

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

H. THAYNE DAVIS	:	Case No: 3:04CV059
Plaintiff,	:	Magistrate Judge Sharon L. Ovington (by Consent of the Parties)
v.	:	
LIFETIME CAPITAL, INC.	:	
Defendant.	:	

**ORDER GRANTING RECEIVER'S MOTION TO ESTABLISH CLAIMS PROCEDURE
PLAN AND TO APPROVE CLAIM FORMS (Doc. # 70)**

This matter is before the Court upon the Motion of the Receiver for the assets of LifeTime Capital, Inc. and related entities ("LifeTime") for Approval of a Claims Procedure and Claim Forms and Brief in Support (Doc. # 70) ("Motion"). The Court, being fully advised in the premises, finds that the Motion should be **GRANTED**. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Receiver and the Assistant Receiver shall handle all aspects of the Claims Procedure Plan and the processing of claims. Where necessary and appropriate, the law firms of Phillips McFall McCaffrey McVay & Murrah, P.C. and D. Benham Kirk, Jr., P.C. shall assist the Receiver and the Assistant Receiver in these efforts.

2. An "Investment Claim" shall be defined as the total amount of all up-front payment(s) of money to LifeTime (or any affiliated entity) by a particular individual or group of individuals (e.g. husband and wife joint investors) resulting in "placement" of the investor(s)' funds on a particular insurance policy or policies within the LifeTime insurance policy portfolio.
3. A "Premium Payment Claim" shall be defined as the total amount paid for policy premium payments made by an investor (after the expiration of the life expectancy of the Viator) on a particular policy on which the investor's funds were "placed."
4. A "Non-Investment Creditor Claim" shall be defined as a claim against LifeTime by *bona fide* third-party non-investor creditors for goods and/or services provided to LifeTime and for which the creditor has not been paid.
5. An "Investment Claim Form," substantially similar in all material respects to the form attached to the Motion as "Exhibit 2," shall be sent, via certified mail, to every person believed to have invested funds with LifeTime ("LifeTime Investors"). This Investment Claim Form shall be used by all LifeTime Investors to file a claim for each initial or "up-front" investment with LifeTime. Investment Claim amounts shall not include: 1) any Policy Premiums paid by the Investor; 2) projected returns on investment; or 3) any claim to interest on investment(s). Those LifeTime Investors who made any Premium Payments shall be instructed to use *both* the "Investment" and the "Policy Premium" Claim Forms.

6. A "Premium Payment" Claim Form," substantially similar in all material respects to the form attached to the Motion as "Exhibit 3," shall be sent, via certified mail, to any person believed to be a LifeTime Investor. Investors shall be instructed to utilize this form to make claims for the total dollar amount of any Policy Premiums paid on a particular Policy on which the Investors' funds were placed. These Premium Payment Claims shall *not* include: 1) the amount(s) initially invested with LifeTime ; 2) any projected returns on investment(s); and 3) any claim to interest upon either investment(s) or premium payments.
7. A "Non-Investment Debt Claim Form," substantially similar to the form attached to the Motion as "Exhibit 4" shall be sent, via certified mail, to any *bona fide* potential third-party claimant who/which is not believed to be a LifeTime Investor (*e.g.* a person or entity potentially owed compensation for the provision of goods or services) at such time as those potential third party claimants are identified by the Receiver.
8. The applicable version of a cover letter (one version for LifeTime Investors and one for non-investor creditors) explaining the Claims Procedure ("Claim Procedure Notice" or "Notice") shall be sent by the Receiver to all potential claimants, along with the appropriate claim forms. (The two versions of the Notice shall be substantially similar in all material respects to the sample letters attached to the Motion as "Exhibit 5.")
9. The Claim Procedure Notice shall state that all claim forms must be returned within ninety (90) days after receipt by the claimant and that failure to timely return

completed claim forms may be grounds for the disallowance by the Court of a claim, in whole or in part.

10. All claimants -- LifeTime Investors and non-investor creditors -- shall be required to provide specified documentation evidencing the dollar amount of any claim. In cases where such documentation is held by a third party (e.g. a broker who facilitated the Investment with LifeTime or the custodian of a retirement account) it shall be the responsibility of the Investor or other claimant to obtain the documentation from that third party and forward copies of the required documentation to the Receiver along with completed claim forms.
11. For purposes of mailing the Claim Procedure Notice and claim forms to LifeTime Investors, the list of Investors shall be divided into four (4) to six (6) groups (e.g. alphabetically by last name) and the mailing shall be staggered to minimize the prospect of a backlog of unprocessed claims.
12. Mailing of the Notice to the first group of Investors shall commence as soon as practicable.
13. When a completed claim form is received, an acknowledgment letter substantially similar in all material respects to the example letter attached to the Motion as "Exhibit 6," shall be sent to the Investor or other claimant. In addition, each claim received shall be assigned to a Claim category reflecting the type of claim ("Investment," "Additional Premium(s)" or "Non-investment") and assigned a sequential Claim Number, or other numbering system, within that category to be

used to identify the claim during processing and in further proceedings before this Court.

14. If processing a claim form requires further information from a claimant, the claimant shall be contacted on behalf of the Receiver and the time and date of the telephone call (or other appropriate form of communication to the claimant) shall be recorded and maintained by the person making such contact and requesting the additional information. The claimant shall be informed via the Notice Letter, and by anyone requesting additional information on behalf of the Receiver, that any additional information (including documentation) requested must be provided within thirty (30) days after the request for such information is made. Failure to timely provide the requested information shall be grounds for the Receiver to recommend to the Court that the claim be disallowed in whole, or in part. Furthermore, if the requested information is not provided by the claimant, the Receiver shall have the right to utilize any records in the possession of the Receiver related to the Receivership assets to establish the amount of those portions of a claim which the Receiver moves the Court to allow or disallow.
15. Where the original LifeTime Investor's viatical contract or non-investor claimant's claim has been transferred by operation of law or by voluntary transfer, the Receiver shall process claims submitted by the current owner of the original Investor's (or other original claimant's) rights. A lack of documentation supporting the claimant's assertion of ownership of those rights shall be grounds for the Receiver to recommend that the Court disallow the claim. In addition, information indicating

that any voluntary transfer was not made by *bona fide* contract or agreement shall be grounds for the Receiver to recommend that the Court disallow the claim.

16. Once processing of completed claim forms by the Receiver begins, the Receiver shall begin filing periodic Motion(s) to Allow Claims for those claims which have been reviewed and verified. If no objection to the proposed allowed claim(s) is lodged within 30 days after the filing of the Motion to Allow Claims, the Court may enter an Order allowing the particular claim(s), in the amounts set forth in the claims motion.
17. A ruling by the Court that a claim is "Allowed" shall not guarantee the dollar amount of that claim will be paid to the claimant but will, instead, indicate the Allowed dollar amount to be used as a basis for calculating the claimant's entitlement to any future distribution from LifeTime's assets. In addition, the allowance of a claim(s) shall not, in and of itself, establish any priority with respect to the ultimate payment of the claim. Any priority of payment shall be established by the future Order(s) of the Court.
18. The Receiver shall also file periodic Motion(s) to Disallow Claims which have been reviewed by the Receiver and which cannot be verified. A hearing to consider those disputed claims will be set by the Court and the claimant will be notified by the Receiver, via certified mail, return receipt requested, mailed at least forty-five (45) days prior to the hearing date set by the Court.

January 21, 2005

s/ Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge