

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	Case No. 09-32672
LIFE FUND 5.1, LLC, et. al.,)	(Jointly Administered)
)	
Debtors.)	Honorable A. Benjamin Goldgar
)	
)	
PATRICK M. COLLINS, solely as TRUSTEE of LIFE FUND 5.1, LLC, et. al.,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 10-00104
)	
AVIVA LIFE AND ANNUITY COMPANY,)	
)	
Defendant.)	

COMES NOW DEFENDANT, Aviva Life and Annuity Company (“Aviva”), and for its Answer to Plaintiff Patrick M. Collins’ Complaint for Declaratory Relief states:

PARTIES

1. Aviva admits the allegations contained in paragraph 1.
2. Aviva admits the allegations contained in paragraph 2.

JURISDICTIONAL ALLEGATIONS

3. Aviva admits the allegations contained in paragraph 3.
4. Aviva admits the allegations contained in paragraph 4.
5. Aviva admits the allegations contained in paragraph 5.

GENERAL ALLEGATIONS

6. Aviva admits the allegations contained in paragraph 6.
7. Aviva admits the allegations contained in paragraph 7.
8. Aviva admits the allegations contained in paragraph 8.
9. Aviva admits the allegations contained in paragraph 9.

ALLEGATIONS RELATING TO THE POLICY

10. Aviva admits the allegations contained in paragraph 10.
11. Aviva admits that Aviva Policy No. B05020454 (“the Policy”), prior to its lapse for nonpayment of premium, had a face amount of \$5,000,000.00.
12. Aviva admits that Houston Tanglewood Partners, LLC was listed as the owner of the Policy prior to its lapse.
13. Aviva has not had the opportunity to review the referenced Scheduled of Assets and Liabilities identified in paragraph 13 of the Complaint. Therefore, Aviva denies the allegations contained in paragraph 13 for lack of information sufficient to form a belief.
14. Aviva denies the allegations contained in paragraph 14 for lack of information sufficient to form a belief.
15. Aviva admits that the Policy was scheduled to lapse pursuant to its terms on September 19, 2009, unless sufficient premium was paid on the Policy by that date. Aviva denies any other allegation contained in paragraph 15.
16. Aviva admits that Exhibit A attached to the Complaint speaks for itself. Aviva denies any other allegation contained in paragraph 16.
17. Aviva admits that Exhibit B attached to the Complaint speaks for itself. Aviva denies any other allegation contained in paragraph 17.

18. Aviva admits that Exhibit C attached to the Complaint speaks for itself. Aviva denies any other allegation contained in paragraph 18.

19. Aviva admits the allegations contained in paragraph 19.

20. Aviva denies the allegations contained in paragraph 20 for lack of information sufficient to form a belief.

21. Aviva denies the allegations contained in paragraph 21 for lack of information sufficient to form a belief.

22. Aviva denies the allegations contained in paragraph 22 for lack of information sufficient to form a belief.

23. Aviva admits that on or about October 30, 2009 the Trustee transmitted a starter check to Aviva in the amount of \$24,090.40. Aviva further states that Exhibit D speaks for itself. Aviva denies any other allegation contained in paragraph 23.

24. Aviva admits that pursuant to the USA Patriot Act, it could not accept a starter check from the Trustee for payment of premiums on the Policy. Aviva further states that Exhibit E speaks for itself. Aviva expressly denies that it waived any protection or requirement established by 11 U.S.C. § 108(b) in its rejection of the starter check as required by the USA Patriot Act. Aviva denies any other allegation contained in paragraph 24.

25. Aviva admits that on or about November 10, 2009, outside the 60-day savings period provided by 11 U.S.C. § 108(b), the Trustee tendered to Aviva a cashier's check in the amount of \$24,090.40. Aviva further admits that pursuant to its normal process, the cashier's check was cashed and deposited into a holding account. However, Aviva affirmatively states that all funds represented by the cashier's check were not retained by Aviva, but rather were

refunded and tendered back to the Trustee. Aviva states that Exhibit F speaks for itself. Aviva denies any other allegation contained in paragraph 25.

26. Aviva admits that because the policy had lapsed, it delivered a reinstatement offer to the Trustee in the form dictated by the Policy. Aviva states that Exhibit G speaks for itself. Aviva expressly denies that it was required to “dispute” the Trustee’s reliance upon 11 U.S.C. § 108(b). Aviva denies any other allegation contained in paragraph 26.

27. Aviva admits that on or about November 19, 2009, the Trustee mailed a cashier’s check to Aviva in the amount of \$27,020.62. Aviva further states that Exhibit H speaks for itself. Aviva further admits that pursuant to its normal process, the cashier’s check was cashed and deposited into a holding account. However, Aviva affirmatively states that all funds represented by the cashier’s check were not retained by Aviva, but rather were refunded and tendered back to the Trustee. Aviva further admits that the Trustee took the position that he timely satisfied all obligations to maintain the Policy. However, Aviva specifically denies that the Trustee timely acted to prevent the lapse of the Policy. Aviva denies any other allegation contained in paragraph 27.

28. Aviva states that Exhibit I speaks for itself. Aviva denies any other allegation contained in paragraph 28.

29. Aviva denies the allegations contained in paragraph 29 for lack of information sufficient to form a belief.

30. Aviva states that Exhibit J speaks for itself. Aviva denies any other allegation contained in paragraph 30.

31. Aviva admits the allegations contained in paragraph 31 and further states that Exhibit K speaks for itself.

32. Aviva admits that on or about December 22, 2009, it tendered an Aviva check to the Trustee in the amount of \$51,111.02 which represented the full amount of monies tendered by the Trustee to Aviva on account of the Policy. Aviva denies any other allegation contained in paragraph 32.

COUNT I

(Request for Declaratory Judgment)

33. Aviva restates its answers to paragraphs 1-32 as if fully set forth herein.

34. Aviva admits that the Trustee has correctly set forth the excerpted text of 11 U.S.C. § 108(b). Aviva denies any other allegation contained in paragraph 34.

35. Aviva admits that the Trustee had until November 1, 2009 within which to pay premiums due on the Policy and prevent its lapse. Aviva denies any other allegation contained in paragraph 35.

36. Aviva admits that on or about October 30, 2009, the Trustee tendered premiums owed on the Policy using a payment method — a starter check — which Aviva could not accept pursuant to obligations of federal law. By way of further answer, Aviva states the Trustee's tender of a starter check did not satisfy the Trustee's obligations to prevent the lapse of the Policy.

37. Aviva denies the allegations contained in paragraph 37.

38. Aviva denies the allegations contained in paragraph 38.

39. Aviva denies the allegations contained in paragraph 39.

40. Aviva admits the parties to this case have adverse legal interests.

41. Aviva denies the allegations contained in paragraph 41.

42. Aviva admits the allegations contained in paragraph 42.

43. Aviva admits the allegations contained in paragraph 43.

WHEREFORE Aviva Life and Annuity Company respectfully requests that the Court confirm that Aviva Life and Annuity Company Policy No. B05020454 properly lapsed pursuant to its terms and 11 U.S.C. § 108(b) and issue a declaratory judgment that the Policy is lapsed and of no legal effect, and granting Aviva Life and Annuity Company such other and further relief as the Court deems just and proper.

Dated: March 19, 2010

AVIVA LIFE AND ANNUITY COMPANY,

By: /s/ Craig M. Bargher

Craig M. Bargher

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SERVICE LIST

I hereby certify that a true and correct copy of the Answer to Complaint of Aviva Life and Annuity Company's was served upon the following via the delivery methods described below on this **19th** day of **March, 2010**. The documents delivered by U.S. Mail were mailed in a duly addressed, envelope and deposited in the U.S. mail reciprocal at 303 W. Madison Street, Chicago, Illinois, on or before the hour of 5:00 p.m. this **19th** day of **March, 2010**.

	Via Delivery Method		Via Delivery Method
Sandra Rasnak Richard Friedman Office of the U.S. Trustee 219 S. Dearborn Street, Room 873 Chicago, Illinois 60604-1702 sandra.rasnak@usdoj.gov richard.c.friedman@usdoj.gov	Court's ECF notice	David T. B. Audley Carly Jones Chapman & Cutler 111 W. Monroe Street, Suite 1600 Chicago, Illinois 60603 audley@chapman.com cmjones@chapman.com	Court's ECF Notice
Michael L. Gesas Thomas P. Yardley Miriam R. Stein Kevin H. Morse Arnstein & Lehr LLP 120 S. Riverside Plaza, Suite 1200 Chicago, Illinois 60606 mlgesas@arnstein.com mrstein@arnstein.com tpyardley@arnstein.com khmorse@arnstein.com	Court's ECF notice	William S. Hackney Brian M. Graham Bryan Minier Ean L. Kryska SMITHAMUNDSEN LLC 150 N. Michigan Ave., Suite 3300 Chicago, Illinois 60601 whackney@salawus.com bgraham@salawus.com bminier@salawus.com ekryska@saluwus.com	Court's ECF notice
Brian A. Audette David M. Neff Perkins Coie LLP 131 South Dearborn, Suite 1700 Chicago, IL 60603 baudette@perkinscoie.com dneff@perkinscoie.com	Court's ECF notice	Jonathan R. Buck Perkins Coie LLP 131 South Dearborn, Suite 1700 Chicago, IL 60603 jbuck@perkinscoie.com	U.S. Mail
Hal F. Morris Assistant Attorney General Managing Attorney – Bankruptcy Regulatory Section Texas Attorney General's Office P.O. Box 12548, Midwest Capitol Austin, Texas 78711-2548 hal.morris@oag.state.tx.us	U.S. Mail	Deborah J. Fritsche Lori A. Hood Johnson, Trent, West & Taylor, LLP 919 Milam, Suite 1700 Houston, Texas 77002 dfritsche@johnsontrent.com lhood@johnsontrent.com	Court's ECF notice

	Via Delivery Method		Via Delivery Method
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Gordon E. Gouveia Shaw Gussis Fishman Glantz Wolfson & Towbin 321 N. Clark Street, Suite 800 Chicago, Illinois 60654 ggouveia@shawgussis.com	Court's ECF Notice	David S. Gragg Langley & Banack, Inc. Trinity Plaza II, 9th Floor 745 E. Mulberry San Antonio, Texas 78212-3166 dgragg@langleybanack.com	U.S. Mail
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Mary Fabre LeVine Blalock Walters Held & Johnson PA 802 11th Street West Bradenton, Florida 34205 mlevine@blalockwalters.com	U.S Mail	Emily S. Gottlieb The Garden City Group, Inc. 190 S. LaSalle Street, Suite 1520 Chicago, Illinois 60603 emily.gottlieb@gardencitygroup.com	Court's ECF notice
Edith Stuart Phillips Assistant Attorney General Bankruptcy & Collections Division P.O. Box 12548, MC-008 Austin, Texas 78711-2548 stuart.phillips@aog.state.tx.us	Court's ECF notice	Marc H. Schneider Waldron & Schneider LLP University Park 15150 Middlebrook Drive Houston, Texas 77058 marcs@ws-law.com	U.S. Mail
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David E. Grochocinski David P. Lloyd Ariane Holtschlag Grochocinski, Grochocinski & Lloyd 1900 Ravinia Place Orland Park, Illinois 60462 lawyers@ggl-law.com	Court's ECF notice	Daniel T. Graham Neil M. Rosenbaum Funkhouser, Vegosen, Liebman & Dunn, Ltd. 55 W. Monroe, Suite 2300 Chicago, Illinois 60603 dgraham@fvldlaw.com nrosenbaum@fvldlaw.com	Court's ECF Notice

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