

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:

LIFE FUND, 5.1, LLC et al.

§ Chapter 11
§ Case No. 09 B 32672
§
§ Administratively consolidating case nos.
§ Case No. 09 B 32674
§ Case No. 09 B 32676
§ Case No. 09 B 32677
§ Case No. 09 B 32678
§ Case No. 09 B 32679
§ Case No. 09 B 32681

Debtors

§
§
§ Judge A. Benjamin Goldgar

**GROUP OF INVESTORS' OBJECTIONS TO
TRUSTEE'S WITNESS AND EXHIBIT LISTS**

**(For evidentiary hearing to be heard January 13, 2010, regarding
Trustee's Objection to November 13, 2009)**

COMES NOW counsel for a group of investor/creditors¹ ("Group of Investors/Creditors") filing this, their Objections to Trustee's Witness and Exhibits and states as follows:

I.

BACKGROUND

1. The contested matter before the Court is the certification of an election of a Chapter 11 Trustee, Jeff J. Marwil, by the creditors at a properly noticed meeting of the creditors for the sole and specific purpose to elect a (new) trustee on November 13, 2009 (the "Election"). The matter comes to the Court based upon a Report of Disputed Chapter 11 Trustee Election ("Election Report", docket no. 189) to which Election Report, Group of Investors moved the

¹ Specifically identified in Second Supplemental and Amended Bankruptcy Rule 2019 Verified Statement for Group of Investor/creditors ("Docket No. 177").

Court, pursuant to 11 U.S.C. §1104 and Fed. R. Bank. P. 2007.1, to resolve the disputed election. (“Motion for Resolution”, docket no. 191). Written objections were filed after the actual Election by Patrick M. Collins, the current trustee (“Collins”) (docket no. 180), which objections were joined in by creditors Parlette (docket no. 182), and creditor Dr. Giger (docket no. 183). Separate objections were filed by the U.S. Trustee for the Northern District of Illinois (docket no. 214), which were joined in by the Texas State Securities Board (docket no. 216) (collectively, the “Objections”).² Group of Investors Responded to the Objections (docket no. 239) with affirmation by its clients of their votes for Marwil, among other evidence, (exhibits to docket no. 239).

2. Only Collins filed a witness and exhibit list (the “Objectors Witness and Exhibit Lists”) pursuant to the Court’s Final Pretrial Order (docket no. 250). This pleading is Group of Investors’ evidentiary objections to Objectors Witness and Exhibit Lists.

II.

GENERAL OBJECTIONS OF WAIVER, RELEVANCY AND/OR FAILURE TO LAY PROPER PREDICATE

3. Group of Investors makes several general, global evidentiary objections to Objectors Witness and Exhibit Lists³. First, all Objections to the Election are waived unless having been made at the time of the Election. The Election Report should be the record to document exactly what objections were made and preserved.⁴ The Report appears to state only

² Group of Investors are proceeding in this contested matter as the respondent to Objectors to the Election. Objectors bare the burden to prove their objections and invalidate a presumptively valid election of Marwil.

³ Since the exhibits did not identify the purpose for which they are offered, it is impossible to be more specific with these general objections. Therefore, subject to clarification by the Objectors, Group of Investors objects to all Objectors’ exhibits (Tr. Ex. 1-34) on the general grounds of waiver, relevancy, and/or failure to lay a predicate.

⁴ Both the Report (docket no. 189) and the Objection of the US Trustee (docket no. 214) are signed by Richard C. Friedman. His dual roles with conflicting responsibilities taint both the Report which the Court and all parties in interest expect to be impartial, and makes suspect the motivation and validity of the objection. On information and

two objections. One objection is to the specific votes for two investors.⁵ A second blanket objection, per the Report was made at the Election by counsel for Collins, contests “the validity of the proxies of the Group of Investors, because their attorneys’ solicitation was unauthorized under B.R. 2006(d)(4) [sic], and because they failed to substantially comply with Fed. R. Bankr. P. 2006(e), (notwithstanding their attempt to do so on November 12, 2009, docket no. 176).” Report at 6, para. 10.

4. As to this second objection, no specific proxies are identified for disallowance. Therefore, Group of Investors object to any and all evidence offered for objections other than the objections stated above, as reported to have been made at the Election in the Report. Also, Group of Investors objects to an improper blanket objection on the issue of solicitation. Further, since Objectors failed to identify the allegedly improper proxies, Group of Investors asserts that Objectors have waived their objections to the vote of any specific claims. Additionally and alternatively, Group of Investors demands evidence offered identify the vote to which the evidence is relevant. If this can be done at the start of evidence, the Court can allow Group of Investors a blanket evidentiary objection.

belief, Collins was selected by Mr. Friedman and if replaced by a vote of the creditors, perhaps is seen by Mr. Friedman as a challenge to his judgment. Group of Investors certainly hope that their choice is not being subjected to this petty a motivation. However, being the impartial officer to conduct the election and to make an objection at the same time is a classic example of injustice. Our system of justice does not allow one person to be both judge and prosecutor in the exact same proceeding. In deed, Mr. Friedman exhibited uncalled for, open hostility toward counsel for Group of Investors at the 341 meeting when the request of an election to replace Collins became known.

⁵ Report at 2, para. 6, objections to the “participation” of [Group of Investors assume this means to the votes of] Consolidate Wealth Management, LLC, John E. Spalding and Laura H. Spalding [who are creditors who filed proofs of claims and to which no objection has been made to the actual proofs of claims]. Therefore, the objection is simply to the vote of the claim on grounds that these creditors are “insiders with interests materially adverse to the estate.” If these claims or votes are removed, the result still does not change. **Nonetheless, the Objectors must prove that these two creditors are “insiders with interests materially adverse to the estate.”** And only evidence on this point is relevant and only to the disallowance of two claims that will not change the Election result. Therefore, Group of Investors objects to this complete area of inquiry as not relevant to the Election and not in the best interest of the estate (wasting money). Disallowance of these two claims will not change the Election results. Further, Group of Investors objects to evidence outside this area of inquiry as being not relevant to the Election; specifically, allegations of a conflict of interest for counsel for the Group of Investors is completely outside the area of relevant inquiry.

III.

OBJECTIONS TO SPECIFIC EXHIBITS

5. Subject to the general objections describe above and further clarification by Objectors, Group of Investors make the following objections to each of Tr. Ex.'s 1 through 34.

6. Tr. Ex. 1:

i Objection, relevancy. There is no identification as to which Election objection this exhibit relates to.

i Objection, failure to lay proper predicate.

i Objection, authenticity. These appear to be altered copies from the proper, authenticating source. Each document is marked with "confidential" on the bottom. This appears to be something added after, if at all, provided from the authenticating source. Further, Group of Investors have not agreed to any sort of protective order if this information is of a personal nature and could violate the rights of persons whose information this is. On information and belief, this information is likely from the Texas State Securities Board and violates chapter 28 of the Texas Securities Code, if this information was gathered in an investigation unrelated to this case, or even if gathered in relation to this case.

7. Tr. Ex. 2:

i Objection, violation of the Federal Rules of Procedure and Federal Bankruptcy Rules of Procedure as to protection of personal information. There is personal information on this exhibit which should have been redacted. Group of Investors bares no responsibility for the release of personal information.

- i Objection authenticity. These appear to be altered copies from the proper, authenticating source. Each document is marked with “confidential” on the bottom. This appears to be something added after, if at all, provided from the authenticating source. Further, Group of Investors have not agreed to any sort of protective order if this information is of a personal nature and could violate the rights of persons whose information this is.
 - i Objection, relevancy.
- 8. Tr. Ex. 3:
 - i Objection, relevancy.
 - i Objection, authentication. Document on its face says it can not be use for proof of standing of the entity.
 - i Objection, failure to lay predicate for a relevant fact in dispute.
- 9. Tr. Ex. 4:
 - i Objection, authenticity. The document purports (bottom right hand corner) to be from 9/18/2006. How could this Trustee have obtained this document on that date and where has the document been since?
 - i Objection, failure to lay predicate for a relevant fact in dispute.
- 10. Tr. Ex. 5:
 - i Objection, authenticity. Document has been altered; selective information removed. Further, there is handwritten material which would need to be authenticated to be offered for the truth of the matter.
 - i Objection, relevancy.

11. Tr. Ex. 6:

i Objection, authenticity. Document has been altered; both information removed and added.

i Objection, relevancy.

12. Tr. Ex. 7:

i Objection, authenticity. These appear to be altered copies from the proper, authenticating source. Each document is marked with “confidential” on the bottom. This appears to be something added after, if at all, provided from the authenticating source. Further, Group of Investors have not agreed to any sort of protective order if this information is of a personal nature and could violate the rights of persons whose information this is.

i Objection, relevancy.

13. Tr. Ex. 8:

i Objection, authenticity. Document has been altered; selective information removed. Further, there is hand written material which would need to be authenticated to be offered for the truth of the matter.

i Objection, relevancy.

14. Tr. Ex. 9:

i Objection, authenticity. Document has been altered; selective information removed. Further, there is handwritten material which would need to be authenticated to be offered for the truth of the matter. These appear to be altered copies from the proper, authenticating source. Each document is marked with “confidential” on the bottom. This appears to be something

added after, if at all, provided from the authenticating source. Further, Group of Investors have not agreed to any sort of protective order if this information is of a personal nature and could violate the rights of persons whose information this is.

i Objection, relevancy.

15. Tr. Ex. 10:

i Objection, authentication. If this is a filed proof of claim, there is nothing to indicate if was in fact filed. No file stamp. If offered to prove it is a filed proof of claim, it is not authenticated as such.

i Objection, relevancy.

16. Tr. Ex. 11:

i Objection, relevancy.

17. Tr. Ex. 12:

i Objection, authentication.

i Objection, relevancy.

18. Tr. Ex. 13:

i Objection, relevancy.

i Objection, authentication.

19. Tr. Ex. 14:

i Objection, relevancy.

i Objection, authentication.

20. Tr. Ex. 15:
- i Objection, authentication. Incomplete document also, indicates there were three pages and there is only one offered (optional completeness).
 - i Objection relevancy.
21. Tr. Ex. 16:
- i Objection, authentication. Incomplete document also, indicates there were three pages and there is only one offered.
 - i Objection, relevancy.
22. Tr. Ex. 17:
- i Objection, authentication. Incomplete document also, indicates there were two pages and there is only one offered.
 - i Objection, relevancy.
23. Tr. Ex. 18:
- i Objection, hearsay, as taken at a proceeding at which Group of Investors was not able to attend and cross examine the witness.
 - i Objection, relevancy.
 - i Objection, incomplete. The exhibits referenced are not included.
 - i Objection. There is personal information in the transcript the release of which violates the Federal Rules of Civil Procedure and the Bankruptcy Rules on disclosure of personal information. Additionally, on information and belief, this information is likely from the Texas State Securities Board and violates chapter 28 of the Texas Securities Code, if this information was gathered in an

investigation unrelated to this case, or even if gathered in relation to this case, and released in this manner in this proceeding.

24. Tr. Ex. 19:

- i Objection, hearsay, as taken at a proceeding at which Group of Investors was not able to attend and cross-examine the witness.
- i Objection, relevancy.
- i Objection, incomplete. The exhibits referenced are not included.
- i Objection. There is personal information in the transcript the release of which violates the Federal Rules of Civil Procedure and the Bankruptcy Rules on disclosure of personal information. Additionally, on information and belief, this information is likely from the Texas State Securities Board and violates chapter 28 of the Texas Securities Code, if this information was gathered in an investigation unrelated to this case, or even if gathered in relation to this case, and released in this manner in this proceeding.

25. Tr. Ex. 20:

- i Objection, authenticity.
- i Objection, relevancy.
- i Objection, completeness.

26. Tr. Ex. 21:

- i Objection, document is incomplete. Referenced is an Exhibit A which is not attached, if it was in fact attached in the complete filing of docket no. 9 in this Case.

27. Tr. Ex. 22:
- i Objection, relevancy.
28. Tr. Ex. 23:
- i Objection, relevancy.
29. Tr. Ex. 24:
- i Objection, authentication. All letters from the firm were addressed to individual people. None is shown on this exhibit.
 - i Objection, completeness, to whom was the letter allegedly sent?
30. Tr. Ex. 25:
- i Objection, authentication. Firm letter was one page. This document indicates there were two pages.
 - i Objection, completeness. Where is the other page?
31. Tr. Ex. 26:
- i Objection, authentication.
 - i Objection, completeness. This exhibit shows this document to be page 3 of 16. Where are the other documents?
32. Tr. Ex. 27:
- i Objection, hearsay, if offered for the truth of the matters asserted. Group of Investors are entitled to cross examine witness who has not established she is not otherwise available.
 - i Objections, relevancy and standing.
33. Tr. Ex. 28: No objection except general objections relating to the entire proceeding.

34. Tr. Ex. 29: No objection except general objections relating to the entire proceeding.

35. Tr. Ex. 30: No objection except general objections relating to the entire proceeding.

36. Tr. Ex. 31:

i Objection, authenticity.

i Objection, hearsay.

i Objection, relevancy.

37. Tr. Ex. 32:

i Objection, authenticity.

i Objection, hearsay.

i Objection, relevancy.

38. Tr. Ex. 33:

39. Objection, authenticity.

40. Objection, hearsay.

41. Objection, relevancy.

42. Tr. Ex. 34:

i Objection, Rule of Completeness (Rule of Evidence 106). The document as filed had more than the one exhibit attached in this exhibit offered. No Objection if offered with all exhibits to docket no. 239 filed in this Case.

Dated: January 11, 2010.

GROUP OF INVESTORS/CREDITORS

Respectfully submitted,

By: s/ Deborah J. Fritsche
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via electronic transmission on this 11th day of January, 2010 to the following:

See attached Service List

s/ Deborah J. Fritsche
DEBORAH J. FRITSCHE

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