

**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 B 32672  
) (Jointly Administered)  
Debtors. )  
) Judge A. Benjamin Goldgar  
) Hearing Date: October 7, 2009  
) Hearing Time: 9:30 a.m.

**NOTICE OF ROUTINE MOTION**

**PLEASE TAKE NOTICE** that on October 7, 2009 at 9:30 a.m. or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable A. Benjamin Goldgar, or any other Judge sitting in his stead, in Courtroom 613 of the United States Courthouse, 219 South Dearborn Street, in Chicago, Illinois, and shall then and there present **GROUP OF INVESTORS' MOTION FOR AUTHORITY TO CONDUCT EXAMINATION PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**, a copy of which is attached hereto and is hereby served upon you.

**THE APPENDED PROPOSED ORDER MAY BE ENTERED BY THE JUDGE WITHOUT PRESENTMENT IN OPEN COURT UNLESS A PARTY IN INTEREST NOTIFIES THE JUDGE OF AN OBJECTION HERETO.**

Dated: October 5, 2009

GROUP OF INVESTORS (see Motion, footnote 1)

By: /s/ Brian M. Graham  
One of the attorneys for the Group of Investors

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**CERTIFICATE OF SERVICE**

I, Brian M. Graham, an attorney, do hereby certify that I caused true and correct copies of the attached Notice of Motion and Group of Investors' Motion for Authority to Conduct Examination Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to be served upon the attached service list via the Court's CM/ECF electronic filing system and/or via email, as indicated below, on this the 5<sup>th</sup> day of October, 2009.

/s/ Brian M. Graham

**SERVICE LIST**

**VIA CM/ECF**

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(Trustee)

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**Living Trust**  
(Interested Party)

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(Interested Party)

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(Debtor)

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(U.S. Trustee, Region 11)

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Office of the Texas Attorney  
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*(Attorney)*

**Tony L Visage**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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In Re:	)	Chapter 11
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LIFE FUND, 5.1, LLC, <i>et al.</i> ;	)	Case No. 09 B 32672
	)	(Jointly Administered)
Debtors.	)	
	)	Judge A. Benjamin Goldgar
	)	Hearing Date: October 7, 2009
	)	Hearing Time: 9:30 a.m.

**GROUP OF INVESTORS’ ROUTINE MOTION FOR AUTHORITY TO CONDUCT EXAMINATIONS  
PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

A group of investors/creditors<sup>1</sup> (“Group of Investors”), by and through its undersigned counsel<sup>2</sup>, and pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Rule 9013-9 of the Local Rules of the United States Bankruptcy Court for the Northern District of

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<sup>1</sup> As of Friday, October 3, 2009, JT has been retained, or contacted to be retained, to represent the following investors/creditors (all of whom have been identified by Debtors as unsecured creditors): John E. and Laura H. Spalding; Kenneth & Michelle Fancher; Doug Parsons; Eileen Parsons; Kathleen Peck; Luther D. Pritchard, Jr.; Dina A. Pyron; Sumner Kai; Thomas & Vessie Ferrell; Cheryl Northam; Sherryll Bennett; Connie Kieschnick; Mark E. Brooks; Pamela C. Brooks; Bert Brown; Chau Dang; David & Chau Dang; Chau & Linh Dang Nguyen JT; Chalet Morella; Jayanti & Suman Patel; Jayanti Patel; Suman Patel; Barbara Natham; Clyde B. and Norma E. Loan; Rudolph & Dawn Abeyta; Lourdes S. Savana; John C. & Lourdes S. Savana; The Aubin Family Trust; Cary Bauer; Barry H. Cohn; Glenna M. Cohn; Bruce D. Davis; Frank DiMaria; Anthony & Joan DiRienzo; John & Claire Fielding; Daniel Galfione; Mary Barbara Gold; Clarence D. Hall, III; Roy & Ilse Harris; Richard Henke; Don Stanley Hite; Sydney Hite; Michael & Brenda Kessler; Daniel G. Krueger; Mark John Le; Daniel Lenehan; Clyde B. & Norma E. Loan; Georgette H. McNally; Ronald N. & Nedra D. Miller; Wayland W. Moore, Jr.; Danny L. Moseley; Kenneth Wayne Raybon; Michael A. Richards, Jr.; Danny O. Rush; Martha C. Sappington; Daniel & Gerlinde Schmerbach; Edward J. Shannon, Jr.; Lucy B. St. George; Wilbern E. Warnell, Jr.; Leonard Wenig; Guy Thomas Wood; Dorothy Wright; Elma P. Marsh; Luther D. Pritchard, Jr.; Georgia J. Monkres; and T. Eugene Monkres.

<sup>2</sup> Brian M. Graham with the law firm of SmithAmundsen LLC, Chicago, Illinois (“SA”) appears as local counsel for the law firm of Johnson, Trent, West & Taylor, L.L.P., Houston, Texas (“JT”), and two attorneys with JT, Lori A. Hood and Deborah J. Fritsche, each of whom have Orders approving Leave to Appear Pro Hac Vice before this Court for the bankruptcy case(s), referenced in the style. Ms. Fritsche is designated lead counsel.

Illinois, moves this Court for the entry of an Order directing Russell Mackert to appear for separate examinations. In support of its Routine Motion, Group of Investors states as follows:

1. On September 2, 2009, an entity named Shepherd Capital Management LLC (“Shepherd”), by its solo and managing member, Russell Mackert, executed and authorized filing petitions for relief under the United States Bankruptcy Code for the seven entities captioned above.

2. On September 16, 2009, this Court entered an order approving the joint administration of these cases under the above captioned number.

3. On September 21, 2009, this Court entered an order appointing Patrick M. Collins of Perkins Coie LLP as Chapter 11 Trustee.

4. On October 14, 2009, the Debtors – supposedly through Russell Mackert – are scheduled to appear for their regularly scheduled meeting of creditors. Counsel to the Group of Investors will attend that meeting. However, given the limited time frame and format generally imposed at the meeting of creditors, the Group of Investors will likely not be able to examine the Debtors’ representatives at any length.

5. How long the Group of Investors will need to examine Mr. Mackert will in large part depend on the completeness of the information contained in the yet-to-be-filed Debtors’ schedules of assets and liabilities and statements of financial affairs. To this date, the Debtors have not filed their schedules and statements, which were originally due September 17, 2009. Instead, on September 17, 2009, the Debtors filed a motion requesting additional time to file their schedules and statements. They are currently due to be filed on October 7, 2009.

6. Because of these issues, the Group of Investors seek an order from this Court directing the examination of Russell Mackert, the petitioning entity’s solo and managing

member, in regard to the basis for Mr. Mackert's authority to execute and file the petitions commencing these cases, the Debtors' pre-filing activities, the Debtors' post-petition activities, and Debtors' financial affairs in general.

7. What makes sense – since Mr. Mackert will be here anyway for the 341 meeting on October 14, in order to avoid duplicating the questions asked by the U.S. Trustee and other parties at the creditors' meeting, and in order to ensure that this opportunity to examine Mr. Mackert is not wasted or left incomplete by the limitations of time and format of the 341 meeting – is for this Court direct a 2004 exam be scheduled for the day after the meeting of creditors; *i.e.*, October 15, 2009. Considering that Mr. Mackert will already be in town for the meeting of creditors, this should not impose any significant burden on him. Conversely, given the issues raised in the Group of Investors motion to dismiss / transfer venue and the critical, urgent need for disclosures about the Debtors' financial affairs more than one month into these cases which remains almost completely unsatisfied, any delay or continuance in a complete examination of the Debtors past October 14-15 will hinder, if not make impossible, any chance of recovery to creditors in these cases. And, though the Group of Investors, through its Houston counsel, certainly has the ability to depose Mr. Macket near his Houston home, it makes much more sense to do it here in Chicago, in conjunction with the 341 meeting, while all the parties are in Chicago already and can attend and participate in a full examination of the Debtors.

8. Two days notice of this Motion has been provided to counsel and parties-in-interest as opposed to the three days now required by the local rules. This Motion may or may not qualify as an "emergency". However, the parties will all be in Court on October 7 already and, given the federal holiday on Monday, October 12, the next day this motion could otherwise be heard on the regular motion call would be October 14 - the date of the 341 meeting. A ruling

on this Motion on October 14 would leave everyone's travel plans up in the air until the last minute. Thus, the Group of Investors asks that the Court shorten and limit notice to the notice given and consider this Motion with the matters to be heard on October 7 or such other date sufficiently prior to October 14.

WHEREFORE, Group of Investors hereby respectfully requests the entry of an Order directing Russell Mackert to appear for an examination under oath on October 15, 2009, shortening and limiting notice and for such other and further relief as this Court deems just and appropriate.

Dated: October 5, 2009

GROUP OF INVESTORS (see Motion, footnote 1)

By: /s/ Brian M. Graham  
One of the attorneys for the  
Group of Investors

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Bryan E. Minier ARDC No. 6275534  
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**ORDER GRANTING THE GROUP OF INVESTORS' ROUTINE  
MOTION FOR AUTHORITY TO CONDUCT EXAMINATIONS PURSUANT  
TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

**THIS MATTER** having come before the Court on the Group of Investors' Routine Motion for Authority to Conduct Examinations Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, the Court having determined that due notice was given under the circumstances and the Court being duly advised in premises;

**IT IS HEREBY ORDERED** that:

1. Russell Mackert is hereby directed to appear for an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure at the Chicago offices of counsel to the Group of Investors on October 15, 2009 at 10:00 a.m.

ENTER:

\_\_\_\_\_  
United States Bankruptcy Judge