

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
)	
LIFE FUND 5.1, LLC, <i>et al.</i> , ¹)	Case No. 09 B 32672
)	
Debtors.)	Jointly Administered

ORDER AUTHORIZING TRUSTEE TO EXECUTE AND PERFORM UNDER SETTLEMENT AGREEMENT WITH AVIVA LIFE AND ANNUITY COMPANY

Upon consideration of Trustee's Motion to Compromise and Settle Adversary Proceeding With Aviva Life and Annuity Company (the "Motion"),² this Court having considered the Motion and otherwise being fully advised in the premises; the Court finding and determining that: (A) it has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (B) venue is proper in this district pursuant to 28 U.S.C. § 1409, (C) this is a core proceeding pursuant to 28 U.S.C. § 157 (b), (D) granting the relief requested in the Motion is in the best interests of the Debtors, the Estates, and other parties-in-interest, (E) cause exists to limit notice as requested in the Motion, and (F) appropriate notice and opportunity for a hearing on the Motion was provided; and for sufficient cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted in its entirety.
2. The Trustee is authorized to execute and perform the Settlement Agreement.
3. This order ~~shall be~~^{is} effective immediately upon entry by the Court. CFE

¹ The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

² Each capitalized term used but not defined herein shall have the meaning ascribed thereto in the Motion.

~~4. The Court shall retain jurisdiction to hear and determine any controversy arising from the implementation of this order.~~

ENTERED:

Dated: 14 JUL, 2010


UNITED STATES BANKRUPTCY JUDGE

SETTLEMENT AGREEMENT

This settlement agreement (the "Settlement Agreement") is entered into as of the 28th day of May, 2010, by and between the Chapter 11 estates of Houston Tanglewood Partners, LLC ("Houston Tanglewood"), A&O Resource Management, Ltd. ("A&O Management"), Life Fund 5.1, LLC ("5.1"), Life Fund 5.2, LLC ("5.2"), A&O Life Fund, LLC ("A&O Fund"), A&O Bonded Life Settlement, LLC ("A&O Bonded"), and A&O Bonded Life Assets, LLC ("A&O Life Bonded"), and together with Houston Tanglewood, A&O Management, 5.1, 5.2, A&O Fund, A&O Bonded, each a "Debtor" and, in groups or collectively, the "Debtors") and Aviva Life and Annuity Company ("Aviva") (Aviva, the Trustee (as defined below) and each of the Debtors, each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, on June 20, 2003, Aviva issued a universal life insurance policy, designated as Policy No. B05020454 with a face amount of \$5,000,000 (the "Policy").

WHEREAS, on September 2, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (11 U.S.C. §§ 101, *et. seq.*, the "Bankruptcy Code").

WHEREAS, the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Court") entered an order directing that the Debtors' Chapter 11 cases (the "Chapter 11 Cases") be jointly administered under Case No. 09-32672 assigned to Debtor 5.1.

WHEREAS, on September 21, 2009, the Court approved the appointment of Patrick Collins as Chapter 11 trustee of the Debtors' estates (collectively, the "Estates") and on March 8, 2010, after Jeff Marwil was elected Chapter 11 trustee by creditors of the Debtors, the Court

entered an order certifying Mr. Marwil's election as Chapter 11 trustee ("Trustee") of the Estates.

WHEREAS, Houston Tanglewood is the owner of the Policy.

WHEREAS, prior to the Petition Date, one or more of the Debtors have paid certain premiums under the Policy.

WHEREAS, Aviva asserts that the Policy lapsed for failure of the owner of the Policy to timely pay premiums under the Policy.

WHEREAS, the Trustee asserts that Policy premiums were timely paid and, on January 20, 2010, then-trustee Collins filed an adversary complaint naming Aviva as defendant (the "Adversary Complaint"), initiating in the Court Adversary Proceeding No. 10 A 104 (the "Adversary Proceeding") and seeking, among other things, a declaration that the Policy remains in full force and effect.

WHEREAS, Aviva has answered the Adversary Complaint and asserts that it has valid defenses to the Adversary Complaint.

WHEREAS, Aviva believes that it has grounds to rescind the Policy, and intended to assert an action for rescission in the Adversary Proceeding if not for this Settlement Agreement.

WHEREAS, the Parties desire to avoid the uncertainties and expense of continued litigation with respect to the Adversary Complaint and any and all potential litigation and disputes regarding other claims or causes of action relating to the Policy that (1) any Debtor has or may have against Aviva and (2) Aviva has or may have against any Debtor, in each case for acts occurring prior to the date of this Settlement Agreement, and to settle and compromise the Adversary Proceeding and other actual, potential or unknown claims and causes of action related

in any way to the Policy on the terms set forth below, without any Party admitting any liability therefor.

WHEREAS, the Trustee and Aviva each have consulted with their respective counsel in connection with the matters related to the subject matter of this Settlement Agreement.

WHEREAS, each of the Parties agrees to bear its own costs and expenses, including but not limited to attorney, paralegal and expert witness fees, arising out of or related to this Settlement Agreement, including, without limitation, the Adversary Proceeding and any other disputed matters that are subject to and resolved by this Settlement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals Incorporated.** The recitals, definitions and prefatory phrases and paragraphs set forth above are hereby incorporated in full, and made a part of, this Settlement Agreement.

2. **Approval of the Settlement Agreement.** As soon as practicable after execution of this Settlement Agreement by the Trustee and Aviva, the Trustee shall file with the Court in the Chapter 11 Cases, and seek timely approval of, a motion seeking approval of the Settlement Agreement and authority to perform under the Settlement Agreement.

3. **Settlement Payment and Rescission of Policy.** Within five (5) business days after a Final Order of the Court (as defined below) in the Chapter 11 Cases authorizing the Trustee to execute and perform under this Settlement Agreement, Aviva shall rescind the Policy and pay \$539,039.63 (the "Settlement Amount") to the Trustee on behalf of the estate of Houston Tanglewood via wire transfer using wire instructions provided to Aviva by the Trustee. For purposes of this Settlement Agreement, "Final Order" means an order of the Court, as

entered on the docket of the Court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order either: (a) no objection was filed prior to its entry; or (b) if an objection was filed and overruled, the time to appeal any such objection overruled by the Court has expired and as to which no appeal or motion for stay or other relief from such order was filed or, if filed, remains pending. For purposes of clarity, the possibility that a motion may be filed pursuant to rules 9023 or 9024 of the Federal Rules of Bankruptcy Procedure beyond the time to appeal shall not mean that an order is not a final order. The Trustee and Aviva hereby stipulate that the Settlement Amount is equal to the amount of premiums previously paid on the Policy.

4. **Dismissal of the Adversary Proceeding.** Within five (5) business days after receipt of the Settlement Amount, the Trustee shall cause the Adversary Complaint to be dismissed with prejudice and with each party thereto to bear its own costs and attorneys' fees.

5. **Survival of Settlement Agreement.** All of the terms and conditions of this Settlement Agreement as well as any rights and benefits inuring to the benefit of the Parties shall survive the Estates' receipt of the Settlement Amount from Aviva as specified in paragraph three (3) of this Settlement Agreement.

6. **Waiver/Release of Claims by Estate Parties.** Subject to and conditioned upon (a) an order of the Court in the Chapter 11 Cases approving the Settlement Agreement becoming a Final Order, and (b) receipt by the Trustee of the Settlement Amount from Aviva in the manner described in paragraph three (3) above, the Debtors and Estates, their collective predecessors, successors and assigns, and the Trustee and his agents, professionals, employees, legal representatives, predecessors, heirs, successors and assigns, each in its capacity as such, and each of the foregoing (collectively, the "Estate Parties"), shall be conclusively deemed to have

unconditionally, absolutely and irrevocably released Aviva and its officers, agents, professionals, employees, legal representatives, predecessors, heirs, agents, successors and assigns, each in its capacity as such, and each of them (collectively, the "Aviva Parties") with respect to all manners of action, causes of action, suits, debts, accounts, promises, warranties, damages and consequential damages, demands, agreements, costs, expenses, claims or demands whatsoever of any kind or nature ("Claims"), whether known or unknown, liquidated or unliquidated, disputed or undisputed, contingent, inchoate or matured, in law or in equity, including but not limited to, those claims set forth in the Adversary Complaint, which the Estate Parties have or ever had against the Aviva Parties related to or arising out of the Policy (including any claim for death benefits thereunder), provided, however, that nothing contained in this paragraph shall be deemed or construed to be a covenant, release, waiver or discharge of the terms and conditions of this Settlement Agreement.

7. **Waiver/Release of Claims by Aviva Parties.** Subject to and conditioned upon an order of the Court in the Chapter 11 Cases approving the Settlement Agreement becoming a Final Order, the Aviva Parties shall be conclusively deemed to have unconditionally, absolutely and irrevocably released the Estate Parties with respect to all Claims, whether known or unknown, liquidated or unliquidated, disputed or undisputed, contingent, inchoate or matured, in law or in equity, including but not limited to, any counter claims or defenses that were raised or could have been raised in any response to the Adversary Complaint, which the Aviva Parties have or ever had against the Estate Parties related to or arising out of the Policy, provided, however, that nothing contained in this paragraph shall be deemed or construed to be a covenant, release, waiver or discharge of the terms and conditions of this Settlement Agreement.

8. **Waiver of California Civil Code 1542.** The Parties each hereby acknowledge that states may have laws that generally provide as follows and specifically waive the benefit of such laws, including, without limitation, California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding this statute, or any other similar state law, the Trustee, on behalf of the Estate Parties, and Aviva, on behalf of the Aviva Parties, each respectively, agrees to releases of the Claims described herein and as set forth in paragraphs six (6) and seven (7) above, in each case which Claims may be unknown or unsuspected at the time of the execution of this Settlement Agreement.

9. **Jurisdiction.** The Parties agree that the Court shall retain exclusive jurisdiction to the fullest extent possible over the interpretation and enforcement of this Settlement Agreement and over any dispute between them in any way related to this Settlement Agreement. The Parties further agree that this Settlement Agreement shall be construed and governed by the laws of the State of Illinois irrespective of its choice of law rules.

10. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Estate Parties and the Aviva Parties.

11. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the Parties as to the subject matter hereof and is the final and complete expression of their intent. The undersigned acknowledge that there are no communications or understandings, oral or written, contrary, different or which in any way restrict this Settlement Agreement. The undersigned further acknowledge that all prior agreements, communications, and understandings

within the scope of the subject matter of this Settlement Agreement are, upon execution of this Settlement Agreement, superseded, null and void. This Settlement Agreement can only be changed, modified or discharged if consented to in a writing executed by the Trustee and an officer of Aviva and, if applicable with respect to the Debtors, approved by order of the Court.

12. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, by facsimile, electronic mail or other means acceptable to the Parties, with each counterpart to be considered an original portion of this Settlement Agreement.

13. **Segregation.** In the event that any one or more provisions contained in this Settlement Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. **Advice of Counsel.** The Parties acknowledge that each Party has made an investigation of the facts pertaining to the Settlement Agreement provided herein and all matters pertaining thereto, as it deems necessary. The Parties further acknowledge: (a) each Party is represented by experienced counsel; (b) each Party has read this Settlement Agreement and understands its contents; and (c) each Party is entering into this Settlement Agreement voluntarily and without duress, and with a full understanding of its terms. The Parties agree that no Party shall later seek to overturn or invalidate any aspect of this Settlement Agreement on grounds of unconscionability, oppression or any similar reason.

15. **No Admission of Liability.** Nothing contained in this Settlement Agreement shall be deemed to be an admission of any liability or lack of merit in any claim, by any Party, of any matter, claim or defense previously in dispute. The Settlement Agreement shall have no

precedential value, and shall not be used in any proceeding or litigation as evidence of the Parties' respective rights, duties or obligations under any policy of insurance.

16. Ultimate Expression of Intent. Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true. Nevertheless, it is the intention of the Parties to fully, finally and forever settle and release any and all controversies among themselves, and all claims relative thereto, that do now exist or heretofore have existed between them. In furtherance of such intention, each release given herein shall be and remain in effect as a full and complete release of all released matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

17. Authority. The Trustee, on behalf of the Estates and the Estate Parties, and the individual executing this Settlement Agreement on behalf of Aviva and the Aviva Parties, respectively, represent and warrant that they have the authority to execute, deliver and perform this Settlement Agreement on behalf of such entities and that when executed by the undersigned and after entry of a final order of the Court in the Chapter 11 Cases authorizing the Trustee to execute and perform under the Settlement Agreement, the Estate Parties and the Aviva Parties, respectively, shall be bound by the terms hereunder.

18. Costs. Each Party shall bear its own costs and attorneys' fees in connection with the preparation, negotiation, review and documentation of this Settlement Agreement and with respect to all matters subject to this Settlement Agreement.

19. Notices. Any and all notices required or permitted under this Settlement Agreement and any and all correspondence shall be in writing and shall be personally delivered or mailed by registered or certified mail, return receipt requested, or by overnight delivery to the

Parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notice to Estate Parties:

Proskauer Rose LLP
70 W. Madison St.
Suite 3800
Chicago, IL 60602
Attn: Jeremy T. Stillings
Telephone: (312) 962-3529
Facsimile: (312) 962-3551
Email: jstillings@proskauer.com

Notice to Aviva Parties:

Nyemaster Goode, P.C.
700 Walnut Street
Suite 1600
Des Moines, IA 50309
Attn: John T. Clendenin
Telephone: (515) 283-3138
Facsimile: (515) 283-8045
Email: jtc@nyemaster.com

IN WITNESS WHEREOF, the Parties, each by persons duly authorized, have caused the Settlement Agreement to be executed as of the day and year first written above.

**HOUSTON TANGLEWOOD PARTNERS, AVIVA LIFE AND ANNUITY COMPANY
LLC
A&O RESOURCE MANAGEMENT,
LTD.
LIFE FUND 5.1, LLC
LIFE FUND 5.2, LLC
A&O LIFE FUND, LLC
A&O BONDED LIFE SETTLEMENT,
LLC; and
A&O BONDED LIFE ASSETS, LLC**

X: _____

Jeff Marwil, not individually, but solely in his capacity as Trustee

Dated: _____

X: Erik H. Askelsen

Erik H. Askelsen
Vice President and Senior Counsel

Dated: 6-18-10