

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

In Re: § Chapter 11  
LIFE FUND, 5.1, LLC et al., §  
§ Case No. 09 B 32672  
§ (administratively consolidated)  
§  
Debtors. § Judge A. Benjamin Goldgar

**OBJECTION TO TRUSTEE’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
HIS EMPLOYMENT AND RETENTION OF  
THE GARDEN CITY GROUP, INC. AS CLAIMS AND NOTICING AGENT**

A group of investor/creditors<sup>1</sup> (“Group of Investors/Creditors”), by and through its undersigned counsel,<sup>2</sup> for their objection to Trustee’s Motion for Entry of Order Authorizing His Employment and Retention of The Garden City Group, Inc. (“Garden City”) as Claims and Noticing Agent (docket no. 37 in Case No. 09-32672; hereinafter, “Motion”), state as follows:

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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.

## JURISDICTION

1. Subject to its Motion to Dismiss or Transfer Venue, and without waiver of its right to challenge the jurisdiction of this Court and the venue of these proceedings, the Group of Investors/Creditors admits retention of professionals by the Trustee is a core proceeding and this Court has jurisdiction to handle same. Group of Investor/Creditors deny, however, that Local Bankruptcy Rule 1007-2 is applicable.

## RELIEF REQUESTED

2. At this juncture of these cases<sup>3</sup>, before even knowing if there will be money to distribute, the Motion should be denied. Under the Local Bankruptcy Rules, there is no basis for a claims and noticing agent to be hired. The Local Rule does not appear to apply. Finally, Appointment of a claims and noticing agent is not in the best interest of the estates, as the cost is unnecessary, duplicative and excessive.

## ARGUMENT AND AUTHORITIES

3. There are seven (7) cases before the Court, not one. Local Bankruptcy Rule 1007-2 (the "Rule") applies per case. For the Rule to apply to these cases there would need to be 3,500 claimants (500 times 7 cases), and there are not. The cases have been administratively consolidated, not substantively consolidated, and must be kept separate for claims processing. Group of Investors/Creditors are very concerned about commingling of claims and assets among the seven cases. The order requested by the Trustee illustrates the problem.

4. Paragraph "3" of the proposed order makes the payment of Garden City "administrative expenses of the Debtors' estates, the Debtors' estates **shall be jointly and severally liable for GCG's fees and expenses**, and expenses may **be paid by the Trustee in**

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<sup>3</sup> Also pending, to which no objection has been filed, is a Motion to Dismiss for lack of subject matter jurisdiction.

**the ordinary course of business.”** Proposed Order, paragraph 3 (emphasis added). Group of Investors/Creditors are adamant that costs must be kept by each estate, as the claimants for each estate are not the same. The costs proposed by Garden City are indeed contingent on the number of claimants in an estate. See Exhibit “A” to the Motion — Pricing Schedule: The Garden City Group, Inc. Pricing for Perkins Coie, LLP.

5. Further, the Rule uses the term Debtor and not Trustee or Debtor in Possession. The Rule does not appear to apply to the situation in which the Trustee finds himself in these cases. First, Debtor was given approval to hire the Arnstein & Lehr law firm for the purpose of producing complete schedules and statements. The estates do not need Garden City for this purpose. The estates should not pay twice or three times just to get a list of creditors with good addresses. Second, why hire a claims processing firm until the size of, and whether there will be money in, the estates is known? Third, the Rule does not seem to apply to these cases. Or if the Rule applies somehow, these estates should be exempted. There is no on going business to bear this cost. This cost will directly reduce returns, if any, to the investors/creditors. Fourth, until complete schedules and statements are filed it is impossible for the Trustee to know that there will be anything to distribute or to say how many claimants there are in total for all seven cases. In any event, there are not 3,500 claimants (500 times 7 cases). And finally, counsel for the Group of Investors/Creditors, having already built a data base of investors based upon the petitions filed, admits there are over 500 investors in total, but denies there are more than 500 in each case. This data base can be handled by one paralegal.

6. It appears the Trustee is using Garden City to do everything to administer these cases, not just claims administration applicable under the Rule. All or part of the services identified to be performed by Garden City should be performed by the Trustee and at his

expense. The creditors have already been obligated to pay Debtors' counsel for the schedules and statements. The Trustee appears to desire to delegate all creditor relations to Garden City. Certain of the Group of Investors/Creditors have already experienced the complete ineffectiveness (lack of knowledge to even address their questions) by calls to an 800 number set up by the Trustee that appears to be answered by someone on Long Island in New York without any ability or apparent interest to answer the investor/creditor's questions. For this pleasure, the Trustee expects the investors/creditors to pay, and pay in addition the Trustee and his law firm.

7. The Bankruptcy Administration Agreement ("Agreement") entered into by the Trustee, or by Perkins Coie, is not in the best interest of the estates of the cases. On a very simply matter, the Agreement is not consistent as to whom is the Client. On page 1, the Client is defined as the Trustee, but in the notice paragraph (no. 11.) the Client is Perkins Coie, with attention not to the Trustee who works at that firm and address also, but to Brian Audette, Esq. On a very fundamental level, this is a problem. Where does this administrative cost properly fall, with the Trustee or the law firm representing the law firm? The Group of Investors/Creditors does not want to pay a very excessive amount for Garden City when that administrative cost should be part of the Trustee's expense for his compensation. Or, in either case whether paid by the Trustee or the law firm, this administrative expense needs to be noticed and subject to court approval, not paid going forward as an ordinary business expense. If it is an ordinary business expense, however, then it should be the expense of the Trustee and part of his expenses covered by his statutory fee.

8. Further, the Agreement has several objectionable provisions. It is assignable (paragraph 14) which should not be allowed without further court approval, at a minimum. Also there are attempts to limit the liability of Garden City (paragraph 7) and to indemnify Garden

City (paragraph 8). The Trustee is a fiduciary. If he desires to shield the investors/creditors from the mistakes of the Garden City, then his bond needs to be increased. But in no event should the creditor/investors be prevented from challenging the errors and omissions of Garden City, unless of course the Trustee will take that responsibility. In which case, Mr. Collins' bond of only \$5,000 is insufficient.

9. Finally, Garden City wants to be paid for everything from talking to the creditor/investors [jobs which should not be given to a third party, particularly when they refuse to be responsible for the accuracy of the information (see Agreement, paragraph 5)] and to be reimbursed for things such as "staff overtime meal expenses." See Agreement, paragraph 2.2. Creditor/investors should not be paying to feed the Trustee's hired help. Why hire a firm in New York City with such expensive rates and demands for unnecessary reimbursement of expenses? These cases are not the size or complexity of the ones listed in the Motion. There is no cash to pay these fees. Most of the information regarding claimants is in Texas. Of the 722 investor/creditors listed as unsecured creditors on the original petitions filed on September 2, 2009, 354 have Texas addresses. Counsel for Group of Investors/Creditors has built a data base. Trustee should be able to do the same with his existing staff. If he does not have a staff yet, he needs to obtain one at his expense.

FOR THE REASONS AND AUTHORITIES STATED ABOVE, counsel for the Group of Investors/Creditors requests the Court, in all ways, deny the Motion and grant such other and further relief to which the Group of Investors/Creditors may be entitled.

Dated: October 5, 2009.

GROUP OF INVESTORS/CREDITORS (see footnote 1)

Respectfully submitted,

By: /s/ Deborah J. Fritsche  
Lead Counsel for Group of Investors/Creditors

**OF COUNSEL:**

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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 foregoing OBJECTION TO TRUSTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING HIS EMPLOYMENT AND RETENTION OF THE GARDEN CIY GROUP, INC. AS CLAIMS AND NOTICING AGENT 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 6<sup>th</sup> day of October, 2009.

/s/ Brian M. Graham

**SERVICE LIST**

**VIA CM/ECF**

**David M. Neff**  
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representing **Patrick Collins, as Ch. 11 Trustee**  
*(Trustee)*

**Michael M. Eidelman,**  
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222 N. LaSalle Street  
Suite 2600  
Chicago, IL 60601

representing **Eric Boutte, as Trustee for the AB Revocable**  
**Living Trust**  
*(Interested Party)*

**Zala L Forizs**  
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4301 Anchor Plaza  
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Suite 300  
Tampa, FL 33634

representing **Alma Held**  
*(Creditor)*  
**Fred Held**  
*(Creditor)*

**Michael M. Eidelman**  
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222 North LaSalle Street  
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representing **Eric Boutte, as Trustee for the AB Revocable**  
**Living Trust**  
*(Interested Party)*

**Michael L. Gesas**  
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120 South Riverside Plaza  
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representing **Life Fund 5.1, LLC**  
203 N. LaSalle Street, Suite 2100  
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*(Debtor)*

**Richard C. Friedman**  
**Gretchen M. Silver**  
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representing **William T Neary**  
*(U.S. Trustee, Region 11)*

**Edith Stuart Phillips**

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representing **The Texas State Securities Board**  
*(Attorney)*

**Tony L Visage**

**Deana F Tillotson**  
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representing **Eric Boutte, as Trustee for the AB Revocable  
Living Trust**  
*(Interested Party)*

**VIA EMAIL**

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