

**UNITED STATES BANKRUPTCY COURT
FOR THE NOTHERN 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
)
) Date: January 12, 2011
) Time: 10:00 a.m.

NOTICE OF FILING OF REPLY

To: See attached Service List

PLEASE TAKE NOTICE that on **December 17, 2010** we caused to be filed with the Clerk for the United States Bankruptcy Court for the Northern District of Illinois—Eastern Division, the attached **ARNSTEIN & LEHR LLP'S REPLY TO GROUP OF INVESTORS OBJECTION TO FIRST AND FINAL APPLICATION FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF COSTS.**

ARNSTEIN & LEHR LLP,

By: /s/ Thomas P. Yardley
One of its Attorneys

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CERTIFICATE OF SERVICE

I, Kevin H. Morse, hereby certify that I caused of the Reply that was filed with the Clerk of the Bankruptcy Court to be served on the parties listed on the attached Service List below by the Court's ECF system on December 17, 2010.

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

In re:) Chapter 11
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LIFE FUND, 5.1, LLC, et al.,) Case No. 09-32672
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Debtors.) Hon. A. Benjamin Goldgar
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) Date: January 12, 2011
) Time: 10:00 a.m.

**ARNSTEIN & LEHR LLP’S REPLY TO GROUP OF INVESTORS OBJECTION TO
FIRST AND FINAL APPLICATION FOR ALLOWANCE OF
FEES AND REIMBURSEMENT OF COSTS**

Arnstein & Lehr LLP (“A&L”), counsel for the debtors Life Fund 5.1, LLC; Life Fund 5.2, LLC; Houston Tanglewood Partners, LLC; A&O Resource Management, LLC; A&O Life Fund, LLC; A&O Bonded Life Assets, LLC; A&O Bonded Life Settlement, LLC (collectively, “Debtors”), hereby files its Reply Brief as follows:

I. Summary of Reply

The Investors¹ begin their Response Brief by incorrectly stating that A&L represents Russell Mackert. A&L never represented Russell Mackert in his personal capacity nor has it ever filed pleadings on behalf of Mr. Mackert in any case or matter. A&L has represented Shepherd Capital Management, LLC (“Shepherd”) but only for the limited purpose of obtaining authorization from the Circuit Court of Cook County to allow the Debtors to safeguard the assets through the filing of the Chapter 11 bankruptcy petition. Finally, A&L fully disclosed its representation of Shepherd in its Application for

¹ For sake of clarity, the “Group of Investors” only involves a discreet numbers of investors. The vast majority of investors in the Debtors have not posed any objection to A&L’s application.

Entry of Order Authorizing Retention and Employment and the Affidavit of Michael Gesas in support thereof.

At that time of the filing of the Motion Authorizing Retention of A&L, Gesas properly represented that “to the best of my knowledge, neither I, A&L nor any of its employees hold or represent an interest adverse to the Debtors.” (Gesas Affidavit, ¶ 5, attached to Motion to Employ as Exhibit A). Investors have failed to introduce any evidence whatsoever that Gesas, A&L or any employee of A&L (collectively, “A&L”) had any knowledge whatsoever either at the time A&L was retained or during its representation of the Debtors regarding any conflict. Moreover, A&L had no knowledge of the potential causes of action or allegations contained in Adversary No. 10 A 0042 alleging impropriety involving Russell Mackert and/or Shepherd.

Throughout A&L’s entire involvement in this case, its sole objective was to safeguard the assets of the Debtors by using the automatic stay to preclude the various insurers from declaring defaults on the respective policies held by the Debtors. Before any bankruptcy case could be filed, A&L was required to invoke certain deadlock procedures in a state court proceeding that allowed Shepherd to execute the necessary resolutions allowing each of the Debtors to file their respective Chapter 11 Petitions.² A&L’s representation of Shepherd was strictly limited to filing the appropriate state court proceedings and seeking a deadlock ruling and subsequent declaratory judgment authorizing the Debtors to file the Chapter 11 Petition. Prepetition, A&L received

² Shepherd argued in the State Court proceeding that the Debtors were essentially deadlocked because Shepherd’s Management Agreement authorizing Shepherd to pay the policy premiums for the various Debtors did not authorize Shepherd to take other actions to safeguard the assets of the respective Debtor entities. To make matters worse, the managing members of the Debtors and its parent corporation were nowhere to be found. The absence of authority to act in the Management Agreement combined with the absence of the managing members of the Debtors and their parent corporations precluded Shepherd and Debtors from obtaining authority to take action to protect the Debtors’ assets.

payments totaling \$32,500 from an entity related to the Debtor entities to handle the state court deadlock proceedings, all of which were properly disclosed, and all of which were applied to fees and expenses incurred in the state court matter pre-petition.

II. Arnstein & Lehr's Actions Were In the Best Interest of the Investors

Counsel for the Investors further argues in its Response Brief that "A&L should not receive a cent from the Debtor entities for its services which did not benefit the Debtor estates." In order to evaluate counsel's claims, it is necessary to look at the circumstances that existed at the time Shepherd first consulted A&L. At the time A&L filed the state court proceedings, Shepherd's contract to manage the Debtor entities did not authorize it to file any bankruptcy petitions. In the months leading up to the filing of the state court matter, Shepherd had been unable to make the necessary premium payments on the life insurance policies that comprise the only assets of the Debtors due to the embezzlement of certain trust account assets by an unrelated third party. At the time of the filing of the state court proceedings, most if not all of the policies were in default and the redemption periods for paying the premiums were beginning to expire. To put it bluntly, all of the assets of the Debtors were dangerously close to becoming worthless.

A&L filed the state court case and obtained a declaratory judgment allowing Shepherd to file the respective bankruptcy petitions thereby evoking the automatic stay and precluding the insurers from proceeding with the termination of the policies. Immediately after filing of the respective petitions, A&L consented to the appointment of a Chapter 11 Trustee thereby divesting Shepherd and Russell Mackert of all management responsibilities relating to the Debtors. A&L then completed the essential

task of filing the Schedules and Statement of Financial Affairs for each Debtor as authorized by this Court. A&L also responded to questions of the interim Trustee and provided information to the interim Trustee upon his specific requests (See September 30, 2009 Order of Hon. A. Benjamin Goldgar appointing A&L as counsel for the Debtors attached as Exhibit B). After completing all the responsibilities outlined by the September 30, 2009 Order, A&L stepped back from the case and allowed the respective Chapter 11 Trustees to continue the efforts to safeguard the assets of the estate.

III. A&L Never Represented Russell Mackert and Immediately Consented to the Appointment of a Trustee

The crux of the Investors' argument appears to be based on the mistaken belief that A&L represented Russell Mackert. A&L has never represented Russell Mackert. A&L represented Shepherd for the sole purpose of breaking a deadlock among the Debtor entities. A&L's representation of Shepherd was limited to filing an action in the Circuit Court of Cook County seeking authorization from that court to allow the respective Debtors to file the subject Chapter 11 Petitions and was disclosed in the Rule 2014 affidavit. Immediately after the filing of the Chapter 11 Petitions, A&L consented to the appointment of the Chapter 11 Trustee and only remained as counsel for the Debtors for the limited purposes outlined in this Court's September 30, 2009 Order.

IV. Arnstein & Lehr Made All the Proper Disclosures Required by Law

A&L made all proper disclosures required by Section 329(a). On the Debtors' statement of financial affairs ("SOFA"), in response to Question 9, the Debtors disclose that \$32,500 was paid to the Debtors' pre-petition from a non-debtor source. (See

Question 9 of each SOFA filed for the Debtors attached as Exhibit C)³. These funds were applied to pre-petition services relating to the state court proceeding and none of the funds remained as post petition retainer.

Given the full disclosures by A&L, it is difficult to understand the basis for the Investors' objection. The 2014 affidavit is not inconsistent to the information provided in the Debtors' SOFA. The Affidavit addressed post petition retainer (which was zero – see Par. 10) and fee splitting (which there was none – see Par. 13). It did not address pre-petition collections for the Debtor or non-debtor entity on the Debtor's behalf. The pre-petition payments were properly disclosed in the SOFA in response to Question 9.

V. This Court Has Already Ruled Upon the Actions of A&L in the Filing of this Case.

Immediately after the filing of the Chapter 11 Petitions, Investors, by and through Johnson Trent, filed a Motion to Dismiss or in the Alternative Motion to Transfer Venue.

This Court described the motion as follows:

In their motion, the Investors argued that the cases should be dismissed because Shepherd lacked authority to file them and because two of the debtors had been dissolved.

(Order of Hon. A. Benjamin Goldgar, March 24, 2010 attached as Exhibit D). This Court made the following findings of fact:

In July 2009, Shepherd filed an action in the Circuit Court of Cook County, Illinois styled *Shepherd Capital Management, LLC v. A&O Life Funds LP*, No. 09 CH 22301, naming as defendants A&O Life Funds, LP and Physicians Trust LLC. A&O Life Funds was alleged to be the managing member or otherwise in control of each of the seven debtors here, and Physicians Trust was alleged to be the managing partner of A&O Life Funds. The complaint sought a declaratory judgment that Shepherd had

³ The SOFAs attached as Exhibit C correspond to the following Debtors: Docket No. 67 is A&O Bonded Life Assets; Docket No. 73 is A&O Bonded Life Settlements; Docket No. 79 is A&O Life Fund; Docket No. 85 is A&O Resource Management; Docket No. 91 is Houston Tanglewood Partners; Docket No. 97 is Life Fund 5.1; and Docket No. 103 is Life Fund 5.2.

authority to file the bankruptcy cases for the debtors. Although an attorney appeared in the action for one of the defendants, no answer was ever filed for either of them, and on August 29, 2009, the state court entered a default judgment granting Shepherd the desired declaration.

On September 2, 2009, Shepherd issued a document entitled "certificate of resolution" that cited the declaratory judgment and resolved (among other things) to file these bankruptcy proceedings. The cases were filed the same day.

Just days earlier, two of the debtors, A&O Resource Management, and Houston Tanglewood Partners LLC, had forfeited their charters. The forfeitures came at the instance of the Texas Secretary of State and were the result of a failure to pay Texas franchise taxes the preceding year.

(Id. at p. 2). The Court ruled that it had both the legal right and ability to examine the state court proceedings in the context of this bankruptcy case. Id at 4. The Court then found that the Investors failed to produce even a shred of credible evidence demonstrating that the state court case was improper or that Shepherd lacked the authority to file the respective Chapter 11 Petitions. In the words of this Court:

In their motion, [Investors] offer no cogent argument – one supported with evidence and legal authority rather than merely invective – establishing that Shepherd lacked the right to file the cases on debtors' behalf. For the most part, Investors simply raise lots of interesting questions about Mackert, Shepherd and the debtors, questions they invite the debtors and their counsel to answer. But if the cases are to be dismissed under section 1112(b), the burden is on the Investors, not the debtors or anyone else, to provide the answers. They provide none.

(Id. at p. 4). Having failed to provide any evidence of impropriety in the state court proceedings, the Investors now challenge the fees charged by A&L to represent Shepherd in the state court proceedings. The Investors previously challenged A&L's retention and work in this case and lost. First, A&L's actions in obtaining the state court ruling and the fees charged in obtaining that ruling were not only reasonable and necessary, they were all properly disclosed to this Court. See Exhibit A and Exhibit C.

Second, the Court found that there was no evidence to contest the propriety of the state court proceeding. See Exhibit D. Finally, this Court granted A&L's retention under Section 327, over the objection of the Investors, and in such Order detailed the work for which A&L could later seek compensation. See Exhibit B.

VI. All of the Work Performed by A&L Was Specifically Approved by Previous Order of this Court.

On September 30, 2010, this Court heard oral argument on Debtor's Application for Entry of an Order Authorizing Retention and Employment of Michael L. Gesas, Thomas P. Yardley and Miriam R. Stein, and the Law Firm of Arnstein & Lehr LLP as Counsel for the Debtors. Counsel for the Investors appeared at that hearing and objected to the appointment of A&L based, upon among other things, allegations that the filing of the Chapter 11 Petitions was not unauthorized. This Court approved the Debtors' application to retain A&L for the following limited purposes:

(a) representation of the Debtors for all bankruptcy matters prior to the appointment of the Chapter 11 Trustee including filing of the bankruptcy cases, preparation and filing of retention motion, preparation and filing of the Debtors motion to barrow against cash reserves of their insurance policies; appearances at Court hearings and initial preparation of bankruptcy schedules;

(b) representation of the debtors for bankruptcy matters subsequent to the appointment of the Chapter 11 Trustee limited to the following: (i) preparation of schedules; (ii) appearance at 341 meeting of creditors at the request of the Chapter 11 Trustee; (iii) working with the Chapter 11 Trustee to convey any and all documentation and information on behalf of the Debtors; and (iv) all other work on behalf of the Debtor that is specifically requested by the Chapter 11 Trustee.

(Order of Hon. A. Benjamin Goldgar dated September 30, 2009).

A&L's fees detail services approved by the Court in the September 30, 2009 Order and include providing the interim Trustee with information and documentation

specifically requested by the Trustee, and preparing and filing the bankruptcy schedules and SOFA for each Debtor. The Investors have not provided this Court with any credible reason why the fees of A&L in completing the work authorized by this Court should be denied, particularly in light of the fact that the fees were contemplated and incurred pursuant to this Court's September 30, 2009 Order.

VII. Conclusion

A&L properly disclosed all payments received prepetition relating to the state court litigation. Specifically, A&L disclosed that it received \$32,500 with respect to that representation from a non debtor source. The Affidavit of Michael Gesas filed with respect to the Debtors' Application to Employ A&L was consistent with the Debtors' SOFA. Finally, neither the Investors nor their attorneys have produced any evidence that A&L represented Russell Mackert individually or that A&L was aware of the potential conflicts that may exist or potentially exist between Shepherd and the Debtors which would create an actual conflict for A&L. For these reasons and based upon this Court's Order dated September 30, 2009, A&L seeks approval of all fees sought in its First and Final Application for the Allowance of Fees and Reimbursement of Costs as Debtors Counsel.

WHEREFORE, Arnstein & Lehr LLP as counsel for the Debtors respectfully requests that this Court grant Arnstein & Lehr LLP's fees and costs in the amount of \$91,805.74 .

Respectfully submitted,
ARNSTEIN & LEHR LLP

/s/ Thomas P. Yardley
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UNITED STATES BANKRUPTCY COURT
FOR THE NOTHERN 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

To: See attached Service List

PLEASE TAKE NOTICE that on **Wednesday, September 30, 2009 at 9:30 a.m.** or as soon thereafter as counsel may be heard, we will appear before United States Bankruptcy 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, on the attached **DEBTORS' APPLICATION FOR ENTRY OF ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF MICHAEL L. GESAS, THOMAS P. YARDLEY, MIRIAM R. STEIN, AND THE LAW FIRM OF ARNSTEIN & LEHR LLP AS COUNSEL FOR THE DEBTORS**, at which time and place you may appear as you see fit.

LIFE FUND 5.1, LLC, et. al.
Debtors and Debtors in Possession

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CERTIFICATE OF SERVICE

I, Miriam R. Stein, an attorney, certify that I caused a copy of the Notice of Motion and Motion to be served on the parties listed on the attached service list by U.S. Mail with proper postage prepaid and by the Court's ECF System to those entities entitled to electronic service, on September 18, 2009.

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**UNITED STATES BANKRUPTCY COURT
FOR THE NOTHERN 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

**DEBTORS' APPLICATION FOR ENTRY OF ORDER AUTHORIZING RETENTION
AND EMPLOYMENT OF MICHAEL L. GESAS, THOMAS P. YARDLEY, MIRIAM R.
STEIN, AND THE LAW FIRM OF ARNSTEIN & LEHR LLP AS COUNSEL FOR THE
DEBTORS**

A&O Life Fund; A&O Bonded Life Assets; A&O Bonded Life Settlement; A&O Resource Management; Life Fund 5.1, LLC; Life Fund 5.2, LLC; and Houston Tanglewood Partners, LLC , debtors and debtors in possession ("Debtors"), presents this application for entry of an order authorizing the Debtors to retain and employ, Michael L. Gesas, Thomas P. Yardley, Miriam R. Stein and the law firm of Arnstein & Lehr LLP (collectively "A&L") as counsel for the Debtors in the above-captioned Chapter 11 cases (the "Application"). The facts and circumstances supporting this Application are set forth herein and in the Affidavit of Michael L. Gesas ("Gesas Affidavit"), which is attached as **Exhibit A**. In support of this Application, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§1408 and 1409. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). The

statutory predicates for the relief requested herein are 11 U.S.C. § 327(a) and Rules 2014(a) and 6003 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules").

BACKGROUND

2. On September 2, 2009 ("Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have operated their businesses and managed their assets as debtors in possession. No trustee, committee or examiner has been appointed in any of the Debtors' cases.

3. The Debtors are each limited liability companies. Life Fund 5.1 LLC, A&O Bonded Life Assets, LLC, Life Fund 5.2 LLC, A&O Bonded Life Settlements LLC and A&O Life Fund LLC are Illinois limited liability companies. The remaining two companies – Houston Tanglewood Partners LLC and A&O Resource Management LLC – are Texas limited liability companies. Each of the Debtors' business office is located at 203 N. LaSalle, Suite 2100, Chicago, Illinois. Life Funds LP and its managing member Physicians Trust LLC are directly or indirectly the managing member and/or controlling entity of each of the seven Debtors.

4. The Debtors operate in the life settlement industry. The Debtors operational funds came from investor contributions. The Debtors used the investment funds to purchase life insurance policies and create a reserve account to satisfy policy premiums for the duration of the policy (i.e. until the insured's demise). The insurance proceeds collected upon maturity of any policies were to be distributed to the investors. The Debtors' operations, including the payment of policy premiums and distribution of proceeds, were managed by Shepherd Capital Management LLC.

5. The Debtors' life insurance policies have a total face value of over \$178,000,000 and a total current cash value of more than \$3,000,000.

6. An escrow account was established pre-petition at Prestige Title, Inc., a corporation organized and existing under the laws of the State of Mississippi, to hold all of the reserve funds of the Debtors which were used to pay insurance premiums.

7. On February 13, 2009, Wachovia Bank N.A. filed a Complaint for Interpleader, Declaratory Judgment and Other Related Relief against Prestige Title, Inc. and other related entities to Prestige Title in the Chancery Court of Harrison County, Mississippi, Second Judicial District. In its Complaint, Wachovia Bank alleged that Prestige Title improperly withdrew funds from various escrow accounts held by Prestige Title and used funds for purposes other than the intended purpose of the escrow account, without notice to or consent by the account holder.

8. Upon information and belief, most (if not all) of the Debtors' reserve funds held in escrow at Prestige Title were transferred from the accounts by representatives of Prestige Title. Due to the Wachovia litigation, all of the escrow and corporate funds at Prestige Title have been frozen since approximately February 2009. To date, the Debtors have been unable to access any of those funds to pay the required policy premiums on the various insurance policies.

9. Many of the insurance companies insuring the policies have commenced proceedings to terminate the policies due to the non-payment of policy premiums. As a result of these factors, the Debtors have found it necessary to commence these chapter 11 cases to preserve the value of the insurance policies.

10. The Debtors intend to seek authority from the Court to borrow against the cash value of the insurance policies to support payment of the insurance premiums, and to support payment of the administrative costs of these Chapter 11 cases.

RELIEF SOUGHT

11. By this Application, the Debtors respectfully request that this Court enter an order authorizing the Debtors to employ and retain A&L as their attorneys pursuant to section 327(a) of the Bankruptcy Code.

12. The Debtors seek to retain A&L as their attorneys because (a) the firm is knowledgeable as to the facts of this case, the interested parties and relevant information regarding the Debtors; (b) the firm has extensive general experience and knowledge in the field of debtor's and creditor's rights and business reorganizations under Chapter 11 of the Bankruptcy Code, (c) the firm has experience and knowledge practicing before this Court, and (d) the firm's appearance before this Court for the application, motions and other matters in this Chapter 11 case will be efficient and cost effective for the Debtors' estates. The Debtors believe that A&L is both well-qualified and uniquely able to represent them in their Chapter 11 case in a most efficient and timely manner.

SCOPE OF EMPLOYMENT

13. The Debtors desire to retain A&L because of the extensive legal services that may be required and the fact that the nature and extent of such services are not known at this time. The Debtors expect that A&L will be called upon to render professional services, including, but not limited to, the following:

- (a) providing legal advice with respect to the Debtors' powers and duties as debtors in possession in the management of their assets;

- (b) providing legal advice with respect to the Debtors' obligations to taxing bodies and other government agencies;
- (c) negotiations with the Debtors' creditors;
- (d) pursuing confirmation of a plan and approval of a disclosure statement;
- (e) preparing, on behalf of the Debtors, all necessary applications, motions, answers, orders, reports and other legal papers as required by applicable bankruptcy or non-bankruptcy law, as dictated by the demands of the case, or as required by the Court, and representing the Debtors in any hearings or proceedings related thereto;
- (f) appearing in Court and protecting the interests of the Debtors before the Court;
- (g) assisting with any disposition of the Debtors' assets, by sale or otherwise; and
- (h) performing all other legal services for the Debtors which may be necessary and proper in this case.

COMPENSATION

14. Section 327(a) of the Bankruptcy Code authorizes the employment of a professional person on any reasonable terms and conditions of employment, including on an hourly basis. See 11 U.S.C. §327(a). The Debtors will require A&L to render extensive legal services, the cost of which cannot be estimated.

15. Subject to this Court's approval and in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court and other procedures that may be fixed by this Court, the Debtors request that A&L be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses A&L incurs, in accordance with the ordinary and customary rates which are in effect on the date the services are rendered and the expenses are incurred. Those expenses for which A&L ordinarily and customarily charges clients

include, but are not limited to, telephone and telecopier tolls and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying services, courier services, overnight deliveries, computer assisted research, docket and court filing fees, telecommunications, travel expenses, court reporting charges, expenses for working meals, transcription costs, and any other incidental costs advanced by the firm specifically for these matters.

16. A&L has advised the Debtors that the current hourly rates applicable to the principal attorneys and paralegals proposed to represent the Debtors are as follows:

- (a) Michael L. Gesas \$550.00 per hour
- (b) Barry A. Chatz \$565.00 per hour
- (c) Miriam R. Stein \$430.00 per hour
- (d) Thomas P. Yardley \$380.00 per hour
- (e) Kevin H. Morse \$255.00 per hour
- (f) Becky Sutton (paralegal) \$215.00 per hour

Other persons employed by A&L will render services to the Debtors as needed. Generally, A&L's hourly rates are in the following ranges: Attorneys: \$250.00 - \$600.00 per hour and Paralegals: \$195.00 - \$225.00 per hour. The Debtors understand that the hourly rates set forth above are subject to periodic adjustments in the ordinary course of A&L's business, as the market may require or due to other conditions.

17. A&L was not paid an advance retainer in this case. The Debtors intend to seek authority to pay A&L a post-petition retainer.

ARNSTEIN & LEHR LLP DOES NOT HOLD OR REPRESENT ANY ADVERSE INTEREST

18. To the best of the Debtors' knowledge and based upon the Gesas Affidavit, A&L does not hold or represent any interest adverse to the Debtors or their Chapter 11 estates, creditors or any other party in interest, and A&L is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code.

19. Except as set forth in the Gesas Affidavit, to the best of the Debtors' knowledge, A&L does not have any connections with the Debtors, their creditors, any other parties in interest, their current respective attorneys, the United States Trustee or any person employed in the Office of the United States Trustee.

20. A&L is not a creditor of the Debtors.

NOTICE AND PRIOR APPLICATION

21. Notice of this Application has been given to (a) the Office of the United States Trustee of this District; (b) Securities and Exchange Commission; (c) relevant state and federal taxing bodies; (d) relevant insurance companies; and (e) an aggregate list of the thirty (30) largest unsecured creditors of the Debtors.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the attached order (i) granting this Application pursuant to Bankruptcy Rule 6003; (ii) authorizing the Debtors to retain and employ Arnstein & Lehr LLP as their counsel in this Chapter 11 case pursuant to section 327(a) of the Bankruptcy Code retroactive to September 2, 2009; and (iii) granting such other relief as this Court may deem just and proper.

LIFE FUND 5.1, LLC, et. al.
Debtors and Debtors in Possession

By: /s/ Miriam R. Stein
One of Its Proposed Attorneys

Michael L. Gesas
Thomas P. Yardley
Miriam R. Stein
ARNSTEIN & LEHR LLP
120 S. Riverside Plaza, Suite 1200
Chicago, IL 60606
Tel: (312)876-7100
Fax: (312)876-0288
8892638.1

**UNITED STATES BANKRUPTCY COURT
FOR THE NOTHERN 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

**AFFIDAVIT OF MICHAEL L. GESAS PURSUANT TO BANKRUPTCY
RULE 2014(a) AND IN SUPPORT OF DEBTOR'S APPLICATION FOR
ENTRY OF ORDER AUTHORIZING RETENTION AND EMPLOYMENT
OF ARNSTEIN & LEHR LLP AS COUNSEL FOR DEBTOR**

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, Michael L. Gesas, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice before the United States District Court for the Northern District of Illinois and a partner with the law firm of Arnstein & Lehr LLP ("A&L"), located at 120 S. Riverside Plaza, Suite 1200, Chicago, Illinois 60606.

2. I respectfully submit this Affidavit in connection with the application of the above-captioned Debtors and Debtors in possession (the "Debtors") to retain and employ A&L and the professionals at A&L as counsel to the Debtors.

3. I have personal knowledge of the matters set forth herein. If called upon to testify, I could testify competently to the facts contained herein.

4. I am not related, and, to the best of my knowledge, no other professional employed by A&L is related to any judge of the United States Bankruptcy Court of the Northern District of Illinois, Eastern Division.

5. To the best of my knowledge, neither I, A&L, nor any of its employees hold or represent an interest adverse to the Debtors within the meaning of Bankruptcy Code §327(a).

6. To the best of my knowledge, I, A&L, and all of its employees are disinterested as that term is defined in Bankruptcy Code §101(14) and used in §327(a).

7. To the best of my knowledge, neither I, A&L, nor any of its employees have any connection to the Debtors' creditors, the United States Trustee, any person employed in the office of the United States Trustee, or any other party in interest or their respective attorneys or accountants, within the meaning of Fed. R. Bankr. P. 2014(a), except for the following:

- a. Barry A. Chatz is currently serving on the panel of Chapter 7 Trustees in this district.
- b. Arnstein & Lehr LLP represented the Debtors pre-petition in preparation for the Chapter 11 filings including without limitation representation of Shepherd Capital Management LLC in the state court litigation titled *Shepherd Capital Management LLC v. A&O Life Funds LP and Physicians Trust, LLC* (Case No. 09 CH 22301) when it sought and obtained state court authorization to file the instant bankruptcy cases.

8. To the extent that any such other connection to the Debtors' creditors, the United States Trustee, any person employed in the office of the United States Trustee, or any other party in interest or their respective attorneys or accountants, in addition to the connections listed in Paragraph 7 above, is discovered during the pendency of this case, I will amend this Affidavit to disclose same to the Court.

9. The professional services that A&L expects to render to the Debtors include, but shall not be limited to, the following:

- (a) providing legal advice with respect to the Debtors' powers and duties as a debtor in possession in the management of its assets;
- (b) providing legal advice with respect to the Debtors' obligations to taxing bodies and other government agencies;
- (c) negotiations with the Debtors' creditors;
- (d) pursuing confirmation of a plan and approval of a disclosure statement;
- (e) preparing, on behalf of the Debtors, all necessary applications, motions, answers, orders, reports and other legal papers as required by applicable bankruptcy or non-bankruptcy law, as dictated by the demands of the case, or as required by the Court, and representing the Debtors in any hearings or proceedings related thereto;
- (f) appearing in Court and protecting the interests of the Debtors before the Court;

(g) assisting with any disposition of the Debtors' assets, by sale or otherwise; and

(h) performing all other legal services for the Debtors which may be necessary and proper in this case.

10. A&L intends to apply for compensation for professional services rendered in connection with this Chapter 11 case subject to this Court's approval and in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court and other procedures that may be fixed by this Court. A&L requests to be compensated on an hourly bases, plus reimbursement of the actual and necessary expenses A&L incurs, in accordance with the ordinary and customary rates which are in effect on the date the services are rendered and the expenses are incurred. A&L was not paid an advance retainer in these cases.

11. With respect to this case, A&L has advised the Debtors that the current hourly rates applicable to the principal attorneys and paralegals proposed to represent the Debtor are as follows:

(a) Michael L. Gesas	\$550.00 per hour
(b) Barry A. Chatz	\$565.00 per hour
(c) Miriam R. Stein	\$430.00 per hour
(d) Thomas P. Yardley	\$380.00 per hour
(e) Kevin H. Morse	\$255.00 per hour
(f) Becky Sutton (paralegal)	\$215.00 per hour

Other attorneys and paralegals will render services to the Debtors as needed. Generally, A&L's hourly rates are in the following ranges: Attorneys: \$250.00 - \$600.00 per hour and Paralegals: \$195.00 - \$225.00 per hour. The Debtors understand that the hourly rates set forth above are subject to periodic adjustments in the ordinary course of A&L's business, as the market may require or due to other conditions.

12. The hourly rates set forth above are A&L's standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate A&L for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses.

13. Other than as set forth herein, there is no proposed arrangement to compensate A&L. A&L has not shared, nor agreed to share (a) any compensation it has received or may receive with any other party or person, other than with the professionals of A&L, or (b) any compensation another person or party has received or may receive.

14. By reason of the foregoing, I believe A&L is eligible for employment and retention by the Debtors pursuant to section 327(a) of the Bankruptcy Code and the applicable Bankruptcy Rules.

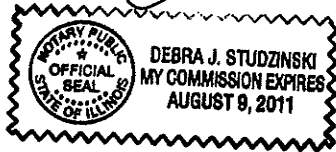
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 9 day of September 2009.

Michael L. Gesas, Esq.

SUBSCRIBED AND SWORN to before me this 9 day of September 2009.

Notary Public



**UNITED STATES BANKRUPTCY COURT
FOR THE NOTHERN 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

**ORDER AUTHORIZING DEBTORS' RETENTION AND EMPLOYMENT OF
ARNSTEIN & LEHR LLP AS COUNSEL FOR THE DEBTORS**

Upon the application (the "Application") of A&O Life Fund; A&O Bonded Life Assets; A&O Bonded Life Settlement; A&O Resource Management; Life Fund 5.1, LLC; Life Fund 5.2, LLC; and Houston Tanglewood Partners, LLC, Debtors and Debtors in Possession in the above-captioned Chapter 11 case ("Debtors"), for entry of an order authorizing the Debtor to retain and employ Michael L. Gesas, Thomas P. Yardley, Miriam R. Stein, and Arnstein & Lehr LLP ("A&L") as its counsel in the Debtors' Chapter 11 cases; the Court having considered the Affidavit of Michael L. Gesas, a partner of Arnstein & Lehr LLP ("A&L") which is attached to the Application as Exhibit A; the Court being satisfied that A&L does not hold or represent any interest adverse to the Debtors or their estates, creditors and other parties in interest; that A&L is "disinterested" as such term is defined in Section 101(14) of the Bankruptcy Code; and that the retention and employment of A&L as its counsel is necessary and in the best interest of the Debtors' estates; adequate notice of the Application having been given pursuant to Bankruptcy Rule 6003; and the Court being fully advised in the premises;

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 327(a) of the Bankruptcy Code, the Debtors are authorized and empowered to retain and employ A&L as their counsel in these Chapter 11 cases as set forth in the Application for all purposes set forth in the Application retroactive to September 2, 2009.

2. A&L shall be compensated in accordance with the procedures set forth in Sections 330 and 331 of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, and such other procedures as may be fixed by order of this Court.

Dated:

ENTERED:

A. BENJAMIN GOLDGAR

UNITED STATES BANKRUPTCY COURT
FOR THE NOTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

LIFE FUND, 5.1, LLC, et al

Debtors.

Chapter 11

Case No. 09-32672
(Jointly Administered)

Hon. A. Benjamin Goldgar

ORDER AUTHORIZING DEBTORS' RETENTION AND EMPLOYMENT OF
ARNSTEIN & LEHR LLP AS COUNSEL FOR THE DEBTORS

Upon the application (the "Application") of Life Fund, 5.1, LLC et al, Debtors and Debtors in Possession in the above-captioned Chapter 11 case ("Debtors")¹, for entry of an order authorizing the Debtor to retain and employ Michael L. Gesas, Thomas P. Yardley, Miriam R. Stein, and Arnstein & Lehr LLP ("A&L") as its counsel in the Debtors' Chapter 11 cases; the Court having considered the Affidavit of Michael L. Gesas, a partner of Arnstein & Lehr LLP ("A&L") which is attached to the Application as Exhibit A; the Court being satisfied that A&L does not hold or represent any interest adverse to the Debtors or their estates, creditors and other parties in interest; that A&L is "disinterested" as such term is defined in Section 101(14) of the Bankruptcy Code; and that the retention and employment of A&L as its counsel on a limited basis as set forth in this Order is necessary and in the best interest of the Debtors' estates; adequate notice of the Application having been given pursuant to Bankruptcy Rule 6003; and the Court being fully advised in the premises including the Order entered by the Court on September 16, 2009 granting the Motion of the U.S. Trustee to Appoint a Chapter 11 Trustee; *and the objection of the group of investors/creditors having been overruled,*

AEa

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 327(a) of the Bankruptcy Code, the Debtors are authorized and empowered to retain and employ A&L as their counsel in these Chapter 11 cases as set forth in the Application for the following limited purposes retroactive to September 2, 2009:

(a) representation of the Debtors for all bankruptcy matters prior to the appointment of a Chapter 11 Trustee including filing of the bankruptcy cases, preparation and filing of retention motion, preparation and filing of Debtors' motion to borrow against cash reserves of their insurance policies; appearances at Court hearings; and initial preparation of bankruptcy schedules;

¹ Debtors include the following entities: A&O Life Fund; A&O Bonded Life Assets; A&O Bonded Life Settlement; A&O Resource Management; Life Fund 5.1, LLC; Life Fund 5.2, LLC; and Houston Tanglewood Partners, LLC.

(b) representation of the Debtors for bankruptcy matters subsequent to the appointment of a Chapter 11 Trustee limited to the following: (i) preparation of schedules; (ii) appearance at the Section 341 meeting of creditors at the request of the Chapter 11 trustee; (iii) working with the Chapter 11 Trustee to convey any and all documentation and information on behalf of the Debtors; and (iv) all other work on behalf of the Debtors that is specifically requested by the Chapter 11 Trustee.

2. A&L shall be compensated in accordance with the procedures set forth in Sections 330 and 331 of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, and such other procedures as may be fixed by order of this Court.

Dated: **30 SEP 2009**

ENTERED


A. BENJAMIN GOLDGAR
UNITED STATES BANKRUPTCY JUDGE

8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
\$2,511,000	Prestige Title, See Wachovia v. Colson 1:09 CV-222 HSO-JMR (D. Miss 2009) Remanded to Chancery Court, Harrison County, Mississippi, 2nd Judicial District	

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Arnstein & Lehr LLP 120 S. Riverside Plaza Chicago, IL 60606	8/5/09	\$15,000
Arnstein & Lehr LLP 120 S. Riverside Plaza Chicago, IL 60606	7/8/09	\$5,000
Arnstein & Lehr LLP 120 S. Riverside Plaza Chicago, IL 60606	7/2/09	\$5,000
Arnstein & Lehr LLP 120 S. Riverside Plaza Chicago, IL 60606	6/9/09	\$7,500

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management 5555 West Loop South Suite 300 Bellaire, TX 77401		\$130,000, paid in January 2008 by A&O Life Funds, LP pursuant to the Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
\$2,511,000 in escrow funds missing from Prestige Title account. See Wachovia v. Colson, 1:09 CV 222 HSO-JMR (D. Miss 2009) remanded to Chancery Court Harrison County, Mississippi, 2nd Judicial District		Unknown

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	August 5, 2009 (\$15,000); July 8, 2009 (\$5,000); July 2, 2009 (\$5,000); June 9, 2009 (\$7,500). All amounts paid by non-debtor entity.	\$32,500

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management 5555 West Loop South Suite 300 Bellaire, TX 77401 Management Company	January 30, 2008	\$130,000 paid to Shepherd Capital Management by A&O Life Funds, LP pursuant to Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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7. Gifts

None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
\$2,511,000 in escrow funds missing from Prestige Title account. See Wachovia v. Colson, 1:09 CV 222 - HSO - JMR (D. Miss. 2009) remanded to Chancery Court, Harrison County, Mississippi, 2nd Judicial District		Unknown

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	August 5, 2009 (\$15,000); July 8, 2009 (\$5,000); July 2, 2009 (\$5,000); June 9, 2009 (\$7,500). All amounts paid by non-debtor entity.	\$32,500

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management 5555 West Loop South Suite 605 Bellaire, TX 77401	January 2008	\$130,000 paid to Shepherd Capital Management by A&O Life Funds, LP pursuant to Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
\$2,511,000 in escrow funds missing from Prestige Title account. See Wachovia v. Colson, 1:09 CV 222 HSO - JMR (D. Miss. 2009) remanded to Chancery Court Harrison County, Mississippi, 2nd Judicial District		

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT AND VALUE
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	August 5, 2009 (\$15,000); July 8, 2009 (\$5,000); July 2, 2009 (\$5,000); June 9, 2009 (\$7,500). All amounts paid by non-debtor entity.	\$32,500

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management 5555 West Loop South Suite 605 Bellaire, TX 77401 Management Company	January 30, 2008	\$130,000 paid to Shepherd Capital Management by A&O Life Funds, LP pursuant to Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Arnstein & Lehr LLP 120 S. Riverside Plaza Chicago, IL 60606	08/05/2009	\$15,000
Arnstein & Lehr LLP 120 South Riverside Plaza Chicago, IL 60606	07/08/2009	\$5,000.00
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	07/02/2009	\$5,000.00
Arnstein & Lehr LLP 120 South Riverside Plaza Chicago, IL 60606	06/09/2009	\$7,500.00

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management	01/30/2008	\$130,000 paid to Shepherd Capital Management by A&O Life Funds, LP pursuant to Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
Escrow Account at Prestige Title Holding	All funds previously held at Prestige Title Holding (to the extent that they still exist) have been transferred per Court order to four accounts at Wachovia Bank: (1) 7013; (2) 7026; (3) 7039; and (4) 7055. See Complaint in Wachovia v. Colson 1:09 CV 222-HSO-JRM (D.MISS, 2009)	\$2,511,000.00

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	08/05/2009	\$15,000.00
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	07/08/2009	\$5,000.00
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	07/02/2009	\$5,000.00
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	06/09/2009	\$7,500.00

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management		\$130,000, paid in January 2008 by A&O Life Funds, LP pursuant to the Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Arnstein & Lehr LLP 120 S. Riverside Plaza - Suite 1200 Chicago, IL 60606	August 5, 2009 (\$15,000); July 8, 2009 (\$5,000); July 2, 2009 (\$5,000); June 9, 2009 (\$7,500). All amounts paid by non-debtor entity.	

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Shepherd Capital Management Management Company	January 2008	\$130,000, paid in January 2008 by A&O Life Funds, LP pursuant to the Management Agreement

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY

11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
Prestige Title Holding	All funds previously held at Prestige Title Holding (to the extent that they still exist) have been transferred per Court order to four accounts held by Wachovia Bank (Account Nos. 7013, 7026, 7039, 7055). See Complaint in Wachovia v. Colson, 1:09 CV 222 - HSO - JMR (D. Miss. 2009).	

United States Bankruptcy Court, Northern District of Illinois

Name of Assigned Judge	A. Benjamin Goldgar	Case No.	09 B 32672
DATE	March 24, 2010	ADVERSARY NO.	
CASE TITLE	Life Fund 5.1 LLC, <i>et al.</i> (jointly administered)		
TITLE OF ORDER	Order denying motion of Group of Investors to dismiss or alternatively to transfer		

DOCKET ENTRY TEXT

The motion of the Group of Investors to dismiss these cases or transfer them to the Southern District of Texas is denied.

[For further details see text below.]

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This matter is before the court for ruling on the motion of the Group of Investors to dismiss these jointly administered bankruptcies pursuant to section 1112(b) of the Code or alternatively to transfer them to the Southern District of Texas pursuant to 28 U.S.C. § 1412. For the reasons that follow, the motion will be denied.

1. Facts

The following facts are drawn from the parties' papers, this court's docket, and the docket of a related matter in the Circuit Court of Cook County, Illinois (of which this court can take judicial notice). No facts appear to be in dispute.

These bankruptcy cases were filed on September 2, 2009, by seven debtors: Life Fund 5.1 LLC, Life Fund 5.2 LLC, A&O Life Fund LLC, A&O Resource Management, Ltd., A&O Bonded Life Settlement LLC, A&O Bonded Life Assets LLC, and Houston Tanglewood Partners LLC. The debtors operated in what is known as the "life settlement industry," soliciting funds from individual investors to acquire life insurance policies.

The petition in each case was filed by one Russell Mackert, a Texas attorney, as manager of an entity called Shepherd Capital Management. Shepherd is a Texas limited

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company formed on February 16, 2008. Under a management agreement dated January 30, 2008, with the debtors and several other entities, Shepherd agreed to provide certain management services to the debtors, among others.

In July 2009, Shepherd filed an action in the Circuit Court of Cook County, Illinois, styled *Shepherd Capital Management, LLC v. A&O Life Funds, LP, et al.*, No. 09 CH 22301, naming as defendants, A&O Life Funds, LP and Physicians Trust LLC. A&O Life Funds was alleged to be the managing member or otherwise in control of each of the seven debtors here, and Physicians Trust was alleged to be the managing partner of A&O Life Funds. The complaint sought a declaratory judgment that Shepherd had authority to file bankruptcy cases for the debtors. Although an attorney appeared in the action for one of the defendants, no answer was ever filed for either of them, and on August 27, 2009, the state court entered a default judgment granting Shepherd the desired declaration.

On September 2, 2009, Shepherd issued a document entitled "certificate of resolution" that cited the declaratory judgment and resolved (among other things) to file these bankruptcy cases. The cases were filed the same day.

Just days earlier, two of the debtors, A&O Resource Management, Ltd., and Houston Tanglewood Partners LLC, had forfeited their charters. The forfeitures came at the instance of the Texas Secretary of State and were the result of a failure to pay Texas franchise taxes the preceding year.

One week after the bankruptcy cases were filed, the U.S. Trustee moved under section 1104(a) of the Bankruptcy Code, 11 U.S.C. § 1104(a), for the appointment of a trustee. The motion was granted, and on September 21, 2009, the appointment of Patrick Collins as chapter 11 trustee was approved.

Around the same time, a group of investors in the debtors (for purposes of this ruling, simply "the Investors") moved to dismiss the bankruptcy cases or transfer them to the Southern District of Texas. In their motion, the Investors argued that the cases should be dismissed because Shepherd lacked authority to file them and because two of the debtors had been dissolved. Alternatively, the Investors argued, the cases have no ties to Illinois and should be transferred to Texas for the convenience of all concerned.

For the next several months, the motion to dismiss or transfer was continued repeatedly to permit the Investors to take Mackert's deposition, but they were unable to run him to ground. In January 2010, a briefing schedule was at last set on the motion, and Collins and the U.S. Trustee filed responses urging its denial.

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Meanwhile, the Investors requested the election of a new trustee, Jeff Marwil, to replace Collins. The election was held, and Marwil prevailed. His election was disputed, but the dispute was resolved in Marwil's favor. Despite their election of Marwil, a Chicago lawyer, as trustee, the Investors continue to pursue either dismissal or transfer of the cases. (The Investors recently hinted they might withdraw the dismissal request, but they have never withdrawn it.) For his part, Marwil has adopted Collins's response and objects to the motion.

2. Discussion

The motion to dismiss or transfer will be denied. Dismissal is inappropriate because the Investors have not shown that Shepherd lacked authority to file the bankruptcy cases or that any of the debtors lacked capacity to be debtors in bankruptcy. Transfer is inappropriate because the Investors have not shown that the convenience of the parties or the interest of justice warrants transferring the cases to Texas.

i. Dismissal

First, dismissal. Section 1112(b)(1) of the Code permits the court, on the request of a party in interest or the U.S. Trustee, to dismiss or convert a chapter 11 case for "cause." Section 1112(b)(4) lists sixteen examples of "cause," but the list is not exclusive. *In re Tekena USA, LLC*, 419 B.R. 341, 346 (Bankr. N.D. Ill. 2009). A party's lack of authority to file bankruptcy on behalf of a debtor constitutes cause for dismissal. *In re Comscape Telecomms., Inc.*, ___ B.R. ___, ___, 2010 WL 532066, at *12 (Bankr. S.D. Ohio, Feb. 11, 2010); *In re Gen-Air Plumbing & Remodeling, Inc.*, 208 B.R. 426, 430 (Bankr. N.D. Ill. 1997). So does a debtor's lack of capacity to file bankruptcy. *In re Markus Enters., Inc.*, 91 B.R. 459, 460 & n.1 (M.D. Tenn. 1988); *see In re Seaman*, 340 B.R. 698, 708 (Bankr. E.D.N.Y. 2006) (dictum).

A bankruptcy court has broad discretion to dismiss a chapter 11 case for "cause" under section 1112(b). *In re Woodbrook Assocs.*, 19 F.3d 312, 316 (7th Cir. 1994). To do so, however, there must first in fact be "cause." The burden on a motion to dismiss under section 1112(b) lies squarely with the movant to demonstrate cause by a preponderance of the evidence. *Id.* at 317; *Tekena*, 419 B.R. at 350.

The Investors have not met that burden. They are right, of course, that the state court's judgment in no way bars an examination of Shepherd's authority to file the cases. Marwil and the U.S. Trustee contend that the *Rooker-Feldman* doctrine prevents this court from contradicting the judgment, but they are wrong. *Rooker-Feldman* is a jurisdictional doctrine concerned with actions brought in federal court "by state-court losers complaining of injuries caused by state-court judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). There is no state court loser here, since neither of the two defendants in the state court action is a debtor, and these cases do not invoke federal jurisdiction to redress an

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injury caused by the state court judgment. The issue that Marwil and the U.S. Trustee raise is instead whether the judgment has some preclusive effect. *See Freedom Mortgage Corp. v. Burnham Mortgage Corp.*, 569 F.3d 667, 671 (7th Cir. 2009) (noting that *Rooker-Feldman* does not “turn all disputes about the preclusive effects of judgments into matters of federal subject-matter jurisdiction”).

The state court’s declaratory judgment has no preclusive effect here – at least not on the Investors. Whether a state judgment is preclusive in a federal case depends on state law. *Brokaw v. Weaver*, 305 F.3d 660, 669 (7th Cir. 2002). The only preclusion doctrine that could conceivably bind the Investors is issue preclusion, also known as collateral estoppel. But the state judgment here is a default judgment, and Illinois “subscribes to the majority view that a default judgment cannot form the basis for collateral estoppel.” *Clear Channel Outdoor, Inc. v. Nikitas (In re Nikitas)*, 326 B.R. 127, 131 (Bankr. N.D. Ill. 2005); *see also Lopez v. Reyes (In re Reyes)*, Nos. 07-80407, 07-8070, 2008 WL 2020501, at *2 (Bankr. C.D. Ill. May 9, 2008). In Illinois, issue preclusion applies only to a point actually litigated, and “by definition nothing is ‘actually litigated’ when a default is entered.” *Nikitas*, 326 B.R. at 131. Shepherd’s default judgment therefore does not prevent an inquiry into its authority to file the bankruptcy cases.

But merely moving the judgment aside so an inquiry can take place is not enough. The Investors still have the burden of proving that Shepherd in fact lacked the authority to file the bankruptcy cases, and they have not satisfied that burden. In their motion, they offer no cogent argument – one supported with evidence and legal authority rather than merely invective – establishing that Shepherd lacked the right to file the cases on the debtors’ behalf. For the most part, the Investors simply raise lots of interesting questions about Mackert, Shepherd, and the debtors, questions they invite the debtors and their counsel to answer. But if the cases are to be dismissed under section 1112(b), the burden is on the Investors, not the debtors or anyone else, to provide the answers. They provide none.

One potentially interesting question the Investors raise is how the January 30, 2008 management agreement could have given Shepherd authority to file the bankruptcy cases when Shepherd itself was not formed until February 16, 2008 – two weeks *after* the agreement was signed. The Investors contend that this timing renders the management agreement a “nullity.”

But the Investors cite no legal authority to support this contention and fail to run with it factually. As it happens, a contract can sometimes bind a corporation although the corporation did not exist when the contract was made. A person acting as a “promoter” can enter into a contract on behalf of an unformed corporation, and the contract will become binding once the corporation ratifies it. *See generally* 1A William Mead Fletcher, *Fletcher Cyclopedic of Corporations* §§ 205, 207 (2002 rev.). Whether Shepherd ratified the management agreement after February 16, 2008, or failed to do so are questions of fact on which the Investors again offer no evidence.

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The Investors also note that two of the debtors, a limited liability company and a limited partnership, were dissolved just before the bankruptcy cases were filed. The Investors argue (once more without citation to any legal authority) that these two debtors therefore lacked the capacity to file bankruptcy. At a minimum, the Investors suggest, the cases of these debtors should be dismissed.

Not so. An entity entitled to be a debtor under chapter 7 is also entitled to be a debtor under chapter 11. 11 U.S.C. § 109(d). A “person” may be a debtor under chapter 7, 11 U.S.C. § 109(b), and “person” is defined to include both a “partnership” and a “corporation,” 11 U.S.C. § 101(41). A corporation, in turn, includes a limited liability company. *See Brandt v. Tabet DiVito & Rothstein, LLC (In re Longview Aluminum, L.L.C.)*, 419 B.R. 351, 354 (Bankr. N.D. Ill. 2009). So both a partnership and an LLC are entitled to be chapter 11 debtors. But whether a partnership or an LLC dissolved under state law can be a debtor is a matter of state law, not bankruptcy law. *In re International Zinc Coatings & Chem. Corp.*, 355 B.R. 76, 83 (Bankr. N.D. Ill. 2006); *In re StatePark Bldg. Group, Ltd.*, 316 B.R. 466, 472 (Bankr. N.D. Tex. 2004).

As Marwil correctly notes, Texas limited partnerships and LLCs can be dissolved under the Texas Tax Code for failure to pay state franchise taxes, but once dissolved they have three years to wind up their affairs. *See Tex. Bus. Orgs. Code* § 11.356. During this three-year period, Texas bankruptcy courts have held, the dissolved entities are eligible to be debtors in bankruptcy. *See In re American Heartland Sagebrush Secs. Inves., Inc.*, 334 B.R. 848, 852-53 (Bankr. N.D. Tex. 2005); *StatePark Bldg. Group*, 316 B.R. at 472-75; *In re ABZ Ins. Servs., Inc.*, 245 B.R. 255, 259-62 (Bankr. N.D. Tex. 2000). Since the two debtors here, A&O Resource Management and Houston Tanglewood Partners, were dissolved just six days before they filed bankruptcy, they were well within the three years and were eligible under Texas law to be debtors.

Because the Investors have failed to meet their burden to show either that Shepherd lacked authority to file these cases or that two of the debtors were ineligible to be debtors, the motion to dismiss will be denied.

ii. Transfer

Next, transfer. Section 1412 permits a district court to transfer a case or proceeding under title 11 to another district “in the interest of justice or for the convenience of the parties.” 28 U.S.C. § 1412. In determining whether a transfer is appropriate, courts typically consider five factors: (1) the location of the debtor; (2) the location of the creditors; (3) the location of the debtor’s assets; (4) the location of witnesses necessary to the administration of the estate; and (5) the forum that would provide the most efficient and economical administration of the case. *In re B.L. McCandless LP*, 417 B.R. 80, 82-83 (Bankr. N.D. Ill. 2009); *In re Pickwick Place L.P.*, 63

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B.R. 290, 291-92 (Bankr. N.D. Ill. 1986). Venue is presumed proper in the district where a bankruptcy case is filed, and the burden of proving otherwise is on the party seeking a transfer. *McCandless*, 417 B.R. at 82. Whether to transfer a case rests with the bankruptcy court's discretion. *Id.*

The Investors have not met their burden of proving a transfer is warranted. As the U.S. Trustee properly points out, the motion that the Investors filed last September provides neither evidentiary nor legal support for a transfer. In fact, the motion barely mentions transfer at all, the Investors expending most of their energy on dismissal (and that with little effect). In their reply in support of the motion, the Investors do at last offer an argument of sorts, though still no citation to any legal authority. But new arguments in a reply are dirty pool: they sandbag the opponent, depriving him of a chance to respond. Arguments offered for the first time in a reply are therefore deemed waived. *Fogel v. Linnemann (In re Mission Bay Ski & Bike, Inc.)*, Nos. 07 B 20870, 08 A 55, 2009 WL 2913438, at *8 (Bankr. N.D. Ill. Sept. 9, 2009); *In re Farrar-Johnson*, 353 B.R. 224, 227 n.3 (Bankr. N.D. Ill. 2006). Since the Investors' entire transfer argument appears in their reply, the request for a transfer is waived.

That said, it may be worth noting that the *McCandless* factors, applied to the sparse record the parties have created, do not weigh in favor of transferring these unusual cases.

- *The location of the debtors.* According to Marwil, five of the seven debtors are Illinois limited liability companies, and at least some of them maintained offices in Chicago. (Marwil offers no factual support for these contentions, but the Investors do not dispute them.) The debtors apparently chose to file the cases here – at least the Investors have not demonstrated otherwise – and a debtor's choice of forum is typically entitled to “great weight.” *In re Enron Corp.*, 274 B.R. 327, 342 (Bankr. S.D.N.Y. 2002).

But the debtors are not the only ones in Illinois. So is Marwil, the chapter 11 trustee himself, elected at the Investors' urging. And so are the debtors' records, or most of them, since they are now in the trustee's possession. For all intents and purposes, then, the debtors are located at least as much in Illinois at this point as they are in Texas.

The Investors do not take issue with any of this but would have the court equate the debtors with their former principals, all of whom allegedly reside in the Southern District of Texas. Because the former principals are located in Texas, so the argument goes, the debtors themselves must be located in Texas, too. But the Investors offer no authority for making this equation. To make it would likely require a showing that the principals were the alter egos of the debtors, a showing akin to piercing the corporate veil. The Investors have not attempted such a showing here.

The location of the debtors, then, is a neutral factor, weighing neither for nor against

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transfer.

- *The location of creditors.* The parties discuss only where the many investors are located. Nothing is said about how much they are owed. Ordinarily, the “location of creditors” factor depends not only on the number of creditors but also on the amounts of their claims, since it is more important for creditors with large claims to have a convenient forum. *In re Dunmore Homes, Inc.*, 380 B.R. 663, 676 (Bankr. S.D.N.Y. 2008). An analysis of the claims registers in the bankruptcy cases would have permitted a determination of where the creditors’ center of gravity really lies here. But the parties have not performed that analysis, and the court has no obligation to perform it for them. *See Mission Bay Ski & Bike*, Nos. 2009 WL 2913438, at *8.

So all we have are the locations of creditors. According to the parties (and these facts, too, are not disputed), the creditor body consists of about 720 investors, of whom roughly half live in Texas. The other half are scattered among thirty-eight states, with sixty of them in Illinois. A Texas court would thus provide a convenient forum for only about half the creditor body, although no court except a Texas court would be as convenient for as many creditors.

The better question is not how many creditors are located where, but why the location of creditors matters in these cases. The debtors, it must be remembered, are investment funds. The creditors, all apparently unsecured, are investors in the funds. The funds are not operating in any real sense, and the debtors’ estates are currently under the administration of a chapter 11 trustee keeping the businesses alive strictly to protect the creditors’ investments. Under the circumstances, there is little for the creditor body to do other than sit back, monitor the cases, and hope for the best. If the investors need ready access to the court in which the bankruptcies are pending, they do not explain why.

In short, the parties have submitted insufficient information for a careful decision about the location of creditors. But given the data available as well as the nature of the cases, the creditors’ location is also a neutral factor here.

- *The location of the debtors’ assets.* This factor is neutral as well. The parties agree that the debtors have no physical assets located in a particular place. The debtors’ main assets are life insurance policies and bonds. To the extent the policies and bonds have a physical location at all, they are located in Chicago because the documentation is in the hands of the chapter 11 trustee, Marwil.

The Investors note that the trustee’s recovery from the settlement with the receiver of W Financial, Inc. is an asset, and the receiver is in Texas. But the receiver himself is not an asset, of course, and so his location is irrelevant. As for the settlement proceeds, those are dollars, not real or personal property, and when the settlement is paid, the dollars will move from Texas to Illinois at no cost to the estates here.

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• *The location of witnesses.* This factor is impossible to evaluate because the parties have provided no information about potential witnesses. The trustee maintains that he is the only witness of interest and is in Chicago. It seems unlikely that Marwil is the only relevant witness in these cases. The Investors, by contrast, take the position that all relevant witnesses are in Texas but fail to name any. It is true, as the Investors note, that some potential witnesses were unable to travel to Chicago for the hearing to resolve the trustee election, but that hearing has come and gone. Despite what the Investors think, the individual investors do not count as potential witnesses – not without some explanation of why they would need to be called. In fact, no party has suggested *any* specific purpose for which *any* witnesses would be necessary going forward.

It may be that the trustee's pending adversary proceeding against Messrs. Mackert, Oncale, Allmendinger, and Wahab will require discovery from witnesses whose appearance in an Illinois court cannot be compelled. But if so, the parties again have not said. The court has no obligation to speculate about these kinds of matters and make the parties' arguments for them. *See Mission Bay Ski & Bike*, 2009 WL 2913438, at *8.

Given the dearth of information about potential witnesses, the location of witnesses is as neutral a factor as the others.

• *Most efficient and economical forum.* The debtors' estates, finally, are most efficiently and economically administered here. It is true that these cases have an undeniable Texas connection. The debtors had offices in Texas and seem to have operated primarily from Texas. The debtors' former principals are apparently Texas residents. Mackert is also a Texas resident. Others with connections to the debtors, such as John and Laura Spalding, are in Texas. The investors from Texas are the largest group, and the Texas authorities, notably the Texas State Securities Board, have spent a great deal of time and energy investigating the debtors' affairs.

But none of this means the debtors' bankruptcy estates can be administered more efficiently in a Houston bankruptcy court. In fact, the contrary is true. As Marwil points out, these cases have now been pending in Chicago for seven months under the auspices of an Chicago chapter 11 trustee. The debtors' books and records are in the chapter 11 trustee's possession in Chicago. The chapter 11 trustee, the U.S. Trustee, and to some extent even this court have become educated about the debtors and their affairs.

Most important, in November the Investors chose to elect a Chicago chapter 11 trustee, Marwil, to replace the appointed chapter 11 trustee, Collins. Since Marwil is now the elected trustee, these cases will have a Chicago chapter 11 trustee whether they are transferred or not. A Chicago trustee will have considerably greater access to the bankruptcy court at considerably less expense if the cases remain here. Marwil also has easier access to Collins and his counsel, should that access be necessary, because all are in Chicago. As for witnesses and documents in

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Texas, Marwil will have to travel from Chicago to Texas for third-party discovery whether the cases are pending here or there.

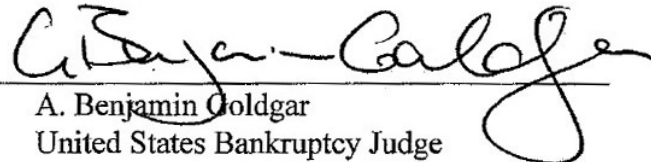
In contending otherwise, the Investors stress the high cost of having the cases heard in Chicago. But they fail to explain why the administration of the cases would be any more costly in Chicago than in Houston. The Investors assert that Collins incurred huge attorneys' fees during his tenure as chapter 11 trustee, but once again they offer no evidence to support their assertion. And even if the Investors are right, they have not demonstrated (or even tried to demonstrate) that Collins's fees were unnecessary, or that a Houston chapter 11 trustee would not have incurred the same fees had the cases been transferred early on.

In addressing transfer requests under section 1412, "the most weight is given to the economic and efficient administration of the estate." *Dunmore Homes*, 380 B.R. at 676. With a Chicago chapter 11 trustee elected and administering the debtors' estates, these cases are more economically and efficiently administered in Chicago. The court will therefore exercise its discretion to deny the motion to transfer.

3. Conclusion

For these reasons, the motion of the Group of Investors to dismiss these cases or transfer them to the Southern District of Texas is denied.

Dated: March 24, 2010


A. Benjamin Goldgar
United States Bankruptcy Judge