

MEMORANDUM OF INTERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MJ Villicana
U.S. Postal Inspector

9-26-11

Date

IS 9095, Memorandum Of Interview, March 2009

MISSOURI DEPARTMENT OF INSURANCE
INTERNAL MEMORANDUM

TO: KIRK SCHMIDT – CHIEF FINANCIAL EXAMINER
FROM: RICK STAMPER^{RS}
DATE: AUGUST 31, 2001
RE: LINCOLN MEMORIAL LIFE INSURANCE COMPANY (TX)

RECEIVED
AUG 31 2001
MO INS DEPT

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

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

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

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

LINCOLN MEMORIAL LIFE INSURANCE COMPANY Memorandum

Page 2 of 7

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

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

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

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

LINCOLN MEMORIAL LIFE INSURANCE COMPANY Memorandum

Page 3 of 7

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

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

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

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

- By making its' affiliate National Prearranged Services, Inc. the owner of substantially all of the life insurance policies funding the preneed funeral contracts sold in Missouri by NPS, Inc., Lincoln Memorial effectively provided a conduit to move \$22.7 million (as of 12/31/99) in the form of policy loans out of the regulated insurance company (Lincoln Memorial) and into the non-regulated funeral contract seller affiliate (NPS, Inc.), and possibly up to the RBT Trust II ultimate controlling person. This explains why the company adamantly and continuously refuses to provide audited financial statements for either the affiliate National Prearranged Services, Inc. or the RBT Trust II ultimate controlling person in the Lincoln Memorial holding company system.
- Lincoln Memorial and its' affiliate National Prearranged Services, Inc. were named defendants in a lawsuit filed in St. Louis Circuit Court challenging National Prearranged Services, Inc.'s method of funding preneed funeral contracts with life insurance policies as a breach of contract in violation of Chapter 436 statutes of the Missouri Related Laws ('Special Purpose Contracts'). On two separate occasions, I personally reviewed case file #962-07285 *Loretta F. Whitlow, et. al. versus National Prearranged Services, Inc.* During the lawsuit, plaintiff attorneys repeatedly requested production of bank statements, cash receipts/disbursements records, or other accounting records to support deposits, withdrawals or transfers to/from preneed funeral contract trust accounts, or any financial records of NPS, Inc., or any source data for NPS, Inc.'s income tax returns. Attorneys representing National Prearranged Services, Inc. repeatedly refused to provide any of NPS, Inc.'s financial records to the court. NPS, Inc. vigorously defended this lawsuit at a cost of several hundred thousand dollars. Over a period of three and a half years, legal counsel for NPS, Inc. filed motions for continuances, motions to dismiss the case, motions to transfer jurisdictions, motions to bar the claim based on statutes of limitations, and various other motions. For reasons unknown, the lawsuit was dismissed by the plaintiffs, and the case file was closed effective January 27, 2000. Two important points were gleaned from review of this case file. First, National Prearranged Services, Inc. has refused to provide audited financial statements to the departments of insurance of Texas, Missouri and the St. Louis Circuit Court. Second, the chief partner of the law firm that vigorously defended the lawsuit on behalf of the defendant National Prearranged Services, Inc. is Howard Wittner, a primary beneficiary of the RBT Trust II ultimate controlling person in the Lincoln Memorial holding company system. No person stands to benefit more financially from lack of provision of audited financial statements on the RBT Trust II than Mr. Wittner.

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

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

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

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

LINCOLN MEMORIAL LIFE INSURANCE COMPANY Memorandum
Page 6 of 7

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

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

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

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

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

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

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

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

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

cc: Doug Conley – Audit Manager
File