

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

In re: ) Chapter 11  
)  
LIFE FUND, 5.1, LLC, et. al. ) Case No. 09-32672  
) (Jointly Administered)  
)  
Debtor. ) Hon. A. Benjamin Goldgar

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **Wednesday, January 27, 2010 at 9:30 a.m.** or as soon thereafter as counsel may be heard, we will appear before the Honorable A. Benjamin Goldgar, or any other judge sitting in his stead, in Courtroom 613 of the Dirksen Federal Building, 219 S. Dearborn St., Chicago, Illinois, and present *Trustee's Motion for Authority to Take Rule 2004 Examinations of Certain Insureds*, at which time and place you may appear as you see fit.

Dated: January 20, 2010

**PATRICK M. COLLINS**, not individually, but solely in his capacity as chapter 11 Trustee of the Debtors' estates

By: /s/ David M. Neff

PERKINS COIE LLP  
David M. Neff (ARDC # 6190202)  
Brian A. Audette (ARDC # 6277056)  
131 S. Dearborn Street, Suite 1700  
Chicago, Illinois 60603-5559  
Telephone: (312) 324-8400  
Facsimile: (312) 324-9400

*Counsel to the Trustee*

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

In re: ) Chapter 11  
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LIFE FUND 5.1, LLC, et. al., ) Case No. 09-32672  
) (Jointly Administered)  
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Debtors. ) Hon. A. Benjamin Goldgar

**TRUSTEE'S MOTION FOR AUTHORITY TO TAKE RULE 2004  
EXAMINATIONS OF CERTAIN INSURED**

Patrick M. Collins, not individually, but solely in his capacity as chapter 11 trustee (the "Trustee") of the bankruptcy estates of Life Fund 5.1, LLC (Case No. 09-32672), Life Fund 5.2, LLC (Case No. 09-32674), A&O Life Fund, LLC (Case No. 09-32678), Houston Tanglewood Partners, LLC (Case No. 09-32676), A&O Resource Management, Ltd. (Case No. 09-32677), A&O Bonded Life Assets, LLC (Case No. 09-32679), and A&O Bonded Life Settlement, LLC (Case No. 09-32681) (collectively, the "Debtors"), requests the entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 1106(a)(3) and Federal Rule of Bankruptcy Procedure 2004, authorizing the Trustee to issue a subpoenas to, and conduct examinations of, certain individuals insured under life insurance policies owned by one or more of the Debtors (hereinafter, the "Insureds"). In support of this motion, the Trustee states as follows:

**JURISDICTION**

1. This Court exercises jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these bankruptcy cases and this motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 1106(a)(3) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **BACKGROUND**

3. On September 2, 2009, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. On September 16, 2009, the Court entered an Order Directing Joint Administration of Related Chapter 11 Cases, which directed joint administration of the Debtors' cases under Case No. 09-32672.

5. On September 16, 2009, the Court entered an Order Granting U.S. Trustee's Motion to Appoint a Chapter 11 Trustee.

6. On September 21, 2009, the Office of the United States Trustee appointed the Trustee as chapter 11 trustee of the Debtors' estates.

### **THE DEBTORS' BUSINESS AND THE INSUREDS' CONNECTIONS WITH THE DEBTORS**

7. The Debtors operated in the "life settlement industry" and the Debtors used funds solicited and obtained from hundreds of individual investors to purchase life insurance policies (the "Policies"). Other than claims and potential causes of action against third parties, the Policies are the primary assets of the Debtors' estates.

8. Although the Debtors purchased and still own interests in numerous Policies, to date the Trustee has been unable to locate certain documents related to some of the Policies, including documents that the Trustee is informed and believes are part of virtually all life settlement transactions. Such documents include, for example, releases by the insureds for medical records (including authorizations for the future release of medical records of the underlying insured) and

limited powers of attorney. In fact, continuing contact with insureds is a staple of the life settlement industry and the transactions in which life settlement assets are bought and sold.

9. Neither Ideal Settlements—through which the majority of Policies were purchased—nor the Debtors or their agents, have provided records related to the original life settlement transactions (between, for example, the insured and Ideal Settlements) or documents that necessarily would have been executed by the insureds at the time they sold their interests in the Policies. Ideal Settlements has thus far claimed that such documents were either transferred to the Debtors or shredded at the time of sale, and the Debtors (and their former principals) have likewise denied possession of such documents. The Trustee has also been unable to locate original settlement documentation in the files and materials collected from the Debtors' files.

10. On November 11, 2009, the Trustee moved for entry of an order authorizing the retention and employment of Melville Capital as life settlement broker to the Trustee effective *nun pro tunc* to November 2, 2009. Dkt. # 173. As set forth in the original motion, Melville Capital's anticipated services were to include, *inter alia*, the following: (a) reviewing and analyzing the Policies and advising the Trustee of his rights under the Policies; (b) assisting the Trustee with obtaining updated life expectancy reports for applicable Policies; (c) implementing a strategy to market the Policies and expose them to the marketplace; (d) assisting the Trustee with negotiating with potential purchasers of the Policies; (e) assisting the Trustee with reviewing and analyzing bids and/or offers for the purchase of any one or more of the Policies; and (f) communicating with insurers, medical providers, and other third parties whose cooperation is necessary to consummate one or more sales of the Policies.

11. On November 30, 2009, the Court granted the Trustee's motion to retain Melville Capital. Dkt # 197. Since that time, Melville Capital has assisted the Trustee in the very manner

anticipated in the original filing, and its activities have included contacting both insurance companies and underlying insureds in an attempt to update the Debtors' information regarding the in-force Policies. Specifically, Melville has contacted or attempted to contact 26 individuals who are insured under Policies that have aggregate face values in excess of \$100 million, in an attempt to facilitate cooperation between such insureds and the Debtors. Cooperation of the Insureds is crucial, and will greatly improve the Debtors' ability to evaluate and maximize the values of the Policies.

12. Approximately half of the individuals contacted have agreed to cooperate with Melville Capital and the Trustee. The remainder, however, have either (i) failed to respond to repeated attempted contacts by Melville Capital; (ii) flatly refused to provide any cooperation to the Trustee or Melville Capital; (iii) referred inquiries to third parties (e.g., an agent); or (iv) are considering whether they will cooperate. Unfortunately, the "uncooperative" Insureds are connected to Policies that have face values of over \$60 million.<sup>1</sup>

13. Information regarding each Insured is one of the most critical components in appropriately evaluating a Policy, including its potential sale value and whether premiums should be paid. Specifically, one of the fundamental drivers of each Policy's value is the anticipated life expectancy ("LE") of the insured. There are a number of vendors in the life settlement industry that will review medical records and provide anticipated LE certificates that are then used by buyers in the market, along with other information, to evaluate potential bids for a particular Policy. Without updated medical information, however, reliable LEs are unavailable.

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<sup>1</sup> In order to reasonably limit the publication of the names and addresses of the Insureds referenced herein, the Trustee has omitted such details from the Motion itself. Notice of this Motion has been served on all of the referenced Insureds, however, and proof of such service will be provided to the Court.

14. The Trustee is informed and believes, based on exemplar documents he has located related to Ideal Settlement contracts, that each Insured executed releases of medical information that were ongoing, and which extended to purchasers of the Policies (such as the Debtors). Moreover, the Trustee is informed and believes that each Insured also agreed to a continuing obligation to execute such other documents as might be necessary to facilitate transfers of the Policies and obtain current medical information. As a result of how Debtors obtained the Policies and the manner in which the Debtors or others retained records, however, the Trustee does not have specific documents that reflect such obligations for each particular Insured.

15. Additional information from and about the Insureds is a fundamental component of the Trustee's evaluation of the Policies, decisions related to premium obligations on the Policies and, given the scope of policies held by Insureds that to date have been uncooperative, the ultimate course that these proceedings should take. Indeed, Melville Capital has advised the Trustee that without additional information from and regarding the Insureds, it is highly likely that the Policies connected to the Insureds will be unsaleable in the life settlement market. Moreover, if additional information regarding the Insureds cannot be obtained, the Trustee will necessarily be restricted in the information upon which he can make decisions for the benefit of the Debtors' estates.

#### **RELIEF REQUESTED AND BASIS FOR SUCH RELIEF**

16. The Trustee requests that this Court enter an order authorizing, but not directing, the Trustee to issue and serve a Subpoena for Rule 2004 Examination upon the Insureds, who are eleven individuals.<sup>2</sup>

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<sup>2</sup> The Trustee and Melville Capital are in ongoing conversations with a number of these individuals and thus the number of Insureds for which Rule 2004 examinations are requested may be decreased by the time of the hearing. In addition, the Trustee has omitted two individuals from this Motion in anticipation of their expected cooperation.

17. Section 1106 of the Bankruptcy Code provides that "[a] trustee shall . . . investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1106(a)(3).

18. Section 105(a) of the Bankruptcy Code empowers this Court with the authority to assist the Trustee in carrying out his duties, providing that this Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a).

19. Consistent with the Court's broad authority under section 105(a) to enforce the Bankruptcy Code, and in furtherance of the Trustee's duties under section 1106(a) of the Bankruptcy Code, Bankruptcy Rule 2004 provides that "[o]n motion of a party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). The scope of this examination may relate, among other things, to "the acts, conduct, or property or to the liabilities and the financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." Fed. R. Bankr. P. 2004(b). In addition, in a case under chapter 11, the examination may also include "any other matter relevant to the case or to the formulation of a plan." *Id.*

20. The attendance for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Bankruptcy Rule 9016, which incorporates Federal Rule of Civil Procedure 45 into cases under the Bankruptcy Code, and as an officer of this Court, an attorney may issue and sign a subpoena on behalf of the Court. *See* Fed. R. Bankr. P. 2004(c).

21. It is generally accepted that "the scope of a Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted." *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985). Because "the primary purpose of a Rule 2004 examination is to permit the trustee to quickly ascertain the extent and location of the estate's assets," courts have acknowledged that Bankruptcy Rule 2004 allows for a "fishing expedition" not limited to the debtor's agents but extending to creditors and third parties who have had dealings with the debtor, without the limits as to scope placed upon examinations under the Federal Rules of Civil Procedure. *Id.*; *see also In re Enron Corp.*, 281 B.R. 386, 840 (Bankr. S.D.N.Y. 2002) (recognizing that "Rule 2004 examinations are broad and unfettered and in the nature of fishing expeditions"); *In re Handy Andy Home Improvement Ctrs., Inc.*, 199 B.R. 376, 380 (Bankr. N.D. Ill. 1996) (noting that "a Rule 2004 examination is a broad 'fishing expedition' into a party's affairs for the purpose of obtaining information relevant to the administration of the bankruptcy estate").

22. Because the Trustee believes that (i) additional information from the Insureds is necessary to realize meaningful value from the Policies, the primary assets of the Debtors' estates; (ii) when they originally relinquished their interest in the Policies the Insureds would have released medical records and committed to future cooperation<sup>3</sup>; and (iii) the Insureds have important information concerning the nature and value of the Debtors' assets and therefore the appropriate course forward in the administration of these proceedings, the Trustee desires to examine the Insureds pursuant to Bankruptcy Rule 2004. It is critical for the Trustee to gather information from Insureds in order to fully evaluate, and ultimately realize, the value of the Policies.

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<sup>3</sup> The Trustee is informed and believes that each of the Insureds was provided consideration for their respective Policies, and that in many cases the payments likely were significant.

23. The use of Bankruptcy Rule 2004 in this instance is especially appropriate given the status and interests of the Debtors' estates. The Trustee must obtain information from the Insureds to continue his investigation into, among other things, the status of the Policies, the viability of the Policies, and the value of the Policies. The Trustee believes that the Insureds have information necessary to assist the Trustee with carrying out the duties imposed upon him by the Bankruptcy Code. Bankruptcy Rule 2004 therefore provides the means by which the Trustee can obtain the critical information he needs to administer the Debtors' estates.

24. Accordingly, the Court should grant the Trustee authority to issue and serve a Subpoena for Rule 2004 Examination upon the Insureds. In addition, the Court should allow, without further notice and order of the Court, the Trustee to issue and serve subpoenas for medical records of the Insureds upon any entities or individuals that are identified by the Insureds (or records of the Insureds) as providing medical services to any of the Insureds.

#### **NOTICE**

25. The Trustee has served notice of this motion and a copy of this motion upon: (a) Office of the United States Trustee; (b) the Debtors' counsel; (c) all parties that have appeared and/or requested notice in the Debtors' cases; (d) the Insureds; and (e) a consolidated list of the Debtors' 30 largest investors. Given the relief requested herein, the Trustee submits that such notice is sufficient under the circumstances.

WHEREFORE, the Trustee respectfully requests the entry of an order (a) authorizing, but not compelling, the Trustee to conduct discovery of the Insureds by issuing and serving a Subpoena for Rule 2004 Examination upon the Insureds; (b) authorizing, but not compelling, the Trustee to issue and serve subpoenas for medical records of the Insureds upon any entities or individuals that are identified by the Insureds (or records of the Insureds) as providing medical services to any of the Insureds, without further order or notice; and (c) granting the Trustee such other and further relief the Court deems just and proper.

Dated: January 20, 2010

Respectfully submitted,

**PATRICK M. COLLINS**, not individually,  
but solely in his capacity as chapter 11  
Trustee of the Debtors' estates

By: /s/ David M. Neff

**PERKINS COIE LLP**

David M. Neff (ARDC #6190202)

Brian A. Audette (ARDC #6277056)

131 S. Dearborn St., Ste. 1700

Chicago, IL 60603

Tel: (312) 324-8400

Fax: (312) 324-9400

[dneff@perkinscoie.com](mailto:dneff@perkinscoie.com)

[baudette@perkinscoie.com](mailto:baudette@perkinscoie.com)

*Counsel to the Trustee*

**CERTIFICATE OF SERVICE**

David M. Neff, an attorney, certifies that on January 20, 2010 he caused a copy of the *Notice of Motion and Trustee's Motion for Authority to Take Rule 2004 Examination of Certain Insureds* to be served on the parties listed on the attached Service List as so indicated.

/s/ David M. Neff \_\_\_\_\_

**SERVICE LIST**

	Delivery Method		Delivery Method
Sandra Rasnak Richard Friedman Office of the U.S. Trustee 219 S. Dearborn St., Room 873 Chicago, IL 60604-1702 <a href="mailto:sandra.rasnak@usdoj.gov">sandra.rasnak@usdoj.gov</a> <a href="mailto:richard.c.friedman@usdoj.gov">richard.c.friedman@usdoj.gov</a>	U.S. Mail	Brian M. Graham Bryan Minier Ean L. Kryska SMITHAMUNDSEN LLC 150 N. Michigan Ave., Suite 3300 Chicago, IL 60601 <a href="mailto:bgraham@salawus.com">bgraham@salawus.com</a> <a href="mailto:bminier@salawus.com">bminier@salawus.com</a> <a href="mailto:ekryska@salawus.com">ekryska@salawus.com</a>	Court's ECF notice
David T. B. Audley Carly Jones Chapman & Cutler 111 W. Monroe Street, Suite 1600 Chicago, IL 60603 <a href="mailto:audley@chapman.com">audley@chapman.com</a> <a href="mailto:cmjones@chapman.com">cmjones@chapman.com</a>	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, IL 60606 <a href="mailto:mlgesas@arnstein.com">mlgesas@arnstein.com</a> <a href="mailto:mrstein@arnstein.com">mrstein@arnstein.com</a> <a href="mailto:tpyardley@arnstein.com">tpyardley@arnstein.com</a> <a href="mailto:khmorse@arnstein.com">khmorse@arnstein.com</a>	Court's ECF notice
Deborah J. Fritsche Lori A. Hood Johnson, Trent, West & Taylor, LLP 919 Milam, Suite 1700 Houston, TX 77002 <a href="mailto:dfritsche@johnsontrent.com">dfritsche@johnsontrent.com</a> <a href="mailto:lhood@johnsontrent.com">lhood@johnsontrent.com</a>	Court's ECF notice	Tony L. Visage Deana F. Tillotson Bracewell & Giuliani LLP 711 Louisiana St., Suite 2300 Houston, TX 77002-2770 <a href="mailto:tony.visage@bglp.com">tony.visage@bglp.com</a> <a href="mailto:deana.tillotson@bglp.com">deana.tillotson@bglp.com</a>	U.S. Mail
Arlene N. Gelman Michael M. Eidelman Vedder Price P.C. 222 N. LaSalle St., Suite 2600 Chicago, IL 60601 <a href="mailto:agelman@vedderprice.com">agelman@vedderprice.com</a> <a href="mailto:meidelman@vedderprice.com">meidelman@vedderprice.com</a>	Court's ECF notice	David S. Gragg Langley & Banack, Inc. Trinity Plaza II, 9th Floor 745 E. Mulberry San Antonio, TX 78212-3166 <a href="mailto:dgragg@langleybanack.com">dgragg@langleybanack.com</a>	U.S. Mail
Zala Forizs Forizs & Dogali, P.A. 4301 Anchor Plaza Pkwy., Ste 300 Tampa, FL 33634 <a href="mailto:zforizs@forizs-dogali.com">zforizs@forizs-dogali.com</a>	U.S. Mail	Janet Douvas Chafin Jackson Walker LLP 1401 McKinney, Suite 1900 Houston, TX 77010 <a href="mailto:jchafin@jw.com">jchafin@jw.com</a>	U.S. Mail

	Delivery Method		Delivery Method
Daniel T. Graham Neil M. Rosenbaum Funkhouser, Vegosen, Liebman & Dunn, Ltd. 55 W. Monroe, Suite 2300 Chicago, IL 60603 <a href="mailto:dgraham@fvldlaw.com">dgraham@fvldlaw.com</a> <a href="mailto:nrosenbaum@fvldlaw.com">nrosenbaum@fvldlaw.com</a>	Court's ECF notice	Gordon E. Gouveia Shaw Gussis Fishman Glantz Wolfson & Towbin 321 N. Clark Street, Suite 800 Chicago, IL 60654 <a href="mailto:ggouveia@shawgussis.com">ggouveia@shawgussis.com</a>	Court's ECF notice
Patricia A. Navin 32 Mill Road Hampton, NH 03842 <a href="mailto:navin32@comcast.net">navin32@comcast.net</a>	U.S. Mail	Nancy J. Groppi 5837 Electric Avenue Berkeley, IL 60163-1522 <a href="mailto:ngroppi@adt.com">ngroppi@adt.com</a>	U.S. Mail
Edith Stuart Phillips Assistant Attorney General Bankruptcy & Collections Division P.O. Box 12548, MC-008 Austin, TX 78711-2548 <a href="mailto:stuart.phillips@oag.state.tx.us">stuart.phillips@oag.state.tx.us</a>	Court's ECF notice	Hal F. Morris Assistant Attorney General Managing Attorney - Bankruptcy Regulatory Section Texas Attorney General's Office P.O. Box 12548, MC-008 Austin, TX 78711-2548 <a href="mailto:hal.morris@oag.state.tx.us">hal.morris@oag.state.tx.us</a>	U.S. Mail
Emily S. Gottlieb The Garden City Group, Inc. 190 S. LaSalle St., Suite 1520 Chicago, Illinois 60603 <a href="mailto:emily.gottlieb@gardencitygroup.com">emily.gottlieb@gardencitygroup.com</a>	Court's ECF notice	Mary Fabre LeVine Blalock Walters Held & Johnson PA 802 11th Street West Bradenton, FL 34205 <a href="mailto:mlevine@blalockwalters.com">mlevine@blalockwalters.com</a>	U.S. Mail
David E. Grochocinski David P. Lloyd Ariane Holtschlag Grochocinski, Grochocinski & Lloyd 1900 Ravinia Place Orland Park, IL 60462 <a href="mailto:lawyers@ggl-law.com">lawyers@ggl-law.com</a>	Court's ECF notice	Erin E. Jones Jones Morris LLP 2700 Post Oak, Suite 1120 Houston, TX 77056 <a href="mailto:erin@jonesmorris.com">erin@jonesmorris.com</a>	Court's ECF notice
Judith T. Romano Phelan Hallinan & Schmieg, LLP 1617 John F. Kennedy Blvd. #1400 Philadelphia, PA 19103 <a href="mailto:judith.romano@fedphe.com">judith.romano@fedphe.com</a>	U.S. Mail	Paige E. Barr Katten Muchin Rosenman LLP 525 W. Monroe Street Chicago, IL 60661 <a href="mailto:paige.barr@kattenlaw.com">paige.barr@kattenlaw.com</a>	Court's ECF notice
Mark E. Leipold Gould & Ratner LLP 222 N. LaSalle St., Suite 800 Chicago, IL 60601 <a href="mailto:mleipold@gouldratner.com">mleipold@gouldratner.com</a>	Court's ECF notice	Marc H. Schneider Waldron & Schneider LLP University Park 15150 Middlebrook Drive Houston, TX 77058 <a href="mailto:marcs@ws-law.com">marcs@ws-law.com</a>	U.S. Mail

	Delivery Method		Delivery Method
Toby Galloway U.S. Securities & Exchange Comm. Fort Worth Regional Office 801 Cherry Street, 19th Floor Fort Worth, TX 76102	U.S. Mail	Russell E. Mackert 5555 West Loop South, Suite 605 Houston, TX 77401 <a href="mailto:rmackert1@aol.com">rmackert1@aol.com</a>	U.S. Mail

**The following served via U.S. Mail**

Aguilar, Jorge and Amelia JTWROS 2310 Engeling Road Rosenburg, TX 77471	Cohn, Barry H. 3010 Powderhorn Point Richmond, TX 77802	Curtis, Blaine W. & Claudia B. JTIC 1910 London Plane Road Salt Lake City, UT 84124
Bush, Jon M. 8324 N.W. Lakeview Drive Parkville, MO 64152	Danielowicz, David 1913B Nantuckett Houston, TX 77057	Elizabeth A. Bryant Living Trust 316 Cedar Valley Road Delafield, WI 53018
Dabelic, Ivo 326 Gleneagles Drive Friendswood, TX 77546	Geiger, Charles C. 265 Claremont Avenue Elmhurst, IL 60126	Giger, James J. and Therese M. 1675 Estate Circle Naperville, IL 60565
Foulis, Robert F. 773 CR439 Laward, TX 77970	Gibson, Evelyn L. 2309 Bristol Bryan, TX 77802	McCoy Family First Ltd. Partnership 1701 Jennifer Circle Corsicana, TX 75110
Gerdes, Adolph 8823 Tanager Street Houston, TX 77036	McNally, Georgette H. 1812 Locklaine Pasadena, TX 77502	Parsons, Doug 15 Crescent Falls Ct. Spring, TX 77381
Harper, Carrie J. & Joseph M. JTWRO 10633 Johnson Road Petersburg, VA 23805	Mozley, Loretta 24806 Amond Orchard Ln Katy, TX 77494	Self, Mark 1464 Drake Lane Lancaster, PA 17601
Madden, Charles D. 5600 Tennyson, Suite #155 Plano, Texas 75024	Pyron, Dina A. 2924 Georgetown Houston, TX 77005	Smith, Dorothy A. 318 N. Lind Hillside, IL 60162
McKellom Revocable Marital Trust c/o Consolidated Wealth Mgmt. 17202 North Bridge Ct. Spring, TX 77379	Sirk, Fay M. 9705 Kingussle Lane Richmond, TX 23236	Taylor, Tad S. 2625 N. Highway 360 Apt. 621 Grand Prairie, TX 75050
Motiff, Jan 723 Chantilly Rue Green Bay, WI 54301	Illinois Department of Revenue Bankruptcy Section 100 W. Randolph, Level 7-425 Chicago, IL 60606	Internal Revenue Service Centralized Insolvency Operations P.O. Box 21126 Philadelphia, PA 19114-0326

Shannon, Edward J., Jr. 1865 Old Willow Road Northfield, IL 60093	Secretary of State Securities Dept. Jefferson Terrace, Suite 300A 300 W. Jefferson St. Springfield, IL 62702-5041	Texas State Securities Board Houston Division 1919 N. Loop West, Suite 300 Houston, TX 77008-1354
Spalding, John E and Laura H. 1561 Kirby Drive Houston, TX 77019-3301	Secretary of State Securities Dept. Chicago Division 69 W. Washington St., Suite 1220 Chicago, IL 60602-3048	WIEC Properties, LLC 15521 Edgewood Drive Baxter, MN 56401

And additional individuals (the “Insureds”) that will be identified for the Court.

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

In re: ) Chapter 11  
)  
LIFE FUND 5.1, LLC, et. al., ) Case No. 09-32672  
) (Jointly Administered)  
)  
Debtors. ) Hon. A. Benjamin Goldgar

**ORDER AUTHORIZING TRUSTEE TO TAKE RULE 2004  
EXAMINATIONS OF CERTAIN INSUREDS**

THIS MATTER COMING TO BE HEARD upon the Trustee's Motion for Authority to Take Rule 2004 Examinations of Certain Insureds (the "Motion");<sup>1</sup> the Court having found that notice of the Motion was proper and sufficient under the circumstances; and the Court having jurisdiction over this core proceeding; and the Court otherwise being fully advised in the premises,

IT IS HEREBY ORDERED that:

1. The Motion is granted.
2. The Trustee is authorized, but not directed, to issue and serve subpoenas for Rule 2004 examinations upon those insureds identified to the court (the "Insureds"), without prejudice to the Trustee's right to seek further Court authority to issue additional subpoenas.
3. The Trustee is authorized, but not directed, to issue and serve subpoenas for medical records of the Insureds upon any entities or individuals that are identified by the Insureds (or records of the Insureds) as providing medical services to any of the Insureds.

Dated: January \_\_\_\_\_, 2010

ENTER:

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.