

Cause No. D-1-GV-08-000945

THE STATE OF TEXAS,
Plaintiff

v.

MEMORIAL SERVICE LIFE INSURANCE
COMPANY, LINCOLN MEMORIAL
LIFE INSURANCE COMPANY,
AND NATIONAL PREARRANGED
SERVICES, INC.

Defendants

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL MAY 14 2008
At 1:24 P.M.
Amalia Rodriguez-Mendoza, Clerk

**AGREED ORDER APPOINTING REHABILITATOR AND
PERMANENT INJUNCTION**

On this day, the Court heard the *Plaintiff's First Amended Original Petition Requesting Appointment of Rehabilitator and Injunctive Relief* ("Application") filed by the State of Texas at the request of the Commissioner of Insurance. The Application requests an order placing Memorial Service Life Insurance Company ("Memorial"), Lincoln Memorial Life Insurance Company ("Lincoln), and National Prearranged Services, Inc. ("NPS"), Defendants, into rehabilitation pursuant to TEX. INS. CODE § 443.101 *et seq*, and appointing the Commissioner of Insurance for the State of Texas ("Commissioner of Insurance") as Receiver for Rehabilitation ("Rehabilitator") of Defendants. This Application is also brought to obtain a Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining Defendants and their agents from conducting Defendants' business, and restraining other parties from taking any actions against Defendants or their property.

I. FINDINGS

Having considered Plaintiff's verified petition, the evidence and arguments of counsel, the Court finds as follows:

- 1.1 The Court has jurisdiction over the parties and the subject matter of this action.
- 1.2 The Court finds that Defendants are in hazardous financial condition as set out in Tex. Ins. Code § 443.057(9), that grounds exist to place Defendants into rehabilitation under TEX. INS. CODE § 443.057, and that Plaintiff is entitled to an Order of Rehabilitation and Permanent Injunction as requested in the Application pursuant to TEX. INS. CODE § 443.058.
- 1.3 The Commissioner of Insurance must be appointed as Rehabilitator of Defendants pursuant to TEX. INS. CODE § 443.151, and vested by operation of law with title to all of Defendants' property as defined in TEX. INS. CODE § 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in share accounts or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendants, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendants (collectively, "Defendants' Property"). The Rehabilitator's title to Defendants' Property shall extend to all items owned by Defendants, regardless of the name in which such items are held. Pursuant to TEX. INS. CODE § 443.101(a), the Rehabilitator is directed to take possession of the Defendants' Property, wherever located.

- 1.4 The Rehabilitator may take action as he deems necessary or appropriate to perform his duties pursuant to TEX. INS. CODE § 443.101 *et seq.* The Rehabilitator shall have all the powers of Defendants' directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Rehabilitator or his designees. Further, Defendants and Defendants' agents are required to cooperate with the Rehabilitator pursuant to TEX. INS. CODE § 443.010. The Rehabilitator shall also have the special powers requested in the petition as set forth below.
- 1.6 It is necessary for this Court to issue a permanent injunction pursuant to TEX. INS. CODE § 443.008(a) to carry out the provisions of TEX. INS. CODE Chapter 443, and prevent irreparable injury, loss and damage to the general public and Defendants' creditors. A necessity exists to enjoin Defendants and Defendants' agents from conducting Defendants' business; to enjoin financial institutions or depositories from taking any actions in connection with Defendants' property, except as authorized by the Rehabilitator; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendants, except as permitted by TEX. INS. CODE Chapter 443.
- 1.7 Pursuant to TEX. INS. CODE § 443.008, an automatic stay is in effect upon the commencement of the rehabilitation proceeding.
- 1.8 By signing this Order, Defendants have waived citation and service of process and have consented to the entry of this Order.

II. APPOINTMENT OF REHABILITATOR

IT IS ORDERED that the Commissioner of Insurance is appointed as Rehabilitator of Defendants, and granted the following duties and powers:

- 2.1 The Rehabilitator is granted and given all powers and authority under TEX. INS. CODE § 443.101 *et seq.*, and any and all other powers and authority under applicable statutes and the common law of this State.
- 2.2 Pursuant to TEX. INS. CODE § 443.101(a), title to all of Defendants' Property, including but not limited to all the assets and rights described in this *Agreed Order Appointing Rehabilitator and Permanent Injunction*, is vested in the Rehabilitator.
- 2.3 The Rehabilitator is authorized to take control and/or possession of Defendants' Property, wherever located, and remove all such property from Defendants' premises.
- 2.4 The Rehabilitator is authorized to withdraw Defendants' Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of Defendants, at his discretion.
- 2.5 The Rehabilitator is authorized to appoint a special deputy and retain any other professional, administrative, and clerical services as he deems necessary pursuant to TEX. INS. CODE § 443.102(a). The Rehabilitator is further authorized to set the compensation of such persons, and pay for such services from Defendants' funds pursuant to TEX. INS. CODE § 443.015(e).
- 2.6 The Rehabilitator is authorized to conduct Defendants' business, administer Defendants' operations, and enter into any contracts necessary to perform the Rehabilitator's duties, at his discretion pursuant to TEX. INS. CODE § 443.102.

- 2.7 The Rehabilitator is authorized to supervise, suspend, terminate, or dismiss any or all of the agents, employees, officers, and/or directors of Defendants' or retain such persons at his discretion, and compensate them as he deems necessary from Defendants' funds.
- 2.8 The Rehabilitator is authorized to receive, collect, control, open and review all mail addressed to or intended for Defendants, or arriving at Defendants' address.
- 2.9 The Rehabilitator is authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this order.
- 2.10 The Rehabilitator is authorized to exclude any person from any property owned, leased or occupied by Defendants, at his discretion.
- 2.11 The Rehabilitator is authorized to pay claims that are approved by the Rehabilitator or allowed in accordance with a rehabilitation plan approved under TEX. INS. CODE § 443.103. The Rehabilitator is further authorized to establish a procedure for the processing of claims, provided that such procedure is consistent with TEX. INS. CODE § 443.103(c)(1), and provides no less favorable treatment of a claim or class of claims than would occur in liquidation, unless a claimant agrees to a less favorable treatment of a claim.
- 2.12 The Rehabilitator is authorized to assume or reject pre-receivership contracts with Defendants at his discretion pursuant to TEX. INS. CODE § 443.013.
- 2.13 Pursuant to TEX. INS. CODE § 443.008(m), the Commissioner of Insurance is not required to file a bond.

- 2.14 In the event a successor is appointed to be the Commissioner of Insurance, the successor shall become the Rehabilitator upon his appointment as Commissioner, and the former Commissioner shall be discharged as Rehabilitator as a matter of law.
- 2.15 The Rehabilitator's designees and any Special Deputy appointed under TEX. INS. CODE § 443.102(a) shall have all the rights and powers of the Rehabilitator, subject to any limitations imposed by the Rehabilitator.
- 2.16 The Rehabilitator is authorized and has the ability to take any action that he deems necessary or appropriate to redeem or revitalize the Defendants as allowed by TEX. INS. CODE § 443.102(b), including the ability to address issues and make applications to the court relating to surrenders of whole life insurance policies and the subsequent replacement with term policies, and the ability to address issues and make applications to the court related to designation or redesignation of beneficiaries and/or owners of insurance policies issued by Lincoln or Memorial.
- 2.17 The Rehabilitator is required to report to the receivership court as required by TEX. INS. CODE §§ 443.015(g), 443.016, and 443.101(b).

III. PERMANENT INJUNCTION

It is FURTHER ORDERED that the Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendants and their agents, including but not limited to:
Defendants and their its current and former officers, trustees and directors (including but not limited to Randall J. Singer, Randall K. Sutton, George Wise, Brent D. Cassity, L. Keith Hale, Hans H. Dahl, Nekol Province, Anne M. Chrun, James M. Crawford, and Howard A. Wittner), owners (including but not limited to including but not limited to Brent Cassity, Forever Enterprises, Inc., National Heritage Enterprises, Inc., and the RBT Trust II), underwriters,

affiliates (including but not limited to Wise & Associates, Inc., Forever Memorial, Inc., Forever Network, Inc., Forever Illinois, Inc., Forever Georgia, Inc., Forever Preneed Insurance Agency, In., Heritage Research, Inc., Lincoln Services, Inc., National Cemetery Management Company, and National Cemetery Merchandise, Inc.), managers, employees, agents, servants, representatives, attorneys, adjusters and other persons or entities acting on behalf of Defendants;

Financial institutions, including but not limited to:

any and all banks (including Bremen Bank and Trust Company), savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions in the possession of any of Defendants' Property; and

All other parties, including but not limited to:

policyholders, creditors, claimants, reinsurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against Defendants, or in possession of any of Defendants' Property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- 3.1 Doing, operating, or conducting Defendants' business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to Defendants, or exercising any direction, control, or influence over Defendants' business, except through the authority of the Rehabilitator or his designees;
- 3.2 Transacting any business of Defendants' in any manner except through the authority of the Rehabilitator or his designees;
- 3.3 Wasting, disposing of, converting, dissipating, using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, concealing, in any manner, or removing from this Court's jurisdiction or from

Defendants' place of business, any of Defendants' Property, or any other items purchased by Defendants, or any items into which such property has been transferred, deposited or placed, or any other items owned by Defendants', wherever located, except through the authority of the Rehabilitator or his designees;

- 3.4 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendants, whether asserted or not, except through the authority of the Rehabilitator or his designees;
- 3.5 Doing anything, directly or indirectly, to prevent the Rehabilitator or his designees from gaining access to, acquiring, examining, or investigating any of Defendants' Property or any other property, books, documents, records, or other materials concerning Defendants' business, under whatever name they may be found;
- 3.6 Interfering with these proceedings or with the lawful acts of the Rehabilitator or his designees in any way;
- 3.7 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendants as prohibited by TEX. INS. CODE § 443.005(i);
- 3.8 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendants, Defendants' Property or any part thereof, or against the Rehabilitator, except as permitted by TEX. INS. CODE Chapter 443, Subchapter F.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Rehabilitator or his designees the nature, amount, and location of any and all of

the items listed above, including but not limited to Defendants' Property, and immediately surrender all such property to the Rehabilitator or his designees. The Court further specifically finds and orders that the Rehabilitator is vested by operation of law with title to the rights of Defendants as the customer of any financial institution. Defendants and Defendants agents are further ordered to cooperate with the Rehabilitator or his designees as required by TEX. INS. CODE § 443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Rehabilitator any items addressed to or intended for Defendants.

IV. AUTOMATIC STAYS

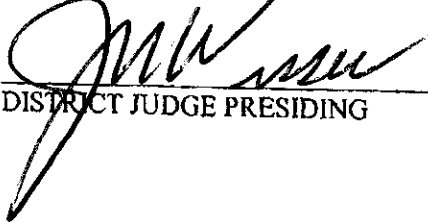
- 4.1 Automatic stays are in effect with respect to actions against Defendants or its property as provided by TEX. INS. CODE §§ 443.008(c) & (d). In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against Defendants is in effect for the duration of this proceeding, and the stay of actions against Defendants' property is in effect for as long as the property belongs to the receivership estate.
- 4.2 The stays in effect pursuant to TEX. INS. CODE § 443.008 shall be applicable to any actions described therein commenced either before or after the entry of this order.

V. OTHER ORDERS


- 5.1 This *Agreed Order Appointing Rehabilitator and Permanent Injunction* shall issue and become effective immediately, and shall continue in full force and effect until the entry of an order by this Court terminating rehabilitation entered under TEX. INS. CODE § 443.104.

- 5.2 Pursuant to TEX. INS. CODE § 443.055(b), this *Agreed Order Appointing Rehabilitator and Permanent Injunction* constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443.
- 5.3 In accordance with TEX. INS. CODE § 443.007(d), the Rehabilitator may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at his discretion. Pursuant to TEX. INS. CODE § 443.007(e), parties who wish to object to the application for Rehabilitator must file an objection within 20 days of filing the application.
- 5.4 This *Agreed Order Appointing Rehabilitator and Permanent Injunction* does not constitute a finding of Defendants' insolvency, nor an order of liquidation of Defendants.
- 5.5 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs pursuant to TEX. CIV. PRAC. & REM. CODE §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, and the amount and payment of such claim are subject to the provisions of TEX. INS. CODE Chapter 443.
- 5.6 Notice of the Plaintiff's petition and this order shall be provided to the insurance Commissioners and insurance guaranty associations in the states in which Defendants did business by first class mail or electronic communication pursuant to TEX. INS. CODE § 443.052(b).
- 5.7 Anyone over the age of 18 whom is not a party to nor interested in the outcome of this suit may serve all citations, writs and notices in this cause.
- 5.8 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 14 day of
May, 2008, at 1:25 o'clock P.m.


DISTRICT JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

By: 

Jennifer S. Jackson
Assistant Attorney General
State Bar No. 24060004
Karen Pettigrew
Assistant Attorney General
State Bar No. 01529500
Financial Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
(512) 475-4866 - Telephone
(512) 477-2348 - Telecopier
Jennifer.Jackson@oag.state.tx.us

ATTORNEYS FOR PLAINTIFF THE STATE OF TEXAS

By: 

Hector De Leon
State Bar No. 05650800
De Leon, Boggins & Icenogle, P.C.
221 West 6th Street, Suite 1050
Austin, Texas 78701
Fax: (512) 482-8628
Voice: (512) 478-5308

ATTORNEY FOR DEFENDANTS