation Plan, the SDR will file an application to make early access payments to Participating Associations from the assets of the Defendants in accordance with TEX. INS. CODE § 443.303.
- 7.13 Payments made by or on behalf of Lincoln Memorial and/or Memorial Service to NPS or NPS's designee prior to entry of the Liquidation Order shall be deemed to have fully satisfied their respective duties and obligations under the respective policies. The Participating Associations shall have no obligations or duties with respect to such policies.
- 7.14 The Liquidation Plan represents a settlement and compromise among the Parties and shall be without prejudice to any Party, except as specifically provided in the Liquidation Plan, and shall not be deemed as or construed as an admission by any Party. The Liquidation Plan does not relieve or release any third parties, including but not limited to reinsurers and trustees, from any duties, obligations or statutory requirements
- 7.15 This Order shall not be construed to modify the terms of the Liquidation Plan; limit the rights and powers of the Receiver, the SDR, NOLHGA or the Participating Associations under the Liquidation Plan; or conflict with the Participating Associations' statutory duties or TEX. INS. CODE §§ 443.005(j) and 443.008(l).

### **VIII. OTHER ORDERS**

- 8.1 This *Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction* shall issue and become effective immediately, and shall continue in full force and effect until the entry of an order by this Court terminating liquidation entered under TEX. INS. CODE § 443.352.

8.2 Pursuant to TEX. INS. CODE § 443.054(b), this *Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction* constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443.

8.3 The Defendants are joined in a common delinquency proceeding for administrative purposes, and the receivership estates of Defendants are not substantively consolidated. The separate assets and liabilities of each Defendant shall be maintained in accordance with TEX. INS. CODE Chapter 443.

8.4 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, and the amount and payment of such claim are subject to the provisions of TEX. INS. CODE Chapter 443.

8.5 Pursuant to TEX. INS. CODE § 443.052(b), The Liquidator may provide notice of the Application and this *Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction* to the insurance commissioners and insurance guaranty associations in the states in which Defendants are or were licensed by first class mail, electronic mail, or facsimile transmission, at his discretion.

8.6 Anyone over the age of 18 whom is not a party to nor interested in the outcome of this suit may serve all citations, writs and notices in this cause.

8.7 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the \_\_\_\_\_ day of

September 23, 2008, at 1:38 o'clock p.m.

PROPER NOTICE GIVEN.  
OBJECTION FILED.

HEARING HELD  
RECOMMENDED  
SIGNED ON 23 DAY OF Sept. 2008  
Tom Coll

Judy Bellamy  
DISTRICT JUDGE PRESIDING