

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE §
COMMISSION, §

PLAINTIFF, §

vs. §

BRIAN A. BJORK, THE ESTATE OF §
JOEL DAVID SALINAS, J. DAVID §
GROUP OF COMPANIES, INC., J. §
DAVID FINANCIAL GROUP LP, §
SELECT ASSET MANAGEMENT LLC, §
SELECT ASSET CAPITAL §
MANAGEMENT LLC, SELECT ASSET §
FUND I, LLC, AND SELECT ASSET §
PRIME INDEX FUND, LLC. §

CIVIL ACTION NO. 4:11 CV - 02830

DEFENDANTS.

**RECEIVER’S UNOPPOSED MOTION TO APPROVE COMPROMISE OF CLAIM
RELATING TO LINCOLN FINANCIAL LIFE INSURANCE COMPANY POLICY**

TO THE HONORABLE KEITH P. ELLISON, UNITED STATES DISTRICT COURT:

Receiver Steven A. Harr (“Receiver”) moves the Court to approve this
Compromise of Claim relating to Lincoln Financial Life Insurance Company (“Lincoln
Financial”) and respectfully provides:

**I.
BACKGROUND**

1. On August 1, 2011, the Securities and Exchange Commission (“SEC”) filed
its Complaint against Defendants. In conjunction therewith, the SEC sought, and by
Order Appointing Receiver (the “Order”), the Court appointed, Steven A. Harr as the
Receiver for Brian A. Bjork, The Estate of Joel David Salinas, J. David Group of

Companies, Inc., J. David Financial Group LP, Select Asset Management LLC, Select Capital Management, LLC, Select Asset Fund I, LLC and Select Asset Prime Index Fund, LLC (collectively, the "Receivership Entities").

2. Mr. Harr was authorized to have complete and exclusive control, possession and custody of all Receivership assets and Receivership records of Defendants. Receivership Assets and Receivership Records were defined in the Order as "assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the [Receivership Entities] and all entities they own or control . . . , and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers telephones, personal digital devices and other informational resources of or in possession of the [Receivership Entities] or issued by [Receivership Entities] and in possession of any agent or employee of the [Receivership Entities]."¹

3. The Receiver has been acting and fulfilling his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities with the intent to marshal the Receivership assets for the benefit of the Receivership Entities' investors and creditors. These efforts have included interactions with existing and former employees, reviews of corporate records and discussions with involved third-parties.

¹ Order Appointing Receiver, ¶1.

II.
PERTINENT FACTS

4. The Receiver's duties include investigating and collecting all assets which rightfully belong to the Receivership Entities. Shortly after appointment, the Receiver identified several life insurance policies insuring the life of Joel David Salinas. After locating these policies, the Receiver conducted a thorough factual, forensic, and legal investigation to identify the proper owner(s) of these policies. With this Motion, the Receiver seeks to compromise a claim relating to one of these policies.

5. First-Penn Pacific Life Insurance Company issued Policy No. T100783653 insuring the life of Joel David Salinas on July 19, 1997 ("First-Penn Policy"). The original owner and beneficiary on the First-Penn Policy was J. David Group of Companies, Inc. In July 2004, policy ownership and beneficial interests were transferred from J. David Group of Companies, Inc. to J. David Financial Group, L.P. Both J. David Group of Companies, Inc. and J. David Financial Group, L.P. are Receivership Entities.

6. On February 19, 2007, J. David Financial Group, L.P. converted the First-Penn Policy to Lincoln Financial Life Insurance Company Policy No. 731644 (the "Policy"). The total death benefit value of the Policy is \$3,000,000. At the time of issuance, J. David Financial Group, L.P. was both the sole owner and beneficiary of the Policy. On June 25, 2011, just days before Mr. Salinas committed suicide, J. David Financial Group, L.P. transferred 81% of the beneficial interests in the Policy from J. David Financial Group, L.P. These transfers included one each to Brian Kelledy (20% equaling \$600,000), William Yeoman (60% equaling \$1,800,000), and Deborah Kelting

(1% equaling \$30,000). (collectively, "Putative Beneficiaries"). The Putative Beneficiaries are all victims of the fraudulent scheme at issue in the underlying proceeding.

7. After identifying the Policy, the Receiver contacted the Putative Beneficiaries to assert a multitude of claims including, but not limited to, fraudulent conveyance and constructive trust, on the death proceeds owed pursuant the Policy. Mr. Yeoman and Mrs. Kelting immediately disclaimed/assigned any and all interest they had in the Policy in favor of the Receivership Estate.

8. Mr. Kelledy was not willing to disclaim/assign his interest in the Policy without hiring counsel and paying for a legal review of the Receiver's position. For this reason, and because of three other putative beneficiaries on another policy, the Receiver retained UHY Advisors, Inc. to conduct a forensic investigation to trace the source of all premium payments and to conduct a thorough solvency analysis of the implicated entities. The Receiver's independent forensic investigation in conjunction with the Receiver's own legal and factual analysis confirm the Receivership Estate is the rightful owner of the death proceeds at issue. To effectively demonstrate this, the Receiver provided Mr. Kelledy a detailed Position Statement outlining the results from the Receiver's forensic, legal and factual investigations.

9. The Receiver is confident that the Receivership Estate is the rightful owner of any and all death proceeds paid as a result of Mr. Salinas' suicide.² The Receiver is willing and able to litigate his entitlement to the entirety of these proceeds. However,

² In addition to the Policy, the Receiver is also currently in negotiations on resolving similar claims relating to various other policies.

in the interest of preserving the Receivership Estate, the Receiver entered into negotiations with Mr. Kelledy to resolve this dispute without incurring substantial litigation costs and expenses. The Receiver now seeks permission from this Court to effectuate the compromise reached with Mr. Kelledy relating to the Policy.

III.
AUTHORITIES

10. In receiverships, federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief. *SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978); *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103-04 (2d Cir. 1972).

IV.
RELIEF SOUGHT

11. Mr. Kelledy claims he is entitled to the death proceeds at issue because he lost a reasonably equivalent dollar figure as a result of his investment in the underlying fraudulent scheme. The Receiver does not agree with Mr. Kelledy's position and has thoroughly outlined the reasons why in his Position Statement.

12. In an effort to compromise their positions and settle this matter without further judicial intervention, the Receiver proposes to make the following compromise: the Receiver will pay Mr. Kelledy \$20,000 in exchange for Mr. Kelledy's full disclaimer/assignment of any and all interest he may have in the Policy, including specifically but not limited to, the \$600,000 in death benefits plus any accrued interest. The Receiver further agrees that this compromise will not affect any other claims Mr. Kelledy may have against the Receivership Estate for his lost investments.

13. A copy of the Disclaimer and Assignment to be executed by Mr. Kelledy and the Receiver's Position Statement will be made available to the Court upon request but are not attached here so as to protect the confidentiality of these documents.

14. The Receiver believes these compromises are in the best interest of the Receivership Estate because they will add \$600,000 plus accrued interest to the Receivership Estate in exchange for a nominal payment of \$20,000. If this matter were to be litigated through trial, the Receivership Estate would incur attorneys' fees and costs that would be significantly more than this nominal settlement figure.

15. For these reasons, the Receiver requests that the Court approve the Release as stated in this motion and order that the Receiver is permitted to proceed with the transaction as stated or terms substantially similar thereto.

16. Pursuant to Local Rule LR 7.2, the Receiver advises the Court that the Plaintiff SEC does not oppose this Motion. The Defendant entities are all controlled by the Receiver.

V.
CONCLUSION

WHEREFORE, the Receiver prays that the Court enter an Order in the form submitted with this Motion, or for substantially the same relief in such form as the Court may find just and proper.

Respectfully submitted,

By: /s/Sameer S. Karim

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CERTIFICATE OF CONFERENCE

On June 11, 2012, I conferred with Tim McCole and he advised that the Securities and Exchange Commission is not opposed to the relief sought in this motion.

/s/ Sameer S. Karim

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Clerk via the CM/ECF system on June 11, 2012. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system on the date of filing. Moreover, notice of this filing will also be sent to Brian Kelledy by and through his counsel of record, Thomas Bartlett, pursuant to the Federal Rules of Civil Procedure.

/s/ Sameer S. Karim

Sameer S. Karim