

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 07-CV-10712-RGS
)	
LYDIA CAPITAL, LLC,)	
GLENN MANTERFIELD, and)	
EVAN ANDERSEN,)	
)	
Defendants.)	
)	

**RECEIVER’S MOTION AND BRIEF IN SUPPORT FOR INSTRUCTIONS FROM
THE COURT REGARDING INSURANCE POLICY ON THE LIFE OF F.B.**

COMES NOW H. Thomas Moran II, Court-appointed Receiver for Lydia Capital, LLC (the “Receiver”) and moves the Court for instructions regarding the insurance policy on the Life of F.B.¹ (the “Motion”). In support of his Motion, the Receiver represents the following to the Court:

I. SUMMARY OF PENDING PROCEEDINGS

On April 12, 2007, the Securities and Exchange Commission (“S.E.C.”) filed this action against Defendants Lydia Capital, LLC (“Lydia”), Evan Anderson (“Anderson”) and Glenn Manterfield (“Manterfield”). (Doc. No. 1.) On the same date the S.E.C. sought, and on April 13, 2007 secured, a temporary restraining order freezing certain of the Defendants’ assets. (Electronic Order, dated April 13, 2007.) The temporary restraining order was modified on April 17, 2007. (Electronic Order, dated April 17,

¹ In order protect the privacy of the insured, who is not a party to this litigation, the Receiver will use the insured’s initials, rather than the insured’s full name.

2007.) On May 3, 2007, the Court entered unopposed preliminary injunction orders, freezing certain assets of Defendants Lydia, Manterfield, and Anderson. (Doc. Nos. 20, 21 and 22.)

On May 23, 2007, the S.E.C. filed an unopposed motion seeking the appointment of a receiver for Lydia as well as a brief in support of the motion. (Doc. Nos. 25 and 26.) On June 1, 2007, the Court entered its Order for Appointment of Receiver (“Order for Appointment”), granting the S.E.C.’s request and appointing Mr. Moran as Receiver for Lydia. (Doc. No. 28.) In the Order for Appointment, the Receiver was directed to take complete control, possession and custody of all assets of Lydia defined in the Order for Appointment collectively as “Receivership Assets.” (Doc. No. 28, pp 1-2, II.A.) In addition, the Order for Appointment directed that the Receiver “take all steps the Receiver deems necessary to secure and protect the Receivership Assets, including all assets and property of Lydia and Lydia Capital Alternative Investment Fund LP.” (Doc. No. 28, p. 2, II.D).²

II. CIRCUMSTANCES SURROUNDING LYDIA’S ACQUISITION OF THE F.B. LIFE INSURANCE POLICY.

Among the Receivership Assets was a certain Delaware statutory trust known as the F.B. Insurance Trust (“Trust”). The Trust was created on September 19, 2005, with F.B. as its settlor, Wilmington Trust Company (“Wilmington”) as its trustee, P.B. as its co-trustee and G.V., B.R. and C.C. as its beneficiaries. On October 13, 2005, the Trust acquired a life insurance policy on the life of F.B. (the “Policy”). The Policy had an initial

² A Court’s authority to impose and administer a 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). A federal court exercises “broad powers and wide discretion” in crafting relief in an equitable receivership proceeding. S.E.C. v. Basic Energy & Affiliated Resources, Inc., 273 F.3d 657, 668 (6th Cir. 2001).

death benefit of \$5,000,000.00 with premiums in year one of \$845,326.00, no premium in year two and premiums of \$400,000.00 per year in years three to 15.

Also in October 2005, F.B. executed a supplement to the Trust and directed Wilmington to create a new series of the Trust to be titled F.B. Insurance Trust, Premium Finance Sub-Trust ("Sub-Trust"). The purpose of the Sub-Trust was to hold title to the Policy and to obtain financing to pay the first year's premium on the Policy. The Sub-Trust sought financing through a program administered by Coventry Capital I, LLC ("Coventry") known as Premium Finance Plus. This program provided a fixed-rate, simple-interest loan to the Sub-Trust from LaSalle Bank, N.A. ("LaSalle"). The loan was to cover the first year's premium of \$845,326.00 plus the fees and costs of originating the loan.

The Note executed by the Sub-Trust called for a 30 month term with a payment of \$1,244,751.41 due at the end of the term on May 10, 2007 (the "Loan"). LaSalle was the lender under the Note and Coventry was LaSalle's servicing agent. The Policy and the beneficial interests held by the beneficiaries of the Trust and the Sub-Trust were pledged to LaSalle by F.B., G.V., B.R. and C.C. to serve as security for the Loan.

On December 22, 2006, the beneficiaries of the Trust and the Sub-Trust (i.e., G.V., B.R. and C.C.) purported to assign all of their beneficial interest in the Trust to Steven M. Estabrook, a principal with SLS West, Inc. ("SLS West"). G.V., B.R. and C.C. also consented to a change of trustee from Wilmington and P.B., as trustee and co-trustee, to William C. Coyle, an attorney providing escrow services to SLS West. Wilmington, LaSalle, and Coventry allege that they were not aware of, and did not consent to the purported transfer of beneficial interests or change of trustee. On

December 23, 2006, Mr. Estabrook assigned all his beneficial interest in the Trust to SLS West. On February 27, 2007, SLS West assigned all of its beneficial interest in the Trust to Lydia Capital Alternative Investment Fund LP (the "Lydia Fund") in exchange for \$565,100.00. The written assignment by SLS West to the Lydia Fund included no acknowledgement of the Loan.

The SEC filed this action in April 2007 and the Receiver was appointed on June 1, 2007. In the interim – in May 2007 – the term of the Note came due and the Note was not repaid. On December 1, 2007, the Receiver made a quarterly premium payment on the Policy of \$100,000.00.

In February 2008, Coventry, as LaSalle's servicer, began sending notices of default to the Trust and the Sub-Trust, which were addressed to Wilmington and to F.B. Coventry did not send notices of default to SLS, Lydia, the Lydia Fund or the Receiver because Coventry alleges that neither Coventry, nor LaSalle were aware of the alleged assignments and change of trustee until the Receiver notified Coventry of such in March 2008.

In June 2008, in the course of investigating the Trust, the Receiver served subpoenas on Coventry, SLS West, Wilmington and the insurance agency that issued the Policy – RMD Financial Group. The Receiver reviewed the documents produced in response as well as documents contained in Lydia's files. The deposition of Randy Bagley, with SLS West, was also taken on October 1, 2008 and SLS West's acquisition of the Policy for the Lydia Fund was discussed at the deposition. The facts set forth in this Motion are based on the Receiver's review of all of this information.

III. CLAIMS BY COVENTRY AND LASALLE.

On behalf of LaSalle, Coventry seeks to foreclose on the collateral securing the Note (i.e., the Policy) and has asked that the Receiver release any alleged interest Lydia or Lydia Fund has in the Trust, Sub-Trust or the Policy and to allow Coventry and LaSalle to exercise all of their state law and contractual rights with respect to the Trust, Sub-Trust and Policy. In exchange, Coventry and LaSalle have offered to reimburse the Receiver in the amount of \$100,000.00 on account of the Policy premium payment made by the Receiver on December 1, 2007.

Coventry and LaSalle assert that the purported assignments to Mr. Estabrook, SLS West and the Lydia Fund, and the change of trustee from Wilmington to Mr. Coyle, are all invalid. Coventry and LaSalle argue that the assignments and change of trustee were in direct contravention of the following provisions in the underlying loan and trust documents:

- The Sub-Trust agreement indicates that during the term of the Loan Wilmington was to “hold all right, title and interest in and to the Policy . . . for the benefit of [LaSalle] as security for the Loan” and that “so long as the Loan is outstanding, [Wilmington] shall perform all of its duties hereunder solely at the direction of [LaSalle].” Coventry and LaSalle allege that at no time during the term of the Loan did they authorize any assignments of interest or change of trustees, and there is no documentary evidence to suggest otherwise. Thus, Coventry and LaSalle argue that the original beneficiaries did not have any beneficial interest in the Policy, the Trust or the Sub-Trust which they could assign, and even if they did, they did not have the power to assign without LaSalle’s consent.

- The assignments to Mr. Estabrook, SLS and Lydia, and the change of trustee to Mr. Coyle, were all executed by P.B. as co-trustee of the Trust. However, pursuant to the Trust Agreement for the Trust, the co-trustee had limited authority. He could only execute the application for insurance and related documents. Documents like the assignments at issue and the change of trustees could only be executed by Wilmington. Thus, Coventry and LaSalle argue that the assignments and change of trustee are not valid because they were executed by one without authority to do so.

- Pursuant to the security agreement, LaSalle took a security interest in the Policy, the Trust and the Sub-Trust. To perfect this security interest, the certificate

evidencing the Sub-Trust was amended to read as follows: "This Certificate is not transferable by the named holder hereof other than by inheritance or law, and is collateral security for a Note & Security Agreement between the Trust, as borrower, and LaSalle Bank, N.A., as lender." At all times Coventry, as servicing agent for LaSalle, has maintained physical possession of the Certificates for the Trust and the Sub-Trust. Thus, Coventry and LaSalle argue that LaSalle has a perfected security interest in the Policy, the Trust and the Sub-Trust and that the beneficiaries' execution of the assignments cannot create rights in the Lydia Fund that are superior to LaSalle's.

IV. THE RECEIVER'S RECOMMENDATION AND REQUEST FOR INSTRUCTIONS

The Receiver has appraised the Policy and believes its current value is significantly less than the outstanding Loan balance due to LaSalle. Based on this and the foregoing facts, it is the Receiver's opinion and recommendation that (i) the attempted transfer of the beneficial interests in the Trust and the Sub-Trust to Estabrook, SLS West and/or the Lydia Fund will likely be found to be in contravention of the provisions of the loan and trust documents referenced above and (ii) receivership resources should not be expended in pursuing claims against Coventry or LaSalle with respect to the Trust or the Policy or in attempting to defend against a foreclosure of the Policy by Coventry and LaSalle.

The Receiver recommends, therefore, that:

1. He be authorized to execute a release that releases any interest Lydia or the Lydia Fund has in the Trust, Sub-Trust or the Policy to Coventry and LaSalle (the "Release"); and
2. In exchange for the Release, Coventry and LaSalle shall pay to the Receiver \$100,000.00, representing the amount of the premium previously paid by the Receiver on December 1, 2007 on account of the Policy.

The Receiver shall retain and continue to pursue whatever claims Lydia and/or the Lydia Fund may have against F.B., P.B., G.V., B.R., C.C., SLS West and/or Mr. Estabrook based upon the purported assignment of their purported interests in the Trust or Sub-Trust. The Receiver has sent a demand letter to SLS West regarding the assignment of its interest in the Trust and/or the Policy given the circumstances outlined above.

The Receiver believes it is in the best interest of the receivership estate and Lydia's investors not to expend any additional resources contesting Coventry's or LaSalle's interest(s) in the Trust, Sub-Trust or the Policy. Specifically, the Receiver believes it is in the best interests of the receivership estate and Lydia's investors to provide Coventry and LaSalle the Release - releasing any and all rights in the Trust, Sub-Trust and the Policy in exchange for payment of \$100,000.00. Accordingly, the Receiver respectfully requests that the Court authorize him to execute the Release of any and all interest in the Trust, Sub-Trust and the Policy in favor of Coventry and LaSalle.

Dated: November 5, 2008

Respectfully submitted,

/s/ Douglas M. Todd

Douglas M. Todd, OBA #15378 (admitted *pro hac vice*)

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Attorney for H. Thomas Moran, II,

Court-Appointed Receiver for Lydia Capital, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Douglas M. Todd

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LYDIA CAPITAL, LLC,)
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)
Defendants.)
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Case No. 07-CV-10712-RGS

ORDER

The Court has before it for review and consideration the RECEIVER’S MOTION AND BRIEF IN SUPPORT FOR INSTRUCTIONS FROM THE COURT REGARDING INSURANCE POLICY ON THE LIFE OF F.B. [Doc. No. ____]. Upon review of the Motion, and for good cause shown, the Court finds the course of action proposed by the Receiver to be reasonable and proper.

Accordingly, the Receiver is authorized to provide Coventry Capital I, LLC and LaSalle Bank, N.A. with a release of any and all rights that Lydia Capital, LLC or Lydia Capital Alternative Investment Fund, LP might have in the insurance policy on the life of F.B., the trust known as the F.B. Insurance Trust and the trust known as the F.B. Insurance Trust, Premium Financing Sub-Trust in exchange for a payment from Coventry Capital I, LLC and LaSalle Bank, N.A. of \$100,000.00.

IT IS SO ORDERED this ____ day of November 2008.

Richard G. Stearns
United States District Judge