

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

H. THAYNE DAVIS, :
 :
 Plaintiff, : Case No. 3:04 CV 0059
 :
 vs. : (Magistrate Judge Sharon L. Ovington)
 :
 LIFETIME CAPITAL, INC., :
 and : **RECEIVER'S MOTION FOR**
 : **INSTRUCTIONS REGARDING**
 : **LIFETIME INVESTORS WHO HAVE**
 DAVID W. SVETE, : **NOT SUBMITTED A CLAIM FORM**
 : **IN ACCORDANCE WITH THE**
 Defendants. : **CLAIMS PROCEDURE**

COMES NOW H. Thomas (Tom) Moran, II (the "Receiver"), Receiver for certain assets of Defendant LifeTime Capital, Inc. ("LifeTime") and respectfully moves this Court for instructions regarding issues related to certain of the LifeTime Investors who have not submitted a claim form to the Receiver during the claims process (the "Motion").¹ In support thereof, the Receiver submits the following.

I. INTRODUCTION AND BACKGROUND OF CASE

A. APPOINTMENT OF THE RECEIVER

Plaintiff, H. Thayne Davis ("Davis"), sued LifeTime for fraud and breach of contract arising from LifeTime's purchase of life insurance policies from terminally ill insureds and subsequent sale of investments in the policies to a number of investors. Additionally, Davis sought the appointment of a receiver to control and administer the assets of LifeTime for his benefit and that of other similarly situated investors. On February 20, 2004, the Court issued an

¹ Excluded from the scope of this Motion are the claims of two investors whose investments were allocated to the Jordan insurance policies. (Doc. No. 539, pp. 4-5.) The claims of those investors are the subject of a separate motion.

Agreed Order (the "Order of Appointment") appointing H. Thomas (Tom) Moran as Receiver of the assets of LifeTime (Doc. No. 6).²

In its Order of Appointment, the Court took exclusive jurisdiction and possession of:

the assets, monies, securities, contracts, notes, negotiable and non-negotiable instruments or documents of title, choses in action and properties, real, if any, and personal, tangible and intangible, of whatever kind and description, wherever situated, of LifeTime, including, without limitation, all viatical and life settlement insurance policies, including beneficial interests therein and proceeds thereof, comprising the LifeTime Portfolio (hereinafter "Receivership Assets").

(Doc. No. 6, p. 1.)

In addition, the Court stated that the Receivership Assets shall include, but not be limited to, all property of whatsoever nature, whether real or personal, tangible or intangible, which has been acquired with or through funds or proceeds of LifeTime. The Court stated that the Receivership Assets specifically included, without limitation, all viatical or life settlement contracts with respect to LifeTime or its affiliates, and all related life insurance policies (collectively the "LifeTime Portfolio").³

The Order of Appointment further provided that the title to the Receivership Assets would vest by operation of law in the Receiver until further order of the Court. Thus, the Receiver was given complete and exclusive control, possession, and custody of all Receivership Assets, without exclusion.

In addition, from and after the date of entry of the Order of Appointment, the Receiver had the authority to:

² On May 5, 2004, December 2, 2004 and February 17, 2006, the Court issued orders clarifying and/or modifying its Order of Appointment. (Doc. Nos. 23, 141, and 381).

³ At the time the Receiver was appointed, the LifeTime Portfolio consisted of policies with an aggregate face value of in excess of \$139,000,000.00.

“conduct the business operations of LifeTime and the entities it controls, including, without limitation, all life insurance trusts which were created by or on behalf of LifeTime for the express purpose of holding any right, title or interest in any of the policies which comprise the Lifetime Portfolio.” *Id.* at 8.

“... to incur such expenses and make such disbursements as are necessary and proper for the collection, preservation, maintenance and operation of the Receivership Assets.” *Id.* at 10

Finally, the Court in its Order of Appointment specifically stated that, until further order of the Court, the Order of Appointment prohibited the prosecution of any action or other proceeding against LifeTime, as well as the enforcement of any judgments against LifeTime (*Id.* at 9).

B. THE CLAIMS PROCEDURE

On or about September 7, 2004, the Receiver filed a motion seeking to establish a Court-approved claims procedure for investors and non-investor creditors.⁴ (Doc. No. 70.) Attached to the Receiver’s motion was a draft Investment Claim Form (Doc. No. 70, Exhibit 2), a draft Premium Payment Claim Form (Doc. No. 70, Exhibit 3), a cover letter to be used by the Receiver to transmit claim forms to the investors (Doc. No. 70, Exhibit 5) and a draft letter acknowledging the Receiver’s receipt of completed claim forms (Doc. No. 70, Exhibit 6). The cover letter that was attached to the motion set an original deadline for the submission of claims for ninety (90) days from the investor’s receipt of the claim form. (Doc. No. 70, Exhibit 5). In the motion, the Receiver explained that he did “not intend to use this deadline as a hard and fast rule to penalize claimants but rather only as a means to prompt a timely return of the completed form(s). The Receiver intends to make exceptions to the deadline as circumstances dictate and according to equitable principles, subject to Court approval.” (Doc. No. 70, p. 6, n. 3.)

⁴ In addition to excluding the claims of the Jordan investors, *supra* n. 1, this Motion does not address the claims, if any, of non-investors.

On January 21, 2005, the Court entered an Order granting the Receiver's motion to establish a claims procedure. (Doc. No. 167.) In that Order, the Court approved the claim forms which were attached to the motion. (Doc. No. 167, pp. 2-3, ¶¶ 5-6.) The Court also approved the form of the cover letter to be used by the Receiver in transmitting claim forms to the investors. (Doc. No. 167, pp. 3-4, ¶¶ 8-9.)

C. STATUS OF THE CLAIMS PROCEDURE

Pursuant to the court-approved procedure, cover letters and claim form packets were mailed to the LifeTime Investors, over a period of several weeks, beginning on February 17, 2005 and ending on March 15, 2005.⁵ (A sample of the cover letter and the claim form packet mailed to each of the Investors is attached hereto as Exhibit 1.) As a result of the initial mailing to Investors, the Receiver received approximately 2,224 claim forms from or on behalf of Investors. (Affidavit of H. Thomas Moran, II, Exhibit 2, ¶ 5.)

In September of 2005, a second notice of the claims process was mailed to the investors who had not yet returned a claim form. (A sample of the second cover letter and the claim form packet mailed to Investors is attached hereto as Exhibit 3.) As a result of the second mailing to Investors, the Receiver received approximately 243 claim forms from or on behalf of investors. (Exhibit 2, ¶¶ 7, 9.)

On or about March 9, 2007, a third notice of the claims process was mailed to investors. (A sample of the letter (the "Third Notice") mailed to investors is attached hereto as Exhibit 4.) Accompanying the Third Notice was a blue postcard which could be used by the Investors to request another copy of the claim form packet be mailed to him/her. (A copy of the blue postcard is attached hereto as Exhibit 5.) At the time of the Third Notice, the records in the

⁵ The Court's January 21, 2005, Order permitted the Receiver to stagger the original mailing of the claim forms in an attempt to avoid a backlog of unprocessed claim forms. (Doc. No. 167, p. 4, ¶ 11.)

Receiver's possession indicated that there were approximately four hundred and fifty (450) investors who had not returned claim forms to the Receiver's office. With the exception of six investors discussed in subparts I.D.1.i. and I.D.2.ii. below, the Receiver believes that each of the four hundred and fifty investors received a copy of the Third Notice. (Exhibit 2, ¶ 12.)

Shortly after the mailing of the Third Notice, the Receiver's staff began a concentrated effort to use other methods of contact to reach the investors. As a result of a combination of the Third Notice and the intensified due diligence of the Receiver's staff, claim forms have been received from or on behalf of two hundred and sixty investors (more than one-half of the 450).⁶ As of October 16, 2007, it is the Receiver's belief, as explained below, that there are one hundred and ninety investors who have failed or refused to return a claim form to the Receiver's office.⁷ It is these one hundred and ninety investors (the "No Claim Form Investors") that are the subject of this Motion. (A list of the No Claim Form Investors is attached hereto as Exhibit 6 (to be filed under seal).)

D. DUE DILIGENCE AND PROPOSED FINAL WRITTEN NOTICE

Out of the one hundred and ninety No Claim Form Investors that are the subject of this Motion, upon information and belief, one hundred and fifty-seven are living and thirty-three are deceased. Although the Receiver will request the Court allow him to proceed with respect to each group of No Claim Form Investors in a substantially similar manner, the due diligence that has been performed with respect to the living investors and the deceased investors has been different enough to warrant separate explanation.

⁶ As the Court is aware, nine separate motions to allow claims have been filed by the Receiver. (Doc. Nos. 340, 523, 619, 708, 751, 768, 790, 801 and 813.) In addition, the Court has granted each of the Receiver's Motions, allowing 2,684 claims, representing over \$86,936,505.28 in original investment dollars. (Doc. Nos. 446, 668, 725, 756, 786, 794, 819, 820 and Minute Entry, dated August 11, 2006.)

⁷ There are approximately twenty (20) claims in the Receiver's office awaiting completion of the Receiver's confirmation process. Because a claim form has been received from these Investors, their claims are not included within the scope of this Motion.

1. LIVING INVESTORS:

As noted above, it is believed that one hundred and fifty-seven of the one hundred and ninety No Claims Investors are living. In order to verify which investors are still living, many sources, including one that links to the Social Security Death Index, have been periodically checked.⁸ As of the most recent check, none of the 157 individuals were reported or identified as being deceased. (Exhibit 2, ¶ 24.)

i. No Claim Form Returned:

The Receiver has verified that as many as one hundred and nine of the living No Claim Form Investors have copies of the necessary claim forms. As set forth on Exhibit 2:

- 81 Investors returned the blue postcard (Exhibit 5) and thereafter received claim forms;
- 21 Investors have spoken to the Receiver's office and thereafter received claim forms;
- 5 Investors stated that a claim form will be mailed to the Receiver's office; and,
- 2 claims are assets of another receivership.⁹

(Exhibit 2, ¶¶ 25-27.)

In addition, the Receiver believes that another forty-five living No Claim Form Investors received a copy of the Third Notice. (Exhibit 2, ¶ 28.) As set forth on Exhibit 2, the addresses of each of these forty-five living No Claim Form Investors have been verified through various sources. (Exhibit 2, ¶ 28.) In addition, of those forty-five, the Receiver's office has left telephone messages for twenty-eight of the No Claim Form Investors. (Exhibit 2, ¶ 29.) Five investors' addresses were verified through Sterling Trust Company as part of the process

⁸ Most of the databases are accessed using an investors' name, address and/or social security number.

⁹ The Receiver's office has been in contact with the court-appointed receiver for Trade Partners. Although the necessary claim forms have been mailed to and received by him, the other receiver has not returned completed forms to Mr. Moran.

preceding the filing of the Receiver's Eighth Motion to Allow Claims (Doc. No. 801).¹⁰ (Exhibit 2, ¶ 30).

Although he has verified the investors' addresses through various sources, the Receiver, can not for 10 of those fifty Living No Claim Form Investors, locate good telephone numbers or reach a person by telephone or leave a message on an answering machine. An additional two Investors, whose addresses have been verified, can not be reached by telephone because of communication difficulties.¹¹ The address of the final investor in this category was verified when the investor submitted a change of address request to the Receiver in 2005 and thereafter no mail sent to that address has been returned to the Receiver's office as undeliverable. (Exhibit 2, ¶¶ 31-33.)

ii. Living Investors Who Can Not be Contacted:

There are three living No Claim Form Investors who, despite the best efforts of the Receiver, can not be located. (Exhibit 2, ¶ 34.) All mail to the investors last known address has been returned and the phone number, if any, appearing in the original LifeTime investment file is not valid. (Exhibit 2, ¶ 34.) Using various internet resources, no new address or phone number can be located for the Investor. (Exhibit 2, ¶ 34.) In addition, despite the efforts of the Receiver and his staff, the beneficiary, if any, listed in the investors' original investment file can not be located. (Exhibit 2, p. ¶ 34.)

2. DECEASED INVESTORS:

¹⁰ As the Court is aware, Sterling Trust Company, as custodian of certain qualified accounts, submitted completed claim forms on behalf of 91 Investors. (Doc. No. 801.) Due to its status as custodian of only the qualified accounts, Sterling Trust Company could not file a claim on behalf of the Investors' non-qualified accounts. Sterling Trust Company did, however, verify the Investors' addresses for the Receiver. (Exhibit 2, ¶ 30.)

¹¹ One Investor is too hard of hearing to communicate with effectively over the telephone, although the Investor's name and address have been verified. One Investor does not speak English fluently enough to communicate with the Receiver's staff, although the Investor's name and address have been confirmed. (Exhibit 2, ¶ 32.)

As noted above, the Receiver believes that thirty-three of the one hundred and ninety No Claim Form Investors are deceased. The fact of these investors' death has been confirmed by various sources, including at least one database that links to the Social Security Death Index and in some instances through review of obituaries and/or death certificates. (Exhibit 2, ¶ 16.)

i. No Claim Form Returned:

The Receiver has reached the next of kin or beneficiary of twenty-three of the deceased investors. (Exhibit 2, ¶¶ 35-36.) Claim forms have been mailed to twenty of those twenty-three. (Exhibit 2, ¶ 35.) Three of those twenty-three have not been sent claim forms due to various circumstances, although addresses have been verified. (Exhibit 2, ¶ 36.)

ii. Deceased Investors Whose Beneficiaries Can Not be Contacted:

Despite the best efforts of the Receiver, there are beneficiaries or next of kin of three deceased investors who can not be located. (Exhibit 2, ¶ 38.) All mail to the beneficiaries' or next of kin's' last known address has been returned as undeliverable. (Exhibit 2, ¶ 38.) Using various resources available to him and his staff, no new address or phone number has been located. (Exhibit 2, ¶ 38.)

3. PROPOSED FINAL WRITTEN NOTICE:

The Receiver respectfully requests that he be authorized to send a fourth and final notice to each of the one hundred and eighty-four Investors for which the Receiver has verified addresses, in the form substantially shown on Exhibit 7.¹² If the Investors do not return a completed claim form to the Receiver's office within thirty (30) days of the Investors' receipt of

¹² Although there are one hundred and ninety Investors who have not returned claim forms, the Receiver believes he has exhausted all reasonable efforts to locate six of those Investors (or their beneficiaries or next of kin) and mail to the last known addresses of the Investor and his/her beneficiaries or next of kin has been returned as undeliverable. (Exhibit 2, ¶¶ 34, 38.) Accordingly, the Receiver believes it to be futile to send further mailings to addresses the Receiver knows are not good. The Receiver will, at the conclusion of the claims process, file a motion with the Court explaining the specific due diligence that has been conducted and, based thereon, move for disallowance of those Investors' claims.

that letter,¹³ the Receiver respectfully requests the Court authorize him to move for disallowance of those Investors' claims based on their failure to fully participate in the Court-approved claims process.

III. ARGUMENTS AND AUTHORTIES

A. THE COURT'S JURISDICTION AND THE RECEIVER'S AUTHORITY

The Court's authority to impose and administer this Receivership is derived from its inherent powers as a court of equity. *S.E.C. v. Forex Asset Management, L.L.C.*, 242 F.3d 325, 331 (5th Cir. 2001); *United States v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996). A federal court exercises "broad powers and wide discretion" in crafting relief in an equitable receivership proceeding. *S.E.C. v. Basic Ener. & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

This Court's jurisdiction over the Receiver and the Receiver's authority to act on behalf of the Receivership are set forth in the Order Appointing Receiver (Doc. No. 6), the Order Granting Motion to Clarify and/or Modify Order Appointing Receiver entered on May 5, 2004 (Doc. No. 23), the Order Granting Motion to Clarify and/or Modify Order Appointing Receiver entered on December 2, 2004 (Doc. No. 141); and the Order Clarifying Order Appointing Receiver entered on February 17, 2006 (Doc. No. 381). Acting pursuant to this authority, the Receiver has performed his duties and responsibilities within the scope of the Order of Appointment and the orders clarifying and modifying the same.

IV. REQUESTED RELIEF

The Receiver requests instructions from the Court regarding the claims of the final one hundred and eighty-four No Claim Form Investors. As more specifically set forth herein, the

¹³ The letter will be sent to the Investor (or the next of kin or beneficiary) via either UPS or the U.S. Postal Service, with delivery conditioned upon receipt of the recipient's signature.

Receiver requests that he be authorized to send a letter to the Investor (or the Investor's beneficiary or next of kin), substantially in the form as Exhibit 7. Thereafter, if the No Claim Form Investor does not return a completed claim form to the Receiver within thirty (30) days of the date on which he/she receives the letter, that the Receiver be allowed to file a motion seeking seek disallowance of the Investor's claim due to the Investor's failure to participate in the claims process and seek further instruction as to the disposition of the escrowed funds attributable to those investors' investments.

In addition, with respect to the claims of the six Investors who can not be located, the Receiver requests that the Court waive the requirement that the Receiver mail the fourth and final notice to them as the Receiver does not have and cannot locate a good address or other contact information for the Investor or any beneficiary or next of kin.

WHEREFORE, premises considered, H. Thomas Moran, II, Receiver for the assets of LifeTime Capital, Inc., hereby respectfully requests instructions from the Court regarding the remaining two hundred and four investors who have not returned a claim form to the Receiver.

Respectfully submitted,

/s/ Joseph C. Oehlers

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**ATTORNEYS FOR THE RECEIVER,
H. THOMAS MORAN, II**

CERTIFICATE OF SERVICE

This is to certify that on **October 26, 2007**, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and that a true and correct copy of the foregoing document was electronically mailed to the following:

Andrew C. Storar, Esq., *Court-Appointed Examiner*

D. Benham Kirk Jr., Esq., *Co-Counsel for H. Thomas Moran II, Receiver*

Melvin R. McVay, Jr., Esq., *Co-Counsel for H. Thomas Moran II, Receiver*

James M. Hill, Esq. and Stephen J. Johnson, Esq., *Co-Counsel for Ernest R. Bustos*

Richard Lines Carr, Jr., Esq., and Robert G. Hanseman, Esq., *Counsel for Investors, Henry H. Cox, Shirley Cox Banks, Timothy Bon, Rachel Bon, Richard E. Fillingham, Joseph Girardin, Ginette Girardin, Erich Grams, Coral J. Hanseman, Kathleen M. Hendrix, Brian Krasner, Paul Prokop, Joan Prokop, Johnny James Todd, Jr., Nannie Todd, James Walker and Janet Walker*

Walter F. Reynolds, Esq., *Counsel for Investors, James P. Kardys and Richard A. Lee*

James I. Weprin, Esq. and Alexander A. Arestides, Esq., *Counsel for Investors Larry Harville and Frances Harville*

James M. Hill, Esq., *Counsel for Jonathan J. Majers*

Brent L. English, Esq., *Counsel for Interested Party William Svete*

Felix John Gora, Esq., *Counsel for Interested Parties, Charles Farmouth, Cale W. Carson, Cornerstone Processing Alliance, LLC*

And that on **October 26, 2007**, a true and correct copy of the foregoing was sent, via regular U.S. Mail, postage prepaid, to the following Designated Notice Parties:

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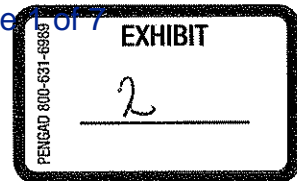
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/s/ Joseph C. Oehlers
Joseph C. Oehlers, Trial Attorney for
H. Thomas Moran II, Receiver



AFFIDAVIT OF H. THOMAS MORAN, II

COUNTY OF OKLAHOMA)
) SS.
STATE OF OKLAHOMA)

I, H. Thomas Moran, II, being of lawful age and sound mind, state upon my oath as follows:

1. I am the Court-Appointed Receiver for the assets of LifeTime Capital, Inc. ("LifeTime").

2. As Receiver, I have directed my staff in the review and processing of investment and premium claims forms ("Claims Forms") received in my office. In addition, together with the Assistant Receiver, I have overseen and supervised my staff's day to day communication with investors as well as the research and due diligence that has been conducted with respect to the LifeTime investor accounts for which no Claims Forms have been received.

3. As of October 16, 2007, and based on the records of LifeTime which are in my possession, it appears that one hundred and ninety LifeTime Investors out of a total of nearly 3,000 investors have not returned claim forms to my Office as required by the Court's prior orders.

Overview and Current Status of the Claims Process:

4. Based on the review of the files in my office, it appears that between February 17, 2005 and March 15, 2005, a copy of the court-approved letter and court-approved claim forms (the "First Notice") were mailed to addresses for approximately 3,600 investor accounts. (Thereafter, some of the addresses were determined to be duplicate addresses for the same account and some of the accounts were determined to have zero balances.)

5. As a result of that First Notice to Investors, my office received approximately 2,224 claim forms from or on behalf of Investors.

6. The records in my office demonstrate that a second letter (the "Second Notice") was mailed, in September of 2005, to the LifeTime Investors who had not previously returned a claim form.

7. As a result of the Second Notice, approximately 243 claim forms were submitted to my office.

8. In March of 2007, a third letter (the "Third Notice") was mailed to approximately four hundred and fifty (450) LifeTime Investors who had not previously returned a claim form.

9. Enclosed with the Third Notice was a blue postcard that an Investor (or his/her beneficiary or next of kin) could return to my office to request another copy of the claim forms.

10. At any time in this process, if letters or claim packets were returned to my office as undeliverable, new letters were mailed to addresses received from the U.S. Postal Service or to the addresses identified through my staff's due diligence.

11. Based on the records in my possession, it appears as of October 16, 2007, that there are one hundred and ninety Investors for which no claim form has been received.

12. With the exception of six Investors discussed below, it is my belief that all of the Investors ultimately received a copy of the March, 2007, Third Notice.

Due Diligence Performed to Assist in Contacting Remaining Investors:

13. As part of the due diligence preceding the filing of this motion for instructions, I instructed my staff to attempt to verify the addresses and other contact information for each of the remaining 190 investment accounts for which no claim form has been received.

14. My staff began by conducting a detailed review of each of the Investor files which had been obtained from LifeTime. This review included reading the initial investment forms, any applicable trusts, estate documents or powers of attorneys, and all correspondence and notes in order to attempt to obtain current contact information (addresses and/or telephone numbers) for the Investor or the Investor's next of kin or beneficiary.

15. In addition, my staff also reviewed the computer database notes for each of the 190 Investor accounts. Such computer database notes may include notes that were made by LifeTime employees during the pre-Receivership period as well all notes input by my staff during the course of the Receivership.

16. My staff also used a combination of on-line database searches (both free searches such as internet phone books and reverse directories as well as databases for which a fee is charged) to look for address and telephone information for the 190 Investors as well as possible relatives, beneficiaries, dates of birth and death records. With respect to the fee-based database, a basic report was run on each of the 190 Investors and, in those instances where no definitive information was located, an extended Finder Report search was employed. At least one of the databases links to the Social Security Death Index.

17. For investors who also had investments through qualified IRA accounts, the address in the records of the IRA custodian was verified or obtained.

18. If a trust was involved with the investor's account, either as the owner of the investment or as a named beneficiary, and the trustee (or successor trustee) of the trust could not be located or would not respond to my staff's inquiries, my staff also attempted to locate and contact the individual beneficiaries of the trust.

19. If at any time during this process a new or different address(es) was located, my staff would, as stated above, send a copy of the Third Notice to the new address(es).

20. In addition, using the phone numbers that were on file in the LifeTime database or obtained through the above process, my staff attempted to call each of the 190 investors who had not returned a blue post card to see if either the investor or the investor's next of kin and/or beneficiary could be reached. If my staff did not speak to a person, a detailed message was left on an answering machine (if available) and the message included a request that the call be returned. If there was no answering machine on the line, multiple calls were placed both during normal business hours and on the weekend.

21. For investors who were determined to be deceased, an online research service was used to search for the investor's obituary in an attempt to confirm names of the investor's next of kin, funeral home information and any other information that may be helpful.

22. For deceased investors whose next of kin's or beneficiaries' telephone numbers could not be located or those who could not be reached by telephone, letters were mailed to the verified address of the persons believed to be the next of kin or beneficiary requesting that they contact the Receiver's office about the Investor's account.

23. If, with respect to deceased Investors, my staff was unable to locate the next of kin, beneficiary other information that could be helpful in locating or contacting the beneficiary or next of kin, death certificates were also ordered from the state where the investor died.

24. Following the March 9, 2007, Third Notice, and the due diligence performed by my staff, it has been determined that there are one hundred and ninety LifeTime Investors who have not returned claim forms to my office (the "No Claim Form Investors"). Based on the due

diligence that has been performed, it is believed that one hundred and fifty-seven (157) of the No Claim Form Investors are living and thirty-three are deceased.

Results of Due Diligence -- Living Investors:

25. Following the Third Notice, eighty-one (81) of the (living) No Claim Form Investors returned the blue postcards to my office, requesting additional copies of the Claim Forms be mailed to them. Each of those requests for Claim Forms was promptly fulfilled.

26. My staff has spoken to an additional twenty-six (26) of the living No Claim Form Investors. Twenty-one of the twenty-six have requested additional copies of the claim forms be mailed to them. Each of those requests for claim forms were promptly fulfilled. Five of the twenty-six have stated they have the claim forms and will mail them in.

27. My staff has spoken with the attorney for the receiver for Trade Partners who has acknowledged receipt of the claim forms (for two investments). He has not, however, returned completed claim forms to my office.

28. My staff has verified the address of an additional forty-five (45) No Claim Form Investors through the due diligence process discussed above. Based upon the verification of the investors' addresses, it is my opinion that those No Claim Form Investors received the Third Notice which was mailed to them in March of 2007 as none of the letters to those Investors were returned to my office.

29. In addition to verifying the addresses, my staff has left telephone messages for twenty-eight of the forty-five.

30. The addresses of five of the fifty (who have non-qualified investment accounts) were verified by Sterling Trust Company in the process of preparing the Eight Motion to Allow

Claims (Doc. No. 801) as Sterling Trust Company is the custodian of those five investors' qualified accounts.

31. Although my staff has verified the investors' addresses through various sources, we cannot for 10 of those fifty Living No Claim Form Investors, locate good telephone numbers or reach a person by telephone or leave a message on an answering machine.

32. My staff cannot effectively communicate with two Investors over the telephone because of communication difficulties. Specifically, one Investor is too hard of hearing to communicate with effectively over the telephone, although the Investor's name and address have been verified and one Investor does not speak English fluently enough to communicate with, although the Investor's name and address have been confirmed.

33. The address of one investor was verified when the investor submitted a change of address request to the Receiver in 2005 and thereafter no mail sent to that address has been returned to the my office as undeliverable.

34. Finally, despite the extensive due diligence performed by my staff, I am unable to locate three living No Claim Form Investors, their next of kin, or beneficiaries. All mail to the investors last known address has been returned and the phone number, if any, appearing in the original LifeTime investment file is not valid. Using various internet resources discussed above, no new address or phone number can be located for the Investor. In addition, similar efforts with respect to the Investor's beneficiary or next of kin have proved fruitless.

Results of Due Diligence – Deceased Investors:

35. Following the Third Notice, the next of kin or beneficiary of twenty (20) of the deceased No Claim Form Investors have communicated with my staff and claim forms sent to them.

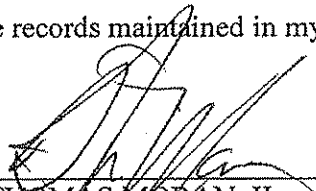
36. My staff has spoken to the next of kin or beneficiary of three more No Claim Form Investors. Due to either the recentness of the death of the Investor or a pending probate action, no claim forms were mailed. However, addresses were confirmed for each of the Investors' accounts.

37. My staff is continuing its work on the due diligence with respect to seven of the deceased No Claim Form Investors' accounts, including awaiting the receipt of death certificates which have been ordered.

38. Finally, despite the extensive due diligence performed by my staff, I am unable to locate the next of kin or beneficiary of three deceased No Claim Form Investors. All mail to the beneficiaries' or next of kin's' last known address has been returned as undeliverable. Using various resources available to me and my staff, no new address or phone number has been located.

39. As of the date of this affidavit, the claim figures stated herein are true and accurate to the best of my belief and based on the records maintained in my office.

FURTHER AFFIANT SAYETH NOT.



H. THOMAS MORAN, II

Subscribed and sworn before me this 25th day of October, 2007.



Notary Public

My Commission Number:

07009560

My Commission Expires:

10/10/11

(SEAL)

