

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

In re: ) Chapter 11  
)  
LIFE FUND 5.1, LLC, et. al., ) Case No. 09-32672  
) (Jointly Administered)  
)  
Debtors. ) Hon. A. Benjamin Goldgar

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE THAT on Wednesday, October 14, 2009, at 9:30 a.m.,** or as soon thereafter as counsel may be heard, we will appear before the Honorable A. Benjamin Goldgar, or any judge sitting in his stead, in Room 613 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, and present the *Trustee's Motion for Authority to Issue Subpoenas*, a copy of which is hereby served upon you.

Dated: October 7, 2009

PATRICK M. COLLINS, not individually, but solely in his capacity as chapter 11 Trustee of the Debtors' estates

By: /s/ Brian A. Audette  
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*Attorneys for the Trustee*

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

In re: ) Chapter 11  
)  
LIFE FUND 5.1, LLC, et. al., ) Case No. 09-32672  
) (Jointly Administered)  
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Debtors. ) Hon. A. Benjamin Goldgar

**TRUSTEE'S MOTION FOR AUTHORITY TO ISSUE SUBPOENAS**

Patrick M. Collins, not individually, but solely in his capacity as chapter 11 trustee (the "Trustee") of the bankruptcy estates of Life Fund 5.1, LLC (Case No. 09-32672), Life Fund 5.2, LLC (Case No. 09-32674), A&O Life Fund, LLC (Case No. 09-32678), Houston Tanglewood Partners, LLC (Case No. 09-32676), A&O Resource Management, LP (Case No. 09-32677), A&O Bonded Life Assets, LLC (Case No. 09-32679), and A&O Bonded Life Settlement, LLC (Case No. 09-32681) (collectively, the "Debtors"), requests the entry of an order, pursuant to 11 U.S.C. §§ 105(a), 1106(a)(3) and Federal Rule of Bankruptcy Procedure 2004, authorizing the Trustee to issue subpoenas to, and conduct examinations of, certain entities that may have information regarding the Debtors' finances, creditors, investors, insurance policies, and potential causes of action. In support of this motion, the Trustee states as follows:

**JURISDICTION**

1. This Court exercises jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these bankruptcy cases and this motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 1106(a)(3) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **BACKGROUND**

3. On September 2, 2009, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. On September 16, 2009, the Court entered an Order Directing Joint Administration of Related Chapter 11 Cases, which directed joint administration of the Debtors' cases under Case No. 09-32672.

5. On September 16, 2009, the Court entered an Order Granting U.S. Trustee's Motion to Appoint a Chapter 11 Trustee.

6. On September 21, 2009, the Office of the United States Trustee appointed the Trustee as chapter 11 trustee of the Debtors' estates.

7. According to information obtained by the Trustee from the Debtors and the Trustee's own preliminary investigation of the Debtors' businesses, the Debtors operated in the "life settlement industry." The Trustee believes that the Debtors used funds obtained from hundreds of individual investors to acquire life insurance policies (the "Policies") and these investors likely comprise the majority of the Debtors' creditors.

### **RELIEF REQUESTED**

8. The Trustee requests that this Court enter an order authorizing, but not directing, the Trustee to issue subpoenas to, and conduct examinations of, certain entities that may have information regarding the Debtors' finances, creditors, investors, Policies, and potential causes of action (collectively, the "Anticipated Subpoena Recipients"). The Anticipated Subpoena

Recipients consist of certain parties the Trustee has determined might possess information and documents needed by the Trustee to fulfill his obligations under the Bankruptcy Code. The Trustee reserves the right to seek further Court authority to issue additional subpoenas as he continues his investigation into the Debtors' affairs.

**BASIS FOR RELIEF REQUESTED**

9. Section 1106 of the Bankruptcy Code provides that "[a] trustee shall . . . investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1106(a)(3).

10. Section 105(a) of the Bankruptcy Code empowers this Court with the authority to assist the Trustee in carrying out his duties, providing that this Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a).

11. Consistent with the Court's broad authority under section 105(a) to enforce the Bankruptcy Code, and in furtherance of the Trustee's duties under section 1106(a) of the Bankruptcy Code, Bankruptcy Rule 2004 provides that "[o]n motion of a party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). The scope of this examination may relate, among other things, to "the acts, conduct, or property or to the liabilities and the financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." Fed. R. Bankr. P. 2004(b).

12. The attendance for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Bankruptcy Rule 9016, which incorporates Federal Rule of Civil

Procedure 45 into cases under the Bankruptcy Code, and as an officer of this Court, an attorney may issue and sign a subpoena on behalf of the Court. *See* Fed. R. Bankr. P. 2004(c).

13. It is generally accepted that "the scope of a Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted." *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985). Because "the primary purpose of a Rule 2004 examination is to permit the trustee to quickly ascertain the extent and location of the estate's assets," courts have acknowledged that Bankruptcy Rule 2004 allows for a "fishing expedition" not limited to the debtor's agents but extending to creditors and third parties who have had dealings with the debtor, without the limits as to scope placed upon examinations under the Federal Rules of Civil Procedure. *Id.*; *see also In re Enron Corp.*, 281 B.R. 386, 840 (Bankr. S.D.N.Y. 2002) (recognizing that "Rule 2004 examinations are broad and unfettered and in the nature of fishing expeditions"); *In re Handy Andy Home Improvement Ctrs., Inc.*, 199 B.R. 376, 380 (Bankr. N.D. Ill. 1996) (noting that "a Rule 2004 examination is a broad 'fishing expedition' into a party's affairs for the purpose of obtaining information relevant to the administration of the bankruptcy estate").

14. The Trustee expects to issue subpoenas to the Anticipated Subpoena Recipients, who consist of, among others, insurance companies and other entities that have done business with the Debtors. A list of the Anticipated Subpoena Recipients is attached hereto as Exhibit A. It is critical for the Trustee to quickly gather information from the Anticipated Subpoena Recipients to accurately identify and confirm the Debtors' creditors and investors, the Debtors' assets, and the status of the Debtors' Policies. The use of Bankruptcy Rule 2004 is especially appropriate in these cases given the serious allegations levied against the Debtors and pending investigations by state and federal agencies. Moreover, the Trustee believes that the Debtors'

most significant assets consist of the Policies. Consequently, the Trustee must obtain accurate information about each of the Policies so that he can make a determination about, among other things, the status of the Policies, the value of the Policies, and immediate efforts that might need to be undertaken to preserve the value of the Policies. The Trustee believes that the Anticipated Subpoena Recipients may have information necessary to assist the Trustee with carrying out the duties imposed upon him by the Bankruptcy Code. Bankruptcy Rule 2004 therefore provides the means by which the Trustee can obtain the critical information he needs to administer the Debtors' estates.

15. Accordingly, the Trustee requests authority to serve Bankruptcy Rule 2004 subpoenas and document requests upon the Anticipated Subpoena Recipients. The Trustee believes it is necessary and appropriate for this Court to provide the Trustee with authority to issue subpoenas for testimony and documents and to conduct examinations in furtherance of his duties under the Bankruptcy Code.

#### **NOTICE**

16. The Trustee has served notice of this motion upon: (a) the Office of the United States Trustee; (b) the Debtors' counsel; (c) all parties that have appeared and/or requested notice in the Debtors' cases; and (d) the Anticipated Subpoena Recipients. The Trustee has not served this motion upon the Debtors' consolidated list of 30 largest unsecured creditors because the Trustee believes that such service would constitute an unnecessary expense. Therefore, given the relief requested herein, and notice to the parties who have otherwise appeared and participated in these cases, the Trustee requests that the Court approve limited notice of this motion.

WHEREFORE, the Trustee respectfully requests the entry of an order (a) authorizing, but not compelling, the Trustee to conduct discovery of the Anticipated Subpoena Recipients by issuing Bankruptcy Rule 2004 subpoenas to them, and (b) granting the Trustee such other and further relief the Court deems just and proper.

Dated: October 7, 2009

Respectfully submitted,

**PATRICK M. COLLINS**, not individually,  
but solely in his capacity as chapter 11  
Trustee of the Debtors' estates

By:                   /s/ Brian A. Audette                  

**PERKINS COIE LLP**

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*Counsel to the Trustee*

## **Exhibit A**

AVIVA Life and Annuity Company

Bayou City Escrow, Inc. (n/k/a First Houston Inc.)

Columbus Life Ins. Co.

John Hancock Life Insurance Company

Lincoln Benefit Life Insurance Company

Security Life of Denver Insurance Company

West Coat Life Insurance Company

**CERTIFICATE OF SERVICE**

Brian A. Audette, an attorney, certifies that on October 7, 2009 he caused a copy of the *Notice of Motion* and *Trustee's Motion for Authority to Issue Subpoenas* to be served on the parties listed below via email to the extent an email address is listed. To the extent no email address is listed and to the *Special Service List*, service was made via U.S. Mail, postage prepaid. Service was also made via the Court's ECF System to the parties registered to receive electronic service.

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### **SPECIAL SERVICE LIST**

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Dallas, TX 75201

Bayou City Escrow, Inc. (n/k/a First Houston Inc.)  
Michelle Fancher, Registered Agent  
919 Milam, Suite 1700  
Houston, TX 77002

Columbus Life Ins. Co.  
Donald J. Wuebbeling, Registered Agent  
400 Broadway  
Cincinnati, OH 45202

John Hancock Life Insurance Company  
Corporation Service Company, Registered Agent  
84 State Street  
Boston, MA 02117

Lincoln Benefit Life Insurance Company  
C T Corporation System, Registered Agent  
1024 K Street  
Lincoln, NE 68508

Security Life of Denver Insurance Company  
CT Corporation System, Registered Agent  
1675 Broadway, Suite 1200  
Denver, CO 80202

West Coast Life Insurance Company  
C T Corporation System, Registered Agent  
818 West Seventh St.  
Los Angeles, CA 90017

/s/ Brian A. Audette

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

In re:	)	Chapter 11
	)	
LIFE FUND 5.1, LLC, et. al.,	)	Case No. 09-32672
	)	(Jointly Administered)
	)	
Debtors.	)	Hon. A. Benjamin Goldgar

**ORDER AUTHORIZING TRUSTEE TO ISSUE SUBPOENAS**

THIS MATTER COMING TO BE HEARD upon the Trustee's Motion for Authority to Issue Subpoenas (the "Motion");<sup>1</sup> the Court having found that notice of the Motion was proper and sufficient under the circumstances; and the Court having jurisdiction over this core proceeding; and the Court otherwise being fully advised in the premises,

IT IS HEREBY ORDERED that:

1. The Motion is granted.
2. The Trustee is authorized, but not directed, to issue subpoenas to, and conduct examinations of, those Anticipated Subpoena Recipients listed on Exhibit 1 to this Order, without prejudice to the Trustee's right to seek further Court authority to issue additional subpoenas.

Dated: October \_\_\_\_, 2009

ENTER:

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UNITED STATES BANKRUPTCY JUDGE

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

## **Exhibit 1**

AVIVA Life and Annuity Company

Bayou City Escrow, Inc. (n/k/a First Houston Inc.)

Columbus Life Ins. Co.

John Hancock Life Insurance Company

Lincoln Benefit Life Insurance Company

Security Life of Denver Insurance Company

West Coat Life Insurance Company