

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

H. THAYNE DAVIS,	:	Case No. 3:04CV0059
Plaintiff,	:	(Magistrate Judge Ovington)
vs.	:	
LIFETIME CAPITAL, INC., et al.	:	
Defendants.	:	

**MOTION TO SHOW CAUSE WHY ERNEST BUSTOS SHOULD NOT
BE HELD IN CONTEMPT FOR INTERFERING WITH THE RECEIVERSHIP
AND ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW.**

Now comes the Examiner, and moves the Court for an Order directing Ernest Bustos to show cause why he should not be held in contempt for interfering with the Receivership in the above captioned case, and for engaging in the unauthorized practice of law.

Respectfully submitted,

/s/ Andrew C. Storar
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Examiner

MEMORANDUM

Ernest Bustos (“Bustos”) claims to be a former LifeTime Capital (“LifeTime”) investment sales agent. He is not an investor in LifeTime. Recently Bustos has acted in a manner which interferes with the LifeTime Receivership and also constitutes the unauthorized practice of law.

A. Bustos Has Interfered With The Receivership, And Should Be Ordered To Show Cause Why He Should Not Be Held In Contempt.

A receiver is an officer of the court that appoints him. *Taylor v. Sternberg*, 293 U.S. 470, 472 (1935). The receiver’s possession of receivership assets and property is the possession of the court; any attempt to interfere with the receivership or obstruct the receiver directly questions the authority of the court to appoint him as well as the right of the court to custody of the property. *Catrow v. Columbus D&M Ry.*, 22 Ohio Dec 791, 795 (1911). Acts interfering with a receivership subject the actor to contempt. *Id.*

On February 20, 2004, this Court appointed H. Thomas Moran II (“Receiver”) as the receiver for the assets of LifeTime. (Agreed Order Appointing Receiver, Feb. 20, 2004). The order states that appointment of a receiver was both “necessary and appropriate in order to prevent waste and dissipation of the assets of Defendant to the detriment of investors, including the receivership estate of LifeTime.” (*Id.*) The Order also stays all persons, including past or present LifeTime agents, servants and employees from:

Doing any act or thing whatsoever to interfere with the taking control, possession, or management by the Receiver, of the Receivership Assets and assets owned, controlled or in the possession of entities in receivership, or to in any way interfere with or harass the Receiver, or to

interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Assets...

Ernest Bustos (“Bustos”) is a former LifeTime investment sales agent. Bustos has interfered with the court ordered receivership through two letters sent directly to LifeTime investors. (See copies of letters dated July 30, 2004 and August 19, 2004, attached hereto and incorporated by reference.) He is feeding false and misleading information to LifeTime investors and is undermining the efforts of the Receiver. His letter to investors dated July 30, 2004 alleges that under the Receiver investors will only recoup fifty-two cents out of every dollar invested, and that the Receiver will spend \$44,000,000 in legal fees. Bustos has no evidence to back up these claims, and cannot point to any document or statement by the Receiver that supports these allegations. Bustos admitted as much in a deposition taken by the Examiner. (Bustos Dep. at 38-46.) His assumptions and allegations regarding the Receiver’s competency have interfered with the receivership, confused investors, and ultimately questioned the authority of this Court.

Bustos is attempting to subvert this Court’s order appointing the Receiver and use the vulnerable position of LifeTime investors to his own financial gain. Purporting to act in the best interest of LifeTime investors, Bustos claims he has started the “IP Fund” to unseat the Receiver and form an investor-owned company. In order to join the IP Fund, he instructs investors to send a check for one hundred dollars for each LifeTime contract the investor owns, sign an allegedly “very limited” power of attorney, and send copies of LifeTime confirmation documents for each contract. The address for the IP Fund is identical to Bustos’ home address. The General Power of Attorney is not at all “limited”

as Bustos suggests; it gives Bustos full authority with regard to an investor's claims against LifeTime and David Svete.

After the Examiner took the deposition of Bustos and posted a summary and a response to the July 30, 2004 letter on the Receiver's website, Bustos sent a second letter to investors on August 19, 2004. This letter alleges bias and malfeasance on the part of the court appointed Receiver and Examiner. The letter also outlines Bustos' plan to "intervene and challenge the Receiver's appointment" and oust the Examiner.

Bustos' letters clearly violate the Court's order against interference with the Receivership and harassment of the Receiver. The Examiner respectfully requests that this Court order Bustos to show cause why he should not be held in contempt for violation of the Agreed Order Appointing Receiver.

B. Bustos Should Be Ordered By This Court To Show Cause Why He Should Not Be Held In Contempt For Engaging In The Unauthorized Practice Of Law.

Bustos is not an attorney, yet he admitted in his deposition that he prepared the General Power of Attorney attached to the July 30, 2004 letter himself. (Bustos Dep. at 47-48.) He also gives investors misleading legal advice in the letters about the scope and effect of the power of attorney, describing it as "very limited."

Bustos is a resident of the state of Texas. Texas state law provides that "a person may not practice law in this state unless the person is a member of the state bar." Tex. Gov't. Code Ann § 81.102 (West 2004). The Code defines the practice of law to include the preparation of documents incident to an action or rendering advice requiring the use of legal skill or knowledge, such as "preparing a will, contract or other instrument." Tex.

Gov't. Code Ann. § 81.101 (West 2004). Bustos' acts of drafting the power of attorney and advising as to its scope and effect violate the Texas rules and constitute the unauthorized practice of law.

Bustos sent out over 2700 letters to investors in different states, including Ohio. Under Ohio law, no person shall be permitted to practice as an attorney unless that person has been admitted to the Ohio bar by order of the Supreme Court. Ohio Rev. Code Ann. § 4705.01 (Anderson 2004). The Supreme Court of Ohio defines the unauthorized practice of law as "the rendering of legal services for another by any person not admitted to practice in Ohio..." Gov. Bar R. VII §2(A). The practice of law includes the preparation of pleadings and other papers and the preparation of legal instruments of all kinds, as well as rendering advice to clients. *See Land Title Abstract & Trust Co. v. Dworken*, 123 Ohio St. 23 (1934).

Bustos engaged in the practice of law in Texas, Ohio, and every other state where he sent the July 30, 2004 letter and power of attorney. The Examiner respectfully requests this Court order Bustos to show cause why he should not be held in contempt for the unauthorized practice of law.

CONCLUSION

For the forgoing reasons, the Examiner respectfully requests that this Court order Ernest Bustos to show cause why he should not be held in contempt of this Court for interfering with the receivership in violation of this Court's order and engaging in the unauthorized practice of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion and Memorandum were filed electronically in accordance with this Court's electronic filing guidelines on the 15th day of September, 2004. Notice of this filing will be sent to counsel by operation of this Court's electronic filing system or will be served by ordinary U.S. mail, postage prepaid, pursuant to applicable Federal and Local Rules, upon counsel or parties who are *not* sent electronic notification. Parties may access this filing through this Court's electronic filing system.

The undersigned further certifies that a true and accurate copy of the foregoing Motion and Memorandum was served on the following by regular U.S. Mail, first-class postage prepaid, on the same date as set forth above:

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/s/ Andrew C. Storar
Andrew C. Storar (0018802)
Examiner

IP Fund
909 N.E. Loop 410, Suite 300
San Antonio, Texas 78209
(210) 841-5651

July 30, 2004

Important Information Regarding Your Investment In LifeTime Capital

Dear LifeTime Investor:

Recently you received a mailing from the Receiver concerning a decision to pool all of the investor's Interests in the LifeTime portfolio of policies. While I agree with the concept of pooling, I have a real problem with the Receiver. I think his continued control of LifeTime is a mistake and, after reading this, I think you will agree with me.

My name is Ernest Bustos and, for several years, I represented LifeTime Capital as an investment sales agent. When LifeTime fell under the scandal of Federal charges, I was outraged that my clients were exposed to this alleged fraud. I involved myself in researching what led to LifeTime's problems and, in the course of my examinations, I also looked into the background of the Receiver, H. Thomas Moran and his claim of experience in these matters. What I found wasn't encouraging - in fact - it was alarming! So alarming that I wanted to bring it to your attention and ask for your help.

Mr. Moran was the Receiver for Accelerated Benefits Corporation (ABC). This is a viatical company similar to LifeTime Capital. Under his Receivership, investors were supposed to receive the dollar amount that they invested and were placed in a position by Mr. Moran to have to wait 7 years to get 52 cents out every dollar invested. That's right - - fifty-two cents out of every dollar and over 7 years!

You and all of the other investors in LifeTime purchased \$154 million in death benefits. Cumulatively, you paid \$96 million. That's a gain of \$56 million. Mr. Moran estimates that he will pay out \$86 million. He claims that the rest is needed for premiums and legal expenses. Here's the calculation:

Death Benefits	\$ 154,000,000
<u>Originally invested</u>	<u>\$ 96,000,000</u>
Difference	\$ 58,000,000
Death Benefits	\$ 154,000,000
<u>Proposed Payout by Receiver</u>	<u>\$ 86,000,000</u>
Premiums and Legal Fees	\$ 68,000,000

I asked an expert in this field and he said that the premiums are likely to be between \$15 and \$20 million over the next 7 years. Assuming the \$20 million, that still leaves \$48 million for legal fees and operating expenses! My expert explained that even planning aggressively, operating expenses for 7 years would only total a little less than \$4 million - fully staffed and doing everything. That would leave \$44 million in legal fees. That's a lot of legal fees - nearly 46% of your original investment. You'd think that this was ridiculous until you read the report of what's being spent on lawyers.

Over Please

It's posted on the website. It's the most creative justification I've read in a long time and very scary. If you think \$44 million is too much - and my clients do, you will join me in a legal action to get this Receiver out and replaced with someone who acts in your best interest.

In analyzing the situation, my expert placed a "best case" scenario at a return to the investors of as much as \$120 million after satisfying the debt already incurred. I don't want to paint too rosy a picture because Mr. Moran has made some troubling commitments we need to unravel - but it seems to me that this is a powerful motivator. Let's look at one dollar of your Investment in a side-by-side picture.

A Single Dollar of Your Money		
You Spent	\$.96
You were promised	\$	1.54
Receiver projects	\$	0.86
<u>We project</u>	<u>\$</u>	<u>1.20</u>
	Difference \$	0.34

Multiply this by every dollar you invested and the recovery with Mr. Moran as the Receiver could be much less, as with ABC that was only 0.52 out of every dollar invested. You should get angry - real angry!

I'm not new to this type of action. Some time ago, many of my clients invested in pay phones and they also encountered a Receiver situation. I started the Payphone Owners Legal Fund that now has over 2,000 members. The Fund filed a \$170 million lawsuit on the insurance companies, represented the Owners in bankruptcy and has now engaged the IRS at a total cost to the members of only \$200 each. I discussed what to do with one of my attorneys about the Life-Time situation and he believes we need to take legal action to unseat the Receiver and form an investor owned company. I have spoken to a qualified administrator that has a bank that will lend the company the money needed without giving away the farm. To do this I have formed the Investors Protection Fund (**IP FUND**) for LifeTime investors and membership is only \$100 per LifeTime contract. As a member, the Fund will act on your behalf to recover more of your money. We have found that not only is this the best way to get legal representation, it is the most cost effective. Here's how to act:

- Make your membership check for \$100 payable to **IP Fund** for each contract.
- Sign the enclosed (very limited) Power of Attorney.
- Enclose a copy of your LifeTime Capital confirmation documents for each contract.

Mail all to:

IP Fund
909 NE Loop 410
Suite 300
San Antonio Texas 78209

Do not wait. Read how much money Mr. Moran has already spent from the website. Its address is <http://www.lifetimereceiver.com/>. After you read it you'll know we've got to stop this right away. Act now and help me save you some money! Please send your request as a member to be placed on our email for forth-coming updates. lpfund@aol.com

Very truly yours,
Ernest Bustos

Enc. Power of Attorney Form

GENERAL POWER OF ATTORNEY

TO: Ernest Bustos
909 N.E. Loop 410, Suite 300
San Antonio, TX 78209

The undersigned claimant/interested party hereby authorizes you as attorney in fact for the undersigned and with full power of substitution, to bring suit if necessary and prosecute to final judgment or to compromise or settle any and all claims against LifeTime Capital, David W. Svete founder and their successors, and assigns, in any way or manner that he may deem best and advisable and in general to perform any act not constituting the practice of law for the undersigned in connection with said claims.

Dated: _____

Signed: _____

Printed Name: _____

Address: _____

STATE OF _____)
)
COUNTY OF _____)

On this _____ day of _____, 2004, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that _____ (he/she) executed the same as _____ (his/her) free act and deed.

Notary Public, In and for the State of

IP Fund
909 N.E. Loop 410, Suite 300
San Antonio, Texas 78209
(210) 841-5651

August 19, 2004

The IP Fund is under attack by the Receiver and the Examiner!

In an apparent attempt to try to stop the investors from standing up for their rights the Examiner, led by his nose ring, has made blatant misrepresentations of the facts and I will look to file a legal action on the Examiner and others for their actions. I have always been told to follow the money. Who stands to gain financially in this case?

I was issued a summons to appear as a witness in the LifeTime case but it was nothing more than a ploy to find out about the IP Fund and attack me hoping to defeat the Fund's objective to protect the investors' position. The Receiver in the payphone case and his attorneys attacked me and it did not do them any good either. I have no financial gain in this action, however, there is for the Receiver, his wife, attorneys and the Examiner. My only concern here are the Investors best interest. The only reason they did this is to discredit my work and me.

Here are some of the issues:

1) Davis, the LifeTime agent that sued LifeTime, specifically requested the appointment of Moran as the Receiver. What was the relationship between them before the suit was filed?

2) The Examiner has no expertise as an examiner. This is his very first case as one. In fact, he first introduced himself as an attorney for the Receiver, a clear conflict. I believe that a committee of Investors should oversee the Receiver not an interested attorney.

3) The Examiner attacked the numbers that the IP Fund sent out pointing out that the Receiver would recover 86 million not the 154 million. The Examiner claimed that the Receiver has not said what amount he would recover and that I had misled the investors. Then the Examiner claimed that the Receiver's projection is 103% base on the .0010333 of the amount invested. That is very misleading. They wanted to know how I had come up with the 86 million dollar number. It is based on the ABC case where the return for the investors was 52 cents out of every dollar and when you take 55% of the \$154 million you have almost \$86 million. The Receiver has never returned the amount invested let alone 103%. I have clients that told me when they called the Receiver's office they were told that full recovery was not likely.

4) The Power of Attorney is needed to represent the investors under one voice. This has been used in other actions and no court has questioned the use, it also keeps the other side from raising the issue of authority. It is not meant to control your money as the Examiner leads you to believe .

5) The Receiver now takes a stance that the policies are not truly yours and you do not have any rights to any to them for many reasons. This same argument was made In the payphone case where the Receiver took the stance the Investors/Owners did not own the payphones.

a. There is an IRS action against me for enforcement of a summons for production of payphone owners files. The Examiner was told it was for production, however, he makes it sound like everyone is after me for wrongdoing and that I am not trustworthy.

OVER

We are in court now to force the IRS to prove their case that the payphones were an abusive tax-plan and that the Owners did not own the payphones. The IRS has taken a stance that the payphone owners owe \$10s of millions of back taxes based on the Receivers unfounded allegations. The Receiver in that case is responsible for the IRS actions against the Owners. He is attempting to receive a \$1.8 million tax refund for the company by informing the IRS that the Investors/Owners never purchased the phones.

- b. For over 15 years as a Registered representative under the NASD & SEC control and for over 10 years as a Registered Principal I underwent background checks by the Justice Department for these registrations. I oversaw the actions of agents and had over 22 million dollars under management in my agency.
- c. Over the last 25 years I helped individuals file complaints on attorneys, investment advisers, insurance agents and have help them recover money. Not once was I paid for my help. In the past 15 years as a Registered representative, I have not had a client complaint filed on me for any reason and this is also true about my 25 years as an insurance agent.
- d. I have agents that invested in LifeTime, one has \$100,000.00, and others invested their IRA money. They have family members with over \$50,000.00 invested. I did not start the IP Fund for financial gain.

The Fact that the Examiner and Receiver have chosen to attack me shows that they fear losing their place at the feeding trough. Do not allow them to scare you off.

The IP Fund after just 17 days represents almost \$5 million In LifeTime investments. The number increases everyday. I believe that the Receiver will continue to attack the Fund in an attempt to derail the investors' attempt to unseat him, and form a new company overseen by a board of investors.

The Plan is to:

- 1) To intervene and challenge the Receiver's appointment;
- 2) Put into place an investor committee, not an Examiner, to oversee the process;
- 3) Form a new company made up of investors and controlled by a board of investors to oversee and approve the expenses of the new company;
- 4) Borrow the money needed to pay the premiums;
- 5) And hire an administer with a back room to handle the viaticals and examine the viators.

The attorneys will the file a motion to intervene very soon.

The Receiver has confirmed that two Prudential policies had matured before he was seated. He did not give notice to the investors assigned to them. Instead the Receiver sent out a letter informing the investors that If they did not pool the Investor could stand to lose all of the investment. The Id numbers for the Prudential policies are 9904060001 & 9904060002. If you are investors in these polices please let us know.

If you would like to join the IP Fund please send membership check for \$100 payable to **IP Fund** for each contract and your information to:

IP Fund
909 N.E Loop 410
Suite 300
San Antonio Texas 78209

Thank you for your support
Ernest Bustos