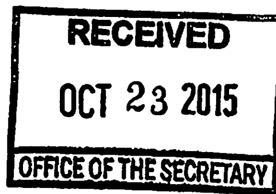

Received
OCT 23 2015
Office of Administrative
Law Judges

October 19, 2015

Honorable Judge James E. Grimes
Administrative Law Judge
United State Securities and Exchange Commission
100 F Street. N.E.
Washington, DC 20549

Admin Procedure File #3-16374 – WULF

Dear Judge Grimes,

Pursuant to Rule of Practice 450(a), the following is submitted as the brief in support of my petition for review of the administrative law judge's initial decision. I hereby attest to the truthfulness and verifiability of the content of my petition.

In 2008 Lincoln Memorial Life Insurance Company (Lincoln) was taken over by Texas regulators. The Cassity consortium, which owned Lincoln and many other related companies, collapsed into bankruptcy. I was the investment advisor for the Lincoln bond portfolio and advisor to National Prearranged Services (NPS). Soon afterwards, I, and more than 75 other persons and entities, were named as defendants in a civil lawsuit brought by the Texas Special Deputy Receiver (SDR). This suit sought hundreds of millions of dollars in damages on behalf of Texas and approximately 15 other State Insurance Guaranty Associations.

About 2 years after this "sister" civil case had proceeded, the Federal Government criminally indicted me and 5 other "alleged co-conspirators" for conspiracy, bank fraud, wire fraud and mail fraud. The civil case was stayed while the criminal case went ahead. In the summer of 2013, 5 of the "co-conspirators" pled guilty. I pled not-guilty and went to trial in August 2013, and lost. The day after the trial, I shut down my Registered Investment Advisory (RIA), relinquished all of my securities licenses and ceased doing any form of securities business. I am currently incarcerated.

After my criminal trial, numerous events and independent investigations put the spotlight on my criminal attorney's (Joe Hogan) horrid performance before, during and after the trial. Upon review of the trial transcripts, appellate counsel reported that Hogan's lack of objections during the trial effectively eliminated a successful appeal. Hogan failed to call any witnesses; expert or otherwise. He failed to introduce any evidence. He interviewed no witnesses. He ignored my wishes, instructions and his own contract. He did not file agreed upon motions on time; if at all. Hogan's cross examination of government witnesses was dismal due to poor preparation. In short, he was totally unprepared for this trial or sentencing.

In addition to these discoveries, numerous instances of serious prosecutorial misconduct were uncovered. It was found prosecutors withheld exculpatory information, used known forged letters as critical evidence and also omitted vital exculpatory facts pertinent to my innocence.

Prosecutors not only unlawfully concealed meetings held between themselves and admitted conspirators, but also ignored the exculpatory evidence those meetings produced. Prosecutors badgered, intimidated and unfairly coached witnesses with their testimony at my trial. Critical unsound evidence was used repeatedly against me, that has since been refuted by third parties. Taken together, these "violations," had they not been allowed, would have changed the outcome of the trial.

In late 2013, the Texas SDR civil case was allowed to proceed. The Texas SDR civil case is referred to as a "sister" case to the criminal case because both have all the same facts, entities and people involved. Texas spent tens of millions of dollars developing additional evidence that was unknown during the criminal trial. Petitioner's criminal case was exceptionally complex involving over 80 million documents and a plethora of various laws, regulations and regulatory authorities. These laws and regulations often overlap and conflict, or are poorly written. Many times even "simple" definitions can be interpreted differently by responsible parties. I was contacted in late 2013 by the Texas SDR (plaintiff) and asked to help them to understand aspects of this very complex case. I agreed to provide the best "road map" that I could. I initially testified and answered their questions at my civil defense attorney's office. That interview took a full day. Later, in May of 2014, I testified for three full days in sworn depositions to an audience of approximately 12 bank attorneys and the plaintiff. During that time, it became clear to me that the bank trustees' "ploy" was to use me as a "scapegoat" for their own gross negligence. After those depositions, I believe my testimony completely doomed that wrong and inappropriate strategy for use by the banks.

Over the following nine months I was copied on mountains of exculpatory evidence in the form of expert witness reports, new affidavits, interviews, motions, judicial rulings and judgments. Had I not received this new, vital information, I would never have understood the fraudulent and negligent behavior of the Cassitys or the banks. Finally, in the Texas SDR opening statement in their motion to dismiss me (Wulf) from the civil case they state: "The remaining Missouri Trustees...seek to force plaintiffs to pursue claims against an incarcerated, unrepresented defendant to foster **their** improper strategy to blame Wulf for their negligence." In January 2015 I was dismissed with prejudice by the Honorable Judge E. Richard Webber.

In February 2015, a jury in the U.S. 8th District of Eastern Missouri, Honorable E. Richard Webber presiding, sided with the Plaintiff (Texas SDR) and awarded approximately $340 million against PNC Bank (the remaining Missouri Trustee). The jury also awarded $35 million in punitive damages against the bank. An additional award of $100 million was rendered against Forever Enterprises (the surviving Cassity entity). It is unknown to me, but it is estimated that the other trustee banks settled with Texas for over another $100 million.

In November 2014, the 8th US District Court accepted my US 2255. This motion is based upon ineffective counsel, prosecutorial misconduct and new exculpatory evidence. This motion was accepted two days after it was filed. A government response was filed in March of 2015 and my rebuttal was filed in May 2015. A copy of this motion, the rebuttal and its 54 exhibits have been previously provided to the SEC. I have formally filed this motion as evidence against the

government's charges. It is crucially important in this SEC review. It goes to the heart of these charges. This motion is currently pending in the U.S. 8th District Court of Eastern Missouri.

BACKGROUND SEC PROCESS

The correspondence and official filings between the SEC and me are matters of public record and well known by the time of this review. However, additional actions taken by me and others may not be known by this court. These other events are pertinent to my defense and critical to understanding this exceedingly complex case and its concepts. The criminal case alone, with its more than 80 million documents, has been described as the most document intensive case in the entire history of the US 8th District Court. This was before the "sister" civil Texas SDR lawsuit, in which research and discovery added millions more. I was dismissed with prejudice from this case in January of 2015. Much of the new "explosive" evidence is exculpatory to me and was unknown at the time of the criminal trial.

With a rough time-line, I will attempt to put into some order the events and highlight key issues and facts that have led to this review. It is not meant to be all inclusive; indeed it could not be in any event. I have read extensively the interviews, depositions, motions, expert reports, judgments, verdicts and the analysis of the Cassity fraud itself. I was shut off from any knowledge of the fraud. I know what I did and what I did not do. I know why I took certain actions and the basis for taking those actions. It will be obvious to this court that I am not a lawyer. However, it does nothing to diminish the underlying and steadfast strength of the defense itself.

1. I did not conspire with NPS to defraud any bank or any individual at any time. What I know about the fraud is what I have learned since the 2008 bankruptcy of National Prearranged Services. (NPS)

2. I did not and have not breached my fiduciary duty to any of my clients.

3. I will not plead guilty or give up any of my legal rights or remedies with respect to the SEC or anyone else.

4. I have at all times during the SEC process been incarcerated in a room about the size of a walk-in closet. I have no legal help, no access to computers (other than monitored e-mail), no internet access, no desk, no cellular communications or other items conducive to due process or a proper minimal defense of these charges. I have been inundated with thousands of pages of important legal data pertaining mostly to the Texas SDR civil trial but also the criminal trial and the SEC matters. Storage space is severely limited to paper documents only.

5. I have spent hundreds of hours reviewing new evidence for my US 2255 received mostly from the Texas SDR civil case. Since the criminal trial, Texas and the 20 or so State Guaranty Associations have spent tens of millions of dollars and expended thousands of man hours developing this new evidence; much of which is exculpatory evidence for me.

6. In May of 2014, I spent 4 full days testifying in depositions for the Texas SDR civil trial. Approximately a dozen bank attorneys attended for the defense and up to 3 for the plaintiffs.

7. In contrast, in early 2015 I spent about 20 minutes speaking with Administrative Judge Grimes and two SEC enforcement attorneys in which virtually nothing about the case, specific accusations or the so-called evidence that had been previously used in the criminal trial was asked of me as an explanation. It was called a "follow up" to a criminal conviction. It was dismissed without prejudice. In layman's terms, the reason given was that just because a jury convicts a person, does not mean he/she is guilty in the eyes of the SEC. The enforcement attorneys were given time to resubmit. The resubmitted case was documented by evidence that had been previously used in the criminal trial. Those documents and charges were accepted by Judge Grimes on the re-submittal. Those charges are addressed specifically and effectively debunked by my 2255 and Rebuttal.

8. In November 2014, the US District Court accepted my US 2255 to vacate, set aside or correct sentence. This motion alleges and documents serious prosecutorial misbehavior and ineffective counsel. Additionally, this motion contains volumes of new exculpatory information including two complete expert witness reports that concur with my version of my duties and responsibilities. It also diagrams the Cassity fraud and the Trustee Banks' fiduciary breaches and gross negligence. These experts were called "qualified, reliable and admissible" by the Honorable Judge E. Richard Webber in the 8th District US Court. This motion, US 2255, along with the accompanying documents was copied to the SEC in early 2015 as a defense against the charges brought by the SEC. Hundreds of hours were spent creating and filing this motion with the US 8th District Court. My motion was filed pro se. I placed priority upon the US 2255 and the criminal case. While the SEC case is also of vital importance, I feel the SEC should be willing to wait until the resolution of my US 2255. The SEC allegations mirror a subset of the criminal charges. It should be reasoned that any victory by me in the federal courts would effectively negate any SEC basis for action. It is my belief that this US 2255 has not been read or considered by anyone at the SEC. It vigorously dispels the SEC charges directly.

9. In January of 2015, I was dismissed with prejudice from the Texas SDR civil suit.

10. In February of 2015, a jury decided in favor of the plaintiff (Texas SDR) against PNC Bank for about $340 million in damages and $35 million in punitive damages. It also ruled in favor of plaintiff against Forever Enterprises for about $100 million.

11. In May of 2015, I filed a rebuttal to the Federal Government Response. In addition to the rebuttal of each government allegation, there were an additional 250 pages of new exculpatory evidence that had been discovered and reviewed just since my original US 2255 filing in November 2014. Most of this evidence was from the Texas SDR civil suit. A copy of this rebuttal was filed with the SEC in May of 2015, as a response and in lieu of a separate defense to the SEC allegations. It is my opinion that this document was also ignored by the SEC.

12. In late summer of 2015, I filed a 31 point response letter to a preliminary ruling by Judge Grimes as "mistakes of material facts." Weeks later those facts and inaccurate concepts were summarily dismissed by the Judge. The late US Senator Patrick Moynihan was alleged to have said: "You are entitled to make up your own mind about the facts...you are **not** entitled to make up your own facts." Very appropriate here, especially when critical facts and concepts are dismissed with statements like: "Wulf does not dispute my recital of the allegations, he disputes the allegations themselves." Well...yes sir, I do. But I am not the only one to dispute these "allegations" and "facts." So too do state Insurance laws, Texas SDR expert witnesses in banking and insurance and accounting, security law textbooks, lawyers and investment colleagues. And finally, so too do the past NPS and Lincoln Life Insurance executives. Both those admittedly involved in the fraud and others not involved in the fraud dispute these "allegations" and "facts." Many of these are documented in my US 2255 and Rebuttal.

13. In September 2015, I requested and was granted a review scheduled for December 2015. This document is to serve as my brief in support of my innocence.

INSURANCE: SIMPLE WHOLE LIFE AND TERM

According to the federal government prosecutor's response to my US 2255, virtually all of the "Cassity fraud" involved the use of Whole Life and Term insurance at its foundation. NPS had its own insurance agency and insurance agents registered and licensed with the Missouri Division of Insurance. This arrangement was purposely hidden from me. I had no affiliation with NPS's Agency and was never paid any insurance commissions. These commissions totaled over 50 million dollars to NPS. I did not even know of the agency's existence or of commissions being paid to NPS employees until the discovery phase of the criminal and "sister" civil trials.

As I have stated numerous times; I gave only broad, general and infrequent insurance advice based upon my experience as an Agent registered with the Missouri Department of Insurance. These opinions were based upon "good faith," although it was later discovered that the information given me was purposely "doctored" by NPS and designed to deceive and manipulate me. This deception was not limited to me alone. Indeed, the Cassity deception ran the gamut from State agencies and regulators, insurance companies, funeral homes, customers, accountants and federal regulators and agencies; including the SEC, which allowed the public offering of Cassity's Lincoln Heritage common stock in 1999. In any event, NPS had ultimate and total control over every aspect of those policies. I had none.

This agency knows that insurance regulations of these products fall under the Missouri Department of Insurance. It was that agency under which I was licensed as a general insurance agent. That license was carried by Moloney Insurance Agency. There is no variable element in simple whole life or term insurance and the policies are 100% guaranteed by the issuing insurance company. Simple whole life and term insurance are NOT securities. The various State Guaranty Associations back these policies in the event of a life insurance company bankruptcy. Upon the insolvency of Lincoln Life, that is exactly what the Guaranty Associations did; all the policy holders were made whole so long as they continued to pay their premiums.

As the Registered Investment Advisor (RIA), I had no involvement with insurance. These products were not reflected in WBM's ADV nor could they have been. Simple whole life and term insurance are not the purview of the SEC, and it is the SEC that registers and regulates RIAs. I have previously stated these facts in my civil depositions given in May 2014. The Texas SDR expert witnesses concur with my position. These same experts were described as "qualified, reliable and admissible" by the Honorable Judge E. Richard Webber, U.S. 8th District Court, presiding for the Texas civil trial.
If I have an advisory client who has a life insurance policy and I call the issuing insurance company, that company will not give me any information or take any action, even if I tell them the policy owner is an advisory client of mine. Only if I am the insurance agent of record, the insurance agency which wrote the policy or the owner of the policy, will they divulge any information whatsoever. It does not matter whether I am the investment advisor or not. That is because I, as an advisor, have no control over the policy. The control of the aforementioned policies, including premiums, loans, lapses and death claims falls to Lincoln Life and NPS's agency. They in turn answer to the various State Insurance Agencies. Each and every "allegation" or purported "fact" in this review should be discarded or referred to the proper agency which regulates these products. Otherwise these actions and duties are being completely misinterpreted. It is wrong and misleading to "stencil" regulations or duties that fall to insurance agents under their requirements, to advisors who answer to a completely different set of rules and regulations.

NON-DISCRETIONARY ACCOUNTS/ADVISOR INDEPENDENCE

This agency apparently fails to note that the advisory relationship between Wulf, Bates & Murphy (WBM) and NPS was on a "non-discretionary" basis. This relationship is disclosed in my ADV and also the advisory contract between NPS and WBM. This is a critically important distinction and dictates the entire operation of the advisory account. In this relationship, the client must be contacted PRIOR to the advisor taking ANY investment action. Additionally, the client must agree to the advice BEFORE the advisor acts on any investment idea. Therefore, the ultimate authority and consequent control of the account rests with the client, not the advisor. This is particularly true if that client is an institution. At all times the client reserves the right to refuse any advice or act unilaterally without the advisor's knowledge or consent. This is the "investment protocol" in a non-discretionary account. This protocol happens each time on every investment transaction that the advisor makes on the client's behalf. In fact, an advisor **cannot** make investments without prior client approval.

NPS acted unilaterally with regard to purchase of the promissory notes and the securities deposited into the trust. The promissory notes were created, negotiated and placed between NPS lawyers and the trustee banks. Securities deposited were directed by Brent Cassity and Randy Sutton (Presidents of NPS parent company and NPS respectively). These directions were

addressed specifically to the bank trustee. These transactions are fully described in the Texas SDR expert witness reports, which are attached to my US 2255.

Missouri law Chapter 436 attempts to define a legal framework for the operation of pre-need trusts in Missouri. It failed. Most businessmen and lawyers described this law as vague, confusing and poorly written. After the NPS bankruptcy in 2008, the law was scrapped and completely re-written. The "Consent Agreement of 1994" attempted to "patch" some of the perceived flaws of that law. Both documents call for any investment advisor appointed to be "independent," yet it does not define the term nor does it explain the manner in which the advisor is to be "independent." An advisor relies upon the client for accurate and honest information upon which to make recommendations. It is perfectly normal for an advisor to work closely with a client on a "non-discretionary" basis and at the same time be "totally independent" from them. In fact, most of WBM's advisory relationships were "non-discretionary" and in which it was also "independent." In an attached document to my 2255, lawyers for the Missouri Trustee Banks argue effectively and correctly that WBM was wholly "independent."

The criminal prosecutors purposely confused the terms "independent" with an advisor having "discretionary" authority. The jury was led to believe that the advisor somehow must act in a vacuum and buy and sell whatever it deemed appropriate without the consent or any interaction with NPS. This is not only wrong but also highly misleading, particularly if the jury is unfamiliar with advisory terms. This review board is familiar with these terms. These distinctions are a crucial determinant of the advisor's responsibilities and also define the interaction between it and a client. WBM was "independent" of both the bank trustees and NPS however, it DID NOT have "discretionary" authority. Therefore control resided with the client, NPS. These truths directly dismiss many of this agency's "facts" and "allegations" outright.

WULF'S CLIENT WAS NPS/FIDUCIARY DUTY

My client for the pre-need trust was NPS, not the individual contract holders. My fiduciary duty was to my client, NPS, for the pre-need trust, not the individual contract holders. It is patently absurd that an advisor of this "non-discretionary" account could be required to solicit 10,000 different opinions before making an investment transaction. It is likewise incorrect and wrong to equate this trust to a mutual fund; as there are many more differences to the analogy than similarities. In the more than 25 states in which NPS operated, in only one state was it governed by the flawed and confusing Mo 436. For that reason, this trust is unique in many ways.

In the Missouri pre-need trust, it is crystal clear that NPS is the GRANTOR and the Banks are the TRUSTEES. The BENEFICIARY of the trust was believed to be NPS. This opinion was held by the Missouri Trustee Banks and NPS. That position was communicated to me as advisor through

both official and other channels. I had every reason to believe that the beneficiary of the trust was NPS and that it acted accordingly. My 2255 has an attached document in which the Missouri Trustee Banks set down the legal basis for their belief that NPS was the beneficiary for the pre-need trust. Therefore, the bank trustees, NPS and I ALL believed the BENEFICIARY to be NPS. Therefore the advisory client HAD to be NPS because they were BOTH the Grantor and the Beneficiary. This is a crucial factor. It follows logically that my fiduciary duty was to NPS. In the reports provided by me to the SEC, outside expert witnesses who were deemed "qualified, reliable and admissible" agree; WBM's fiduciary duty was to NPS, not the individual contract holders.

It is disingenuous to state as a purported "fact" that I admitted during cross examination that I had a duty to the contract holders. Without context or an explanation of what that duty was felt to have been, it is a meaningless statement. I had no control of money entering the trust, no administrative function and no control of money leaving the trust. To the extent possible, I tried through NPS, to keep the face value of the life insurance policies above the trust death liabilities. That I did. The responsibility of money entering and leaving the trust, administrative functions, and accounting of the trust were the exclusive duties of NPS and the Trustee Banks. I played no part in those functions whatsoever. These responsibilities are confirmed and outlined in detail by outside expert witnesses used by the Texas SDR. Those reports are attached to my US 2255.

DUTY TO PRESERVE AND PROTECT ASSETS

My opinion given more than 20 years ago is still solid: life insurance is a good investment for the trust. In simple Whole Life and Term Insurance, there is no market risk. This is the primary reason it is not considered a security. Life insurance is 100 % guaranteed by the underlying life insurance company. That company is backed by a plethora of regulations and safeguards and in the event of a default, there are the State Guaranty Associations that have historically made those policies good. But, just as a knife can be used to carve a turkey or commit a murder, it is not the tool but the user's intent and action that make the difference. The losses of the corpus of the trust were due to the theft by the Cassity's; not by any action on my part. I had no knowledge of the fraud nor did I take part in any of it.

I believed my duty to the customer was; to the extent possible, to keep the face value of the life insurance policies at 100% of the level required to insure death benefits; and this I did. I relied on NPS to provide me with the total amount of coverage needed to achieve this objective. I always put the interest of NPS ahead of my own. The bank trustees were uniquely responsible for the losses to NPS customers in Missouri. And those banks paid heavily for it in the civil case. These responsibilities and the trustees' gross negligence are outlined in the expert witness reports for the Texas SDR civil trial. Finally, in a "Memorandum and Order," dated 1-9-15, the

Honorable Judge Webber ruled: "The Bank Trustee always has an overarching duty to protect assets" and "The court reads the statutes to require these obligations whether an investment advisor is appointed or not." These documents are attached to my US 2255.

SURRENDER OF WHOLE LIFE POLICIES

While I acknowledge that this occurred, I did not direct or control these transactions in any way. In fact, I knew nothing of them and in no way benefitted from them. I have previously stated, and it can be shown, that I received no insurance commissions from NPS, its Insurance Agency or Lincoln Life; ever. Whether or not these transactions were for the explicit purpose of generating extra commissions or for other reasons, I do not know. Generally, the proper agency to take that up with would be the Missouri Department of Insurance. They would normally investigate the issuing agency and the agent of record on the policies to determine any wrongdoing. Appropriate action could then be decided upon. These are the responsibilities of the bank trustees, the insurance company and NPS; not the investment advisor. The expert witness reports and other trial documents confirm this.

POLICY LOANS/MISSOURI DEPARTMENT OF INSURANCE

The NPS theft was unknown by me at the time and should have been discovered and reported immediately by the banks. This whole fraud scheme by the Cassity's could have been prevented had the trustee banks been safeguarding the trusts. During the regulator, Bob Lock's six years of monitoring (1994-2000)...I was never informed of any impropriety or objection then. I had every reason to believe that this remedy for cash flow issues was acceptable.

Richard Stamper was a financial examiner for the State of Missouri with over 20 years experience. He shares my belief that NPS was under the Regulatory authority of the Missouri Insurance Department with regard to insurance purchases. Mr. Stamper conducted an extensive examination of Lincoln Memorial LIC in 1998 and in 2001. I have enclosed his FBI interview and e-mail to the Director of Insurance. These findings can only be described as "explosive." In them he cites "red flags," fraud, deceit and a laundry list of violations of state insurance laws and regulations, between NPS, Lincoln and RBT trusts. He explains and documents his memorandums and other attempts to notify responsible people in the Insurance Department including the Director and even the Governor of Missouri; Jay Nixon. In each instance he was ignored; they did nothing. Six months after these internal disclosures, Lincoln Heritage, the parent company of all the Cassity consortium, went public with a stock issue. I knew nothing about the meetings or its disclosures. In the document it is obvious that NPS was not using policy loan proceeds as I recommended. NPS and Lincoln were deceiving and using the advisor (me).

At the same time, the Missouri-appointed monitor of NPS, Bob Lock, was overseeing the procedures and operations. In 2001, Bob Lock was relieved and the State gave essentially an "all clear" signal when it allowed him to leave without event. The prosecutors in the criminal trial stated that the trust was fully funded when Mr. Lock left in 2001. I had to rely on the opinion and reputation of Mr. Lock.

It's no wonder that the criminal trial discovery revealed that in a 2001 prescient statement Mr. Stamper said "I don't want the MDI to have to answer the Missouri consumers when this house of cards collapses sometime down the road, and the Missouri pre-need contract owners say 'hey you Missouri Department of Insurance guys knew about this all along and did nothing about it.' And knowing of this now, I can only respond to Mr. Stamper's comments today with two pathetic words---you're right." I was told nothing about the known abuse by NPS and Lincoln. In fact I was told everything was "all clear." I continued to view NPS as a viable honest company. I paid them my fiduciary duty...and I was defrauded; not to mention the public shareholders. To me, this is a breach of regulatory duty to the advisor (me) and also to the public shareholders.

BOND MANAGEMENT/BACKGROUND

I started my professional career as a life insurance agent with Connecticut General. I received extensive training in Life Insurance and Estate Planning. Later, I spent two 4 year periods as vice president of Merrill Lynch and Shearson Lehman Brothers, respectively. My specialty was institutional bond management, which fit well with my formal education in economics and finance.

Merrill Lynch had a program called "man of the day" in which walk-in business was referred to account executives on a random basis. By coincidence, one day Randall Sutton walked into the office and was referred to me. He opened a corporate brokerage account. Before long, he came to understand my bond expertise and eventually I was asked to manage bonds for NPS. This I did. For years I worked to manage and advise NPS with mostly government bonds of all sorts. This was done on a non discretionary basis. Mr. Sutton introduced me to Jim Fischer. Mr. Fischer was the president of Lincoln Memorial Life Insurance Company. It was Mr. Fischer who asked me to help manage a bond portfolio for the insurance company. A contract was drawn up and signed.

WBM managed bonds for Lincoln Memorial and their reinsurance accounts for many years. During this time there were perhaps 5 different CEOs and a dozen other Lincoln employees with whom personnel from WBM worked on a daily basis. I personally spent most of my day with bond portfolios. I knew there were some ties to NPS from an ownership standpoint, but I knew nothing specific. It is common when dealing with institutions not to know anything about the

ownership of that corporation; it is the executives on the Corporate Resolution that is recorded on the new account forms. I also knew NPS pre-need trust bought life insurance from Lincoln LIC and I saw nothing wrong with that. I knew all legal reserve life insurance companies are highly regulated and safe for their policy holders. Lincoln, from my vantage point, was autonomous from NPS. All bond portfolio contact, transactions, directions, bank statements and meetings that I was involved with, were distinct and separate from NPS.

For many years Wulf, Bates and Murphy managed many millions of dollars successfully for Lincoln LIC. Our fees and performance were constantly reviewed by Lincoln Executives. Many other portfolio managers were brought in from time to time and put in competition with WBM. We were constantly under the spotlight and so our performance and relations had to be good to keep the company's bond business. Consequently, I spent the greater part of each day tracking, reviewing, recommending and transacting bonds.

During this time we were audited by the SEC at least five times. WBM fully disclosed and complied with all security laws. If an audit discovered a deficiency, we immediately corrected it. We completely opened all our books and were receptive to comments from the agency always. In addition to the SEC audits we were also subjected to an annual review by Moloney Securities and random audits by FINRA. We cooperated fully. We also participated in annual continued education classes and tests for each of our securities licenses and insurance licenses with the State of Missouri. On the whole our clients were pleased and well served. Some of our customers had been with us for three generations. I have letters from children thanking me for taking care of their parent's investments. In short, we did right by our clients and had very few regulatory issues.

When the collapse of NPS and Lincoln occurred, I was informed by a parking attendant as I arrived for work one morning. We were totally outside the closed circle of those who perpetrated this fraud. We knew nothing of it and the people who we trusted as clients, used us as pawns. The federal prosecutors were allowed to expand our role way beyond what it actually was. Responsibilities designated specifically to bank trustees were improperly placed on us. These improper expansions and misdirection of our duties are best illustrated by the expert witness reports already documented, but also by the civil trial verdict of over 500 million dollars against the bank trustees.

WULF/SEC LEGAL ISSUES

I have been denied due process by this court. Evidence presented by me has been ignored. That evidence and the arguments rebutting any federal charges, effectively refute and disprove the same evidence used by the SEC. Each is addressed my US 2255. In the initial SEC telephone conference call, I was not given any specific charges to which I could defend myself. This is very

important, as evidence require facts. There are complex aspects of this case which require verbal response and explanation to be properly understood. Time tables have been ridiculously short considering the complexity of this case (over 80 million documents) and the fact that I am currently incarcerated. Also, during the entire time of this SEC process, I have been writing a legal brief and rebuttal to vacate the original criminal case verdict, which would undermine and negate any resulting SEC case. The federal motion had timetables that directly conflicted with the SEC process. My federal motion was filed due to a mountain of new evidence, misbehavior of the prosecution and ineffective counsel. I am not represented by counsel and have no reference material with which to respond to the SEC court. I object to "purported facts" stated in the Honorable Judge Grime's decision, as they are not facts at all. When those "mistakes of fact" were pointed out, they were summarily dismissed. I agree with the challenges and critics of the SEC's increased use of its own judges and the markedly higher success rate it enjoys over defendants. And finally, I also agree with two federal judges who stated that the process by which the SEC appoints its judges is "likely unconstitutional."

WULF'S $436 MILLION RESTITUTION

My restitution judgment of $436 million dollars is an appalling example to me of the abuse of power by federal prosecutors. Once a conspiracy charge is leveled against an individual, all losses in a fraud are considered jointly and severally in their application among conspirators. I am not guilty of any conspiracy or fraud. Lincoln Memorial Life Insurance Company was licensed to do business in 37 states. When Texas Department of Insurance put the company into receivership, the liabilities were estimated to be around $500 million dollars. These losses were caused by NPS' theft and the Bank Trustees' failure to monitor, not the investment advisor. There have been no losses to pre-need contract holders. The Bank Trustees were judged responsible for the losses to the receivership in the recent Texas SDR civil suit. The plaintiff was awarded $335 million from PNC bank and $100 million from the remaining "Cassity Consortium" company. An additional $35 million in punitive damages was awarded plaintiff against PNC Bank for "intentional and reckless misconduct." I was dismissed from the civil suit "with prejudice."

I charged NPS $375.00 a quarter for the NPS Pre-Need Trust IV. My $436 million dollar judgment is an assault to any rational thought. It is absurd; the jury simply did not have the facts. I do not believe any previous ruling cited by the SEC can even begin to capture the unique complexities of this case. There is no logic in using the criminal case judgment against me in this SEC proceeding.

EXCULPATORY AFFIDAVITS

My US 2255 has 7 (seven) affidavits presented as exculpatory support. These are not merely lay witnesses; to the contrary; they are in fact "key" witnesses.

1) James Crawford was CEO of NPS and a key government witness. He exonerated me.
2) Katherine Scannell was NPS Corporate Counsel and involved in all aspects of NPS. She was a key witness against the Cassitys and Howard Wittner. She exonerated me.
3) Darci Greco worked for Tony Lumpkin. She was a key witness against the Cassitys in explaining their insurance policy "doctoring." She exonerated me and admits the prosecutors "intimidated" her into testifying at my trial.
4) Nekol Province held many important and sensitive positions at NPS. She pled guilty. She exonerated me.
5) Kelly Bates managed the paperwork for Wulf, Bates & Murphy. She exonerated me.
6) Trip Bates III was President and Chief Compliance Officer of Wulf, Bates & Murphy. He exonerated me.
And finally; 7) Tony Lumpkin was Chief Technology Officer and ran the entire insurance operations including the details of each policy. He was the key witness against the Cassitys; resulting in their pleading guilty. Part of his affidavit states;
"during several interviews, I told investigators and prosecutors that David Wulf had no knowledge of any criminal activity...Doug Cassity had hidden it from David. I gave investigators several examples to show that David had no knowledge of the criminal activity."

In addition, there are many, many more employees of NPS and Lincoln who would testify to what I did and did not do. There were dozens of individuals to write letters attesting to my credibility and honesty; from my industry, my community, my neighborhood, my customers and my family.

CONCLUSION

Simple "purported facts" are not facts at all; they have been shown to be untrue. I ask that this tribunal dismiss these charges against me. I did not set up the pre-need trusts. I did not have control over the trust and I did not direct the cancelling of insurance policies. Similarly, many "allegations" are simple conjecture that have no place being in a list of charges. Statements such as: "it is not a coincidence that Wulf managed the life insurance portfolios" is not based on any fact, but instead designed to imply some unproven nefarious activity in what was a normal business relationship. This is what institutional bond managers do and we were duly licensed by your agency to do so. There were no complaints or charges about that management of the Lincoln bond portfolios. All of our audits made the various agencies aware of those relationships. All of my "mistakes of facts" are equally valid and true. To dismiss them all "offhand" looks to me to be for the purpose of judicial expediency.

When this agency does not read evidence and arguments presented by a petitioner in his defense, it is a dereliction of duty to me. All the federal charges against me have been rebutted and dismantled by an official document (US 2255) that has been presented to and accepted by the U.S. Federal Court. These arguments are sound. The documents are real and are directly applicable to this case. They are the result of millions of dollars spent and thousand of man-hours expended on new research. This was instituted by a neutral party to this hearing, the Texas Special Deputy Receiver. These documents paint a completely different picture of these allegations than do the federal prosecutors. To ignore my 2255 and its documented new evidence is negligence. To make a statement like "Wulf now tries to blame the prosecutors and his attorney for his conviction" is hogwash. If this official motion was not made in the format that this agency expects, it should have been rejected and I should have been informed of such rejection. Otherwise, I had every reason to expect it to be thoroughly read and seriously considered in my defense.

The SEC does not have jurisdiction over simple whole life and term insurance; they are not securities. Expert witnesses, State Insurance Auditors, and decades of legal precedence confirm this. Debate between the various State Insurance Departments and the SEC focus on insurance and annuities that have a "variable" component. The policies in question had no such component whatsoever. These policies are 100% guaranteed by an operating legal reserve life insurance company. I had every reason to believe them to be safe, prudent investments. As the e-mail and FBI interviews of Richard Stamper make clear, the Missouri Department of Insurance was fully aware of all aspects of the NPS insurance operations. Due to the vague provisions of MO. 436, which Mr. Stamper calls "a documentary travesty," and the inaction of the Missouri State Insurance Department in 1998, the Cassity's were allowed to perpetrate their fraud for an additional 10 years. This fraud was completely unknown to me as advisor at the time. The "official" word given by Missouri monitor, Bob Lock, was that the NPS operations and the trust were "all clear." It was not in doubt with the Senior Missouri Auditor however, as to whom the regulation of these policies fall; The Missouri Department of Insurance. I only gave general advice as to insurance and it was not related to the WBM investment advisory; it was given as a general insurance agent and regulated by the MDI.

It is understandable that a jury of "laymen" in terms of financial acumen would not understand the importance and distinction between a "non-discretionary" account and an "independent" advisor. This tribunal is another story entirely. It is critically important as to the ultimate control of these accounts. I should not and cannot be held responsible for the client's unilateral actions and malfeasance. This was completely unknown to advisor at the time. I believed my client was NPS. As such, unilateral actions taken by the client were seen by the advisor (me) as "their right" to do so. I was of the opinion that NPS was fully aware that its own self interest was best served in the long run by acting in the best interest of the contract holders. I knew nothing of

the fraud which was hidden from me as well as from many others. In any event, NPS retained and exercised ultimate control over the account.

The federal charge of conspiracy has been strongly challenged in my US 2255. Documented prosecutorial misconduct and ineffective counsel are part of my challenges. However, a very strong case for my innocence can be made with just the disclosure of new evidence produced by the Texas SDR civil case. Among those documents are the affidavits testifying of my non-involvement in the fraud. Some of these testimonies come from people who admittedly participated in the fraud. I was purposely kept in the dark and misled and deceived. The $436 million dollar restitution charged to me is based solely on the conspiracy count. I believe that the new evidence will prove that I did not conspire with NPS or anyone else to defraud any bank. The remaining counts all have to do with wires from the bank, which Texas SDR has shown to be "a system that Allegiant Bank knowingly and consciously created where it would AUTOMATICALLY execute ALL wire transfers requested by NPS and its employees." I had no part in those wires and no part in conspiracy. The losses were the result of NPS theft and the bank's failure to monitor.

In spite of the SEC's size advantage and deep resources, the basic facts and premise of your arguments are seriously flawed. In the first place, these charges and the SEC's use of these documents merely repeat the charges brought by federal prosecutors. I have shown in my US 2255 that their case is built on a house of cards that, upon closer review, collapses on its own lack of merit. These arguments and new evidence directly dispelling these charges have been presented to this court in a timely fashion and ignored. Next, duties and responsibilities incorrectly assigned to the advisor by federal prosecutors were expanded to include those specifically designated to the Bank Trustees. The Texas SDR civil trial verdict as well as "overwhelming new evidence" was used extensively and authoritatively to disprove this. The Bank Trustees misleading and self-serving interpretation of the advisor's role were shown to be wrong. Third, the proper jurisdictional authority in this case with regard to simple whole life and term insurance, is the Missouri and Texas Departments of Insurance, not the SEC. By the prosecution's own admission, the fraud was mostly perpetrated by the Cassitys and their use of insurance. Securities had little to do with this case and when they were used, they were used properly by the advisor. This relationship was on a "non-discretionary" basis and any abuse was caused by NPS's misuse of their control over the account. Finally, there is the seriously flawed and subsequently scrapped MO 436. This is the same law that Mr. Stamper, a Senior Insurance Auditor for the MDI called "nothing short of a documentary travesty." Mr. Stamper had a great deal of experience working with this law and NPS. All of this was unknown to me. It is easy to misinterpret a law that no one can correctly interpret in the first place. It has been twisted by the prosecutors to attempt to show malfeasance by the advisor (me); when it was nothing more than honest understanding of a flawed law's provisions. It was abused by the Cassitys to

perpetrate their fraud. I was unaware of this and had nothing to do with the fraud.

Each of the agency's charges should be reviewed in light of these arguments and the new evidence presented since the criminal trial. It is advisor's belief that all charges should be dismissed. If there are any remaining questions, I should be informed of the exact accusations and allowed to respond and defend myself. I am not guilty of these charges.

MEMORANDUM OF INTERVIEW

CASE NUMBER	:	1732727-MF
PERSON INTERVIEWED	:	Richard Stamper
PLACE OF INTERVIEW	:	U.S. Attorney's Office EDMO St. Louis, MO
DATE OF INTERVIEW	:	8-10-11
TIME OF INTERVIEW	:	10:00 am-3:35 pm
INTERVIEWED BY	:	Inspector MJ Villicana, SA T Ardrey (IRS), SA C Ward (FBI)

On August 10, 2011, investigators interviewed Richard Stamper, financial examiner for the State of Missouri, Department of Insurance, Financial Institutions & Professional Registration, Wainright Builidng, 111 N. 7th Street, Suite 229, St. Louis, MO 63101, (314) 340-6830, cell [REDACTED]. Stamper has been a financial examiner for approximately 20 ½ years. He was hired in 1991, and became as an examiner III in early 1994. Also present during the interview were AUSA Charlie Birmingham and AUSA Steve Muchnick.

Stamper said he was involved with the financial examinations of Lincoln Memorial Service Life Insurance Company (LMLIC) in 1998 and 2001. He said more recently he was involved with an examination of Professional Liability Insurance Company of America (PLICA). Stamper said his examinations revealed that LMLIC and PLICA shared similar problems. He further said, while reviewing memoranda from LMLIC, he noticed that many of that company's personnel also worked for for PLICA.

Regarding PLICA, Stamper stated New York regulators "tipped off" Missouri. He said New York regulators contacted the Missouri Department of Insurance to have it send one of its examiners to help examine PLICA in Clayton, MO. Stamper said this particular examination took place prior to PLICA being placed in receivership. He said he assisted Joe Rome (NY DOI). Stamper said the same personnel "directed traffic" for both LMLIC and PLICA. He said members of that common personnel included Doug Cassity, Brent Cassity, Howard Wittner, Randall Sutton, Niki Province, David Wulf, and Jim Shawn. Stamper also said LMLIC and PLICA also committed similar types of "shenanigans." He said Doug Cassity and Wittner were "bleeding millions out of the company (PLICA)" through loss ratio bonuses, management agreements, and "ridiculous salaries." Stamper recalled Wittner and Howard Nathans' salaries to be a combined $2.5 million per year. He described this amount as "a lot for a small company."

Stamper said he "assumed" Jim Rome (NY DOI) submitted a report on PLICA. He (Stamper) did not have a copy of it. Stamper described the PLICA personnel as "adversarial", claiming they did not want regulators at their company. He said no one was interviewed. Stamper said PLICA would either provided wrong information or none

at all in response to regulator requests. He said Howard Nathans lived in another state, and Doug Cassity never came to the office site. Stamper recalled seeing Brent Cassity at the NPS office when the State of Missouri examined LMLIC and National Prearranged Services (NPS).

Stamper said he and Rome eventually saw PLICA's service management contracts and loss ratio bonus agreements for Nathans and Wittner. He said according to the bonus agreements, Nathans and Wittner would get "significant" bonuses if the company's loss was zero. Stamper explained that the loss ratio involved a comparison of losses and revenues brought in by the company. He said according to the agreements, bonuses would be awarded if the ratio stayed below a certain threshold. Stamper said the problem was that Nathans and Wittner controlled the case reserves. He said the two manipulated the numbers, brining down the loss ratio in order to obtain their bonuses. Stamper said PLICA would report that it could settle its claims with no losses, even those in litigation, because Wittner was "such a great attorney." He said this did not seem realistic. Stamper said medical mal practice cases are "long tailed", meaning that they take quite some time to settle. He said litigation costs are a "given" in such cases. Stamper said the case reserve contemplates indemnification as well as other losses including litigation. He said PLICA did not have a developed loss history because it only wrote business for a couple of years before New York shut it down. Stamper recalled PLICA threatened to sue, but never did. He said Bayside Capital was a PLICA affiliate. Stamper said he looked at PLICA's loss reserve runs and saw a high percentage of case reserves at zero. He said he figured the numbers were manipulated to allow for bonuses to be paid.

Stamper said the insurance company had its own actuaries. PLICA, however, did not provide the Missouri Department of Insurance with credible information regarding adequacy of reserves. He said PLICA did not provide certified reports from actuaries. Stamper stated when Missouri and New York actuaries looked at company reserves, they found PLICA was "under-reserved." He said there should be three reports from the company's actuaries. Stamper said regulator actuaries kept asking for the reserve information. He said Keith Hale (LMLIC) would change the numbers with each response. Stamper said, "You can't change history." He said when New York regulators challenged the information, PLICA would change the data to make it more favorable. Stamper said the loss data was typically kept in "loss data files." He said Joe Rome (NY DOI) would have handled the NY actuary. Stamper said while Doug Cassity did not exist on paper, he appeared to be running the company.

Stamper said when an insured buys a policy from PLICA, premiums are determined by a pricing actuary. He said the policy must be reserved by "X" amount of reserves. Stamper explained that a portion of the premium needs to be set aside. He said sometimes this amount exceeds 100% of the premium in order to cover commissions. Stamper said as premiums come in over time, the amount goes down. Eventually, he said, the company would make money on the policy. Stamper said an underpriced insurance product will "bite you on the backside" when it comes to loss reserves.

Stamper described PLICA as a "mom and pop" operation that was very small. He guessed that the company's pricing actuary and its reserve actuary was the same person. Stamper believed PLICA "farmed out" its actuary responsibilities. Stamper said New York was exclusively responsible for the report on PLICA. He recalled seeing the draft, be said he did not receive the final copy. Stamper said he voiced his concerns

over PLICA's operation to both Joe Rome (NY DOI) and his own management. He said he and Rome concluded that PLICA was insolvent. Stamper said he (Stamper) reported to Fred Heese who was the head examiner at the Missouri Department of Insurance. He said Heese reported to the director at the time named John Huff (phonetic). Stamper noted that Heese was the assistant chief from 1999-2001. He further said he had previously made Heese aware of problems with Lincoln Memorial Life Insurance Company (LMLIC) and National Prearranged Services, Inc. (NPS) via memoranda.

Stamper said MO DOI conducted two exams of Lincoln Memorial Life Insurance Company (LMLIC) in the summer of 1998 and late spring/summer 2001 respectively. He said he did not believe the Missouri "adequately looked at the situation from its inception." Stamper recalled that in 1998, the Texas Department of Insurance (TDI) called MO DOI to encourage it to take a look at LMLIC. He said Steve Devine was the chief examiner in 1998 who appointed him to conduct the first exam. Stamper said in 2001, Chief Examiner Kirk Schmidt appointed him to conduct the second examination. He said Steve Klein was the examiner in charge on behalf of TDI in 1998. Stamper said Zak Kazi took over this role for the 2001examination.

Regarding the 1998 examination, Stamper said he saw problems from the beginning. He said he knew Doug Cassity had been convicted of a fraud in the 1970s. Stamper recalled seeing "millions" being transferred to affiliated companies. He said he documented his concerns in a memorandum to the MO DOI. Stamper said Devine (chief examiner) did not want to touch it, claiming MO DOI had no teeth. He said Devine told him the MO Attorney General's Office would be the more appropriate agency to handle the problem. Stamper recalled Klein (TDI examiner) being in a similar situation with his agency. He said the underlying theme of the issues raised during the examination was LMLIC was a "political hot potato." Stamper said he made at least a dozen attempts to meet with attorney Doug Omen of MO DOI at the Wainright building regarding LMLIC. He said, however, Omen "refused" to meet with him. Stamper recalled security telling him that Omen was not available. He said Jay Nixon was the person who referred him to Omen.

Stamper said Steve Devine's (chief examiner) take on the situation was that the AG's office had the power of subpoena. He said he told Devine that the AG would not go after LMLIC. Stamper recalled Steve Klein giving him a copy of a 1994 consent judgment. He said Klein concluded that NPS and its related company, LMLIC, did not comply with the order. Stamper said he felt the AG's office would not go after LMLIC simply because in doing so, Jay Nixon would have to admit that the state had "dropped" the ball. He said Nixon would never want to admit to this. Stamper said between 1998 and 2001, he also attempted to speak with Robert Lock (McBride & Lock) regarding NPS' and LMLIC's violations of the consent agreement. He said Lock never responded. Stamper said no one ever told him he was prohibited from speaking with Lock regarding the monitoring of NPS. As a result, he felt as though those involved with the consent agreement and monitoring simply did not want to own up to having "dropped the ball."

Regarding his participation in the 2001 examination of LMLIC, Stamper said it was the "same stuff different day." He said the numbers were just bigger, as the company had an additional three years to move millions of dollars. Stamper said Zak Kazi of TDI headed the examination. He described Kazi as a "don't ask don't tell kind of guy" who did not "rock the boat." Stamper speculated the State of Texas did not want Steve Klein (TDI), who performed the 1998 examination, back at LMLIC for the second examination.

As for Missouri, according to Stamper, the DOI had the power to shut down LMIC but did not. Stamper said Fred Heese, who served as assistant chief to Devine and Schmidt, knew what was going on. The ultimate decision to pursue any action was with the chief. Stamper said he was frustrated with the situation.

(Investigator's note: At 11:15 am, the interview was stopped for a break. It resumed at 1:15 pm)

Investigators showed Stamper a document dated August 31, 2001 entitled Missouri Department of Insurance Internal Memorandum regarding "Lincoln Memorial Life Insurance Company (TX)," purportedly written by him and submitted to Chief Financial Examiner Kirk Schmidt. (Exhibit 1) After reviewing the document, Stamper identified it as a memorandum he had written.

Stamper said examinations are done every three years. He said he was down in Texas in 1998 to examine LMLIC's 1997 operations. In 2001, he examined LMLIC's '98,'99, and 2000 operations. Stamper said examinations also take into consideration "subsequent events" from the cut-off date to the date examiners are on site. He said there is an 180 day rule that requires publication of examination documents within 180 days of the completion and submission of reports. Stamper said the clock starts on the last day of the examination. He said this rule has been codified in a statute. Stamper said while the statute was not in existence in 1998 through 2001, the State of Missouri adhered to the deadline as a matter of practice.

Stamper said because LMLIC was domiciled in Texas, the examinations were governed by Texas rules. He described his participation as that of a "zoned participant" whose interest was based upon the fact that LMLIC was "writing millions" in the state of Missouri. Stamper said he did not know the results of the 2004 examination, as he did not return for it. Stamper said Missouri has both financial examiners and market conduct examiners who function separately. He said both types examiners are under the department of insurance. Stamper said he found so much overlap between LMLIC's financial operations and market conduct, he was able to convince the state to assign Austin Conrad, a market conduct examiner, to assist with the 1998 examination. The State of Texas appointed its own market conduct examiner named Scott Laird to that same examination. Stamper said both market conduct examiners concluded that there was fraud. He said he had no market conduct assistance in 2001. Stamper said LMLIC's case was "screaming" for coordination between financial examiners and market conduct examiners. He said, however, market conduct examinations are typically based upon complaints, and are conducted "as needed."

Stamper said typically during an examination, the examiner is in contact with a company representative who is in the "trench of knowledge" regarding financial reports. He said in the case of LMLIC, that person was Joe Cappleman for both the 1998 and 2001 examinations. Stamper recalled LMLIC refusing to comply with his requests for financial documents for RBT Trust II. He said attorney Howard Wittner would send him letters stating that regulators had no right to these documents. Stamper said he analyzed policy loans, affiliated transactions, and cash during both examinations. He said the first examination revealed that 90% of LMLIC's business was through Missouri. Stamper said LMLIC was doing business in additional states by the time he started the 2001 examination.

Stamper said only the owner of a policy can take a loan against an insurance policy. He said LMLIC documents showed that NPS was making itself the owner of policies in order to get loan money. Stamper recalled Randall Sutton as the person who always signed off on the loans. He said he would typically review the policy data pages. Stamper said regulators were aware of David Wulf, but never spoke with him. He said he found some records indicating that trusts owned the policies, and other records showing NPS receiving loan proceeds as owners. Stamper said he wanted to get bank trust statements related to the policies, but MO DOI legal would not allow it. Stamper said MO DOI "could've immediately pulled their (LMLIC) license and shut them down." He added, however, "We blew it. We should have acted on information 13 years ago. We should've stepped in."

Stamper described Assistant Attorney General Doug Omen as a "ghost" during this time. He said he never saw Omen despite repeated attempts to speak with him about LMLIC. Stamper said Omen "popped up" later as a director of a state agency. Even then, according to Stamper, Omen would not respond to his requests to meet. He said the attorney general's office will deny that he (Stamper) made any attempts to make contact.

Stamper said because regulators were unable to obtain RBT Trust II and other trust records, he could only rely on LMLIC's insurance records. He recalled seeing millions of dollars going to NPS. Stamper said, however, he could only see the "backside" of the transactions. He said either Howard Wittner or Cliff Mitchell would deny him access to trust records. Stamper explained that he would see money coming into the insurance company, but not see the source of the funds. He could not see the actual sender or the accounts that received funds from the insurance company. Stamper said the market conduct examiners did look at the actual insurance policies. He said the ownership issue would not be apparent by just reviewing company financial records. Stamper said he did not know what happened after the 2001 calendar year.

Investigators had Stamper review page 4, second bullet point of his memo dated August 13, 2001. (See Exhibit 1) After reviewing this section, Stamper said he believed Howard Wittner was trustee as well as a beneficiary of RBT Trust II. He said while he never actually met Wittner, he did interact with him. Stamper said there were times when LMLIC workers would tell him that it was Wittner who was denying him records. He recalled that at one point, Fred Schumpe, who worked in the consumer affairs department of the MO DOI, received a call from an NPS customer who asked him about an LMLIC policy. Stamper said Schumpe called NPS for information. He said shortly thereafter, Wittner called Schumpe, telling him DOI had no right to obtain information on a policy. Stamper said he was privy to Wittner's phone call, as Schumpe had it on speakerphone.

Stamper said after the State of Texas took over NPS, he had conference calls with Howard Wittner regarding who had access to company trust documents, specifically those related to RBT Trust II. He said Wittner denied having access to trust records. Stamper said Wittner claimed an accountant handled the records. He further said Wittner denied any knowledge of anything. Stamper recalled Wittner specifically denying that he knew about policy loans. He said he (Stamper) never had all the records that would enable him to get the full picture of what was going on.

Investigators had Stamper review page 5, second paragraph of his memo dated August 13, 2001. (See Exhibit 1) After reviewing this section, Stamper said it is a reference to the incident between Wittner and Fred Schumpe he had just described.

Stamper said he had three contacts at LMLIC. Joe Cappleman, head of accounting, was his main contact. Stamper said the other two were Tony Lumpkin, an LMLIC employee who would provide him with data files, and Cliff Mitchell, who was president of LMLIC. Stamper denied socializing with any LMLIC employees.

Investigators showed Stamper a document entitled "Certificate of Insurance" for insured Warren Wilson. (Exhibit 2) After reviewing the document, Stamper said it appeared that the owner of the policy was Bremen Bank and Trust Company.

Investigators next showed Stamper a document entitled "Policy Data Page" for a policy on Warren Wilson dated September 24, 2005. (Exhibit 3) After reviewing the document, Stamper identified it as the "index." He said according to the data page, the owner of the policy was Trust IV.

Investigators next showed Stamper a document entitled "Custody Agreement for Life Insurance Policies Held Under National Prearranged Services, Inc. Pre-Need Plans Trusts" dated November 1, 1999. (Exhibit 4) After reviewing the document, Stamper stated LMLIC never provided it to him. He said he was unaware that Dave Wulf had signed this agreement with Allegiant Bank which maintains that the trustee is the title holder of the policies.

Investigators showed Stamper a document entitled "Policy Owner Service Request" dated March 12, 2005 for insured Patricia Shafer. (Exhibit 5) After reviewing the document, Stamper acknowledged the form authorized a policy loan and listed the policy owner as Randall Sutton. He said he recognized this type of form as the type that he saw during his examination of LMLIC.

Investigators next showed Stamper a document entitled "Application for Life Insurance" dated March 10, 2006 for Ohio insured Ronald Loterbaugh. (Exhibit 6) After reviewing the document, Stamper said this form also looked familiar to him. He said in this particular situation, the individual appears to maintain ownership of the policy. Stamper said someone other than the owner taking a loan against this policy without that owner's knowledge would be a "major red flag."

Stamper said he never spoke with Randall Sutton. He said he did, however, speak with Niki Province who appeared to be an operations manager back in 1991. Stamper said Province's named kept "popping up" under different titles. He said while he did not interact with her very much, he said Province did provide information to him once or twice. Stamper said he did see Doug Cassity, Brent Cassity and Province in Texas from time to time. He said he noticed that LMLIC used many of the same personnel names for different titles at different times within the company. Stamper did recall an incident in 2008 in which he met Province at the elevator at LMLIC. He said Province became combative with him, stating he did not belong at the company, and did not know what he was doing. Stamper said Province pointed out that her daughter and other "very good people" worked at the company, and that he (Stamper) was ruining their lives. He said Province appeared to be close with Wittner and Doug Cassity. Stamper said Randy

Sutton was a "shot caller" at NPS. He said David Wulf also appeared to be a "shot caller," although Stamper admitted he never met him.

Stamper said he had no confidence in LMLIC's reported reserves, as he believed they were based upon fraud. He said Cliff Mitchell (LMLIC) was handling the reserves. Stamper said Mitchell gave him and Steve Kline (TDI examiner) wrong information. As a result, Stamper never trusted Mitchell's reporting of reserve amounts. He said Texas actuaries said LMLIC's reserves were okay, even with policy loans. Stamper said, however, this was assuming that NPS owned the policies. He claimed that policy loans would have a negative effect on the reserves if NPS was not the owner.

MJ Villicana — 9-26-11

U.S. Postal Inspector — Date

IS 9095, Memorandum Of Interview, March 2009

MISSOURI DEPARTMENT OF INSURANCE
INTERNAL MEMORANDUM

TO: KIRK SCHMIDT – CHIEF FINANCIAL EXAMINER

FROM: RICK STAMPER

DATE: AUGUST 31, 2001

RE: LINCOLN MEMORIAL LIFE INSURANCE COMPANY (TX)

RECEIVED
AUG 3 1 2001
MO INS DEPT

In response to your recent email messages regarding issues and concerns about the above noted company, I would like to share the following thoughts.

I had discussions last week with Laurie Pleus and Karen Baldree regarding the provision of information regarding various company reinsurance transactions. I've already sent Laurie copies of the ERC coinsurance agreement and the North American Life reinsurance treaties, along with some of the settlement statements and some other documents accounting for the reinsurance transactions.

I've also reviewed the mirror image reserve credit offsets picked up by ERC and North America Life. The reserves picked up by those companies don't exactly match the reserve credits taken by Lincoln Memorial Life Insurance Company ("Lincoln Memorial," or "the company"), but they are reasonably close, therefore the reserve credits do not appear to be an issue.

As far as the pending Assumption Reinsurance Agreement, I discussed it with Fred Heese. Fred stated to me (more than once) that in the most recent meetings between Lincoln Memorial representatives and the MDI, that those company representatives and management personnel were explicitly told that this assumption agreement would not be approved by Missouri until completion of the current financial examination. I agree with you that if this agreement is nothing more than moving the old block of business into the newly formed Lincoln Memorial Life Insurance Company, then it really doesn't change things a whole lot. My concern here is this sense of urgency displayed by the company after the fact. If the company was told that the agreement would not be approved until exam completion, why is the company suddenly pressuring the director's office to get this thing pushed through?

- Most (if not all) of the affiliated companies in the Lincoln Memorial holding company system are managed and directed by the same small group of individuals, making arms-length transactions between the affiliates virtually impossible. This core group of individuals includes:
  - Randy K. Sutton - President and Director of Lincoln Memorial, Officer and Director of Memorial Service Life Insurance Company (Lincoln Memorial's parent company), and President of the funeral contract seller affiliate National Prearranged Services, Inc.
  - Brent D. Cassity - Director of Lincoln Memorial, Officer of National Prearranged Services, Inc., and principal beneficiary of RBT Trust II (the ultimate controlling person in the Lincoln Memorial holding company system).
  - Clif M. Mitchell - Actuary, current Officer and former Director of Lincoln Memorial.
  - Howard A. Wittner - Director of Lincoln Memorial and principal beneficiary of RBT Trust II.

- The Missouri Attorney General's Office previously issued a Stipulation for Consent Judgment against Lincoln Memorial's affiliate National Prearranged Services, Inc. ("NPS, Inc.") ordering compliance to specific requirements for funding liabilities related to their preneed contract trust accounts. With the distinct possibility of a lack of oversight to monitor compliance with this agreement, the AG's office has not responded to several requests by the Missouri financial examiners to provide any status of the compliance to that agreement displayed by NPS, Inc. Lincoln Memorial personnel have repeatedly ignored previous requests by the financial examiners of both Missouri and Texas to provide independently audited financial statements or any other accounting records of National Prearranged Services, Inc.

- Lincoln Memorial has repeatedly ignored several requests by Missouri to file and provide independently audited financial statements of the ultimate controlling person (RBT Trust II) in their holding company system. This is a direct violation of Missouri holding company statute sections 382.100 – 382.160 and Missouri insurance regulation 20 CSR 200-11.101.

- National Prearranged Services, Inc. sells preneed funeral contracts substantially to Missouri funeral contract purchasers, then funds these funeral contracts with life insurance policies purchased exclusively from Lincoln Memorial. Lincoln Memorial then makes the affiliate National Prearranged Services, Inc. the owner of the life insurance policies, without informing the Missouri preneed funeral contract owner that the funeral contract owner even has a life insurance policy on themselves. The theoretical question arises: can a life insurance company have an insurable interest on the life of a preneed funeral contract owner if the funeral contract owner has no knowledge of the life insurance policy on themselves?

I have talked to Zak Kazi, the Texas Examiner-in-Charge of this examination, about any major financial issues that may be a concern to Texas. At this point in time, the EIC did not have any materially significant examination issues documented. I believe the material examination issue will be the "reinsurance component" special surplus write-in item reported on line 34 of the company's 2000 Annual Statement liability page. I have not specifically seen this type of animal on any previous examination that I have participated on, however I am quite sure that it is a surplus relief mechanism. My primary concern with the reinsurance component is that it makes up significantly more than 100% of the company's reported surplus. It is also concerning that the reinsurance component number has increased in 2000 instead of decreasing, and the percentage of surplus comprised by the reinsurance component is also increasing. My limited understanding of surplus relief is that the surplus relief would theoretically amortize down over time and be replaced by earnings over the life of the surplus relief contract. That is certainly not the case in this situation. As the reinsurance component continues to increase, negative earnings also continue to increase, a very unfavorable combination.

As of this date, we (the MDI) have not engaged a consulting actuary to opine on the reinsurance component number, which the department may want to consider. I'm not familiar with how that type of arrangement works on a non-Missouri domiciled company examination. Texas will have their actuarial employee from their department looking at the reinsurance component for this examination. Off the record, I have met this person and she appears to be very young. Consequently, and I don't want to sound chauvinistic here, but I'm not completely convinced that the Texas actuarial employee will have the experience and surplus relief expertise to tackle this nebulous reinsurance component issue. I'm also concerned that the MDI bringing in our own consulting actuary may raise the eyebrows of the Texas Department and incur the wrath of the company also. The last thing we need is to generate an adversarial situation with the domiciliary state and/or the company. This one is a tough call. I suggest that you kick this decision around further with Doug, as he has much more experience in the surplus relief arena than I currently have.

As far as other issues with company, I believe that I have already documented to MDI management and some of your and Mr. Lakin's predecessors several areas of concern. A few weeks ago, I participated in the NAIC Fraud Training Seminar in Kansas City. The seminar speakers taught the participants to look for a variety of specific risk factors in determining inappropriate operation of an insurance company, also referred to in the seminar as "red flags." As I observe the things going on at Lincoln Memorial Life Insurance Company for the second consecutive examination, I see red flags everywhere. In no particular order of significance, the following is a non-exclusive list of some of my observations:

- Lincoln Memorial has historically displayed a consistent (and increasing) dependence on surplus relief to remain technically solvent on paper. As of 12/31/00, the company's reported $15,076,260 "reinsurance component" represented 170% of reported surplus. If even a piece of this reinsurance component is incorrect or overstated, the company could be insolvent.

- Lincoln Memorial was previously placed under Administrative Oversight by the Texas Department of Insurance.

- By making its' affiliate National Prearranged Services, Inc. the owner of substantially all of the life insurance polices funding the preneed funeral contracts sold in Missouri by NPS, Inc., Lincoln Memorial effectively provided a conduit to move $22.7 million (as of 12/31/99) in the form of policy loans out of the regulated insurance company (Lincoln Memorial) and into the non-regulated funeral contract seller affiliate (NPS, Inc.), and possibly up to the RBT Trust II ultimate controlling person. This explains why the company adamantly and continuously refuses to provide audited financial statements for either the affiliate National Prearranged Services, Inc. or the RBT Trust II ultimate controlling person in the Lincoln Memorial holding company system.

- Lincoln Memorial and its' affiliate National Prearranged Services, Inc. were named defendants in a lawsuit filed in St. Louis Circuit Court challenging National Prearranged Services, Inc.'s method of funding preneed funeral contracts with life insurance policies as a breach of contract in violation of Chapter 436 statutes of the Missouri Related Laws ('Special Purpose Contracts'). On two separate occasions, I personally reviewed case file #962-07285 *Loretta F. Whitlow, et. al. versus National Prearranged Services, Inc.* During the lawsuit, plaintiff attorneys repeatedly requested production of bank statements, cash receipts/disbursements records, or other accounting records to support deposits, withdrawals or transfers to/from preneed funeral contract trust accounts, or any financial records of NPS, Inc., or any source data for NPS, Inc.'s income tax returns. Attorneys representing National Prearranged Services, Inc. repeatedly refused to provide any of NPS, Inc.'s financial records to the court. NPS, Inc. vigorously defended this lawsuit at a cost of several hundred thousand dollars. Over a period of three and a half years, legal counsel for NPS, Inc. filed motions for continuances, motions to dismiss the case, motions to transfer jurisdictions, motions to bar the claim based on statutes of limitations, and various other motions. For reasons unknown, the lawsuit was dismissed by the plaintiffs, and the case file was closed effective January 27, 2000. Two important points were gleaned from review of this case file. First, National Prearranged Services, Inc. has refused to provide audited financial statements to the departments of insurance of Texas, Missouri and the St. Louis Circuit Court. Second, the chief partner of the law firm that vigorously defended the lawsuit on behalf of the defendant National Prearranged Services, Inc. is Howard Wittner, a primary beneficiary of the RBT Trust II ultimate controlling person in the Lincoln Memorial holding company system. No person stands to benefit more financially from lack of provision of audited financial statements on the RBT Trust II than Mr. Wittner.

During my participation in the current and prior examinations of Lincoln Memorial, Howard Wittner has been the most vocal and combative siren for denial of provision on any financial data or information of National Prearranged Services, Inc. to the Missouri Department of Insurance ("MDI"). This is not surprising, as review of financial statements of NPS, Inc. or the RBT Trust II might potentially reveal that millions of dollars were moved out of Lincoln Memorial (through the policy loan mechanism) through NPS, Inc. and up to the RBT Trust II, which Mr. Wittner will eventually reap significant financial benefit from. I believe that when that trust dissolves in a few years, all funds remaining in the trust will be divided equally between Mr. Wittner and three members of the Cassity family, the corpus beneficiaries. A copy of the RBT Trust II trust agreement can be referenced in the file of Lincoln Memorial documents which I collected during the prior exam and left on file in Doug's office.

Mr. Wittner continues to state that any transaction of NPS, Inc. does not fall under the jurisdiction or scope of the Missouri Department of Insurance. Based on my research of Chapter 436 "Special Purpose Contracts" of the Missouri Related Laws, I disagree with Mr. Wittner's opinion. Statute reference 436.007 section 4., the last sentence states that "Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance sold with a preneed contact."

Mr. Wittner has historically taken an adversarial and confrontational position during any discussions with Missouri Department of Insurance personnel. So as to not lose any substance of the interpretation of that statement, Fred Heese can fill you in on previous meetings and discussions between Mr. Wittner and the MDI. I can relate an incident first-hand which occurred on a day a few months ago in which I was working in Doug's office on an unrelated project. Fred Schumpe in our St. Louis office was approached by a walk-in consumer who had questions about his preneed funeral contract purchased from National Prearranged Services, Inc. in St. Louis. Fred called NPS, Inc. to discuss the questions/issues raised by the preneed contract owner. Fred got no answer(s) from the NPS, Inc. employee who fielded his telephone call, but was told that somebody in the NPS, Inc. accounting department would return Fred's call. A few minutes later, Fred received a telephone call from an irate Howard Wittner blasting Fred for his inquiry, and stating in no uncertain terms that the Missouri Department of Insurance has no right to make inquiries of NPS, Inc. in any manner. I perceive Mr. Wittner's persistent defensive and combative posture as a sign that Mr. Wittner adamantly wants no intervention by the MDI into the financial operations of NPS, Inc. in any manner whatsoever. My interpretation of that incident, as well as all discussions and interaction with Mr. Wittner, is that all people only get irrationally defensive for a reason, and that Mr. Wittner is steadfast in keeping those reasons and agendas hidden from the Missouri Department of Insurance. It appears that Mr. Wittner's hidden agenda may be a huge financial windfall to be realized from his participation in the RBT Trust II.

On a related note, I would like to also take issue with a couple of statements you made in your email message to me dated August 20, 2001. In this correspondence regarding your discussions with Kevin Jones regarding the company's lack provision of audited financial statements of the ultimate controlling entity, you stated that "Kevin said that Missouri doesn't really have jurisdiction on this matter since the company is a Texas domicile, and if Texas does not want to pursue the matter any further, then Missouri can't do anything about it." You represent the third consecutive Missouri Chief Financial Examiner whom I have discussed this issue with, and this issue may be the only bridge we have to act on this Lincoln Memorial situation.

Section 382.100 "Registration" of the Missouri holding company statutes states that "every insurer which is authorized to do business in this state (MO) and which is a member of an insurance holding company system, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in sections 382.010 to 382.300, shall register with the director." An interpretation can be made that if the domiciliary state (in this case Texas) does not substantially require a Missouri foreign company to file registration statements, then Missouri can. Then 20 CSR 200-11.101 (page 8) Form B Items 8(b) and 8(d) kicks in with the crystal clear requirements of annual financial statements of the ultimate controlling person certified by an independent public accountant in conformity with generally accepted accounting principles. This interpretation was discussed with and agreed to by at least one of your position's predecessors. Perhaps a legal opinion of this interpretation of the holding company statute verbage by the MDI Legal Department is warranted.

In response to your previous email correspondence regarding Lincoln Memorial, if you want me to point at a number or an item on Lincoln Memorial's 2000 Annual Statement and say we have a known financial examination issue with that particular number or item, I really can't do that at this point in time. If you ask me do I think there are serious issues or problems with Lincoln Memorial's operations and related affiliates NPS, Inc. and RBT Trust II, the answer is absolutely.

As an auditor, when I want to look under the insurance company's proverbial rock and the insurance company (through intervention of legal counsel) says 'Rick you can't look under that rock and we won't let you,' I get concerned. Any good auditor would. Then the same company takes it a step further and tells the circuit court system 'you guys can't look under that rock either.' My instinctive concerns suddenly became completely validated by the company's own attitude. This isn't rocket science. There is obviously something under the rock, we just haven't been allowed to see it and quantify the problem.

To say that I have a pretty pointed opinion about Lincoln Memorial's operations, and specifically its' relationship with National Prearranged Services, Inc., the RBT Trust II and the kangaroo court that drives their merry-go-round, may be the greatest understatement in statutory history. Seven pages of this memorandum, and pages of prior memoranda to your position's predecessors have made my opinions pretty clear. Can we do anything about it? I'm not completely sure. This situation is a pretty slippery animal. And I realize that, like most all situations in life, the smart, rational person has to pick and choose their battles. Agreed. But in making a decision whether to carry the torch on this one, you have to remember one critical thing. The bottom line is, the only people who are totally at risk in this deal are the consumers of Missouri.

Protecting Missouri consumers is an innate and meaningful part of our jobs as financial examiners. My real concern is that the people who ultimately will get burned in this Lincoln Memorial situation are the tens of thousands of Missouri preneed funeral contract owners. That explains why Texas is taking a "laisse-faire" (no penalties for spelling please) attitude on this company. But consider my points very carefully, because we still have the choice to put on the blinders or not to.

To me, whether I am protecting a Missouri insurance policy owner or a Missouri funeral contract owner is irrelevant. If we don't step up to protect the thousands of preneed funeral contract owners in Missouri, who will? Certainly not the Missouri Attorney General's Office or the Texas Department of Insurance. And chapter 436 of the Missouri Related Laws is nothing short of a documentary travesty. There is no regulation there either. I just don't want to have the MDI have to answer to the Missouri consumers when this house of cards collapses sometime down the road, and the Missouri preneed funeral contract owners say 'hey you Missouri Department of Insurance guys knew about this all along and did nothing about it.' And I can only respond with two pathetic words—you're right. So it looks like it's the MDI's ballgame if we want to make it ours, and if not, game over man.

To conclude, I think we have to decide if in fact these red flags I have discussed are within the scope of responsibility of the Missouri Department of Insurance. That will require your interpretation of the Missouri insurance holding company statutes, specifically RSMo. 382.100. If we need to go so far as to get a legal opinion on the meaning and scope of 382.100, let's do it. That's what our legal department personnel are there for.

If my interpretation of RSMo. 382.100 holds water, meaning if the Missouri holding company statutes allow us to trump the Texas holding company statutes and invoke the requirements for the ultimate controlling person (RBT Trust II) to file legitimate independently audited financial statements, then we have a starting point of pursuit. I would then recommend immediately invoking those financial statement filing requirements on the RBT Trust II ultimate controlling person in the Lincoln Memorial holding company system. If the company balks on the filing of those financials, which is my prediction, then further regulatory sanctions would have to be considered. If my interpretation of our holding company statutes is inaccurate, and we have to rely on Texas to put the finger on these guys, then we are probably done.

The prosecution rests. Now it's my turn to ask you, what do you think?

cc: Doug Conley – Audit Manager
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