

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 |
| |) | Hearing Date: September 15, 2010 |
| |) | Hearing Time: 9:30 a.m. |

**SUPPLEMENT TO AND REVISED PROPOSED ORDER GRANTING
MOTION TO COMPROMISE INTERPLEADER COMPLAINT**

The above captioned Debtors (the “Debtors”), by Jeff Marwil, not individually, but solely in his capacity as chapter 11 trustee (the “Trustee”) to the Debtors, respectfully: (1) supplement (this “Supplement”) their motion [Docket No. 458] (the “Motion”²) for entry of an order pursuant to Bankruptcy Rule 9019 and section 105 of the Bankruptcy Code approving the Debtors’ settlement with the Colson Trustee; and (2) submit the revised proposed order granting the Motion attached hereto as **Exhibit A** (the “Revised Proposed Order”). In support of the Supplement and the Revised Proposed Order, the Trustee respectfully represents as follows:

1. The Debtors currently are defendants in two interpleader adversary complaints pending before the Mississippi Bankruptcy Court.

2. In the adversary subject to the Motion (the “Wachovia Interpleader”), Wachovia interplead approximately \$1,500,000 in funds it held in various accounts for Colson, Prestige Title, and related entities. In the Motion, the Debtors request authority to agree to their dismissal from the Wachovia Interpleader in exchange for allowance of a \$4,600,000 allowed general

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.

unsecured claim in Colson's chapter 7 case. The basis for that settlement is that Life Fund 5.1, LLC and the other entities that comprised the Debtors prior to the Petition Date and certain of their affiliates (collectively, "Life Funds") transferred \$4,600,000 to a Prestige Title account at Wachovia, which funds were to be held in escrow by Prestige Title, but which instead were comingled with other funds of Colson, likely converted, and generally used in violation of Prestige Title's contractual obligations to Life Funds.

3. The genesis of adversary proceeding 10 A 5002 currently pending before the Mississippi Bankruptcy Court (the "Regions Interpleader"³) is a complaint for interpleader that Regions Bank ("Regions Bank") filed against Prestige Title, Colson and several other parties. The subject of the Regions Interpleader is approximately \$300,000 of funds that Regions Bank previously held in accounts of Prestige Title, Advanced Title, and other Colson controlled entities. These funds are now under the control of the Mississippi Bankruptcy Court.

4. Life Funds successfully intervened in the Regions Interpleader and, on October 12, 2009, filed an answer (the "Answer") to the Regions Interpleader that asserted a right to all of the interplead funds. A true and accurate copy of the Answer is attached hereto as **Exhibit B**. The basis for Life Funds' intervention in the Regions Interpleader was that Life Funds sought the return of \$4,600,000 transferred to Prestige Title. (Answer at ¶3.)

5. The Trustee believes that the \$4,600,000 transferred to Prestige Title that forms the basis for the Answer and the Debtors' current involvement in the Regions Interpleader is the same \$4,600,000 that forms the basis for the Debtors' involvement in, and proposed settlement

³ Similar to the Wachovia Interpleader, the Regions Interpleader (1) originally was filed in a Mississippi state court, subsequently removed to the Mississippi District Court, and again removed to the Mississippi Bankruptcy Court, and (2) involves multiple defendants who were originally named by Regions and who subsequently intervened. Those details are not relevant to the inquiry before this court and, for brevity's sake, not presented here.

of, the Wachovia Interpleader. Upon information and belief, the transfers at issue in both interpleaders were two transfers of a total of \$4,600,000 to a Prestige Title account at Wachovia bank on February 29, 2008. This is consistent with the statements made in, and certain documents attached to, Life Funds' pleadings in both the Wachovia Interpleader and the Regions Interpleader. The Trustee is not aware of any other basis for Life Funds' claim to the funds subject to the Regions Interpleader.

6. The Trustee submits that the Debtors' proposed settlement with the Colson Trustee resolves the Debtors' interests in the Wachovia Interpleader, and, to the extent necessary, the Debtors' interests in the Regions Interpleader. The Trustee notes that the Colson Trustee is attempting to obtain the funds subject to the Regions Interpleader for the benefit of Colson's creditors in the same way that she is attempting to obtain the funds subject to the Wachovia Interpleader for the benefit of Colson's creditors (as explained in greater detail in the Motion). The Trustee further submits that one \$4,600,000 claim against the Colson chapter 7 estate is sufficient to represent the Debtors' claims against the funds interplead in both the Wachovia Interpleader and the Regions Interpleader.

7. Based on the foregoing, subject to approval of the Motion and consummation of the settlement approved thereby, the Trustee anticipates agreeing to the dismissal of the Debtors from the Regions Interpleader. It is unclear that the Trustee's agreement to dismissal of the Debtors from the Regions Interpleader constitutes a settlement or compromise subject to Bankruptcy Rule 9019. However, out of an abundance of caution, the Trustee requests that this Court authorize the Trustee to agree to dismissal of the Debtors from the Regions Interpleader in connection with the Motion, subject to approval of the Motion and consummation of the settlement approved thereby.

8. A copy of this Supplement and the Revised Proposed Order has been served upon: (a) counsel to the Colson Trustee; (b) counsel to the United States Trustee; and (c) all parties requesting notice in the Chapter 11 Cases. The Trustee also has posted this Motion to the web site established for the benefit of investors of the Debtors and others in the Chapter 11 Cases. The Trustee believes that this notice is appropriate in light of the large numbers of creditors who actively monitor the website and the expense that the Trustee would incur to provide notice to additional parties via United States Mail or other means, and under the circumstances, the Trustee submits that the notice provided is adequate. The Trustee requests that the Court find that notice of this Supplement is sufficient.

WHEREFORE, the Trustee respectfully requests that the Court enter the Revised Proposed Order granting the Motion and grant such other and further relief as the Court deems just and proper.

Dated: August 26, 2010

Respectfully submitted,

**LIFE FUND 5.1, LLC
LIFE FUND 5.2, LLC
A&O LIFE FUND, LLC
A&O RESOURCE MANAGEMENT, LTD.
A&O BONDED LIFE SETTLEMENTS, LLC
A&O BONDED LIFE ASSETS, LLC; and
HOUSTON TANGLEWOOD PARTNERS, LLC**

By JEFF MARWIL, not individually, but solely in his capacity as their Chapter 11 Trustee

By: /s/ Jeremy T. Stillings

Marc E. Rosenthal (ARDC #06202850)
Jeremy T. Stillings (ARDC# 06279868)
PROSKAUER ROSE LLP
70 West Madison, Suite 3800
Chicago, Illinois 60602-4342
(312) 962-3550
(312) 962-3551 (Fax)

Counsel to the Chapter 11 Trustee

EXHIBIT A

Revised Proposed Order

attached hereto

**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 COMPROMISE OF INTERPLEADER COMPLAINT

Upon consideration of **Motion to Compromise Interpleader Complaint** [Docket 458] (the "Motion"),² this Court having considered the Motion and the supplement (the "Supplement") thereto filed by the Trustee 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 (as modified by the Supplement) is in the best interests of the Debtors, their 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 otherwise 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 compromise the Complaint on the following terms:
(a) the Debtors will agree to be dismissed from the Complaint without prejudice; (b) in exchange therefore, the Debtors will receive an allowed claim in Colson's chapter 7 bankruptcy case in the

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

amount of \$4,600,000, which claim shall not be subject to objection, reduction or disallowance; and (c) neither the Trustee nor the Debtors are releasing any claims or causes of action, specifically, but without limitation, any claims or causes of action against Prestige Title or Colson.

3. The Trustee is authorized to agree to dismissal of the Debtors without prejudice from adversary proceeding 10 A 5002 currently pending before the Mississippi Bankruptcy Court.

4. The Trustee is authorized to execute documents and otherwise take actions necessary to document, implement or effectuate the relief granted herein.

5. This order shall be effective immediately upon entry by the Court.

ENTERED:

Dated: _____, 2010

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Answer

attached hereto

#12

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

REGIONS BANK

PLAINTIFF

VERSUS

CAUSE NO. C2402-09-631(1)

PRESTIGE TITLE, INC., ET AL

DEFENDANTS

**ANSWER TO COMPLAINT FOR INTERPLEADER, DECLARATORY JUDGMENT
AND OTHER RELATED RELIEF,**

AND

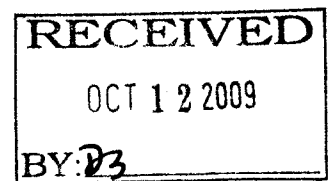
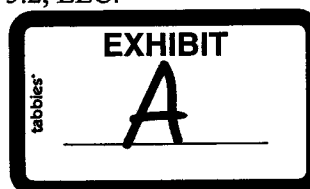
**CLAIM AGAINST FUNDS FILED BY
A&O BONDED LIFE ASSETS MANAGEMENT, ET AL.**¹

COME NOW A & O Bonded Life Assets Management, et al. (hereafter collectively referred to as "A & O"), and submit their Answer to Regions Bank's (hereafter "Regions") Complaint for Interpleader, Declaratory Judgment And Other Related Relief (hereafter "Complaint") and Claim Against Funds and state:

FIRST DEFENSE

A & O hereby reserves all other 12(b) defenses, and as discovery in this matter continues, A & O will assert any other appropriate defenses when it has a good faith basis for doing so.

¹ The Answering defendants herein are: A&O Bonded Life Assets Management, LLC; A&O Bonded Life Assets, LLC; A&O Bonded Life Settlements Management, LLC; A&O Bonded Life Settlements, LLC; A&O Capital Management, LLC; A&O Life Fund Management, LLC; A&O Life Fund, LLC; A&O Life Funds Management, LLC; A&O Life Funds, LLC; A&O Resource Management, Ltd.; Houston Tanglewood Partners, LLC; Life Fund 5.1 Management, LLC; Life Fund 5.1, LLC; Life Fund 5.2 Management, LLC; and Life Fund 5.2, LLC.



SECOND DEFENSE

A & O affirmatively asserts that it is entitled to the funds from the Regions Bank accounts which were deposited into the registry of the Court. A & O further affirmatively asserts that it is entitled to all of the interpleaded proceeds, together with interest from the date of the deposit.

THIRD DEFENSE

A & O affirmatively asserts that Regions has wrongfully removed funds belonging to A & O and its investors and has deposited said funds into the registry of the Court. A & O is not responsible for any damages that stem from Regions' refusal to release funds belonging to A & O.

FOURTH DEFENSE

A & O reserves the right to assert counter-claims and cross-claims against the appropriate parties.

FIFTH DEFENSE

Regions failed to satisfy the requirements set forth in Miss. R. Civ. P. 22.

SIXTH DEFENSE

A & O answers the specific allegations in the Complaint, paragraph by paragraph, as follows:

1.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 8 of Regions' Complaint, and therefore denies the allegations.

2.

A & O admits that the various A & O entities listed in Paragraphs 9 through 22 of Regions' complaint are citizens of states other than Mississippi, with their principal places of business outside the state of Mississippi. The remaining allegations of paragraphs 9 through 22 are denied.

3.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 23 through 26 of Regions' Complaint, and therefore denies the allegations. A & O specifically denies that any person or entity other than the A & O entities has any beneficial interest in any of the proceeds of the interpleaded funds at issue herein, as alleged in paragraphs 25 and 26 of Regions' Complaint.

4.

A & O denies the allegations of Paragraphs 27 and 28 of Regions' Complaint.

5.

A & O denies the allegations of Paragraphs 29 and 30 of Regions' Complaint.

6.

A & O admits the allegations of Paragraphs 31 through 33 of Regions' Complaint.

7.

The allegations of Paragraph 34 of Regions' Complaint are admitted on information and belief.

8.

A & O is without knowledge or information sufficient to form a belief as to the truth

of the allegations of Paragraph 35 of Regions' Complaint, and therefore denies the allegations.

9.

The allegations of Paragraph 36 of Regions' Complaint are admitted on information and belief.

10.

A & O submits that the federal court order referenced in Paragraph 37 of Regions' Complaint speaks for itself. A & O further submits that any findings of fact contained in said order are neither controlling nor binding upon this Court. To the extent the allegations of Paragraph 37 of Regions' Complaint may be deemed to allege that any entity or person other than the A & O entities have any claim to the funds deposited in the registry of the court, said allegations are denied.

11.

A & O submits that the federal court order referenced in Paragraph 38 of Regions' Complaint speaks for itself. A & O further submits that any findings of fact contained in said order are neither controlling nor binding upon this Court. To the extent the allegations of Paragraph 38 of Regions' Complaint may be deemed to allege that any entity or person other than the A & O entities have any claim to the funds deposited in the registry of the court, said allegations are denied.

12.

A & O denies the allegations of Paragraph 39 of Regions' Complaint.

13.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of Regions' Complaint, and therefore denies the allegations.

14.

A & O admits that it has a beneficial interest in the funds deposited in the registry of the court. To the extent the allegations of Paragraph 41 of Regions' Complaint allege that any entity or person other than the A & O entities have any claim to the funds deposited in the registry of the court, said allegations are denied.

15.

The allegations of Paragraph 42 of Regions' Complaint are admitted on information and belief.

16.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 43 through 46 of Regions' Complaint, and therefore denies the allegations.

17.

The allegations of paragraph 47 of Regions' Complaint do not require a response.

18.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48 of Regions' complaint, and therefore denies the allegations. However, A & O admits that Prestige Title had accounts with Regions Bank,

and that A & O has a beneficial interest in said accounts.

19.

A & O submits that the federal court pleadings referenced in Paragraphs 49 and 50 of Regions' Complaint speak for themselves. A & O further submits that any findings of fact made by the federal court in said suit are neither controlling nor binding upon this Court. To the extent the allegations of Paragraphs 49 and 50 of Regions' Complaint may be deemed to allege that any entity or person other than the A & O entities have any claim to the funds deposited in the registry of the court, said allegations are denied.

20.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51 of Regions' Complaint, and therefore denies the allegations.

21.

A & O denies the necessity of depositing the referenced funds with registry of the court as alleged in Paragraph 52 of Regions' Complaint, and reiterates that it is entitled to all monies contained in the referenced Regions Bank accounts.

22.

The allegations of paragraph 53 of Regions' Complaint do not require a response.

23.

The allegations of Paragraph 54 of Regions' Complaint are admitted on information and belief. However, A & O denies that any entity or person other than the A & O entities is entitled to claim any portion of the funds deposited with the registry of the court.

24.

A & O denies the allegations of Paragraph 55 of Regions' Complaint.

25.

The allegations of paragraph 56 of Regions' Complaint do not require a response.

26.

A & O is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 of Regions' Complaint, and therefore denies the allegations.

27.

A & O denies the allegations of the last, unnumbered Paragraph of Regions' Complaint, which begins "WHEREFORE," and reiterates that the A & O entities are entitled to all monies deposited by Regions Bank with the registry of the court.

CLAIM AGAINST INTERPLEADED FUNDS

AND NOW, having answered the Complaint for Interpleader, Declaratory Judgment and Other Related Relief, A & O makes the following claim against the interpleaded funds:

1. A & O Bonded Life Assets Management, et al.² are the beneficial owners of certain life insurance policies (the "Policies") insuring the lives of various individuals. As the Policies mature, A & O distributes the funds realized from the relevant policies to numerous individual investors. However, for the Policies to remain in force until maturity, periodic premiums must be paid on the Policies. In order to ensure proper and timely payment of premiums for the benefit of their investors; A & O entered into an Escrow

² See footnote 1 for a complete list of entities included.

Management Services Agreement (the "Agreement") with Prestige Title on February 15, 2008. A true and correct copy of the Agreement is attached hereto as Exhibit A.

2. Under the terms of the Agreement, Prestige Title acted as escrow agent for A & O and accepted deposits of funds from A & O, from which funds Prestige Title agreed to pay premiums on the Policies as they came due, and to discharge other duties in connection with the Policies for a period of six (6) years. In exchange, Prestige Title was paid a flat fee One Hundred Fifty Thousand Dollars (\$150,000.00) and was required to increase the liability limits on its "errors and omissions" insurance and its "officers and directors" insurance during the term of the Agreement to \$10,000,000. See Exhibit A.

3. In accordance with the Agreement A & O did, in fact, transfer funds to Prestige Title to use as its escrow agent for the purpose of paying premiums on the Policies as they came due. Specifically, on February 29, 2008, A & O transferred Four Million Six Hundred Thousand Dollars (**\$4,600,000.00**) to Prestige Title to use in its capacity as escrow agent for A & O.³ True and correct copies of the wire transfer orders establishing the deposit of said monies are attached hereto as Exhibit B.

6. However, in February 2009, A & O was alerted to potential irregularities in Prestige Title's handling of the funds A & O had deposited under the Agreement, and A & O subsequently began making inquiries to assure that the Agreement was being properly performed, that all Policies remained in force, and that all Policy premiums were being paid when due. In the course of their investigation, A & O discovered that suit had been filed

³ The Complaint incorrectly alleges that only Three Million Six Hundred Thousand Dollars (\$3,600,000.00) was deposited with Prestige Title. Compare Complaint paragraph 30 with Exhibit B attached hereto.

against Prestige Title and others, and that the funds it had deposited with Prestige Title had been sequestered. Further, A & O discovered that because of the sequestration of its funds, premiums for several of A & O's Policies had not been paid when due, which placed them in immediate danger of lapsing.

7. As a result of Regions' freezing of the accounts at issue and the instant interpleader action, Prestige Title has insufficient funds to meet its obligation of timely paying the periodic premiums on the Policies as they come due.

8. A & O has a legal right to the funds that A & O deposited with Prestige Title. Additionally, A & O has an interest in ensuring that all of the funds it deposited with Prestige Title are properly accounted for and disbursed to the proper insurance companies in order to protect its investors' rights as well as its own.

WHEREFORE, having fully answered the allegations of the Complaint filed against it and having stated the basis for its claim to the interpleaded funds, A & O denies that is liable to Regions Bank in any amount or manner whatsoever and prays that its claim to all of the interpleaded funds be granted, that it be awarded its costs and for such other and further relief to which it may be entitled.

Respectfully submitted this 6th day of October, 2009.

Respectfully submitted

SPYRIDON, PALERMO & DORNAN, L.L.C.
Attorneys for

A&O Bonded Life Assets Management, LLC
A&O Bonded Life Assets, LLC
A&O Bonded Life Settlements Management, LLC
Management, LLC
A&O Bonded Life Settlements, LLC

A&O Capital Management, LLC (Texas Company),
A&O Capital Management, LLC (Illinois Company),
A&O Life Fund Management, LLC
A&O Life Fund, LLC
A&O Life Funds Management, LLC
A&O Life Funds, LLC
A&O Resource Management, Ltd.
Houston Tanglewood Partners, LLC
Life Fund 5.1 Management, LLC
Life Fund 5.1, LLC
Life Fund 5.2 Management, LLC
Life Fund 5.2, LLC

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*by John Herke, of
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AND

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