

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

In re:	)	Chapter 11
)	
LIFE FUND 5.1, LLC, <i>et al.</i> , ¹	)	Case No. 09 B 32672
)	
Debtors.	)	Jointly Administered
	)	<u>Hearing Date: June 6, 2011</u>
	)	<u>Hearing Time: 9:30 a.m.</u>

NOTICE OF HEARING ON MOTION TO EXCLUDE THE PURCHASE PRICE ALLOCATION TO LIFE INSURANCE POLICY PURCHASE AND SALE AGREEMENT(S)

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on **June 6, 2011, at 9:30 a.m.**, the undersigned shall appear before the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge for the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, or any other Judge who may be sitting in his place and stead, in Courtroom 613 of the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, 60604, and then and there present for hearing the **Motion to Exclude the Purchase Price Allocation to Life Insurance Policy Purchase and Sale Agreement(s)** (the "Motion").

PLEASE TAKE FURTHER NOTICE that you may obtain a copy of the Motion: (1) by contacting undersigned counsel to the Trustee; (2) on the web site www.lifefundtrustee.com, or (3) by contacting the Clerk of the Court, U.S. Bankruptcy Court, Dirksen Federal Building, 219 S. Dearborn St., Room 713, Chicago, IL 60604.

¹ The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

Dated: May 19, 2011

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

/s/ Jeremy T. Stillings

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Counsel to the Trustee

CERTIFICATE OF SERVICE

I, Jeremy T. Stillings, an attorney, do hereby certify that on or about May 19, 2011, I caused a copy of the foregoing *Notice of Hearing on Motion to Exclude the Purchase Price Allocation to Life Insurance Policy Purchase and Sale Agreement(s)* to be served on the parties identified below and on approximately 40 entities who demonstrated interest in the life insurance policies to be sold to Vida Capital, Inc. under the notice of sale filed in these cases on the date hereof.

By: /s/ Jeremy T. Stillings

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Prudential c/o Legal Department 751 Broad Street Legal Process Unit, 4th Floor Newark, NJ 07102	US Mail	Ranch Capital, LLC 12275 El Camino Real, Ste 110 San Diego, CA 92130	US Mail
Vida Capital, Inc. 1101 S. Capital of Texas Highway Suite K-150 Austin, TX 78746	US Mail		

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

In re:	)	Chapter 11
)	
LIFE FUND 5.1, LLC, <i>et al.</i> , ¹	)	Case No. 09 B 32672
)	
Debtors.	)	Jointly Administered

**MOTION TO EXCLUDE THE PURCHASE PRICE ALLOCATION TO LIFE
INSURANCE POLICY PURCHASE AND SALE AGREEMENT(S)**

Jeff Marwil, not individually, but solely in his capacity as chapter 11 trustee (the “Trustee”) to the bankruptcy estates (the “Estates”) of the above-captioned debtors (collectively, the “Debtors”), hereby moves (the “Motion”) the Court, pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 5005-4 of the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois (the “Local Rules”), for entry of an order authorizing the Trustee to exclude and restrict access to the purchase price allocation (the “Purchase Price Allocation”) to that certain life insurance policy purchase and sale agreement (the “PSA”) filed on May 17, 2011 in these chapter 11 cases, and any subsequent such allocations. In support of the Motion, the Trustee respectfully states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter 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)(A).

¹ The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 5005-4.

Background

4. Vida Capital, Inc. ("Purchaser") has executed the PSA, which provides for the sale of 17 life insurance policies to Purchaser. The PSA includes a Purchase Price Allocation, which allocates the total purchase price among the 17 policies being sold. The Purchase Price Allocation provides the means for a partial rescission of the agreement with respect to any policies that cannot ultimately be transferred to Purchaser;² thus, allowing the Debtors to consummate the PSA with respect to the balance of the policies.

5. The Purchaser is an institutional purchaser that is in the business of buying and selling life insurance policies. The Purchaser, like other such institutions, considers the purchase price it pays for a life insurance policy and the composition of its portfolio to be proprietary commercial information, and has requested that the Trustee exclude the Purchase Price Allocation from the PSA filed with the Court, and seek entry of an order authorizing such exclusion and restricting access to the Purchase Price Allocation as set forth herein. The Trustee engaged in extensive negotiations with the Purchaser regarding the PSA and with a second potential purchaser, who also requested this relief in connection with any proposal it would submit to the Court.

Relief Requested

6. By this Motion, the Trustee respectfully requests entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018(a) and Local Rule

² For example, if (1) ownership of a policy is shared with a non-debtor who declines to sell his or her interest to the Purchaser or (2) an insurance company that issued a policy refuses to recognize the transfer of a policy.

5005-4, (a) authorizing the Trustee to exclude the Purchase Price Allocation (and any purchase price allocation for any other offer to purchase the policies subject to the PSA) from documents filed with the Court or otherwise made public and (b) restricting access to such allocations to the Court, the United States Trustee, and, at the discretion of the Trustee, any co-owner of a policy, any party that has executed a non-disclosure agreement with the Trustee and is not a competitor of the purchaser, and any party that asserts an interest in a policy.

Basis for Relief

7. Section 107(b) of the Bankruptcy Code expressly provides that: “on the request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .” 11 U.S.C. § 107(b). Bankruptcy Rule 9018 empowers the Court to “protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . .” Fed. R. Bankr. P. 9018(1). The Seventh Circuit recognizes that section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018(1) “authorize the court to withhold confidential commercial information from public disclosure.” *In re A.G. Fin. Serv. Center, Inc.*, 395 F.3d 410, 416 (7th Cir. 2005).

8. Commercial information has been defined as “information which would cause an unfair advantage to competitors by providing them with information as to the commercial operations of the debtor.” *In re Handy Andy Home Improvement Ctrs., Inc.*, 199 B.R. 376, 382 (Bankr. N.D. Ill. 1996) (quoting *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)). Courts have held that “the commercial information that is entitled to protection under [Bankruptcy] Code section 107(b) and Bankruptcy Rule 9018 must be viewed from the practical perspective of damage to the estate or its creditors and squarely includes information that could

prejudice either of them as part of a sale process.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (emphasis added); *In re Farmland Indus., Inc.*, 290 B.R. 364, 368-69 (Bankr. W.D. Mo. 2003).

9. Once information is determined to be commercial information, the Bankruptcy Code requires that the information not be disclosed unless otherwise agreed by the party seeking to prevent its dissemination. *Handy Andy*, 199 B.R. at 381 (stating that “good cause” is not a condition to sealing confidential commercial information, the only requirement is that the information seek to have sealed be confidential and commercial in nature). Moreover, notwithstanding a finding that the information represents confidential research, development or commercial information, the court retains discretion to restrict access to the confidential information at issue. *In re Bennett Funding Group, Inc.*, 226 B.R. 331, 336 (Bankr. N.D.N.Y. 1998) (“If the information does not represent trade secrets or confidential research, development or commercial information, then whether to permit access to the information is a matter left to the Court’s discretion.”) (citing *Nixon*, 435 U.S. at 599). Nondisclosure pursuant to section 107(b) is necessary where disclosure of the confidential information would diminish the value of the estate. See *A.G. Fin. Serv. Center.*, 395 F.3d at 416 (affirming nondisclosure of a customer list of the debtor where disclosure “would have diminished value of the estate”); *Global Crossing*, 295 B.R. at 725 (granting debtors’ motion for in camera presentation of evidence where disclosure of testimony could jeopardize debtor’s sale process); *Farmland Indus.*, 290 B.R. at 368-69 (granting debtor’s motion to file amendment to debtor in possession credit agreement under seal where disclosure of sale timeline requirements contained in credit agreement amendment would be detrimental to debtor’s estate by placing debtor at a distinct disadvantage in the sales bargaining and negotiation process with potential purchasers).

10. Good cause exists for the Court to grant the relief requested herein because doing so provides a direct benefit to the estates. Purchase price allocation is proprietary, commercial information to the Purchaser (and likely any other potential purchaser) because it reflects certain valuation models that the Purchaser utilized, and that other purchasers may utilize, in order to put forth an offer to purchase the Portfolio or other life insurance policies or portfolios. If the Purchase Price Allocation were to be made publically available, this commercial information would provide insight into the range of values assigned by the Purchaser to each of the policies, hamper its future trading, and thus reduce their likelihood to buy assets out of chapter 11 cases, including perhaps the remaining policies of the Debtors' estates. The Purchaser submitted its bid with the expectation that the PSA would be concealed from its competitors. Moreover, being able to offer similar protection to a competitor may facilitate a higher or better bid than the PSA.

11. Given the clear mandate of the Bankruptcy Code, the Bankruptcy Rules, and relevant case law, the Court should (a) authorize the Trustee's exclusion of the Purchase Price Allocation and (b) restrict access to the PSA as requested herein.

Notice

12. Notice of this Motion has been given to all parties who have requested notice in the chapter 11 cases pursuant to Bankruptcy Rule 2002, and all parties who received notice of the hearing to approve the PSA.

WHEREFORE, the Trustee respectfully request that the Court enter an order, in substantially the form of the order submitted herewith, authorizing the Trustee's exclusion of the Purchase Price allocation and restricting access to the Purchase Price Allocation and other such allocations, and granting such other and further relief as the Court deems just and proper.

Dated: May 19, 2011
Chicago, Illinois

PROSKAUER ROSE LLP

/s/ Jeremy T. Stillings

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Counsel to 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, <i>et al.</i> , ¹	)	Case No. 09 B 32672
)	
Debtors.	)	Jointly Administered

**ORDER AUTHORIZING THE TRUSTEE TO EXCLUDE
AND RESTRICT ACCESS TO THE PURCHASE PRICE ALLOCATION
TO LIFE INSURANCE POLICY PURCHASE AND SALE AGREEMENT(S)**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Rule 9018 of the Bankruptcy Rules and Local Rule 5005-4 for entry of an order authorizing the Trustee to exclude and restrict access to any purchase price allocation; and upon consideration of the Motion and all pleadings related thereto; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

¹ The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

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

2. The Trustee is authorized to exclude the Purchase Price Allocation from the PSA filed with the Court (whether so filed prior or subsequent to entry of this Order) and to exclude other such allocations from future proposals and agreements submitted to or filed with the Court.

3. Without further order of the Court, only the Court, the United States Trustee, and at the discretion of the Trustee, parties that have executed non-disclosure agreements with the Trustee and are not direct competitors of the potential purchasers and parties that assert a direct interest in a policy are entitled to view purchase price allocations redacted in reliance on this order.

4. The Trustee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

5. This court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Enter:

HON. A. BENJAMIN GOLDGAR
UNITED STATES BANKRUPTCY JUDGE

Prepared by:

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