

State Board of Embalmers and Funeral Directors

September 24-25, 2013

Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri 65109

OPEN AGENDA

Tuesday, September 24, 2013

9:00 a.m.

1. Call to Order
2. Roll Call
3. (Tab 1) Approval of the Agenda
4. (Tab 2) Approval of Open Minutes
 - September 16, 2011 Mail Ballot*
 - December 11-12, 2012 Board Meeting (minutes previously approved but are being returned with corrections/additions that are noted in grey)*
 - May 14, 2013 Financial Examination Committee*

CLOSED

Wednesday, September 25, 2013

9:00a.m.

5. Recognition of past board member John McCulloch
6. (Tab 3) Executive Director Report
 - License statistics (new, closed/ceased, disciplined)
 - Legislative Update
 - House Bill 329
 - Renewal status
 - New Licensing System Update
 - Rules Meeting October 15, 2013
 - "The Conference" in February, 2014
7. (Tab 4) Legal Counsel Report
 - Update Regarding National Prearranged Services
8. (Tab 5) Employer Notification of License Status Changes – Section 324.014
9. Discussion/Dialogue
10. Adjournment

**State Board of Embalmers and Funeral Directors
3605 Missouri Blvd.
Jefferson City, Missouri 65109**

September 16, 2011

Open Mail Ballot Minutes

Board Members

D. Todd Mahn, Chairman
James Reinhard, Vice-Chairman
John McCulloch, Secretary
Gary Fraker, Member
Martin Vernon, Member
Archie Camden, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director _____

Approved by Board on _____

State Board of Embalmers and Funeral Directors

December 11-12, 2012
Hampton Inn & Suites – Country Club Plaza
4600 Summit, Kansas City MO 64112

OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order by D. Todd Mahn, Chairman on December 11, 2012 at 2:10 p.m.

Roll Call

Board Members Present

James Reinhard, Vice Chairman
John McCulloch, Secretary
Archie Camden
Gary Fraker

Board Members Not Present

Eric Pitman

Staff Present

Sandy Sebastian, Executive Director
Lori Hayes, Inspector
Tabatha Lenzini, Administrative Assistant
Sharon Euler, Division Legal Counsel

Approval of Agenda

A motion was made by Gary Fraker and seconded by John McCulloch to approve the open agenda. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Eric Pitman not present for the meeting.

Move to Closed

A motion was made by Gary Fraker and seconded by John McCulloch to move to closed for #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Eric Pitman was not present for the meeting.

Approval of Open Minutes

A motion was made by Gary Fraker and seconded by Archie Camden to accept the open September 25, 2012 board meeting minutes with the correction to the motion relating to the "Discussion of Propose Rule "Insurance Funded Preneed Contracts" by correcting it to read *Motion was made by James Reinhard and seconded by Archie Camden to table the vote on the rule to allow for written comments to be received in the board office. Motion tied with Eric Pitman voting in favor and John McCulloch, Gary Fraker and D. Todd Mahn voting in opposition.* Motion carried with James Reinhard and John McCulloch voting in favor with no votes in opposition. Eric Pitman not present for the meeting.

Executive Director Report

Sandy gave an update on the following –

- Embalmer/Funeral Director renewals reporting that 2092 renewals were mailed in August and as of November 30, 2012 there were 1955 (93.45%) renewed which is 30 days past the expiration date.
- Discussed fees relating to the \$36 per contract fee and shared with the board that rough estimates for 2012 seller renewals indicates there were 14, 811 contracts reported sold, which in line with recent years since the law changed in 2009 (in 2009 there were 12504, 2010 there were 15391 and in 2011 there were 14708). Given that contract numbers reported appear to be consistent Sandy asked if the board wanted to look at options that involve reducing the per contract fee, which would likely involve increasing fees in other areas. The board asked that scenarios be run.
- Sandy updated the board on staffing in the office reporting that Bob Beck would be finishing up his assignments by the end of December and that Betty Lilley was hired full time to replace him.
- Sandy shared with the board that license statistics (new, closed/ceased, disciplined) were included in their materials.
- Sandy told the board that the new law book going out on CD versus hard copy saved a significant amount of money because the CDs were only .97 to complete/mail.

Legal Counsel Report

Sharon informed the board that the litigation regarding National Prearranged Services is continuing as the trial appears to be moving forward.

Presentation by Scott Lindley

Scott Lindley met with the board at his request to discuss a proposal that he had discussed with an interim legislative committee on preneed. Representative Guernsey, Mr. Lindley's representative, was to be present with him to give the presentation to the board but due to illness was not present. Mr. Lindley gave a brief overview of what his representative was going to be talking about relating to tax credits, continued thoughts relating to National Prearranged Services.

Board member notification of new, closed/ceased, disciplined licenses

John McCulloch and Todd Mahn asked that in addition to the notifications relating to each category that they receive at each board meeting that they be notified each time an application or cease is received for an establishment, provider and seller before the office processes anything. Following discussion it was suggested that the information be posted to the secure portal and the board be sent an email that information has been added for their reference.

Licensure categories

Todd Mahn indicated he wanted to revisit the matter of dual licensure and following discussion among the board the public was asked for input. The members of the public present had different opinions, similar to the board. No motion was made.

Discussion of renewal deadlines/preneed seller renewal

John McCulloch discussed the renewal deadlines and any possible grace periods. Sandy and Sharon both clarified that the statute does not provide for a grace period but that all licenses must be renewed by the deadline and that was applicable to all license types. This subject resulted in a combined conversation with the next item on the agenda below.

Discussion of preneed seller renewal/seller annual report forms

Todd Mahn and John McCulloch discussed the current preneed seller form and stated it was unclear to anyone that if the license was not renewed by October 31st that they could not work even if their form was submitted to the board prior to that time. D. Todd Mahn agreed and proposed the date on the renewal form have a suggested date of October 31. Sandy shared that an earlier suggested submission date of October 1st could be put on the form and that the language could be modified to be

more clearer. The public expressed concerns about the background questions requesting information that the board could do nothing with and asked if the board could review those questions. The board asked that Sandy review them. Todd Mahn asked John McCulloch to work with the office on potential language.

Discussion of \$36 per contract fee relating to insurance funded preneed contracts

John McCulloch asked that this item be revisited from a previous meeting. Following discussion a motion was made by Gary Fraker and seconded by John McCulloch to have staff draft a rule that addresses beneficiary changes on insurance policies and any policies sold at the funeral home or by its agents with a preneed contract is subject to the \$36 reporting fee. Motion carried with James Reinhard and Archie Camden voting in favor with no votes in opposition. Eric Pitman was not present for the meeting.

The Conference

Sandy asked the board if they would like to determine which member would be able to attend the upcoming annual meeting of The Conference, being held in Henderson, Nevada in February, 2013. Todd Mahn stated he would like to go. Gary Fraker recommended James Reinhard attend. A motion was made by Gary Fraker and seconded by Archie Camden for James Reinhard to attend the meeting. Motion carried with James Reinhard and John McCulloch voting in favor with no votes in opposition. Eric Pitman not present for the meeting.

Motion to Close

A motion was made by Gary Fraker and seconded by James Reinhard to move to closed for #1, 2, 7, and 9 of the attached motions to close. Motion carried with Archie Camden and John McCulloch voting in favor with no votes in opposition. Eric Pitman was not present for the meeting.

Future Meeting Dates/Locations

Future meeting dates and locations were discussed and the board asked that staff look at meeting locations in downtown St. Louis for March 19, 20, 21, 2013.

Adjournment

Meeting adjourned at 12:12pm on December 12, 2012.

Executive Director: _____

Approved by board on: _____

MOTIONS TO GO INTO CLOSED SESSION

1. DISCIPLINE

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline

2. LEGAL ACTIONS/LITIGATIONS/PRIVILEGED COMMUNICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney

3. PROMOTING/HIRING/DISCIPLINING/FIRING EMPLOYEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency

4. DIAGNOSIS/TREATMENT OF DISCIPLINED LICENSEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (5) and Section 324.001.8 RSMo. for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees

5. EXAMINATION MATERIALS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (7) RSMo for reviewing testing and examination materials

6. EMPLOYEE PERFORMANCE RATINGS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (13) RSMo for making performance ratings pertaining to individual employees

7. APPLICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure

8. CLOSED MINUTES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and 324.017 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings

9. COMPLAINTS/ INVESTIGATIVE REPORTS/AUDITS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021 subsection (14) and section 620.010.14 subsection (7) RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant

Revised 09-11

**State Board of Embalmers and Funeral Directors
Financial Examination Committee**

May 14, 2013

**State Board of Embalmers and Funeral Directors
Missouri Conference Room
3605 Missouri Boulevard
Jefferson City, MO 65109**

OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors Financial Examination Committee was called to order by James Reinhard, Committee Chair, at 8:36 a.m.

Roll Call

Board Members Present

James Reinhard, Committee Chair
Archie Camden, Member

Staff Present

Sandy Sebastian, Executive Director
Lisa Wildhaber, Examiner Supervisor
Sharon Euler, Division Legal Counsel

Approval of Agenda

A motion was made by James Reinhard and seconded by Archie Camden to approve the open agenda.

Approval of Minutes

A motion was made by James Reinhard and seconded by Archie Camden to approve the open financial examination committee minutes of April 10, 2013 and May 1, 2013.

Executive Director Report

No report

Legal Counsel Report

No report

Move to Closed

A motion was made by James Reinhard and seconded by Archie Camden to move to closed session pursuant to #1, #2, #7 and #9 of the attached motions to close.

Adjourn

A motion was made by Archie Camden and seconded by James Reinhard to adjourn 9:26 a.m.

Executive Director: _____

Approved by the board: _____

MOTIONS TO GO INTO CLOSED SESSION

1. DISCIPLINE

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline

2. LEGAL ACTIONS/LITIGATIONS/PRIVILEGED COMMUNICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney

3. PROMOTING/HIRING/DISCIPLINING/FIRING EMPLOYEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency

4. DIAGNOSIS/TREATMENT OF DISCIPLINED LICENSEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (5) and Section 324.001.8 RSMo. for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees

5. EXAMINATION MATERIALS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (7) RSMo for reviewing testing and examination materials

6. EMPLOYEE PERFORMANCE RATINGS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (13) RSMo for making performance ratings pertaining to individual employees

7. APPLICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure

8. CLOSED MINUTES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and 324.017 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings

9. COMPLAINTS/ INVESTIGATIVE REPORTS/AUDITS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021 subsection (14) and section 620.010.14 subsection (7) RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant

Revised 09-11

Board Name**Embalmers & Funeral Directors**

Licensee Name	License #	Orig Issue Date
Hall, Alan James	2013023114	7/3/2013
DeLisle, George Alphonse, II	2013023404	7/3/2013
Scego, Kevin William	2013023692	7/9/2013
Gobber, Adam Michael	2013027282	7/26/2013
Troester, Ann Rae	2013027828	7/30/2013
Miller, Robert Gustav, II	2013028954	8/6/2013
Keim-Thurman, Jamie Marie	2013029180	8/7/2013
Cotten, Diamond Dionne	2013030450	8/15/2013
Harnack, Elizabeth Grace	2013031735	8/23/2013
Simmons, Austin James	2013032065	8/26/2013

Embalmer 10

Licensee Name	License #	Orig Issue Date
Boyer, Lucas Todd	2013023403	7/3/2013
Kelly, Cindy Christine	2013027784	7/29/2013
McDermott, Katherine Bottchen	2013027912	7/30/2013

Funeral Director Limited 3

Licensee Name	License #	Orig Issue Date
Hess, Adam Lee	2013020454	6/21/2013
Dukes, Joshua M	2013020465	6/21/2013
Hackworth, Jerry Dean	2013020806	6/24/2013
Hall, Alan James	2013023115	7/3/2013
Rhodes, Christopher Jerome	2013023116	7/3/2013
Scego, Kevin William	2013023693	7/9/2013
Kutis, Thomas Frank, V	2013023777	7/9/2013
Ford, Stuart Elliott	2013025037	7/15/2013
Rydman, Philip Walter	2013025089	7/15/2013
Miller, Robert Gustav, II	2013025137	7/15/2013
Gaither, Tyler D	2013025866	7/18/2013
Baker, Beth Ann	2013026963	7/24/2013
Cotten, Diamond Dionne	2013027223	7/26/2013
Smith, Christopher Shane	2013027772	7/29/2013
Carter, Angela Michelle	2013027850	7/30/2013
Harnack, Elizabeth Grace	2013030426	8/15/2013
Sabella, Kimberly Ann	2013030512	8/15/2013
Smith, James Keith	2013030984	8/20/2013
Hussain, Mohammed Asghar	2013031602	8/22/2013
Backes, Linda Jolene	2013031750	8/23/2013
Reynolds, Christopher James	2013032070	8/26/2013

Board Name**Embalmers & Funeral Directors**

Licensee Name	License #	Orig Issue Date
Jones, Trevor Jesse	2013032658	8/30/2013
Lamb, William Daniel	2013033013	9/3/2013
Barr, Harold Thomas	2013033615	9/9/2013

Funeral Director

24

Licensee Name	License #	Orig Issue Date
Ashton A. Jones Funeral Directors, Inc.	2013020808	6/24/2013
Massie Funeral Home & Chapel Inc	2013021893	6/28/2013
Slider Funeral Home-Grandview, Inc	2013022023	6/28/2013
Cashatt Family, LLC	2013027219	7/26/2013
Kalmer Memorial, LLC	2013027615	7/29/2013
Midwest Cremation and Funeral Services LLC	2013027792	7/30/2013
Mason Crematory, LLC	2013029962	8/13/2013
Elite Funeral Home LLC	2013030330	8/15/2013
Shawn M. Armstrong, LLC	2013031278	8/20/2013
Metropolitan Cremation Services, LLC	2013032676	8/30/2013
Duncan Funeral Home, LLC	2013032682	8/30/2013
Duncan Funeral Home, LLC	2013032683	8/30/2013
Duncan Funeral Home, LLC	2013032685	8/30/2013
Duncan Funeral Home, LLC	2013032687	8/30/2013
Duncan Funeral Home, LLC	2013032688	8/30/2013

Funeral Establishment

15

Licensee Name	License #	Orig Issue Date
Hess, Adam Lee	2013020879	6/24/2013
Morgan, Matthew Blake	2013025158	7/15/2013
Dukes, Joshua Matthew	2013025870	7/18/2013
Boomer, Catherine Anne	2013027225	7/26/2013
Gaither, Tyler Dean	2013028331	8/1/2013
Carter, Angela Michelle	2013029391	8/8/2013
Smith, James Keith	2013032093	8/26/2013
Gross, DJ	2013032689	8/30/2013
Bradley, Jason Craig	2013033617	9/9/2013
Gleason, Katie Diane	2013033618	9/9/2013

Preneed Agent Funeral Director

10

Licensee Name	License #	Orig Issue Date
Fountain, Cherie A	2013020795	6/24/2013
Higgins, Rhonda Mae	2013020798	6/24/2013
Breckenridge, Roger Keith	2013023127	7/3/2013
Turnage, Paul Anthony	2013025329	7/16/2013
Lakin, Brenda K	2013027275	7/26/2013

Board Name**Embalmers & Funeral Directors**

Licensee Name	License #	Orig Issue Date
Phillips, Robert Michael	2013028531	8/2/2013
Podschwilt, Aaron Justin	2013028917	8/6/2013
Waller, Linda F	2013029195	8/7/2013
King, Dixie Mae	2013029331	8/8/2013
Dillon, Lori Jean	2013030983	8/20/2013
Moore, Christopher Eoen	2013032692	8/30/2013
Dent, Rithel Arnetta	2013033012	9/3/2013

Preneed Agent 12

Licensee Name	License #	Orig Issue Date
Massie Funeral Home & Chapel Inc	2013021894	6/28/2013
Signature Funerals LLC	2013027218	7/26/2013
Kalmer Memorial LLC	2013027614	7/29/2013
Midwest Cremation and Funeral Services LLC	2013027793	7/30/2013
Elite Funeral Home LLC	2013030331	8/15/2013
Duncan Funeral Home, LLC	2013032686	8/30/2013
Duncan Funeral Home, LLC	2013032690	8/30/2013

Preneed Provider 7

Licensee Name	License #	Orig Issue Date
Massie Funeral Home & Chapel, Inc	2013021895	6/28/2013
Duncan Funeral Home, LLC	2013032684	8/30/2013

Preneed Seller 2

Total count for the Embalmers & Funeral Directors board: 83

**Closed Funeral Establishments, Preneed Providers, and Preneed Sellers
Between 6/18/2013 and 9/16/2013**

Funeral Establishment	Name	Lic Number	Address	License Status	Exp Date	Closed Date
Elite Funeral Chapel		2006025795	11525 Blue Ridge Blvd	Closed/Change of Owner	12/31/2013	8/15/2013
Duncan Funeral Homes LLC		2009035027	Kansas City, MO 64134 Third & Sapper St	Closed/Change of Owner	12/31/2013	8/30/2013
Duncan Funeral Homes LLC		2009035029	Winona, MO 65588 Old Hwy 60 & 99 S	Closed/Change of Owner	12/31/2013	8/30/2013
Duncan Funeral Homes, LLC		2009035033	Birch Tree, MO 65438 222 Elm St	Closed/Change of Owner	12/31/2013	8/30/2013
Grisamore Enterprises Inc		2011036631	Mountain View, MO 65548 1010 Hwy 71 S	Closed/Change of Location	12/31/2013	7/3/2013
American Mortuary & Cremation Services LLC		2010040471	Savannah, MO 64485 5444 Hwy 61-67	Closed/Change of Owner	12/31/2013	7/29/2013
W. Crawford Smith, Inc.		001098	Imperial, MO 63052 2619 St Marys Ave	Closed/Change of Owner	12/31/2013	6/28/2013
Duncan Funeral Homes LLC		2009035030	Hannibal, MO 63401 89 Rogers Ave	Closed/Change of Owner	12/31/2013	8/30/2013
Preneed Provider			Summersville, MO 65571			
Duncan Funeral Homes, LLC		2009035031	222 Elm St	Closed/Change of Owner	10/31/2013	8/30/2013
Duncan Funeral Homes, LLC		2009035034	Mountain View, MO 65548 Hwy 19 N	Closed/Change of Owner	10/31/2013	8/30/2013
Malcom Morris		2010015848	Eminence, MO 65466 11525 Blue Ridge Blvd	Closed/Change of Owner	10/31/2012	8/15/2013
			Kansas City, MO 64134			

**Closed Funeral Establishments, Preneed Providers, and Preneed Sellers
Between 6/18/2013 and 9/16/2013**

Preneed Provider	Name	Lic Number	Address	License Status	Exp Date	Closed Date
American Mortuary & Cremation Service, LLC		2010040470	5444 Hwy 61-67	Closed/Change of Owner	10/31/2013	7/29/2013
P-T Thompson, Inc		2009037948	Imperial, MO 63052 119 E. 2nd Street	Closed/Out of Business	10/31/2013	6/30/2013
Ruegg Funeral Homes Inc		2012034357	Winston, MO 64689 1073 Hwy W	Closed/Out of Business	10/31/2013	8/19/2013
Preneed Seller						
W. Crawford Smith Inc		2009037758	Poplar Bluff, MO 63901 2619 St Marys Ave PO Box 549	Closed/Change of Owner	10/31/2013	6/28/2013
Duncan Funeral Homes LLC		2009035032	Hannibal, MO 634013708 222 Elm St	Closed/Change of Owner	10/31/2013	8/30/2013
			Mountain View, MO 65548			

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Complaint: 2012-007442 Lair, Ryan FDR 2011009734 Probation Violation hearing

Lair, Ryan L

S/C:

07/02/2013

3605 Missouri Blvd.
Jefferson City, Missouri 65102
(573) 751-0293

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Probation

The parties agree and stipulate to the following findings of fact and conclusions of law:

The Parties and License

The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

Lair is an individual who resides at 5100 Glenside, Kansas City, Missouri 64129.

Lair holds funeral director license number FD2011009734 that is current and active, but subject to probation.

Order of Probation and Terms and Conditions of Probation

The Board issued Lair its "Order Issuing a Probated Funeral Director License" on April 7, 2011 (the "Funeral Director Probation Order"). Included with the Funeral Director Probation Order was a letter explaining the conditions of probation and also attached forms of what Lair would need to complete and submit to the Board to be in compliance with the conditions of his probation.

The Funeral Director Probation Order placed Lair's funeral director license on probation for a period of two years, subject to certain terms and conditions of probation set forth in paragraph 20 of the Funeral Director Probation Order.

The Funeral Director Probation Order, in paragraph 20, listed conditions of probation including:

e. Licensee shall submit written reports to the Board no later than January 1 and July 1 of each year. Each of these written reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order and shall fully explain any non-compliance. These reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

On April 5, 2012, Lair submitted his written compliance reports that had been due on or before July 1, 2011 and January 1, 2012 after the Board notified him in March, 2012 that he had not filed his written compliance reports on time. The Board accepted the late filings.

Lair failed to submit timely the written compliance reports due on or before July 1, 2012 and due on or before January 1, 2013.

Probation Violation Proceedings

On January 31, 2013, the Board filed its Probation Violation Complaint against the funeral director license held by Lair alleging the probation violations stated above. State Board of Embalmers and Funeral Directors vs. Ryan Lee Carter Lair, Case number EMB13-003-PV.

On February 1, 2013, the Board sent Lair a notice of hearing of the Probation Violation Complaint notifying him that the Board would hear the matter on Wednesday, March 20, 2013 at 11:15 a.m. in Jefferson City, Missouri.

Lair received the notice of hearing.

Lair appeared for the hearing on the Probation Violation

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Lair appeared for the hearing on the Probation Violation Complaint.

Lair met with the Board prior to the hearing to discuss settlement of the pending case with the Board.

During his meeting with the Board on March 20, 2013, Lair submitted to the Board the written reports of compliance that had been due on or before July 1, 2012 and on or before January 1, 2013.

The Board accepted the late filings of the written reports of compliance.

Lair agreed to discipline of an additional year of probation on his funeral director license subject to the same terms and conditions already in place.

The Board continued the hearing on the Probation Violation Complaint so as to allow time for a written settlement agreement to be prepared and signed. This settlement agreement shall fully resolve all matters pending before the Board related to the Probation Violation Complaint, case number EMB 13-003 PV.

Jurisdiction and Venue

The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to paragraphs 22 and 23 of the Funeral Director Probation Order.

Venue is proper

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

3605 Missouri Blvd.
Jefferson City, Missouri 65102
(573) 751-0293

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Complaint: 2013-002691 Elite Funeral Home LLC/ Elite Fuenral Chapel FUN - 2013030330 PNP2013030331 Board Investigation- PROB/
Elite Funeral Home LLC S/C:
DBA:Elite Funeral Chapel 08/15/2013

Issued funeral establishment and preneed provider licenses subject to 1 year probation.

The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

Elite Funeral Home, LLC is a Missouri limited liability company that has registered its address with the Board as 1333 NE Barry Road, Kansas City, Missouri 64155.

Elite Funeral Home, LLC was created on September 30, 2010.

Elite Funeral Home, LLC registered with the Missouri Secretary of State and with the Board the fictitious name of "Elite Funeral Chapel."

Elite Funeral Chapel, LLC submitted its "Application for Funeral Establishment License" to the Board that Malcolm Morris signed before a notary public on March 1, 2013 (the "Establishment Application").

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The Board granted two extensions to consider the Establishment Application.

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On October 31, 2012, the provider license held by Malcolm Morris d/b/a Elite Funeral Chapel lapsed.

When the prior licensee sought reinstatement, the Board discovered that Elite Funeral Chapel was being operated by Elite Funeral Chapel, LLC and not by Malcolm Morris d/b/a Elite Funeral Chapel.

Malcolm Morris d/b/a Elite Funeral Chapel provided the Board with its "Notification of Intent to Sell Assets or Cease Doing Business (Provider)" signed by Malcolm Morris on February 20, 2013.

Elite Funeral Chapel, LLC, agreed to assume responsibility as provider for all contracts of Malcolm Morris d/b/a Elite Funeral Chapel as evidenced by the affidavit filed with the Board that Malcolm Morris signed before a notary public on February 19, 2013.

3605 Missouri Blvd.
Jefferson City, Missouri 65102
(573) 751-0293

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Issued Probated License

Issued funeral establishment and preneed provider licenses subject to 1 year probation.

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Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Complaint: 2013-002691 Elite Funeral Home LLC/ Elite Fuenral Chapel FUN - 2013030330 PNP2013030331 Board Investigation- PROB/

Elite Funeral Home LLC S/C:

DBA:Elite Funeral Home Chape 08/15/2013

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Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Complaint: 2013-003435 Foster, Theodore Sr. FDR 000890 EMB 005469 Probation Violation Hearing - SA SUSP/PROB

Foster, Theodore V, Sr S/C:

07/11/2013

3605 Missouri Blvd.
Jefferson City, Missouri 65102
(573) 751-0293

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Suspension

The parties agree and stipulate to the following findings of fact and conclusions of law:

The Parties and Licenses

The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

Foster is an individual who resides at 1230 Postgrove Drive, St. Louis, Missouri 61346.

Foster holds funeral director license number 000890 and embalmer license number 005469. Both licenses are current, but subject to discipline and suspension. Order of Probation and Terms and Conditions of Probation

The Board and Foster entered into a "Settlement Agreement between Missouri State Board for Embalmers and Funeral Directors and Theodore Foster and Ted Foster & Sons, Inc, and Ted Foster & Sons Funeral Home, Inc." that was signed by the Board on January 9, 2012 and went into effect 15 days later (the "Settlement Agreement"). A true and accurate copy of the Settlement Agreement and the letter and accompanying materials mailed to Licensee with the Settlement Agreement are attached as Exhibit 1 and incorporated herein by reference.

The Settlement Agreement suspended Foster's funeral director and embalmer licenses for a period of 3 years to be immediately followed by probation for a period of 2 years. The period of suspension and also the period of probation constitute the disciplinary period, subject to certain terms and conditions set forth in the Settlement Agreement.

The Settlement Agreement, in paragraph 73, lists the conditions of the disciplinary period including:

E. Licensee shall submit written reports to the Board no later than January 1 and July 1 of each year. Each of these written reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order and shall fully explain any non-compliance. These reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

G. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active.

Licensee failed to submit the written compliance reports due on or before July 1, 2012 and due on or before January 1, 2013.

Effective October 12, 2010, Licensee's funeral director and embalmer licenses were suspended pursuant to Section 324.010, RSMo, for failure to comply with certain taxation laws.

Licensee has failed to meet all requirements necessary to maintain his funeral director and embalmer licenses current and active.

Procedural History

On January 31, 2013, the Board filed its Probation Violation Complaint seeking additional discipline against

Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

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The Board set the Probation Violation Complaint for hearing on March 20, 2013.

Foster was properly served with the Probation Violation Complaint and the Notice of Hearing notifying him of the time, date and location of the hearing.

At the Board's meeting on March 7, 2013, the Board granted a request for continuance of the probation violation hearing and the Order Granting Petitioner's Request for Motion for Continuance" was issued on March 16, 2013.

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Disciplinary Actions

Ordered From 06/18/2013 Through 09/16/2013

Complaint: 2013-003692 **Hutson, Jovana DOR HB600 Suspensoin**

Hutson, Jovana Frances

S/C:

07/24/2013

Suspended 324.010

This license has been suspended by operation of law pursuant to Section 324.010, RSMo, which requires suspension of the professional license of individuals who fail to file state tax returns or fail to pay state tax liabilities.

Complaint: 2013-003698 **Cousin, Marlon DOR HB600 Suspension**

Cousin, Marlon Wayne

S/C:

07/24/2013

Suspended 324.010

This license has been suspended by operation of law pursuant to Section 324.010, RSMo, which requires suspension of the professional license of individuals who fail to file state tax returns or fail to pay state tax liabilities.

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 329

97TH GENERAL ASSEMBLY

1232S.03T

2013

AN ACT

To repeal sections 208.010, 361.160, 408.140, 408.590, 408.592, 408.600, and 513.430, RSMo, and to enact in lieu thereof six new sections relating to financial institutions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 208.010, 361.160, 408.140, 408.590, 408.592, 408.600, and
2 513.430, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as
3 sections 208.010, 361.160, 408.140, 408.590, 408.600, and 513.430, to read as follows:

208.010. 1. In determining the eligibility of a claimant for public assistance pursuant
2 to this law, it shall be the duty of the **family support** division [of family services] to consider
3 and take into account all facts and circumstances surrounding the claimant, including his or her
4 living conditions, earning capacity, income and resources, from whatever source received, and
5 if from all the facts and circumstances the claimant is not found to be in need, assistance shall
6 be denied. In determining the need of a claimant, the costs of providing medical treatment which
7 may be furnished pursuant to sections 208.151 to 208.158 [and 208.162] shall be disregarded.
8 The amount of benefits, when added to all other income, resources, support, and maintenance
9 shall provide such persons with reasonable subsistence compatible with decency and health in
10 accordance with the standards developed by the **family support** division [of family services];
11 provided, when a husband and wife are living together, the combined income and resources of
12 both shall be considered in determining the eligibility of either or both. "Living together" for the
13 purpose of this chapter is defined as including a husband and wife separated for the purpose of
14 obtaining medical care or nursing home care, except that the income of a husband or wife
15 separated for such purpose shall be considered in determining the eligibility of his or her spouse,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 only to the extent that such income exceeds the amount necessary to meet the needs (as defined
17 by rule or regulation of the division) of such husband or wife living separately. In determining
18 the need of a claimant in federally aided programs there shall be disregarded such amounts per
19 month of earned income in making such determination as shall be required for federal
20 participation by the provisions of the federal Social Security Act (42 U.S.C.A. 301 et seq.), or
21 any amendments thereto. When federal law or regulations require the exemption of other income
22 or resources, the **family support** division [of family services] may provide by rule or regulation
23 the amount of income or resources to be disregarded.

24 2. Benefits shall not be payable to any claimant who:

25 (1) Has or whose spouse with whom he or she is living has, prior to July 1, 1989, given
26 away or sold a resource within the time and in the manner specified in this subdivision. In
27 determining the resources of an individual, unless prohibited by federal statutes or regulations,
28 there shall be included (but subject to the exclusions pursuant to subdivisions (4) and (5) of this
29 subsection, and subsection 5 of this section) any resource or interest therein owned by such
30 individual or spouse within the twenty-four months preceding the initial investigation, or at any
31 time during which benefits are being drawn, if such individual or spouse gave away or sold such
32 resource or interest within such period of time at less than fair market value of such resource or
33 interest for the purpose of establishing eligibility for benefits, including but not limited to
34 benefits based on December, 1973, eligibility requirements, as follows:

35 (a) Any transaction described in this subdivision shall be presumed to have been for the
36 purpose of establishing eligibility for benefits or assistance pursuant to this chapter unless such
37 individual furnishes convincing evidence to establish that the transaction was exclusively for
38 some other purpose;

39 (b) The resource shall be considered in determining eligibility from the date of the
40 transfer for the number of months the uncompensated value of the disposed of resource is
41 divisible by the average monthly grant paid or average Medicaid payment in the state at the time
42 of the investigation to an individual or on his or her behalf under the program for which benefits
43 are claimed, provided that:

44 a. When the uncompensated value is twelve thousand dollars or less, the resource shall
45 not be used in determining eligibility for more than twenty-four months; or

46 b. When the uncompensated value exceeds twelve thousand dollars, the resource shall
47 not be used in determining eligibility for more than sixty months;

48 (2) The provisions of subdivision (1) of this subsection shall not apply to a transfer, other
49 than a transfer to claimant's spouse, made prior to March 26, 1981, when the claimant furnishes
50 convincing evidence that the uncompensated value of the disposed of resource or any part thereof
51 is no longer possessed or owned by the person to whom the resource was transferred;

52 (3) Has received, or whose spouse with whom he or she is living has received, benefits
53 to which he or she was not entitled through misrepresentation or nondisclosure of material facts
54 or failure to report any change in status or correct information with respect to property or income
55 as required by section 208.210. A claimant ineligible pursuant to this subsection shall be
56 ineligible for such period of time from the date of discovery as the **family support** division [of
57 family services] may deem proper; or in the case of overpayment of benefits, future benefits may
58 be decreased, suspended or entirely withdrawn for such period of time as the division may deem
59 proper;

60 (4) Owns or possesses resources in the sum of one thousand dollars or more; provided,
61 however, that if such person is married and living with spouse, he or she, or they, individually
62 or jointly, may own resources not to exceed two thousand dollars; and provided further, that in
63 the case of a temporary assistance for needy families claimant, the provision of this subsection
64 shall not apply;

65 (5) Prior to October 1, 1989, owns or possesses property of any kind or character,
66 excluding amounts placed in an irrevocable prearranged funeral or burial contract under chapter
67 436, or has an interest in property, of which he or she is the record or beneficial owner, the value
68 of such property, as determined by the **family support** division [of family services], less
69 encumbrances of record, exceeds twenty-nine thousand dollars, or if married and actually living
70 together with husband or wife, if the value of his or her property, or the value of his or her
71 interest in property, together with that of such husband and wife, exceeds such amount;

72 (6) In the case of temporary assistance for needy families, if the parent, stepparent, and
73 child or children in the home owns or possesses property of any kind or character, or has an
74 interest in property for which he or she is a record or beneficial owner, the value of such
75 property, as determined by the **family support** division [of family services] and as allowed by
76 federal law or regulation, less encumbrances of record, exceeds one thousand dollars, excluding
77 the home occupied by the claimant, amounts placed in an irrevocable prearranged funeral or
78 burial contract under chapter 436, one automobile which shall not exceed a value set forth by
79 federal law or regulation and for a period not to exceed six months, such other real property
80 which the family is making a good-faith effort to sell, if the family agrees in writing with the
81 **family support** division [of family services] to sell such property and from the net proceeds of
82 the sale repay the amount of assistance received during such period. If the property has not been
83 sold within six months, or if eligibility terminates for any other reason, the entire amount of
84 assistance paid during such period shall be a debt due the state;

85 (7) Is an inmate of a public institution, except as a patient in a public medical institution.

86 3. In determining eligibility and the amount of benefits to be granted pursuant to
87 federally aided programs, the income and resources of a relative or other person living in the

88 home shall be taken into account to the extent the income, resources, support and maintenance
89 are allowed by federal law or regulation to be considered.

90 4. In determining eligibility and the amount of benefits to be granted pursuant to
91 federally aided programs, the value of burial lots or any amounts placed in an irrevocable
92 prearranged funeral or burial contract under chapter 436 shall not be taken into account or
93 considered an asset of the burial lot owner or the beneficiary of an irrevocable prearranged
94 funeral or funeral contract. For purposes of this section, "burial lots" means any burial space as
95 defined in section 214.270 and any memorial, monument, marker, tombstone or letter marking
96 a burial space. If the beneficiary, as defined in chapter 436, of an irrevocable prearranged funeral
97 or burial contract receives any public assistance benefits pursuant to this chapter and if the
98 purchaser of such contract or his or her successors in interest transfer, amend, or take any other
99 such actions regarding the contract so that any person will be entitled to a refund, such refund
100 shall be paid to the state of Missouri with any amount in excess of the public assistance benefits
101 provided under this chapter to be refunded by the state of Missouri to the purchaser or his or her
102 successors. In determining eligibility and the amount of benefits to be granted under federally
103 aided programs, the value of any life insurance policy where a seller or provider is made the
104 beneficiary or where the life insurance policy is assigned to a seller or provider, either being in
105 consideration for an irrevocable prearranged funeral contract under chapter 436, shall not be
106 taken into account or considered an asset of the beneficiary of the irrevocable prearranged funeral
107 contract. **In addition, the value of any funds, up to nine thousand nine hundred ninety-nine**
108 **dollars, placed into an irrevocable personal funeral trust account, where the trustee of the**
109 **irrevocable personal funeral trust account is a state or federally chartered financial**
110 **institution authorized to exercise trust powers in the state of Missouri, shall not be taken**
111 **into account or considered an asset of the person whose funds are so deposited if such**
112 **funds are restricted to be used only for the burial, funeral, preparation of the body, or**
113 **other final disposition of the person whose funds were deposited into said personal funeral**
114 **trust account. No person or entity shall charge more than ten percent of the total amount**
115 **deposited into a personal funeral trust in order to create or set up said personal funeral**
116 **trust, and any fees charged for the maintenance of such a personal funeral trust shall not**
117 **exceed three percent of the trust assets annually. Trustees may commingle funds from two**
118 **or more such personal funeral trust accounts so long as accurate books and records are**
119 **kept as to the value, deposits, and disbursements of each individual depositor's funds and**
120 **trustees are to use the prudent investor standard as to the investment of any funds placed**
121 **into a personal funeral trust. If the person whose funds are deposited into the personal**
122 **funeral trust account receives any public assistance benefits pursuant to this chapter and**
123 **any funds in the personal funeral trust account are, for any reason, not spent on the burial,**

124 **funeral, preparation of the body, or other final disposition of the person whose funds were**
125 **deposited into the trust account, such funds shall be paid to the state of Missouri with any**
126 **amount in excess of the public assistance benefits provided under this chapter to be**
127 **refunded by the state of Missouri to the person who received public assistance benefits or**
128 **his or her successors. No contract with any cemetery, funeral establishment, or any**
129 **provider or seller shall be required in regards to funds placed into a personal funeral trust**
130 **account as set out in this subsection.**

131 5. In determining the total property owned pursuant to subdivision (5) of subsection 2
132 of this section, or resources, of any person claiming or for whom public assistance is claimed,
133 there shall be disregarded any life insurance policy, or prearranged funeral or burial contract, or
134 any two or more policies or contracts, or any combination of policies and contracts, which
135 provides for the payment of one thousand five hundred dollars or less upon the death of any of
136 the following:

137 (1) A claimant or person for whom benefits are claimed; or

138 (2) The spouse of a claimant or person for whom benefits are claimed with whom he or
139 she is living. If the value of such policies exceeds one thousand five hundred dollars, then the
140 total value of such policies may be considered in determining resources; except that, in the case
141 of temporary assistance for needy families, there shall be disregarded any prearranged funeral
142 or burial contract, or any two or more contracts, which provides for the payment of one thousand
143 five hundred dollars or less per family member.

144 6. Beginning September 30, 1989, when determining the eligibility of institutionalized
145 spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance benefits as provided for
146 in section 208.151 and 42 U.S.C. Sections 1396a, et seq., the **family support** division [of family
147 services] shall comply with the provisions of the federal statutes and regulations. As necessary,
148 the division shall by rule or regulation implement the federal law and regulations which shall
149 include but not be limited to the establishment of income and resource standards and limitations.
150 The division shall require:

151 (1) That at the beginning of a period of continuous institutionalization that is expected
152 to last for thirty days or more, the institutionalized spouse, or the community spouse, may request
153 an assessment by the **family support** division [of family services] of total countable resources
154 owned by either or both spouses;

155 (2) That the assessed resources of the institutionalized spouse and the community spouse
156 may be allocated so that each receives an equal share;

157 (3) That upon an initial eligibility determination, if the community spouse's share does
158 not equal at least twelve thousand dollars, the institutionalized spouse may transfer to the

159 community spouse a resource allowance to increase the community spouse's share to twelve
160 thousand dollars;

161 (4) That in the determination of initial eligibility of the institutionalized spouse, no
162 resources attributed to the community spouse shall be used in determining the eligibility of the
163 institutionalized spouse, except to the extent that the resources attributed to the community
164 spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section
165 1396r-5;

166 (5) That beginning in January, 1990, the amount specified in subdivision (3) of this
167 subsection shall be increased by the percentage increase in the Consumer Price Index for All
168 Urban Consumers between September, 1988, and the September before the calendar year
169 involved; and

170 (6) That beginning the month after initial eligibility for the institutionalized spouse is
171 determined, the resources of the community spouse shall not be considered available to the
172 institutionalized spouse during that continuous period of institutionalization.

173 7. Beginning July 1, 1989, institutionalized individuals shall be ineligible for the periods
174 required and for the reasons specified in 42 U.S.C. Section 1396p.

175 8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant to
176 the provisions of section 208.080.

177 9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to
178 this chapter there shall be disregarded unless otherwise provided by federal or state statutes the
179 home of the applicant or recipient when the home is providing shelter to the applicant or
180 recipient, or his or her spouse or dependent child. The **family support** division [of family
181 services] shall establish by rule or regulation in conformance with applicable federal statutes and
182 regulations a definition of the home and when the home shall be considered a resource that shall
183 be considered in determining eligibility.

184 10. Reimbursement for services provided by an enrolled Medicaid provider to a recipient
185 who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B, Supplementary
186 Medical Insurance (SMI) shall include payment in full of deductible and coinsurance amounts
187 as determined due pursuant to the applicable provisions of federal regulations pertaining to Title
188 XVIII Medicare Part B, except for hospital outpatient services or the applicable Title XIX cost
189 sharing.

190 11. A "community spouse" is defined as being the noninstitutionalized spouse.

191 12. An institutionalized spouse applying for Medicaid and having a spouse living in the
192 community shall be required, to the maximum extent permitted by law, to divert income to such
193 community spouse to raise the community spouse's income to the level of the minimum monthly
194 needs allowance, as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall

195 occur before the community spouse is allowed to retain assets in excess of the community spouse
196 protected amount described in 42 U.S.C. Section 1396r-5.

361.160. 1. The director of finance at least once each year, either personally or by a
2 deputy or examiner appointed by the director, shall visit and examine every bank and trust
3 company organized and doing business under the laws of this state, and every other corporation
4 which is by law required to report to the director; except, for banks or trust companies receiving
5 a Camel/MOECA 1 or Camel/MOECA 2 rating from the division of finance, the director of
6 finance at least once each eighteen calendar months, **or for a private trust company at least**
7 **once each thirty-six months**, either personally or by a deputy or examiner appointed by the
8 director, shall visit and examine such bank or trust company, and the director of finance, at the
9 director's discretion, may conduct the director's examination, or any part thereof, on the basis of
10 information contained in examination reports of other states, the Federal Deposit Insurance
11 Corporation or the Federal Reserve Board or in audits performed by certified public accountants.
12 **For purposes of this subsection, a private trust company is one that does not engage in trust**
13 **company business with the general public or otherwise hold itself out as a trustee or**
14 **fiduciary for hire by advertising, solicitation, or other means and instead operates for the**
15 **primary benefit of a family, relative of same family, or single family lineage, regardless of**
16 **whether compensation is received or anticipated.** The director shall be afforded prompt and
17 free access to any workpapers upon which a certified public accountant bases an audit. A
18 certified public accountant shall retain workpapers for a minimum of three years after the date
19 of issuance of the certified public accountant's report to the bank or trust company. The director
20 or the director's agent may concentrate the examinations on institutions which the director
21 believes have safety or soundness concerns.

22 2. The director, or the deputy or examiners designated by the director for that purpose,
23 shall have power to examine any such corporation whenever, in the director's judgment, it may
24 be deemed necessary or expedient, and shall have power to examine every agency located in this
25 state of any foreign banking corporation and every branch in this state of any out-of-state bank,
26 for the purpose of ascertaining whether it has violated any law of this state, and for such other
27 purposes and as to such other matters as the director may prescribe.

28 3. The director and the director's deputy and examiners shall have power to administer
29 oaths to any person whose testimony may be required in such examination or investigation of
30 any such corporation or agency, and to compel the appearance and attendance of any person for
31 the purpose of any such examination or investigation.

32 4. On every such examination inquiry shall be made as to the condition and resources
33 of such corporation, the mode of conducting and managing its affairs, the actions of its directors
34 or trustees, the investment of its funds, the safety and prudence of its management, the security

35 afforded to its creditors, and whether the requirements of its charter and of law have been
36 complied with in the administration of its affairs, and as to such other matters as the director may
37 prescribe.

38 5. The director may also make such special investigations as the director deems
39 necessary to determine whether any individual or corporation has violated any of the provisions
40 of this law.

41 6. Such examination may be made and such inquiry instituted or continued in the
42 discretion of the director after the director has taken possession of the property and business of
43 any such corporation, until it shall resume business or its affairs shall be finally liquidated in
44 accordance with the provisions of this chapter.

45 7. The result of each examination shall be certified by the director or the examiner upon
46 the records of the corporation examined and the result of all examinations during the biennial
47 period shall be embodied in the report to be made by the director of the department of insurance,
48 financial institutions and professional registration to the legislature.

49 8. The director may contract with regulators in other states to provide for the
50 examination of Missouri branches of out-of-state banks and branches of banks whose home state
51 is Missouri. The agreements may provide for the payment by the home state of the cost of
52 examinations conducted by the host state at the request of the home state regulators.

408.140. 1. No further or other charge or amount whatsoever shall be directly or
2 indirectly charged, contracted for or received for interest, service charges or other fees as an
3 incident to any such extension of credit except as provided and regulated by sections 367.100 to
4 367.200 and except:

5 (1) On loans for thirty days or longer which are other than "open-end credit" as such term
6 is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not
7 to exceed [five] **ten** percent of the principal amount loaned not to exceed seventy-five dollars
8 may be charged by the lender; however, no such fee shall be permitted on any extension,
9 refinance, restructure or renewal of any such loan, unless any investigation is made on the
10 application to extend, refinance, restructure or renew the loan;

11 (2) The lawful fees actually and necessarily paid out by the lender to any public officer
12 for filing, recording, or releasing in any public office any instrument securing the loan, which
13 fees may be collected when the loan is made or at any time thereafter; however, premiums for
14 insurance in lieu of perfecting a security interest required by the lender may be charged if the
15 premium does not exceed the fees which would otherwise be payable;

16 (3) If the contract so provides, a charge for late payment on each installment or minimum
17 payment in default for a period of not less than fifteen days in an amount not to exceed five
18 percent of each installment due or the minimum payment due or fifteen dollars, whichever is

19 greater, not to exceed fifty dollars. If the contract so provides, a charge for late payment on each
20 twenty-five dollars or less installment in default for a period of not less than fifteen days shall
21 not exceed five dollars;

22 (4) If the contract so provides, a charge for late payment for a single payment note in
23 default for a period of not less than fifteen days in an amount not to exceed five percent of the
24 payment due; provided that, the late charge for a single payment note shall not exceed fifty
25 dollars;

26 (5) Charges or premiums for insurance written in connection with any loan against loss
27 of or damage to property or against liability arising out of ownership or use of property as
28 provided in section 367.170; however, notwithstanding any other provision of law, with the
29 consent of the borrower, such insurance may cover property all or part of which is pledged as
30 security for the loan, and charges or premiums for insurance providing life, health, accident, or
31 involuntary unemployment coverage;

32 (6) Reasonable towing costs and expenses of retaking, holding, preparing for sale, and
33 selling any personal property in accordance with section 400.9;

34 (7) Charges assessed by any institution for processing a refused instrument plus a
35 handling fee of not more than twenty-five dollars;

36 (8) If the contract or promissory note, signed by the borrower, provides for attorney fees,
37 and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the
38 amount due and payable under such contract or promissory note, together with any court costs
39 assessed. The attorney fees shall only be applicable where the contract or promissory note is
40 referred for collection to an attorney, and is not handled by a salaried employee of the holder of
41 the contract;

42 (9) Provided the debtor agrees in writing, the lender may collect a fee in advance for
43 allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more
44 than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are
45 made until the first loan payment is collected and no more than one deferral in a twelve-month
46 period is agreed to and collected on any one loan; this subdivision applies to nonprecomputed
47 loans only and does not affect any other subdivision;

48 (10) If the open-end credit contract is tied to a transaction account in a depository
49 institution, such account is in the institution's assets and such contract provides for loans of
50 thirty-one days or longer which are "open-end credit", as such term is defined in the federal
51 Consumer Credit Protection Act and regulations thereunder, the creditor may charge a credit
52 advance fee of **up to** the lesser of [twenty-five] **seventy-five** dollars or [five] **ten** percent of the
53 credit advanced from time to time from the line of credit; such credit advance fee may be added

54 to the open-end credit outstanding along with any interest, and shall not be considered the
55 unlawful compounding of interest as that term is defined in section 408.120;

56 (11) A deficiency waiver addendum, guaranteed asset protection, or a similar product
57 purchased as part of a loan transaction with collateral and at the borrower's consent, provided the
58 cost of the product is disclosed in the loan contract, is reasonable, and the requirements of
59 section 408.380 are met.

60 2. Other provisions of law to the contrary notwithstanding, an open-end credit contract
61 under which a credit card is issued by a company, financial institution, savings and loan or other
62 credit issuing company whose credit card operations are located in Missouri may charge an
63 annual fee, provided that no finance charge shall be assessed on new purchases other than cash
64 advances if such purchases are paid for within twenty-five days of the date of the periodic
65 statement therefor.

66 3. Notwithstanding any other provision of law to the contrary, in addition to charges
67 allowed pursuant to section 408.100, an open-end credit contract provided by a company,
68 financial institution, savings and loan or other credit issuing company which is regulated
69 pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

408.590. 1. [Each division director shall cause each state financial institution which he
2 supervises, licenses or charters and which has an office within a county or a city, such county or
3 city having a population in excess of two hundred fifty thousand, to be examined periodically
4 during which examination the following shall be determined:

5 (1) The number and total dollar amount of residential real estate loans originated,
6 purchased, or foreclosed by the financial institution after January 1, 1980, in each of the
7 following categories:

8 (a) Loans secured by residential real estate located outside the state of Missouri other
9 than in counties contiguous to the state of Missouri;

10 (b) Loans secured by residential real estate located in the state of Missouri or in the
11 counties of other states which counties are contiguous to the border of the state of Missouri,
12 which number and dollar amount shall be further reported by the county in which the property
13 is located;

14 (2) The number of residential real estate loan applications denied by the institution in
15 which the real estate which was to secure the loan is situated in a county or city with a population
16 in excess of two hundred and fifty thousand by such county or city;

17 (3) By a method to be determined by each division director, such facts as will enable the
18 division director to conclude whether or not the institution has engaged or is engaged in any
19 practice in violation of sections 408.570 to 408.600.

20 2. Each division director may issue such regulations as are necessary to require the
21 maintenance of records from which the conclusions required by this section can be determined.

22 3. Each division director shall report annually to the governor and the director of the
23 department his findings made in accordance with the provisions of this section and which shall
24 include information reported under the provisions of the Federal Home Mortgage Disclosure Act
25 (12 U.S.C. 2801 et seq.), which findings shall be made as to the total industry he regulates, and
26 by each county or city with a population in excess of two hundred fifty thousand. This report
27 shall be maintained by the division as a public document for a period of five years.

28 4. The annual reports of the division directors shall state the method or methods used by
29 the division director to reach his conclusions both in examination and analysis; and shall contain
30 such facts as he deems necessary to support those conclusions, including but not limited to:

31 (1) The information required to be obtained by the provisions of subsection 1 of this
32 section;

33 **(2)] As to the state financial institutions under the supervision of the respective**
34 **divisions, each division director shall report annually to the governor and the director of**
35 **the department, with regard to each county or city with a population in excess of two**
36 **hundred fifty thousand the following:**

37 **(1)** The number and type of violations of sections 408.570 to 408.600 which are found
38 to have occurred, a statement of the action or actions taken to enforce the provisions of said
39 sections, and the names of the financial institutions which have been found upon a hearing to
40 have violated the provisions of said sections[.

41 **(3)]; and**

42 **(2)** The number and nature of all complaints received by the department or division
43 regarding alleged violations of any provision of sections 408.570 to 408.600 and the action taken
44 on each complaint by the division.

45 **2. This report shall be maintained by each division as a public document for a**
46 **period of five years.**

408.600. 1. Each division director shall enforce the provisions of sections 408.570 to
2 408.600. With respect to state financial institutions which he supervises, licenses or charters,
3 each division director shall utilize the powers granted him under the general statutory authority
4 by which he regulates, supervises, licenses, or charters such institutions, as well as the powers
5 granted him by sections 408.570 to 408.600. The director of the division of finance shall enforce
6 the provisions of sections 408.570 to 408.600 as they pertain to state financial institutions not
7 supervised, licensed or chartered by a division director, and shall in that enforcement have such
8 powers as are granted in said sections. The enforcement powers granted by subsections 2
9 through 5 of this section shall be utilized by the director of the division of finance concerning

10 national banks, by the director of [savings and loan supervision] **the division of finance**
11 concerning federal savings and loan associations, and by the director of credit unions concerning
12 federal credit unions.

13 2. Any person who alleges to have been aggrieved as a result of a violation of section
14 408.575 or 408.580 may file a complaint with the appropriate division director. Within ninety
15 days of the receipt of such complaint, the division director shall determine whether there is any
16 reason to believe that a violation of section 408.575 or 408.580 has occurred. If the division
17 director determines that there is such reason, then he shall undertake to resolve the complaint by
18 negotiation or he shall conduct a hearing in accordance with the provisions of subsection 3 of
19 this section, except that the hearing shall be held in the locality where the alleged violation
20 occurred.

21 3. If the division director[, on the basis of an examination, an investigation of a
22 complaint which has not been resolved by negotiation, a report required to be filed by section
23 408.592, or any public document or information,] has reason to believe that a violation of section
24 408.575 or 408.580 has occurred or does exist, the division director shall conduct a hearing in
25 accordance with chapter 536. If the evidence establishes a violation of any provision of section
26 408.575 or 408.580, the division director may issue a cease and desist order stating specifically
27 the unlawful practice to be discontinued, which order shall be served personally, or by certified
28 mail. The decision of the division director shall be appealable directly to the circuit court
29 pursuant to chapter 536.

30 4. If, after an order of the division director has become final, the director believes a
31 violation of any provision of the order has occurred, he may seek an injunction to prohibit such
32 violations in any court of competent jurisdiction. For each violation of such injunction, the court
33 may assess a fine which may be recovered with costs by the state in any court of competent
34 jurisdiction in an action to be prosecuted by the attorney general.

35 5. The remedies provided by this section shall not be interpreted as exclusive remedies
36 but shall be in addition to remedies otherwise available to the director or to any individual
37 damaged by a violation of sections 408.570 to 408.600.

513.430. 1. The following property shall be exempt from attachment and execution to
2 the extent of any person's interest therein:

3 (1) Household furnishings, household goods, wearing apparel, appliances, books,
4 animals, crops or musical instruments that are held primarily for personal, family or household
5 use of such person or a dependent of such person, not to exceed three thousand dollars in value
6 in the aggregate;

- 7 (2) A wedding ring not to exceed one thousand five hundred dollars in value and other
8 jewelry held primarily for the personal, family or household use of such person or a dependent
9 of such person, not to exceed five hundred dollars in value in the aggregate;
- 10 (3) Any other property of any kind, not to exceed in value six hundred dollars in the
11 aggregate;
- 12 (4) Any implements or professional books or tools of the trade of such person or the
13 trade of a dependent of such person not to exceed three thousand dollars in value in the
14 aggregate;
- 15 (5) Any motor vehicles, not to exceed three thousand dollars in value in the aggregate;
- 16 (6) Any mobile home used as the principal residence but not attached to real property
17 in which the debtor has a fee interest, not to exceed five thousand dollars in value;
- 18 (7) Any one or more unmaturred life insurance contracts owned by such person, other
19 than a credit life insurance contract;
- 20 (8) The amount of any accrued dividend or interest under, or loan value of, any one or
21 more unmaturred life insurance contracts owned by such person under which the insured is such
22 person or an individual of whom such person is a dependent; provided, however, that if
23 proceedings under Title 11 of the United States Code are commenced by or against such person,
24 the amount exempt in such proceedings shall not exceed in value one hundred fifty thousand
25 dollars in the aggregate less any amount of property of such person transferred by the life
26 insurance company or fraternal benefit society to itself in good faith if such transfer is to pay a
27 premium or to carry out a nonforfeiture insurance option and is required to be so transferred
28 automatically under a life insurance contract with such company or society that was entered into
29 before commencement of such proceedings. No amount of any accrued dividend or interest
30 under, or loan value of, any such life insurance contracts shall be exempt from any claim for
31 child support. Notwithstanding anything to the contrary, no such amount shall be exempt in such
32 proceedings under any such insurance contract which was purchased by such person within one
33 year prior to the commencement of such proceedings;
- 34 (9) Professionally prescribed health aids for such person or a dependent of such person;
- 35 (10) Such person's right to receive:
- 36 (a) A Social Security benefit, unemployment compensation or a public assistance
37 benefit;
- 38 (b) A veteran's benefit;
- 39 (c) A disability, illness or unemployment benefit;
- 40 (d) Alimony, support or separate maintenance, not to exceed seven hundred fifty dollars
41 a month;

42 (e) Any payment under a stock bonus plan, pension plan, disability or death benefit plan,
43 profit-sharing plan, nonpublic retirement plan or any plan described, defined, or established
44 pursuant to section 456.072, the person's right to a participant account in any deferred
45 compensation program offered by the state of Missouri or any of its political subdivisions, or
46 annuity or similar plan or contract on account of illness, disability, death, age or length of
47 service, to the extent reasonably necessary for the support of such person and any dependent of
48 such person unless:

49 a. Such plan or contract was established by or under the auspices of an insider that
50 employed such person at the time such person's rights under such plan or contract arose;

51 b. Such payment is on account of age or length of service; and

52 c. Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, 408A
53 or 409 of the Internal Revenue Code of 1986, as amended, (26 U.S.C. 401(a), 403(a), 403(b),
54 408, 408A or 409); except that any such payment to any person shall be subject to attachment
55 or execution pursuant to a qualified domestic relations order, as defined by Section 414(p) of the
56 Internal Revenue Code of 1986, as amended, issued by a court in any proceeding for dissolution
57 of marriage or legal separation or a proceeding for disposition of property following dissolution
58 of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked
59 jurisdiction to dispose of marital property at the time of the original judgment of dissolution;

60 (f) Any money or assets, payable to a participant or beneficiary from, or any interest of
61 any participant or beneficiary in, a retirement plan [or] , profit-sharing plan, **health savings plan,**
62 **or similar plan, including an inherited account or plan,** that is qualified under Section 401(a),
63 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, **whether**
64 **such participant's or beneficiary's interest arises by inheritance, designation, appointment,**
65 **or otherwise,** except as provided in this paragraph. Any plan or arrangement described in this
66 paragraph shall not be exempt from the claim of an alternate payee under a qualified domestic
67 relations order; however, the interest of any and all alternate payees under a qualified domestic
68 relations order shall be exempt from any and all claims of any creditor, other than the state of
69 Missouri through its division of family services. As used in this paragraph, the terms "alternate
70 payee" and "qualified domestic relations order" have the meaning given to them in Section
71 414(p) of the Internal Revenue Code of 1986, as amended.

72

73 If proceedings under Title 11 of the United States Code are commenced by or against such
74 person, no amount of funds shall be exempt in such proceedings under any such plan, contract,
75 or trust which is fraudulent as defined in subsection 2 of section 428.024 and for the period such
76 person participated within three years prior to the commencement of such proceedings. For the
77 purposes of this section, when the fraudulently conveyed funds are recovered and after, such

78 funds shall be deducted and then treated as though the funds had never been contributed to the
79 plan, contract, or trust;

80 (11) The debtor's right to receive, or property that is traceable to, a payment on account
81 of the wrongful death of an individual of whom the debtor was a dependent, to the extent
82 reasonably necessary for the support of the debtor and any dependent of the debtor.

83 2. Nothing in this section shall be interpreted to exempt from attachment or execution
84 for a valid judicial or administrative order for the payment of child support or maintenance any
85 money or assets, payable to a participant or beneficiary from, or any interest of any participant
86 or beneficiary in, a retirement plan which is qualified pursuant to Section 408A of the Internal
87 Revenue Code of 1986, as amended.

2 [408.592. 1. Each state financial institution which is not supervised,
3 licensed or chartered by a division director, which operates or has a place of
4 business within a county having a population in excess of two hundred fifty
5 thousand or a city not within a county and which originated an aggregate of five
6 hundred thousand dollars or more in residential real estate loans in Missouri
7 during the last calendar year shall, on or before a date of ninety days after the end
8 of the fiscal year of the institution, file with the director of the division of finance
9 an annual statement for each such county or city showing separately the number
10 and total dollar amount of residential real estate loans both within and outside of
that county or city which were:

- 11 (1) Originated by that institution during the preceding fiscal year;
12 (2) Purchased by that institution during the preceding fiscal year; and
13 (3) Foreclosed by that institution during the preceding fiscal year.

14 2. The information required to be filed under subsection 1 of this section
15 shall be further itemized in order to clearly and conspicuously disclose the
16 following:

- 17 (1) The number and dollar amount of each item by census tracts for
18 residential real estate loans on property located within that county or city;
19 (2) The number and dollar amount of each item for all residential real
20 estate loans on property located outside that county or city.

21 3. The information required to be filed under subdivisions (1) and (2) of
22 subsection 1 shall also be itemized in order to clearly and conspicuously disclose
23 the following:

24 (1) The number and dollar amount of loans made for the purchase of
25 residential real estate which are insured under Title II of the National Housing
26 Act or under Title V of the Housing Act of 1949 or which are guaranteed under
27 Chapter 37 of Title 38, United States Code;

28 (2) The number and dollar amount of loans made for the purchase of
29 residential real estate, including loans insured under federal housing insurance
30 programs;

31 (3) The number and dollar amount of loans made for the repair,
32 rehabilitation or remodeling of residential real estate.

33 4. Each statement filed under the provisions of this section shall be filed
34 on forms approved or furnished by the director of the division of finance and
35 shall be verified by two officers of the institution. Wherever possible, the
36 director of the division of finance shall make the forms consistent with the
37 disclosure forms required under the Federal Home Mortgage Disclosure Act of
38 1975 (12 U.S.C. 2801 et seq.).

39 5. The director of the division of finance shall maintain the statements
40 filed under the provisions of this section for a period of not less than five years
41 and shall make the statements available to the public for inspection during regular
42 business hours and for copying at a cost not to exceed the actual cost to the
43 division.]

✓

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
v.)	
)	No. S2-4:09 CR 509 JCH
BRENT DOUGLAS CASSITY,)	
)	
Defendant.)	

*Filed under Seal
John C. Hummer
USDJ
7/3/13*

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the Defendant Brent Douglas Cassity, represented by Richard H. Sindel and Susan S. Kister, and the United States of America (hereinafter "United States" or "Government"), represented by the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri.

The Court is neither a party to nor bound by this agreement. However, if the Court accepts the plea agreement as to the sentencing range, then the Court will be bound by said agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Counts 21, 31, 38, and 50 of the Second Superseding Indictment, the government agrees to move for the dismissal of the remaining counts against the

defendant at the time of sentencing. Moreover, the United States agrees that no further federal prosecution will be brought in this District against the defendant relative to the matters described in the Second Superseding Indictment which began sometime prior to 1992 and continued until on or about April 28, 2010, of which the Government is aware at this time.

In addition, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the parties agree that the defendant's sentence shall be in a range between probation and 60 months incarceration. If the Court informs the parties prior to sentencing that it will reject this agreement or sentences defendant to a sentence not in conformity with this agreement, then either party may withdraw from the plea agreement and the defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5). The parties further agree that neither party shall request a sentence above or below the sentencing agreement in this paragraph pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553, or any other provision or rule of law not addressed herein.

The defendant also agrees to forfeit to the United States any interest he may have in all property subject to forfeiture under the counts of conviction, as further set forth herein.

3. ELEMENTS:

As to Count 21 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1343, and admits there is a factual basis for the plea and further fully understands that the elements of the crimes alleged in this count are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of facts;

- (3) the defendant and others acted with the intent to defraud; and
- (4) the defendant caused interstate wire facilities to be used in furtherance of the scheme.

As to Count 31 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1341, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant with others acted with the intent to defraud; and
- (4) the defendant caused mails to be used in furtherance of the scheme.

As to Count 38 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1957, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others engaged in a monetary transaction;
- (2) the monetary transaction was in property of a value greater than \$10,000 derived from wire fraud, wire fraud affecting a financial institution, mail fraud, mail fraud affecting a financial institution, or bank fraud;
- (3) the defendant knew that the monetary transaction involved proceeds of a criminal offense;
- (4) the monetary transaction took place within the United States; and
- (5) the monetary transaction affected interstate commerce.

As to Count 50 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1033(e)(1)(B), and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant was engaged in the business of insurance;
- (2) the activities of that business affected interstate commerce;
- (3) while engaged in the business of insurance, the defendant permitted another individual who had previously been convicted of a criminal felony involving dishonesty or a breach of trust to participate in such business of insurance; and
- (4) the defendant acted willfully.

4. FACTS:

The parties agree that the facts in this case are as set forth in paragraphs A, D, E, F, G, H, and I of this Stipulation and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. In addition, the parties agree that the facts as set forth in paragraphs A through I of this Stipulation may be considered as relevant conduct pursuant to Section 1B1.3 of the Federal Sentencing Guidelines.

A. Defendant's Role in the Offenses

The Defendant Brent Douglas Cassity, a resident of the Eastern District of Missouri, at various times during the time period between 1990 and 2008, ~~held the titles of Chief Operational Officer of National Prearranged Services, Inc. ("NPS"); Chief Executive Officer, Chairman, President, and Director of Forever Enterprises, Inc.; President and Director of National Heritage Enterprises; and Director of Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company and Professional Liability Insurance Company of America.~~ Defendant Brent Douglas Cassity was also a partner and officer of Bayside Capital, LLC.

Handwritten notes:
was employee by
and held titles
OB
RF
SAM
SK
BC

B. NPS Operations in General

Beginning sometime prior to 1992 and continuing until 2008, NPS sold prearranged funeral contracts in multiple states including Arizona, Florida, Illinois, Iowa, Kansas, Kentucky, Missouri, Oklahoma, Ohio, and Tennessee. During that time, affiliated insurance companies, including Lincoln Memorial Life Insurance Company, issued life insurance policies related to those prearranged funeral contracts, with NPS acting as its General Agent. As part of the contracts, the total price for funeral services and merchandise for an individual was agreed upon, and would remain constant regardless of when the funeral services and merchandise would be needed. Customers entering into such prearranged funeral contracts would pay a single sum of money up-front to NPS either directly or through a funeral home that was also a party to the contract. NPS represented to individual customers, funeral homes, and state regulators that funds paid by customers under the prearranged funeral contracts would be kept in a secure trust or insurance policy as required under state law.

NPS, however, made use of funds paid by customers in ways that were inconsistent both with its prior and continuing representations and with the state laws and regulations applicable to such transactions. In some states, such as Illinois, insurance premiums were misappropriated before an insurance policy was issued. In other states, such as Ohio and Tennessee, unauthorized policy loans were among the means by which cash was extracted from insurance policies owned by individual policy holders. Ultimately, NPS operated as a fraudulent Ponzi-like scheme, where customer funds were neither kept safe in bank trusts or insurance policies but instead were utilized for unauthorized purposes and the personal enrichment of NPS's officers and others. In

turn, new business became the source of funding for funerals that prior customers had previously paid for in advance. In addition to dissipating the funds paid by individuals that NPS and Lincoln Memorial Life Insurance Company did business with, these events and other activities of the defendants jeopardized the safety and soundness of the FDIC insured banks and the insurance companies owned and controlled by the defendants.

C. NPS Operations in Missouri

In Missouri, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in an FDIC insured bank trust. Missouri customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties and consistent with Missouri law, 80% of the funds paid by a preneed customer would be deposited in a bank trust, with the bank serving as trustee, and all funds deposited would be held in trust according to the terms of the trust agreement and Chapter 436 of the laws of Missouri. Under the applicable law and agreements, NPS could seek disbursements of the deposited trust principal only upon providing proof that the agreed-upon funeral had been provided by the funeral home and that NPS had paid the funeral home for the funeral it provided. Upon providing such proof, the seller would then be entitled to seek reimbursement from the trust principal.

In addition to deposits into trust from individual customers, the preneed funeral trusts established by NPS also received deposits in the form of “rollovers.” “Rollovers” were trust-to-trust transfers by which a funeral home that had deposited customer funds into a Chapter 436 preneed trust entered an agreement with NPS to appoint a successor trustee. The successor

trustee would be the bank trustee serving as trustee of the Chapter 436 trust established by NPS. By agreement, the original trustee would be directed to “roll over” funds and assets held in the original trust by depositing those funds and assets with the successor trustee bank, where they were to be held in trust along with deposits from NPS’s other customers. Rollover agreements also specified that the proceeds of the rollover would be invested in insurance within 30 days of the trust receiving the rollover deposit.

NPS represented to the bank trustees that any withdrawals from trust would comply with the trust agreement and Missouri law. Both the trust agreement and the Missouri law allowed for investment decisions regarding the trust principal to be made by a registered, independent, and qualified investment advisor designated by the seller who established the trust, provided, however, that (1) title to all investments remain with the trustee and be kept by the trustee, (2) control of the assets would not be divested from the trustee, and (3) the assets would not be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in.

From 2000 through 2008, NPS sought and received withdrawals from the preneed trust of funds and assets that were required by its agreements and by the applicable state law to remain in trust. Withdrawals from trust were made under the color of the authority vested with the investment advisor designated by NPS to invest trust funds and assets, Wulf, Bates & Murphy, Inc. Contrary to the representations made to the bank trustee, the investment advisor was neither independent nor directing investments in a manner consistent with Chapter 436. Instead, NPS, through Wulf, Bates & Murphy, Inc., directed the movement of funds from the trust for purposes

not authorized by Chapter 436, including investments that did not meet the requirements of Chapter 436 and withdrawals and distributions that were not permitted under the trust agreement or Chapter 436.

Several FDIC-insured banks were defrauded into believing that Wulf, Bates & Murphy, Inc., having been designated as the investment advisor for the trusts, was qualified to act under the statute and was comporting its activities with the investment requirements of Chapter 436 of the laws of Missouri. The banks were further defrauded with each trust transfer made pursuant to the direction of co-defendant David R. Wulf, or under the color of the authority of Wulf, Bates & Murphy, Inc. as an independent investment advisor. Persons affiliated with NPS represented to the banks that Wulf, Bates & Murphy, Inc. was independent when those persons knew it was not, and the misrepresentation was part of the scheme to defraud the banks of the trust property. Throughout the scheme, persons affiliated with NPS concealed from the banks the nature and value of the assets the banks owned and the nature and purpose of withdrawals and disbursements from the trusts. The banks were led to believe that the trusts' principal assets were life insurance policies.

The banks were affected by actions of persons affiliated with NPS in that they now face a lawsuit for damages because the value of assets in and held by the banks was dissipated as a result of the scheme to defraud and have had to incur legal fees in defending said lawsuit.¹ This loss to the banks occurred because the assets that should have been kept safe in trust were no

¹ Jo Ann Howard and Assocs., et al., v. J. Douglas Cassity, et al., Case No. 4:09-cv-01252 ERW (E.D. Mo. 2009).

longer in trust, and what was in trust (replacement term life policies on which the owner was obligated to pay premiums) had no investment value.

D. NPS Operations in Ohio

In Ohio, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Ohio customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance, and the customer was obligated to purchase a life insurance policy from an insurance company licensed to do business in Ohio and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented, however, that the customer would retain ownership of the insurance policy.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Ohio. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Ohio.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. In those instances when an insurance policy was paid in full, the preneed funeral contract was considered paid in full as well. Most Ohio customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Ohio funeral home insurance agents and forwarded the application and insurance premium to Lincoln Memorial Life Insurance Company. Typically, if the funeral home was designated as a beneficiary of the policy, NPS crossed out that designation before submitting the application to Lincoln Memorial Life Insurance Company. In Ohio, NPS sent the entire insurance premium paid by the customer to Lincoln Memorial Life Insurance Company.

Upon issuance of the insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, often within the first 100 days after a policy's issuance, NPS took a policy loan against the policy. The

amount of the policy loan was generally in excess of 90% of the cash surrender value of the insurance policy. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered the policies it had taken loans against. Those surrendered single-pay whole life insurance policies were often replaced with term life insurance with monthly renewable premium obligations that would have to be paid from sources other than the premium paid initially by the customer. If inquiries were made by customers, funeral homes, or even NPS Account Executives regarding the status of the insurance policy, including inquiries regarding the cash surrender value or requests for the policies themselves, persons affiliated with NPS provided incomplete, misleading, and false information regarding the policies in order to conceal this activity.

E. NPS Operations in Tennessee

In Tennessee, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Tennessee customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance, and the customer was obligated to purchase a life insurance policy from an insurance company licensed to do business in Tennessee and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Tennessee. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Tennessee.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. In those instances when an insurance policy was paid in full, the preneed funeral contract was considered paid in full as well. Most Tennessee customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Tennessee funeral home insurance agents and forwarded the application and insurance premium to Lincoln Memorial Life Insurance Company. Typically, if the funeral home was designated as a beneficiary of the policy, NPS

crossed out that designation before submitting the application to Lincoln Memorial Life Insurance Company. In Tennessee, NPS sent the entire insurance premium paid by the customer to Lincoln Memorial Life Insurance Company.

Upon issuance of the insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, often within the first 100 days after a policy's issuance, NPS took a policy loan against the policy. The amount of the policy loan was generally in excess of 90% of the cash surrender value of the insurance policy. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered the policies it had taken loans against. Those surrendered single-pay whole life insurance policies were often replaced with term life insurance with monthly renewable premium obligations that would have to be paid from sources other than the premium paid initially by the customer. If inquiries were made by customers, funeral homes, or even NPS Account Executives regarding the status of the insurance policy, including inquiries regarding the cash surrender value or requests for the policies themselves, persons affiliated with NPS provided incomplete, misleading, and false information regarding the policies in order to conceal this activity.

F. Stipulations Particular to Count 21 (Wire Fraud)

Beginning on or before June of 2006, Ohio and Tennessee policies were included among those policies subjected to unauthorized loans as part of NPS's practice of obtaining millions of dollars in loan proceeds, typically on a quarterly basis, from the cash value of hundreds of individual policies owned by individuals and Chapter 436 trusts. Specifically, on or about June

28, 2006, millions of dollars in policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio and Tennessee as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about September 29, 2006, millions of dollars in policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio and Tennessee as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about December 1, 2006 through January 23, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio and Tennessee as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about May 9, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio and Tennessee as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about May 30, 2007 through June 7, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri.

The proceeds from these loans were used to pay renewal insurance premiums (owed by virtue of the Ponzi-like operations of NPS and Lincoln Memorial Life Insurance Company) on both whole life policies and replacement term life policies for states such as Illinois, Ohio, Tennessee and Missouri. In addition, the loan proceeds were also used to pay NPS's share of operating costs associated with the joint business operation of NPS, Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company. In addition, the loan

proceeds were also used to make payments on a Forever Enterprises note payable to Memorial Service Life Insurance Company reflecting unpaid debts attributable to the business operations of Forever Enterprises and its affiliated companies.

On or about June 20, 2007, the Ohio Department of Insurance submitted an official written inquiry to Lincoln Memorial Life Insurance Company requesting a list of all 2006 and 2007 Ohio life policies sold by Lincoln Memorial Life Insurance Company that had loans against them. At the time it received the regulatory inquiry, Lincoln Memorial Life Insurance Company could not have truthfully responded to this request without disclosing the existence of unauthorized policy loans taken by NPS against policies for Ohio customers. Instead of Lincoln Memorial Life Insurance Company truthfully responding to the regulatory inquiry, NPS directed Lincoln Memorial Life Insurance Company to remove all loans on Ohio policies by transferring the loan repayment obligation from Ohio policies to whole life insurance policies owned by individuals in other states, including Tennessee and Kansas. At NPS's direction, Lincoln Memorial Life Insurance Company then reported in a letter dated July 9, 2007 and sent that same day via a wire, radio, or television communication in interstate commerce, that is, by email, from NPS's office in Clayton, Missouri to the Ohio Department of Insurance in Columbus, Ohio, that no Ohio policies had loans taken against them, which report was intended to conceal the fact that there were outstanding loans against Ohio policies totaling more than \$10,000,000 at the time of the regulatory inquiry. The letter was sent with Defendant Brent Douglas Cassity's approval, knowing that the letter was intended to conceal from regulators Lincoln Memorial Life Insurance

Company's and NPS's fraudulent practices in the state of Ohio and thereby avoid any regulatory actions which might interfere with the scheme in Ohio and elsewhere.

Persons affiliated with NPS, including Defendant Brent Douglas Cassity, voluntarily and intentionally participated in a scheme to obtain money and property by means of material false representations and promises regarding funds that were to be kept safe and secure in insurance policies purchased by individuals in states such as Ohio. As part of that scheme, such persons made material misrepresentations of fact regarding such insurance policies and NPS's practice of taking unauthorized policy loans against those policies. In furtherance of that scheme, Defendant Brent Douglas Cassity acted with the intent to defraud regulators regarding the existence of policy loans in Ohio by means of the letter dated July 9, 2007 sent to the Ohio Department of Insurance. In addition, after said letter was sent, Defendant Brent Douglas Cassity agreed with the co-defendants and others that the NPS "Account Executives" who dealt with funeral homes should be instructed to state "we do not do policy loans in any state" and, if asked if NPS ever has done policy loans, respond "not that I am aware of."

G. Stipulations Particular to Count 31 (Mail Fraud)

On or about prior to May 2007, Smith Funeral Home of Woodbury, Tennessee entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. Timothy Gentry also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about May 22, 2007, Z.D. entered into an NPS Preneed Funeral Contract sold by Smith Funeral Home. The agreed price of the prearranged funeral was \$10,520.16. As required under the prearranged funeral contract and consistent with Tennessee law, Z.D. purchased a whole life insurance policy in the amount of \$10,520.16 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay, and Z.D. paid a premium of \$10,520.16 with his insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated Z.D.'s niece as the beneficiary. Tim Gentry signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received Z.D.'s premium payment and forwarded the same amount to Lincoln Memorial Life Insurance Company. Prior to forwarding Z.D.'s application for life insurance, NPS crossed out Z.D.'s niece as a designated beneficiary and designated NPS as the only named beneficiary. This alteration to the application was performed without the knowledge or approval of Z.D. or Smith Funeral Home.

Upon receipt of Z.D.'s premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy reflected that Z.D. was both the insured and the owner of the insurance policy. The data page also reflected the amount of insurance as \$10,520.16. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by

Lincoln Memorial Life Insurance Company on or about May 31, 2007 was \$10,520.16. Lincoln Memorial Life Insurance Company commission records reflect that a commission payment in the amount of \$1,998.83 was sent on or about May 31, 2007 to its General Agent, NPS.

On or about June 5, 2007, "Paid in Full" Certificates were placed in an authorized depository for mail matter in Clayton, Missouri and delivered by the United States Postal Service according to the directions thereon, to both Z.D. and Smith Funeral Home, certifying that Z.D. had completed payment in full to NPS. On or about June 18, 2007, Lincoln Memorial Life Insurance Company sent Z.D. a letter stating his insurance policy number, the amount paid and the face amount of the policy, and that the letter was intended to serve as his "Certificate of Insurance" and that "the insurance is funding the prearranged funeral contract with National Prearranged Services."

On or about June 28, 2006, an unauthorized policy loan was taken against Z.D.'s whole life insurance policy in the amount of \$7,011.65—an amount that approached the total cash surrender value of the policy. The loan proceeds from Z.D.'s policy were used by NPS, along with the proceeds from other unauthorized policy loans taken against other policies in Tennessee and Kansas on or about June 29, 2007, to remove all loans on Ohio policies while the Ohio Department of Insurance regulatory inquiry was pending.

Persons affiliated with NPS, including Defendant Brent Douglas Cassity, knew that the "Paid in Full" Certificates issued and mailed by NPS customers and funeral homes, such as those sent to Z.D. and Smith Funeral Home on or about June 5, 2007, were intended to lead customers and funeral homes to believe that the funds paid by customers would be kept in insurance as

required by state law and as represented by NPS, and to ensure that the customer and funeral home would remain unaware of NPS's practice of taking unauthorized loans against insurance policies sold in Ohio, Tennessee, and elsewhere, including the loans taken against Kansas and Tennessee policies on or about June 29, 2007.

H. Stipulations Particular to Count 38 (Money Laundering)

On or about January 6, 2004, Price Funeral Home of Maryville, Missouri entered into a "rollover" agreement with NPS whereby approximately \$2,419,395.74 (the "Price rollover funds") was deposited in the Chapter 436 trust established by NPS at Allegiant Bank, a bank whose deposits were insured by the Federal Deposit Insurance Corporation. It had been represented to Price Funeral Home that all deposited rollover proceeds would be held in a trust and invested in insurance policies owned by the trust.

As a result of two wire transfers occurring on January 8, 2004 and January 15, 2004, funds totaling \$4,500,000, which included the Price rollover funds, were wired out of trust to Lincoln Memorial Services, which in turn transferred the funds to RBT Trust II, a family trust of which Defendant Brent Douglas Cassity was a named beneficiary and for which co-defendant Howard Wittner served as trustee. RBT Trust II used the Price rollover funds and other fraudulent proceeds in June of 2004 to purchase Professional Liability Insurance Company of America ("PLICA"), a New York medical malpractice insurance company.

In or around July 2004, Defendant Brent Douglas Cassity and co-defendant James Douglas Cassity formed Bayside Capital, LLC ("Bayside"), a Missouri limited liability company, in which they each owned a fifty per cent (50%) interest. On July 1, 2004, PLICA,

PLICA Management Company, and Bayside entered into an administrative agreement whereby Bayside agreed to handle administrative services for PLICA in exchange for a commission of six per cent (6%) on all direct business written by PLICA excepting reinsurance assumed. On November 10, 2005, PLICA, PLICA Management Company and Bayside agreed to increase the amount of commission payable to Bayside to ten per cent (10%). On April 15, 2008, PLICA, PLICA Management Company, and Bayside agreed to increase the amount of commission payable to Bayside to fourteen per cent (14%). Through this agreement, Bayside became the primary vehicle by which Defendant Brent Douglas Cassity and co-defendant James Douglas Cassity derived income from PLICA.

On May 1, 2008, PLICA Management Company wrote a check to Bayside in the amount of \$301,238.70 for commissions payable to Bayside for the month of April, 2008. Bayside deposited this check into its account at First Bank, in St. Louis, Missouri, on May 2, 2008. On May 14, 2008, Bayside wrote a check on its account at First Bank to Defendant Brent Douglas Cassity in the amount of \$20,000.00. On May 15, 2008, Defendant Brent Douglas Cassity deposited this check in the amount of \$20,000.00 into his personal bank account at Regions Bank, in St. Louis, Missouri. These funds, being derived from the purchase of PLICA, constituted property traceable to the proceeds of the fraudulent scheme described above.

At the time that Defendant Brent Douglass Cassity engaged in the foregoing monetary transaction, he was aware of a high probability that the funds involved in that transaction constituted the proceeds of criminal activity, but he deliberately shut his eyes to the illicit nature of the funds and took deliberate actions to avoid learning the truth. The monetary transaction

occurred within the United States and affected interstate commerce. Regions Bank was a financial institution as defined in Title 31, United States Code, Section 5312(a)(2) because it was a bank whose deposits are insured by the Federal Deposit Insurance Corporation, and because was engaged in, and its activities affected interstate commerce.

I. Stipulations Particular to Count 50 (Engagement in Business of Insurance by a Convicted Felon)

On or about January 29, 1982, Defendant's co-defendant James Douglas Cassity was convicted in the United States District Court for the Western District of Missouri of criminal felonies involving dishonesty and a breach of trust, that is, willfully, knowingly and unlawfully conspiring to use and using fraudulent letters of credit, in violation of Title 18, United States Code, Section 371, and falsifying an income tax return, in violation of Title 26, United States Code, Section 7206(1). After January 1, 1998, Defendant Brent Douglas Cassity, being himself engaged in the business of insurance, willfully permitted co-defendant James Douglas Cassity to engage in and participate in the business of insurance, including the writing of insurance and the reinsuring of risks and all acts necessary or incidental to such writing and reinsuring, and which activities affected interstate commerce. Specifically, co-defendant James Douglas Cassity exercised significant control over Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and the Professional Liability Insurance Company of America and, among other activities, directed the financial activities of said insurance companies including, but not limited to, exercising authority over insurance premium accounts, insurance company investments, and various agreements related to the management and operations of the insurance companies including those agreements related to affiliated companies, such as Bayside Capital,

LLC, and agreements related to reinsurance particular to Lincoln Memorial Life Insurance Company and PLICA, and thereby acted as an officer, director, or agent of those companies.

5. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the crimes to which the defendant is pleading guilty is:

- as to Counts 21 and 31, not more than 20 years imprisonment, a fine of not more than \$250,000, or both;
- as to Count 38, not more than 10 years imprisonment, a fine of not more of \$250,000 or twice the amount of the criminally derived property involved in the transaction, whichever is greater, or both;
- as to Count 50, not more than 5 years imprisonment, a fine of not more than \$250,000, or both.

The Court may also impose a period of supervised release of not more than 3 years on each of Counts 21, 31, 38, and 50.

6. U.S. SENTENCING GUIDELINES – 2012 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines that recommend a sentencing range determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions that are supported by the evidence related to the defendant in this case for each of Counts 21, 31, 38, and 50:

a. Chapter 2 Offense Conduct:

(1) Base Offense Level: The parties agree that the base offense level is 7 as found in Section 2B1.1(a)(1).²

(2) Specific Offense Characteristics: The parties agree that the following Specific Offense Characteristics apply, except as otherwise indicated:

(a) The Government contends that 30 levels should be added pursuant to Section 2B1.1(b)(1)(P), because the loss attributable to the offenses in which the defendant was involved was more than \$400,000,000.00. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(b) The parties agree that 6 levels should be added pursuant to Section 2B1.1(b)(2)(C) because the offenses in which the defendant was involved affected more than 250 victims.

(c) The Government contends that 2 levels should be added pursuant to Section 2B1.1(b)(9)(C) because the offenses in which the defendant was involved resulted in the violation of a prior, specific judicial order not addressed elsewhere in the Guidelines. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(d) The parties agree that 2 levels should be added pursuant to Section 2B1.1(b)(1)(C) because the offense involved sophisticated means.

² Although the base offense level for Count 38 (money laundering) is determined by Section 2S1.1, that count is grouped together with the others pursuant to Section 2S1.1 (Application Note 6) because the other counts constitute the underlying offenses from which the laundered funds were derived. The remaining counts produce a higher total offense level and therefore control pursuant to Section 3D1.3. Count 38 is therefore not considered separately herein.

(c) That parties agree that 4 levels should be added pursuant to Sections 2B1.1(b)(15)(B)(i) and (iii) because the offense substantially jeopardized the safety and soundness of a financial institution, Bremen Bank, and because the offense substantially jeopardized the solvency or financial security of 100 or more victims.

b. Chapter 3 Adjustments:

(1) Vulnerable Victim: The parties agree that 4 levels should be added pursuant to Sections 3A1.1(b)(1) and (2) because the defendant knew or should have known that one or more victims of the offense were vulnerable and the offense involved a large number of vulnerable victims.

(2) Aggravating Role: The parties agree that 3 levels should be added pursuant to Section 3B.1.1(a) because the defendant acted at times as manager or supervisor of criminal activity that involved five or more participants or was otherwise extensive.

(3) Abuse of a Position of Trust: The parties agree that 2 levels should be added pursuant to Section 3B.1.3 because the offense involved the defendant's abusing a position of public or private trust.

(4) Acceptance of Responsibility: The parties agree that 2 levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility. The parties further agree, and the government so moves, that an additional 1 level should be deducted pursuant to Section 3E1.1(b)(2) because the defendant timely notified authorities of the intention to enter a plea of guilty, thereby permitting the government and the Court to allocate their resources efficiently.

The parties agree that if the defendant does not abide by all of the agreements made within this document, the defendant's failure to comply is grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1. The parties further agree that the defendant's eligibility for a reduction pursuant to Section 3E1.1 is based upon the information known at the present time and that any actions of the defendant which occur or which become known to the government subsequent to this agreement and are inconsistent with the defendant's acceptance of responsibility including, but not limited to criminal conduct, are grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1.

(5) Grouping: The parties agree that all counts should be grouped together pursuant to Section 3D1.2.

c. Estimated Total Offense Level: The Government contends that the Total Offense Level is 57. The defendant disputes this calculation and reserves the right to challenge said total offense level and the enhancements noted above at sentencing.

d. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

e. Effect of Parties' Guidelines Analysis: The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the

agreement herein and the parties shall not be permitted to withdraw from the plea agreement. But, if the Court accepts the plea agreement in this case, it is bound by the sentencing agreement in paragraph 2 above.

7. WAIVER OF APPEAL AND POST-CONVICTION RIGHTS:

a. Appeal: The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) Non-Sentencing Issues: The parties waive all rights to appeal all non-jurisdictional, non-sentencing issues, including but not limited to, any issues relating to pretrial motions, discovery, and the guilty plea.

(2) Sentencing Issues: In the event the Court accepts the plea and, in sentencing the defendant follows the sentencing agreement in paragraph 2, then, as part of this agreement, the parties hereby waive all rights to appeal all sentencing issues.

b. Habeas Corpus: The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. Right to Records: The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including any records that may be

sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552(a).

8. OTHER:

a. Disclosures Required by the United States Probation Office: The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or other administrative action against the defendant.

c. Supervised Release: Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. Mandatory Special Assessment: Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$400.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any

restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. Possibility of Detention: The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143. Absent intervening circumstances, the government will not request immediate detention.

f. Fines, Restitution, and Costs of Incarceration and Supervision: The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration, and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A, an order of restitution is mandatory for all crimes listed in 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the Second Superseding Indictment.

g. Forfeiture: Except as otherwise provided herein, the defendant agrees to forfeit any and all interest he may have in any items seized by law enforcement during the course of their investigation and all items specifically identified in the Second Superseding Indictment (together, the "Subject Property"), including but not limited to approximately \$1,109,062.62 in funds held and frozen in account No. XXXX1581 at Truman Bank; approximately \$620,333.33 in funds supporting a Truman Bank cashier's check no. xxxxxx0679; and approximately \$1,984,384.63 in funds held and frozen in account XXXXX7738 at First National Bank.

In addition, the parties agree that the Subject Property includes all ownership shares in Professional Liability Insurance Corporation of America (PLICA), a New York insurance company. However, because PLICA is presently in receivership and subject to liquidation proceedings, the government will not seek the criminal forfeiture of PLICA shares or any remaining PLICA assets, and this agreement shall not be construed to affect or preclude any rights or remedies that Defendant or others may have in such shares or assets.

The following property is specifically excluded from the property subject to criminal forfeiture as criminal proceeds and from the definition of "Subject Property" and the government shall not pursue the forfeiture of any such property: real property located at 4201 Gulf Shore Blvd., Naples, FL; real property located at 120 Linden, St. Louis, MO (which the parties believe to be presently subject to a recorded judgment in excess of \$10,000,000); real property located at 6000 Santa Monica Boulevard, Los Angeles, CA and any business located on said property; real property located at 301 Tennessee Valley Road, Mill Valley, CA and any business located on said property; real property at 10301 and 10305 Big Bend Road, St. Louis, MO and any business located on said property; and any jewelry identified as personal property subject to criminal forfeiture in the Second Superseding Indictment.

Subject to the foregoing exceptions, the defendant agrees that the Subject Property constitutes the proceeds of the scheme to defraud alleged in the Second Superseding Indictment. The defendant also consents to the entry of a money judgment against defendant and in favor of the United States in the total amount of the criminal proceeds received by the co-defendants in the course of the scheme. The parties agree that criminal forfeiture proceedings are governed by

Federal Rule of Criminal Procedure 32.2 and that a forfeiture order that directs the defendant to forfeit specific property remains preliminary as to third-parties until the ancillary proceeding is concluded under Rule 32.2(c).

The defendant consents to the seizure of the Subject Property and hereby forfeits all of the defendant's interest therein. The defendant agrees that the United States may dispose of the Subject Property in any manner authorized by law. The defendant agrees that forfeiture of the Subject Property shall not be treated as satisfaction of or applied to any fine, cost of imprisonment, special assessment, restitution, money judgment, or any other penalty or assessment the Court may impose on the defendant except where required by law or authorized by the United States or its representative.

The defendant agrees not to file a claim in any forfeiture proceeding or otherwise to contest, in any manner, the forfeiture of the Subject Property, including by a motion under Federal Rule of Criminal Procedure 41(g), and hereby withdraws any such pending claim, contest, objection, or other opposition to the forfeiture of the Subject Property. The defendant further agrees not to actively assist any other individual in contesting the forfeiture of the Subject Property. The defendant agrees to take the steps necessary to transfer title, ownership, and possession of the Subject Property to the United States, including executing any necessary documents and providing truthful testimony and other evidence to rebut the claims of any party claiming an interest in the Subject Property. The defendant agrees to prevent the disbursement of the Subject Property to the extent it remains within the defendant's direct or indirect possession,

custody, or control. This agreement shall not be construed to waive any third-party rights under Rule 32.2 to file a petition asserting an interest in the property to be forfeited.

The defendant hereby knowingly and intelligently waives any rights the defendant may have (a) for a jury or the Court to determine what of defendant's property is subject to forfeiture, (b) for the Court to explain the forfeiture at the defendant's change of plea hearing, and (c) for the forfeiture to be made part of the oral pronouncement of sentence and included in the judgment. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(4), the defendant consents to the Court's preliminary order of forfeiture becoming final as to him on the date the Court enters its preliminary order of forfeiture.

9. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

10. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and the agreements, recommendations and stipulations herein. The defendant further

acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the offenses specified in sections four and five above.

11. CONSEQUENCES OF POST-PLEA MISCONDUCT:

After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States, at its option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

12. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects the sentence recommendations therein or those portions of the plea agreement which deal with charges the government agrees to dismiss.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney



STEVEN A. MUCHNICK, #27597MO
Assistant United States Attorney

7/3/13
Date

7/3/13
Date


CHARLES S. BIRMINGHAM, #47134MO
Assistant United States Attorney

7/3/13
Date


RICHARD E. FINNERAN, #60768MO
Assistant United States Attorney
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 20.333
Saint Louis, Missouri 63102
(314) 539-2200

7/3/13
Date


BRENT DOUGLAS CASSITY

7/3/13
Date


RICHARD H. SINDEL
Sindel, Sindel & Noble, P.C.
8000 Maryland Avenue, Suite 350
St. Louis, Missouri 63105
(314) 721-6040
Attorney for Defendant

7/3/13
Date


SUSAN KISTER
Susan S. Kister, P.C.
809 Forest Trace Drive
St. Louis, Missouri 63017
(314) 616-0311
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
Plaintiff,)
v.)
)
JAMES DOUGLAS CASSITY,)
)
Defendant.)

No. S2-4:09 CR 509 JCH

Filed with plea

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the defendant James Douglas Cassity, represented by N. Scott Rosenblum, and the United States of America (hereinafter "United States" or "Government"), represented by the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri.

The Court is neither a party to nor bound by this agreement. However, if the Court accepts the plea agreement as to the sentencing range, then the Court will be bound by said agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Counts 7, 17, 21, 24, 36, and 48 of the Second Superseding Indictment, the government agrees to move for the dismissal of the remaining counts against the defendant at the time of sentencing. Moreover, the United States agrees that

no further federal prosecution will be brought in this District against the defendant relative to the matters described in the Second Superseding Indictment which began sometime prior to 1992 and continued until on or about April 28, 2010, of which the Government is aware at this time.

In addition, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the parties agree that the defendant shall be sentenced to a range between probation and 115 months incarceration. If the Court informs the parties prior to sentencing that it will reject this agreement or sentences defendant to a sentence not in conformity with this agreement, then either party may withdraw from the plea agreement and the defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5). The parties further agree that neither party shall request a sentence above or below the sentencing agreement in this paragraph pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553, or any other provision or rule of law not addressed herein, but either party may argue for any sentence within the range based upon any factor contained in Title 18, United States Code, Section 3553, or any other reason.

The defendant also agrees to forfeit to the United States any interest he may have in all property subject to forfeiture under the counts of conviction, as further set forth herein.

3. ELEMENTS:

As to Count 7 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1344, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others knowingly executed a scheme to defraud a financial institution or to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of material false or fraudulent pretenses, representations, or promises;

- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant and others acted with the intent to defraud; and
- (4) that the financial institution was then insured by the Federal Deposit Insurance Corporation.

As to Counts 17 and 21 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1343, and admits there is a factual basis for the plea and further fully understands that the elements of the crimes alleged in these counts are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant and others acted with the intent to defraud; and
- (4) the defendant caused interstate wire facilities to be used in furtherance of the scheme.

As to Count 24 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1341, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant with others acted with the intent to defraud; and
- (4) the defendant caused mails to be used in furtherance of the scheme.

As to Count 36 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1957, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others engaged in a monetary transaction;
- (2) the monetary transaction was in property of a value greater than \$10,000 derived from wire fraud, wire fraud affecting a financial institution, mail fraud, mail fraud affecting a financial institution, or bank fraud;
- (3) the defendant knew that the monetary transaction involved proceeds of a criminal offense;
- (4) the monetary transaction took place within the United States; and
- (5) the monetary transaction affected interstate commerce.

As to Count 48 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Sections 1033(b)(1) and (b)(2), and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant was engaged in the business of insurance;
- (2) the activities of that business affected interstate commerce;
- (3) the defendant misappropriated money, funds, premiums, or credits from the company engaged in the business of insurance; and
- (4) the misappropriation jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation.

4. FACTS:

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3 of the Federal Sentencing Guidelines:

A. Defendant's Role in the Offenses

On or about sometime in 1979, Defendant James Douglas Cassity acquired an interest in National Prearranged Services, Inc. (“NPS”). On or about sometime in 1980, Defendant James Douglas Cassity transferred ownership of NPS to a trust named RBT Trust, for the benefit of his wife and children. On or about September 28, 1990, Defendant’s wife and children transferred their interests in RBT Trust to a new trust named RBT Trust II. From 1979 to 1982, Defendant served as Director of Operations of NPS. Thereafter, Defendant had no official position with NPS, but he continued to exercise control over NPS and its affiliated companies and received compensation through an agreement with NPS.

Beginning sometime prior to 1992 and continuing until 2008, NPS sold prearranged funeral contracts in multiple states including Arizona, Florida, Illinois, Iowa, Kansas, Kentucky, Missouri, Oklahoma, Ohio, and Tennessee. During that time, affiliated insurance companies, including Lincoln Memorial Life Insurance Company, issued life insurance policies related to those prearranged funeral contracts, with NPS acting as its General Agent. As part of the contracts, the total price for funeral services and merchandise for an individual was agreed upon, and would remain constant regardless of when the funeral services and merchandise would be needed. Customers entering into such prearranged funeral contracts would usually pay a single sum of money up-front to NPS either directly or through a funeral home that was also a party to the contract. NPS represented to individual customers, funeral homes, and state regulators that funds paid by customers under the prearranged funeral contracts would be kept in a secure trust or insurance policy as required under state law.

NPS, however, made use of funds paid by customers in ways that were inconsistent both with its prior and continuing representations and with the state laws and regulations applicable to

such transactions. In some states, such as Illinois, insurance premiums were misappropriated before an insurance policy was issued. In other states, such as Ohio, unauthorized policy loans were among the means by which cash was extracted from insurance policies owned by individual policy holders. Ultimately, NPS operated as a fraudulent Ponzi-like scheme, where customer funds were neither kept safe in bank trusts or insurance policies but instead were utilized for unauthorized purposes and the personal enrichment of NPS's officers and others. In turn, new business became the source of funding for funerals that prior customers had previously paid for in advance. In addition to dissipating the funds paid by individuals that NPS and Lincoln Memorial Life Insurance Company did business with, these events and other activities of the defendants jeopardized the safety and soundness of the FDIC insured banks and the insurance companies owned and controlled by the defendants.

B. NPS Operations in Illinois

In Illinois, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Illinois customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance. The customer was obligated to purchase a life insurance policy from an insurance company licensed to do business in Illinois and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented that the customer would retain ownership of the insurance policy. At all

pertinent times, Illinois law required that all insurance premiums received by a licensed insurance entity such as NPS were to be deposited into a premium fund trust account and held in a fiduciary capacity until the premium funds were transferred to an insurance company.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Illinois. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Illinois.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. Most Illinois customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Illinois funeral home insurance agents. The insurance premium was deposited in NPS's Illinois Premium Fund Trust account. Rather than

keeping premiums deposited into this account in a fiduciary capacity as represented by NPS and as required by state law, premiums were transferred on a daily basis into NPS's general operating account for its general use including transfers to National Heritage Enterprises, an affiliated company that compensated certain persons affiliated with NPS, including Defendant James Douglas Cassity through payments made to RBT Trust II.

Applications for life insurance by Illinois customers that were designated as single-pay were "whited out" by employees of NPS and Lincoln Memorial Life Insurance Company to falsely reflect that the customer had applied for a monthly pay as opposed to a single-pay policy. Policies were then issued by Lincoln Memorial Life Insurance Company as monthly pay policies, even though NPS, as *Lincoln Memorial Life Insurance Company's* General Agent, had received a single premium payment. The funds necessary to renew these monthly policies came not from the original purchaser's funds, but instead from funds paid by new Illinois customers and funds paid by customers in other states. Often, unauthorized policy loans on policies owned by individuals and trusts were used to make renewal premium payments for policies issued in Illinois.

Upon issuance of an insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, NPS took policy loans against Illinois policies as the policies accumulated a cash surrender value without receiving the authorization of the owners of those policies. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered Illinois policies that had both renewal premium obligations and policy loans taken against them. Many of those surrendered single-pay whole life

insurance policies were replaced with term life insurance with monthly renewable premium obligations. Neither the individual owner of the policy nor the funeral home that was obligated to provide the funeral was aware of this activity.

1. Stipulations Particular to Count 48

Prior to February 2006, Schwarz Funeral Home of Mendota, Illinois entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. Catherine Thomas, a funeral director with Schwarz Funeral home, also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about February 20, 2006, E.M. entered into a NPS Preneed Funeral Contract sold by Schwarz Funeral Home. The agreed price of the prearranged funeral was \$10,242.48. As required under the prearranged funeral contract and consistent with Illinois law, E.M. purchased a life insurance policy in the amount of \$10,242.48 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay, and E.M. paid a premium of \$10,242.48 with her insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated NPS as the named beneficiary. The application also stated that E.M. intended to retain ownership of her policy. Catherine Thomas signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application

and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received E.M.'s premium payment and deposited E.M.'s check for \$10,242.48 in its Illinois Premium Fund Trust Account. Premiums deposited into the Illinois Premium Fund Trust account that day were swept into the general operating account of NPS. NPS then mailed E.M.'s insurance application to Lincoln Memorial Life Insurance Company. Upon receiving Illinois applications for single-pay life insurance policies, including E.M.'s application, Lincoln Memorial Life Insurance Company employees were instructed to "white-out" the insurance application such that the single-pay designation was changed to monthly pay, and the amount paid with the application was altered to reflect a monthly premium amount. E.M.'s single-pay application was changed to a monthly pay period of 120 months, and the amount paid with the application was changed from \$10,242.48 to \$192.56 with the first renewal premium payment due on March 20, 2006. This alteration to the application was done without the knowledge or approval of E.M. or Schwarz Funeral Home. Neither E.M. nor Schwarz Funeral Home was informed that, despite E.M.'s payment of her insurance premium in full, renewal premiums were now owed on the insurance policy in order to keep the policy current and in effect.

On or before receipt of E.M.'s first month's premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy falsely reflected that NPS, not E.M., was the owner of the insurance policy. The data page also reflected the amount of insurance as \$10,242.48 but with an annual premium obligation totaling \$2,310.70. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by Lincoln Memorial Life

Insurance Company on or about February 20, 2006 was \$192.56. Lincoln Memorial Life Insurance Company records reflect that a commission payment in the amount of \$1,946.07 was sent on or about March 20, 2006 to its General Agent, NPS. On or about March 13, 2006, a "Paid in Full" Certificate was mailed to both E.M. and Schwarz Funeral home certifying that E.M. had completed payment in full to NPS.

On or about September 29, 2006, NPS took a policy loan against E.M.'s whole life insurance policy in the amount of \$103.07—an amount that reflected the total cash surrender value of the policy as of the date. The loan proceeds from E.M.'s policy were paid to NPS with policy loans taken against other policies on or about September 29, 2006 resulting in a total payment of approximately \$5,670,184.78 from Lincoln Memorial Life Insurance Company to NPS and the Chapter 436 trusts established by NPS.

Lincoln Memorial Life Insurance Company's policy file for E.M. included a Policy Owner Service Request Form reflecting that the policy owner requested a policy loan in the amount of \$103.07 and stating "in consideration of the advance by Lincoln Memorial Life Insurance Company of this requested loan all rights, title and interest in this policy are hereby assigned to said company as sole security for the repayment of the loan with interest subject to the provisions of the policy which were incorporated and made a part hereof." One of these policy terms provided that the proceeds payable at the death of the insured would be reduced by any policy loan and interest. The Policy Owner Service Request form was not executed by E.M. Instead it bore only the computer-generated signature of an NPS employee. Neither E.M. nor Schwarz Funeral Home was aware of the policy loan taken against the policy or was a party to

the execution of the Policy Owner Service Request maintained by Lincoln Memorial Life Insurance Company in E.M.'s policy file as its authorization to issue the loan.

On or about January 11, 2007, E.M. died. NPS used funds paid by new customers to pay the policy loan balance after E.M.'s death, thus obligating Lincoln Memorial Life Insurance Company to pay the death benefit in full to NPS as beneficiary of the policy. At the time of E.M.'s death, Lincoln Memorial Life Insurance Company had received only \$2,110.16 in premiums but paid death benefits to NPS in the amount of \$10,242.48 in addition to the previously paid commission payment to NPS of \$1,946.07.

Defendant James Douglas Cassity and others, being engaged in the business of insurance, misappropriated insurance premiums paid by customers to Lincoln Memorial Life Insurance Company through its General Agent, NPS, such as the single-pay premium paid by E.M. in the amount of \$10,242.48.

NPS's misappropriation of single-pay premium payments made by Illinois consumers applying for insurance policies from Lincoln Memorial Insurance Company jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis, Texas, on or about May 14, 2008.

C. NPS Operations in Ohio

In Ohio, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Ohio customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance, and the customer

was obligated to purchase a life insurance policy from an insurance company licensed to do business in Ohio and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented, however, that the customer would retain ownership of the insurance policy.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Ohio. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Ohio.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. In those instances when an insurance policy was paid in full, the preneed funeral contract was considered paid in full as well. Most Ohio customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy

could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Ohio funeral home insurance agents and forwarded the application and insurance premium to Lincoln Memorial Life Insurance Company. Typically, if the funeral home was designated as a beneficiary of the policy, NPS crossed out that designation before submitting the application to Lincoln Memorial Life Insurance Company. In Ohio, NPS sent the entire insurance premium paid by the customer to Lincoln Memorial Life Insurance Company.

Upon issuance of the insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, often within the first 100 days after a policy's issuance, NPS took a policy loan against the policy. The amount of the policy loan was generally in excess of 90% of the cash surrender value of the insurance policy. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered the policies it had taken loans against. In many instances, those surrendered single-pay whole life insurance policies were replaced with term life insurance with monthly renewable premium obligations that would have to be paid from sources other than the premium paid initially by the customer. If inquiries were made by customers, funeral homes, or even NPS Account Executives regarding the status of the insurance policy, including inquiries regarding the cash surrender value or requests for the policies themselves, persons affiliated with NPS

provided incomplete, misleading, and false information regarding the policies in order to conceal this activity.

1. Stipulations Particular to Count 24

Prior to March 2006, Gluvna Shimo Hrmoda Funeral Chapel of Lorain, Ohio entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. James M. Hrmoda also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about March 10, 2006, R.L. entered into an NPS Preneed Funeral Contract sold by Gluvna Shimo Hrmoda Funeral Chapel. The agreed price of the prearranged funeral was \$6,802.81. As required under the prearranged funeral contract and consistent with Ohio law, R.L. purchased a life insurance policy in the amount of \$6,802.81 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay and R.L. paid a premium of \$6,802.81 with his insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated NPS and Gluvna Shimo Hrmoda Funeral Chapel as the named beneficiaries. The application stated R.L. intended to retain ownership of his policy. James Hrmoda signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received R.L.'s premium payment and forwarded the same amount to Lincoln Memorial Life Insurance Company. Prior to forwarding R.L.'s application for life insurance, NPS crossed out Gluvna Shimo Hrmoda Funeral Chapel as a designated beneficiary, leaving NPS as the only named beneficiary. This alteration to the application was performed without the knowledge or approval of R.L. or Gluvna Shimo Hrmoda Funeral Chapel.

Upon receipt of R.L.'s premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy reflected that R.L. was both the insured and the owner of the insurance policy. The data page also reflected the amount of insurance as \$6,802.81 and a single premium amount of \$6,802.81. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by Lincoln Memorial Life Insurance Company on or about March 20, 2006 was \$6,802.81. Lincoln Memorial Life Insurance Company commission records reflect that a commission payment in the amount of \$1,292.53 was sent on or about March 20, 2006 to its General Agent, NPS. On or about April 10, 2006, "Paid in Full" Certificates were placed in an authorized depository for mail matter in Clayton, Missouri and delivered by the United States Postal Service according to the directions thereon, to both R.L. and Gluvna Shimo Hrmoda Funeral Chapel, certifying that R.L. had completed payment in full to NPS.

Persons affiliated with NPS, including Defendant James Douglas Cassity, knew that the "Paid in Full" Certificates issued and mailed by NPS customers and funeral homes, such as those sent to R.L. and Gluvna Shimo Hrmoda Funeral Chapel on or about April 10, 2006, were intended to lead customers and funeral homes to believe that the funds paid by customers would be kept in insurance as required by state law and as represented by NPS, and to ensure that the

customer and funeral home would remain unaware of NPS's practice of taking unauthorized loans against insurance policies sold in Ohio, and elsewhere.

2. Stipulations Particular to Count 17

On or about September 29, 2006 through October 6, 2006 unauthorized policy loans on approximately 29,914 whole life insurance policies were taken against policies owned by individuals in such states as Ohio, Kentucky, Arizona, Oklahoma, Tennessee, Illinois and Kansas as well as policies owned by a Chapter 436 Missouri trust, with said loans against policies owned by individuals resulting in wires of loan proceeds directly to NPS including a wire transfer of funds in the amount of \$1,531,668.01 from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A., Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, Missouri. The unauthorized loans diminished the value of life insurance policies owned by individuals who purchased said policies in order to fund prearranged funeral contracts. The above loans were taken without the owners' knowledge and consent and served only to advance the Ponzi-like activity of NPS and pay debts owed by NPS and its affiliated companies. Many of the loans on these policies were never repaid but were extinguished by the unauthorized surrender of the whole life policies and the unauthorized replacement of those whole life policies with term life insurance. The practice of taking such unauthorized policy loans on individually owned policies was known to, and directed by, the Defendant James Douglas Cassity, his co-defendants and others and was part of a scheme and artifice to defraud and to obtain monies and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, Defendant James Douglas Cassity caused to be transmitted by means of wire

communication in interstate commerce, certain signs, signals and sounds, that is the wire of transfer of funds described above in the amount of \$1,531,668.01.

3. Stipulations Particular to Count 21

Beginning on or before June of 2006, Ohio policies were included among those policies subjected to unauthorized loans as part of NPS's practice of obtaining millions of dollars in loan proceeds, typically on a quarterly basis, from the cash value of hundreds of individual policies owned by individuals and Chapter 436 trusts. Specifically, on or about June 28, 2006, millions of dollars in policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about September 29, 2006, millions of dollars in policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about December 1, 2006 through January 23, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about May 9, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about May 30, 2007 through June 7, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri.

The proceeds from these loans were used to pay renewal insurance premiums (owed by virtue of the Ponzi-like operations of NPS and Lincoln Memorial Life Insurance Company) on both whole life policies and replacement term life policies for states such as Illinois, Ohio, and Missouri. In addition, the loan proceeds were also used to pay NPS's share of operating costs associated with the joint business operation of NPS, Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company. In addition, the loan proceeds were also used to make payments on a Forever Enterprises, Inc. note payable to Memorial Service Life Insurance Company reflecting unpaid debts attributable to the business operations of Forever Enterprises, Inc. and its affiliated companies.

On or about June 20, 2007, the Ohio Department of Insurance submitted an official written inquiry to Lincoln Memorial Life Insurance Company requesting a list of all 2006 and 2007 Ohio life policies sold by Lincoln Memorial Life Insurance Company that had loans against them. At the time it received the regulatory inquiry, Lincoln Memorial Life Insurance Company could not have truthfully responded to this request without disclosing the existence of unauthorized policy loans taken by NPS against policies for Ohio customers. Instead of Lincoln Memorial Life Insurance Company truthfully responding to the regulatory inquiry, NPS directed Lincoln Memorial Life Insurance Company to remove all loans on Ohio policies by transferring the loan repayment obligation from Ohio policies to whole life insurance policies owned by individuals in other states, including Tennessee and Kansas. At NPS's direction, Lincoln Memorial Life Insurance Company then reported in a letter dated July 9, 2007 and sent that same day via a wire, radio, or television communication in interstate commerce, that is, by email, from NPS's office in Clayton, Missouri to the Ohio Department of Insurance in Columbus, Ohio, that

no Ohio policies had loans taken against them, which report was intended to conceal the fact that there were outstanding loans against Ohio policies totaling more than \$10,000,000 at the time of the regulatory inquiry. The letter was sent with Defendant James Douglas Cassity's approval, knowing that the letter was intended to conceal from regulators Lincoln Memorial Life Insurance Company's and NPS's fraudulent practices in the state of Ohio and thereby avoid any regulatory actions which might interfere with the scheme in Ohio and elsewhere.

Persons affiliated with NPS, including Defendant James Douglas Cassity, voluntarily and intentionally participated in a scheme and artifice to defraud and to obtain money and property by means of material false representations and promises regarding funds that were to be kept safe and secure in insurance policies purchased by individuals in states such as Ohio. As part of that scheme, such persons made material misrepresentations of fact regarding such insurance policies and NPS's practice of taking unauthorized policy loans against those policies. In furtherance of that scheme, Defendant James Douglas Cassity acted with the intent to defraud regulators regarding the existence of policy loans in Ohio by means of the letter dated July 9, 2007 sent to the Ohio Department of Insurance.

D. NPS Operations in Missouri

In Missouri, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in an FDIC insured bank trust. Missouri customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties and consistent with Missouri law, 80% of the funds paid by a preneed customer would be deposited in a bank trust, with the bank serving as trustee, and all funds deposited would be held in trust according to the terms of the trust agreement and Chapter

436 of the laws of Missouri. Under the applicable law and agreements, NPS could seek disbursements of the deposited trust principal only upon providing proof that the agreed-upon funeral had been provided by the funeral home and that NPS had paid the funeral home for the funeral it provided. Upon providing such proof, the seller would then be entitled to seek reimbursement from the trust principal.

In addition to deposits into trust from individual customers, the preneed funeral trusts established by NPS also received deposits in the form of “rollovers.” “Rollovers” were trust-to-trust transfers by which a funeral home that had deposited customer funds into a Chapter 436 preneed trust entered an agreement with NPS to appoint a successor trustee. The successor trustee would be the bank trustee serving as trustee of the Chapter 436 trust established by NPS. By agreement, the original trustee would be directed to “roll over” funds and assets held in the original trust by depositing those funds and assets with the successor trustee bank, where they were to be held in trust along with deposits from NPS’s other customers. Rollover agreements also specified that the proceeds of the rollover would be invested in insurance within 30 days of the trust receiving the rollover deposit.

NPS represented to the bank trustees that any withdrawals from trust would comply with the trust agreement and Missouri law. Both the trust agreement and Missouri law allowed for investment decisions regarding the trust principal to be made by a registered, independent, and qualified investment advisor designated by the seller who established the trust, provided, however, that (1) title to all investments remain with the trustee and be kept by the trustee, (2) control of the assets would not be divested from the trustee, and (3) the assets would not be

placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in.

From 2000 through 2008, NPS sought and received withdrawals from the preneed trust of funds and assets that were required by its agreements and by the applicable state law to remain in trust. Withdrawals from trust were made under the color of the authority vested with the investment advisor designated by NPS to invest trust funds and assets, Wulf, Bates & Murphy, Inc. Contrary to the representations made to the bank trustee, the investment advisor was neither independent nor directing investments in a manner consistent with Chapter 436. Instead, NPS, through Wulf, Bates & Murphy, Inc., directed the movement of funds from the trust for purposes not authorized by Chapter 436, including investments that did not meet the requirements of Chapter 436 and withdrawals and distributions that were not permitted under the trust agreement or Chapter 436. To the extent that the trust invested funds in whole life insurance policies, those policies were subjected to unauthorized policy loans, unauthorized surrenders, and unauthorized replacements with term life policies. Each of these occurrences had the consequence of diminishing or destroying the value of the insurance policies and thus were not reasonably prudent investments and in fact were not investments at all. As the trust accumulated insurance holdings of negligible value, funds that should have been held in trust were withdrawn and disbursed to NPS and its affiliated companies to the ultimate benefit of NPS and persons affiliated with NPS and the ultimate detriment of those individuals and funeral homes that had funds deposited in trust.

Several FDIC-insured banks were defrauded into believing that Wulf, Bates & Murphy, Inc., having been designated as the investment advisor for the trusts, was qualified to act under

the statute and was comporting its activities with the investment requirements of Chapter 436 of the laws of Missouri. The banks were further defrauded with each trust transfer made pursuant to the direction of co-defendant David R. Wulf, or under the color of the authority of Wulf, Bates & Murphy, Inc. as an independent investment advisor. Persons affiliated with NPS represented to the banks that Wulf, Bates & Murphy, Inc. was independent when they knew it was not, and the misrepresentation was part of the scheme to defraud the banks of the trust property. These representations gained the persons affiliated with NPS access to the trust accounts of the FDIC-insured bank trusts and enabled them to remove assets from the FDIC-insured banks that should have been kept in trust. These misrepresentations resulted in the banks losing title to the insurance policies through unauthorized policy loans, and the trusts permanently being divested of ownership of their whole life insurance policies as a result of mass surrenders. These misrepresentations also resulted in the banks losing non-insurance assets through a series of transfers of funds from the trust to entities engaged in the scheme and controlled by the Defendant James Douglas Cassity and other persons affiliated with NPS.

Throughout the scheme, persons affiliated with NPS concealed from the banks the nature and value of the assets the banks owned and the nature and purpose of withdrawals and disbursements from the trusts. The banks were led to believe that the trusts' principal assets were life insurance policies. Throughout the scheme, persons affiliated with NPS concealed how much actually had been paid into the insurance policies, concealed that policy loans had been taken out against policies the banks owned (and which needed to be repaid in order to prevent the amount of the loan from being deducted from the death benefit), concealed that the banks no longer had title to insurance policies purchased by the trusts, concealed that policies had been surrendered,

concealed that the surrender value of the policies went to payoff policy loans previously dispersed instead of being paid to, and retained by, the owner of the policies, and concealed that the banks owned replacement term insurance policies which (1) had no investment value and (2) had new premium obligations for which there was no source of payment other than new customers of NPS.

The banks were affected by actions of persons affiliated with NPS in that they now face a lawsuit for damages because the value of assets in and held by the banks was dissipated as a result of the scheme to defraud and have had to incur legal fees in defending said lawsuit.¹ This loss to the banks occurred because the assets that should have been kept safe in trust were no longer in trust, and what was in trust (replacement term life policies on which the owner was obligated to pay premiums) had no investment value.

1. Stipulations Particular to Count 7

On or about April 1, 2004 unauthorized policy loans on approximately 33,536 whole life insurance policies were taken against policies owned by a Chapter 436 trust, specifically "Trust IV," a Missouri preneed trust established by National Prearranged Services, Inc., with said loans resulting in a wire transfer of funds to Trust IV of loan proceeds in the amount of \$3,027,149.00. The unauthorized loans diminished the property held in trust by the FDIC insured bank trustee Allegiant Bank, and served only to advance the Ponzi-like activity of NPS and pay debts owed by NPS and its affiliated companies. In addition, the unauthorized loans were specifically impermissible in that, as a result of the loans, title to those policies was no longer held by the FDIC insured bank trustee but was transferred from trust to Lincoln Memorial Life Insurance

¹ Jo Ann Howard and Assocs., et al., v. J. Douglas Cassity, et al., Case No. 4:09-cv-01252 ERW (E.D. Mo. 2009).

Company in order to secure repayment of said loans. Many of the loans on these policies were never repaid but were extinguished by the unauthorized surrender of the whole life policies and the unauthorized replacement of those whole life policies with term life insurance. The practice of taking such unauthorized policy loans was known to, and directed by, Defendant James Douglas Cassity, his co-defendants, and other persons affiliated with NPS and was part of a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits assets, securities and other property owned, owned by or under the control of Allegiant Bank by means of materially false and fraudulent pretenses, representations and promises.

2. Stipulations Particular to Count 36

On January 6, 2004, Price Funeral Home of Maryville, Missouri entered into a “rollover” agreement with NPS whereby approximately \$2,419,395.74 (the “Price rollover funds”) was deposited in the Chapter 436 trust established by NPS at Allegiant Bank, a bank whose deposits were insured by the Federal Deposit Insurance Corporation. It had been represented to Price Funeral Home that all deposited rollover proceeds would be held in a trust and invested in insurance policies owned by the trust.

As a result of two wire transfers of funds occurring on January 8, 2004 and January 15, 2004, funds totaling \$4,600,000, which included the Price rollover funds and other rollover funds received in December of 2003 and early January of 2004, were wired out of trust to Lincoln Memorial Services, Inc., which in turn transferred the funds to RBT Trust II, a family trust for which co-defendant Howard A. Wittner served as trustee. RBT Trust II used the Price rollover funds and other fraudulent proceeds in June of 2004 to purchase PLICA.

In or around July 2004, Defendant James Douglas Cassity and co-defendant Brent Douglas Cassity formed Bayside Capital, LLC (“Bayside”), a Missouri limited liability company, in which they each owned a fifty per cent (50%) interest. On July 1, 2004, PLICA, PLICA Management Company, and Bayside entered into an administrative agreement whereby Bayside agreed to handle administrative services for PLICA in exchange for a commission of six per cent (6%) on all direct business written by PLICA excepting reinsurance assumed. On November 10, 2005, PLICA, PLICA Management Company and Bayside agreed to increase the amount of commission payable to Bayside to ten per cent (10%). On April 15, 2008, PLICA, PLICA Management Company, and Bayside agreed to increase the amount of commission payable to Bayside to fourteen per cent (14%). Through this agreement, Bayside became the primary vehicle by which Defendant James Douglas Cassity and co-defendant Brent Douglas Cassity derived income from PLICA.

On July 1, 2008, PLICA Management Company wrote a check to Bayside in the amount of \$401,962.61 for commissions payable to Bayside for the month of June 2008. Bayside deposited this check into its account at First Bank, in St. Louis, Missouri, July 1, 2008. On July 7, 2008, Bayside wrote a check on its account at First Bank in the amount of \$57,423.23. On July 7, 2008, Defendant James Douglas Cassity deposited this check in the amount of \$57,423.23 into his personal account at Southwest Bank in Saint Louis, Missouri. These funds, being derived from the purchase of PLICA, constituted property traceable to the proceeds of the fraudulent scheme described above.

At the time that Defendant James Douglas Cassity engaged in the foregoing monetary transaction, he knew that the funds involved in that transaction constituted the proceeds of

criminal activity, in that they were derived from the misuse of the Price rollover funds to acquire PLICA. The monetary transaction occurred within the United States and affected interstate commerce. Southwest Bank was a financial institution as defined in Title 31, United States Code, Section 5312(a)(2) because it was a bank whose deposits are insured by the Federal Deposit Insurance Corporation, and because it was engaged in, and its activities affected interstate commerce.

5. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the crimes to which the defendant is pleading guilty is:

- as to Count 7, not more than 30 years imprisonment, a fine of not more than \$1,000,000, or both;
- as to Counts 17, 21, and 24, not more than 20 years imprisonment, a fine of not more than \$250,000, or both;
- as to Count 36, not more than 10 years imprisonment, a fine of not more of \$250,000 or twice the amount of the criminally derived property involved in the transaction, whichever is greater, or both; and
- as to Count 48, not more than 15 years imprisonment, a fine of not more than \$250,000, or both.

The Court may also impose a period of supervised release of not more than 5 years on Count 7; and not more than 3 years on each of Counts 17, 21, 24, 36, and 48.

6. U.S. SENTENCING GUIDELINES – 2012 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines that recommend a sentencing range determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions that are supported by the evidence related to the

defendant in this case for each of Counts 7, 17, 21, 24, 36, and 48.

a. Chapter 2 Offense Conduct:

(1) Base Offense Level: The parties agree that the base offense level is 7 as found in Section 2B1.1(a)(1). Pursuant to Application Note 2(C), the base offense level is determined by Count 7 because that count provides for the highest statutory maximum term of imprisonment.²

(2) Specific Offense Characteristics: The parties agree that the following Specific Offense Characteristics apply, except as otherwise indicated:

(a) The Government contends that 30 levels should be added pursuant to Section 2B1.1(b)(1)(P), because the loss attributable to the offenses in which the defendant was involved was more than \$400,000,000.00. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(b) The parties agree that 6 levels should be added pursuant to Section 2B1.1(b)(2)(C) because the offenses in which the defendant was involved affected more than 250 victims.

(c) The Government contends that 2 levels should be added pursuant to Section 2B1.1(b)(9)(C) because the offenses in which the defendant was involved resulted in the violation of a prior, specific judicial order not addressed elsewhere in the Guidelines. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

² Although the base offense level for Count 36 (money laundering) is determined by Section 2S1.1, that count is grouped together with the others pursuant to Section 2S1.1 (Application Note 6) because the other counts constitute the underlying offenses from which the laundered funds were derived. The remaining counts produce a higher total offense level and therefore control pursuant to Section 3D1.3. Count 36 is therefore not considered separately herein.

(d) The parties agree that 2 levels should be added pursuant to Section 2B1.1(b)(10)(C) because the offense involved sophisticated means.

(e) That parties agree that 4 levels should be added pursuant to Section 2B1.1(b)(15)(B)(i) and (iii) because the offense substantially jeopardized the safety and soundness of several financial institutions, including Allegiant Bank, Bremen Bank, Lincoln Memorial Life Insurance Company, and the Professional Liability Insurance Company of America, and because the offense substantially jeopardized the solvency or financial security of 100 or more victims.

b. Chapter 3 Adjustments:

(1) Vulnerable Victim: The parties agree that 4 levels should be added pursuant to Sections 3A1.1(b)(1) and (2) because the defendant knew or should have known that one or more victims of the offense were vulnerable and the offense involved a large number of vulnerable victims.

(2) Aggravating Role: The parties agree that 4 levels should be added pursuant to Section 3B.1.1(a) because the defendant acted as an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive.

(3) Abuse of a Position of Trust: The parties agree that 2 levels should be added pursuant to Section 3B.1.3 because the offense involved the defendant's abusing a position of public or private trust.

(4) Acceptance of Responsibility: The parties agree that 2 levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility. The parties further agree, and the government so moves, that an additional 1 level

should be deducted pursuant to Section 3E1.1(b)(2) because the defendant timely notified authorities of the intention to enter a plea of guilty, thereby permitting the government and the Court to allocate their resources efficiently.

The parties agree that if the defendant does not abide by all of the agreements made within this document, the defendant's failure to comply is grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1. The parties further agree that the defendant's eligibility for a reduction pursuant to Section 3E1.1 is based upon the information known at the present time and that any actions of the defendant which occur or which become known to the government subsequent to this agreement and are inconsistent with the defendant's acceptance of responsibility including, but not limited to criminal conduct, are grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1.

(5) Grouping: The parties agree that all counts should be grouped together pursuant to Section 3D1.2.

c. Estimated Total Offense Level: The Government contends that the Total Offense Level is 58. The defendant disputes this calculation and reserves the right to challenge said total offense level and the enhancements noted above at sentencing.

d. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

e. Effect of Parties' Guidelines Analysis: The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the agreement herein and the parties shall not be permitted to withdraw from the plea agreement. But, if the Court accepts the plea agreement in this case, it is bound by the sentencing agreement in paragraph 2 above.

7. WAIVER OF APPEAL AND POST -CONVICTION RIGHTS:

a. Appeal: The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) Non-Sentencing Issues: The parties waive all rights to appeal all non-jurisdictional, non-sentencing issues, including but not limited to, any issues relating to pretrial motions, discovery, and the guilty plea.

(2) Sentencing Issues: In the event the Court accepts the plea and, in sentencing the defendant follows the sentencing agreement in paragraph 2, then, as part of this agreement, the parties hereby waive all rights to appeal all sentencing issues.

b. Habeas Corpus: The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. Right to Records: The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records

pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552(a).

8. OTHER:

a. Disclosures Required by the United States Probation Office: The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or other administrative action against the defendant.

c. Supervised Release: Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. Mandatory Special Assessment: Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$600.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any

restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. Possibility of Detention: The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. Fines, Restitution, and Costs of Incarceration and Supervision: The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration, and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A, an order of restitution is mandatory for all crimes listed in 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the Second Superseding Indictment.

g. Forfeiture: Except as otherwise provided herein, the defendant agrees to forfeit any and all interest he may have in any items seized by law enforcement during the course of their investigation and all items specifically identified in the Second Superseding Indictment (together, the "Subject Property"), including but not limited to approximately \$1,109,062.62 in funds held and frozen in account No. XXXX1581 at Truman Bank; approximately \$620,333.33 in funds supporting a Truman Bank cashier's check no. xxxxxx0679; and approximately \$1,984,384.63 in funds held and frozen in account XXXXX7738 at First National Bank.

In addition, the parties agree that the Subject Property includes all ownership shares in Professional Liability Insurance Corporation of America (PLICA), a New York insurance

company. However, because PLICA is presently in receivership and subject to liquidation proceedings, the government will not seek the criminal forfeiture of PLICA shares or any remaining PLICA assets, and this agreement shall not be construed to affect or preclude any rights or remedies that Defendant or others may have in such shares or assets.

The following property is specifically excluded from the property subject to criminal forfeiture as criminal proceeds and from the definition of "Subject Property" and the government shall not pursue the forfeiture of any such property: real property located at 4201 Gulf Shore Blvd., Naples, FL; real property located at 120 Linden, St. Louis, MO (which the parties believe to be presently subject to a recorded judgment in excess of \$6,000,000); real property located at 6000 Santa Monica Boulevard, Los Angeles, CA and any business located on said property; real property located at 301 Tennessee Valley Road, Mill Valley, CA and any business located on said property; real property at 10301 and 10305 Big Bend Road, St. Louis, MO and any business located on said property; and any jewelry identified as personal property subject to criminal forfeiture in the Second Superseding Indictment.

Subject to the foregoing exceptions, the defendant agrees that the Subject Property constitutes the proceeds of the scheme to defraud alleged in the Second Superseding Indictment. The defendant also consents to the entry of a money judgment against defendant and in favor of the United States in the total amount of the criminal proceeds received by the co-defendants in the course of the scheme. The parties agree that criminal forfeiture proceedings are governed by Federal Rule of Criminal Procedure 32.2 and that a forfeiture order that directs the defendant to forfeit specific property remains preliminary as to third-parties until the ancillary proceeding is concluded under Rule 32.2(c).

The defendant consents to the seizure of the Subject Property and hereby forfeits all of the defendant's interest therein. The defendant agrees that the United States may dispose of the Subject Property in any manner authorized by law. The defendant agrees that forfeiture of the Subject Property shall not be treated as satisfaction of or applied to any fine, cost of imprisonment, special assessment, restitution, money judgment, or any other penalty or assessment the Court may impose on the defendant except where required by law or authorized by the United States or its representative.

The defendant agrees not to file a claim in any forfeiture proceeding or otherwise to contest, in any manner, the forfeiture of the Subject Property, including by a motion under Federal Rule of Criminal Procedure 41(g), and hereby withdraws any such pending claim, contest, objection, or other opposition to the forfeiture of the Subject Property. The defendant further agrees not to assist any other individual in contesting the forfeiture of the Subject Property. The defendant agrees to take all steps necessary to transfer title, ownership, and possession of the Subject Property to the United States, including executing any necessary documents and providing truthful testimony and other evidence to rebut the claims of any party claiming an interest in the Subject Property. The defendant agrees to prevent the disbursement of the Subject Property to the extent it remains within the defendant's direct or indirect possession, custody, or control. This agreement shall not be construed to waive any third-party rights under Rule 32.2 to file a petition asserting an interest in the property to be forfeited.

The defendant hereby knowingly and intelligently waives any rights the defendant may have (a) for a jury or the Court to determine what of defendant's property is subject to forfeiture, (b) for the Court to explain the forfeiture at the defendant's change of plea hearing, and (c) for

the forfeiture to be made part of the oral pronouncement of sentence and included in the judgment. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(4), the defendant consents to the Court's preliminary order of forfeiture becoming final as to him on the date the Court enters its preliminary order of forfeiture.

9. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

10. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and the agreements, recommendations and stipulations herein. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the offenses specified in sections four and five above.

11. CONSEQUENCES OF POST-PLEA MISCONDUCT:

After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States, at its

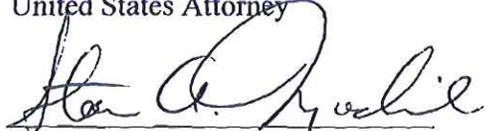
option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

12. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects the sentence recommendations therein or those portions of the plea agreement which deal with charges the government agrees to dismiss.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney


STEVEN A. MUCHNICK, #27597MO
Assistant United States Attorney

7/3/13
Date

7/3/13
Date

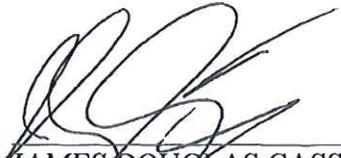

CHARLES S. BIRMINGHAM, #47134MO
Assistant United States Attorney

7/3/13
Date


RICHARD E. FINNERAN, #60768MO
Assistant United States Attorney
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 20.333
Saint Louis, Missouri 63102
(314) 539-2200

7/3/13
Date

7/3/13
Date



JAMES DOUGLAS CASSITY


N. SCOTT ROSENBLUM
120 South Central, Suite 130
Clayton, Missouri 63105
(314) 862-4332
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
v.)	
)	No. S2-4:09 CR 509 JCH
HOWARD A. WITTNER,)	
)	<u>FILED UNDER SEAL</u>
Defendant.)	

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the Defendant Howard A. Wittner, represented by J. William Lucco and Bradford J. Kessler, and the United States of America (hereinafter "United States" or "Government"), represented by the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri.

The Court is neither a party to nor bound by this agreement. However, if the Court accepts the plea agreement as to the sentencing range, then the Court will be bound by said agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Counts 45, 46, and 50 of the Second Superseding Indictment, the government agrees to move for the dismissal of the remaining counts against the

defendant at the time of sentencing. Moreover, the United States agrees that no further federal prosecution will be brought in this District against the defendant relative to the matters described in the Second Superseding Indictment which began sometime prior to 1992 and continued until on or about April 28, 2010, of which the Government is aware at this time.

In addition, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the parties agree that the defendant's sentence shall include incarceration for at least 12 months and one day and not longer than 60 months. If the Court informs the parties prior to sentencing that it will reject this agreement or sentences defendant to a sentence not in conformity with this agreement, then either party may withdraw from the plea agreement and the defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5). The parties further agree that neither party shall request a sentence above or below the sentencing agreement in this paragraph pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553, or any other provision or rule of law not addressed herein.

The defendant also agrees to forfeit to the United States any interest he may have in all property subject to forfeiture, as further set forth herein.

3. ELEMENTS:

As to Counts 45 and 46 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1033(a)(1) and (a)(2), and admits there is a factual basis for the plea and further fully understands that the elements of the crimes alleged in these counts are:

- (1) the defendant was engaged in the business of insurance;
- (2) the activities of such business affected interstate commerce;

- (3) the defendant made a false material statement or report;
- (4) the false statement or report was made in connection with a financial report or document presented to an insurance regulatory official or agency to examine the affairs of such person;
- (5) the statement or report was made for the purpose of influencing the actions of an insurance regulatory official or agency;
- (6) the defendant acted knowingly and with the intent to deceive; and
- (7) the defendant's statement or report jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in rehabilitation by an appropriate court.

As to Count 50 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1033(e)(1)(B), and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant was engaged in the business of insurance;
- (2) the activities of that business affected interstate commerce;
- (3) while engaged in the business of insurance, the defendant permitted another individual who had previously been convicted of a criminal felony involving dishonesty or a breach of trust to participate in such business of insurance; and
- (4) the defendant acted willfully.

4. FACTS:

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3 of the Federal Sentencing Guidelines:

A. Engagement in Business of Insurance by a Convicted Felon (Count 50)

On September 28, 1990, the wife and children of co-defendant James Douglas Cassity, including co-defendant Brent Douglas Cassity, transferred their interests in RBT Trust to a new

trust which was named RBT Trust II. Defendant Howard A. Wittner was designated as trustee of RBT Trust II. Among the assets of RBT Trust II was National Heritage Enterprises, Inc. ("NHE"), a Missouri corporation. NHE was a holding company which owned controlling interests in various corporations, including National Prearranged Services, Inc., Lincoln Memorial Services, Inc., and Forever Enterprises, Inc. Forever Enterprises, Inc., a Texas corporation (formerly known as Lincoln Heritage Corporation), owned various other corporations, including Memorial Service Life Insurance Company, a Texas insurance company. Memorial Service Life Insurance Company owned Lincoln Memorial Life Insurance Company, which was also a Texas insurance company. At various times while serving as Trustee of RBT Trust II, defendant Howard A. Wittner also served as a Director of NPS and Chairman of the Board of Directors of Forever Enterprises, Inc., the parent company of Memorial Service Life Insurance Company and Lincoln Memorial Life Insurance Company. The annual statements of Memorial Service Life Insurance Company and Lincoln Memorial Life Insurance Company reflect defendant Howard A. Wittner as a Director.

On January 29, 1982, co-defendant James Douglas Cassity was convicted in the United States District Court for the Western District of Missouri of criminal felonies involving dishonesty and a breach of trust, that is, willfully, knowingly, and unlawfully conspiring to use and using fraudulent letters of credit, in violation of Title 18, United States Code, Section 371, and falsifying an income tax return, in violation of Title 26, United States Code, Section 7206(1). On or before February 1, 1994, defendant Howard A. Wittner became aware and knew that co-

defendant James Douglas Cassity was convicted of the above referenced felonies and that said felonies involved dishonesty and breach of trust.

Beginning as early as January 1, 1998, and continuing until after January 1, 2009, defendant Howard A. Wittner, being himself engaged in the business of insurance, willfully permitted co-defendant James Douglas Cassity to exercise significant control over Memorial Service Life Insurance Company and Lincoln Memorial Life Insurance Company, and thus to engage in and participate in the business of insurance, which activities affected interstate commerce. Defendant Howard A. Wittner also permitted co-defendant James Douglas Cassity to participate in the business of insurance conducted by the Professional Liability Insurance Company of America (“PLICA”), as set forth in further detail below.

B. Purchase and Operation of PLICA (Counts 45, 46, and 50)

On or before September 11, 2003, defendant Howard A. Wittner was instructed by co-defendant James Douglas Cassity to locate and purchase an insurance company that was licensed in Missouri and other states to write medical malpractice insurance. Such an insurance company was identified and, sometime prior to December 31, 2003, negotiations commenced for the purchase and acquisition of PLICA, a New York domiciled medical malpractice insurance company.

As a result of two wire transfers occurring on January 8, 2004 and January 15, 2004, funds totaling in excess of \$4,500,000 were wired out of a Missouri Chapter 436 trust established by NPS for which Allegiant Bank was serving as Trustee and into an account of Lincoln Memorial Services, Inc., which held the funds in company and investment accounts that were controlled by co-defendant James Douglas Cassity. On or about January 27, 2004, co-defendant

Howard A. Wittner, as trustee of RBT Trust II, executed a letter of intent for RBT Trust II to buy PLICA for \$4,500,000 plus an additional amount equal to the fair market value of PLICA's investment assets, which was anticipated to be approximately \$6,000,000 at the time of closing. At the time of acquisition, the source of the additional \$6,000,000 would be a draw on borrowed funds.

In order for the PLICA purchase and acquisition to occur, approval had to be obtained from the New York Department of Insurance. To obtain approval, defendant Howard A. Wittner and others prepared a financial statement, known as "Form A," for submission to the New York Department of Insurance, along with a series of exhibits for submission with the form. The purpose of Form A was, in part, to determine:

- the source of the funds for the purchase and whether any of those funds were borrowed;
- whether the disclosed purchaser, RBT Trust II, had the financial wherewithal and financial stability necessary to assume ownership of PLICA; and
- the identity of the individuals and entities that would be exercising control over PLICA after acquisition.

The completed Form A that defendant Howard A. Wittner executed as trustee of RBT Trust II and which was submitted to the New York Department of Insurance was materially false in that it:

- failed to disclose that co-defendant James Douglas Cassity would have any role or control over PLICA when, in fact, he would have a significant role in the management, operations, and administration of PLICA;
- failed to disclose the original source of the \$4,500,000 used to purchase PLICA; and
- failed to disclose that the original source of the additional \$6,000,000 used to purchase PLICA was borrowed funds.

The Form A submission also included a statement from a Certified Public Accountant (“C.P.A.”) that contained further materially false statements regarding the financial condition and position of RBT Trust II. Defendant Howard A. Wittner and others, including co-defendant James Douglas Cassity, directed the C.P.A. to produce statements and affirmations that presented the beneficiaries’ equity of RBT Trust II based upon the assets and liabilities of only two of the entities that were owned by RBT Trust II, namely, NPS and Forever Enterprises, Inc. These statements and affirmations failed to disclose the assets and liabilities of other entities also owned by RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc., which made the statements contained in the Form A materially false. Had those assets and liabilities been included in the Form A submission, then the amount of the beneficiaries’ equity in RBT Trust II would have been substantially less than what the defendant and others reported. One such statement by the C.P.A., dated May 10, 2004, was notarized by defendant Howard A. Wittner and was submitted to the New York Department of Insurance.

The defendant Howard A. Wittner and others knowingly and with the intent to deceive caused the Form A to be submitted to the New York Department of Insurance knowing the Form A contained false material statements and submitted the false statements as part of the Form A for the purpose of influencing the actions of the New York Department of Insurance. The New York Department of Insurance ultimately approved RBT Trust II’s acquisition of PLICA.

Subsequent to the approval of the acquisition of PLICA by RBT Trust II, defendant Howard A. Wittner and co-defendants James Douglas Cassity and Brent Douglas Cassity entered into and executed a series of agreements related to PLICA, as follows:

- On or about June 1, 2004, PLICA entered into a contract with a law firm of which defendant Howard A. Wittner was a partner.
- On or about July 1, 2004, co-defendant James Douglas Cassity and co-defendant Brent Douglas Cassity executed an Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital LLC (“Bayside”), whereby Bayside agreed to handle administrative services for PLICA in exchange for a commission of six percent (6%) on all direct business written by PLICA excepting reinsurance assumed.
- On or about July 1, 2004, defendant Howard A. Wittner executed an Agreement between PLICA Management Company, and defendant Howard A. Wittner.
- On or about July 12, 2004, defendant Howard A. Wittner, in his capacity as Trustee of RBT Trust II and defendant Howard A. Wittner, in an individual capacity, entered into an “Incentive Agreement,” whereby RBT Trust II agreed to “compensate Wittner for his efforts with an equity ownership interest in PLICA” if certain conditions were met.
- On or about November 10, 2005, co-defendant James Douglas Cassity and co-defendant Brent Douglas Cassity executed an Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital LLC that increased the commission payable to Bayside to ten percent (10%).
- On or about April 15, 2008, shortly before the Special Deputy Receiver was appointed as to Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc., defendant Howard A. Wittner, co-defendant James Douglas Cassity, and co-defendant Brent Douglas Cassity executed an amendment that increased the commission payable to Bayside to fourteen percent (14%) of all direct business written by PLICA.

These agreements, and specifically those related to Bayside Capital, LLC (“Bayside”) and defendant Howard A. Wittner, served to give defendant, the co-defendants, and others control over the operations of PLICA. In turn, payments to Bayside served as the primary means by which co-defendant James Douglas Cassity derived compensation from PLICA. HAW LLC (a limited liability company defendant Howard A. Wittner established close in time to the

acquisition of PLICA) served as the primary means by which defendant Howard A. Wittner derived compensation from PLICA.

PLICA was required to file quarterly and annual statements with the New York Department of Insurance. Defendant Howard A. Wittner was identified both as an officer and a director of PLICA on said statements and executed these statements as an officer subscribing and swearing they were full and true statements. In submitting the quarterly and annual statements, defendant Howard A. Wittner asserted that all affiliated transactions and agreements which were required to be disclosed had been disclosed, whereas, in truth and in fact, said statements failed to disclose numerous transactions and agreements between PLICA and entities which were affiliates of PLICA, such as those set forth above. In addition, the annual statements failed to disclose all transactions with affiliated parties, each of which constituted greater than one-half percent ($\frac{1}{2}\%$) of admitted assets and therefore were required to be disclosed.

In particular, defendant Howard A. Wittner participated in the preparation of the 2006 Annual Statement for PLICA, a financial statement which was submitted to the New York Department of Insurance. The form upon which the 2006 Annual Statement was prepared required defendant Howard A. Wittner and others to disclose information detailing transactions greater than one-half percent ($\frac{1}{2}\%$) of admitted assets; information regarding management agreements, service contract agreements, and cost-sharing agreements; and information regarding guarantees or contingencies for related parties. Defendant Howard A. Wittner and others, knowingly and with the intent to deceive, responded to the inquiries with the statement "Not Applicable." This statement was false in that it concealed the existence of numerous

agreements and transactions with affiliated persons and entities, including agreements with Bayside and defendant Howard A. Wittner which required disclosure. For example, the 2006 annual statement did not disclose that PLICA had engaged in transactions with HAW LLC, an affiliated party, totaling approximately \$2,402,517. Said false material statement was made for the purpose of influencing the actions of the New York Department of Insurance.

The false statements contained in Form A and the annual statements submitted to the New York Department of Insurance jeopardized the safety and soundness of PLICA, an insurer, and was a significant cause of PLICA being placed into rehabilitation by the Supreme Court of the State of New York on or about April 28, 2010.

Beginning as early as June 1, 2004, and continuing until after January 1, 2009, defendant Howard A. Wittner, being himself engaged in the business of insurance, willfully permitted co-defendant James Douglas Cassity to exercise significant control over PLICA, and thus to engage in and participate in the business of insurance, which activities affected interstate commerce.

5. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the crimes to which the defendant is pleading guilty is:

- as to Counts 45 and 46, not more than 15 years imprisonment, a fine of not more than \$250,000, or both;
- as to Count 50, not more than 5 years imprisonment, a fine of not more than \$250,000, or both.

The Court may also impose a period of supervised release of not more than 3 years on each of Counts 45, 46, and 50.

6. U.S. SENTENCING GUIDELINES – 2012 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines that recommend a sentencing range determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions that are supported by the evidence related to the defendant in this case for each of Counts 45, 46, and 50:

a. Chapter 2 Offense Conduct:

(1) Base Offense Level: The parties agree that the base offense level is 6 as found in Sections 2B1.1(a)(1). Pursuant to Application Note 2(C), the base offense level is determined by Counts 45 and 46 because those counts provide for the highest statutory maximum term of imprisonment.

(2) Specific Offense Characteristics: The parties agree that the following Specific Offense Characteristics apply, except as otherwise indicated:

(a) The Government contends that at least 22 levels should be added pursuant to Section 2B1.1(b)(1)(L), because the loss associated with the counts to which the defendant has pled guilty exceeds \$20 million. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(b) The parties agree that 2 levels should be added pursuant to Section 2B1.1(b)(10)(C) because the offense involved sophisticated means.

(c) That parties agree that 4 levels should be added pursuant to Section 2B1.1(b)(15)(B)(i) because the offense substantially jeopardized the safety and soundness of a financial institution, the Professional Liability Insurance Company of America (PLICA).

b. Chapter 3 Adjustments:

(1) Aggravating Role: The Government contends that 4 levels should be added pursuant to Section 3B.1.1(a) because the defendant acted as a an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(2) Abuse of a Position of Trust: The Government contends that 2 levels should be added pursuant to Section 3B.1.3 because the offense involved the defendant's abusing a position of public or private trust. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(3) Acceptance of Responsibility: The parties agree that 2 levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility. The parties further agree, and the government so moves, that an additional 1 level should be deducted pursuant to Section 3E1.1(b)(2) because the defendant timely notified authorities of the intention to enter a plea of guilty, thereby permitting the government and the Court to allocate their resources efficiently.

The parties agree that if the defendant does not abide by all of the agreements made within this document, the defendant's failure to comply is grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1. The parties further agree that the defendant's eligibility for a reduction pursuant to Section 3E1.1 is based upon the information known at the present time and that any actions of the defendant which occur or which become known to the

government subsequent to this agreement and are inconsistent with the defendant's acceptance of responsibility including, but not limited to criminal conduct, are grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1.

(4) Grouping: The parties agree that all counts should be grouped together pursuant to Section 3D1.2.

c. Estimated Total Offense Level: The Government contends that the Total Offense Level is 37. The defendant disputes this calculation and reserves the right to challenge said total offense level at sentencing.

d. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

e. Effect of Parties' Guidelines Analysis: The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the agreement herein and the parties shall not be permitted to withdraw from the plea agreement. But, if the Court accepts the plea agreement in this case, it is bound by the sentencing agreement in paragraph 2 above.

7. WAIVER OF APPEAL AND POST -CONVICTION RIGHTS:

a. Appeal: The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) Non-Sentencing Issues: The parties waive all rights to appeal all non-jurisdictional, non-sentencing issues, including but not limited to, any issues relating to pretrial motions, discovery, and the guilty plea.

(2) Sentencing Issues: In the event the Court accepts the plea and, in sentencing the defendant follows the sentencing agreement in paragraph 2, then, as part of this agreement, the parties hereby waive all rights to appeal all sentencing issues.

b. Habeas Corpus: The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. Right to Records: The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552(a).

8. OTHER:

a. Disclosures Required by the United States Probation Office: The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or other administrative action against the defendant.

c. Supervised Release: Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. Mandatory Special Assessment: Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$300.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. Possibility of Detention: The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. Fines, Restitution, and Costs of Incarceration and Supervision: The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration, and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A, an order of restitution is mandatory for all crimes listed in 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of the offenses to which the defendant has pled guilty.

g. Forfeiture: Except as otherwise provided herein, the defendant agrees to forfeit any and all interest he may have in any items seized or restrained by law enforcement during the course of their investigation and all items specifically identified in the Second Superseding Indictment, including but not limited to all funds contained in First National Bank account number xxxxx5742 in the amount of approximately \$1,984,384.63 or more (together, the "Subject Property"). The defendant agrees that the Subject Property constitutes the proceeds of the offenses alleged in the Second Superseding Indictment. The defendant consents to the seizure of the Subject Property and hereby forfeits all of the defendant's interest therein. The defendant agrees that the United States may dispose of the Subject Property in any manner authorized by law. The defendant agrees that forfeiture of the Subject Property shall not be treated as

satisfaction of or applied to any fine, cost of imprisonment, special assessment, restitution, or any other penalty or assessment the Court may impose on the defendant except where required by law or authorized by the United States or its representative, provided, however, that upon the issuance of a final order of forfeiture, the government shall apply to the Attorney General for permission to have the proceeds of any forfeiture of the Subject Property, including but not limited to all funds contained in First National Bank account number xxxxx5742 in the amount of approximately \$1,984,384.63 or more, restored to the victims in Cause Nos. S2-4:09-cr-00509-JCH-TCM-2, S2-4:09-cr-00509-JCH-TCM-3, and S2-4:09-cr-00509-JCH-TCM-4, such victims to include the Special Deputy Receiver, through payment of the restitution orders in those cases. The government shall not pursue a forfeiture money judgment against the defendant.

The following property is specifically excluded from the property subject to criminal forfeiture as criminal proceeds and from the definition of "Subject Property" and the government shall not pursue the forfeiture of any such property: real property located at 1315 Wildhorse Parkway, Chesterfield, Missouri; all funds and investments in Morgan Stanley Smith Barney account number xxxx4793 in the name of Howard and Joan Wittner; all funds and investments in First National Bank of St. Louis account number xxxx7738 in the name of Howard and Joan Wittner; all funds and investments in First National Bank of St. Louis account number xxxx2058 in the name of Howard and Joan Wittner; all funds and investments in First National Bank of St. Louis account number xxxx9581 in the name of Gregory N. Wittner Irrevocable Trust; all funds and investments in Invest Financial Corp. account number xxxx9858 in the name of Howard A. Wittner and Joan R. Wittner; all funds and investments in Invest Financial Corp. account number

xxxx4604 in the name of Greg N. Wittner; all funds and investments in Invest Financial Corp. account number xxxx0540 in the name of Gregory Wittner and Jennifer Wittner; all funds and investments in Invest Financial Corp. account number xxxx4418 in the name of Kirk J. Wittner; all funds and investments in Invest Financial Corp. account number xxxx0531 in the name of Kirk J. Wittner; all investment holdings in KBS Real Estate Investment Trusts, KBS REIT II, account number xxx2560 in the name of Howard A. Wittner and Joan R. Wittner; all investment holdings in KBS Real Estate Investment Trusts, KBS REIT II, account number xxx7970 in the name of Gregory Wittner Revocable Trust; all investment holdings in KBS Real Estate Investment Trusts, KBS REIT II, account number xxx6465 in the name of Kirk J. Wittner Irrevocable Trust; and all investments in TEC Executive Investor, LLC in the name of Howard and Joan Wittner, as set forth in the subscription agreement executed on or about February 22, 2010.

Furthermore, to the extent that (1) any of the funds contained in First National Bank account number xxxxx5742 are traceable not to any criminal activity but rather to defendant Howard A. Wittner's Social Security payments and (2) defendant provides the government with documentary evidence to that effect no later than 35 days before defendant's sentencing, the government agrees to forgo the forfeiture of any such Social Security payments so documented by defendant, not to exceed the sum of \$264,000.

Subject to the foregoing exceptions, the defendant agrees not to file a claim in any forfeiture proceeding or otherwise to contest, in any manner, the forfeiture of the Subject Property, including by a motion under Federal Rule of Criminal Procedure 41(g), and hereby

withdraws any such pending claim, contest, objection, or other opposition to the forfeiture of the Subject Property. The defendant further agrees not to assist any other individual in contesting the forfeiture of the Subject Property. The defendant agrees to take all steps necessary to transfer title, ownership, and possession of the Subject Property to the United States, including executing any necessary documents and providing truthful testimony and other evidence to rebut the claims of any party claiming an interest in the Subject Property. The defendant agrees to prevent the disbursement of the Subject Property to the extent it remains within the defendant's direct or indirect possession, custody, or control.

The defendant hereby knowingly and intelligently waives any rights the defendant may have (a) for a jury or the Court to determine what of defendant's property is subject to forfeiture, (b) for the Court to explain the forfeiture at the defendant's change of plea hearing, and (c) for the forfeiture to be made part of the oral pronouncement of sentence and included in the judgment. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(4), the defendant consents to the Court's preliminary order of forfeiture becoming final as to him on the date the Court enters its preliminary order of forfeiture.

9. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a

reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

10. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In addition, the

defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and the agreements, recommendations and stipulations herein. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the offenses specified in sections four and five above.

11. CONSEQUENCES OF POST-PLEA MISCONDUCT:

After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States, at its option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

12. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects the sentence recommendations therein or those portions of the plea agreement which deal with charges the government agrees to dismiss.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney



STEVEN A. MUCHNICK, #27597MO
Assistant United States Attorney

7/8/13
Date

7/8/13
Date

7/8/13
Date

7.8.13
Date

7.8.13
Date



CHARLES S. BIRMINGHAM, #47134MO
Assistant United States Attorney



RICHARD E. FINNERAN, #60768MO
Assistant United States Attorney
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 20.333
Saint Louis, Missouri 63102
(314) 539-2200



HOWARD A. WITTNER



J. WILLIAM LUCCO
Lucco, Brown, Threlkeld & Dawson LLP
224 St. Louis Street
Edwardsville, Illinois 62025
(618) 656-2321
Attorney for Defendant

7/8/13
Date



BRADFORD J. KESSLER
KesslerWilliams, LLC
1520 Washington Avenue, Suite 226
St. Louis, Missouri 63103
(314) 863-6363
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
v.)	
)	No. S2-4:09 CR 509 JCH
RANDALL K. SUTTON,)	File Under Seal
)	
Defendant.)	

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the defendant Randall K. Sutton, represented by Burton H. Shostak, and the United States of America (hereinafter "United States" or "Government"), represented by the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri.

The Court is neither a party to nor bound by this agreement. However, if the Court accepts the plea agreement as to the sentencing range, then the Court will be bound by said agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Counts 7, 24, 43, and 48 of the Second Superseding Indictment, the government agrees to move for the dismissal of the remaining counts against the defendant at the time of sentencing. Moreover, the United States agrees that no further federal

prosecution will be brought in this District against the defendant relative to the matters described in the Second Superseding Indictment which began sometime prior to 1992 and continued until on or about April 28, 2010, of which the Government is aware at this time.

In addition, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the parties agree that the defendant shall be sentenced to a range between probation and 84 months incarceration. If the Court informs the parties prior to sentencing that it will reject this agreement or sentences defendant to a sentence not in conformity with this agreement, then either party may withdraw from the plea agreement and the defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5). The parties further agree that neither party shall request a sentence above or below the sentencing agreement in this paragraph pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553, or any other provision or rule of law not addressed herein, but either party may argue for any sentence within the range based upon any factor contained in Title 18, United States Code, Section 3553, or any other reason.

The defendant also agrees to forfeit to the United States any interest he may have in all property subject to forfeiture under the counts of conviction, as further set forth herein.

3. ELEMENTS:

As to Count 7 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1344, and admits there is a factual basis for the plea and further fully understands that the elements of the crimes alleged in these counts are:

- (1) the defendant and others knowingly executed a scheme to defraud a financial institution or to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of material false or fraudulent pretenses, representations, or promises;

- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant and others acted with the intent to defraud; and
- (4) that the financial institution was then insured by the Federal Deposit Insurance Corporation.

As to Count 24 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1341, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant with others acted with the intent to defraud; and
- (4) the defendant caused mails to be used in furtherance of the scheme.

As to Count 43 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1957, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others engaged in a monetary transaction;
- (2) the monetary transaction was in property of a value greater than \$10,000 derived from wire fraud, wire fraud affecting a financial institution, mail fraud, mail fraud affecting a financial institution, or bank fraud;
- (3) the defendant knew that the monetary transaction involved proceeds of a criminal offense;
- (4) the monetary transaction took place within the United States; and
- (5) the monetary transaction affected interstate commerce.

As to Count 48 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Sections 1033(b)(1) and (b)(2), and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant was engaged in the business of insurance;
- (2) the activities of that business affected interstate commerce;
- (3) the defendant misappropriated money, funds, premiums, or credits from the company engaged in the business of insurance; and
- (4) the misappropriation jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation.

4. FACTS:

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3 of the Federal Sentencing Guidelines:

A. Defendant's Role in the Offenses

The Defendant Randall K. Sutton, a resident of the Eastern District of Missouri, at various times during the time period between 1981 and 2008, held the titles of Chief Financial Officer, Director, and President of National Prearranged Services, Inc. ("NPS"), Vice President, Chief Executive Officer, and Director of Lincoln Memorial Life Insurance Company, Vice President and Director of Memorial Service Life Insurance Company. During this period, Defendant Randall K. Sutton's duties for NPS included management responsibilities relating to operations and finances.

Beginning sometime prior to 1992 and continuing until 2008, NPS sold prearranged funeral contracts in multiple states including Arizona, Florida, Illinois, Iowa, Kansas, Kentucky,

Missouri, Oklahoma, Ohio, and Tennessee. During that time, affiliated insurance companies, including Lincoln Memorial Life Insurance Company, issued life insurance policies related to those prearranged funeral contracts, with NPS acting as its General Agent. As part of the contracts, the total price for funeral services and merchandise for an individual was agreed upon, and would remain constant regardless of when the funeral services and merchandise would be needed. Customers entering into such prearranged funeral contracts would usually pay a single sum of money up-front to NPS either directly or through a funeral home that was also a party to the contract. NPS represented to individual customers, funeral homes, and state regulators that funds paid by customers under the prearranged funeral contracts would be kept in a secure trust or insurance policy as required under state law.

NPS, however, made use of funds paid by customers in ways that were inconsistent both with its prior and continuing representations and with the state laws and regulations applicable to such transactions. In some states, such as Illinois, insurance premiums were misappropriated before an insurance policy was issued. In other states, such as Ohio, unauthorized policy loans were among the means by which cash was extracted from insurance policies owned by individual policy holders. Ultimately, NPS operated as a fraudulent scheme, where customer funds were neither kept safe in bank trusts or insurance policies but instead were utilized for unauthorized purposes and the personal enrichment of NPS's officers and others. In turn, new business became the source of funding for funerals that prior customers had previously paid for in advance. In addition to dissipating the funds paid by individuals that NPS and Lincoln Memorial Life Insurance Company did business with, these events and other activities of the defendants

jeopardized the safety and soundness of the FDIC insured banks and the insurance companies owned and controlled by the defendants.

B. NPS Operations in Illinois

In Illinois, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Illinois customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance. The customer was obligated to purchase a life insurance policy from an insurance company licensed to do business in Illinois and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented that the customer would retain ownership of the insurance policy. At all pertinent times, Illinois law required that all insurance premiums received by a licensed insurance entity such as NPS were to be deposited into a premium fund trust account and held in a fiduciary capacity until the premium funds were transferred to an insurance company.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Illinois. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Illinois.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. Most Illinois customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Illinois funeral home insurance agents. The insurance premium was deposited in NPS's Illinois Premium Fund Trust account. Rather than keeping premiums deposited into this account in a fiduciary capacity as represented by NPS and as required by state law, premiums were transferred on a daily basis into NPS's general operating account for its general use including transfers to National Heritage Enterprises, an affiliated company that compensated certain persons affiliated with NPS, including Defendant Randall K. Sutton.

Applications for life insurance by Illinois customers that were designated as single-pay were "whited out" by employees of NPS and Lincoln Memorial Life Insurance Company to falsely reflect that the customer had applied for a monthly pay as opposed to a single-pay policy. Policies were then issued by Lincoln Memorial Life Insurance Company as monthly pay policies, even though NPS, as Lincoln Memorial Life Insurance Company's General Agent, had received a single premium payment. The funds necessary to renew these monthly policies came not from the original purchaser's funds, but instead from funds paid by new Illinois customers

and funds paid by customers in other states. Often, unauthorized policy loans on policies owned by individuals and trusts were used to make renewal premium payments for policies issued in Illinois.

Upon issuance of an insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, NPS took policy loans against Illinois policies as the policies accumulated a cash surrender value without receiving the authorization of the owners of those policies. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered Illinois policies that had both renewal premium obligations and policy loans taken against them. Many of those surrendered single-pay whole life insurance policies were replaced with term life insurance with monthly renewable premium obligations. Neither the individual owner of the policy nor the funeral home that was obligated to provide the funeral was aware of this activity.

1. Stipulations Particular to Count 48

Prior to February 2006, Schwarz Funeral Home of Mendota, Illinois entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. Catherine Thomas, a funeral director with Schwarz Funeral Home, also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about February 20, 2006, E.M. entered into a NPS Preneed Funeral Contract sold by Schwarz Funeral Home. The agreed price of the prearranged funeral was \$10,242.48. As required under the prearranged funeral contract and consistent with Illinois law, E.M. purchased a life insurance policy in the amount of \$10,242.48 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay, and E.M. paid a premium of \$10,242.48 with her insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated NPS as the named beneficiary. The application also stated that E.M. intended to retain ownership of her policy. Catherine Thomas signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received E.M.'s premium payment and deposited E.M.'s check for \$10,242.48 in its Illinois Premium Fund Trust Account. Premiums deposited into the Illinois Premium Fund Trust account that day were swept into the general operating account of NPS. NPS then mailed E.M.'s insurance application to Lincoln Memorial Life Insurance Company. Upon receiving Illinois applications for single-pay life insurance policies, including E.M.'s application, Lincoln Memorial Life Insurance Company employees were instructed to "white-out" the insurance application such that the single-pay designation was changed to monthly pay, and the amount paid with the application was altered to reflect a monthly premium amount. E.M.'s single-pay application was changed to a monthly pay period of 120 months, and the amount paid with the application was changed from \$10,242.48 to \$192.56 with the first renewal premium payment

due on March 20, 2006. This alteration to the application was done without the knowledge or approval of E.M. or Schwarz Funeral Home. Neither E.M. nor Schwarz Funeral Home was informed that, despite E.M.'s payment of her insurance premium in full, renewal premiums were now owed on the insurance policy in order to keep the policy current and in effect.

On or before receipt of E.M.'s first month's premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy falsely reflected that NPS, not E.M., was the owner of the insurance policy. The data page also reflected the amount of insurance as \$10,242.48 but with an annual premium obligation totaling \$2,310.70. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by Lincoln Memorial Life Insurance Company on or about February 20, 2006 was \$192.56. Lincoln Memorial Life Insurance Company records reflect that a commission payment in the amount of \$1,946.07 was sent on or about March 20, 2006 to its General Agent, NPS. On or about March 13, 2006, a "Paid in Full" Certificate was mailed to both E.M. and Schwarz Funeral home certifying that E.M. had completed payment in full to NPS.

On or about September 29, 2006, NPS took a policy loan against E.M.'s whole life insurance policy in the amount of \$103.07—an amount that reflected the total cash surrender value of the policy as of the date. The loan proceeds from E.M.'s policy were paid to NPS with policy loans taken against other policies on or about September 29, 2006 resulting in a total payment of approximately \$5,670,184.78 from Lincoln Memorial Life Insurance Company to NPS and the Chapter 436 trusts established by NPS.

Lincoln Memorial Life Insurance Company's policy file for E.M. included a Policy Owner Service Request Form reflecting that the policy owner requested a policy loan in the amount of \$103.07 and stating "in consideration of the advance by Lincoln Memorial Life Insurance Company of this requested loan all rights, title and interest in this policy are hereby assigned to said company as sole security for the repayment of the loan with interest subject to the provisions of the policy which were incorporated and made a part hereof." One of these policy terms provided that the proceeds payable at the death of the insured would be reduced by any policy loan and interest. The Policy Owner Service Request form was not executed by E.M. Instead it bore only the computer-generated signature of an NPS employee. Neither E.M. nor Schwarz Funeral Home was aware of the policy loan taken against the policy or was a party to the execution of the Policy Owner Service Request maintained by Lincoln Memorial Life Insurance Company in E.M.'s policy file as its authorization to issue the loan.

On or about January 11, 2007, E.M. died. NPS used funds paid by new customers to pay the policy loan balance after E.M.'s death, thus obligating Lincoln Memorial Life Insurance Company to pay the death benefit in full to NPS as beneficiary of the policy. At the time of E.M.'s death, Lincoln Memorial Life Insurance Company had received only \$2,110.16 in premiums but paid death benefits to NPS in the amount of \$10,242.48 in addition to the previously paid commission payment to NPS of \$1,946.07.

Defendant Randall K. Sutton and others, being engaged in the business of insurance, misappropriated insurance premiums paid by customers to Lincoln Memorial Life Insurance Company through its General Agent, NPS, such as the single-pay premium paid by E.M. in the amount of \$10,242.48.

NPS's misappropriation of single-pay premium payments made by Illinois consumers applying for insurance policies from Lincoln Memorial Life Insurance Company jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis, Texas, on or about May 14, 2008.

C. NPS Operations in Ohio

In Ohio, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Ohio customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance, and the customer was obligated to purchase a life insurance policy from an insurance company licensed to do business in Ohio and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented, however, that the customer would retain ownership of the insurance policy.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Ohio. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed

General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Ohio.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. In those instances when an insurance policy was paid in full, the preneed funeral contract was considered paid in full as well. Most Ohio customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Ohio funeral home insurance agents and forwarded the application and insurance premium to Lincoln Memorial Life Insurance Company. Typically, if the funeral home was designated as a beneficiary of the policy, NPS crossed out that designation before submitting the application to Lincoln Memorial Life Insurance Company. In Ohio, NPS sent the entire insurance premium paid by the customer to Lincoln Memorial Life Insurance Company.

Upon issuance of the insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, often

within the first 100 days after a policy's issuance, NPS took an unauthorized policy loan against the policy. The amount of the policy loan was generally in excess of 90% of the cash surrender value of the insurance policy. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered the policies it had taken loans against. In many instances, those surrendered single-pay whole life insurance policies were replaced with term life insurance with monthly renewable premium obligations that would have to be paid from sources other than the premium paid initially by the customer. If inquiries were made by customers, funeral homes, or even NPS Account Executives regarding the status of the insurance policy, including inquiries regarding the cash surrender value or requests for the policies themselves, persons affiliated with NPS provided incomplete, misleading, and false information regarding the policies in order to conceal this activity.

1. Stipulations Particular to Count 24

Prior to March 2006, Gluvna Shimo Hrmoda Funeral Chapel of Lorain, Ohio entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. James M. Hrmoda also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about March 10, 2006, R.L. entered into an NPS Preneed Funeral Contract sold by Gluvna Shimo Hrmoda Funeral Chapel. The agreed price of the prearranged funeral was \$6,802.81. As required under the prearranged funeral contract and consistent with Ohio law, R.L.

purchased a life insurance policy in the amount of \$6,802.81 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay and R.L. paid a premium of \$6,802.81 with his insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated NPS and Gluvna Shimo Hrmoda Funeral Chapel as the named beneficiaries. The application stated R.L. intended to retain ownership of his policy. James Hrmoda signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received R.L.'s premium payment and forwarded the same amount to Lincoln Memorial Life Insurance Company. Prior to forwarding R.L.'s application for life insurance, NPS crossed out Gluvna Shimo Hrmoda Funeral Chapel as a designated beneficiary, leaving NPS as the only named beneficiary. This alteration to the application was performed without the knowledge or approval of R.L. or Gluvna Shimo Hrmoda Funeral Chapel.

Upon receipt of R.L.'s premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy reflected that R.L. was both the insured and the owner of the insurance policy. The data page also reflected the amount of insurance as \$6,802.81 and a single premium amount of \$6,802.81. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by Lincoln Memorial Life Insurance Company on or about March 20, 2006 was \$6,802.81. Lincoln Memorial Life Insurance Company commission records reflect that a commission payment in the amount of \$1,292.53 was sent on or about March 20,

2006 to its General Agent, NPS. On or about April 10, 2006, "Paid in Full" Certificates, signed by Defendant Randall K. Sutton as President of NPS, were placed in an authorized depository for mail matter in Clayton, Missouri and delivered by the United States Postal Service according to the directions thereon, to both R.L. and Gluvna Shimo Hrmoda Funeral Chapel, certifying that R.L. had completed payment in full to NPS.

On or about June 28, 2006, an unauthorized policy loan was taken against R.L.'s whole life insurance policy in the amount of \$4,169.58—an amount that approached the total cash surrender value of the policy. The loan proceeds from R.L.'s policy were paid to NPS with other unauthorized policy loans taken against other policies on or about June 28, 2006, resulting in a total payment of approximately \$8,939,607.64 from Lincoln Memorial Life Insurance Company to NPS and the Chapter 436 trusts established by NPS.

Lincoln Memorial Life Insurance Company's policy file for R.L. included a Policy Owner Service Request Form reflecting that the policy owner requested a policy loan in the amount of \$4,169.58 and stating "in consideration of the advance by Lincoln Memorial Life Insurance Company of this requested loan all rights, title and interest in this policy are hereby assigned to said company as sole security for the repayment of the loan with interest subject to the provisions of the policy which were incorporated and made a part hereof." One of these policy terms provided that the proceeds payable at the death of the insured would be reduced by any policy loan and interest. The Policy Owner Service Request form was not executed by R.L. Instead it bore only the computer generated signature of an NPS employee. Neither R.L. nor Gluvna Shimo Hrmoda Funeral Chapel was aware of the policy loan taken against the policy or

was a party to the Policy Owner Service Request maintained by Lincoln Memorial Life Insurance Company in R.L.'s policy file as its authorization to issue the loan.

Persons affiliated with NPS, including Defendant Randall K. Sutton, voluntarily and intentionally participated in a scheme to obtain money and property by means of material false representations and promises regarding funds that were to be kept safe and secure in insurance policies purchased by individuals in states such as Ohio. As part of that scheme, such persons made material misrepresentations of fact regarding such insurance policies and NPS's practice of taking unauthorized policy loans against those policies.

Persons affiliated with NPS, including Defendant Randall K. Sutton, knew that the "Paid in Full" Certificates issued and mailed by NPS customers and funeral homes, such as those sent to R.L. and Gluvna Shimo Hrmoda Funeral Chapel on or about April 10, 2006, were intended to lead customers and funeral homes to believe that the funds paid by customers would be kept in insurance as required by state law and as represented by NPS, and to ensure that the customer and funeral home would remain unaware of NPS's practice of taking unauthorized loans against insurance policies sold in Ohio, and elsewhere.

D. NPS Operations in Missouri

In Missouri, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in an FDIC insured bank trust. Missouri customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties and consistent with Missouri law, 80% of the funds paid by a preneed customer would be deposited in a bank trust, with the bank serving as trustee, and all funds deposited would be held in trust according to the terms of the trust agreement and Chapter

436 of the laws of Missouri. Under the applicable law and agreements, NPS could seek disbursements of the deposited trust principal only upon providing proof that the agreed-upon funeral had been provided by the funeral home and that NPS had paid the funeral home for the funeral it provided. Upon providing such proof, the seller would then be entitled to seek reimbursement from the trust principal.

In addition to deposits into trust from individual customers, the preneed funeral trusts established by NPS also received deposits in the form of “rollovers.” “Rollovers” were trust-to-trust transfers by which a funeral home that had deposited customer funds into a Chapter 436 preneed trust entered an agreement with NPS to appoint a successor trustee. The successor trustee would be the bank trustee serving as trustee of the Chapter 436 trust established by NPS. By agreement, the original trustee would be directed to “roll over” funds and assets held in the original trust by depositing those funds and assets with the successor trustee bank, where they were to be held in trust along with deposits from NPS’s other customers. Rollover agreements also specified that the proceeds of the rollover would be invested in insurance within 30 days of the trust receiving the rollover deposit.

NPS represented to the bank trustees that any withdrawals from trust would comply with the trust agreement and Missouri law. Both the trust agreement and Missouri law allowed for investment decisions regarding the trust principal to be made by a registered, independent, and qualified investment advisor designated by the seller who established the trust, provided, however, that (1) title to all investments remain with the trustee and be kept by the trustee, (2) control of the assets would not be divested from the trustee, and (3) the assets would not be

placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in.

From 2000 through 2008, NPS sought and received withdrawals from the preneed trust of funds and assets that were required by its agreements and by the applicable state law to remain in trust. Withdrawals from trust were made under the color of the authority vested with the investment advisor designated by NPS to invest trust funds and assets, Wulf, Bates & Murphy, Inc. Contrary to the representations made to the bank trustee, the investment advisor was neither independent nor directing investments in a manner consistent with Chapter 436. Instead, NPS, through Wulf, Bates & Murphy, Inc., directed the movement of funds from the trust for purposes not authorized by Chapter 436, including investments that did not meet the requirements of Chapter 436 and withdrawals and distributions that were not permitted under the trust agreement or Chapter 436. To the extent that the trust invested funds in whole life insurance policies, those policies were subjected to unauthorized policy loans, unauthorized surrenders, and unauthorized replacements with term life policies. Each of these occurrences had the consequence of diminishing or destroying the value of the insurance policies and thus were not reasonably prudent investments and in fact were not investments at all. As the trust accumulated insurance holdings of negligible value, funds that should have been held in trust were withdrawn and disbursed to NPS and its affiliated companies to the ultimate benefit of NPS and persons affiliated with NPS and the ultimate detriment of those individuals and funeral homes that had funds deposited in trust.

Several FDIC-insured banks were defrauded into believing that Wulf, Bates & Murphy, Inc., having been designated as the investment advisor for the trusts, was qualified to act under

the statute and was comporting its activities with the investment requirements of Chapter 436 of the laws of Missouri. The banks were further defrauded with each trust transfer made pursuant to the direction of co-defendant David R. Wulf, or under the color of the authority of Wulf, Bates & Murphy, Inc. as an independent investment advisor. Persons affiliated with NPS represented to the banks that Wulf, Bates & Murphy, Inc. was independent when they knew it was not, and the misrepresentation was part of the scheme to defraud the banks of the trust property. These representations gained the persons affiliated with NPS access to the trust accounts of the FDIC-insured bank trusts and enabled them to remove assets from the FDIC-insured banks that should have been kept in trust. These misrepresentations resulted in the banks losing title to the insurance policies through unauthorized policy loans, and the trusts permanently being divested of ownership of their whole life insurance policies as a result of mass surrenders. These misrepresentations also resulted in the banks losing non-insurance assets through a series of transfers of funds from the trust to entities engaged in the scheme and controlled by the Defendant Randall K. Sutton and other persons affiliated with NPS.

Throughout the scheme, persons affiliated with NPS concealed from the banks the nature and value of the assets the banks owned and the nature and purpose of withdrawals and disbursements from the trusts. The banks were led to believe that the trusts' principal assets were life insurance policies. Throughout the scheme, persons affiliated with NPS concealed how much actually had been paid into the insurance policies, concealed that policy loans had been taken out against policies the banks owned (and which needed to be repaid in order to prevent the amount of the loan from being deducted from the death benefit), concealed that the banks no longer had title to insurance policies purchased by the trusts, concealed that policies had been surrendered,

concealed that the surrender value of the policies went to pay off policy loans previously disbursed instead of being paid to, and retained by, the owner of the policies, and concealed that the banks owned replacement term insurance policies which (1) had no investment value and (2) had new premium obligations for which there was no source of payment other than new customers of NPS.

The banks were affected by actions of persons affiliated with NPS in that they now face a lawsuit for damages because the value of assets in and held by the banks was dissipated as a result of the scheme to defraud and have had to incur legal fees in defending said lawsuit.¹ This loss to the banks occurred because the assets that should have been kept safe in trust were no longer in trust, and what was in trust (replacement term life policies on which the owner was obligated to pay premiums) had no investment value.

1. Stipulations Particular to Count 7

On or about April 1, 2004 unauthorized policy loans on approximately 33,536 whole life insurance policies were taken against policies owned by a Chapter 436 trust, specifically “Trust IV,” a Missouri preneed trust established by NPS, with said loans resulting in a wire transfer of funds to Trust IV of loan proceeds in the amount of \$3,027,149.00. The unauthorized loans diminished the property held in trust by the FDIC insured bank trustee Allegiant Bank, and served only to advance the fraudulent activity of NPS and pay debts owed by NPS and its affiliated companies. In addition, the unauthorized loans were specifically impermissible in that, as a result of the loans, title to those policies was no longer held by the FDIC insured bank

¹ Jo Ann Howard and Assocs., et al., v. J. Douglas Cassity, et al., Case No. 4:09-cv-01252 ERW (E.D. Mo. 2009).

trustee but was transferred from trust to Lincoln Memorial Life Insurance Company in order to secure repayment of said loans. Many of the loans on these policies were never repaid but were extinguished by the unauthorized surrender of the whole life policies and the unauthorized replacement of those whole life policies with term life insurance. The practice of taking such unauthorized policy loans was known to, and directed by, Defendant Randall K. Sutton, his co-defendants, and other persons affiliated with NPS and was part of a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits assets, securities and other property owned by or under the control of Allegiant Bank by means of materially false and fraudulent pretenses, representations and promises.

2. Stipulations Particular to Count 43

Between November 30, 2000 and July 18, 2001 and thereafter, the parent company of Lincoln Memorial Life Insurance Company, Forever Enterprises, Inc., by and through its President, co-defendant Brent Douglas Cassity and its Chairman of the Board of Directors, co-defendant Howard A. Wittner, was obligated to make payments under a loan agreement and promissory note with Employers Reassurance Corporation ("ERC"), a Kansas company. The agreement and note required installment payments to be made on a yearly basis in amounts ranging from \$1,000,000.00 to \$2,100,000.00, as well as certain agreed upon interest, all of which were due annually on the anniversary date of the note.

In 2005, the source of the ERC installment payment was unauthorized policy loans taken by NPS against individually owned whole life insurance policies issued by Lincoln Memorial Life Insurance to customers in Indiana and Kentucky. In 2006, the source of the ERC installment

payment was funds held in the Chapter 436 trust established by NPS at Bremen Bank and Trust Co. as the result of individual preneed customer deposits and rollover deposits.

In 2007, the installment payment due was \$1,500,000 plus interest. In order to fund the installment payment and with the purpose of defrauding the bank of funds required to be held in trust, on or about July 31, 2007, Defendant Randall K. Sutton, co-defendant David R. Wulf and others caused Bremen Bank to instruct Citizens Bank and Trust in Chillicothe, MO to wire approximately \$170,330 into the trust account at Bremen Bank, constituting the proceeds of a maturing Citizens Bank Certificate of Deposit owned by the trust as the result of a rollover. In addition, and in order to fund the installment payment and with the purpose of defrauding the bank of funds required to be held in trust, on or about August 1, 2007, Defendant Randall K. Sutton, co-defendant David R. Wulf and others caused \$500,000.00 to be wired into the trust account at Bremen Bank from the trust's Caymus Fund account held at Moloney Securities, constituting a partial withdrawal of the trust's investment in a hedge fund whose managing partner was co-defendant David R. Wulf. In addition, and in order to fund the installment payment and with the purpose of defrauding the bank of funds required to be held in trust, on or about August 2, 2007, Defendant Randall K. Sutton, co-defendant David R. Wulf and others caused the wire transfer into the trust account at Bremen Bank of approximately \$900,000.00, constituting a partial withdrawal of investment holdings with Rydex Funds held in the name of and for the benefit of the trust. The Rydex Fund account was also managed by co-defendant David R. Wulf and Wulf, Bates and Murphy, Inc. These transactions into trust were done at the direction of Defendant Randall K. Sutton, co-defendant David R. Wulf, and others such that the trust would have sufficient cash in trust on August 2, 2007 to enable Defendant Randall K.

Sutton, co-defendant David R. Wulf and others to direct cash withdrawals out of trust to pay Forever's debt.

On or about August 2, 2007, Defendant Randall K. Sutton and others caused the sum of \$670,000 to be transferred via a wire transfer of funds from the Chapter 436 trust established by NPS at Bremen Bank and Trust Co. in Saint Louis, Missouri, to a bank account of Forever Enterprises, Inc. at JP Morgan Chase Bank, N.A., in Austin Texas, a financial institution insured by the Federal Deposit Insurance Corporation. Next, on August 6, 2007, Defendant Randall K. Sutton and others caused the sum of \$899,000.00 to be transferred via a wire transfer of funds from same Chapter 436 trust account to the same bank account of Forever Enterprises, Inc., for a total transfer of funds from trust of \$1,569,000. That same day, Defendant Randall K. Sutton and others caused the sum of \$1,784,445.00, which amount included the funds removed from the Chapter 436 trust, to be transferred to ERC to pay the 2007 installment payment of principal and interest. Defendant Randall K. Sutton knew that said funds were required to be kept in trust and prudently invested and instead were impermissibly used for non-investment purposes.

These unauthorized transfers diminished the property held in trust by the FDIC-insured bank trustee Bremen Bank and Trust Co. and served only to advance the fraudulent activity of NPS and pay debts owed by NPS and its affiliated companies. Persons affiliated with NPS, including Defendant Randall K. Sutton, voluntarily and intentionally participated in a scheme to defraud Bremen Bank and Trust Co. and to obtain money, funds, credits, assets, and other property owned by or under the control of Bremen Bank and Trust Co., a financial institution insured by the Federal Deposit Insurance Corporation, by means of material false representations and promises regarding funds that were to be kept safe and secure in trust.

On August 2, 2007, when Defendant Randall K. Sutton engaged in the monetary transaction involving the transfer of \$670,000.00 out of trust, he knew that the funds involved in that transaction constituted the proceeds of criminal activity, in that they constituted the proceeds of unauthorized withdrawals from the Chapter 436 trust and thus were derived from the fraudulent scheme described above. The monetary transactions occurred within the United States and affected interstate commerce. Bremen Bank and Trust Co. was a financial institution as defined in Title 31, United States Code, Section 5312(a)(2) because it was a bank whose deposits were insured by the Federal Deposit Insurance Corporation, and because it was engaged in, and its activities affected, interstate commerce.

5. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the crimes to which the defendant is pleading guilty is:

- as to Count 7, not more than 30 years imprisonment, a fine of not more than \$1,000,000, or both;
- as to Count 24, not more than 20 years imprisonment, a fine of not more than \$250,000, or both;
- as to Count 43, not more than 10 years imprisonment, a fine of not more than \$250,000 or twice the amount of the criminally derived property involved in the transaction, whichever is greater, or both; and
- as to Counts 48, not more than 15 years imprisonment, a fine of not more than \$250,000, or both.

The Court may also impose a period of supervised release of not more than 5 years on Count 7 and not more than 3 years on each of Counts 24, 43, and 48.

6. U.S. SENTENCING GUIDELINES – 2012 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines

that recommend a sentencing range determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions that are supported by the evidence related to the defendant in this case for each of Counts 7, 24, 43, and 48.

a. Chapter 2 Offense Conduct:

(1) Base Offense Level: The parties agree that the base offense level is 7 as found in Sections 2B1.1(a)(1). Pursuant to Application Note 2(C), the base offense level is determined by Count 7 because that count provides for the highest statutory maximum term of imprisonment.²

(2) Specific Offense Characteristics: The parties agree that the following Specific Offense Characteristics apply:

(a) The Government contends that 30 levels should be added pursuant to Section 2B1.1(b)(1)(P), because the loss attributable to the offenses in which the defendant was involved was more than \$400,000,000.00. The defendant disputes the applicability of this Guideline and reserves the right to challenge this enhancement at sentencing.

(b) The parties agree that 6 levels should be added pursuant to Section 2B1.1(b)(2)(C) because the offenses in which the defendant was involved affected more than 250 victims.

(c) The Government contends that 2 levels should be added pursuant to Section 2B1.1(b)(9)(C) because the offenses in which the defendant was involved resulted in the

² Although the base offense level for Count 43 (money laundering) is determined by Section 2S1.1, that count is grouped together with the others pursuant to Section 2S1.1 (Application Note 6) because the other counts constitute the underlying offenses from which the laundered funds were derived. The remaining counts produce a higher total offense level and therefore control pursuant to Section 3D1.3. Count 43 is therefore not considered separately herein.

violation of a prior, specific judicial order not addressed elsewhere in the Guidelines. The defendant disputes the applicability of this Guideline and reserves the right to challenge this enhancement at sentencing.

(d) The parties agree that 2 levels should be added pursuant to Section 2B1.1(b)(10)(C) because the offense involved sophisticated means.

(e) That Government contends that 4 levels should be added pursuant to Section 2B1.1(b)(15)(B)(i) and (iii) because the offense substantially jeopardized the safety and soundness of several financial institutions, including Allegiant Bank, Bremen Bank, Lincoln Memorial Life Insurance Company, and Memorial Services Life Insurance Company, and because the offense substantially jeopardized the solvency or financial security of 100 or more victims. The defendant disputes the applicability of this Guideline and reserves the right to challenge this enhancement at sentencing.

b. Chapter 3 Adjustments:

(1) Vulnerable Victim: The Government contends that 4 levels should be added pursuant to Section 3A1.1(b)(1) and (2) because the defendant knew or should have known that one or more victims of the offense were vulnerable and the offense involved a large number of vulnerable victims. The defendant disputes the applicability of this Guideline and reserves the right to challenge this enhancement at sentencing.

(2) Aggravating Role: The Government contends that 4 levels should be added pursuant to Section 3B.1.1(a) because the defendant acted as an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive. The defendant disputes the applicability of this Guideline and reserves the right to challenge this enhancement at sentencing.

(3) Abuse of a Position of Trust: The parties agree that 2 levels should be added pursuant to Section 3B.1.3 because the offense involved the defendant's abusing a position of public or private trust.

(4) Acceptance of Responsibility: The parties agree that 2 levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility. The parties further agree, and the government so moves, that an additional 1 level should be deducted pursuant to Section 3E1.1(b)(2) because the defendant timely notified authorities of the intention to enter a plea of guilty, thereby permitting the government and the Court to allocate their resources efficiently.

The parties agree that if the defendant does not abide by all of the agreements made within this document, the defendant's failure to comply is grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1. The parties further agree that the defendant's eligibility for a reduction pursuant to Section 3E1.1 is based upon the information known at the present time and that any actions of the defendant which occur or which become known to the government subsequent to this agreement and are inconsistent with the defendant's acceptance of responsibility including, but not limited to criminal conduct, are grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1.

(5) Grouping: The parties agree that all counts should be grouped together pursuant to Section 3D1.2.

c. Estimated Total Offense Level: The Government contends that the Total Offense Level is 58. The defendant disputes the Government's calculation and reserves the right to challenge said Total Offense Level at sentencing.

d. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

e. Effect of Parties' Guidelines Analysis: The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the agreement herein and the parties shall not be permitted to withdraw from the plea agreement. But, if the Court accepts the plea agreement in this case, it is bound by the sentencing agreement in paragraph 2 above.

7. WAIVER OF APPEAL AND POST-CONVICTION RIGHTS:

a. Appeal: The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) Non-Sentencing Issues: The parties waive all rights to appeal all non-jurisdictional, non-sentencing issues, including but not limited to, any issues relating to pretrial motions, discovery, and the guilty plea.

(2) Sentencing Issues: In the event the Court accepts the plea and, in sentencing the defendant follows the sentencing agreement in paragraph 2, then, as part of this agreement, the parties hereby waive all rights to appeal all sentencing issues.

b. Habeas Corpus: The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. Right to Records: The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552(a).

8. OTHER:

a. Disclosures Required by the United States Probation Office: The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or other administrative action against the defendant.

c. Supervised Release: Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of

the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. Mandatory Special Assessment: Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$400.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. Possibility of Detention: The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. Fines, Restitution, and Costs of Incarceration and Supervision: The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration, and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A, an order of restitution is mandatory for all crimes listed in 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the Second Superseding Indictment.

g. Forfeiture: The defendant agrees to forfeit any and all interest he may have in any items seized by law enforcement during the course of their investigation and all items specifically identified in the Second Superseding Indictment (together, the "Subject Property").

The defendant agrees that the Subject Property constitute the proceeds of the scheme to defraud alleged in the Second Superseding Indictment. The defendant also consents to the entry of a money judgment against defendant and in favor of the United States in the total amount of the criminal proceeds received by the co-defendants in the course of the scheme. The defendant consents to the seizure of the Subject Property and hereby forfeits all of the defendant's interest therein. The defendant agrees that the United States may dispose of the Subject Property in any manner authorized by law. The defendant agrees that forfeiture of the Subject Property shall not be treated as satisfaction of or applied to any fine, cost of imprisonment, special assessment, restitution, money judgment, or any other penalty or assessment the Court may impose on the defendant except where required by law or authorized by the United States or its representative.

The defendant agrees not to file a claim in any forfeiture proceeding or otherwise to contest, in any manner, the forfeiture of the Subject Property, including by a motion under Federal Rule of Criminal Procedure 41(g), and hereby withdraws any such pending claim, contest, objection, or other opposition to the forfeiture of the Subject Property. The defendant further agrees not to assist any other individual in contesting the forfeiture of the Subject Property. The defendant agrees to take all steps necessary to transfer title, ownership, and possession of the Subject Property to the United States, including executing any necessary documents and providing truthful testimony and other evidence to rebut the claims of any party claiming an interest in the Subject Property. The defendant agrees to prevent the disbursement of the Subject Property to the extent it remains within the defendant's direct or indirect possession, custody, or control.

The defendant hereby knowingly and intelligently waives any rights the defendant may have (a) for a jury or the Court to determine what of defendant's property is subject to forfeiture, (b) for the Court to explain the forfeiture at the defendant's change of plea hearing, and (c) for the forfeiture to be made part of the oral pronouncement of sentence and included in the judgment. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(4), the defendant consents to the Court's preliminary order of forfeiture becoming final as to him on the date the Court enters its preliminary order of forfeiture.

9. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial

will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

10. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and the agreements, recommendations and stipulations herein. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the offenses specified in sections four and five above.

11. CONSEQUENCES OF POST-PLEA MISCONDUCT:

After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any

term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States, at its option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

12. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects the sentence recommendations therein or those portions of the plea agreement which deal with charges the government agrees to dismiss.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney



STEVEN A. MUCHNICK, #27597MO
Assistant United States Attorney

7/9/13
Date

7/9/13
Date



CHARLES S. BIRMINGHAM, #47134MO
Assistant United States Attorney

7/9/13
Date


RICHARD E. FINNERAN, #60768MO
Assistant United States Attorney
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 20.333
Saint Louis, Missouri 63102
(314) 539-2200

7-8-13
Date


RANDALL K. SUTTON

7-8-13
Date


BURTON H. SHOSTAK
Shostak and Shostak
8015 Forsyth Boulevard
St. Louis, Missouri 63105
(314) 725-3200
Attorney for Defendant

Employer Notifications

324.014. Any board, commission, committee, council, or office within the division of professional registration shall notify any known current employer of a change in a licensee's license and discipline status. An employer may provide a list of current licensed employees and make a request in writing to the board, commission, committee, council, or office within the division of professional registration responsible for the licensee's license, to be notified upon a change in the licensing status of any such licensed employee. Nothing in this section shall be construed as requiring the board, commission, committee, council, or office within the division of professional registration to determine the current employer of any person whose license is sanctioned.