IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

H. THAYNE DAVIS	:	Case No. 3:04 CV 0059
Plaintiff,	:	(U.S. District Judge Thomas M. Rose) (Magistrate Judge Sharon L. Ovington)
v.	:	
LIFETIME CAPITAL, INC.	:	
Defendant.	:	

MOTION FOR SUMMARY JUDGMENT ON CLAIMS ASSERTED BY INTERVENORS JOHNNIE C. IVY [DOC. NO. 1439], NENA ELLISON [DOC. NO. 1440], ERNEST STORMS AND JACQUELYN STORMS [DOC. NO. 1441], JANE C. IVY-STEVENS [DOC. NO. 1442] AND ROBERT BURGESS [DOC. NO. 1443]

Now comes H. Thomas Moran, II, the Court-appointed Receiver of the assets of LifeTime Capital, Inc. and related entities, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and hereby moves the Court for summary judgment in his favor on the claims asserted against him by Johnnie C. Ivy, Nena Ellison, Ernest Storms, Jacquelyn Storms, Jane C. Ivy-Stevens and Robert Burgess (collectively, the "Intervenors"). The bases for this Motion are set out in the attached Memorandum.

Respectfully submitted:
/s/ Joseph C. Oehlers

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Attorney for the Receiver,
H. Thomas Moran, II

MEMORANDUM

On October 27, 2014, Intervenors Johnnie C. Ivy, Nena Ellison, Ernest and Jacquelyn Storms, Jane C. Ivy-Stevens and Robert Burgess each filed nearly identical Complaints against the Receiver alleging that he had converted the proceeds of two life insurance policies designated in prior proceedings and in the Intervenors' Complaints as the "Jordan policies." In their Complaints, the Intervenors each asserted a claim for conversion, alleging that the Receiver has improperly exercised dominion and control over the proceeds of the Jordon policies that were paid to him on May 14, 2004 (the "Proceeds"). Having each filed their claims on October 27, 2014, more than ten and a half years after the Receiver took possession of the Proceeds which the Intervenors claim was wrongful, their claims are barred by the applicable statute of limitations.

In furtherance of his Motion and as proof of the Intervenors' knowledge of the Receiver's possession of the Proceeds and issues concerning the rightful ownership of the Proceeds, the Receiver moves the Court to take judicial notice of the following particularly pertinent filings[1]:

1. On September 21, 2004, the Receiver filed a Motion for Order Clarifying the status of the Proceeds as Receivership assets. [Doc. No. 82].

2. Over the course of the subsequent months, a number of Jordan investors filed objections to the Receiver's motion to have the Proceeds clearly designated by the Court as Receivership assets. [Doc. Nos. 136, 149, 150 and 152]**.**

3. On March 16, 2006, this Court transferred the issue regarding the Proceeds to mediation which was then held on March 28, 2006. [Doc. No. 400].

[1] In addition to these cited filings being matters of public record, there were numerous postings on the Receiver's website of various motions and notices as well as updates from the Court's Examiner concerning the Proceeds. Affidavit of H. Thomas Moran, II, attached hereto as **Exhibit A**. Furthermore, the Receiver's office sent correspondence to, received correspondence from and had telephone conferences with the Intervenors and other investors relating to the Proceeds and the issue of ownership of the Proceeds. *Id*. at Par. 7.

4. On March 28, 2006, a mediation was held before Judge Michael R. Merz which resulted in a settlement in principle. [Doc. No. 412].

5. Given the settlement, and the agreement to it by all investors who had filed objections to the Receiver's Motion to Clarify, the Court overruled the Motion to Clarify Status of Matured Policy Proceeds on March 29, 2006. [Doc. No. 406].

6. On April 4, 2006, the Court approved the settlement subject to a fairness hearing which was held on April 13, 2006 and resulted in the Court's final approval. [Doc. Nos. 416 and 438]. None of the Intervenors attended that hearing.

7. On July 2, 2010, years before their motion to intervene and subsequent pleading were filed, the Intervenors sent a number of letters to the Court concerning a hearing that had been scheduled relating to the remaining Proceeds and Jordan investors who had not accepted the settlement to that point. In those letters, the Intervenors stated their objection to the Receiver's retention of the Proceeds and further noted that their, "…rights to those proceeds have been disputed since the Lifetime Capital receivership began." [Doc. Nos. 1141, 1142 and 1143]. These letters were followed by similar letters in which the Intervenors again noted their long standing objection to the Receiver's retention of what they viewed to be their shares of the Proceeds. [Doc. Nos. 1147, 1149, 1150, 1151, 1152, 1153, 1154, 1155 and 1156]. These letters show unequivocally that each of the Intervenors had been aware of the issues surrounding the Jordan policies and the Proceeds since early in the Receivership's existence and objected to the Receiver's retention of those proceeds as property of the receivership.

8. A hearing was held on August 23, 2010 concerning the claims of Jordan investors who had not accepted the settlement. Despite having indicated in their prior letters a desire to "participate and be heard" at that hearing (see, e.g. Doc. No. 1141, paragraph 1), none of the Intervenors attended that hearing. [See Doc. No. 1162].

9. Subsequent to the dismissal of a baseless appeal filed by the Intervenors, on March 18, 2013, the Intervenors first moved to intervene in this matter. [Doc. Nos. 1333, 1335, 1336, 1337 and 1339]. None of the Intervenors' Motions to Intervene attached a copy of a proposed pleading as required by Rule 24(c) of the Federal Rules of Civil Procedure.

10. On October 10, 2014, the Court granted the Intervenors' Motions to Intervene and ordered that they file their claims on or before October 24, 2014 [Doc. No. 1430].

11. On October 27, 2014, the Intervenors filed their first pleading, each asserting a claim for conversion against the Receiver and a claim for negligence against the Court's Examiner which the Court dismissed *sua sponte* the next day. [Doc. Nos. 1439, 1440, 1441, 1442 and 1443].

12. The Receiver answered the Intervenors' Complaints asserting, among other defenses, failure of the Intervenors' Complaints to state claims upon which relief can be granted and the statute of limitations. [Doc. Nos. 1447, 1448, 1449 and 1450].

The Intervenors have taken no further action to prosecute their claims.

As clear from a review of the Court's Docket, supplemented by the Receiver's Affidavit (attached hereto as ***Exhibit A***), it is clear that the Intervenors' claims were filed too late and should therefore be dismissed pursuant to the applicable statute of limitations. Furthermore, pursuant to the applicable law, a conversion claim cannot pertain to the alleged wrongful withholding of an intangible asset such as cash. For this reason as well, the Intervenors' claims should be dismissed.

LAW AND ARGUMENT

A. SUMMARY JUDGMENT STANDARD

The court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.

Civ. P. 56(a). An assertion of an undisputed fact must be supported by citations to particular parts of the record, including depositions, affidavits, admissions, and interrogatory answers. The party opposing a properly supported summary judgment motion "'may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.'" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (internal quotation omitted).

The Court is not duty bound to search the entire record in an effort to establish a lack of material facts. *Guarino v. Brookfield Township Trs.*, 980 F.2d 399, 404 (6th Cir. 1992). Rather, the burden is on the non-moving party to "present affirmative evidence to defeat a properly supported motion for summary judgment," *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989), and to designate specific facts in dispute. *Anderson*, 477 U.S. at 250. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). The court construes the evidence presented in the light most favorable to the non-movant and draws all justifiable inferences in the non-movant's favor. *United States v. Diebold Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962).

The court's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. The court must assess "whether there is the need for trial — whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250. "If the evidence is merely colorable, . . . or is not significantly probative, . . . the court may grant judgment." *Anderson*, 477 U.S. at 249-50 (citations omitted).

B. APPLICABLE LAW

The Intervenors are each Texas citizens while the Receiver is a citizen of Oklahoma. See Intervenors' Complaints at ¶¶ 1 and 4. A federal court sitting in diversity must apply the choice of law rules of the state in which it sits. *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496, 85 L. Ed. 1477, 61 S. Ct. 1020 (1941); *Tele-Save Merchandising Co. v. Consumers Distrib. Co.*, 814 F.2d 1120, 1122 (6th Cir. 1987). The Ohio Supreme Court has held that the Restatement (Second) of Conflicts governs choice of law questions in this state. *Morgan v. Biro Mfg. Co.*, 15 Ohio St. 3d 339, 342, 474 N.E.2d 286 (1984); *Macurdy v. Sikov & Love*, 894 F.2d 818, 820 (6th Cir. 1990). Ohio continues to recognize lex loci delicti, the place where the tort occurs, but that principle no longer automatically determines which state's law applies. Rather, the court must apply the Restatement analysis. *Id*.

Restatement (Second) of Conflicts § 147 governs "injuries to tangible things," which include conversion. Under that section, "the local law of the state where the injury occurred determines the rights . . . of the parties unless . . . some other state has a more significant relationship . . . to the occurrence." Comment i to § 147 specifically addresses conversion and states that whether a conversion has been committed, and if it has, "the resulting rights and liabilities of the parties, will be determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence, the chattel, and the parties." The Sixth Circuit Court of Appeals has determined that in a conversion action, the law of the state where the conversion occurs presumably applies. *Charash v. Oberlin College*, 14 F.3d 291, 296-99 (6th Cir. 1994). Accordingly given that if there was a conversion by the Receiver, it happened in his home state of Oklahoma, that state's law should apply on the substantive issues relating to the conversion the Intervenors allege.

On the specific issue of what statute of limitations should apply, though statutes of limitation might be viewed as procedural in nature and therefore an issue of forum-state law, the Sixth Circuit Court of Appeals has held that Ohio's borrowing statute "redirects" to the law of the state where the alleged cause of action accrued if that state has a shorter limitations period. *Frisch v. Nationwide Mut. Ins. Co.*, 553 Fed. Appx. 477, 484 (6th Cir. 2014). Ohio's borrowing statute reads as follows:

> No civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.

Ohio Rev. Code § 2305.03(B). Accordingly, Oklahoma's statute of limitations applies to the Intervenors' conversion claims. Pursuant to Oklahoma law, a plaintiff has two years from the date of the alleged wrongful conversion to commence an action. Okla. Stat. tit. 12, § 95(3). This limitations period is subject to a discovery rule which provides that the two years begin to run on the date the claimant knows, or in the exercise of due diligence, should have known of his or her alleged injury. *Kordis v. Kordis*, 2001 OK 99, 3, 37 P.3d 866, 869 (Okla. 2001).

C. ARGUMENTS

For at least two reasons, the Intervenors' claims should be dismissed. First, their conversion claims are barred by Oklahoma's two year statute of limitations. Second, under Oklahoma law, a plaintiff seeking to recover only money, which is intangible rather than tangible property, has no rightful claim for conversion.

With their own words and actions the Intervenors prove that they knew more than a decade before their pleadings were filed that the Receiver was retaining what they viewed to be their property and felt wronged by his failure to pay to them what they viewed to be their portion of the Proceeds. Most telling are the letters they sent the Court in July 2010 wherein they each

stated that their rights to the Proceeds, "…have been disputed since the LifeTime Capital receivership began." [Doc. Nos. 1141, 1142 and 1143]. Even in the absence of those letters, there is no reasonable dispute concerning whether the Intervenors knew, given the numerous docket entries, website postings and mailings, that the Receiver viewed and views the Proceeds as assets of the receivership contrary to the Intervenors' views that the Proceeds belonged to them and the other Jordan policies investors. As similarly situated investors did, the Intervenors could have appeared before the Court long ago and pressed their case. [Doc. Nos. 136, 149, 150 and 152]**.** They failed to do that and instead waited until this Receivership neared conclusion to plead their claims. They were years too late and as a result, their claims should be dismissed and judgment entered in favor of the Receiver.

Furthermore, "The general rule in Oklahoma is that only tangible personal property may be converted." *Welty v. Martinaire of Okla., Inc.*, 1994 OK 10, 867 P.2d 1273, 1275 (Okla. 1994) (internal citations omitted). When a plaintiff seeks to recover money, there is no conversion. *See Shebester v. Triple Crown Insurers*, 1992 OK 20, 826 P.2d 603, 608 (Okla. 1992) (finding no common-law conversion claim when claimant sought to recover money, which under Oklahoma law, "is considered intangible personal property"); *AG Equip. Co. v. AIG Life Ins. Co., Inc.*, No. 07-CV-0556-CVE-PJC, 2008 U.S. Dist. LEXIS 80669, 2008 WL 4570319, at *5 (N.D. Okla. Oct. 10, 2008) (dismissing claim for conversion because conversion claim was based on allegation that defendant wrongfully retained money paid by plaintiff) ("[B]ecause [plaintiff] is seeking to recover money only, the Court finds that [plaintiff] has not stated a claim for conversion under Oklahoma law."); *Slover v. Equitable Variable Life Ins. Co.*, 443 F. Supp. 2d 1272, 1279 (N.D. Okla. 2006) (applying Oklahoma law) ("Generally, only tangible personal property may be converted, such that conversion will not lie where the seller has the right to recover money, which is considered to be intangible personal property.") (internal citations

omitted). There is no genuine dispute concerning what the Intervenors are seeking: as clearly pled in their Complaints, they want money from the Receiver which they view as theirs. As such, their pleadings fail to state claims against the Receiver upon which relief can be granted pursuant to applicable law and should be dismissed.

Respectfully submitted:

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Attorneys for the Receiver,
H. Thomas Moran, II

CERTIFICATE OF SERVICE

This is to certify that on the **3rd** day of **August, 2015** a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and that a true and correct copy of the foregoing document was electronically mailed to the following:

Andrew C. Storar, Esq., *Court-Appointed Examiner*

D. Benham Kirk Jr., Esq. and **Melvin R. McVay, Jr., Esq.**, *Co-Counsel for H. Thomas Moran II, Receiver*

Brent L. English, Esq., *Counsel for Intervenor, Natlis Capital, LLC*

James M. Hill, Esq. and Stephen J. Johnson, Esq., *Co-Counsel for Janathan Majers, Ernest R. Bustos, Claimant Rudy Sotelo*

Walter F. Reynolds, Esq., *Counsel for Interested Parties, Richard A. Lee, James P. Kardys, Rachel Bon, Timothy Bon, Richard E. Fillingham, Ginette Giarardin, Joseph Girardin, Erich Grams, Cora J. Hanseman, Kathleen M. Hendrix, Brian Krasner, Joan Prokop, Paul Prokop, Johnny James Todd, Jr., Nannie Todd, James Walker, Janet Walker, Robert L. Hulseman, SPCP Group, LLC*

Alexander A. Arestides, Esq., *Counsel for Interested Parties, Larry Harville, Frances Harville*

Felix John Gora, Esq., *Counsel for Interested Parties, Cale W. Carson, Cornerstone Processing Alliance, LLC , C. Thomas Dupuis, Charles Farmouth,*

Andrew Paisley, Esq. and Scott P. Ciupak, Esq., *Counsel for Intervenor, Guaranty Bank*

And that a true and correct copy of the foregoing was also served, via regular U.S. Mail, postage prepaid, to the following:

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Jacquelyn Storms
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Nena Ivy-Ellison
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San Antonio, TX 78264

BIESER, GREER & LANDIS

By: */s/ Joseph C. Oehlers*
Joseph C. Oehlers

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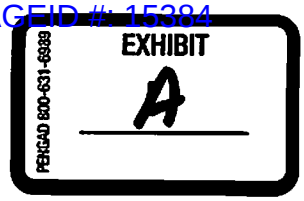


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

H. THAYNE DAVIS	:	Case No. 3:04 CV 0059
Plaintiff,	:	(U.S. District Judge Thomas M. Rose) (Magistrate Judge Sharon L. Ovington)
v.	:	
LIFETIME CAPITAL, INC.	:	**AFFIDAVIT OF** **H. THOMAS MORAN, II**
Defendant.	:	

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

The undersigned, H. Thomas Moran, of lawful age, being first duly sworn, deposes and states as follows:

1. I am the Receiver of certain assets of LifeTime Capital, Inc. ("LifeTime") pursuant to an Agreed Order ("Receivership Order") entered in this matter on February 20, 2004.

2. I have personal knowledge of the matters set forth herein.

3. I am providing this Affidavit in support of my Motion for Summary Judgment on Claims of Intervenors Johnnie C. Ivy, Nena Ellison, Ernest Storms, Jacquelyn Storms, Jane C. Ivy-Stevens and Robert Burgess (the "Motion"). The claims the Intervenors have asserted against me are for conversion of the proceeds of what have been referred to as the "Jordan policies."

4. The proceeds of the Jordan policies (the "Proceeds") were paid to me on May 14, 2004. Given that the insured covered by the Jordan policies had died prior to my appointment as Receiver, the issue arose concerning whether those Proceeds belonged to the receivership estate for the benefit of all LifeTime Capital investors or only to the investors who had arbitrarily had their investments "matched" to the Jordan policies.

5. On my behalf, my counsel filed on September 21, 2004, a motion seeking clarification from the Court on the issue of ownership of the Proceeds.

6. Over the course of the subsequent months and years, there were numerous other filings pertaining to the Proceeds, as more specifically set forth in the Motion. As proceedings progressed, my office made numerous postings to LifeTimeReceiver.com, including various court filings and updates from the Court's Examiner, Andrew Storar.

7. Additionally, my office sent letters to, received letters from and spoke over the telephone to investors concerning the Proceeds, including each of the Intervenors (or the investor through whom certain of the Intervenors apparently claim their interest). Included in that correspondence are the following:

(a) A March 4, 2006 letter from Intervenor Robert Burgess in which he states, "The viator of one of my policies died before you became the receiver. LifeTime Capital never distributed my share of that policy (#9904060001) to me. I suspect that money has long gone. It is of no consequence to my wife or me whether the court is or you are responsible for the failure to remit the money due me. A true and accurate copy of that letter is attached as Exhibit A1.

(b) Identical January 6, 2010 letters from Intervenors Ernest and Jacquelyn Storms in which they state, among other things, "Because Jordan died prior to your appointment as

Lifetime's Receiver, I do not believe my rights have been adequately protected nor have I been given due process." True and accurate copies of those letters are attached as Exhibits A2 and A3.

(c) Another January 6, 2010 letter from Irene Ivy (through whom Intervenors Johnnie C. Ivy, Jane C. Ivy-Stevens and Nena Ellison appear to be asserting their interests) wherein she also states, "Because Jordan died prior to your appointment as Lifetime's Receiver, I do not believe my rights have been adequately protected nor have I been given due process." A true and accurate copy of that letter is attached as Exhibit A4.

FURTHER AFFIANT SAYETH NOT.

By: _____
H. Thomas Moran

Subscribed and Sworn to before me this 30 day of July, 2015, by H. Thomas Moran.

MICHELLE SOBBE-NASHERT
Notary Public
State of Oklahoma
Commission # 08010472 Expires 10/27/16
(SEAL)

_____
Notary Public

My Commission Expires: 10-27-16

9157-2041671491949

March 4, 2006

101 Crested Butte
Cedar Creek, TX 78612
Reference Account IDs: #52267, #52268

Mr. Thomas H. Moran
Receiver for (and Non-distributor to policy holders of) the Assets of LifeTime Capital, Inc.
PO Box 16338
Oklahoma City, OK 73113

Mr. Moran:

My wife and I are stopping any further payments of our pro-rata share of the premium expense. The viator of one of my policies died before you became the receiver. LifeTime Capital never distributed my share of that policy (#9904060001) to me. I suspect that money has long gone. It is of no consequence to my wife or me whether the court is or you are responsible for the failure to remit the money due me. The court has made no accounting to me regarding the money, nor has it said that it is holding it in some account for me. Now, if we have not received any funds that we know are due, and we have no guarantee of any return on our investments, my wife and I see no realistic basis to continue payments.

Robert Burgess #52268

LaJuana Burgess #52267

EXHIBIT
A-2

Certified Mail

H. Thomas Moran, II
Receiver for Lifetime Capital Inc.
PO Box 16338
Oklahoma City, Oklahoma 73113

January 6, 2010

Re: Lifetime Capital: ownership rights to the Jordan policy

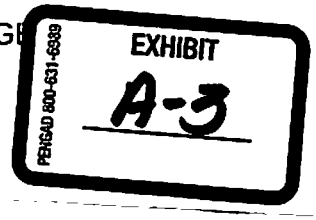
To: H. Thomas Moran,

In response to your December 16, 2009 letter, I am Ernest Storms, a Lifetime investor, and have been assigned beneficiary rights to the proceeds of policy # 9904060001, one of the Jordan policies since June 2, 2000. On October 5, 2004 I received a letter from Mr. Andrew C. Storar confirming I was identified as one of the investors matched to one of the Prudential policies that had matured. He stated the Jordan polices matured prior to the appointment of the receiver and *"Under those circumstances, it is required that the Court determine those funds are Receivership assets or whether they should be distributed directly to you"*, however, I have not received any notice from Mr. Storar or the Court of any determination on this issue. Instead, on December 16, 2009, you sent me a request to sign a release of all my rights to the death benefits of the Jordan policy to which I was assigned or I would lose all of my money. This would not be a fair or a just outcome to a legitimate question of my ownership rights to the Jordan proceeds. Because Jordan died prior to your appointment as Lifetime's Receiver, I do not believe my rights have been adequately protected nor have I been given due process. I am asking the Court for an Order releasing and paying to me the full death benefit proceeds from the Jordan Policy that are due to me as one of the rightful beneficiaries, plus interest, because the Jordan policy matured on time and prior to the appointment of the receivership. Enclosed is a copy of my request to the court.

Sincerely yours,

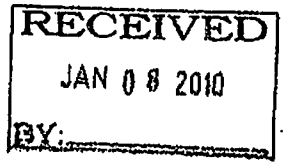
Ernest Storms

Ernest Storms
121 Frontier Tr.
Wimberley, TX 78676



Certified Mail

H. Thomas Moran, II
Receiver for Lifetime Capital Inc.
PO Box 16338
Oklahoma City, Oklahoma 73113



January 6, 2010

Re: Lifetime Capital: ownership rights to the Jordan policy

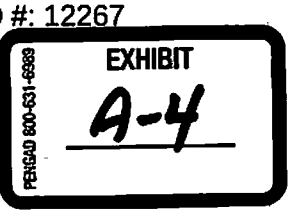
To: H. Thomas Moran,

In response to your December 16, 2009 letter, I am Jacquelyn Storms, a Lifetime investor, and have been assigned beneficiary rights to the proceeds of policy # 9904060002, one of the Jordan policies since June 2, 2000. On October 5, 2004 I received a letter from Mr. Andrew C. Storar confirming I was identified as one of the investors matched to one of the Prudential policies that had matured. He stated the Jordan polices matured prior to the appointment of the receiver and *"Under those circumstances, it is required that the Court determine those funds are Receivership assets or whether they should be distributed directly to you"*, however, I have not received any notice from Mr. Storar or the Court of any determination on this issue. Instead, on December 16, 2009, you sent me a request to sign a release of all my rights to the death benefits of the Jordan policy to which I was assigned or I would lose all of my money. This would not be a fair or a just outcome to a legitimate question of my ownership rights to the Jordan proceeds. Because Jordan died prior to your appointment as Lifetime's Receiver, I do not believe my rights have been adequately protected nor have I been given due process. I am asking the Court for an Order releasing and paying to me the full death benefit proceeds from the Jordan Policy that are due to me as one of the rightful beneficiaries, plus interest, because the Jordan policy matured on time and prior to the appointment of the receivership. Enclosed is a copy of my request to the court.

Sincerely yours,

Jacquelyn Storms

Jacquelyn Storms
121 Frontier Tr.
Wimberley, TX 78676



Certified Mail 707 2680 0001 7195 8472

H. Thomas Moran, II
Receiver for Lifetime Capital Inc.
PO Box 16338
Oklahoma City, Oklahoma 73113

January 4, 2010

Re: Lifetime Capital: ownership rights to the Jordan policy

To: H. Thomas Moran,

In response to your December 16, 2009 letter, I am Irene Ivy, a Lifetime investor, and have been assigned beneficiary rights to the proceeds of policy # 9904060001, one of the Jordan policies. On October 2004 I received a letter from Mr. Andrew C. Storar confirming I was identified as one of the investors matched to one of the Prudential policies that had matured. He stated the Jordan polices matured prior to the appointment of the receiver and *"Under those circumstances, it is required that the Court determine those funds are Receivership assets or whether they should be distributed directly to you"*, however, I have not received any notice from Mr. Storar or the Court of any determination on this issue. Instead, on December 16, 2009, you sent me a request to sign a release of all my rights to the death benefits of the Jordan policy to which I was assigned or I would lose all of my money. This would not be a fair or a just outcome to a legitimate question of my ownership rights to the Jordan proceeds. Because Jordan died prior to your appointment as Lifetime's Receiver, I do not believe my rights have been adequately protected nor have I been given due process. I am asking the Court for an Order releasing and paying to me the full death benefit proceeds from the Jordan Policy that are due to me as one of the rightful beneficiaries, plus interest, because the Jordan policy matured on time and prior to the appointment of the receivership. Enclosed is a copy of my request to the court.

Sincerely yours,

Irene F. Ivy

Irene F. Ivy
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