



*Id.* at ¶ 5. Such steps specifically included those "necessary" to protect the LifeTime investors. *Id.* at ¶ 5(g).

3. "[I]nstitute. . . proceedings in state or federal courts. . . as may, in his discretion, . . . be necessary or proper for the. . . preservation, and maintenance of the Receivership Assets." *Id.* at ¶ 12.

4. to take "all other steps necessary to protect the interests of the beneficial owners in the LifeTime Portfolio, including, without limitation, the financing, sale or liquidation of all or part of the LifeTime Portfolio. . .". *Id.* at ¶ 5(g).

#### **A. LIFETIME'S BUSINESS**

Prior to the appointment of the Receiver, LifeTime sold viatical or life settlement investments using money from investors to purchase life insurance policies from the terminally or chronically ill or elderly ("viaticals"). LifeTime placed many of the viaticals in irrevocable insurance trusts and allocated interests in the trusts – corresponding to the amount of each investor's investment plus a promised return – to each investor. In this way, the insureds received money in advance of their deaths while the investors were supposed to receive a higher percentage rate of return than with more traditional investment vehicles.

Over a period of time, LifeTime amassed a viatical portfolio with a face value of approximately \$140,000,000.00. Approximately 3,000 investors purchased viaticals from LifeTime induced, in part, by LifeTime's provision of projected life expectancies.<sup>2</sup> In many instances, the life expectancies of the insureds were artificially represented to be in the range of 12 to 60 months when, in fact, the demonstrated life expectancies proved to be much longer.

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<sup>2</sup> Medical Underwriting, Inc., a company affiliated with LifeTime and controlled by Svete and/or his business associates, provided most of the life expectancies. According to testimony and evidence offered in *United States v. Svete, et al.*, Case No. 3:04 CR 10, United States District Court for the Northern District of Florida, Pensacola Division, Medical Underwriters, Inc. was a sham not independent of LifeTime. Therefore, many of the life expectancies provided by Medical Underwriters, Inc. were not legitimate.

Unfortunately, LifeTime was essentially a clearing house for fraudulently procured investor funds. Not only were the viator life expectancies overly optimistic, but Svete and other LifeTime insiders diverted, for their personal use, a substantial portion of money paid by investors, including funds set aside for premium payments.

**B. U.S. BANK'S RELATIONSHIP TO LIFETIME BUSINESS**

U.S. Bank is the successor to Firststar Bank, N.A. which was the successor to Star Bank, N.A. On July 1, 1997, U.S. Bank, then Star Bank, and LifeTime executed an Escrow Agreement for Viatical Settlements ("LifeTime Escrow Agreement") for the purpose of the Bank serving as the escrow agent/Custodian of funds provided to LifeTime by investors. According to the LifeTime Escrow Agreement, the Bank agreed to hold certain property as well as later-delivered property for LifeTime as its agent.

Subsequent to the execution of the LifeTime Escrow Agreement, LifeTime deposited money raised through sales to investors into accounts with the Bank known as Purchase Deposit Accounts from which the funds necessary to purchase life insurance policies were to be taken. Other funds paid by investors were placed in what were referred to as Premium Reserve Account from which the funds necessary to pay the premiums on life insurance policies for a specified period of time were to be taken. Finally as part of the transaction by which LifeTime purchased insurance policies, the persons insured by those policies entered into irrevocable life insurance trust agreements which appointed a trustee with responsibility for, among other things, payment of policy premiums, safekeeping of policy documents, and collection of policy proceeds on the death of the viator. The Bank was named trustee of these trusts when the previous trustee, Paul Schwarz, ended his relationship with LifeTime.

**C. THE RECEIVER'S CLAIMS AGAINST U.S. BANK AND MEDIATION OF THOSE CLAIMS**

On February 21, 2006, the Receiver filed suit against U.S. Bank in the United States District Court for the Southern District of Ohio (Case No. 3:06-cv-00050) claiming that the Bank had failed to meet its obligations as escrow agent and/or trustee of certain LifeTime funds held for the benefit of LifeTime investors. Specifically, the Receiver alleged in his complaint and subsequently filed amended complaint that the Bank transferred \$11,585,970 between certain Purchase Deposit Accounts and Premium Reserve Accounts to LifeTime operating accounts at the Bank without the proper authority. Furthermore, the Receiver alleged that on April 8, 1999, the Bank improperly allowed the transfer of approximately \$1,300,000.00 from a Purchase Deposit Account to an entity known as Banque de Financier, Ltd., without the proper authority. Finally, the Receiver alleged that on April 19, 2000, \$1,967,750.93 was improperly removed from a certain Premium Reserve Account for the benefit of LifeTime's operating account at an outside bank. The Receiver alleged that some of these transactions ultimately benefitted David Svete.

U.S. Bank denied the Receiver's allegations and moved to dismiss the Receiver's complaint or, in the alternative, remove the lawsuit from District Court and submit the dispute to arbitration, given the provisions of certain of the agreements at issue. The District Court agreed and ordered that the matter proceed to arbitration. (Doc. No. 25.) Subsequently, the parties agreed to the selection of an arbitrator at which point U.S. Bank submitted its arguments in support of the dismissal of the Receiver's claims. After extensive briefing, the arbitrator dismissed certain of the Receiver's claims but allowed others to proceed. A trial was scheduled for September 2008.

Given the costs of continuing litigation, which would have included extensive discovery, trial and appellate practice, the Receiver and U.S. Bank agreed to explore settlement with the assistance of a mediator. The parties agreed on the choice of mediator and on June 13, 2008, a mediation was held. At the mediation, each party gained further appreciation for the other's position and, though no agreement was reached that day, agreed to reconvene informally to attempt compromise. Subsequently, the parties agreed in principle to a settlement that would call for payment by U.S. Bank to the receivership estate of \$725,000 in consideration of a release and the dismissal of all of the Receiver's claims. Counsel for the Receiver and U.S. Bank have drafted a Settlement Agreement, attached hereto as **Exhibit A**.

## **II. ARGUMENTS AND AUTHORITIES**

### **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. *See S.E.C. v. Forex Asset Management, L.L.C.*, 242 F.3d 325, 331 (5<sup>th</sup> Cir. 2001); *United States v. Durham*, 86 F.3d 70, 72 (5<sup>th</sup> Cir. 1996). A federal court exercises "broad powers and wide discretion" in crafting relief in an equitable receivership proceeding. *See S.E.C. v., Basic Ener. & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6<sup>th</sup> Cir. 2001).

This Court's jurisdiction over the LifeTime Portfolio and the Receiver's authority to act on behalf of the Receivership are set forth in the Order Appointing Receiver (*see* Doc. No. 6), the Order Granting Motion to Clarify and/or Modify Order Appointing Receiver entered on May 5, 2004 (*see* Doc. No. 23), the Order Granting Motion to Clarify and/or Modify Order Appointing Receiver entered on December 2, 2004 (*see* Doc. No. 141); and the Order Clarifying Order Appointing Receiver entered on February 17, 2006 (*see* Doc. No. 381). Acting pursuant

to this authority, the Receiver performed his duties and responsibilities within the scope of the Order of Appointment and the orders clarifying same and has essentially preserved the LifeTime Portfolio.

**B. THE RECEIVER BELIEVES IT IS IN THE BEST INTERESTS OF THE RECEIVERSHIP AND INVESTORS FOR THE COURT TO APPROVE THE SETTLEMENT AGREEMENT WITH U.S. BANK**

The Receiver, in consultation with his counsel, has concluded that it is in the best interests of the LifeTime investors for the Court to authorize the Receiver to settle and compromise the Receiver's claims against U.S. Bank as set forth in the attached Settlement Agreement. In the view of the Receiver and his counsel, in particular given recent law on the issue of standing, the risks of continued litigation are significant. Though the amount is less than could have been recovered had arbitration been successful, the amount offered by U.S. Bank is substantial and in the Receiver's view fair given the uncertainties on both sides of the dispute. Finally, settling these disputed claims now will save the receivership estate, and therefore the investors, considerable amounts of time and money. As amply demonstrated by the pleadings and other filings, the factual and legal issues relevant to LifeTime's finances and the claims against U.S. Bank are complex. The expense of arbitrating the disputes was certain to be substantial and the chances that the Receiver would incur attorneys' fees and other third-party expenses beyond the cost of the actual arbitration were significant. In light of the certain expenses, both in terms of time and money, and the uncertain prospects for success, U.S. Bank's payment of \$725,000 is in the Receiver's view and that of his counsel an appropriate resolution to the claims against U.S. Bank.

U.S. Bank does not admit liability for the claims asserted by the Receiver in the arbitration and litigation. U.S. Bank has communicated to the Receiver that, absent this

settlement, it would continue to vigorously defend the claims in the arbitration and, if necessary, through appeal and other challenges to the Receiver's right to recover on the claims. U.S. Bank believes the cost of the arbitration and ongoing litigation would be extensive, which informed U.S. Bank's offer to settle on the terms set forth in the Settlement Agreement.

**C. THE RECEIVER REQUESTS THAT THE COURT SET THIS MOTION FOR EXPEDITED FAIRNESS HEARING.**

As mentioned above, the negotiations by the Receiver have been ongoing for some time. Having reached an agreement subject to the Court's approval, the Receiver needs to obtain such approval and effectuate the compromise of this and other matters on an expedited basis. The Receiver requests that the Court set this Motion for an expedited fairness hearing on October 7, 2008, at 10:00 a.m., and following a hearing, enter an Order accordingly.

**WHEREFORE**, premises considered, H. Thomas Moran II, as Receiver for the assets of LifeTime Capital, Inc. and affiliated entities respectfully prays that this Honorable Court grant this Motion to Approve Compromise and Settlement and enter an order approving the Settlement Agreement attached hereto, authorizing the Receiver to execute that Settlement Agreement, and making the releases and all other terms of the Settlement Agreement binding on the receivership estate and all interests represented by the Receiver as set forth in the Settlement Agreement.

Respectfully submitted,

*/s/ Joseph C. Oehlers*  
Joseph C. Oehlers (#0065740)  
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Ph: (405) 235-4100  
Fx: (405) 235-4133

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

### **CERTIFICATE OF SERVICE**

This is to certify that on **September 22, 2008**, 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 Giradin, Ginette Giradin, 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 **September 22, 2008**, a true and correct copy of the foregoing was sent, via regular U.S. Mail, postage prepaid, to the following Designated Notice Parties:

**Brian Gazvini**  
Department of Corporations  
Securities Regulations  
320 W. 4th Street, Suite 750  
Los Angeles, CA 90013-2344

**Bob Lang**  
Ohio Division of Commerce  
Division of Securities  
77 South High Street, 22nd Floor  
Columbus, OH 43215-6131

**Patricia A. Labarthe, Esq.**  
Enforcement Attorney  
Oklahoma Department Of Securities  
800 First National Center  
120 N. Robinson  
Oklahoma City, OK 73102

**Brian Hoy, Investigator**  
State Securities Board  
210 River Bend Drive  
Dallas, Texas 75247

**David W. Svete, Pro Se**  
Reg. #05779-017  
FCI Elkton  
P. O. Box 10  
Lisbon, Ohio 44432

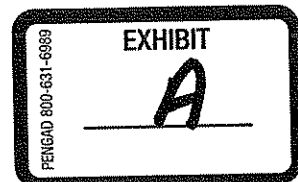
**Sherwin D. Byars**  
409 Langley Road  
Travelers Rest, SC 29690

**Steven F. Stucker**  
108 John Street  
Carson City, NV 89706

**Matthew A. Clemente**  
Sidney Austin LLP  
One South Dearborn  
Chicago, IL 60603

BIESER, GREER & LANDIS

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



## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is entered into by and between U.S. Bank National Association (“U.S. Bank”) and H. Thomas Moran II (“Receiver”) as court-appointed receiver for Lifetime Capital, Inc. and various related entities (collectively “Lifetime”) (U.S. Bank and Receiver sometimes individually a “Party” and collectively the “Parties”), as of the date of the first signature indicated below.

**WHEREAS**, the Receiver was appointed in a case filed in the United States District Court for the Southern District of Ohio captioned *Davis v. LifeTime Capital, Inc. et al*, Case No. 04-cv-00059 (the “Receivership Case”)

**WHEREAS**, Receiver initiated litigation against U.S. Bank in the United States District Court for the Southern District of Ohio in a case captioned *H. Thomas Moran II v. U.S. Bank, N.A.*, Case No. 06-cv-00050 (the “Litigation”);

**WHEREAS**, Receiver, on behalf of itself and Lifetime’s investors, asserted claims against U.S. Bank in the Litigation for breach of contract, negligence, breach of fiduciary duty, fraud, civil conspiracy, fraudulent transfer, punitive damages, and other relief (the “Claims”);

**WHEREAS**, upon motion by U.S. Bank, the Court in the Litigation compelled arbitration of the Claims;

**WHEREAS**, the Receiver and U.S. Bank commenced an arbitration proceeding pursuant to the CPR Rules for Non-Administered Arbitrations (the “Arbitration”);

**WHEREAS**, the Receiver filed a Statement of Claims in the Arbitration asserting the Claims against U.S. Bank (the “Statement of Claims”);

**WHEREAS**, upon motion by U.S. Bank, the arbitrator dismissed numerous Claims against U.S. Bank in the Arbitration;

**WHEREAS**, Receiver and U.S. Bank desire to resolve fully their dispute and to conclude the Arbitration and the Litigation;

**NOW, THEREFORE**, in consideration of the mutual promises and obligations set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties warrant and agree as follows:

1. The Parties' agreement and obligations under this Agreement are contingent upon approval by the United States District Court for the Southern District of Ohio, as the appointing court for the Receiver in the Receivership Case (the "Court") of the Receiver's authority to enter into and bind the receivership estate to the terms of this Agreement. Approval by the Court is a condition precedent to the effectiveness of this Agreement and to all obligations hereunder. If the Court does not approve the Receiver's request, this Agreement shall be void and neither the Agreement nor its proposed terms shall be introduced or used in evidence in the Litigation or the Arbitration for any reason.

2. Within 7 days of entry of an order by the Court approving the Receiver's authority to enter into and bind the receivership estate to the terms of this Agreement, U.S. Bank shall pay to the Receiver the amount of \$725,000, pursuant to wire transfer instructions to be supplied by the Receiver (the "Payment"). The Payment shall be in full and final satisfaction of all claims that were or could have been brought against U.S. Bank in the Litigation and/or the Arbitration. The Parties acknowledge and agree that the Payment is made solely for the purpose of compromising a dispute and in order to avoid the cost and expense of further litigation. Neither the Payment nor any other provision of this Agreement does or shall constitute an admission of liability by U.S. Bank, which is expressly denied.

3. Within 3 days of receipt of the Payment, the Receiver shall file notices of dismissal with prejudice in the Litigation and Arbitration in the form attached hereto as Exhibits A and B, respectively (the "Notices"). The Receiver authorizes and directs his counsel to sign the Notices and to serve and file them in the Litigation and Arbitration.

4. In consideration of the Payment and the other covenants in this Agreement, the Receiver, on behalf of Lifetime's investors for post-purchase claims that the Receiver has authority to release on their behalf based on the pooling of the investors' interests in the Receivership Case, and on behalf of himself, Lifetime, and Lifetime's receivership estate (including all persons and entities affiliated with Lifetime for which he has been appointed receiver or otherwise has authority pursuant to any order of the Court), and each of their respective parent, subsidiary and affiliated entities, shareholders, predecessors, successors, administrators, agents, principals, attorneys, officers, employees, directors, representatives, and assigns (the "Receiver Release Parties"), hereby releases U.S. Bank and its parent, subsidiary and affiliated entities, shareholders, predecessors, successors, administrators, agents, principals, attorneys, officers, employees, directors, representatives, and assigns (the "U.S. Bank Release Parties"), from any and all actions, causes of action, controversies, and/or claims whatsoever, in law, admiralty or equity, whether known or unknown, liquidated or unliquidated, which the Receiver Release Parties have, had, or may have against the U.S. Bank Release Parties for, upon, or by reason of any act, omission, matter, cause or thing, from the beginning of time through and including the date of this Agreement, that arises out of or in any way relates to Lifetime, Lifetime's accounts with U.S. Bank, the sale of viaticals to Lifetime investors, and/or the Claims, including but not limited to, all claims and requests for relief that were or could have been asserted against U.S. Bank in the Litigation and/or the Arbitration.

5. The Parties acknowledge and agree that the amount of the Payment is confidential and that, beyond the Receiver's filing of a request in the Receivership Case for approval of this Agreement, they shall not disclose that amount to any third-party unless required to do so by law; provided, however, that 1) the Receiver may disclose the amount of the Payment to Lifetime's investors if he determines in his reasonable and good faith discretion that it is appropriate to do so in carrying out his duties as receiver, but he shall not identify the amount of the Payment on the Receiver's website or in other public communications, and 2) the Parties may disclose the amount of the Payment to their legal and tax professionals (and in U.S. Bank's case, to any regulatory authority upon request) to the extent necessary to those professionals' duties. The Receiver shall seek leave of Court to file Exhibit A to this Agreement under seal. The Receiver shall not make any statement, whether oral or written, of a defamatory, disparaging, or otherwise derogatory nature pertaining to U.S. Bank and shall not state or imply that the Payment reflects liability by U.S. Bank, but rather shall characterize the Payment as a voluntary settlement of disputed claims in the Litigation and Arbitration.

6. U.S. Bank shall have no responsibility or liability for the Payment or its disposition after it is transmitted to the Receiver, including but not limited to, for the nature, timing, or apportionment of any distribution of the Payment or its proceeds to investors or other creditors of Lifetime.

7. Each Party shall bear its own fees and costs in the Litigation and Arbitration and neither Party will file a bill of costs.

8. The Parties acknowledge and agree that: (a) no promise, inducement or consideration has been offered to either Party except as set forth in the Agreement; (b) this Agreement constitutes the final and fully-integrated agreement of the Parties concerning the

subject matter hereof and supersedes all prior or contemporaneous oral and written statements and agreements between them; (c) this Agreement shall be governed by the laws of the State of Ohio; (d) this Agreement may not be modified except in a writing signed by each of the Parties and neither Party shall be entitled to rely on any other manner of attempted modification; and (e) this Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed effective as of the day and year first indicated below.

**U.S. BANK NATIONAL ASSOCIATION:**

**H. THOMAS MORAN II:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

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

<b>H. THOMAS MORAN II, Receiver</b>	)	
	)	<b>Case No. 06-cv-00050</b>
<b>Plaintiff,</b>	)	
	)	<b>Judge Walter H. Rice</b>
<b>v.</b>	)	<b>Magistrate Judge Sharon L. Ovington</b>
	)	
<b>U.S. BANK, N.A</b>	)	<b><u>NOTICE OF VOLUNTARY</u></b>
	)	<b><u>DISMISSAL WITH PREJUDICE</u></b>
<b>Defendant.</b>	)	
	)	
	)	

Plaintiff H. Thomas Moran, II, Receiver, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, hereby provides notice that the above-captioned action (together with all of Plaintiff's claims therein) is dismissed with prejudice to refileing. The underlying arbitration proceeding also has been dismissed with prejudice. Counsel for Defendant is aware of and agreeable to this dismissal.

Respectfully submitted,

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Joseph C. Oehlers (0065740)  
Bieser, Greer & Landis, LLP  
400 National City Center  
6 North Main Street  
Dayton, OH 45402

Melvin R. McVay, Jr., Esq.  
Phillips McFall McCaffrey McVay  
& Murrah, P.C.  
Corporate Tower, Thirteenth Floor  
101 N. Robinson  
Oklahoma City, OK 73102

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Notice of Dismissal with Prejudice was served on **September 19, 2008**, by filing it through the Court's ECF system, which transmitted it electronically to:

Scott A. Kane  
Squire, Sanders & Dempsey L.L.P.  
221 East Fourth Street, Suite 2900  
Cincinnati, OH 45202  
*Counsel for Defendant*

---

An Attorney for Plaintiff

9157-204167/337268.1



**EXHIBIT B**

**IN THE MATTER OF:**

<b>H. THOMAS MORAN II, Receiver</b>	)	
	)	
<b>Claimant,</b>	)	
	)	
<b>v.</b>	)	<b>James E. Burke, Arbitrator</b>
	)	
<b>U.S. BANK NATIONAL</b>	)	
<b>ASSOCIATION</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

Claimant H. Thomas Moran, II, Receiver, hereby provides notice that the above-captioned proceeding (together with all of Claimant's claims therein) is dismissed with prejudice to refiling. Counsel for Respondent is aware of and agreeable to this dismissal.

Respectfully submitted,

---

Joseph C. Oehlers (0065740)  
Bieser, Greer & Landis, LLP  
400 National City Center  
6 North Main Street  
Dayton, OH 45402

Melvin R. McVay, Jr., Esq.  
Phillips McFall McCaffrey McVay  
& Murrah, P.C.  
Corporate Tower, Thirteenth Floor  
101 N. Robinson  
Oklahoma City, OK 73102

*Counsel for Claimant*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Notice of Dismissal with Prejudice was served upon the following, by email and by U.S. Mail, postage prepaid, on **September 19, 2008**:

Scott A. Kane  
Squire, Sanders & Dempsey L.L.P.  
221 East Fourth Street, Suite 2900  
Cincinnati, OH 45202  
*Counsel for Respondent*

James E. Burke, Esq.  
Keating, Muething & Klekamp, PLL  
1 East Fourth Street, Suite 1400  
Cincinnati, OH 45202  
*Arbitrator*

---

An Attorney for Claimant