

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

**In re:**  
**LIFE FUND 5.1, LLC, et. al.,**  
  
**Debtors**

§ **Chapter 11**  
§  
§  
§  
§ **Case No. 09-32672**  
§ **(Jointly Administered)**  
§

---

**JEFF J. MARWIL, solely as TRUSTEE of LIFE  
FUND 5.1, LLC, et. al.,**  
  
**Plaintiff,**

§  
§  
§  
§  
§  
§  
§

v.

§ **Hon. A. Benjamin Goldgar**  
§

**BRENT ONCALE; RUSSELL MACKERT;  
ADLEY ABDULWAHAB, a/k/a ADLEY  
WAHAB; CHRISTIAN ALLMENDINGER;  
A&O LIFE FUNDS, LP; A&O LIFE FUNDS  
MANAGEMENT, LLC; and SHEPHERD  
CAPITAL MANAGEMENT LLC,**

§ **Adversary No.: 10 A 00042**  
§  
§  
§  
§  
§  
§  
§  
§

**Defendants.**

**DEFENDANT CHRISTIAN ALLMENDINGER'S  
ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Christian Allmendinger, through his counsel, Neal Gerber & Eisenberg LLP and Curran Tomko Tarski LLP, hereby answers the First Amended Complaint filed by Jeff J. Marwil, solely in his capacity as Trustee of Life Fund 5.1, LLC, Life Fund 5.2 LLC, A&O Life Fund LLC, Houston Tanglewood Partners, LLC, A&O Resource Management, Ltd., A&O Bonded Life Assets, LLC and A&O Life Settlement, LLC (the "Debtors") as follows:

**THE ALLEGATIONS IN THE FIRST AMENDED COMPLAINT**

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, Ltd. (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"), by and through Jeff Marwil, not individually, but solely in his capacity as chapter 11 Trustee (the "Trustee") of the Debtors' bankruptcy estates, bring this amended adversary complaint seeking to avoid and recover fraudulent conveyances from the Debtors to the Defendants and others pursuant to sections 548 and 550 of the Bankruptcy Code and the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.*, and/or the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code 5§ 24.001 *et. seq.* In addition, the Complaint seeks recovery from various individuals and entities that were involved in or facilitated the looting, of and misapplication of A&O accounts and investor funds in or about late 2007 and 2008, in breach of their fiduciary and contractual duties and other applicable law. Finally, the complaint seeks mandatory injunctive relief and specific performance against certain Defendants in order to cure their breaches of duty and breaches of contract as trustees of certain life insurance trusts that own or purportedly own life insurance policies that were intended to belong, to the Debtors. In support this amended adversary complaint, the Trustee states as follows:

**ANSWER:** The first sentence of the Introductory Paragraph is a statement of law which requires no admission or denial by Allmendinger. The second and third sentences of the Introductory Paragraph contain statements of law describing the recovery sought which require no admission or denial by Allmendinger. With regard to the factual allegations in the second and third sentences of the Introductory Paragraph, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

### **SUMMARY OF CLAIMS**

1. In late 2007, the Debtors were purportedly sold to one or more Nevis-based entities in exchange for \$3 million, which was to be paid to then-owners Brent Oncale ("Oncale"), Adley Abdulwahab, also known as Adley Wahab ("Wahab"), and Christian Allmendinger ("Allmendinger"). Upon information and belief, the purported sale was engineered by Wahab, Oncale, Russell Mackert ("Mackert") an attorney for the Debtors and perhaps others to create the illusion that these principals had relinquished their financial stake in and control of the Debtors. At the time, regulatory investigations were proceeding in multiple states and, upon information and belief, the principals knew that there were significant issues with the "investments" that had been marked and sold to investors.

**ANSWER:** With regard to the factual allegations in Paragraph 1, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

2. The sale was a sham and, in reality, at least Oncale, Wahab and Mackert maintained and continued to exercise authority and control over the financial accounts of the Debtors and investor funds, as well as the Debtors generally. In particular, as detailed below, at least Oncale, Wahab and Mackert engaged in a series of circular and fraudulent transfers of A&O investor funds through which Oncale, Wahab, and Allmendinger effectively received millions of dollars from the Debtors to "sell" the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 2, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

3. This purported sale was only one part of a larger series of insider transactions through which the Defendants caused over \$37 million dollars to be transferred from accounts of

the Debtors into the accounts of A&O Life Funds, LP, a non-debtor affiliate of the Debtors. Millions of dollars of investor funds in A&O Life Funds, LP were then transferred directly to A&O principals for their own personal use. In addition, over \$12 million of these funds were transferred to Mackert's lawyer trust fund account, and distributed for the benefit of the A&O principals and Mackert, including but not limited to over \$5 million each in transfers to and for the benefit of Oncale and Wahab. Through this adversary complaint, the Trustee seeks to avoid and recover these fraudulent transfers, and seeks further relief from A&O Life Funds, LP and the other Defendants.

**ANSWER:** With regard to the factual allegations in the first two sentences of Paragraph 3, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations. The third sentence of Paragraph 3 contains statements of law describing the recovery sought which require no admission or denial by Allmendinger.

#### **PARTIES**

4. Plaintiff Jeff Marwil is the duly elected Chapter 11 Trustee of the Debtors A&O Life Fund, LLC; A&O Bonded Life Settlements, LLC; A&O Bonded Life Assets, Life Fund 5.1, LLC; Life Fund 5.2, LLC; Houston Tanglewood Partners, LLC; and A&O Resource Management, Ltd.

**ANSWER:** Paragraph 4 is a statement of law that requires no admission or denial by Allmendinger.

5. Defendant A&O Life Funds, LP is a limited partnership. A&O Life Funds, LP has been held out as managing member and/or controlling entity of all the Debtors. See *Shepherd Capital Management, LLC v. A&O Life Funds, LP, et al.*, 09 CH 22301 (Circuit Ct. Cook Cty.

filed July 8, 2009). Upon information and belief, in or about December 2006, A&O Life Funds, LP was created to serve as an umbrella entity for the Debtors.

**ANSWER:** The first sentence of Paragraph 5 purports to construe or relate information contained in documents filed in the legal proceeding *Shepherd Capital Management, LLC v. A&O Life Funds, LP, et al.*, 09 CH 22301 (Circuit Ct. Cook Cty. filed July 8, 2009). Such documents speak for themselves and are the best evidence of the statements contained therein and, therefore, these allegations require no admission or denial by Allmendinger. With regard to the factual allegations in the second sentence of Paragraph 5, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

6. Defendant A&O Life Funds Management, LLC is a Delaware limited liability company. A&O Life Funds Management, LLC was the general partner of A&O Life Funds, LP at all relevant times.

**ANSWER:** The allegations in Paragraph 6 purport to construe or relate information contained in legal formation documents. Such documents speak for themselves and are the best evidence of the statements contained therein and, therefore, these allegations require no admission or denial by Allmendinger. Further, Paragraph 6 contains statements of law which require no admission or denial by Allmendinger.

7. Collectively, the Debtors, A&O Life Funds, LI', and A&O Life Funds Management, LLC are referred to herein as the "A&O Entities."

**ANSWER:** Paragraph 7 requires no admission or denial by Allmendinger.

8. Upon information and belief, Defendant Wahab was an owner of the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 8, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

9. Upon information and belief, Defendant Oncale was an owner of the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 9, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

10. Upon information and belief, Defendant Allmendinger was an owner of the A&O Entities. Upon information and belief, however, Allmendinger was not involved in the control of the A&O Entities after approximately August 31, 2007.

**ANSWER:** With regard to the factual allegations in Paragraph 10, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

11. Collectively, Wahab, Oncale, and Allmendinger are referred to herein as the "A&O Principals."

**ANSWER:** Paragraph 11 contains no factual allegations and therefore requires no admission or denial by Allmendinger.

12. At all relevant times after December 2006 and before August 31, 2007, the A&O Principals jointly owned and controlled all of the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 12, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

13. Defendant Mackert is an attorney who, at relevant times, represented the A&O Entities. Upon information and belief, Mackert also owns and controls Shepherd Capital. Upon information and belief, at all relevant times Mackert had a close personal relationship with Wahab.

**ANSWER:** With regard to the factual allegations in Paragraph 13, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

14. Defendant Shepherd Capital Management LLC ("Shepherd Capital") is a Texas limited liability company. Upon information and belief, Shepherd Capital served as a "manager" of the Debtors for a period beginning in early 2008 and continuing up through the time of the filing of these bankruptcy cases on September 2, 2009 (the "Filing Date").

**ANSWER:** With regard to the factual allegations in Paragraph 14, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

15. Upon information and belief, in his role as an attorney for the A&O Entities and, later, through his control of Shepherd Capital Management, Mackert participated in, facilitated and assisted the fraudulent transfers and activities of Wahab, Oncale, and others, as set forth herein. Mackert's activities included the use of his attorney trust fund account in an attempt to facilitate and conceal certain transfers of A&O investor funds for the personal use of A&O Principals, as well as his own use.

**ANSWER:** With regard to the factual allegations in Paragraph 15, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**JURISDICTION**

16. This Court exercises jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This 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.

**ANSWER:** Paragraph 16 is a statement of law that requires no admission or denial by Allmendinger.

17. The statutory bases for the relief requested herein are sections 105(a), 544, 548, 550 and 1106(a)(2) of the Bankruptcy Code.

**ANSWER:** Paragraph 17 is a statement of law that requires no admission or denial by Allmendinger.

18. On the Filing Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

**ANSWER:** Paragraph 18 is a statement of law that requires no admission or denial by Allmendinger.

19. 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.

**ANSWER:** Paragraph 19 is a statement of law that requires no admission or denial by Allmendinger.

20. On September 21, 2009, the Court approved the Office of the United States Trustee appointment of Patrick Collins as chapter 11 Trustee of the Debtors' estates. On March 8, 2010, the Court entered an order certifying the election of Jeff Marwil as Trustee.

**ANSWER:** Paragraph 16 is a statement of law that requires no admission or denial by Allmendinger.

**GENERAL ALLEGATIONS**

**The A&O Business**

21. Oncale and Allmendinger founded the original A&O business and at all relevant times prior to August 31, 2007, held themselves out to be business managers, owners and principals of the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 21, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

22. Upon information and belief, Wahab became and held himself out as an owner and principal of the A&O Entities beginning in approximately December 2006 and prior to that time was an integral part of the marketing and sale of investments in the A&O Entities, through his role as a sales agent and sales manager.

**ANSWER:** With regard to the factual allegations in Paragraph 22, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

23. The Debtors operated in the "life settlement industry," under which existing life insurance policies are sold on a secondary market to investors. In a typical life settlement, a life insurance policy is purchased from an insured or an intermediary for a cash payment that is a discount to the face value of the policy. The purchase price is based on a variety of factors, including the life expectancy of the insured. Typically, when a life insurance policy is sold on the secondary market, the owner and beneficiary of the policy is changed so that the purchaser obtains the death benefit upon the demise of the insured.

**ANSWER:** With regard to the factual allegations in Paragraph 23, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

24. Beginning around approximately late 2004 and continuing through around early 2008, the A&O Principals solicited and received tens of millions of dollars from hundreds of investors who were told by A&O Principals and others that they were investing in life insurance policies owned by one or more of the A&O Entities. In total, over 700 investors transferred approximately \$100 million to the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 24, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

25. In some instances, the owner and beneficiary of a purchased life insurance policy was changed to be one of the A&O Entities, but in others, a newly formed trust became the owner/beneficiary, with one of the A&O Principals or their family members as trustee. For at least some of these trust-owned policies, the A&O Principals contractually transferred ownership of the purchased policies to the A&O Entities/Debtor(s) that paid the purchase price, but failed to complete documentation required by the insurance company that issued the policy in order for the insurance company to recognize the transfer and the new owner. Because an insurance policy is a contract right, the insurance company's failure to recognize the Debtors as the owner of a policy jeopardizes the Debtors' ability to maintain, control and transfer property of their estates and, ultimately, their chapter 11 cases. For example, if an insured were to die and the Debtors were not recognized as owners or beneficiaries of the policy on that insured, then the insurance company likely would pay the proceeds of the policy to the owners of record (here a trust

controlled by A&O Principals and/or their relatives) and not the Debtors. Additionally, if the Debtors are not owners of record with the insurance company for a policy, the insurance company generally will not provide information regarding the policy to the Debtors and/or their professionals. The Trustee needs to continually obtain updated and current information regarding the policies to maintain the policies, make informed decisions as to how to dispose of the policies, and effectively market the policies for sale, all in accordance with his duties to creditors and for the benefit of the Debtors' estates.

**ANSWER:** With regard to the factual allegations in the first two sentences of Paragraph 25, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations. The third through sixth sentences of Paragraph 25 comprise statements of law that require no admission or denial by Allmendinger. To the extent the third through sixth sentences of Paragraph 25 are interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

26. The investment vehicles offered by the A&O Entities evolved over time, but consisted generally of an investment with a specified rate of return that was purportedly secured by an interest in a specific life insurance policy or a pool of life insurance policies. Typically, the security of the investment was allegedly supported further by a "bond" purportedly issued by a foreign-based entity, Provident Capital Indemnity ("Provident Capital"). The amount of investments varied greatly, from approximately \$10,000 to several hundred thousand dollars or more.

**ANSWER:** With regard to the factual allegations in Paragraph 26, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

27. The investments were solicited primarily by the A&O Principals and various agents and brokers—some of whom worked closely with the A&O Principals to facilitate the investments into the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 27, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

28. Upon information and belief, the A&O Principals each held senior management positions in the A&O Entities that included overseeing the day-to-day operations of the A&O Entities, marketing the A&O Entities' services, recruiting and training brokers and Financial advisors to sell the Policies, and overseeing all aspects of the A&O Entities' operations.

**ANSWER:** With regard to the factual allegations in Paragraph 28, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

29. To induce investors to purchase an interest in the Policies, the A&O Principals made numerous representations, including, upon information and belief; the following:

- (a) the A&O Entities maintained sufficient cash reserves to pay the premiums necessary to keep the Policies in force;
- (b) the A&O Entities paid necessary premiums up front;
- (c) the Policies would yield annual returns of up to 15%; and
- (d) the life settlements were "bonded," meaning if the individuals insured under the Policies lived beyond their life expectancies, a third-party bonding company, Provident Capital, would assume ownership of the Policies and pay the full-face amount of the Policies to the investors.

**ANSWER:** With regard to the factual allegations in Paragraph 29, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

30. In addition, as early as 2006, Mackert lauded the A&O investments in communications with investors and/or their agents and brokers. For example, in a letter dated March 27, 2006, Mackert represented that he had "found that the product being offered by A&O is sound and the represented returns on the investment are real" and that "A&O has ensured that all the requirements necessary to effect the seamless transfer of the life policies to the investor are in place." Upon information and belief, A&O Principals used Mackert's letter to solicit investments.

**ANSWER:** With regard to the factual allegations in Paragraph 30, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

31. By way of example only, and upon information and belief, the A&O Principals and others working with them made representations to investors that were misleading, false, and/or inaccurate, including:

- (a) representations relating to the nature of the underlying investments offered by the Debtors (e.g., "guaranteed" returns);
- (b) representations regarding the transfers of the policies in the records of the insurance carriers;
- (c) representations regarding the role and function of purported escrow agents;
- (d) representations regarding the nature of the reinsurance and bonding;
- (e) representations regarding the type of life insurance policies that were owned (e.g., single life versus dual life policies); and

- (f) representations concerning the reliability of life expectancy reports used to value the policies.

**ANSWER:** With regard to the factual allegations in Paragraph 31, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

32. In addition, at all relevant times prior to August 31, 2007, upon information and belief, the A&O Entities operated such that:

- (a) A&O Principals served as the shareholders, officers, directors and managers of the A&O Entities;
- (b) A&O Principals served as trustees of trusts that owned life insurance policies purchased by the A&O Entities with investor funds;
- (c) the funds of the A&O Entities were commingled;
- (d) the A&O Entities operated out of the same office location; and
- (e) the A&O Entities failed to observe corporate formalities.

**ANSWER:** With regard to the factual allegations in Paragraph 32, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

#### **The Transfers of Investor Funds to A&O Life Funds, LP**

33. Upon information and belief, in late 2006, Allmendinger and Oncale decided to enter into a partnership with Wahab, whereby each of the three individuals would have a one-third interest in the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 33, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

34. On December 2, 2006, at approximately the same time that the A&O Principals created A&O Life Funds, LP, a Wells Fargo bank account identified as account number XXX-XXX2369 was opened in the name of A&O Life Funds, 1,1' (the "LP Account"). At the time the account was opened, the authorized signatories to this account were the A&O Principals.

**ANSWER:** With regard to the factual allegations in Paragraph 34, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

35. The LP Account was initially funded on January 10, 2007 with a transfer of \$139,308 from the Wells Fargo bank account of A&O Life Funds Management, LLC, account number XXX-XXXX2385.

**ANSWER:** With regard to the factual allegations in Paragraph 35, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

36. Upon information and belief, at relevant times thereafter, the LP Account was used as a "slush fund" by the A&O Principals, where they pooled funds from the various Debtors and underlying investors and paid numerous business expenses, commissions and payroll expenditures. The A&O Principals also directed disbursements of millions of dollars from the LP Account for their own personal benefit.

**ANSWER:** With regard to the factual allegations in Paragraph 36, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

37. Prior to the Filing Date, the Defendants caused the Debtors to make in excess of \$37 million in transfers to the LP Account (collectively, the "LP Transfers"). Upon information and belief, the LP Transfers were made primarily to or for the benefit of the Defendants, and included the following transactions:

- (a) from May 1, 2007 through October 15, 2007, approximately \$2 million was transferred from A&O Bonded Life Assets' Wells Fargo Account # 4139 into the LP Account;
- (b) from May 14, 2007 through October 24, 2007, approximately \$5.4 million was transferred from A&O Bonded Life Settlements' Wells Fargo Account # 4113 into the LP Account;
- (c) from January 24, 2007 through November 21, 2007, approximately \$14.6 million was transferred from A&O Life Fund, LLC's Wells Fargo Account # 7329 into the LP Account;
- (d) from September 17, 2007 through December 10, 2007, approximately \$9.2 million was transferred from Life Fund 5.1, LLC's Wells Fargo Account # 7073 into the LP Account;
- (e) from October 31, 2007 through December 28, 2007, approximately \$5.9 million was transferred from Life Fund 5.2, 1:1,C's Wells Fargo Account # 7107 into the LP Account; and
- (f) on December 26, 2007, approximately \$460,000 was transferred from an A&O Resource Management Encore Account #1004 into the LP Account.

**ANSWER:** With regard to the factual allegations in Paragraph 37, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

38. Upon information and belief, the LP Transfers were conducted without formal observance of corporate formalities.

**ANSWER:** With regard to the factual allegations in Paragraph 38, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

39. Upon information and belief, the LP Transfers were made for the benefit of the A&O Principals and A&O Life Funds, LP with the actual intent to defraud the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 39, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

40. The LP Transfers were made for less than reasonably equivalent value.

**ANSWER:** With regard to the factual allegations in Paragraph 40, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

41. At the time of the LP Transfers, the Debtors: (a) were insolvent; and/or (b) became insolvent as a result of the LP Transfers; and/or (c) were engaged in business transactions or were about to engage in business transactions for which the capital remaining with the Debtors was unreasonably small; and/or (d) intended to incur or believed that they would incur debts that would be beyond their ability to pay as they came due.

**ANSWER:** Paragraph 41 comprises statements of law that require no admission or denial by Allmendinger. To the extent Paragraph 41 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

42. Upon information and belief, at the time of the LP Transfers the Debtors (a) had failed to pay premiums to Provident Capital and otherwise maintain the enforceability of certain bonds issued by Provident Capital, and (b) were responsible to pay premium obligations for their portfolio of insurance policies on insureds that had, on average, life expectancies of several years

in excess often (10) years. At the time of the LP Transfers, the Debtors were insolvent because they had liabilities to investors and insurance companies (in the form of premium payment obligations that were or would come due) that exceeded their assets.

**ANSWER:** With regard to the factual allegations in Paragraph 42, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

43. Upon information and belief, the Debtors were insolvent at the time of the LP Transfers because, as alleged herein, the A&O Principals had used the Debtors to intentionally defraud investors and had diverted assets of the Debtors for their own personal use and gain. Accordingly, at the time of the LP Transfers, each of the more than 700 investors of the Debtors had the right to rescind its investment in the Debtors giving rise to a tort (creditor) claim against the Debtors in an amount equal to each investor's investment. The Debtors did not have sufficient assets to pay the millions of dollars of tort claims (based on state law rights of rescission) to investors.

**ANSWER:** With regard to the factual allegations in Paragraph 43, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

### **Pre-Sale Transfers**

44. On August 31, 2007, the A&O Principals purportedly sold the A&O Entities, as discussed below. In the two months prior to this purported sale, however, the A&O Principals transferred at least \$1.5 million to themselves from the LP Account as follows (the "LP-Principal Transfers"):

- (a) on July 2, 2007, Oncale and Allmendinger each deposited, in their personal accounts, \$250,000 in checks drawn from the LP Account;

- (b) on July 5, 2007, Wahab deposited a \$250,000 check drawn from the LP Account;
- (c) on August 1, 2007, the A&O Principals each received \$150,000 via a \$450,000 cashiers checks drawn from the LP Account; and
- (d) on August 14, 2007, the A&O Principals each received \$100,000 via a \$300,000 check withdrawn from the LP Account.

**ANSWER:** With regard to the factual allegations in Paragraph 44, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

45. Upon information and belief, the LP-Principal transfers were conducted for the benefit of the A&O Principals with the actual intent to defraud the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 45, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

46. The LP-Principal Transfers were made for less than reasonably equivalent value.

**ANSWER:** With regard to the factual allegations in Paragraph 46, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

47. Upon information and belief, and as set forth in paragraphs 41, 42 and 43 above, the Debtors either were insolvent or became insolvent as a result of the LP-Principal Transfers.

**ANSWER:** With regard to the factual allegations in Paragraph 47, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

### **The Purported Sale of the A&O Entities**

48. On August 31, 2007, the Debtors were purportedly purchased for \$3 million by Nevis-based entities named "Physicians Trust, LLC" and "Blue Dymond Capital Group, LLC" (together, the "Nevis Entities"), in an allegedly arms-length transaction.

**ANSWER:** With regard to the factual allegations in Paragraph 48, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

49. To facilitate the sale of the A&O Entities, Mackert used his attorney trust fund IOLTA Account, #6404 (the "IOLTA Account"), which he had just opened on or about July 20, 2007, with \$100. As of August 29, 2007, the balance in the IOLTA Account was approximately \$3,000.

**ANSWER:** With regard to the factual allegations in Paragraph 49, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

50. On information and belief, the A&O Principals also used the LP Account to transact the purported sale of the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 50, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

51. On August 30, 2007, the A&O Principals withdrew \$1,140,000 of A&O investor funds from the LP Account. Upon information and belief, this withdrawal was evenly split between the A&O Principals.

**ANSWER:** With regard to the factual allegations in Paragraph 51, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

52. Upon information and belief, Allmendinger deposited his \$380,000 into his own personal account. Oncale and Wahab, however, turned around and each provided Mackert their respective \$380,000 share of the August 30, 2007 withdrawal. That same day, Mackert deposited Oncale's and Wahab's funds, totaling \$760,000, into his IOLTA Account raising the balance of that account to approximately \$763,000.

**ANSWER:** With regard to the factual allegations in Paragraph 52, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

53. The following day, August 31, 2007, upon information and belief, Oncale, Wahab and Mackert caused checks drawn from the IOLTA Account to be delivered to the A&O Principals in the following amounts: (a) \$750,000 to Allmendinger; (b) \$750 to Oncale; and (c) \$750 to Wahab. The transfers described in paragraphs 50 through this paragraph are referred to hereinafter as the "Sale Transfers."

**ANSWER:** With regard to the factual allegations in Paragraph 53, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

54. Upon information and belief, Allmendinger was paid a material amount from the "sale" to relinquish control over the A&O Entities, whereas Oncale and Wahab received a nominal amount because they retained an interest in or control over the A&O Entities after the "sale."

**ANSWER:** With regard to the factual allegations in Paragraph 54, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

55. The money used for the purported "sale" came from the Debtors through the LP Transfers described above, via the LP Account, and then the IOLTA Account.

**ANSWER:** With regard to the factual allegations in Paragraph 55, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

56. On information and belief, the Sale Transfers were conducted for the benefit of the A&O Principals with the actual intent to defraud the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 56, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

57. The Debtors were sold, and the Sale Transfers were made, for less than reasonably equivalent value.

**ANSWER:** With regard to the factual allegations in Paragraph 57, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

58. Upon information and belief, and as set forth in paragraphs 41, 42 and 43 above, the Debtors either were insolvent or became insolvent as a result of the Sale Transfers.

**ANSWER:** With regard to the factual allegations in Paragraph 58, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

59. Upon information and belief, the "sale" was executed with the actual intent to defraud the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 59, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**The Post-"Sale" Looting of Investor Funds By Oncale, Wahab and Mackert (and Others)**

60. After the sale had been "completed"—and the ownership interest of the A&O Principals was allegedly extinguished—Wahab and Oncale continued to control the A&O Entities. Thereafter, in collaboration with Mackert, they drained the LP Account for their personal use, including expenditures related to their personal homes and luxury automobiles (the "Post-Sale Transfers").

**ANSWER:** With regard to the factual allegations in Paragraph 60, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

61. For example, immediately after the purported "sale," and despite allegedly having sold their interests in the A&O Entities, Oncale, Wahab and Allmendinger each deposited \$87,000 checks drawn from the LP Account on September 4, 2007 (with respect to Wahab) and September 5, 2007 (with respect to Oncale and Allmendinger).

**ANSWER:** With regard to the factual allegations in Paragraph 61, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

62. Upon information and belief, Oncale, Wahab and Mackert further fraudulently transferred \$2 million in Debtors' funds from the LP Account into the IOLTA Account, and then to Oncale and Wahab for their own personal benefit and use. Specifically, on September 14,

2007, \$2 million of Debtor funds was transferred from the LP Account to the TOLTA Account, causing the balance in the IOLTA Account to increase from approximately \$9,000 to \$2,009,000. Upon information and belief, Mackert then used these funds to draw cashiers checks for \$1 million to each Oncale and Wahab on September 17, 2007 for their personal use.

**ANSWER:** With regard to the factual allegations in Paragraph 62, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

63. The Post-Sale Transfers were made for the benefit of the A&O Principals (and in particular Oncale, Wahab and Mackert) with the actual intent to defraud the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 63, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

64. The Post-Sale Transfers were made for less than reasonably equivalent value.

**ANSWER:** With regard to the factual allegations in Paragraph 64, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

65. Upon information and belief, and as set forth in paragraphs 41, 42 and 43 above, the Debtors either were insolvent or became insolvent as a result of the Post-Sale Transfers.

**ANSWER:** With regard to the factual allegations in Paragraph 65, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

#### **Mackert's Role as Attorney and "Manager" of the A&O Entities**

66. At relevant times, and upon information and belief, Mackert served as an attorney for the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 66, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

67. In or about early 2008, Mackert formed Shepherd Capital Management ("Shepherd Capital"), purportedly as a vehicle for managing the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 67, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

68. On January 30, 2008, Shepherd Capital entered into a management agreement under which it assumed responsibility for the operation of the A&O Entities. Among other duties and responsibilities, Mackert/Shepherd Capital, agreed to do the following:

- (a) manage all correspondence and dialog with each company's investors and representatives;
- (b) prepare and distribute annual reports to each company's investors;
- (c) monitor distribution of funds on maturity date for each company;
- (d) monitor premium payments for each company;
- (e) monitor bank account management for each company;
- (f) manage fiends for each company.

**ANSWER:** With regard to the factual allegations in Paragraph 68, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

69. Mackert owed contractual and fiduciary obligations to the A&O Entities, by virtue of his role as their attorney and, later, his role as the "Manager" of the investor funds placed in investments with the A&O Entities.

**ANSWER:** With regard to the factual allegations in Paragraph 69, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

70. Upon information and belief, Mackert breached his contractual and fiduciary obligations to the Debtors by, among other things:

- (a) participating in and facilitating fraudulent transfers, as discussed above;
- (b) making misrepresentations to investors about the status and nature of the Debtors and investments with the intent that the investors would rely on such representations when Mackert knew, or should have known upon reasonable inquiry, that such representations were false or misleading;
- (c) appropriating Debtors' investor funds for his own personal benefit;
- (d) failing to monitor the premium payments for the Debtors' investments;
- (e) failing to monitor the Debtors' bank accounts;
- (f) failing to manage the funds of the Debtors; and
- (g) failing to properly advise investors as to the status of their investments.

**ANSWER:** With regard to the factual allegations in Paragraph 70, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**COUNT I**

**AVOIDANCE OF FRAUDULENT TRANSFERS - 11 U.S.C. §§ 548(a)(1)  
AND 550(a)**

**(AGAINST A&O LIFE FUNDS, LP)**

71. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 71.

72. The LP Transfers which occurred from September 2, 2007 through September 2, 2009 were made on or within two years before the Filing Date.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

73. The LP Transfers NA were made NA with the actual intent to hinder, delay or defraud some or all of the Debtors.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

74. The Debtors received less than reasonably equivalent value in exchange for each of the LP Transfers.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

75. At the time of the LP Transfers, and as set forth in paragraphs 41, 42 and 43 above, the Debtors were insolvent or became insolvent as a result of the LP Transfer in question.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

76. At the time of each of the LP Transfers, the Debtors were engaged in a business or a transaction for which any property remaining with the Debtors was an unreasonably small capital.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

77. At the time of these LP Transfers, the Debtors intended to incur, or believed that they would incur, debts that would be beyond their ability to pay as such debts matured.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

78. The LP Transfers constitute a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(I) of the Bankruptcy Code and recoverable from A&O Life Funds, LP pursuant to section 550(a).

**WHEREFORE**, the Trustee requests that the Court enter a Judgment order pursuant to sections 548(a)( 1) and 550(a) of the Bankruptcy Code: (a) avoiding and preserving the LP Transfers which occurred from September 2, 2007 through September 2, 2009, (b) directing these LP Transfers to be set aside, (c) recovering these LP Transfers, or the value thereof, from A&O Life Funds, LP for the benefit of the Debtors' estates, and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count I of the Complaint and Paragraphs 72-78 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

## COUNT II

### ILLINOIS AND TEXAS UNIFORM FRAUDULENT TRANSFER ACTS

#### (AGAINST A&O LIFE FUNDS, LP)

79. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 79.

80. Pursuant to section 544 of the Bankruptcy Code, the Trustee brings this claim under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.*, and/or the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Corn. Code §§ 24.001 *et seq.*

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

81. For the purposes of the Illinois Uniform Fraudulent Transfer Act and the Texas Uniform Fraudulent Transfer Act, the LP Transfers are all transfers made by the Debtors.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

82. The Debtors made each of the LP Transfers without receiving reasonably equivalent value in exchange.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

83. At the times the Debtors made the LP Transfers, and as set forth in paragraphs 41, 42 and 43 above, the Debtors either were insolvent or became insolvent as a result of making the LP Transfers.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

84. At the times the Debtors made the Transfers, the Debtors were engaged in business for which their remaining assets were unreasonably small in relation to their business.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

85. At the times the Debtors made the IT Transfers, the Debtors intended to incur or believed, or reasonably should have believed, that they would incur debts beyond their ability to pay as they became due.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

86. Creditors and investors in the Debtors had allowable claims against the Debtors at the time the Debtors made the LP Transfers.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

87. Pursuant to section 550 of the Bankruptcy Code, the Debtors may recover the LP Transfers from A&O Life Funds, LP.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order pursuant to sections 544 and 550(a) of the Bankruptcy Code: (a) avoiding and preserving the LP Transfers; (b) directing that the LP Transfers be set aside; (c) recovering, the LP Transfers, or the thereof-, from A&O Life Funds, LP for the benefit of the Debtors; and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count II of the Complaint and Paragraphs 79-87 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT III**

**ILLINOIS AND TEXAS UNIFORM FRAUDULENT  
TRANSFER ACTS (ACTUAL INTENT)**

**(AGAINST A&O LIFE FUNDS, LP)**

88. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 88.

89. Pursuant to section 544 of the Bankruptcy Code, the trustee brings this claim under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.* and the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code § 24.001 *et seq.*

**ANSWER:** As Count III of the Complaint and Paragraphs 88-90 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

90. The Debtors, voluntarily or involuntarily and under the direction and pursuant to the control of the Defendants as described herein, made the LP Transfers with actual intent to hinder, delay, or defraud the Debtors.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order pursuant to sections 544 and 550(a) of the Bankruptcy Code: (a) avoiding and preserving these LP Transfers; (b) directing that the LI' Transfers be set aside; (c) recovering the LP Transfers, or the value thereof, from A&O Life Funds, LP for the benefit of the Debtors; and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count III of the Complaint and Paragraphs 88-90 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT IV**

**ALTER EGO**

**(AGAINST A&O LIFE FUNDS, LP)**

91. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 91.

92. The A&O Entities operated under a unity of interest and ownership such that the separate personalities of the corporations did not exist. Specifically:

- (a) the Debtors were undercapitalized and are now insolvent;
- (b) the same A&O Principals acted as shareholders, officers, directors, managers and employees of the A&O Entities;
- (c) the A&O Entities all operated out of the same offices but paid no rent to the A&O Entity that owned the offices;
- (d) the same A&O Principals determined the corporate policies of the A&O Entities;
- (e) the A&O Entities were purportedly sold in an attempt to avoid liabilities and prevent discovery of fraudulent asset transfers and other activities;
- (f) there was a failure to observe corporate formalities between and amongst the A&O Entities;
- (g) the A&O Entities commingled funds and other assets; and
- (h) the A&O Entities apparently were organized and operated, in large part, as mere tools and business conduits for the personal use of the A&O Principals.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

93. Adherence to the fiction of separate corporate personalities would promote injustice or inequitable consequences because millions of dollars of the Debtors' assets have been fraudulently transferred to A&O Life Funds, LP.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

94. Thus, the Debtors and A&O Life Funds, LP are alter egos of each other.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

95. In addition, the largest single asset of the Debtors' estates is the portfolio of life insurance policies in which the A&O Entities have interests.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

96. There are discrepancies in which entity "owns" the various policies. For example, in many cases there are differences among the following: (a) the records of underlying investors in the Debtors; (b) the Schedules of Assets and Liabilities (the "Schedules") filed by the Debtors; (c) the internal records of the Debtors that have been received by the Trustee; and (d) the records of the insurance carriers that issued the policies.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

97. To the extent that records reflect that any life insurance policies are "owned" by A&O Life Funds, LP, such policies are assets of the Debtors.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

98. By way of example, in the records of the insurance carrier Transamerica Corporation, A&O Life Funds, LP is listed as the owner of two insurance policies: policy numbers 60134441 and 60134442. Both policies were purportedly transferred from Life Fund 5.2, LLC (previously named AB Revocable Living Fund, LI,C) to A&O Life Funds, LP in or about December 2007, after the sale discussed above and, upon information and belief, as part of attempts to improperly transfer assets out of the Debtors. The Schedules, however, identify these two policies as assets of certain Debtors.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

99. The Trustee is also informed and believes that A&O Life Funds, LP is deemed by Principal Financial Group to be the "owner" of a separate policy, the issuance of which is, upon information and belief, under investigation by the carrier. Upon information and belief, however, the policy was not issued or obtained with funds separate and distinct from funds of the Debtors.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

100. Instead, all, or virtually all of the policies in which any A&O Entity has an interest were obtained using funds from the Debtors' investors and, as noted above, all or virtually all of the activities and funds of A&O Life Funds, LP arose out of or were facilitated by transfers of funds from the Debtors and the Debtors' investors.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

101. Accordingly, any and all policies in which A&O Life Funds, LP allegedly has an interest are owned by one or more Debtors and should be assigned by A&O Life Funds, LP to the appropriate Debtors, as necessary.

**WHEREFORE,** the Trustee requests that this Court enter a judgment order declaring: (a) A&O Life Funds, LP is the alter ego of the Debtors; (b) assets held by A&O Life Funds, LP are property of the Debtors' bankruptcy estates; and (c) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count IV of the Complaint and Paragraphs 91-101 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT V**

**TURNOVER OF PROPERTY OF THE DEBTORS, PURSUANT TO 11 U.S.C. § 542**

**(AGAINST A&O LIFE FUNDS, LP)**

102. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 102.

103. The Debtors have a legal or equitable interest in certain investor funds and various life insurance policies nominally held by A&O Life Funds, LP, which properly constitutes property of Debtors' bankruptcy estates pursuant to section 541(a) of the Bankruptcy Code.

**ANSWER:** As Count V of the Complaint and Paragraphs 102-104 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

104. A&O Life Funds, LP has not delivered such property to the Trustee as required by section 542 of the Bankruptcy Code.

**WHEREFORE,** the Trustee requests that the Court enter a judgment order: (a) ordering that A&O Life Funds, LP turnover and/or assign all investor funds and interests in any life insurance policies to the Trustee for the benefit of the Debtors; (b) awarding compensatory damages and disgorgement of all sums received by A&O Life Funds, LP from the Debtors in an amount to be determined at trial; and (c) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count V of the Complaint and Paragraphs 102-104 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT VI**

**AVOIDANCE OF FRAUDULENT TRANSFERS - 11 U.S.C. § 548(a)(1)  
AND 550(a)**

**(AGAINST THE A&O PRINCIPALS)**

105. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 105.

106. The LP Transfers, Sale Transfers and Post-Sale Transfers which occurred from September 2, 2007 through September 2, 2009, were made on or within two years before the Filing Date.

**ANSWER:** With regard to the factual allegations in Paragraph 106, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

107. These transfers were made with the actual intent to hinder, delay or defraud some or all of the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 107, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

108. The Debtors received less than reasonably equivalent value in exchange for each of these transfers.

**ANSWER:** With regard to the factual allegations in Paragraph 108, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

109. At the time of each of these transfers, as set forth herein, the Debtors were insolvent or became insolvent as a result of these transfers.

**ANSWER:** With regard to the factual allegations in Paragraph 109, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

110. At the time of each of these transfers, the Debtors were engaged in a business or a transaction, for which any property remaining with the Debtors was an Unreasonably small capital.

**ANSWER:** With regard to the factual allegations in Paragraph 110, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

111. At the time of these transfers, the Debtors intended to incur, or believed that they would incur, debts that would be beyond their ability to pay as such debts matured.

**ANSWER:** With regard to the factual allegations in Paragraph 111, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

112. These transfers constitute a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)( I) of the Bankruptcy Code and recoverable from the A&O Principals pursuant to section 550(a) of the Bankruptcy Code.

**ANSWER:** Paragraph 112 comprises statements of law that require no admission or denial by Allmendinger. To the extent Paragraph 112 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to

him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order pursuant to sections 548(a)(1) and 550(a) of the Bankruptcy Code: (a) avoiding and preserving the LP Transfers, Sale Transfers, and Post-Sale Transfers which occurred from September 2, 2007 through September 2, 2009, (b) directing these transfers to be set aside, (c) recovering, these transfers, or the value thereof, from the A&O Principals who benefited therefrom for the benefit of the Debtors' estates, and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** The prayer in Count VI comprises a statement of law that require no admission or denial by Allmendinger. To the extent the prayer in Count VI is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

## **COUNT VII**

### **ILLINOIS AND TEXAS UNIFORM FRAUDULENT TRANSFER ACTS**

#### **(AGAINST THE A&O PRINCIPALS)**

113. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 113.

114. Pursuant to section 544 of the Bankruptcy Code, the Trustee brings this claim under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.* and the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Corn. Code §§ 24.001 *et seq.*

**ANSWER:** Paragraph 114 is a statement of law that requires no admission or denial by Allmendinger.

115. For the purposes of the Illinois and Texas Uniform Fraudulent Transfer Acts, the LP Transfers, LP-Principal Transfers, Sale Transfers, and Post-Sale Transfers are all transfers made by the Debtors.

**ANSWER:** Paragraph 115 comprises statements of law that require no admission or denial by Allmendinger. To the extent Paragraph 115 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

116. The Debtors made each of the above-referenced transfers without receiving reasonably equivalent value in exchange.

**ANSWER:** With regard to the factual allegations in Paragraph 116, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

117. At the times the Debtors made these transfers, as set forth herein, the Debtors either were insolvent or became insolvent as a result of making these transfers.

**ANSWER:** Paragraph 117 comprises statements of law that require no admission or denial by Allmendinger. To the extent Paragraph 117 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

118. At the times the Debtors made these transfers, the Debtors were engaged in business for which their remaining assets were unreasonably small in relation to their business.

**ANSWER:** With regard to the factual allegations in Paragraph 118, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

119. At the times the Debtors made these transfers, the Debtors intended to incur or believed, or reasonably should have believed, that they would incur debts beyond their ability to pay as they became due.

**ANSWER:** With regard to the factual allegations in Paragraph 119, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

120. Creditors and investors of the Debtors had allowable claims against the Debtors at the times the Debtors made these transfers.

**ANSWER:** With regard to the factual allegations in Paragraph 120, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

121. These transfers were made for the benefit of the A&O Principals as set forth herein.

**ANSWER:** With regard to the factual allegations in Paragraph 121, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

122. Pursuant to section 550 of the Bankruptcy Code, the Debtors may recover the LP Transfers, LP-Principal Transfers, Sale Transfers, and Post-Sale Transfers from the entities and individuals for whose benefit the transfers were made.

**ANSWER:** Paragraph 122 comprises statements of law that require no admission or denial by Allmendinger. To the extent Paragraph 122 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**WHEREFORE,** the Trustee requests that the Court enter a judgment order pursuant to sections 544 and 550(a) of the Bankruptcy Code: (a) avoiding and preserving these transfers; (b) directing that these transfers be set aside; (c) recovering these transfers, or the value thereof, from the A&O Principals who benefited therefrom for the benefit of the Debtors' estates; and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** The prayer in Count VII comprises a statement of law that require no admission or denial by Allmendinger. To the extent the prayer in Count VII is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**COUNT VIII**

**ILLINOIS AND TEXAS UNIFORM FRAUDULENT  
TRANSFER ACTS (ACTUAL INTENT)**

**(AGAINST THE A&O PRINCIPALS)**

123. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 123.

124. Pursuant to section 544 of the Bankruptcy Code, the Trustee brings this claim under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.* and the Texas Uniform Fraudulent transfer Act, Tex. Bus. & Comm. Code § § 24.001 *et seq.*

**ANSWER:** Paragraph 124 is a statement of law that requires no admission or denial by Allmendinger.

125. The Debtors, voluntarily or involuntarily and under the direction and pursuant to the control of the Defendants, made the LP Transfers, LP-Principal Transfers, Sale Transfers, and Post-Sale Transfers with the actual intent to hinder, delay, or defraud the creditors of the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 125, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

126. The LP Transfer, LP-Principal Transfers, Sale Transfers, and Post-Sale Transfers were made for the benefit of the A&O Principals as set forth above.

**ANSWER:** With regard to the factual allegations in Paragraph 126, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

127. Pursuant to section 544 and 550 of the Bankruptcy Code, and the Illinois and Texas Uniform Fraudulent Transfer Acts, the Debtors may recover the LP Transfers, LP-Principal Transfers, Sale Transfers and Post Sale Transfers from the entities and individuals for whose benefit the transfers were made.

**ANSWER:** Paragraph 127 comprises statements of law that require no admission or denial by Allmendinger. To the extent Paragraph 127 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**WHEREFORE,** the Trustee requests that the Court enter a judgment order pursuant to sections 544 and 550(a) of the Bankruptcy Code: (a) avoiding and preserving these transfers; (b) directing that these transfers be set aside; (c) recovering these transfers, or the value thereof, from the A&O Principals who benefited therefrom for the benefit of the Debtors' estates; and granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** The prayer in Count VII comprises a statement of law that require no admission or denial by Allmendinger. To the extent the prayer in Count VIII is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**COUNT IX**

**BREACH OF FIDUCIARY DUTY**

**(AGAINST THE A&O PRINCIPALS)**

128. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 128.

129. Each of the A&O Principals had relationships of trust and confidence with the Debtors, held senior managerial, compliance and/or supervisory responsibilities at the Debtors

during the relevant time period, and consequently had fiduciary duties to act in the best interest of, and for the benefit of, the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 129, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

130. The fiduciary duties owed by each of the A&O Principals included duties of due care and loyalty to the Debtors, and duties to act in good faith. The A&O Principals also had duties not to waste or divert the assets of the Debtors and duties not to act in furtherance of their own personal interests at the expense of the Debtors.

**ANSWER:** With regard to the factual allegations in Paragraph 130, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

131. Each of the A&O Principals acted in breach of the fiduciary duties owed to the Debtors by, among other behavior, misusing corporate assets, self-dealing, mismanagement, corporate waste, failing to prepare, implement and carry out compliance and supervisory responsibilities, and breaching the A&O Principals' duties to act with due care, loyalty, and good faith and fair dealing as described above.

**ANSWER:** With regard to the factual allegations in Paragraph 131, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

132. As a direct and proximate result of the conduct by the A&O Principals, the Debtors were damaged. The conduct set forth in paragraph 37 above alone constitutes breaches of the A&O Principals' fiduciary duties, for which Debtors suffered \$37 million in damage.

**ANSWER:** With regard to the factual allegations in Paragraph 132, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

133. By reason of the above, the Trustee is entitled to an award of compensatory damages and disgorgement of all sums received by each of the A&O Principals, directly or indirectly, from the Debtors in an amount to be determined at trial.

**ANSWER:** Paragraph 133 comprises a statement of law that require no admission or denial by Allmendinger. To the extent Paragraph 133 is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order: (a) awarding compensatory damages and disgorgement of all sums received by each of the A&O Principals, directly or indirectly, from the Debtors in an amount to be determined at trial; and (b) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** The prayer in Count IX comprises a statement of law that require no admission or denial by Allmendinger. To the extent the prayer in Count IX is interpreted to include allegations of fact requiring a response by Allmendinger, Allmendinger responds by asserting the rights granted to him under the Fifth Amendment of the Constitution to decline to affirmatively deny or admit the allegations.

**COUNT X**

**AVOIDANCE OF FRAUDULENT TRANSFERS - 11 U.S.C. §§ 548(a)(1)  
AND 550(a)**

**(AGAINST MACKERT)**

134. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 134.

135. The LP Transfers and Post-Sale Transfers to the IOLTA Account which occurred from September 2, 2007 through September 2, 2009 were made on or within two years before the Filing Date.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

136. These transfers were made with the actual intent to hinder, delay or defraud some or all of the Debtors.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

137. The Debtors received less than a reasonably equivalent value in exchange for each of these transfers.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

138. At the time of these transfers, as set forth above, the Debtors were insolvent, or became insolvent as a result of the transfers.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

139. At the time of each of these transfers, the Debtors were engaged in a business or a transaction, for which any property remaining with the Debtors was an unreasonably small capital.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

140. At the time of these transfers, the Debtors intended to incur, or believed that they would incur, debts that would be beyond their ability to pay as such debts matured.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

141. These transfers constitute a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1) of the Bankruptcy Code and recoverable from Mackert pursuant to section 550(a) of the Bankruptcy Code.

**WHEREFORE,** the Trustee requests that the Court enter a judgment order pursuant to sections 548(a)(1) and 550(a) of the Bankruptcy Code: (a) avoiding and preserving the LP Transfers and Post-Sale Transfers which occurred from September 2, 2007 through September 2, 2009, (b) directing these transfers to be set aside, (c) recovering these transfers, or the value thereof from Mackert for the benefit of the Debtors' estates, and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count X of the Complaint and Paragraphs 134-141 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT XI**

**ILLINOIS AND TEXAS UNIFORM FRAUDULENT TRANSFER ACTS**

**(AGAINST MACKERT)**

142. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 142.

143. Pursuant to section 544 of the Bankruptcy Code, the Trustee brings this claim under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.* and the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code §§ 24.001 *et seq.*

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

144. For the purposes of the Illinois and Texas Uniform Fraudulent Transfer Acts, the LP Transfers and Post-Sale Transfers to the IOLTA Account are all transfers, made by the Debtors.

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

145. The Debtors made each of the above-referenced transfers without receiving reasonably equivalent value in exchange.

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

146. At the times the Debtors made these transfers, as set forth above, the Debtors either were insolvent or became insolvent as a result of making the transfers.

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

147. At the times the Debtors made these transfers, the Debtors were engaged in a business for which its remaining assets were unreasonably small in relation to the business.

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

148. At the times the Debtors made these transfers, the Debtors intended to incur or believed, or reasonably should have believed, that they would incur debts beyond their ability to pay as they became due.

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

149. Creditors of the Debtors had allowable claims against the Debtors each time the Debtors made the transfers.

**ANSWER:** As Count XI of the Complaint and Paragraphs 141-149 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

150. Pursuant to section 550 of the Bankruptcy Code, the Debtors may recover the Post-Sale Transfers from Mackert.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order pursuant to sections 544 and 550(a) of the Bankruptcy Code: (a) avoiding and preserving these transfers; (b) directing that these transfers be set aside; (c) recovering these transfers, or the value thereof, from Mackert for the benefit of the Debtors' estates; and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count XI of the Complaint and Paragraphs 142-150 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT XII**

**ILLINOIS AND TEXAS UNIFORM FRAUDULENT  
TRANSFER ACT (ACTUAL INTENT)**

**(AGAINST MACKERT)**

151. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 151.

152. Pursuant to section 544 of the Bankruptcy Code, the Trustee brings this claim under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.* and the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Comm. Code § 24.001 *et seq.*

**ANSWER:** As Count XII of the Complaint and Paragraphs 151-153 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

153. The Debtors, voluntarily or involuntarily, made the Post-Sale Transfers with actual intent to hinder, delay, or defraud the Debtors.

**WHEREFORE,** the Trustee requests that the Court enter a judgment order pursuant to sections 544 and 550(a) of the Bankruptcy Code: (a) avoiding and preserving the Post-Sale Transfers; (b) directing that the Post-Sale Transfers be set aside; (c) recovering the Post-Sale Transfers, or the value thereof, from Mackert for the benefit of the Debtors' estates; and (d) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count XII of the Complaint and Paragraphs 151-153 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT XIII**

**PROFESSIONAL NEGLIGENCE**

**(AGAINST MACKERT)**

154. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 154.

155. In or about 2007, Mackert served as an attorney for the Debtors and their umbrella entity, A&O Life Funds, LP, in connection with certain transactions, representations, and legal needs of the Debtors, including but not limited to drafting documents that were used in the internal and external business affairs of the Debtors.

**ANSWER:** As Count XIII of the Complaint and Paragraphs 154-158 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

156. By virtue of the above, an attorney-client relationship existed between the Debtors, on the one hand, and Mackert, on the other, as a result of which Mackert owed the Debtors a duty of care at all relevant times.

**ANSWER:** As Count XIII of the Complaint and Paragraphs 153-158 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

157. As alleged with greater particularity above, Mackert was negligent in the performance of the legal services rendered to the Debtors and breached his duties of care to them in one or more of the following respects:

- (a) misusing assets of the Debtors;
- (b) self-dealing;
- (c) failing to investigate when he knew, or should have known upon

reasonable inquiry, that his actions Would harm the Debtors and/or their underlying investors;

- (d) making representations regarding the Debtors, the nature of their business, and the status of the underlying investments of investors when he knew, or should have known, that such representations were false;
- (e) undertaking representation of individuals and entities that had actual or potential conflicts with the Debtors, and failing to disclose such conflicts and obtain appropriate consents;
- (f) facilitating a sale of the Debtors and using his IOLTA Account in an attempt to conceal the nature and source of the funds for such transaction; and
- (g) otherwise failing to take actions that comport with the standards of loyalty, due care, good faith and fair dealing that are required of legal counsel.

**ANSWER:** As Count XIII of the Complaint and Paragraphs 153-159 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

158. As a direct and proximate result of Mackert's professional negligence, the Debtors incurred monetary damages relating to the loss of interests in life insurance policies which have lapsed as well as damages in the form of expenses that will be incurred in pursuing collection of the funds and avoidance of the transfers that Mackert helped facilitate.

**ANSWER:** As Count XIII of the Complaint and Paragraphs 153-159 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

159. In addition to the above, as a direct and proximate result of Mackert's professional negligence, the Debtors incurred monetary damages in the form of loss of cash that would have assisted the Debtors in making premium payments that are or will become due.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order: (a) awarding compensatory damages and disgorgement of all sums received by Mackert in an amount to be proven at trial; and (b) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** As Count XIII of the Complaint and Paragraphs 153-159 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT XIV**

**BREACH OF FIDUCIARY DUTY**

**(AGAINST MACKERT AND SHEPHERD CAPITAL)**

160. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 160.

161. Upon information and belief, Mackert had an attorney-client relationship with the Debtors, and by virtue of his role as their attorney and his subsequent control of Shepherd Capital, held senior managerial, compliance and/or supervisory responsibilities at the Debtors during the relevant time period, and consequently had fiduciary duties to act in the best interest of, and for the benefit of, the Debtors.

**ANSWER:** Count XIV of the Complaint and Paragraphs 160-165 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

162. The fiduciary duties owed by Mackert and Shepherd Capital included duties of care and loyalty to the Debtors and duties to act in good faith. Mackert and Shepherd Capital also had duties not to waste or divert the assets of the Debtors and duties not to act in furtherance of their own personal interests at the expense of the Debtors.

**ANSWER:** Count XIV of the Complaint and Paragraphs 160-165 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

163. Mackert and Shepherd Capital acted in breach of the fiduciary duties owed to the Debtors by, among other behavior, misusing corporate assets, sell-dealing, mismanagement,

corporate waste, failing to prepare, implement, and carry out compliance and supervisory responsibilities, and breaching their duties to act with due care, loyalty, and good faith and fair dealing as described above.

**ANSWER:** Count XIV of the Complaint and Paragraphs 160-165 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

164. As a direct and proximate result of the conduct by Mackert and Shepherd Capital, the Debtors were damaged.

**ANSWER:** Count XIV of the Complaint and Paragraphs 160-165 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

165. By reason of the above, the Trustee is entitled to an award of compensatory damages and disgorgement of all sums received by Mackert and Shepherd Capital from the Debtors in an amount to be determined at trial.

**WHEREFORE**, the Trustee requests that the Court enter a judgment order: (a) awarding compensatory damages and disgorgement of all sums received by Mackert and Shepherd Capital from the Debtors in an amount to be determined at trial; and (b) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** Count XIV of the Complaint and Paragraphs 160-165 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT XV**

**BREACH OF CONTRACT**

**(AGAINST SHEPHERD CAPITAL)**

166. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 166.

167. Pursuant to the January 30, 2008 management agreement, Shepherd Capital and Mackert owed managerial duties for each of the Debtors, including managing funds and retaining services of appropriate auditing, tax services and accounting firms.

**ANSWER:** Count XV of the Complaint and Paragraphs 166-170 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

168. Shepherd Capital and Mackert acted in breach of the contractual duties owed to the Debtors by, among other behavior, assisting in the misuse of corporate assets, self-dealing, mismanagement, corporate waste, and failing to carry out the financial responsibilities detailed in the management agreement.

**ANSWER:** Count XV of the Complaint and Paragraphs 166-170 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

169. As a direct and proximate result of the conduct by Mackert and Shepherd Capital, the Debtors were damaged.

**ANSWER:** Count XV of the Complaint and Paragraphs 166-170 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

170. By reason of the above, the Trustee is entitled to an award of compensatory damages and disgorgement of all sums received by Mackert and Shepherd Capital pursuant to the management agreement in an amount to be determined at trial.

**WHEREFORE,** the Trustee requests that the Court enter a judgment order: (a) awarding compensatory damages and disgorgement of all sums received by Mackert and Shepherd Capital

from the Debtors in an amount to be determined at trial; and (b) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** Count XV of the Complaint and Paragraphs 166-170 thereof are not against Allmendinger, those Paragraphs require no admission or denial by Allmendinger.

**COUNT XVI**  
**BREACH OF CONTRACT/SPECIFIC PERFORMANCE/BREACH OF DUTY**

**(AGAINST THE A&O PRINCIPALS)**

171. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

**ANSWER:** Allmendinger incorporates by reference his responses to the previous Paragraphs as if set forth fully in response to Paragraph 171.

172. As described above, the A&O Entities obtained certain life insurance policies using investor funds and subsequently transferred the ownership and beneficial rights and interests of such policies into and out of trusts for which insiders of the A&O Entities were trustees. In certain instances, one or more of the Debtors would ultimately regain or otherwise obtain the beneficial or ownership interest in the policy and/or the death benefit under the policy. Because of failures of the A&O Principals and insiders of the A&O Entities, including, without limitation, the failure of such individuals to execute transfers of beneficial and/or ownership interests required by insurance companies to memorialize transactions already effectuated by such parties, there currently are discrepancies in which entity "owns" various policies and holds rights thereunder. For example, in many cases there are differences among the following: (a) the records of underlying investors in the Debtors; (b) the Schedules of Assets and Liabilities (the "Schedules") filed by the Debtors; (c) the internal records of the Debtors that have been received by the Trustee; and (d) the records of the insurance carriers that issued the policies. The issuing

insurance carriers generally will not recognize a change of ownership/beneficiary unless and until the owner of record executes a form of transfer of interest document required by the carrier (in addition to the transfer document that effectuated the transfer between the parties). Upon maturity of a policy, the insurance carrier will likely only pay' the death benefit to the owner/beneficiary designated in its records.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

173. In at least six instances, the owners and beneficiaries of policies purchased by the Debtors were newly formed trusts, For which the A&O Principals or their family members were designated as trustees. Specifically, according to the records of the insurance carriers: (a) American General policy No. U10033937L is owned by an irrevocable trust for which Oncale and Allmendinger are trustees; (b) ING policy No. 1618622 is owned by an irrevocable trust For which Wahab's sister is the trustee; (c) Lincoln policy No. JP5578112 is owned by an irrevocable trust for which Wahab's sister is the trustee; (d) Lincoln policy No. JP5571385 is owned by an irrevocable trust for which Wahab's sister is the trustee; (e) Lincoln policy No. JP5571244 is owned by an irrevocable trust For which Wahab's sister is the trustee; and (f) Lincoln policy No. J.17002605 is owned by an irrevocable trust For which Wahab's sister is the trustee.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

174. The records the Trustee has located to date include Assignment Agreements For the ING and each of the four Lincoln policies, signed by Wahab and his sister, under which the

Trust assigns each policy to one of the Debtors For Ten Dollars each. The American General policy is also subject to three Assignment Agreements that together assign 100.03% of the policy to Debtors Life Fund 5.1 LLC, A&O Bonded Life Settlements, LLC and A&O Bonded Life Assets, LLC for Ten Dollars each. To date, the insurers refuse to recognize such assignments because the assigning trusts failed to execute documentation required by the insurance company to memorialize the transfer for its internal purposes.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

175. Upon information and belief, one or more of the A&O Principals have the authority, and the contractual obligation, to memorialize the assignment (in the manner required by the insurance carriers) previously effectuated by the Assignment Agreements. The A&O Principals are in breach of these agreements and specific performance should be ordered.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

176. On or about May, 18, 2010, Defendants Oncale and Allmendinger were requested, through their respective counsel of record herein, to execute the necessary change of ownership and change of beneficiary forms. As of the filing of this Amended Complaint, Oncale and Allmendinger have failed to respond.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

177. In addition, each of the A&O Principals had relationships of trust and confidence with the Debtors, held senior managerial, compliance and/or supervisory responsibilities at the Debtors during the relevant time period, and consequently had fiduciary duties to act in the best interest of, and for the benefit of, the Debtors.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

178. The fiduciary duties owed by each of the A&O Principals included duties of due care and loyalty to the Debtors, and duties to act in good faith. The A&O Principals also had duties not to waste or divert the assets of the Debtors and duties not to act in furtherance of their own personal interests at the expense of the Debtors.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

179. Each of the A&O Principals acted in breach of the fiduciary duties owed to the Debtors by failing or refusing to memorialize (in the manner required by insurance carriers) the previous assignment of policy ownership and beneficiary rights from trusts they control to the Debtors.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

180. To the extent that records reflect that any life insurance policies are "owned" by any trust for which the A&O Principals or their family members are trustees, such policies are assets of the Debtors, and should be assigned to the appropriate Debtors, as necessary.

**WHEREFORE**, the Trustee requests that this Court enter a judgment order: (a) declaring A&O Principals in breach of the Assignment Agreements and breach of fiduciary duties for failing to memorialize With insurance carriers the transfer of policies to the appropriate Debtor entities; (b) requiring Defendants Oncale and Allmendinger, as trustees, to execute the necessary change of ownership and change of beneficiary forms for the American General policy; (c) requiring Defendant Wahab to obtain execution of the necessary change of ownership and change of beneficiary forms for the INC and Lincoln policies; (d) declaring the above-listed policies are property of the Debtors' bankruptcy estates; and (e) granting such additional relief as the Court may deem equitable, just and proper.

**ANSWER:** Count XVI and Paragraphs 171-180 thereof has been dismissed by the Court as moot against Allmendinger and, therefore, those Paragraphs require no admission or denial by Allmendinger.

Respectfully submitted,  
CHRISTIAN ALLMENDINGER

By: /s/ Deborah M. Gutfeld  
One of His Attorneys

Jason Ross  
CURRAN TOMKO TARSKI, LLP  
2001 Bryan Street, Suite 2000  
Dallas, Texas 75201  
(214) 270-1400

Terry D. Weissman  
Kyle D. Rettberg  
Deborah M. Gutfeld  
NEAL GERBER & EISENBERG LLP  
2 North LaSalle Street, Suite 1700  
Chicago, Illinois 60602  
(312) 269-8000

*Attorneys for Defendant Christian  
Allmendinger*

**CERTIFICATE OF SERVICE**

I, Deborah M. Gutfeld, hereby certify that on the 19th day of January, 2011, I caused true and correct copies of the foregoing ***DEFENDANT CHRISTIAN ALLMENDINGER'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT*** to be served: (a) by Electronic Case Filing upon counsel of record who are filing users of the Court's Electronic Case Filing System, and (b) upon the following individuals via First Class United States Mail:

Brent Oncale  
1 Riverway, Suite 470  
Houston, TX 77056

Brent Oncale  
9125 Chatsworth Drive  
Houston, TX 77024-3713

Russell E. Mackert  
5555 West Loop South, Suite 605  
Houston, TX 77401

Russell E. Mackert  
28303 Bolinas Ct.  
Spring, TX 77386-1813

Adley Abdulwahab a/k/a Adley Wahab  
3007 E. Lake Falls, C1  
Spring, TX 77386-2905

Adley Abdulwahab a/k/a Adley Wahab  
221 N. LaSalle Street, Suite 1137  
Chicago, IL 60601

Adley Abdulwahab a/k/a Adley Wahab  
3426 Schumann Oaks  
Spring, TX 77386

A&O Life Funds, LP  
Attn: Russell E. Mackert  
5555 West Loop South, Suite 605  
Houston, TX 77401

A&O Life Funds Management, LLC  
Attn: Russell E. Mackert, Member  
5555 West Loop South, Suite 605  
Houston, TX 77401

A&O Life Funds Management, LLC  
Attn: Russell E. Mackert, Member  
221 N. LaSalle Street, Suite 1137  
Chicago, IL 60601

Shepherd Capital Management, LLC  
Attn: Russell E. Mackert, Member  
5555 West Loop South, Suite 605  
Houston, TX 77401

/s/ Deborah M. Gutfeld  
Deborah M. Gutfeld  
NEAL GERBER & EISENBERG  
Two North LaSalle Street, Suite 1700  
Chicago, Illinois 60602  
(312) 269-8000