

**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 TWELFTH REPORT TO THE COURT
FOR THE PERIOD NOVEMBER 1, 2009 – JANUARY 31, 2010**¹

Pursuant to the Court’s June 1, 2007, Order for Appointment of Receiver (“Order for Appointment”) [Doc. No. 28], H. Thomas Moran, II, Court-Appointed Receiver for Defendant Lydia Capital, LLC (“Lydia”), submits his Twelfth Report to the Court “summarizing his activities, providing an accounting of the funds, assets and property in his possession, and reporting on the status of any legal claims” for the period November 1, 2009 to January 31, 2010. [Doc. No. 28, p. 8, ¶ XIII.] As further ordered, this Report also contains “an application to the Court for an order approving the payment of all reasonable fees and expenses” for both the Receiver and the Receiver’s legal counsel. [*Id.*]

I. BACKGROUND

On April 12, 2007, the United States Securities and Exchange Commission (“S.E.C.”) filed this action against Defendants Lydia, Evan Andersen (“Andersen”) and Glenn Manterfield (“Manterfield”). [Doc. No. 1.] On the same date, the S.E.C. sought and, on April 13, 2007,

¹ This Twelfth Report includes the Receiver's activities for the months of November and December, 2009 and January of 2010, as well as financial information for the second quarter (October, November and December) of 2009.

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, 2007.] On May 3, 2007, the Court entered two unopposed preliminary injunction orders freezing certain assets of Defendants Lydia, Manterfield and Andersen. [Doc. Nos. 20, 21 and 22.]

On May 23, 2007, the S.E.C. filed a motion seeking the appointment of a receiver for Lydia as well as a brief in support of the motion. [Doc. Nos. 25 and 26.] The Defendants did not oppose the S.E.C.'s motion. [Doc. No. 25, p. 2.] On June 1, 2007, the Court granted the S.E.C.'s request and appointed Mr. Moran as Receiver for Lydia.² [Doc. No. 28.] In the June 1, 2007 Order for Appointment, the Court directed the Receiver to:

A. take and retain immediate possession, custody and control of the funds, assets, monies, securities, contracts, notes, bank accounts, safe deposit boxes, 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 Lydia, and of all other entities which Lydia either owned, controlled or benefited from (including, but not limited to, Lydia Capital Alternative Investment Fund LP) including without limitation, the accounts established by Lydia on behalf its investors (the "Lydia Client Accounts"), as well as all property of whatsoever nature, whether real or personal, tangible or intangible, which has been acquired with or through funds or proceeds of Lydia (hereinafter "Receivership Assets");

B. take all steps the Receiver deems necessary to conduct an inventory of the assets and liabilities of Lydia and Lydia Capital Alternative Investment Fund LP;

C. take all steps the Receiver deems necessary to reconstruct the histories of the Lydia Client Accounts to determine whether and how client funds have been dissipated;

D. 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;

² An Electronic Order was entered on May 23, 2007, granting the S.E.C.'s motion to appoint a receiver. [Electronic Order dated May 23, 2007.] However, it was an additional ten days (June 1, 2007) before an order was docketed which set forth the name of the Receiver and delineated the scope of the Receiver's duties. [Doc. No. 28.]

E. promptly provide written notice of this Order to all current and former clients of Lydia (“Lydia Clients”). Service of a copy of this Order shall be deemed sufficient notice;

F. have access to and take control of all books, records, papers and other documents of Lydia and Lydia Capital Alternative Investment Fund LP, including all computers, computer files, on-site and off-site backup files, backup disks, other electronic storage material and websites;

G. have control of, and be added as an authorized signatory for, all accounts of Lydia and Lydia Capital Alternative Investment Fund LP at any bank, brokerage firm, insurance company or financial institution having possession, custody or control of any assets, accounts or funds of Lydia and Lydia Capital Alternative Investment Fund LP, wherever situated;

* * * *

J. receive and collect any and all sums of money due and/or owing to Lydia or Lydia Capital Alternative Investment Fund LP and make or authorize such payments and disbursements from the funds and assets taken into control or thereafter received by the Receiver, engage in or authorize such transactions, incur or authorize the incurrence of such expenses, and make or authorize the making of such agreements, as the Receiver deems necessary and appropriate to carry out the Receiver’s mandate pursuant to this Order;

K. In connection with the exercise of these powers, liquidation of any, or all, of the assets of Lydia or the Lydia Capital Investment Fund LP shall be undertaken, if at all, with due regard for the best long-term interests of investors in the Fund;

L. engage and employ persons in his discretion and in consultation with the Boston Regional Office of the Commission to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, attorneys, accountants and appraisers;

M. have access to, including rights to receive, open and review all mail of Lydia and Lydia Capital Alternative Investment Fund LP; and

N. file on a timely basis all relevant federal, state, and local tax returns and take any and all other steps required by such taxing authorities.

[Doc. No. 28, pp. 1-4, ¶¶ II.A-G and II.J-N.]

II. SUMMARY OF THE RECEIVER'S ACTIVITIES³

A. GENERAL BACKGROUND

The Receiver was notified of his appointment on Friday, June 1, 2007. Since that date, and the date of the Receiver's last report to the Court, the Receiver and his staff have continued to work diligently toward preserving the assets of the Receivership Estate, including the life settlement policies comprising the bulk of the Estate. The Receiver's initial efforts were concentrated primarily on identifying and preserving the assets of the Estate. Since the time of his appointment, the Receiver and his counsel have been required to devote a substantial amount of time to defending lawsuits brought by various insurance companies seeking to void or rescind certain of the life settlement policies in the Estate. Not only do the lawsuits seek to void or rescind the policies, but they also seek to retain the premiums paid for the policies rather than returning them to the Receiver upon rescission of the policies. Therefore, the Receiver has aggressively defended the lawsuits in order to protect assets of the Estate.

As discussed more fully below, when possible, the Receiver has sought a favorable settlement of certain of the lawsuits when such a settlement would result in an outcome that is in the best interests of the Estate. A total of thirteen lawsuits have been filed against the Receivership in separate federal jurisdictions throughout the country. The Receiver has previously negotiated and finalized the settlement of eight of the lawsuits, resulting in a significant amount of money being realized by the Receivership. [Doc No. 239.] Since the Receiver's last report, he has reached settlements in three additional lawsuits and is currently

³ The activities of the Receiver, his staff, accountants and attorneys are briefly summarized herein. For a more complete statement of the activities of the Receiver, his staff and attorneys, please refer to the itemized statements attached to the motions seeking Court approval for payment of fees and expenses of the Receiver and his counsel. Further, the Receiver is always available to the Court should the Court determine that it would be advisable to schedule a status conference to more fully discuss any of these matters.

negotiating final settlement agreements and releases with the settling parties. Those settlements are expected to be finalized in the near future, leaving two lawsuits pending. Additionally, the Receiver has continued to monitor the status of AXA Equitable Life Insurance Company's ("AXA") efforts to recover commissions from its producers, a portion of which must be paid to the Estate as part of the settlement entered into with AXA. [Doc. No. 252.]

The Receiver is also maintaining the 17 policies in the Estate not currently in litigation to ensure that the policies can be sold for the benefit of the Estate. As discussed in more detail below, the Receiver has reached an agreement to sell six of these policies. On February 3, 2010 the Receiver submitted his Motion to Authorize the Sale of Certain Assets of the Receivership Estate, requesting approval from the Court to sell six of the Policies for \$2,900,000.00. [Doc. No. 268.] The Court provisionally granted this motion pending objections, which are due on or before February 17, 2010. [Electronic Order, dated February 8, 2010]. Further, the Receiver is in negotiations to sell the remaining 11 non-litigation policies, and hopes to have an offer to submit to the Court soon on these policies. The Receiver's efforts in this regard are detailed below.

B. SUMMARY OF THE DISPOSITION OF THE POLICIES WITHIN THE ESTATE

I. 37 – Total Policies in Lydia’s Portfolio

A. 14 Policies at issue in 13 lawsuits

1. 9 policies settled as part of a settlement of 8 lawsuits with AXA and Lincoln and as part of settlements with Yurkus, SLS and Panzarella [Doc. Nos. 239 & 252]
 - a. Return of a portion of premium and commission paid on 8 policies: all AXA policies (3345-01, 3347-02, 3350-01, 3352-01, 3356-02, 3356-03, 3358-01) and one Lincoln policy (3341-01) **\$3,070,000**
(\$2,518,038 paid & remaining \$551,962 to be paid by 2/15/2010)
 - b. 10% participation in AXA’s recovery from its producers, up to \$100,000 **\$5,818.97**
(rest to be paid as AXA recovers from producers)
 - c. Transfer of 6685-01 to SLS [Doc. Nos. 119, 123] **\$35,200** (paid)
 2. 3 policies settled in connection with 3 lawsuits (3357-01, 3362-01, 3364-01). The settlement involves a return of a portion of premium paid and purchase price paid. A motion for court approval of this settlement will be filed shortly. **\$281,500**
(pending approval)
 3. 2 policies remain at issue in two pending lawsuits (3356-01, 3359-01). Dispositive motions are on file and awaiting court rulings. **\$100,000** (paid)
- B. 1 policy ownership challenge (6688-01). Settlement was reached with Coventry Capitol and Bank of America [Doc. Nos. 193 & 196]. **\$1,401,000** (paid)
- C. 5 policies sold in August 2008 (3343-01, 3346-01, 3353-01, 3361-01, 3363-01) [Doc. Nos. 147, 166 & 175] **\$2,900,000**
(pending approval)
- D. 6 policies under contract for sale, pending court approval (3351-01, 3355-01, 3360-01, 3360-03, 3365-01, 3367-01) [Doc. No. 268].
- E. 11 policies – the Receiver is currently negotiating with a party to sell these policies and initial offers have been exchanged. There is strong interest and the Receiver hopes to be able to submit an offer to the Court soon (3342-01, 3342-02, 3346-02, 3347-01, 3348-01, 3349-01, 3354-01, 3355-02, 3355-03, 3360-02, 3366-01).

The Court has recently received correspondence from two groups of investors expressing concern over the Receiver’s attempt to sell the six policies mentioned in ¶ I(D) above, which are

the subject of a pending motion, Doc. No. 268. These investors' complaints fall generally into three categories: (a) second-guessing of the Receiver's decision not to sell the policies in June 2007 when he was appointed, but to hold them until they exited their contestability periods in 2009; (b) second-guessing of the Receiver's marketing efforts to sell the policies; and (c) dissatisfaction with the value of the offers the Receiver has obtained. While the Receiver understands the investors' frustrations, he believes that the offers being presented to the Court are in the best interest of the Estate and should be approved, given current market conditions. Premium on the policies continues to come due and the Estate must continue to pay very high premiums on the policies, or sell the policies for the best price available in the market today. The only other alternative is to allow the policies to lapse, and the Estate will get nothing for these policies. While the investors are understandably disappointed in the value of the offers the Receiver has obtained, the objecting investors offer no other solutions, other than to demand a higher price, which is not achievable in today's life settlement market.

With the 20/20 hindsight of today's fallen market, the investors now second-guess the Receiver's decision in 2007 to hold the policies and continue to pay premium until the policies exited their two year contestability period in 2009. The majority of the policies were issued in 2007 and they have two year contestability provisions, which allow the insurance companies who issued the policies to challenge the validity of the policies. The grounds upon which an insurance company can challenge a policy become very limited once a policy exits its two year contestability period. For these reasons, the life settlement market places a substantially higher value on policies that have exited their contestability period. Consequently, the Receiver elected in 2007 to hold the policies until they exited their contestability period in 2009, when he would

actively market and sell the policies. At the time, this strategy was discussed with the investors on several investor conference calls.

Unfortunately, when the contestability periods expired in 2009 the world had experienced an unprecedented, global financial collapse, a severe recession and a seizing up of the credit markets. Private equity, to the extent it flowed at all, flowed away from non-traditional markets, like the life settlement market, and toward more traditional markets. Thus, the number of participants in the life settlement market willing to buy policies was significantly diminished in 2009 and those who were still participating in the market were much more selective about the types of policies they would purchase. This heightened scrutiny, while driven in part by the tightening of available capital, was also driven by the insurance industry's attack on certain aspects of the life settlement industry and by increased regulation of the life settlement market by state regulators and legislators, which has resulted in the recent passage of numerous state statutes regulating the life settlement market.

The insurance industry's attack on the life settlement market is directly evidenced by the 13 lawsuits filed against this Estate, which sought (a) the rescission of 13 of the 37 policies in the Estate, and (b) to keep all premiums paid on the policies. This type of litigation generally has had a significant chilling effect on the price purchasers are willing to pay for life settlement policies, and it has certainly had a direct effect on the value of all policies in this Estate, which potential purchasers view as tainted by the 13 lawsuits already filed against policies in this Estate. For all of these reasons, unfortunately, the life settlement market in 2009 is nothing like the market in 2007 – prices for life settlement policies have dropped dramatically. With 20/20 hindsight and the opportunity for a do-over, the Receiver might have made a different decision in 2007 and decided not to hold the policies, but even then, there is no guaranty that contestable

policies would have sold for significantly more in 2007 than non-contestable policies are now selling for in 2010.

The Receiver has been actively marketing the non-litigation policies to many potential buyers for months. The Receiver began by placing a notice about the portfolio of policies and their availability for sale in the following industry publications: *THE LIFE SETTLEMENT REVIEW*, a publication of the Life Insurance Settlement Association, and *THE LIFE SETTLEMENT REPORT*, a publication of DealFlow Media. The Receiver also reached out in various ways to his numerous industry contacts, and sent basic information about the portfolio to at least 158 different insurance brokers, providers and industry-specific individuals potentially interested in purchasing the policies (the "Initial Contacts"). *See* Exhibit A, List of Potential Purchasers. The Receiver was contacted by and received initial interest from approximately 20% of these Initial Contacts (the "Prospects"). The Receiver's staff took numerous calls and e-mails from these Prospects and provided them with basic information about the policies. If, after this initial exchange of information, a Prospect was still interested in buying the policies, the Receiver would have the Prospect execute a confidentiality agreement, and then give access to an online data room that contained detailed information about the policies for sale. Extensive due diligence was performed by several Prospects and the Receiver's staff continually followed up with the Prospects, but most of the Prospects ultimately made no offers on any of the policies after conducting due diligence and learning of the litigation associated with this portfolio.

Of the Prospects the Receiver communicated with, eight ultimately executed confidentiality agreements, and they were provided access to the on-line data room maintained by the Receiver. These parties conducted extensive due diligence to determine their continued

interest, and to determine what price they would offer for the policies. Following is a summary of the initial offers received:

Offer Details	Status
\$11,104,000 for the 17 policies mentioned in ¶ I(D) and ¶ I(E) above	Upon further due diligence, offer was reduced to \$6,940,000.00 for the 17 policies. The Receiver's staff maintained contact through December 2009 when the contact ceased communication.
\$1,500,000 for the following 8 policies: 3347-01, 3365-01, 3355-01, 3348-01, 3351-01, 3342-01, 3342-02, 3354-01	Offer too low to accept.
\$10,410,000 for the 17 policies mentioned in ¶ I(D) and ¶ I(E) above	Offeror did not conduct due diligence or communicate further after initial interest.
\$5,552,000 for the 17 policies mentioned in ¶ I(D) and ¶ I(E) above	Offeror did not conduct complete due diligence and ceased further communication with Receiver because the European hedge fund that was going to fund the purchase was not able to provide funding.
\$2,082,000 for the 17 policies mentioned in ¶ I(D) and ¶ I(E) above	Offer too low to accept.
\$2,900,000 for the 6 policies mentioned in ¶ I(D), plus payment of premium due between execution of the sales contract and closing	Offer accepted by Receiver and Motion for approval of sale has been submitted to the Court [Doc. No. 268].
	The Receiver is still in negotiations with two other parties to sell some combination of the 17 policies mentioned in ¶ I(D) and ¶ I(E) above and preliminary offers have been exchanged. There is strong interest by this party in the 11 policies mentioned in ¶ I(E) and the Receiver anticipates being able to present an offer to the Court soon as to these policies.

The Receiver has engaged in extensive marketing of the policies and he knows of no other marketing avenues to pursue that would result in higher offers for the policies. The \$2.9M offer for the six policies in ¶ I(D) represents the best offer the Receiver has been able to obtain, and he believes it is in the best interest of the Estate given current market conditions. Consequently, the Receiver has filed a motion asking the Court to approve the sale of the six policies mentioned in

¶ I(D) above, and he will do the same with the policies mentioned in ¶ I(E), once he has an acceptable offer.

If the court approves (a) settlement of the three lawsuits mentioned in ¶ I(A)(2) above, (b) the sale of the six policies mentioned in ¶ I(D) above, and (c) the ultimate sale of the 11 policies mentioned in ¶ I(E) above, the only policies remaining will be the two policies at issue in the litigation mentioned in ¶ I(A)(3) above. Other than these two policies and lawsuits and the payments still due under certain settlement agreements, there are no other significant assets of the Estate left to be administered by the Receiver at this time. The S.E.C. has obtained judgment against Defendant Manterfield, which is on appeal. Should the S.E.C.'s judgment be upheld and if the S.E.C. is able to collect upon that judgment, there may be additional assets for the Receiver to administer. Nevertheless, once the Court approves the settlements and sales mentioned above, the Receiver believes that an interim distribution of assets of the Estate to the investors and creditors should occur, and the Receiver intends to propose a distribution plan to the Court at that time.

C. PENDING LITIGATION

During the course of this Receivership, a total of 13 lawsuits have been filed against the Estate. Those lawsuits seek to rescind 13 of the life insurance policies in the Estate. In addition, the insurance companies bringing those lawsuits ask the courts for declaratory judgments finding that they do not have to repay the premiums that were paid for the policies. Should the insurance companies prevail in this litigation, it would result in a significant loss to the Estate. Further, in the Receiver's opinion, the extensive litigation has resulted in a lower overall value to the remaining policies in the Estate. Therefore, the Receiver has aggressively defended the lawsuits. First, the Receiver seeks to keep the policies in effect so that they can be sold for the benefit of

the Estate. Second, should the insurance companies be successful in rescinding the policies, the Receiver is seeking the return of the premiums paid on the policies, which will result in the return of assets to the Estate.

Since the Receiver's last report, the Receiver and his counsel have negotiated the settlement of three additional lawsuits. To date, the Receiver has negotiated and finalized the settlement of 11 of the 13 lawsuits, and the settlement agreements and releases have been executed by the parties to the agreements. The Court has approved settlement of eight of the lawsuits [Doc No. 252.]. The Receiver anticipates filing a motion with the court for approval of the three additional lawsuits within the week following this Report. Further details regarding the settlement of the eight lawsuits are discussed below (*See Settlements with AXA and Lincoln, infra*).

The Receiver continues to defend the remaining two lawsuits filed by Lincoln and Hartford, which seek to void or rescind two policies owned by the Estate. The Receiver has filed dispositive motions in these two cases, seeking rulings that will end the litigation in the Receiver's favor. At the same time, the possibility of settlement, on terms favorable to the Estate, is being explored. In addition, the Receiver has filed Third-Party Complaints in these lawsuits against various individuals involved in the sale and purchase of the subject life insurance policies, including agents, brokers, insureds, beneficiaries and trustees. Through these third-party actions, the Receiver seeks the return of monies paid by Lydia to acquire these policies in the event the policies are rescinded.

A major obstacle to settlement has been the refusal of the insurers to return the premiums on these policies in return for their request to rescind the policies. It is the position of the insurers in the pending litigation that they can rescind the policy and keep the premium. The

Receiver disputes this position. The Receiver's counsel has conducted extensive research regarding the return of premiums upon rescission of the policies. Based upon this research, the Receiver is seeking rulings from the Courts that the insurers are obligated to return all premiums that were paid on the policies should the insurers be successful in rescinding the policies.

The Receiver filed a Motion for Summary Judgment and, alternatively, a Motion to Dismiss in the *Harford v. Moran* matter pending in the United States District Court for Central California on December 2, 2009. The Receiver requests the Court to enter summary judgment against Hartford on the grounds that it waived any right it might otherwise have to rescind or void the policy at issue by continuing to accept premium for the policy after Hartford initiated suit to have the policy declared void. In the alternative, the Receiver requests the Court to dismiss Hartford's claims for relief. These Motions are set for hearing on March 8, 2010.

A summary of each lawsuit follows:

	DATE FILED	PLAINTIFF/INSURED	STATUS	COURT/CASE NO.
1	12/21/2007	The Lincoln National Life Ins. Company/ Vandenbush SETTLED & AWAITING COURT APPROVAL	Scheduling Order in place. Written discovery has been issued and answered by both parties. Subpoenas duces tecum have been issued to third parties, who have responded with document production. Receiver has made written demand on parties involved in the sale of the policy to indemnify and otherwise compensate the receivership for its losses and damages. Receiver has filed a Third-Party Complaint against individuals involved in the sale and purchase of the subject insurance policy. The Third-Party Defendants have answered the Receiver's Third-Party Complaint. A settlement conference took place on October 14, 2009, which was initially unsuccessful. However, the parties subsequently reached a settlement agreement. The settlement agreement and releases are being executed by the parties, and the Receiver anticipates filing a motion for approval shortly.	E.D. Wis. 07-C-1140

	DATE FILED	PLAINTIFF/INSURED	STATUS	COURT/CASE NO.
2	12/26/2007	The Lincoln Life & Annuity Company of New York/ Gisonni DISPOSITIVE MOTION FILED	Scheduling Order in place. Plaintiff filed a Second Amended Complaint and the Receiver's Answer has been filed. Written discovery has been issued and answered by both parties. Subpoenas duces tecum have been issued to third parties, who have responded and/or produced the requested documents. Receiver has made written demand on parties involved in the sale of the policy to indemnify and otherwise compensate the receivership for its losses and damages. Depositions of the insured and beneficiary have been taken. Receiver has filed a Third-Party Complaint against individuals involved in the sale and purchase of the subject insurance policy. All of the Third-Party Defendants have answered the Receiver's Third-Party Complaint. A settlement conference took place on September 30, 2009, which was unsuccessful. The parties are continuing to discuss the possibility of settlement. The Receiver's counsel has also prepared a motion to determine the insurer's claim that it may retain the premiums in the event it is successful in obtaining a judicial declaration that that policy is void and/or subject to rescission.	E.D.N.Y CV-08-699
3	04/02/2008	Sun Life Assurance Company of Canada/ Hoover SETTLED & AWAITING COURT APPROVAL	Scheduling Order has been entered. Rule 26 disclosures have been made. Receiver has filed a Third-Party Complaint against individuals involved in the sale and purchase of the insurance policy. All Third-Party Defendants have answered or otherwise pled. Written discovery has been issued and answered by the Plaintiff and Defendants. The Court, upon the motion of the parties, consolidated this matter with the Bawden matter. At the request of the Receiver and other parties, the Court has set this matter for a settlement conference on December 3, 2009. When the settlement conference was continued by the Court to February 8, 2010, the Receiver, Plaintiff and two of the Third-Party Defendants agreed to mediate the case on December 3 rd . As a result of the mediation, these parties reached a settlement agreement to which all parties have agreed. The settlement agreement and releases are being executed by the parties, and the Receiver anticipates filing a motion for approval shortly.	D. Ariz. 2:08-CV-00632-SRB
4	04/02/2008	Sun Life Assurance Company of Canada/ Bawden SETTLED & AWAITING COURT APPROVAL	Scheduling Order has been entered. Rule 26 disclosures have been made. Receiver has filed a Third-Party Complaint against individuals involved in the sale and purchase of the insurance policy. All Third-Party Defendants have answered. Written discovery has been issued and answered by the Plaintiff and Defendant. The Court, upon the motion of the parties, consolidated this matter with the Hoover matter. At the request of the Receiver and other parties, the Court has set this matter for a settlement conference on December 3, 2009. When the settlement conference was continued by the Court to February 8, 2010, the Receiver, Plaintiff and two of the Third-Party Defendants agreed to mediate the case on December 3 rd . As a result of the mediation, these parties reached a settlement agreement to which all parties have agreed. The settlement agreement and releases are being executed by the parties, and the Receiver anticipates filing a motion for approval shortly.	D. Ariz. 2:08-CV-00629-MHB

	DATE FILED	PLAINTIFF/INSURED	STATUS	COURT/CASE NO.
5	1/16/2009	Hartford Life & Annuity Ins. Company/ Williamson DISPOSITIVE MOTION FILED, SET FOR HEARING 3/8/10	Suit filed in January 2009 and Receiver has filed its Answer. A scheduling Order has been entered and Rule 26 disclosures have been made. The parties are proceeding with discovery. At the request of the Receiver and other parties, the Court set this matter for mediation to take place on November 12, 2009. The mediation was unsuccessful. On December 2, 2010, the Receiver filed two dispositive motions: (1) motion seeking summary judgment on the grounds that the insurer had waived any right it otherwise had to void or rescind the policy by accepting premiums after initiating suit; and alternatively (2) motion to dismiss the insurer's claims that it is entitled to retain the premiums, recover damages or recover its attorney's fees in the event that the Court declares the policy to be void or subject to rescission. The motions are set for hearing March 8, 2010.	C.D. Cal. 2:09-CV-00391-CAS-SS

D. SETTLEMENTS WITH AXA AND LINCOLN

During prior reporting periods, the Receiver advised the Court of its extensive discussions with AXA and Lincoln regarding the settlement of eight of the litigation cases involving all of the policies issued by AXA (the "AXA Policies") and one policy issued by Lincoln. On June 17, 2009, the Receiver submitted a Motion to approve the settlements with AXA and Lincoln. [Doc. No. 252.] The settlements resolved all claims and causes of action relating to all seven AXA Policies and one of the Lincoln Policies.

After the receipt of all payments due under the AXA and Lincoln settlement agreements, the settlement will result in the payment of between \$3,105,200 and \$3,205,200 to the Estate. The settlement agreement entered into with AXA requires AXA to pay to the Estate 10% of any amounts AXA recovers from its agents and/or producers, up to \$100,000. Therefore, the final amount received may vary depending on the amount AXA is able to recover from its agents and/or producers.

To date, the Estate has received \$2,553,238 under the AXA and Lincoln settlement agreements. The Receiver expects a final payment of \$551,962 to be made on February 15, 2010. Further, as of this Report, AXA has recovered funds from its producers sufficient to pay

the Estate \$5,818.97 out of \$100,000. As a result, the Estate has the potential to recover an additional \$94,181.03 from AXA under the settlement agreement. AXA reports to the Receiver that it is currently in negotiations with other agents and producers to recover additional funds. The Receiver will continue to update the Court on the status of AXA's efforts, and the resulting funds the Estate expects to receive.

Additionally, the insured under the Lincoln Black Policy has died. All payments due under the Lincoln settlement have not yet been made and, accordingly, the Lincoln Black Policy has not been surrendered or rescinded. Under the terms of the Lincoln settlement agreement, Lincoln "shall hold the benefit due under the Black Policy in an interest bearing account at the standard rate of interest Lincoln applies to payments for death benefits until the Black Policy is surrendered" The Receiver's counsel has made written demand on Lincoln to comply with this term of the settlement agreement.

III. INVESTOR-RELATED MATTERS

As previously reported, based on the records received from Dundee Leeds and others, the total amount invested in the Fund, including \$8,807,686.22 from certain April 2007 Investors (the "April Investors"), was \$42,734,226.12. However, \$4,553,858.11 was returned to these April Investors pursuant to a Settlement Agreement discussed in the Receiver's Fourth Report. [Doc. No. 127, p. 4]. Therefore, as previously reported, the total amount invested stands at \$38,180,368.01.

The Receiver has previously requested revised Proof of Claim forms from certain April 2007 Investors reflecting the payment of funds received by them from the Settlement Agreement. The Receiver has received seven revised Proof of Claim forms; three revised Proof of Claim forms remain outstanding. In addition, the Receiver has requested an initial Proof of Claim form

from one investor. The Receiver has repeatedly sent correspondence to the remaining three investors from whom revised Proof of Claim forms are still required, as well as the remaining investor from whom an initial Proof of Claim form is required. The Receiver has not yet received these Proof of Claim forms. The Receiver addressed this issue during the meeting with investors in Taipei. However, the Receiver has not yet received the required revised or initial Proof of Claim forms following his meeting with the investors.

IV. THE INSURANCE POLICIES.

In the Receiver's Sixth Report to the Court, the Receiver reported that based upon the Receiver's analysis of the data and documents received from the S.E.C. and others, the portfolio consisted of thirty-seven policies ranging in face value from \$1,000,000 to \$10,000,000 on the lives of 28 individuals. On May 9, 2008, the Receiver filed a motion for an order approving an Asset Purchase Agreement for the sale of five of the 37 policies. [Doc. No. 147]. On July 16, 2008, the Court entered an Order approving the Purchase Agreement and authorized the sale of the five policies, free and clear of all liens, claims, encumbrances and other interests. [Doc. No. 166-2].

As reported herein, 13 lawsuits have been filed against the Estate seeking to void or rescind certain other life insurance policies. The Receiver negotiated a settlement of eight of the lawsuits, and entered into settlement agreements with the two insurers of the policies that brought the lawsuits. On June 17, 2009, the Receiver submitted a motion to approve the settlements with the insurers. [Doc. No. 239]. The settlements resolved all claims and causes of action relating to the insurance policies, provided for the rescission of the policies, and resulted in the payment of up to \$3,205,200 to the Estate. The Court approved the settlement on July 31, 2009. [Doc. No. 252].

Since the Receiver's last report, the Receiver and his counsel have negotiated the settlement of three additional lawsuits, which will result in a net recovery to the Estate of \$281,500, if approved. Currently the settlement agreements and releases are being negotiated, and the Receiver expects to seek approval from the Court for those settlements shortly.

In exchange for payments to the Estate, the Receiver sought, and the Court granted, approval to release Lydia Capital's rights in two policies within the portfolio. [Doc Nos. 123 and 196.] Further, on February 3, 2010 the Receiver filed a motion to authorize the sale of six additional policies for the total value of \$2,900,000, plus premiums that the buyer will pay prior to closing on the sale. [Doc. No. 268.]

Because of the settlements, the sale of five of the insurance policies, and the release of two policies, the portfolio currently consists of 22 policies with face amounts ranging from \$1,000,000 to \$10,000,000. Should the Court approve the Receiver's motion to sell six of the policies, and the Receiver's forthcoming motion to settle three of the lawsuits, the Portfolio will consist of 13 policies. However, as discussed, the Receiver is currently negotiating the potential sale of the 11 policies not currently in litigation, which would leave only two remaining policies in litigation.

The Receiver made \$660,406.20 in premium payments on the policies between October 1, 2009 and December 31, 2009. *See* Lydia Premium Disbursement Check Register, attached as Exhibit B. Additionally, the Receiver has made \$233,833.45 in premium payments from January 1, 2010 through the date of this Report. Future premium payments are contingent on the approval by the Court of the sale of the non-litigation policies, and how quickly those sales can be closed.

V. RECEIVERSHIP ACCOUNTING MATTERS

On June 1, 2007, the Receiver was given authority over all of Lydia's accounts pursuant to the Order for Appointment. The amount of funds deposited in those accounts totaled \$11,932,721.16⁴ on the day of the Receiver's appointment. The principal balance in the Receiver's accounts as of December 31, 2009 was \$1,882,709.76. A General Ledger summarizing the activity in those accounts is set forth in Exhibit C. Additionally, for further information regarding the income and expenses of the Receivership, see the Standardized Fund Accounting Report attached as Exhibit D.

VI. MOTIONS FOR PAYMENT OF FEES AND EXPENSES

The Receiver and his counsel will submit motions next week seeking the approval of their fees and expenses for the months of October, November and December 2009.

Respectfully submitted,

/s/ Melvin R. McVay, Jr.

Melvin R. McVay, Jr. (admitted *pro hac vice*)

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⁴ As discussed in the Receiver's Fourth Report, \$4,553,858.11 was returned to the April Investors in January 2008, pursuant to a settlement agreement with the April Investors.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February 2010, 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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