

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED

NOV 18 2010

U. S. DISTRICT COURT  
E. DIST. OF MO.  
ST. LOUIS

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
RANDALL K. SUTTON, )  
SHARON NEKOL PROVINCE, )  
JAMES DOUGLAS CASSITY, a/k/a DOUG )  
CASSITY, )  
BRENT DOUGLAS CASSITY, )  
HOWARD A. WITTNER, and )  
DAVID R. WULF, )  
)  
Defendants. )

No. S2-4:09CR00509 JCH (TCM)

SECOND SUPERSEDING INDICTMENT

COUNT 1

The Grand Jury charges:

1. Beginning on or about sometime prior to 1992, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree together and with each other to commit various offenses against the United States, that is, mail fraud affecting a financial institution, in

violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

MANNER AND MEANS OF THE CONSPIRACY

The allegations of Paragraphs 1 through 41 of Count 2 of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

In violation of Title 18, United States Code, Section 1349.

COUNT 2

The Grand Jury charges:

**A. INTRODUCTION**

1. Beginning on or about sometime prior to 1992, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises from purchasers of prearranged funeral contracts from National Prearranged Services, Inc., funeral homes which did

business with National Prearranged Services, Inc., policy holders of Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, and financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., and which scheme and artifice to defraud affected financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Service, Inc., and knowingly executed and attempted to execute a scheme and artifice to defraud financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of such financial institutions, by means of materially false and fraudulent pretenses, representations, and promises.

2. This scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises was carried out in the following manner:

**B. ENTITIES INVOLVED IN SCHEME**

3. On or about sometime in 1979, with the exact date unknown to the Grand Jury, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, acquired an interest in National Prearranged Services, Inc., a Missouri corporation. National Prearranged Services, Inc. was engaged in the business of selling contracts for prearranged funeral services, which involved the sale for an agreed upon price of funeral services and merchandise to be provided in the future upon the death of the person for whom such services and merchandise were to be provided.

4. On or about sometime in 1980, with the exact date unknown to the Grand Jury, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, transferred ownership of his

interest in National Prearranged Services, Inc., and other assets which he owned or controlled to a trust named RBT Trust for the benefit of his wife and children, including defendant BRENT DOUGLAS CASSITY. On or about September 28, 1990, the wife and children of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, including 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.

5. Among the assets of RBT Trust II was National Heritage Enterprises, Inc., a Missouri corporation. National Heritage Enterprises, Inc. was a holding company which owned controlling interests in various corporations, including National Prearranged Services, Inc., Lincoln Memorial Services, Inc., and Forever Enterprises, Inc.

6. Lincoln Memorial Services, Inc., an Illinois corporation, was primarily used by defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and his wife and children, including defendant BRENT DOUGLAS CASSITY, to make investments. Defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, had complete discretion regarding the investment portfolio and decisions of Lincoln Memorial Services, Inc.

7. Forever Enterprises, Inc., a Texas 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. Forever Enterprises, Inc. also owned various corporations which provided funeral, cemetery, and other related services and products, including Forever Network, Inc., a Missouri corporation.

8. Forever Network, Inc. owned various corporations which provided funeral, cemetery,

and other related services and products, such as Hollywood Forever, Inc., and Forever Marin, Inc., both California corporations; Forever Oak Hill, Inc., and Mount Washington Forever LLC, both Missouri corporations; and Texas Forever, Inc., a Texas corporation.

9. In 2004, RBT Trust II purchased Professional Liability Insurance Company of America, hereinafter referred to as PLICA, a New York medical malpractice insurance company. On or about April 28, 2010, the Supreme Court of New York (New York County) placed PLICA in rehabilitation.

10. On or about May 14, 2008, at the request of the Texas Department of Insurance, the District Court of Travis County, Texas placed Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc. in rehabilitation due to the hazardous financial condition of these companies. A Special Deputy Receiver was subsequently appointed to take possession of the assets of Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc.

**C. DEFENDANTS AND THEIR ROLES IN THE SCHEME**

11. Beginning on or about sometime in 1981, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, defendant RANDALL K. SUTTON served at various times as Chief Financial Officer, Director, and President of National Prearranged Services, Inc.; as Vice President, Chief Executive Officer, and Director of Lincoln Memorial Life Insurance Company; Vice President and Director of Memorial Service Life Insurance Company; and as Treasurer and Assistant Vice President of PLICA. During this period, defendant RANDALL K. SUTTON's duties for National Prearranged Services, Inc. included senior

management responsibilities relating to operations and finances. Defendant RANDALL K. SUTTON also served at various times since 1974 as Chief Financial Officer for the family of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY.

12. Beginning on or about sometime in 1990, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, defendant SHARON NEKOL PROVINCE served at various times as Office Manager, Assistant Secretary, and President of National Prearranged Services, Inc.; Vice President of Lincoln Memorial Life Insurance Company; Vice President of Memorial Service Life Insurance Company; Vice President of Lincoln Memorial Services, Inc.; and a Director of PLICA. During this period, defendant SHARON NEKOL PROVINCE's duties for National Prearranged Services, Inc. included personnel, operations and financial responsibilities.

13. From 1979 to 1982, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, served as an owner and Director of Operations of National Prearranged Services, Inc. After on or about sometime in 1982, with the exact date unknown to the Grand Jury, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, had no official position with National Prearranged Services, Inc., and other companies which were part of RBT Trust II. Nevertheless, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, continued to exercise control over National Prearranged Services, Inc., Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and PLICA. Defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, received compensation by agreement from National Prearranged Services, Inc., and other companies which were part of RBT Trust II.

14. Beginning on or about sometime in 1989, with the exact date unknown to the Grand

Jury, and continuing until on or about May 14, 2008, defendant BRENT DOUGLAS CASSITY, served as Marketing President of National Prearranged Services, Inc., Chief Executive Officer, Chairman, President, and Director of Forever Enterprises, Inc., and Director of Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company. During this period, defendant BRENT DOUGLAS CASSITY's duties for National Prearranged Services, Inc. included senior management responsibilities related to sales, operations and finances.

15. At all times pertinent herein, defendant HOWARD A. WITTNER was an attorney at law who was licensed to practice law in the State of Missouri. Defendant HOWARD A. WITTNER provided personal legal services to defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant BRENT DOUGLAS CASSITY, and also served as trustee of RBT Trust II. Defendant HOWARD A. WITTNER served as Vice President, Secretary and General Counsel of PLICA. Defendant HOWARD A. WITTNER served as a Director of National Prearranged Services, Inc., Forever Enterprises, Inc., Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company, and PLICA. Defendant HOWARD A. WITTNER also provided legal services for National Prearranged Services, Inc., and PLICA.

16. At all times pertinent herein, defendant DAVID R. WULF was registered as an Investment Advisor with the United States Securities and Exchange Commission and the Missouri Secretary of State. Defendant DAVID R. WULF was Chief Executive Officer of the investment firm of Wulf, Bates & Murphy, Inc., whose offices were leased from National Prearranged Services, Inc., and were located in the same office building in Clayton, Missouri as the home office of National Prearranged Services, Inc. On or about June 2, 1988, National Prearranged Services, Inc. appointed Wulf, Bates & Murphy, Inc. as the Investment Advisor for

the prearranged funeral trusts which it established.

**D. STATE REGULATION OF PREARRANGED FUNERAL CONTRACTS**

17. The risk to purchasers of prearranged funeral contracts was that the money which the purchasers provided to sellers of such contracts would not be available when the funeral services were needed which potentially could be many years after the contracts were purchased. The prearranged funeral industry was regulated by state government agencies throughout the United States. The purpose of state regulation of the prearranged funeral services industry was to insure that money provided by purchasers of prearranged funeral services would be available at a later date when the services were needed.

18. Although the particulars of state regulation of the prearranged funeral services industry differed from state to state, one common feature of the various regulatory schemes was that money received from purchasers of prearranged funeral contracts was to be held by independent entities whose activities were monitored by governmental agencies. These independent entities included financial institutions, such as banks, which were regulated by the Federal Deposit Insurance Corporation (FDIC), and state departments of finance, and insurance companies, which were regulated by state departments of insurance.

19. Some states, including Missouri, required that all money received from purchasers of prearranged funeral contracts, less a percentage of which the seller was permitted by state law to retain for the payment of expenses and overhead, was to be held in trust to be invested for the benefit of the purchasers. Other states permitted the purchasers of prearranged funeral contracts to buy a life insurance policy in order to fund the funeral services and merchandise to be



provided under the contract.

**E. MANNER IN WHICH NATIONAL PREARRANGED SERVICES, INC.'S PREARRANGED FUNERAL CONTRACTS WERE CREATED AND ADMINISTERED**

20. An individual who was interested in purchasing a prearranged funeral contract from National Prearranged Services, Inc. would execute a written document which set forth the terms of the contract. As part of the contract, the total price for the funeral services and merchandise was agreed upon, and would remain constant regardless of when the funeral services and merchandise would be needed. A purchaser could pay the agreed upon price either in full, or by periodic installments. The purchaser deposited funds with National Prearranged Services, Inc. to obtain the funeral services and merchandise at the agreed upon price. National Prearranged Services, Inc. agreed to arrange for the funeral with the funeral home designated in the agreement upon the death of the person for whom the contract was purchased.

21. In order to secure the performance of the prearranged funeral contract, a third party received the deposited funds. The third party provisions of the prearranged funeral contract typically were derived from the requirements of the applicable statutes and regulations of the particular state where the prearranged funeral contract was entered into. In Missouri, the purchaser and National Prearranged Services, Inc. agreed that the payments made under the prearranged funeral contract after the initial twenty per cent (20%) were to be deposited into a trust with a financial institution, such as a bank, as trustee. Missouri law provided that the seller of a prearranged funeral contract was permitted to retain for its own use the initial twenty per cent (20%) deposited by the purchaser.

22. In other states, such as Ohio, Illinois, and Tennessee, the purchaser and National

Prearranged Services, Inc. agreed that the purchaser would apply for a life insurance policy on the life of the person for whom the funeral services and merchandise were to be provided that would fund the prearranged funeral contract when the funeral services and merchandise were needed. In these states, the purchaser would execute both a written contract, and an application for a life insurance policy with the understanding that all funds paid under prearranged funeral contract were insurance premium payments to the insurance company which issued the life insurance policy.

23. Beginning on or about January 3, 1983, National Prearranged Services, Inc. entered into agreements with several financial institutions to act as trustees of the various trusts which were established to hold the funds paid by the purchasers of prearranged funeral services who were located in the State of Missouri. The following financial institutions served as trustees of these trusts: United Missouri Bank of Kansas City, N.A., Mark Twain Bank, Bremen Bank and Trust Company, Allegiant Bank, and Marshall & Ilsley Trust Company N.A. At all times while serving as trustees of National Prearranged Service, Inc.'s prearranged funeral trusts, United Missouri Bank of Kansas City, N.A., Mark Twain Bank, Bremen Bank and Trust Company, Allegiant Bank, and Marshall & Ilsley Trust Company N.A. were financial institutions which were insured by the Federal Deposit Insurance Corporation (FDIC).

**F. BOONE COUNTY CONSENT JUDGMENT**

24. Beginning in 1992, the Office of the Missouri Attorney General brought civil lawsuits against National Prearranged Services, Inc. in the Circuit Courts of Cole County, Missouri, and Boone County, Missouri. This litigation culminated in the entry of a Consent Judgment in the Circuit Court of Boone County, Missouri, hereinafter referred to as the "Boone County Consent

Judgment,” on or about February 1, 1994. Under the terms of the Boone County Consent Judgment, all funds received on or after February 1, 1994, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts, excluding certain fees, sold by National Prearranged Services, Inc. to Missouri purchasers, were to be deposited in the form of cash payments into a preneed trust which was to be separate from the existing preneed trusts of National Prearranged Services, Inc. These payments were to be deposited into the trust within forty-five (45) days after receipt by National Prearranged Services, Inc. The trust which was to contain funds from Missouri residents received on or after February 1, 1994 was subsequently referred to as “National Prearranged Services, Inc. Trust IV.”

25. Another provision of the Boone County Consent Judgment provided for the appointment of an accounting firm to monitor National Prearranged Services, Inc.’s compliance with the Boone County Consent Judgment. This court ordered monitoring began shortly after the entry of the consent judgment in 1994, and continued until on or about May 15, 2000, at which time the monitor made its final report to the Circuit Court of Boone County, Missouri.

**G. DEFENDANTS FAILED TO FULLY FUND THE TRUSTS AND INSURANCE COMPANIES WHICH WERE TO HOLD AND INVEST THE MONEY PROVIDED BY PURCHASERS OF PREARRANGED FUNERAL CONTRACTS BY WITHHOLDING MONEY WHICH SHOULD HAVE BEEN PAID INTO SUCH TRUSTS AND INSURANCE COMPANIES AND BY REMOVING MONEY WHICH HAD BEEN PREVIOUSLY PAID INTO SUCH TRUSTS AND INSURANCE COMPANIES**

26. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the trusts and insurance companies

which were to hold money provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc. to be funded in amounts less than the amounts required by the laws in the jurisdictions where National Prearranged Services, Inc. operated. Money provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc. which should have been paid into and maintained by these trusts and insurance companies to be available for the payment of funeral expenses was withheld and removed from these trusts and insurance companies by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, in the following manner:

a. One of the types of investments for money obtained from purchasers of prearranged funeral contracts which was permitted under the laws of many states was individual whole life insurance policies on the lives of the persons for whom prearranged funeral contracts were purchased. In states such as Missouri, where money provided by persons who purchased prearranged funeral contracts was to be held in trust, the purchase of whole life insurance policies was to be made by the trust, as a trust investment, using funds which National Prearranged Services, Inc. was required to deposit into the prearranged funeral trusts which it established. In non-trust states, the purchaser applied directly for an individual whole life insurance policy, and made the premium payment through National Prearranged Services, Inc. The insurance policies which National Prearranged Services, Inc. obtained to provide funding for its prearranged funeral contracts were acquired from Lincoln Memorial Life Insurance Company, and Memorial Service

Life Insurance Company, both of which were part of RBT Trust II, as was National Prearranged Services, Inc.

b. Instead of making the required deposits into trust or forwarding the insurance premiums as paid, National Prearranged Services, Inc. obtained insurance in a manner that allowed it to retain money received from purchasers of prearranged funeral contracts that should have been deposited into trust or paid as a premium to an insurance company. Because National Prearranged Services, Inc., and the insurance companies from whom policies were obtained were controlled by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, National Prearranged Services, Inc. was able to not use all of the money received from purchasers, less amounts which it was able to retain under state law, to purchase insurance policies. The amounts of the premiums that were ultimately sent by National Prearranged Services, Inc. to the insurance companies were substantially less than the amounts which should have either been deposited into the trusts or to the insurance companies. The difference in these amounts was retained by National Prearranged Services, Inc. National Prearranged Services, Inc.'s retention of these funds violated laws of the various states where National Prearranged Services, Inc. sold prearranged funeral contracts, the Boone County Consent Judgment, the terms of the written contracts entered into by the purchasers with National Prearranged Services, Inc., and the applications for insurance policies which were executed by the purchasers, and which specifically designated that all of the money paid to National Prearranged Services, Inc. was premium payments on an insurance policy.

c. National Prearranged Services, Inc. obtained life insurance policies from Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company on behalf of the persons who purchased prearranged funeral contracts. Many of these policies provided that their premiums were to be paid in installment payments over a period of time, even though the purchasers actually paid much more than the amounts of these minimum installment premium payments to National Prearranged Services, Inc. at the time of purchase, and while the prearranged funeral contract was in effect. National Prearranged Services, Inc. retained the difference between the money which it received from the purchasers in non-trust states, and the premiums which it actually paid to Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company in connection with such insurance policies.

d. This difference should have been deposited with the trusts and insurance companies which were to hold the money provided by the purchasers of prearranged funeral contracts from National Prearranged Services, Inc. The retention of these funds prevented the insurance policies from being fully funded, and also required future premium payments to be made from a source other than the trusts and the individual purchasers of the prearranged funeral contract in order to provide a source of funds to reimburse funeral homes for the funeral services and merchandise which they were contractually obligated to provide. The retention of these funds by National Prearranged Services, Inc. violated laws of the various states where National Prearranged Services, Inc. sold prearranged funeral contracts, the Boone County Consent Judgment, the terms of the written contracts between the purchasers and National Prearranged Services, Inc., and the applications for insurance policies which were executed by the purchasers.

e. National Prearranged Services, Inc. initially obtained "whole life insurance"

policies with the money provided by purchasers of prearranged funeral contracts. Whole life insurance is insurance that remains in effect while the insured is alive. One of the features of a whole life insurance policy is that a portion of the premiums is used to fund a cash reserve, which is also referred to as the “cash surrender value” of the policy. This cash surrender value is available to be borrowed by the owner of the policy. However, any money borrowed from a policy’s cash surrender value has the effect of reducing the amount of the death benefit payable upon the death of the insured person by the amount of money borrowed on the policy.

f. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to borrow large amounts of the cash surrender values of these policies. These loans reduced the death benefits which would be available to pay for funeral services and merchandise after the deaths of the purchasers. The loans also caused all rights, title and interest in the policies to be removed from the policy owners, and to be assigned to the insurance companies as security for the repayment of the loans with interest. National Prearranged Services, Inc. had no legal right to borrow the cash surrender values of these insurance policies because the owners of these policies were the trusts and individuals who actually purchased the policies.

g. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R.

WULF, and other persons known and unknown to the Grand Jury, failed to disclose to the purchasers of its prearranged funeral contracts the material fact that National Prearranged Services, Inc. borrowed large amounts of the cash surrender values of the insurance policies which were intended to be the source of the payments for the prearranged funeral services and merchandise which its customers purchased.

h. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, concealed from insurance regulators the practice at National Prearranged Services, Inc. of taking and receiving policy loans from insurance policies issued by Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, without the policy owners' knowledge and consent. The concealment of this practice from insurance regulators included the booked "repayment" of loans taken by National Prearranged Services, Inc. on Ohio policies after receiving an investigation inquiry from the Ohio Department of Insurance. To avoid disclosing the existence of policy loans in Ohio material to the inquiry, and providing documentation pertaining to those loans to regulators, National Prearranged Services, Inc. caused the loans on Ohio policies to be credited as having been paid on Lincoln Memorial Life Insurance Company's books and records by transferring the loans to insurance policies owned by persons who resided in states other than Ohio. National Prearranged Services, Inc. then caused Lincoln Memorial Life Insurance Company to respond to the Ohio Department of Insurance's investigative inquiry by denying the existence of loans taken against Ohio policies issued by Lincoln Memorial Life Insurance



Company, thereby concealing the practice of obtaining policy loans with the intent of avoiding further inquiry and regulatory action.

i. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, purchased large blocks of prearranged funeral contracts from funeral homes in Missouri that had previously entered into prearranged funeral contracts with their customers. These purchases were commonly referred to as “roll-overs” because the prearranged funeral contracts were “rolled over” from the prearranged funeral trusts established by the originating funeral homes to the prearranged funeral trusts established by National Prearranged Services, Inc. National Prearranged Services, Inc. obtained these roll-overs by falsely and fraudulently representing to the originating funeral homes that the assets and funds in these accounts would be invested in life insurance policies. However, only a small portion of the funds and assets rolled over into the prearranged funeral trusts established by National Prearranged Services, Inc. was actually used to obtain life insurance policies on the lives of the originating funeral homes’ customers. Instead, Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the funds and assets rolled over to be removed from the original funeral homes’ prearranged funeral trusts, and transferred to entities ultimately owned and controlled by RBT Trust II, such as Lincoln Memorial Services, Inc., and Forever Enterprises, Inc. Funds which

RBT Trust II used to purchase PLICA included funds obtained from roll-overs.

j. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused large amounts of money to be removed from National Prearranged Services, Inc. Trust IV, and transferred to entities ultimately owned and controlled by RBT Trust II, such as Lincoln Memorial Services, Inc., and Forever Enterprises, Inc. Some of the money removed from the prearranged funeral trusts established by National Prearranged Services, Inc. was used to purchase shares of publicly traded corporate stocks of corporations such as Arch Communications Group, Dell Computer Corporation, Consecro, Inc., and E-Trade Group, Inc. from Forever Enterprises, Inc. The values of these stocks had declined substantially shortly before these purchases. The amounts paid for these stocks by National Prearranged Services, Inc. Trust IV were their values before the decline in the stock prices, rather than the substantially lower prices for which such stocks could have been obtained on the open market at the time of such purchases. The effect of these stock purchases was to transfer the losses incurred by the stock market decline in 2000 from Forever Enterprises, Inc. to National Prearranged Services, Inc. Trust IV. Other money removed from prearranged funeral trusts established by National Prearranged Services, Inc. was used to purchase PLICA, to purchase commercial real estate for affiliated companies, to finance business projects for affiliated companies, to enable defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, to purchase residential real estate, and to pay personal expenses of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and members of his family, including

defendant BRENT DOUGLAS CASSITY.

k. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to surrender many of the life insurance policies which it did not own in order to obtain the cash surrender values of these policies. The surrendering of these life insurance policies avoided the need to pay premium payments on the policies in the future, and eliminated the obligation to repay loans which had been obtained on such policies. Loans against surrendered policies were recorded by Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company as “repaid” at the time of surrender even though no actual payment was received from National Prearranged Services, Inc. The effect of surrendering life insurance policies was to deprive the trusts which owned the policies of the assets they had invested in, and to deprive individual purchasers of the insurance policies of the death benefits necessary to fund their prearranged funeral contracts even though they had paid the premiums as agreed.

l. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused many of the whole life insurance policies which were obtained with funds provided by persons who purchased prearranged funeral contracts, and then subsequently surrendered, to be replaced with “term life

insurance” policies. Term life insurance is insurance which provides death benefits in the event that the insured individual dies within the particular period of time in which the insurance policy is in effect. Unlike a whole life insurance policy which has a cash surrender value, a term life insurance policy has no present cash surrender value because it develops value only upon the death of the insured during the term of the policy. The premiums for term life insurance policies are usually substantially less than the premiums for whole life insurance policies because term life insurance policies do not accumulate a cash surrender value during the duration of the policies.

m. The use of term life insurance policies as the source of funds for the payment of the purchasers’ funeral expenses required that National Prearranged Services, Inc. continue to pay the premiums on the policies as they came due, and, upon the expiration of the terms of such policies, obtain and pay the premiums on new insurance policies on the lives of the purchasers until the times of their deaths in order to keep the term life insurance policies in force until the time of death. Any premiums which would be used to purchase such term life insurance would have to come from a source other than the original purchasers of the prearranged funeral contracts. The continued viability of this term insurance coverage was totally dependent on National Prearranged Service, Inc.’s ability and willingness to pay premiums in the future, its renewal of the term insurance policies as they expired, and on the solvency of Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company, both of which were part of the same corporate family as National Prearranged Services, Inc.

n. From on or about November 1, 2007, and continuing until on or about May 14, 2008, when National Prearranged Services, Inc. was placed in rehabilitation in Texas, National

Prearranged Services, Inc. did not deposit any of the money which it received from purchasers of prearranged funeral contracts who resided in Missouri into any of the prearranged funeral trusts which it established to hold and invest money received from Missouri purchasers. Instead, National Prearranged Services, Inc. only deposited term life insurance policies into such trusts. The premiums for these term life insurance policies were substantially less than the amounts which National Prearranged Services, Inc. received from its Missouri customers, less the twenty percent (20%) which it was entitled to retain under Missouri law. National Prearranged Services, Inc. retained for its own use the difference between what should have been deposited to such trusts, and the premiums for the term life insurance policies which it purchased.

o. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to use money which was obtained from new purchasers of prearranged funeral contracts to pay premiums of insurance policies on the lives of previous purchasers of prearranged funeral contracts, and also to reimburse funeral homes for the cost of funeral services and merchandise for previous purchasers of prearranged funeral contracts.

p. In both trust and non-trust states, National Prearranged Services, Inc., provided a "Paid in Full Certificate" to the purchaser and to the funeral home designated to provide the funeral services and merchandise when the purchaser made full payment as required under the prearranged funeral contract. In trust states, the "Paid in Full Certificate" referenced the funeral home as a full participant in the "Permanent Trust Fund" established under the laws of the

applicable state. In non-trust states, the "Paid in Full Certificate" stated that the purchaser was entitled to "all benefits and full performance described in the prearranged funeral contract."

q. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to present "Evidence of Insurance" forms to the banks which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc. These forms falsely and fraudulently misrepresented the cost, value and status of insurance owned by the banks which served as trustees, and were intended to mislead the banks about the existence of policy loans, the replacement of whole life insurance policies with term life insurance policies, and other actions taken and caused by National Prearranged Services, Inc. which affected the cost, value, and status of assets which were owned by the banks.

r. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, made the materially false and fraudulent representation to its purchasers that their prearrangement funds will be kept in a secure trust or insurance policy in order to pay for their funerals. In trust states, customers were promised that the funds they paid would be deposited into a trust with a financial institution, such as a bank, serving as trustee in accordance with state law. The deposits made to the trust would secure the performance of the prearranged funeral contract. In non-trust states, customers were

promised that if they agreed to purchase a life insurance policy and pay the required premiums, then the death benefits from the life insurance policy would fund the prearranged funeral contract. The trusts established by National Prearranged Services, Inc. eventually became unable to pay the obligations which it promised in its prearranged funeral contracts because defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, underfunded these trusts, and also caused the assets of the trusts to be transferred to other entities which were part of RBT Trust II. In non-trust states, the insurance policies which were purchased to secure the performance of the prearranged funeral contracts were unable to do so because defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the value of these life insurance policies to be reduced and ultimately eliminated as a result of their failure to send all of the premiums received from purchasers to the insurance companies, policy loans which lowered the amount of available death benefits, and their decision to surrender large amounts of insurance policies.

**H. USE OF AN INVESTMENT ADVISOR WHOSE INDEPENDENCE WAS COMPROMISED**

27. At all times pertinent herein, Missouri law provided that when the principal and interest in a prearranged funeral trust exceeded two hundred fifty thousand dollars (\$250,000),

investment decisions regarding the principal and undistributed income may be made by a federally registered or Missouri-registered independent qualified investment advisor designated by the seller who established the prearranged funeral trusts. Missouri law further provided that title to all investment assets shall remain with the trustee, that the investment assets shall not be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in, and that a trustee shall exercise such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their own funds, considering the probable income therefrom as well as the probable safety of their capital.

28. At all times pertinent herein, the trust agreement for the prearranged funeral trusts established in Missouri by National Prearranged Services, Inc. provided that National Prearranged Services, Inc. may appoint an independent qualified investment advisor so long as the requirements of Missouri law are met.

29. At all times pertinent herein after February 1, 1994, the Boone County Consent Judgment required that any investment advisor appointed by National Prearranged Services, Inc. as the investment advisor to the prearranged funeral trusts established in Missouri by National Prearranged Services, Inc. must be wholly independent of National Prearranged Services, Inc.

30. Pursuant to this authority, on or about June 2, 1988, National Prearranged Services, Inc. appointed Wulf, Bates & Murphy, Inc., of which defendant DAVID R. WULF was Chief Executive Officer, as the independent investment advisor for all funds and investments held in prearranged funeral trusts established by National Prearranged Services, Inc. Wulf, Bates &



Murphy, Inc. served as the investment adviser for the prearranged funeral trusts established by National Prearranged Services, Inc. until May 14, 2008, when National Prearranged Services, Inc. was placed in rehabilitation by the Travis County, Texas District Court.

31. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to make the materially false and fraudulent representation that Wulf, Bates & Murphy, Inc., of which defendant David R. Wulf was Chief Executive Officer, was an independent investment advisor.

32. The representation by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, that Wulf, Bates & Murphy, Inc. was an independent investment advisor was materially false and fraudulent because the independence of defendant DAVID R. WULF and Wulf, Bates & Murphy, Inc. from National Prearranged Services, Inc. was compromised in the following ways:

a. Between 2002 and 2008, Wulf, Bates & Murphy, Inc. of which defendant DAVID R. WULF was Chief Executive Officer, received approximately \$1,000,000 in fees for investment advice and services from National Prearranged Services, Inc., Forever Enterprises, Inc., Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company, and PLICA, all of which were companies that were part of RBT Trust II. This amount included

the \$15,000 per year in fees which Wulf, Bates & Murphy, Inc. received from serving as the investment advisor for prearranged funeral trusts established by National Prearranged Services, Inc.

b. The offices of defendant DAVID R. WULF, and Wulf, Bates & Murphy, Inc. were leased from National Prearranged Services, Inc., and were located in the same office building in Clayton, Missouri, in which National Prearranged Services, Inc. maintained its offices.

c. Defendant DAVID R. WULF, and other employees of Wulf, Bates & Murphy, Inc. obtained their health insurance benefits through National Prearranged Services, Inc.'s employee benefits plan.

d. Wulf, Bates & Murphy, Inc. received compensation from Memorial Service Life Insurance Company and Lincoln Memorial Life Insurance Company for its work as investment advisor for those companies on a quarterly basis based on a percentage of the aggregate investment account holdings of the insurance companies. These insurance companies issued almost all of the life insurance policies which were purchased and owned by the prearranged funeral trusts established by National Prearranged Services, Inc., and which were purchased and owned by individuals who purchased prearranged funeral contracts from National Prearranged Services, Inc.

e. Wulf, Bates & Murphy, Inc. received compensation from PLICA for its work as investment advisor for PLICA on a quarterly basis based on a percentage of the aggregate investment account holdings of PLICA. Monies used by RBT Trust II to purchase PLICA came from National Prearranged Services, Inc. Trust IV for which Wulf, Bates & Murphy served as the

investment advisor.

f. Defendant DAVID R. WULF personally owned stock of Forever Enterprises, Inc., which owned, among other things, Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company. These insurance companies issued almost all of the life insurance policies which were purchased and owned by the prearranged funeral trusts established by National Prearranged Services, Inc., and individuals who purchased prearranged funeral contracts from National Prearranged Services, Inc.

g. Defendant DAVID R. WULF was a partner of Caymus Fund, L.P., a hedge fund into which he caused money from National Prearranged Services, Inc. Trust IV to be invested. Defendant DAVID R. WULF, and Wulf, Bates & Murphy received commissions, fees, and incentive payments as a result of funds which were invested into Caymus Fund, L.P.

h. On or about February 1, 1994, the same day that the Boone County Consent Judgment against National Prearranged Services, Inc. was entered, and specified that the investment advisor be wholly independent of National Prearranged Services, Wulf, Bates & Murphy, Inc., in its capacity as the Investment Advisor for the prearranged funeral trusts established by National Prearranged Services, Inc., and pursuant to a written document executed by defendant DAVID R. WULF, appointed defendant RANDALL K. SUTTON, who was President of National Prearranged Services, Inc. and Vice President of Lincoln Memorial Life Insurance Company at the time, to perform ministerial acts on a daily basis which would otherwise require the approval of Wulf, Bates & Murphy, Inc.

i. This delegation of ministerial functions to defendant RANDALL K. SUTTON was utilized by persons affiliated with National Prearranged Services, Inc. including defendant

RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, to control the acquisition and disposition of the assets in the prearranged funeral trusts established by National Prearranged Services, Inc. After this delegation of authority to defendant RANDALL K. SUTTON, persons affiliated with National Prearranged Services, Inc., including defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, were able to determine which insurance policies on the lives of purchasers of prearranged funeral contracts from National Prearranged Services, Inc. to pay premiums on, to determine how much to pay in premiums, to obtain policy loans and to decide the amount, if any, of the loans to repay, to surrender insurance policies, to replace surrendered whole life insurance policies with term life insurance policies, and to take all of these actions without the policy owners' knowledge and consent.

j. Persons affiliated with National Prearranged Services, Inc., including defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant HOWARD A. WITTNER, drafted documents for defendant DAVID R. WULF to sign in his capacity as the independent investment advisor for the prearranged funeral trusts established by National Prearranged Services, Inc. Among the documents which were drafted by persons affiliated with National Prearranged Services, Inc. which defendant DAVID R. WULF signed were letters to

regulatory agencies and insurance companies, and an affidavit which was used in an arbitration proceeding involving National Prearranged Services, Inc.

k. On or about November 1, 1999, Wulf, Bates & Murphy, Inc., National Prearranged Services, Inc., and Allegiant Bank, the trustee at the time of prearranged funeral trusts established by National Prearranged Services, Inc., entered into a written agreement to transfer custody of all life insurance policies obtained with money provided by persons who purchased prearranged funeral contracts. The signatories to this document were defendant DAVID R. WULF, on behalf of Wulf, Bates & Murphy, Inc., defendant RANDALL K. SUTTON, on behalf of National Prearranged Services, Inc., and the President of Allegiant Trust Company, a Division of Allegiant Bank, on behalf of Allegiant Bank. This agreement further provided that defendant RANDALL K. SUTTON, and defendant SHARON NEKOL PROVINCE, were among the employees of National Prearranged Services, Inc. who were its authorized agents to take custody of the life insurance policies which were being held as investments in the prearranged funeral trusts which National Prearranged Services, Inc. established. This agreement violated the requirement of Missouri law that all property in preneed trusts shall be held, administered, and invested by the trustee, and circumvented the laws governing prearranged funeral contracts by permitting the seller of prearranged funeral contracts to acquire possession of the funds provided by the purchasers of such contracts. This agreement was provided to Bremen Bank and Trust Co. when it agreed to serve as successor trustee for the prearranged funeral trusts established by National Prearranged Services, Inc.

l. On or about November 5, 1999, defendant DAVID R. WULF sent a letter to the President of Allegiant Trust Company which provided that Allegiant Bank take direction from

representatives of either Wulf, Bates & Murphy, Inc., or National Prearranged Services, Inc. with regard to the depositing and distribution of assets, and settlement of trades. This letter also violated Missouri law because it permitted National Prearranged Services, Inc., a seller of prearranged funeral contracts, to control and manage the property obtained from purchasers in prearranged funeral trusts which it established. This letter was provided to Bremen Bank and Trust Co. when it agreed to serve as successor trustee for the prearranged funeral trusts established by National Prearranged Services, Inc.

m. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to present wire transfer requests to the banks which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc. to transfer money out of such trusts. These wire transfer requests falsely and fraudulently represented the material fact that a copy of the wire transfer request had been sent to defendant DAVID R. WULF, when, in fact, defendant DAVID R. WULF was not copied on such wire transfer requests, and did not require and expect to be copied on wire transfer requests. Instead, defendant DAVID R. WULF permitted National Prearranged Services, Inc. to use the statutory authority vested in Wulf, Bates & Murphy, Inc. as the independent investment advisor to direct the banks which served as trustees to make transfers and distributions from the trusts.

33. The trustees of the National Prearranged Services, Inc. prearranged funeral trusts would have been responsible for the investment of all of the trust deposited money which the

purchasers of prearranged funeral contracts in trust states, such as Missouri, paid to National Prearranged Services, Inc., less any amounts which National Prearranged Services, Inc. was entitled to retain under state law, if an independent investment advisor had not been appointed. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, enabled persons affiliated with National Prearranged Services, Inc. to assume full power to administer, manage, control, remove, and use for their own benefit all of the assets in the prearranged funeral trusts established by National Prearranged Services, Inc. as well as the money which should have been deposited into such trusts, but which was not, by appointing Wulf, Bates & Murphy, Inc., which was not independent as required by Missouri law, as the investment advisor for the prearranged funeral trusts established by National Prearranged Services, Inc.

34. The appointment of Wulf, Bates & Murphy, of which defendant DAVID R. WULF was Chief Executive Officer, enabled defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, to cause money in prearranged funeral trusts established by National Prearranged Services, Inc. to not be invested in accordance with the standards for investments in prearranged funeral trusts as provided by Missouri law, but rather, enabled defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons affiliated with National Prearranged Services, Inc., known and unknown to the Grand Jury, to transfer money from such trusts to entities which were part of RBT Trust II, such as Lincoln Memorial Services, Inc., and Forever Enterprises, Inc.

I. **DEFENDANTS' FALSE REPRESENTATION OF A MATERIAL FACT AND FAILURE TO DISCLOSE MATERIAL FACTS AFFECTED THE FINANCIAL INSTITUTIONS WHICH SERVED AS TRUSTEES OF PREARRANGED FUNERAL TRUSTS ESTABLISHED BY NATIONAL PREARRANGED SERVICES, INC.**

35. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, falsely represented the material fact that Wulf, Bates & Murphy, Inc. was an independent investment advisor as required by Missouri law. This false representation of a material fact to the trustees caused the trustees to transfer their investment authority over trust assets to Wulf, Bates & Murphy, Inc., an investment advisor which was barred from exercising investment authority over prearranged funeral trusts under Missouri law because of the lack of independence of defendant DAVID R. WULF, and Wulf, Bates & Murphy, Inc. from National Prearranged Services, Inc.

36. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, failed to disclose to the trustees of the



prearranged funeral trusts established by National Prearranged Services, Inc. the material fact that under the terms of the Boone County Consent Judgment, all funds received on or after February 1, 1994, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts sold by National Prearranged Services, Inc. to Missouri purchasers, were to be deposited in the form of cash payments into a prearranged funeral trust within forty-five (45) days after receipt. The failure to disclose this material fact prevented the trustees from requiring that all funds, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts, be deposited in the form of cash payments into prearranged funeral trusts established by National Prearranged Services, Inc. within forty-five (45) days after receipt.

37. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, failed to disclose to the purchasers of prearranged funeral contracts from National Prearranged Services, Inc., funeral homes which did business with National Prearranged Services, Inc., policy holders of Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., and state regulators of insurance and prearranged funerals, the material fact that large amounts of money were removed from prearranged funeral trusts established by National Prearranged Services, Inc., and used for purposes other than the payment of funeral services and merchandise, and investments authorized under Missouri law.

38. Allegiant Bank, Bremen Bank and Trust Co., and Marshall & Ilsley Trust Company,

N.A., all of which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., were affected by the false and fraudulent misrepresentations of material facts, and failure to disclose material facts by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, in the following respects:

a. Missouri law provided that a trustee of a prearranged funeral trust was subject to demand from a purchaser of a prearranged funeral contract, and to a provider of funeral services and merchandise, such as a funeral home, if the seller of the contract failed to pay for the funeral services and merchandise which had been previously purchased;

b. A financial institution such as a bank which served as a trustee of a prearranged funeral trust in Missouri had statutory and fiduciary obligations to the purchasers and providers, and the failure of a trustee to perform those obligations may subject the financial institution to liability;

c. The receiver for National Prearranged Services, Inc., Memorial Service Life Insurance Company, and Lincoln Memorial Services, Inc., and various health and life insurance guarantee associations filed a lawsuit against Bremen Bank and Trust Company, National City Bank, which acquired Allegiant Bank through merger, and Marshall & Ilsley Trust Company N.A. for damages and other relief in connection with the service of Bremen Bank and Trust Co., Allegiant Bank, and Marshall & Ilsley Trust Company N.A. as trustees of prearranged funeral trusts established by National Prearranged Services, Inc.

**J. DEFENDANT'S CONTROL OVER THE MONEY PROVIDED BY PURCHASERS OF PREARRANGED FUNERAL CONTRACTS ENABLED THEM TO USE THIS MONEY FOR THEIR OWN BENEFIT**

39. The control over the assets in the National Prearranged Services, Inc. prearranged funeral trusts, as well as the money provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc., the ownership and control over Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, the money paid as premiums for insurance policies purchased from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company, and funds and assets which were acquired as a result of "roll-overs," by Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, enabled National Prearranged Services, Inc. to engage in the following activities in which it would not have been able to engage in the absence of such control:

a. to retain the difference between the cost of the premiums for insurance policies on the lives of purchasers of prearranged funeral contracts, and the amounts which should have been deposited into prearranged funeral trusts established by National Prearranged Services, Inc., and paid to insurance companies in the form of premium payments, and to do so without the knowledge and consent of the trustees and the purchasers;

b. to borrow money from these insurance policies in order to receive their cash surrender values, and to receive the proceeds of such policy loans without the knowledge and

consent of the trustees, and the purchasers who owned the policies;

c. to surrender whole life insurance policies which were purchased and owned by trusts and individual policy holders;

d. to retain money paid as insurance premiums;

e. to authorize the purchase of term life insurance policies, which had no cash surrender value, to replace surrendered whole life insurance policies without the knowledge and consent of the trustees and purchasers;

f. to cause the transfer of large amounts of money from prearranged funeral trusts established by National Prearranged Services, Inc. for purposes other than the payment of funeral services and merchandise, and investments authorized under Missouri law.

**K. MEANS BY WHICH DEFENDANTS EXECUTED THEIR SCHEME TO DEFRAUD**

40. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, utilized various means to execute their scheme to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises. Some of the means by which the scheme was executed, are as follows:

a. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R.

WULF, and other persons known and unknown to the Grand Jury, failed to notify the financial institutions which were trustees of the trusts which were established to hold and invest the funds which the purchasers of prearranged funeral contracts paid to National Prearranged Services, Inc. of the provisions of the Boone County Consent Judgment. Under the terms of the Boone County Consent Judgment, all funds received on or after February 1, 1994, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts sold by National Prearranged Services, Inc. to Missouri purchasers, were to be deposited in the form of cash payments into a preneed trust which was to be separate from the existing preneed trusts of National Prearranged Services, Inc. within forty-five (45) days after receipt.

b. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, obtained access to the funds which were held in trust for purchasers of prearranged funeral services from National Prearranged Services, Inc. by means of the delegation of ministerial investment advisor responsibilities from Wulf, Bates & Murphy, Inc. to defendant RANDALL K. SUTTON, the transfer of custody of all life insurance policies purchased with funds provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc., and the instructions to the trustees to take direction from representatives of National Prearranged Services, Inc., including defendant RANDALL K. SUTTON, and defendant SHARON NEKOL PROVINCE, and Wulf, Bates & Murphy, Inc.

c. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL

PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused promissory notes and debentures issued by entities which were part of RBT Trust II to be deposited and booked as assets of the prearranged funeral trusts which National Prearranged Services, Inc. established. These promissory notes and debentures were intended to replace assets which should have been held in such trusts.

d. In some instances, promissory notes which reflected a promise to repay the amounts removed from the National Prearranged Services, Inc.'s prearranged funeral trusts were created close to the time when the money was removed from the trusts. These promissory notes reflected promises to make payments on the debts reflected in the notes in designated amounts, at designated times, and at designated interest rates. In other instances, back dated promissory notes which reflected a promise to repay the amounts removed from the National Prearranged Services, Inc.'s prearranged funeral trusts were created after significant amounts of time, such as more than one year, had elapsed after the money had been removed from the trusts.

e. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, utilized assets of prearranged funeral trusts established by National Prearranged Services, Inc. to make some of the payments on these promissory notes. In other instances, payments were not made as required under the terms of these promissory notes.

f. In other situations, financial instruments entitled “debentures,” which are unsecured promises to repay debt that were issued by entities which were part of RBT Trust II, were deposited and booked as assets of the prearranged funeral trusts which National Prearranged Services, Inc. established to replace assets which should have been held in such trusts. There were also situations when assets were removed from such trusts in which no financial instruments, such as promissory notes and debentures, were ever deposited and booked as assets of the prearranged funeral trusts which National Prearranged Services, Inc. established to replace assets which should have been held in such trusts.

g. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused material information relating to the persons for whom prearranged funeral contracts were purchased, such as the dates of birth of such persons, and the amounts paid in connection with such contracts, to be changed in Prearranged Funeral Agreements and applications for life insurance policies so that National Prearranged Services, Inc. could retain a larger amount of the payments made by the purchasers of prearranged funeral contracts. This was done by having employees of National Prearranged Services, Inc. white out and cross out the dates of birth of such persons, and the amounts paid in connection with such contracts, and replace those dates and amounts with false dates and amounts.

h. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant

BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the names of the beneficiaries and assignees of the life insurance policies which were purchased with funds provided by the purchasers of prearranged funeral contracts to be changed from the purchasers and the funeral homes which were to provide funeral services and merchandise to National Prearranged Services, Inc. without the knowledge and consent of such beneficiaries and assignees in an attempt to legitimize the misappropriation of funds from these policies. This was done by having employees of National Prearranged Services, Inc. white out and cross out the names of the designated beneficiaries and assignees, and replace those names with National Prearranged Services, Inc.

41. In April 2008, shortly before National Prearranged Services, Inc. was placed in rehabilitation by the District Court of Travis County, Texas, National Prearranged Services, Inc.'s approximate obligations under active prearranged funeral contracts exceeded \$600,000,000. After taking into account insurance and trust assets expected to be available to pay for future funeral services and merchandise under prearranged funeral contracts sold by National Prearranged Services, Inc., the approximate loss to purchasers, funeral homes, and state insurance guarantee associations attributable to the scheme set forth above may range from \$450,000,000 to \$600,000,000.

42. On or about December 1, 2000, in the Eastern District of Missouri,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and



DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute 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, by providing Allegiant Bank with a Letter of Direction to sell two thousand five hundred (2,500) shares of Dell Computer Corporation stock which were owned by Forever Enterprises, Inc. to National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, for \$124,837.50, when such stock could have been purchased by National Prearranged Services, Inc. Trust IV on the open market for substantially less money.

In violation of Title 18, United States Code, Section 1344.

COUNT 3

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about June 22, 2001, in the Eastern District of Missouri,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute 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, by instructing Allegiant Bank, to wire transfer \$900,000.00 from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Wittner, Poger, Rosenblum, Spewak, & Maylack, P.C., at First National Bank of St. Louis, Clayton, Missouri, so that Rhonda L. Cassity, Inc., a corporation owned by the wife of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, could purchase residential real estate located in Nantucket, Massachusetts.

In violation of Title 18, United States Code, Section 1344.

COUNT 4

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about January 22, 2002, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute 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, by instructing Allegiant Bank, to wire transfer \$135,000.00 from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Hollywood Forever, Inc., at Bank of America, Hollywood, California, in order to provide funds for Forever Enterprises, Inc.'s business projects.

In violation of Title 18, United States Code, Section 1344.

COUNT 5

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. Beginning on or about January 8, 2004, and continuing until on or about January 15, 2004, in the Eastern District of Missouri,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, through a series of transactions, knowingly executed and attempted to execute 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, by instructing Allegiant Bank to execute wire transfers totaling \$4,600,000 from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank,

St. Louis, Missouri, to an account of Lincoln Memorial Services, Inc., at Truman Bank, St. Louis, Missouri, in order to provide money for the purchase of PLICA by RBT Trust II.

In violation of Title 18, United States Code, Section 1344.

COUNT 6

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about March 23, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute 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, by instructing Allegiant Bank to wire transfer \$582,592.60 from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Hollywood Forever, Inc., at Bank of America, Hollywood, California, in order to provide funds for Forever Enterprises, Inc.'s business projects.

In violation of Title 18, United States Code, Section 1344.

COUNT 7

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about April 1, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute 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, by obtaining policy loans from Lincoln Memorial Life Insurance Co. in the amount of \$3,027,149.00 on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, without the knowledge and consent of Allegiant Bank, the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies.

In violation of Title 18, United States Code, Section 1344.

COUNT 8

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about October 26, 2004, in the Eastern District of Missouri,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co., a financial institution 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 Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by instructing Bremen Bank and Trust Co. to wire transfer \$49,000.00 from National Prearranged Services, Inc. Trust IV to a bank account of National Prearranged Services, Inc. at Jefferson Bank & Trust in St. Louis, Missouri in order to pay expenses of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Section 1344.

COUNT 9

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about October 5, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co., 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 Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by obtaining policy loans from Lincoln Memorial Life Insurance Co. in the amount of \$2,138,516.77 on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, without the knowledge and consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies.

In violation of Title 18, United States Code, Section 1344.

COUNT 10

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. Beginning on or about July 31, 2007, and continuing until on or about August 6, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co.,

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 Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by causing assets which were part of National Prearranged Services, Inc. Trust IV to be liquidated, and transferring \$1,569,000 of the net proceeds of such liquidation to Forever Enterprises, Inc. in order to pay a debt of Forever Enterprises, Inc.

In violation of Title 18, United States Code, Section 1344.

COUNT 11

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about September 26, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co., 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 Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by causing the surrender of approximately 56,514 life insurance policies which included policies which were part of National Prearranged Services, Inc. Trust IV,



without the consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such whole life insurance policies.

In violation of Title 18, United States Code, Section 1344.

COUNT 12

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about December 10, 2002, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,800,000, from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A. in Austin, Texas, to an account of National Prearranged Services, Inc. Trust IV, at Allegiant Bank, St. Louis, Missouri, which constituted proceeds of loans on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, and which were obtained without the knowledge and consent of Allegiant Bank, the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies, and which affected Allegiant Bank, a financial

institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 13

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about September 25, 2003, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$600,000.00, between an account of Lincoln Memorial Services, Inc. at Truman Bank, St. Louis, Missouri, to an account of Lincoln Memorial Services, Inc., at Harris Trust and Savings Bank, Chicago, Illinois, which constituted assets that were previously wire transferred from National Prearranged Services, Inc. Trust IV, and which affected Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 14

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about January 20, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$187,843.19, from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A. in Austin, Texas, which constituted the only portion of the assets valued at \$2,419,395.74 that were transferred to National Prearranged Services, Inc. in connection with its purchase of existing prearranged funeral contracts from Price Funeral Home, Maryville, Missouri, that was used to pay premiums on life insurance policies that were intended to provide a source of funding for the death benefits which were to be provided by such contracts, and which affected Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 15

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about October 28, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,451,089.10, from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A. in Austin, Texas, to an account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, which constituted proceeds of loans on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, and which were obtained without the knowledge and consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 16

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about August 3, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,700,000.00, from an account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, to an account of Forever Enterprises, Inc. at JP Morgan Chase Bank, Houston, Texas, to pay a debt owed by Forever Enterprises, Inc., and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 17

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about October 6, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, 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, which constituted proceeds of loans on life insurance policies on the lives of non-Missouri customers of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 18

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. Beginning on or about December 1, 2006, and continuing until on or about January 23, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$283,191.55, from an account of Lincoln Memorial Life Insurance Company, at Chase Bank of Texas, N.A., Austin, Texas, to an account of National Prearranged Services, Inc. Trust III, at Bremen Bank and Trust Co., St. Louis, Missouri, which constituted proceeds of loans on life insurance policies which were part of National Prearranged Services, Inc. Trust III, which were obtained without the knowledge and consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust III, which owned and had title to such insurance policies, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 19

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about May 14, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,803,057.41, from an account of Lincoln Memorial Life Insurance Company at Chase Bank of Texas, N. A. Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, Missouri, which contained the proceeds of loans on insurance policies on the lives of non-Missouri customers of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 20

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about June 7, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose



of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,000,000.00, from an account of Lincoln Memorial Life Insurance Company at Chase Bank of Texas, N. A., Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, which contained the proceeds of loans on insurance policies on the lives of non-Missouri customers of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 21

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about July 9, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, an email communication between the office of National

Prearranged Services, Inc., in Clayton, Missouri, and the office of the Ohio Department of Insurance, in Columbus, Ohio, which set forth the response of Lincoln Memorial Life Insurance Company to a regulatory inquiry concerning policy loans, and which stated the following, "There are no Ohio life insurance policies sold by Lincoln Memorial Life Insurance Company that have loans against them.", which statement was false and fraudulent as to a material matter in that this statement concealed the fact that there were policy loans in existence on Ohio policies at the time of the regulatory inquiry which were removed by transferring the loan repayment obligation from Ohio policies to life insurance policies that were owned by persons who resided in states other than Ohio.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 22

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about February 8, 2008, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain

signs, signals and sounds, that is, a wire transfer of funds in the amount of \$60,000.00, from an account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, to an account of National Prearranged Services, Inc. at Bank of America, Dallas, Texas, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 23

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about April 10, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 2011 Greenville Rd., Bristolville, OH 44402, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer A.N., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc.

to A.N. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 24

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about April 10, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 1324 W. 37th St., Lorain, OH 44053, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer R.L., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to R.L. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 25

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about April 30, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to Grand View Funeral Home, 1116 Highway 61, Hannibal, Missouri, which contained a regular statement concerning Grand View Funeral Home's customers' trust accounts that falsely indicated many accounts were current, and that some were paid in full, whereas in truth and fact, a large amount of the funds in Grand View Funeral Home's customers' trust accounts had been extracted for other purposes, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 26

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about May 1, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 205 S. River Road, Des Plaines, IL 60016, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.B., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to E.B. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 27

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about May 1, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and

DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 2409 State Street, Alton, IL 62002, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer M.H., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to M.H. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 28

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about February 28, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises,

did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to James and Gahr Mortuary, 117 Seymour Street, St. James, Missouri 65559, which contained a regular statement concerning James and Gahr Mortuary's customers' trust accounts that falsely indicated many accounts were current, and that some were paid in full, whereas in truth and fact, a large amount of the funds in James and Gahr Mortuary's trust accounts had been extracted for other purposes, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 29

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about March 22, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service,



mail matter addressed to 554 Washington Avenue, Washington Court House, OH 43160, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.M., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to E.M was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 30

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about May 18, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to Reliable Funeral Home, 3964 Washington Blvd., St. Louis, Missouri, 63108, which contained a regular statement concerning Reliable Funeral Home's customers' trust accounts that falsely indicated many accounts were current, and that some were paid in full, whereas in truth and fact, a large amount of the funds in Reliable Funeral Homes' trust accounts

had been extracted for other purposes, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 31

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about June 5, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 303 Marfreesboro Road, Woodbury, TN 37190, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer Z.D., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to Z.D. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 32

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about November 20, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to P.O. Box 446, Blue Springs, MO 64013, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.L, when in fact, National Prearranged Services, Inc. failed to deposit funds received from customer E.L. into National Prearranged Services, Inc. Trust IV, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 33

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about December 3, 2007, in the Eastern District of Missouri,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 444 N. Church St., LaPlata, MO 63549, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.H., when in fact, National Prearranged Services, Inc. failed to deposit funds received from customer E.H. into National Prearranged Services, Inc. Trust IV, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 34

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about March 3, 2008, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be sent and delivered, according to the directions thereon by a private and commercial interstate carrier, that is, United Parcel Service, an envelope with a return address of R K Sutton, Memorial Service Life, 10 Brentwood Blvd, Saint Louis, MO 63105, which was addressed to American Express, US Pymt Center Florida, 2965 W. Corporate Lakes Blvd., Weston, FL 33331, which contained a check in the amount of \$35,489.34 payable to American Express, to pay a personal account of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 35

The Grand Jury charges:

On or about October 10, 2006, in the Eastern District of Missouri,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$260,000, into a bank account

of RBT Trust II at First Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 36

The Grand Jury charges:

On or about July 7, 2008, in the Eastern District of Missouri,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$57,423.23, into a personal bank account of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, at Southwest Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 37

The Grand Jury charges:

On or about October 10, 2006, in the Eastern District of Missouri,

BRENT DOUGLAS CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$260,000.00, into a personal bank account of defendant BRENT DOUGLAS CASSITY, at Southwest Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 38

The Grand Jury charges:

On or about May 15, 2008, in the Eastern District of Missouri,

BRENT DOUGLAS CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction,

affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$20,000.00, into a personal bank account of defendant BRENT DOUGLAS CASSITY, at Regions Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 39

The Grand Jury charges:

On or about July 7, 2008, in the Eastern District of Missouri,

BRENT DOUGLAS CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$57,423.23, into a personal bank account of defendant BRENT DOUGLAS CASSITY, at Regions Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section



1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 40

The Grand Jury charges:

On or about January 9, 2006, in the Eastern District of Missouri,

HOWARD A. WITTNER,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of HAW LLC, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, in the amount of \$200,000.00, into a personal account of defendant HOWARD A. WITTNER, at Smith Barney, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 41

The Grand Jury charges:

On or about April 18, 2007, in the Eastern District of Missouri,

HOWARD A. WITTNER,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of HAW LLC, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, in the amount of \$177,500.00, into a personal account of defendant HOWARD A. WITTNER, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 42

The Grand Jury charges:

On or about July 17, 2008, in the Eastern District of Missouri,

HOWARD A. WITTNER,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of HAW LLC, at First National Bank of St.

Louis, Clayton, Missouri, a financial institution, in the amount of \$713,235.00, into a personal account of defendant HOWARD A. WITTNER, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 43

The Grand Jury charges:

On or about August 2, 2007, in the Eastern District of Missouri,

RANDALL K. SUTTON,  
BRENT DOUGLAS CASSITY, and  
DAVID R. WULF,

the defendants herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the wire transfer of funds from a bank account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, a financial institution, in the amount of \$670,000, to a bank account of Forever Enterprises, Inc. at JP Morgan Chase Bank, N.A., Austin, Texas, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud

affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 44

The Grand Jury charges:

INTRODUCTION

1. Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, Professional Liability Insurance Company of America, hereinafter referred to as PLICA, Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, and HAW LLC were entities engaged in the business of insurance, which consisted of the writing of insurance and the reinsuring of risks, including all acts necessary and incidental to such writing and reinsuring.

2. Beginning on or about sometime before January 1, 2000, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, were engaged in the business of insurance whose activities affected interstate commerce as a result of their acting and being officers, directors, agents and employees of Lincoln Memorial Life Insurance Companies, and Memorial Service Life Insurance Company, both of which were Texas insurance companies.

3. Beginning on or about sometime in 2004, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY  
BRENT DOUGLAS CASSITY, and  
HOWARD A. WITTNER,  
DAVID R. WULF,

the defendants herein, were engaged in the business of insurance whose activities affected interstate commerce as a result of their acting and being officers, directors, agents and employees of PLICA, a New York insurance company.

4. Beginning on or about sometime in 2004, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and  
BRENT DOUGLAS CASSITY,

the defendants herein, were engaged in the business of insurance whose activities affected interstate commerce as a result of their being officers, directors, agents and employees of Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, a Missouri limited liability company that managed PLICA. Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, received as compensation a percentage of all direct business written by PLICA.

4. Beginning on or about sometime in 2004, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010,

HOWARD A. WITTNER,

the defendant herein, was engaged in the business of insurance whose activities affected

interstate commerce as a result of his being an officer, director, agent and employee of HAW LLC, a Missouri limited liability company. HAW LLC was used to compensate defendant HOWARD A. WITTNER for his services as Vice President, Secretary, and General Counsel of PLICA. HAW LLC was also used to pay expenses incurred in the operations of PLICA.

THE CONSPIRACY AND ITS OBJECTS

5. Beginning on or about sometime before January 1, 2000, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY  
BRENT DOUGLAS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, did knowingly and willfully combine, conspire, confederate and agree together and with each other, and with other persons known and unknown to the Grand Jury, to commit various offenses against the United States, that is, being engaged in the business of insurance whose activities affect interstate commerce, and knowingly, with the intent to deceive, making a false material statement and report, and willfully and materially overvaluing any land, property and security, in connection with a financial report and document presented to an insurance regulatory official and agency, and an agent and examiner appointed by such official and agency to examine the affairs of such person, in violation of Title 18, United States Code, Section 1033(a)(1); and acting as, and being an officer, director, agent, and employee of a person engaged in the business of insurance whose activities affect interstate commerce, and being engaged in the business of insurance whose activities affect interstate commerce, and being

involved in a transaction relating to the conduct of affairs of such a business, willfully embezzling, abstracting, purloining and misappropriating the moneys, funds, premiums, credits, and other property of a person engaged in the business of insurance, in violation of Title 18, United States Code, Section 1033(b)(1).

MANNER AND MEANS OF THE CONSPIRACY

1. It was part of the conspiracy that beginning on or about March 10, 2004, and continuing until on or about May 19, 2004, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, submitted financial statements of RBT Trust II to the New York Department of Insurance, in order to obtain the approval of the New York Department of Insurance for RBT Trust II's proposed purchase of PLICA. These financial statements were false and fraudulent as to a material matter in that they only included the assets and liabilities of two of the entities which were part of RBT Trust II, that is, National Prearranged Services, Inc., and Forever Enterprises, Inc., and failed to include the assets and liabilities of many of the other entities which were part of RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc. If the assets and liabilities of the other entities which were part of RBT Trust II had been included in these financial statements, the amount of the beneficiaries' equity of RBT Trust II which was reported to the New York Department of Insurance would have been substantially less than what was actually reported. The New York Department of Insurance probably would not have approved the purchase of PLICA by RBT Trust II if it had been aware of the true financial

condition and position of RBT Trust II, and the true amount of its beneficiaries' equity.

2. It was part of the conspiracy that defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, submitted yearly and quarterly financial statements of PLICA to the New York Department of Insurance which were false and fraudulent as to material matters in that such financial statements asserted that all affiliated transactions which were required to be disclosed had been disclosed whereas in truth and in fact, said statements failed to disclose numerous transactions between PLICA and entities which were affiliates of PLICA. This failure to disclose transactions between PLICA and its affiliates prevented the New York Department of Insurance from effectively overseeing and regulating the operations and finances of PLICA. The following transactions should have been disclosed, but were not:

a. From on or about February 15, 2007 through on or about December 14, 2007, PLICA engaged in transactions with Forever Enterprises, Inc., an affiliated party, totaling approximately \$612,573.20, which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

b. From on or about January 4, 2005 through on or about December 2, 2005, PLICA engaged in transactions with Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, an affiliated party, totaling approximately \$2,202,233.80, which were not disclosed on the 2005 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.



c. From January 17, 2006 through December 18, 2006, PLICA engaged in transactions with Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, an affiliated party, totaling approximately \$4,393,356.06, which were not disclosed on the 2006 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

d. From January 8, 2007 through December 14, 2007, PLICA engaged in transactions with Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, an affiliated party, totaling approximately \$3,499,899.29 which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

e. From January 4, 2005 through December 31, 2005, PLICA engaged in transactions with Lincoln Memorial Services, Inc., an affiliated party, totaling approximately \$1,530,296.00, which were not disclosed on the 2005 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

f. On or about January 5, 2006, PLICA engaged in a transaction with Lincoln Memorial Services, Inc., an affiliated party, totaling \$1,300,000 which was not disclosed on 2006 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

g. On or about January 2, 2007, PLICA engaged in transactions with Lincoln Memorial Services, Inc., an affiliated party, totaling \$1,350,000, which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

h. From January 1, 2006 through December 31, 2006, PLICA engaged in transactions with HAW LLC, an affiliated party, totaling approximately \$2,402,517.67 which were not disclosed on the 2006 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

i. From January 1, 2007 through December 31, 2007, PLICA engaged in transactions with HAW LLC, an affiliated party, totaling approximately \$4,385,337.80 which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

3. It was part of the conspiracy that from on or about certain times in 2004 through on or about certain times in April 2008, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, submitted inaccurate and false information to the New York Department of Insurance regarding the ownership and control of PLICA, including information in Annual Statements and Holding Company Registration Statements, which was false and fraudulent as to material matters in that the statements failed to properly identify ownership and control of PLICA, and to disclose PLICA's parents, subsidiaries and affiliates, as well as the management agreements, service contracts and cost sharing agreements that PLICA entered into with parents, subsidiaries and affiliates, and other entities and persons who exercised control over PLICA.

4. It was part of the conspiracy that defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG

CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, embezzled, abstracted, purloined and misappropriated money from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company by causing unauthorized policy loans to be taken by National Prearranged Services, Inc. on insurance policies purchased from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company which were purchased and owned by individuals and trusts in order to provide a source of funds to pay for the funeral services and merchandise which were promised under prearranged funeral contracts with National Prearranged Services, Inc. These policy loans were obtained without the knowledge and consent of the owners' of the insurance policies.

5. It was part of the conspiracy that defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, embezzled, abstracted, purloined and misappropriated money from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company by causing National Prearranged Services, Inc. to forward to Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company only a portion of premium payments paid on life insurance policies which were purchased from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company by individuals and trusts in order to provide a source of funds to pay for the funeral services and merchandise promised under prearranged funeral contracts with National Prearranged Services, Inc. In many instances, customers of National

Prearranged Services, Inc. paid their insurance premiums on policies issued by Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company in full at the time of purchase. The decision by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, to cause National Prearranged Services, Inc. to obtain and retain for its own use a portion of insurance premium payments that should have been paid to Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company was made without the knowledge and consent of the owners of such policies, who were the persons and trusts who purchased the insurance policies.

OVERT ACTS

In connection with the above conspiracy, and to effectuate the objectives thereof, the following overt acts occurred in the Eastern District of Missouri and elsewhere:

1. On or about March 4, 2004, defendant BRENT DOUGLAS CASSITY executed a Biographical Affidavit which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.
2. On or about March 5, 2004, defendant HOWARD A. WITTNER executed a Biographical Affidavit which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.
3. Beginning on or about March 10, 2004, and continuing until on or about May 19, 2004, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant HOWARD A. WITTNER directed a certified public accountant to prepare three financial

statements of RBT Trust II, which only included assets and liabilities of two of the entities which were part of RBT Trust II, that is National Prearranged Services, Inc., and Forever Enterprises, Inc., and which failed to include the assets and liabilities of many of the other entities which were part of RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc.

4. On or about March 16, 2004, defendant HOWARD A. WITTNER executed a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.

5. On or about April 28, 2004, defendant HOWARD A. WITTNER executed a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.

6. On or about May 10, 2004, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and another person, discussed the language to be used by a certified public accountant to affirm the financial statement of RBT Trust II that was submitted to the New York Department of Insurance in support of RBT Trust II's request for approval of its application to purchase PLICA.

7. On or about May 10, 2004, defendant HOWARD A. WITTNER notarized the signature of a certified public accountant on an affirmation of a financial statement of RBT Trust II.

8. On or about May 16, 2004, defendant HOWARD A. WITTNER caused a draft

agreement to be sent to a certified public accountant to indemnify and hold harmless the certified public accountant from, and any claims made as result of the 2002-2003 audit of RBT Trust II by the certified public accountant.

9. Sometime between on or about June 1, 2004, and on or about July 12, 2004, defendant HOWARD A. WITTNER executed an Incentive Agreement between defendant HOWARD A. WITTNER, Trustee of RBT Trust II, and defendant HOWARD A. WITTNER.

10. On or about June 30, 2004, defendant RANDALL K. SUTTON requested that \$1,310,740 be wire transferred from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. as an advance on policy loans.

11. On or about July 1, 2004, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant BRENT DOUGLAS CASSITY, executed an Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital LLC.

12. On or about July 1, 2004, defendant HOWARD A. WITTNER executed an Agreement between PLICA Management Company, and defendant HOWARD A. WITTNER.

13. On or about some time in February, 2005, with the exact date unknown to the Grand Jury, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER, caused the Annual Statement of PLICA for the year ended December 31, 2004, to be submitted to the New York Department of Insurance.

14. On or about November 10, 2005, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant BRENT DOUGLAS CASSITY, executed an Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital LLC.

15. On or about sometime in February, 2006, with the exact date unknown the the Grand Jury, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER, caused the Annual Statement of PLICA for the year ended December 31, 2005, to be submitted to the New York Department of Insurance.

16. On or about March 13, 2006, defendant RANDALL K. SUTTON caused to be mailed a "Paid In Full" Certificate in the name of E.M., of Mendota, Illinois, who purchased a prearranged funeral contract from National Prearranged Services, Inc., and an insurance policy from Lincoln Memorial Life Insurance Company.

17. On or about April 10, 2006, defendant RANDALL K. SUTTON caused to be mailed a "Paid In Full" Certificate in the name of A.N., of Bristolville, Ohio, who purchased a prearranged funeral contract from National Prearranged Services, Inc., and an insurance policy from Lincoln Memorial Life Insurance Company.

18. On or about June 28, 2006, defendant RANDALL K. SUTTON requested policy loans from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. in the amount of \$4,500,000.

19. On or about October 3, 2006, defendant RANDALL K. SUTTON requested policy loans from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. in the amount of \$5,596,197.19.

20. On or about January 23, 2007, defendant RANDALL K. SUTTON requested policy loans from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. in the amount of \$2,432,501.32.

21. On or about sometime in February, 2007, with the exact date unknown to the Grand Jury, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER, caused the Annual Statement of PLICA for the year ended December 31, 2006, to be submitted to the New York Department of Insurance.

22. On or about April 15, 2008, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER executed an Amendment to Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital Management LLC.

23. On or about January 15, 2009, acting as Trustee of Division 1 of RBT Trust II, defendant HOWARD A. WITTNER executed the First Amendment to Division 1 of RBT Trust II Irrevocable Living Trust Agreement.

In violation of Title 18, United States Code, Section 371.

COUNT 45

The Grand Jury charges:

Beginning on or about March 10, 2004, and continuing until on or about May 19, 2004, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLASS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, being engaged in the business of insurance whose activities affected interstate commerce, knowingly and with



the intent to deceive, did make a false material statement and report, and willfully and materially did overvalue land, property and security, in connection with financial reports and documents presented to the New York Department of Insurance, an insurance regulatory agency, for the purpose of influencing the actions of the New York Department of Insurance, that is, in financial statements submitted as part of RBT Trust II's application for approval to purchase Professional Liability Insurance Company of America, hereinafter referred to as PLICA, to the New York Department of Insurance, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, only included the assets and liabilities of two of the entities which were part of RBT Trust II, that is, National Prearranged Services, Inc., and Forever Enterprises, Inc., in determining the amount of the beneficiaries' equity of RBT Trust II, whereas in truth and in fact, as defendant RANDALL K. SUTTON, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, well knew, the actual amount of the beneficiaries' equity in RBT Trust II was substantially less than the amounts reported in such financial statements because the stated beneficiaries' equity did not include assets and liabilities of numerous entities which were part of RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc., that should have been included in determining the beneficiaries equity of RBT Trust II, and which false material statement and report jeopardized the safety and soundness of PLICA, an insurer, and was a significant cause of PLICA being placed in conservation and rehabilitation by the Supreme Court of the State of New York (New York County), on or about April 28, 2010.

In violation of Title 18, United States Code, Sections 1033(a)(1) and (a)(2) and 2.

COUNT 46

The Grand Jury charges:

On or about some time in February, 2007, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLASS CASSITY, and  
HOWARD A. WITTNER,  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, being engaged in the business of insurance whose activities affected interstate commerce, knowingly and with the intent to deceive, did make a false material statement and report, and willfully and materially did overvalue land, property and security, in connection with financial reports and documents presented to the New York Department of Insurance, an insurance regulatory agency, for the purpose of influencing the actions of the New York Department of Insurance, that is, in the 2006 Annual Statement for Professional Liability Insurance Company of America, hereinafter referred to as PLICA, a financial statement which was submitted to the New York Department of Insurance, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, the defendants herein, stated "Not Applicable," when required to disclose to the New York Department of Insurance information pertaining to its parent, subsidiaries and affiliates, including information detailing transactions greater than one half per cent (½%) of admitted

assets, and information regarding management agreements, service contract agreements and cost sharing agreements and information regarding guarantees or contingencies for related parties, whereas in truth and in fact, as defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, well knew, that agreements existed, and transactions had occurred with affiliates, persons and entities that were related to and controlled PLICA, and were required to be disclosed in the 2006 Annual Statement for PLICA, and which false material statement and report jeopardized the safety and soundness of PLICA, an insurer, and was a significant cause of PLICA being placed in conservation and rehabilitation by the Supreme Court of the State of New York (New York County), on or about April 28, 2010.

In violation of Title 18, United States Code, Sections 1033(a)(1) and (a)(2) and 2.

COUNT 47

The Grand Jury charges:

On or about June 28, 2006, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE,  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLASS CASSITY, and  
HOWARD A. WITTNER,  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, acting as and being officers, directors, agents, and employees of Lincoln Memorial Life Insurance Company, a person engaged in the business of insurance whose activities affected interstate commerce, and being engaged in the business of insurance whose activities affected interstate commerce in a

transaction relating to the conduct of affairs of Lincoln Memorial Life Insurance Company, did willfully embezzle, abstract, purloin and misappropriate moneys, funds, premiums, credits and other property of Lincoln Memorial Life Insurance Company in excess of \$5,000, by causing National Preranged Services, Inc. to obtain the proceeds of unauthorized policy loans from Lincoln Memorial Life Insurance Company in the amount of \$4,500,000, and which embezzlement and misappropriation jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company, an insurer, and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis County, Texas, on or about May 14, 2008.

In violation of Title 18, United States Code, Sections 1033(b)(1) and (b)(2) and 2.

COUNT 48

The Grand Jury charges:

On or about February 20, 2006, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,  
SHARON NEKOL PROVINCE  
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,  
BRENT DOUGLASS CASSITY,  
HOWARD A. WITTNER, and  
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, acting as and being officers, directors, agents, and employees of Lincoln Memorial Life Insurance Company, a person engaged in the business of insurance whose activities affected interstate commerce, and being engaged in the business of insurance whose activities affected interstate commerce in a transaction relating to the conduct of affairs of Lincoln Memorial Life Insurance Company, did willfully embezzle, abstract, purloin and misappropriate moneys, funds, premiums, credits and

other property of Lincoln Memorial Life Insurance Company in excess of \$5,000, by causing National Prearranged Services, Inc. to obtain and retain insurance premiums paid in full with a life insurance application made by E. M. to Lincoln Memorial Life Insurance Company in the amount of \$10,242.48, of which only \$192.56 was forwarded and paid in premiums to Lincoln Memorial Life Insurance Company when the application was received, and the policy was issued by Lincoln Memorial Life Insurance Company, and which embezzlement and misappropriation jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company, an insurer, and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis County, Texas, on or about May 14, 2008.

In violation of Title 18, United States Code, Sections 1033(b)(1) and (b)(2) and 2.

COUNT 49

The Grand Jury charges:

Beginning on or about sometime prior to January 1, 1998, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010, in the Eastern District of Missouri, and elsewhere,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

the defendant herein, having been convicted of a criminal felony 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, 371, and falsifying an income tax return, in violation of Title 26, United States Code, Section 7206(1), in the United States District Court for the Western District of Missouri, on or about January 29, 1982, did

willfully engage in the business of insurance whose activities affected interstate commerce, and participate in such business.

In violation of Title 18, United States Code, Section 1033(e)(1)(A).

COUNT 50

The Grand Jury charges:

Beginning on or about sometime prior to January 1, 1998, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON  
BRENT DOUGLAS CASSITY, and  
HOWARD A. WITTNER,

the defendants herein, being engaged in the business of insurance whose activities affect interstate commerce, did willfully permit James Douglas Cassity, a/k/a Doug Cassity, not named as a defendant in this count, who was convicted of a criminal felony 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, 371, and falsifying an income tax return, in violation of Title 26, United States Code, Section 7206(1), in the United States District Court for the Western District of Missouri, on or about January 29, 1982, to engage in the business of insurance whose activities affected interstate commerce and participate in such business.

In violation of Title 18, United States Code, Sections 1033(e)(1)(B) and 2.

FORFEITURE

The allegations contained in Counts 1 through 34 of this Indictment are hereby realleged

and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(a)(2).

The allegations contained in Counts 35 through 43 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(1).

Upon conviction of the offenses in violation of Title 18, United States Code, Section 1341, Title 18, United States Code, Section 1343, Title 18, United States Code, Section 1344, and Title 18, United States Code, Section 1349, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

Upon conviction of the offenses in violation of Title 18, United States Code, Section 1341, Title 18, United States Code, Section 1343, Title 18, United States Code, Section 1344, and Title 18, United States Code, Section 1349, affecting a financial institution, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2), any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violation.

Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of an offense in violation of Title 18, United States Code, Section 1957, defendant RANDALL K. SUTTON, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in such offense, and any property traceable to such property.

Specific property alleged to be forfeited pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) and pursuant to Title 18, United States Code, Section 982(a)(1) and (a)(2), includes, but is not limited to, the following:

1. All ownership shares in Professional Liability Insurance Corporation of America (PLICA), a New York insurance company, and all the assets of PLICA, including, but not limited to, any recognized or anticipated surplus;
2. The assets of the following trusts: RBT Trust II; RBT Trust II, Division 1 and 2; and PLICA Equity Trust;
3. Real property
  - a. Real Property located at 4201 Gulf Shore Blvd., Naples, FL more particularly described as:

Unit No. 1103, (Type C), LE JARDIN, a condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 2406, Page 433, of the Public Records of Collier County, Florida. Together with the exclusive right to use Parking Space Numbers 35 and 36;
  - b. Real Property located at 120 Linden, St. Louis, MO more particularly described as:



Lot 16 in Block "A" of Bemiston, a subdivision in St. Louis County, Missouri, according to the plat thereof recorded in Plat Book 3, page 64 of the St. Louis County Records.

- c. Real Property located at 18 Cliff Road, Nantucket, MA more particularly described as:

That certain parcel of land, together with the buildings thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 18 Cliff Road, bounded and described as follows:

NORTHEASTERLY by Cliff Road, thirty and 57/100 (30.57) feet;  
SOUTHEASTERLY by the line of Folger Lane, in three courses, one hundred seventy-two and 82/100 (172.82) feet;  
WESTERLY by Lot 2 on plan hereinafter mentioned, in two courses, fifty and 53/100 (50.53) feet; and  
NORTHWESTERLY by said Lot 2 and by land now or formerly of Jean Murray Lewis, one hundred twenty-four and 95/100 (124.95) feet;

- d. Real Property located at #5 Francis, Nantucket, MA more particularly described as:

That certain parcel of land situated in Nantucket, Nantucket County, Massachusetts, with the buildings thereon now known and numbered as 5 Francis Street, bounded and described as follows:

SOUTHEASTERLY by Francis Street, seventy-one and 13/100 (71.13) feet;  
SOUTHWESTERLY by land now or formerly of Donald C. Bohnsack et al., seventy-one and 34/100 (71.34) feet;  
NORTHWESTERLY by Meader Street, seventy and 52/100 (70.52) feet; and  
NORTHEASTERLY by land now or formerly of Hans C. Christensen et al., seventy-two and 6/100 (72.06) feet;

- e. Real Property located at 1315 Wildhorse Parkway, Chesterfield, MO more particularly described as:

That certain parcel of land situated in Chesterfield, Missouri, with the buildings thereon now known and numbered as 1315 Wildhorse Parkway, Chesterfield, Missouri, bounded and described as follows:

Lot 618 of Wildhorse Village Plat Four, according to the plat thereof recorded

in Plat Book 316, page 51 of the St. Louis County Records.

- f. Real Property located at 6000 Santa Monica Boulevard, Los Angeles, CA

more particularly described as:

THAT PORTION OF THE NORTH HALF OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SANTA MONICA BOULEVARD, 80 FEET WIDE, WITH THE EASTERLY LINE OF GOWER STREET, 55.00 FEET WIDE, AS SAID INTERSECTION IS SHOWN ON CITY OF LOS ANGELES ENGINEERS FIELD BOOK 16031 PAGE 34; THENCE NORTH 89 DEGREES 59 MINUTES 00 SECONDS EAST 900.41 FEET ALONG SAID SOUTHERLY LINE; TO THE TRUE POINT OF BEGINNING; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89 DEGREES 59 MINUTES 00 SECONDS WEST 456.00 FEET; THENCE LEAVING SAID LINE SOUTH 0 DEGREE 01 MINUTE 00 SECONDS EAST 102.33 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 57.80 FEET; THENCE SOUTH 0 DEGREE 10 MINUTES 27 SECONDS WEST 4.86 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 11.16 FEET; THENCE SOUTH 0 DEGREE 10 MINUTES 27 SECONDS WEST 2.51 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 53.07 FEET; THENCE NORTH 0 DEGREE 10 MINUTES 27 SECONDS EAST 7.37 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 322.25 FEET TO A POINT ON SAID EASTERLY LINE OF GOWER STREET DISTANT SOUTH 0 DEGREE 05 MINUTES 29 SECONDS EAST 100.85 FEET FROM SAID INTERSECTION OF THE SOUTHERLY LINE OF SANTA MONICA BOULEVARD AND THE EASTERLY LINE OF GOWER STREET; THENCE ALONG SAID EASTERLY LINE SOUTH 0 DEGREE 05 MINUTES 29 SECONDS EAST 1,178.82 FEET TO THE NORTHERLY LINE OF TRACT NO. 3688, IN SAID CITY, AS PER MAP RECORDED IN BOOK 40 PAGE 22 OF MAPS, RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT AND ALONG THE NORTHERLY LINES OF TRACT NO. 9885, TRACT NO. 12154 AND THE MARLBOROUGH TRACT, ALL IN SAID CITY AS PER MAPS RECORDED IN BOOK 147 PAGES 31 AND 32, BOOK 259 PAGE 32 AND BOOK 10 PAGE 9, ALL OF MAPS, RECORDS OF SAID COUNTY RECORDER, NORTH 89 DEGREES 59 MINUTES 12 SECONDS EAST 1,922.68 FEET TO THE WESTERLY LINE OF VAN NESS AVENUE, 60.00 FEET WIDE; THENCE ALONG SAID WESTERLY LINE NORTH 0

DEGREE 05 MINUTES 00 SECONDS WEST, 1,177.86 FEET TO A POINT DISTANT SOUTH 0 DEGREE 05 MINUTES 00 SECONDS EAST 102.11 FEET FROM THE INTERSECTION OF SAID WESTERLY LINE WITH THE SOUTHERLY LINE OF SANTA MONICA BOULEVARD 80.00 FEET WIDE AS SHOWN ON CITY OF LOS ANGELES ENGINEERS FIELD BOOK 13938, PAGE 20; THENCE LEAVING SAID LINE SOUTH 89 DEGREES 58 MINUTES 21 SECONDS WEST, 1,022.49 FEET TO A POINT WHICH IS DISTANT SOUTH 0 DEGREE 00 MINUTES 27 SECONDS WEST 102.18 FEET FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 0 DEGREE 00 MINUTE 27 SECONDS EAST 102.18 FEET BACK TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, IN OR UNDER THAT PORTION OF SAID LAND LAYING WITHIN THE BOUNDARIES DESCRIBED IN DEED IN FAVOR OF TRANS AMERICAN PETROLEUM CO., A CORPORATION, RECORDED JUNE 13, 1958 AS INSTRUMENT NO. 3791 AND AS PARTIALLY QUITCLAIMED IN DEEDS RECORDED MAY 31, 1960 AS INSTRUMENT NO. 4719 AND NO. 4720, AND LYING BELOW 500 FEET BELOW THE SURFACE THEREOF TOGETHER WITH RIGHT TO EXPLORE, DRILL FOR AND PRODUCE SAME IN AREA OF SAID PREMISES, 500 FEET BELOW THE SURFACE THEREOF.

- g. Real property located at 301 Tennessee Valley Road, Mill Valley, CA.

more particularly described as:

PARCEL ONE:

ALL THAT PORTION of Lots 1 and 2 in Block 190, as shown upon that certain map entitled, "Official Map of Lands of the Sausalito Land and Ferry Company", filed for record April 26, 1869 in Rack 1 of Maps, at Pull 9, Marin County Records, lying Westerly of the lands taken in the Action entitled, "United States of America vs. Sausalito Land and Ferry Company, et al", Case No. 22280-R, U.S. District Court.

PARCEL TWO:

ALL OF LOTS 10 and 11, in Block 191, as shown upon that certain map entitled, "Official Map of Lands of the Sausalito Land and Ferry Company", filed for record April 26, 1869 in Rack 1 of Maps, at Pull 9, Marin County Records.

EXCEPTING THEREFROM and thereout that portion of Lot 10 as described in the Deed to Sausalito Cemetery Association, recorded July 7, 1893 in Book 26 of Deeds, at Page 331, Marin County Records.

PARCEL THREE:

COMMENCING at the Southeast corner of the tract of land conveyed by the Sausalito Land and Ferry Company to the Sausalito Cemetery Association on March 18, 1892, the description of which is on file in the Office of the Recorder of Deeds in and for the County of Marin, State of California, which point lies 0°00' East distant 15.40 feet from a concrete monument set in the South line of said tract; running thence 0°00' West 649.40 feet to the East line of the County Road; thence along the County Road, North 11°35' East 212.60 feet; thence North 6°58' West 102.90 feet; thence North 26°13' West 110.80 feet; thence North 32°18' West 156.50 feet; thence leaving the County Road and running North 53°07' East 138.10 feet; thence South 64°45' East 209.90 feet; thence South 21°55' East 98.70 feet; thence South 40°15' East 135.60 feet; thence South 57°45' East 159.90 feet; thence 0°00' West 28.00 feet; thence 0°00' South 14.00 feet; thence 0°00' East 50.00 feet; thence South 28°40' East 163.40 feet; thence South 44°00' East 131.15 feet to the point of commencement.

BEING the most Southwesterly portion of the tract of land conveyed by Sausalito Land and Ferry Company to the Sausalito Cemetery Association on March 18, 1892.

EXCEPTING THEREFROM all of that portion of land described in the Deed conveyed to the Sausalito Land and Ferry Co. in Book 181 of Official Records, at Page 415, Marin County records, lying Northerly and Easterly of the following described agreement line:

BEGINNING at 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" lying on the Southerly line of the Sausalito Cemetery as said line is shown on the "Section Map No. 1, Sasalito Cemetery" Book 1 of Maps, at Page 68, and as said 2" pipe is shown on the Survey of the Sausalito Cemetery by Engineering Field Services, San Rafael, California, Job #645 in April, 1973; thence North 197.06 feet to an 8" X 8" concrete monument with brass pin as shown on said Section Map No. 1; thence West 17.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 20°55' West 133.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 34°56' West 35.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 3°37' West 151.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence 93.59 feet along a tangent curve to the left having a radius of 70.00 feet, through a central angle of 76°36' to a 2" iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" (the midpoint along said curve also being marked by a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 80°13' West 83.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence South 53°7' West 63.67 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence continuing South 53°7' West 71.34 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" set on the Easterly line of

Tennessee Valley Road, a distance of 30 feet East of the existing centerline of pavement as surveyed by said Engineering Field Services.

Reference is made to the Record of Survey to be filed; being the results of the Engineering Field Services Survey of the Cemetery.

EXCEPTING FROM Parcels One, Two and Three above described, the following described property:

BEGINNING at a point on the East line of Tennessee Valley Road which point is distant South  $15^{\circ}20'$  West 3.44 feet from the Northwest corner of Lot 10, shown upon the Record of Survey filed December 29, 1978 in Volume 15 of Surveys, at Page 43, Marin County Records; running thence from said point of beginning and leaving said road line South  $73^{\circ}01'55''$  East 250.26 feet; thence South  $0^{\circ}02'50''$  West 230.00 feet; thence South  $19^{\circ}57'44''$  East 80.00 feet; thence South  $46^{\circ}26'40''$  East 70.88 feet; thence South  $60^{\circ}00'$  East 110.00 feet; thence South 110.00 feet to a point on the Northerly line of Tamalpais Avenue; thence along said Northerly Avenue line and the Easterly line of Tennessee Valley Road the following course and distances, on a curve to the right with a radius of 800 feet, a central angle of  $16^{\circ}40'$  for an arc distance of 232.71 feet; thence on a curve to the left with a radius 260 feet, a central angle of  $17^{\circ}57'35''$  for an arc distance of 81.50 feet; thence South  $82^{\circ}47'$  West 34.50 feet; thence on a curve to the right with a radius of 20 feet, a central angle of  $90^{\circ}$  for an arc distance of 31.42 feet; thence North  $7^{\circ}13'00''$  West 428.24 feet; thence on a curve to the right with a radius of 364 feet, a central angle of  $22^{\circ}33'$  for an arc distance of 143.26 feet to the point of beginning.

PARCEL FOUR:

ALL of that portion of land described in the Deed conveyed to the Sausalito Land & Ferry Co. in Book 181 of Official Records, at Page 415, Marin County Records, lying Northerly and Easterly of the following described agreement line:

BEGINNING at a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" lying on the Southerly line of the Sausalito Cemetery as said line is shown on the 'Section Map No. 1 Sausalito Cemetery', Book 1 of Maps, Page 68, and as said 2" iron pipe is shown on the Survey of the Sausalito Cemetery by Engineering Field Services, San Rafael, California Job #645 in April, 1973; thence North 197.06 feet to an 8" X 8" concrete monument with brass pin as shown on said Section Map No. 1; thence West 17.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence North  $20^{\circ}55'$  West 133.00 feet to a 20" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence North  $34^{\circ}56'$  West 35.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence North  $3^{\circ}37'$  West 151.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence 93.58 feet along a tangent curve to the left having a radius of 70.00 feet, through a central angle of  $76^{\circ}36'$  to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775' (the midpoint along said curve also being marked by a 2" I.D. iron pipe

with brass cap stamped 'Agreement Line Cemetery LS 3775'); thence North 80°13' West 83.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence South 53°7' West 63.67 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence continuing South 53°7' West 71.34 feet to a 2" I.D. iron pipe with a brass cap stamped 'Agreement Line Cemetery LS 3775' set on the Easterly line of Tennessee Valley Road a distance of 30 feet East of the existing centerline of pavement as surveyed by said Engineering Field Services Survey.

PARCEL FIVE:

NON-EXCLUSIVE EASEMENT for access purposes as contained in that certain Easement Agreement made by and between William L. Gamble, et al, and Daphne Fernwood, Inc., a California Corporation, recorded June 7, 1996 as Recorder's Serial No. 96-030209, Marin County Records.

- h. Real property at 10301 and 10305 Big Bend Road, St. Louis, MO more

particularly described as:

A tract of land being Lots 59, 60 and 64 and part of Lots 57, 58, 61, 62, 63 and 65 of EAST KIRKWOOD, a subdivision according to the plat thereof recorded in Plat Book 5 page 32 of the St. Louis City (former County) Records, part of Short Avenue, part of Elliott Avenue and part of Gordon Avenue, in Section 12, Township 44 North, Range 5 East, and Section 7, Township 44 North, Range 6 East, City of Kirkwood, St. Louis County, Missouri, and being more particularly described as:

Beginning at the intersection of the North line of Big Bend Road, 60 feet wide, with the centerline of Elliott Avenue, 60 feet wide, vacated by Ordinance No. 3443 recorded in Book 2212 page 601 of the St. Louis County Records, being the Southeast corner of "Hillside Acres Plat No. 2", a subdivision according to the plat thereof recorded in Plat Book 43 page 33 of the St. Louis County Records; then North 00 degrees 40 minutes 00 seconds East 605.20 feet along said centerline of vacated Elliott Avenue and said East line of "Hillside Acres Plat No. 2" and the East line of "Hillside Acres Plat No. 3", a subdivision according to the plat thereof recorded in Plat Book 47 page 54 of the St. Louis County Records, to the South line of James Avenue, 30 feet wide, being the Northeast corner of Lot 31 of said Hillside Acres Plat No. 3; thence North 75 degrees 45 minutes 58 seconds East 31.04 feet along said South line of James Avenue to the East line of Elliott Avenue, 60 feet wide; thence North 00 degrees 40 minutes 00 seconds East 391.22 feet along said East line of Elliott Avenue to the centerline of Short Avenue, 60 feet wide, as vacated by Ordinance 5369 recorded in Book 6490 page 1987 of the St. Louis County Records; thence North 49 degrees 10 minutes 59 seconds East 79.44 feet along said centerline of vacated Short Avenue to the South line of St. Louis and San Francisco Railroad right-of-way, 100 feet wide; thence North 72 degrees 02

minutes 20 seconds East 1176.84 feet along said South line of St. Louis and San Francisco Railroad right-of-way to the most Western corner of property conveyed to the City of Kirkwood by deed recorded in Book 6760 page 2389 of the St. Louis County Records; thence South 61 degrees 20 minutes 18 seconds East 98.00 feet along the South line of said City of Kirkwood property to the most Southern corner thereof; thence North 29 degrees 44 minutes 19 seconds East 4.00 feet along the East line of said City of Kirkwood property to the Southwest line of Leffingwell Avenue, 60 feet wide; thence South 54 degrees 21 minutes 21 seconds East 469.64 feet along said Southwest line of Leffingwell Avenue to the most Western corner of property conveyed to Michael Fay by deed recorded in Book 441 page 200 of the St. Louis City (former County) Records; thence South 34 degrees 57 minutes 15 seconds East 262.36 feet along the Southwest line of said Fay property to the Western line of Gordon Avenue, 60 feet wide; thence South 68 degrees 48 minutes 28 seconds East 30.00 feet to the centerline of Gordon Avenue; thence South 21 degrees 11 minutes 32 seconds West 335.50 feet along said centerline of Gordon Avenue to a point; thence North 89 degrees 10 minutes 28 seconds West 102.00 feet along the centerline of said Gordon Avenue to a point; thence South 00 degrees 47 minutes 32 seconds West 289.83 feet along the East line of said Lot 57 of East Kirkwood and the West right-of-way of Missouri Interstate Highway 44 to the most Northern corner of property conveyed to the State of Missouri by deed recorded in Book 6291 page 1754 of the St. Louis County Records; thence South 41 degrees 05 minutes 20 seconds West 281.76 feet along the Northwest line of said State of Missouri property to a point; thence South 81 degrees 44 minutes 06 seconds West 301.53 along the North line of said State of Missouri property to the aforesaid North line of Big Bend Road; thence North 89 degrees 29 minutes 24 seconds West 1048.99 feet along said North line of Big Bend road to a point; thence South 75 degrees 31 minutes 59 seconds West 112.98 feet along said North line of Big Bend Road to the point of beginning and containing 46.482 acres according to a survey by Volz, Inc. during November, 1997, and updated during November, 2001.

4. Personal property
  - a. 2003 36' boat, "Haus of the C" hull no. THC36282F303;
  - b. Square emerald cut diamond engagement ring, diamond weight 7.15, clarity VS1, color I, shape emerald purchased from Jacob and Co. on or about November 1, 2005;
  - c. 1 pair of diamonds stud earrings (2=10.62 weight) purchased from Albarre on

or about May 17, 2002;

- d. All funds and investments in the name of Wellstream, Inc., account no. XXXX9360, at Wachovia Bank and any funds or investments recently withdrawn from same;
- e. All funds and investments in the name of Wellstream, Inc., account no. XXXX2573, at Truman Bank and any funds or investments recently withdrawn from same;
- f. All funds and investments in the name of Rhonda L. Cassity, account no. XXXX1581, at Truman Bank and any funds or investments recently withdrawn from same;
- g. All funds and investments in the name of Rhonda L. Cassity, account no. XXXX3353, at Northern Ttrust and any funds or investments recently withdrawn from same;
- h. All funds and investments in the name of Howard and Joan Wittner, account no. XXXX4793 at Morgan Stanley Smith Barney and any funds or investments recently withdrawn from same;
- i. All funds and investments in the name of Howard and Joan Wittner, account no. XXXX7738, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;
- j. All funds and investments in the name of Howard and Joan Wittner, account no. XXXX5742, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;



- k. All funds and investments in the name of Howard and Joan Wittner, account no. XXXXX2058, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;
- l. All funds and investments in the name of Gregory N. Wittner Irrevocable Trust, account no. XXXX9581, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;
- m. All funds and investments in the name of Howard A. Wittner and Joan R. Wittner, account no. XXXX9858, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- n. All funds and investments in the name of Greg N. Wittner, account no. XXXX4604, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- o. All funds and investments in the name of Gregory Wittner and Jennifer Wittner, account no. XXXX0540, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- p. All funds and investments in the name of Kirk J. Wittner, account no. XXXX4418, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- q. All funds and investments in the name of Kirk J. Wittner, account no. XXXX0531, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- r. Investment holdings in KBS REIT II in the name of Howard A. Wittner and

- Joan R. Wittner, account no. XXXX2560, with KBS Real Estate Investment Trusts and any funds or investments recently withdrawn from same;
- s. Investment holdings in KBS REIT II in the name of Gregory Wittner Revocable Trust, Account No. XXXX7970, with KBS Real Estate Investment Trusts and any funds or investments recently withdrawn from same;
  - t. Investment holdings in KBS REIT II in the name of Kirk J. Wittner Irrevocable Trust, Account No. XXXX6465, with KBS Real Estate Investment Trusts and any funds or investments recently withdrawn from same;
  - u. Investment 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 and any funds or investments recently withdrawn from same;
  - v. All funds and investments at Dardenne Creek Partnership, LLP, received on or after September 1, 2010, from Rhonda L. Cassity or Wellstream, Inc. and any funds or investments recently withdrawn from same.
5. Intellectual property:
- a. Trademark registered with United States Patent and Trademark Office, Registration No. 3,141,062, the mark consists of the mathematical/scientific symbol for infinity;
  - b. Trademark registered with United States Patent and Trademark Office, Registration No. 3,244,747, the mark consists of a stylized mark with three interconnected swirls;
  - c. Trademark registered with United States Patent and Trademark Office,

Registration No. 3,220,157, the mark consists of the standard characters  
“PLICA”.

- d. “Family Tree Memorials” and “Library of Lives” related technology and intellectual property.

#### **MONEY JUDGMENT**

A money judgment as to defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, a sum of money equal to approximately \$600,000,000 or more in United States Currency, in that such sum in the aggregate is property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of the offenses alleged.

#### **SUBSTITUTE ASSETS**

If any of the property described above, as a result of any act or omission of defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

A TRUE BILL.

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FOREPERSON

RICHARD G. CALLAHAN  
United States Attorney

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STEVEN A. MUCHNICK  
Assistant United States Attorney

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CHARLES S. BIRMINGHAM  
Assistant United States Attorney

---

STEPHEN R. CASEY  
Assistant United States Attorney

---

MICHAEL W. REAP  
Assistant United States Attorney