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1 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

2
3 Judge Erik P. Kimball

4
5 In Re:

6 Case No. 12-30081-BKC-EPK

7
8 CLSF III IV, INC.,
9 Debtor.

10 _____

11 EMERGENCY MOTION TO APPOINT TRUSTEE, PETITIONING
12 CREDITORS' OMNIBUS EMERGENCY MOTION FOR ORDER
13 DIRECTING IMMEDIATE APPOINTMENT OF INTERIM TRUSTEE (3)

14
15 August 24, 2012

16
17 The above entitled cause came on for hearing before
18 the HONORABLE ERIK P. KIMBALL, one of the Judges in
19 the UNITED STATES BANKRUPTCY COURT, in and for the
20 SOUTHERN DISTRICT OF FLORIDA, at 1515 North Flagler
21 Drive, West Palm Beach, Palm Beach County, Florida, on
22 August 24, 2012, commencing on or about 10:30 a.m.,
23 and the following proceedings were had:

24
25 Reported by: Jacquelyn Ann Jones, Court Reporter

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1 APPEARANCES:

2 EHRENSTEIN CHARBONNEAU CALDERIN

3 By: ROBERT P. CHARBONNEAU, ESQUIRE
DANIEL L. GOLD, ESQUIRE

4 On behalf of MQIC, the petitioning creditors

5 O'QUINN STUMPHAUZER, PL

6 By: RYAN DWIGHT O'QUINN, ESQUIRE
On behalf of the petitioning creditors

7
8 LAW OFFICES OF BRETT A. ELAM, P.A.
By: BRETT A. ELAM, ESQUIRE

9 On behalf of the alleged debtor

10
11 OFFICE OF THE U.S. TRUSTEE
By: HEIDI A. FEINMAN, ESQUIRE
(Appearing telephonically)

12
13
14
15 I N D E X

16 PAGE

17 WITNESS: DEBORAH C. PECK

18 DIRECT EXAMINATION BY MR. O'QUINN ----- 45

19 CROSS EXAMINATION BY MR. ELAM ----- 116

20 REDIRECT EXAMINATION BY MR. O'QUINN ----- 132

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23 Exhibits No. 2 thru 12 admitted ----- 43

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25 Exhibits No. 1 and 2 admitted ----- 149

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1 THE COURT: Good morning, everyone. Let's
2 have appearances in the new case, CLSF, I assume
3 that's III IV, Inc.; correct?

4 MR. GOLD: Yes, Your Honor, that's correct,
5 for the name of the entity.

6 Dan Gold, Ehrenstein Charbonneau Calderin,
7 for the group of individuals and outfit called MQIC,
8 that are the petitioning creditors this morning.

9 THE COURT: Good morning, Mr. Gold. Mr.
10 Elam.

11 MR. ELAM: Good morning, Your Honor. Brett
12 Elam on behalf of the alleged debtor, CLSF, III IV,
13 Inc.

14 THE COURT: So it's probably III IV, Inc.?
15 MR. ELAM: Yes, sir.

16 THE COURT: Okay. Very good. Yes.

17 MR. O'QUINN: Good morning, Your Honor.
18 Ryan O'Quinn on behalf of the petitioning creditors.
19 There's a motion pending, I believe, for my admission
20 pro hac vice.

21 THE COURT: Which I saw. I assume there's
22 no objection.

23 MR. ELAM: No, Your Honor.

24 THE COURT: That would be granted by the
25 usual form order. Yes. Anybody else?

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1 MS. FEINMAN: Good morning, Your Honor.
2 Heidi Feinman for the U.S. Trustee.

3 THE COURT: Good morning, Ms. Feinman.
4 Mr. Charbonneau, you want to be silent?

5 MR. CHARBONNEAU: I probably will be, Your
6 Honor, but just for the record, Robert Charbonneau for
7 the petitioning creditors.

8 THE COURT: All right, gentlemen. You can
9 all have a seat, please.

10 MR. ELAM: Your Honor, before we start, I
11 would just like to -- I would just like to say that
12 we have not been properly served. We have just gotten
13 involved in this case. There's no certificate of
14 service on the docket. We ask that we could continue
15 this hearing until Monday so that we could be properly
16 prepared, properly served.

17 In the motion the petitioning creditors
18 assert that the policy that's at issue could lapse.
19 We do have proof that that policy has been paid, the
20 premium has been paid, and it will be current through
21 September 22nd. So I don't really see any type of
22 damage or harm from the continuance.

23 THE COURT: Mr. Gold, did you have a chance
24 to talk before the hearing?

25 MR. GOLD: We did. And in fact, just a few

1 moments ago Mr. Elam showed me the transfer receipt
2 that I believe he's identifying as the payment for the
3 policy premiums.

4 Before we get into the defenses to the
5 presentation I would like to make for why a trustee
6 should be appointed, just a point about service, Your
7 Honor. I understand that Mr. Elam makes the point
8 about service not being properly perfected, I guess.

9 THE COURT: Of what? I'm asking of what.
10 There's two things. The summons was just issued
11 yesterday.

12 MR. GOLD: The summons was just issued
13 yesterday.

14 THE COURT: Obviously it can be served by
15 mail. I don't know whether it's been mailed. And
16 then there's the issue with regard to this hearing,
17 the notice of hearing, and the accompanying motion.

18 MR. GOLD: Yes. The involuntary petition,
19 the motion to appoint the trustee, and the renote of
20 hearing that set the hearing for 10:30 as opposed to
21 the previous notice of hearing.

22 Your Honor, our process server made efforts
23 to serve the alleged debtor at two locations. The
24 first address is the address found on Sunbiz, which is
25 the address that the debtor provided for itself with

1 fourth -- it's either 4235 PGA Boulevard, number 271,
2 or 4325 PGA Boulevard, number 271, which is, in fact,
3 a post office box. Our process server has photographs
4 of both locations, so service was, let's say
5 impossible. I wouldn't say that it was intentionally
6 thwarted, but certainly it was very difficult to
7 affect personal service on this package.

8 In part, because the address on Sunbiz is
9 not current, and if you're going to affect service on
10 the alleged debtor for a hearing of this sort, you
11 would think the address would be current, but it's
12 not. So that was one disabling condition.

13 As I said, our process server has forwarded
14 her affidavit on to our office, it's in the process of
15 being uploaded, but these were the activities she
16 undertook yesterday in the afternoon.

17 The other thing I would like to point out
18 about that is, Mr. Elam is, in fact, here. We did
19 notice Ms. Peck's litigation counsel with all of the
20 pleadings that we filed, the involuntary petition, the
21 motion, the exhibits, and the renote of hearing.

22 I had some dialogue with him over the e-mail
23 and asked him after our efforts to serve Ms. Peck at
24 the two addresses failed, do you have another address
25 at which we can serve her, to which I didn't get a

1 the Secretary of State, 631 U.S. Highway 1, I believe
2 is the address on the Secretary of State web site.

3 THE COURT: Which is also the address --

4 MR. GOLD: The registered agent, correct,
5 which is where we first attempted service of the
6 pleadings that I had just identified to you.

7 When our process server arrived at that
8 location, she discovered that the office space there
9 is actually vacant and there's a for rent sign on it.
10 So service there was impossible.

11 She's also in the -- well, my office I
12 should say, is in the process of uploading an
13 affidavit of service from the process server detailing
14 the attempts that she made to serve you -- sorry, to
15 serve the debtor.

16 The second address --

17 THE COURT: I did get that (laughter).

18 MR. GOLD: You did get the pleadings, that's
19 right, you did.

20 THE COURT: It's very large. It doesn't
21 look big on my iPad, but when I scroll through --

22 MR. GOLD: Yes. It was expensive, for which
23 I apologize up front, but there was a lot of necessary
24 information that had to be attached to that.

25 The second location, and I believe is the

1 response that said, yes, please serve her here. I got
2 a response that said, well, you're counsel in the
3 bankruptcy case, you'll figure it out, and no, I won't
4 give you a fax number.

5 So we took the efforts that I think were
6 reasonable under the circumstances. Ms. Peck is here,
7 Mr. Elam is here. I believe the allegations as set
8 forth in the motion, the reasons why the appointment
9 of an interim trustee immediately and for the benefit
10 of the petitioning creditors, is a separate issue for
11 whether we go forward today, but I'm eager to make my
12 presentation.

13 THE COURT: Let me address one service
14 issue. Was this mailed, the summons, was it mailed?

15 MR. GOLD: The summons may have been mailed
16 by U.S. mail. I don't know what we've done with the
17 summons that was issued late yesterday. I couldn't
18 tell you off the top of my head.

19 THE COURT: So you mean the petition may
20 have been mailed? You just said the summons may have
21 been mailed, but you don't know what was done with the
22 summons?

23 MR. GOLD: No, I'm sorry. We attempted to
24 serve the petition. The summons was issued late
25 yesterday.

1 THE COURT: Understood. You don't know
2 whether it was mailed?
3 MR. GOLD: No, I don't.
4 MR. CHARBONNEAU: Judge, just a quick point,
5 and I think maybe the Court may have picked up on it
6 in its opening remarks. We're talking about service
7 versus notice.
8 THE COURT: I'm aware of that. I'm aware of
9 that.
10 MR. CHARBONNEAU: Okay. And I think that
11 we have gone over and above what is required of us
12 under the rules to provide notice of this hearing to
13 the alleged debtor and its principal. Service, as you
14 know, can be effectuated by us under 7004. We've also
15 gone above and beyond what is required under that rule
16 and in the process of effectuating service are more
17 than happy to. But I would submit, Your Honor,
18 that --
19 THE COURT: Let's hear about, what notice
20 was given of today? Everything you said has to do
21 with today as well?
22 MR. GOLD: Yes.
23 THE COURT: Including talking with counsel.
24 And when you said the process server went around, that
25 was with the motion and the notice of the 10:30 time?

1 MR. GOLD: Yes, Your Honor.
2 THE COURT: All right. Understood. Yes,
3 Mr. Elam.
4 MR. ELAM: Your Honor, I would just like to
5 point out that while Mr. Gold said that there were
6 several addresses that they had tried to serve Ms.
7 Peck, on the declaration attached to their petition it
8 states Ms. Peck's home address, 128 Victoria Bay
9 Court, Palm Beach Gardens, Florida, 33418. Nobody
10 ever tried to go there.
11 THE COURT: So but why do they have to go
12 there? They're not serving her personally, she's a
13 representative; correct?
14 MR. ELAM: If they wanted to make sure that
15 she had service, I would think that if they had
16 that --
17 THE COURT: Well, didn't they -- they spoke
18 to a lawyer. Did the lawyer not contact her?
19 MR. ELAM: I'm not sure --
20 THE COURT: How did you find out about the
21 case?
22 MR. ELAM: -- I spoke with Ms. Peck.
23 THE COURT: So she found out somehow, and
24 there's actual notice.
25 MR. GOLD: And the lawyer indicated, his

1 name is Michael Glazer, I have an e-mail where he
2 says, Mr. Gold, I briefly spoke with Ms. Peck about
3 your filings. She has now been served as of 4 or 5
4 p.m. Eastern time today, and then he makes his
5 representations about proper service. But he clearly
6 spoke to Ms. Peck.
7 THE COURT: Let me just let you all know,
8 service under Rule 7004 can be effectuated by mail for
9 everything that is so far at issue in this case.
10 So unless, Mr. Elam, you tell me that an
11 address different from that shown on the web site for
12 Florida, which the mail may come back, and frankly,
13 I will not care, unless you give me an address that's
14 different from that, I am going to direct the
15 petitioning creditors to serve your client by mail by
16 mailing to the address shown on Sunbiz. This is your
17 chance to tell me that there's a different address
18 that should be used for the debtor. Whether it be Ms.
19 Peck or somebody else, I simply do not care.
20 MR. ELAM: Your Honor, I would suggest that
21 we use the address that I had just --
22 THE COURT: Somebody's home address?
23 MR. ELAM: Yes. So that it gets to Ms.
24 Peck.
25 THE COURT: That will be the debtor's

1 official address for purposes of this case.
2 MS. PECK: The PGA Boulevard address.
3 MR. ELAM: Also the PGA Boulevard --
4 THE COURT: Choose one, one address. And
5 then after the service of the summons, since you've
6 made an appearance, you get served.
7 MR. ELAM: Yes. That's fine. 128 Victoria
8 Bay Court, Palm Beach Gardens, Florida, 33418. And
9 then obviously, as you say, thereafter I can be
10 served.
11 THE COURT: Correct. All right. But for
12 purposes of today, I want to hear the presentation,
13 because I will reconsider the request for a
14 continuance, but only after I hear the presentation of
15 why I should consider an interim trustee. You
16 understand --
17 MR. ELAM: Yes, sir.
18 THE COURT: Very good. And then of course,
19 you can respond to renew your motion. Yes, Mr. Gold.
20 You should both know that I read everything
21 that you filed. Mr. Gold. So including the
22 attachments. I don't read Dutch, but I'm hoping that
23 the translation is certified.
24 MR. GOLD: Yes. The translation was, in
25 fact, certified. And the certification from the Dutch

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1 of the FIOD report that you were referencing appears
2 on the last page of the translation.
3 Then I will make my opening presentation
4 brief, because we're going to do this in two parts.
5 The first is that I think a brief explanation of the
6 structure of the funds and the flow in investor funds
7 is important for today's purposes.
8 THE COURT: It would be helpful to me. I
9 did read it, but hearing it again, will certainly be
10 helpful.
11 MR. GOLD: Certainly. And I figure for,
12 actually for the benefit of everybody in the
13 courtroom, that would be something that would be
14 appropriate.
15 In terms of what we're here for today, as
16 you know, we filed an emergency motion on behalf of
17 the petitioning creditors to appoint an interim
18 trustee on an immediate emergency basis.
19 As Mr. Elam points out, his client has
20 apparently forwarded premium payments to preserve the
21 underlying policy that we've alleged in our papers is,
22 or perhaps no longer, but as far as the information
23 that we had as of the date of filing the motion, was
24 in peril of lapsing.
25 There were a number of communications that

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1 led us to believe that, but that's perhaps one prong
2 of the factors that would go into the Court's
3 determination of whether an interim trustee should be
4 appointed immediately.
5 Just by way of a little bit of background
6 however, to identify and let you know who our
7 petitioning creditors are, our petitioning creditors
8 are individuals and a collective organized under
9 Belgium law, which is actually called a stichting.
10 The stichting goes by the name of MQIC, which is the
11 Maatschap QI Collectief, and QI stands for Quality
12 Investments. It was a body that was organized after
13 the fact of the, as we've identified in our papers,
14 the PCI fraud came to light.
15 So what happened, Your Honor, was, Provident
16 Capital Indemnity, which is the reinsurer that was
17 chosen by the organizers and issuers of these
18 investment offerings, paid policy premiums to PCI in
19 part to provide what we describe as maturity bonds,
20 which are the bonds that stand behind the life
21 insurance policies and will pay out in case the life
22 insurance policies do not pay out on time.
23 So this is a collective body, MQIC, that
24 represents and acts on behalf of as many as -- or
25 actually, I'm sorry, more than 700 investors, holding

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1 more than, I believe 96 million dollars in claims
2 against the network of funds identified as the CLSF
3 funds.
4 There are also the BGI funds and the LSF
5 funds that are all organized and offered through
6 Quality Investments.
7 THE COURT: Does the structure for MQIC have
8 some parallel in the United States law that might be
9 helpful in understanding its role?
10 MR. GOLD: How would I -- how to properly
11 characterize it. It is almost like a governing body,
12 or a policy board, or a policy body that's created,
13 let's say by a group of, who would be class action
14 plaintiffs. So you could almost -- you could almost
15 analogize it to a body like an unsecured creditors'
16 committee in a bankruptcy case.
17 THE COURT: Is there an agency relationship?
18 MR. GOLD: Yes. There are powers of
19 attorney, there are powers to act, there are
20 responsibilities that are given to the representatives
21 of MQIC who are empowered to take certain actions on
22 behalf of the investors.
23 There are procedures for their reporting
24 back to the members. There are procedures for their
25 being replaced. There are procedures for their

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1 resignation. It's actually a fairly elaborate set of
2 bylaws.
3 And just for Your Honor's information, the
4 petitioning creditors and the individuals, and in this
5 case MQIC had at least \$600,000 in claims against the
6 alleged debtor.
7 What I would like to do now, if I may,
8 before we get into specifics for appointment of the
9 interim trustee, is cede the floor for a moment to Mr.
10 O'Quinn, in part because Mr. O'Quinn is, I think the
11 best person to give the Court the general description
12 of how these funds were organized.
13 THE COURT: Thank you. Sir.
14 MR. O'QUINN: Good morning, Your Honor.
15 By way of background, I'd like to explain to
16 the Court a little bit about the nature of this
17 investment. I'm not sure if the Court is familiar
18 with a viatical or life settlement, but viaticals
19 arose out of the AIDS crisis and a secondary market in
20 insurance policies that covered terminally ill or
21 chronically ill individuals.
22 In approximately 2000 to 2002, by
23 development of medical diagnoses and treatments, a lot
24 of the critical elements of the viatical industry,
25 particularly AIDS as a chronic or terminal illness,

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1 fell away as a great marketing tool. And the viatical
 2 industry looked for other insurance policies of
 3 terminally ill, chronically ill individuals to help
 4 fill an investor demand for this type of investment
 5 product.
 6 Throughout the late 1990s and early 2000s
 7 the retail sale of fractionalized insurance policies
 8 to investors was ripe with fraud. It was something
 9 that we witnessed here in South Florida, and it was
 10 something that affected the entire nation. It turned
 11 into a multi-billion dollar problem.
 12 In approximately 2004 the Securities and
 13 Exchange Commission brought a seminal case called
 14 Mutual Benefits. The Mutual Benefits case was a case
 15 that alleged false life expectancies and
 16 misappropriation of premium escrow funds that left
 17 investors who had invested in viaticals and life
 18 settlements wholly exposed to almost certain loss.
 19 The court -- the Southern District of
 20 Florida issued an opinion in May of 2004 finding that
 21 viaticals and life settlements were securities, a
 22 decision that was appealed to the 11th Circuit, and in
 23 May of 2005 that decision was affirmed by the 11th
 24 Circuit.
 25 The affirmation of the Southern District of

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1 Florida's determination that viaticals and life
 2 settlements were securities had a devastating effect
 3 on the life settlement market domestically, because it
 4 became clear that the issuers of these investment
 5 contracts now fell within the regulatory ambit of the
 6 Securities and Exchange Commission and its disclosure
 7 and anti-fraud provisions.
 8 It was in that climate that Quality
 9 Investments was born. A group of individuals who were
 10 familiar with the sourcing of life insurance policies
 11 now had the market for their policies decimated. And
 12 what they did is, they organized a new business,
 13 Quality Investments, that was intending to take those
 14 insurance policies, package them in the same manner
 15 that they'd been packaged in prior years, but now to
 16 form a foreign entity and to sell them off to
 17 international investors in a sale that was
 18 specifically intended to evade U.S. regulatory
 19 oversight.
 20 From approximately 2005 through 2010 this
 21 offering developed and changed in some ways, but
 22 generally stayed fairly similar to offerings that the
 23 Court may be familiar with, the Financial Federated
 24 Viatical offering, or the Mutual Benefits offering,
 25 where investors were promised a significant return

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1 based on a life expectancy of an insured where the pay
 2 out of that would either be annualized in the BGI
 3 funds, or in a lump sum payment at the end of the CLSF
 4 funds.
 5 The organizers of the Quality Investments
 6 fraud dealt with the life expectancy fraud problem by
 7 representing to investors that they had the ability to
 8 go into the market and buy reinsurance from an
 9 undisclosed reinsurer that they made representations
 10 about the safety and solvency of this company, but
 11 told investors that the identity of this company was a
 12 proprietary secret.
 13 So the investors were told that their
 14 payment, their investment in this insurance policy was
 15 reinsured, and the payment of their return was a
 16 guaranteed payment on a date certain, and that there
 17 were virtually no risks that could adversely impact
 18 the timing date of that investment.
 19 Investors were told that the investments
 20 they were making were in American insurance policies
 21 that would be overseen by an American attorney. And
 22 they were specifically told in the offering documents
 23 that these investments would be overseen by a licensed
 24 attorney who would be subject to disciplinary rules
 25 and all of the accruments that go with a member of a

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1 Bar of the United States.
 2 Investors believing that these investments
 3 were sound and guaranteed, and would return between 8
 4 and 15 percent in annualized returns, were told to
 5 wire their funds directly to an attorney trust account
 6 in the United States where those funds would be
 7 safeguarded and held for the purpose of acquiring the
 8 insurance policy, and importantly, for the maintenance
 9 of that insurance policy through the payment of
 10 premiums.
 11 Unfortunately, the documents in this case
 12 differ slightly from the actual structure of the
 13 fraud. So when the Court is looking at this issue,
 14 the Court needs to take notice of whether or not
 15 you're looking at the form that was presented to
 16 investors prior to the investment, or the form that
 17 the investment actually undertook when they collected
 18 the money and executed the acts in furtherance of what
 19 essentially is the scheme.
 20 Investors sent their money to an attorney
 21 trust account in New Jersey. That money was used to
 22 purchase an insurance policy, to put that policy into
 23 a Florida corporation so that it could be held by that
 24 Florida corporation, and the expectation was that the
 25 premium payments on that policy would be continually

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1 made through the end of that maturity date or the
2 collection on the maturity bond.
3 Unfortunately what happened is the money in
4 those trust accounts was misappropriated leaving these
5 policies exposed to the longevity risk of a maturity
6 date that is exceeded by the insured.
7 The revelation that the PCI fraud was, in
8 fact, a fraud, and a fraud that we believe was
9 somewhat independently operated from some of the other
10 acts of fraud that we'll be talking about in this
11 case, when the PCI fraud was revealed it became
12 apparent that the guaranteed pay out date was now
13 somewhat threatened. And it began to unravel
14 ultimately the Quality Investments offering. And I
15 think that Mr. Gold will be going into some of the
16 aspects of that bad conduct and its effect on the
17 investors and their needs at this time.
18 But essentially what you ended up with in
19 this fraud is investors who, based on material
20 misrepresentations, wired money to a U.S. account for
21 the purpose of purchasing, packaging and holding
22 insurance policies. Those insurance policies were
23 each placed into an individual corporation, and that
24 corporation was the legal owner and the beneficial
25 owner of that insurance policy, and is the holder of

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1 the res that is the subject of each investor's claim.
2 So an investor has a specific corporation, and a
3 specific claim against that corporation, for the
4 amount of their anticipated pay out.
5 THE COURT: And this debtor, the alleged
6 debtor, is just one of these many corporations?
7 MR. O'QUINN: One of approximately 60, yes,
8 Your Honor.
9 Thank you, Your Honor.
10 MR. GOLD: And as Your Honor just pointed
11 out, and probably shouldn't come as a surprise to you,
12 this particular involuntary case is one among what we
13 can anticipate to be many, as you probably found for
14 yourself.
15 In this instance what we have are the
16 requisite number of petitioning creditors against this
17 particular entity. We're lining up others. But this
18 case is instructive in a couple of respects.
19 One, this case is paradigmatic for the rest
20 of certainly the CLF cases in the sense that we have
21 investors who invested in the fund, and in reliance on
22 the prospectus which served as the basis and the model
23 for all other subsequent CLSF funds and CLSF
24 prospectuses.
25 One of the things with prospectus that we've

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1 attached to the motion to appoint the trustee says is
2 that it does, in fact, serve as the basis for other
3 similar offerings that are going to be made by the
4 organizers of the CLF funds by this outfit we call QI,
5 Quality Investments.
6 Why we're here today. As you've also heard,
7 is that the investors, through their various
8 communications with Quality Investments and with Ms.
9 Peck herself, were extremely worried about their
10 investments, had no indication obviously of when a pay
11 out would come, in part because of the PCI fraud, but
12 in part because of the communications that they were
13 receiving through Ms. Peck's office.
14 As Your Honor knows, the standard to appoint
15 an interim trustee is potential wasted assets,
16 concealment, and dissipation of the same.
17 Mr. Elam this morning just before the
18 hearing showed me a wire confirmation. He claims that
19 the wire confirmation is a confirmation that the
20 premiums on this particular policy, on the policy
21 that's being held by CLSF III IV, Inc., has, in fact,
22 been paid. The wire transfer confirmation is dated
23 August 21st. So we filed our motion on August 22nd.
24 I couldn't tell you a couple of things about
25 the transfer. I could certainly look at the face

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1 amount and see how much was transferred. I can also
2 look at the wire transfer confirmation and see that
3 it's tagged to, I'm looking around the courtroom to
4 make sure we're only among the folks here who are
5 authorized to be here and we don't have any other
6 calendar folks here, it's the Herkowitz policy.
7 I've taken pains where possible to redact
8 the policy number or the policy name because these are
9 folks who are still alive and may not want to see
10 their name in the paper --
11 THE COURT: I saw. But does it show the
12 recipient and indicate its purpose on the wire
13 transfers received?
14 MR. GOLD: I would have to look again at the
15 wire transfer confirmation. The recipient is Wells
16 Fargo Bank. It's debited out of Ms. Peck's account.
17 There's the account number. And it says the template
18 name is Robert Herkowitz, the name of the underlying
19 insured, CLSF III-IV. It appears to come out of --
20 originator information is Deborah C. Peck, Esquire,
21 631 U.S. Highway 1, Suite 303, North Palm Beach,
22 Florida, which is the address also of the registered
23 agent, Ms. Peck, and the alleged debtor. And it says
24 premium payment policy JF5516678. So it looks like
25 it's penned to the right policy.

1 THE COURT: And Wells Fargo is the
2 appropriate recipient?

3 MR. GOLD: I don't know, because I believe
4 that the underlying -- the underlying carrier is
5 Jefferson Pilot for this particular policy. I think
6 it's Jefferson Pilot. It says Lincoln Financial
7 Group, which I may just have the name of the carrier
8 wrong. I could look very quickly and see if I've got
9 the right one.

10 THE COURT: Well, you had three concerns,
11 there are other concerns, but there was a concern with
12 regard to the policy terminating as a result of the --

13 MR. GOLD: It's really with regard to the
14 policy terminating.

15 THE COURT: Concern with regard to its
16 potential transfer.

17 MR. GOLD: Yes.

18 THE COURT: And a concern with regard to
19 other transfers of funds which may be held in trust
20 for the benefit of this entity.

21 MR. GOLD: That's right, Your Honor. So
22 there are some things that we don't know. Even if we
23 know now that a payment has been made presumably to
24 preserve a policy, we don't know where those funds
25 came from.

1 called the premium buffer. The premium buffer, as you
2 can imagine, was supposed to be that amount held in
3 reserve in case premium payments had to be made over a
4 longer period.

5 In this particular instance, I don't imagine
6 that the payments that may have been made to preserve
7 this policy were made out of the premium buffer. It
8 seems unlikely after all of the things that the FIOD
9 did regarding the various transfers in and out of Ms.
10 Peck's trust account. Which brings me back to why
11 we're here and why we're seeking a trustee.

12 Ms. Peck may have made a transfer here to
13 preserve the policy. There are a couple of things
14 that we don't know. We don't know if there are any
15 funds remaining in this alleged debtor. We don't know
16 if any funds remaining from those original investor
17 payments remain, what their status is, how much,
18 what's happened to them. It sounds like, based on the
19 payment being made, that the policy has't been
20 transferred.

21 However, as we've detailed in the motion
22 and the the exhibits attached thereto, there
23 definitely been several attempts and several
24 meaningful conversations regarding potential
25 transfers.

1 It would be me speculating, but I don't
2 know, and based on the report of the FIOD, I would be
3 highly skeptical that the funds used to make that
4 payment would have been what are termed in the CLSF
5 prospectus as the premium buffer, which, to just give
6 a very brief explanation of that is, when an investor
7 made their initial investment through Quality
8 Investments, and made their payments to Ms. Peck's
9 trust account, there were two payments that were
10 subtracted from that original investment for payment
11 of premiums of the life insurance on the one hand, and
12 the reinsurance, the maturity bond on the other. I
13 believe the payment on the maturity bond was roughly
14 24, or 25,000 that was paid all in one payment and
15 basically prepaid the entire amount that any investor
16 was supposed to pay to secure the maturity bond.

17 The other two components for the life
18 insurance were roughly 13,000 and change each. So any
19 investor's contribution in the original -- or the
20 initial contribution was broken down into increments
21 of at least 240,000. So of that 240,000 at least
22 13,000 was supposed to go to an initial, I'll call it
23 an initial, premium payment, and there was supposed to
24 be another 13, an identical amount, 13,000 and change,
25 13,100 and something, reserved for what the prospectus

1 THE COURT: This was actually noted
2 apparently in the letter to investors.

3 MR. GOLD: It was. In fact, Ms. Peck, I
4 believe said she would have no choice but to sell
5 certain policies to preserve others. Now, that may be
6 a triage strategy that has a kind of facial appeal,
7 but it's certainly not what's authorized under the
8 prospectuses, it's not what the investors expected,
9 and what it would also do is use funds or use assets
10 of one set of investors who invested in one fund to
11 preserve assets in another fund.

12 Which we could talk at the appropriate time
13 about whether or not that's a breach of fiduciary
14 duty. But it's certainly not something investors in
15 any particular fund would want to see happen if their
16 assets were used to preserve assets in another fund
17 for the benefit of a different group of investors.

18 So as you can see, sort of the nature of
19 this case is going to in part determine and kick off
20 activities that -- or activities is the wrong word,
21 I'm sorry, the pursuit of remedies that are going to
22 have ripple effects throughout the entire network of
23 funds.

24 One of the things that the investors would
25 like to see, and certainly urge you to consider very

1 strongly, is that Ms. Peck has lost the trust. Ms.
2 Peck's history of transfers as outlined in the FIOD
3 report is certainly disturbing.

4 It may be the case that a transfer of funds
5 in this case was made to preserve this particular
6 policy. But what we don't know is what the general
7 tenor, what the general conduct of transfers in and
8 out of her trust accounts in general have been. And
9 what the extent of lost money is. According to the
10 FIOD, it's more than 140 million dollars.

11 I couldn't tell you standing here today how
12 much money may have been misappropriated through this
13 debtor, or whether any money has been misappropriated
14 through this debtor. But what I can tell you is,
15 because of the seriousness of the allegations, even if
16 a trustee is not appointed today, we definitely will
17 push to have a trustee appointed eventually, and that
18 eventuality, I think is undeniable.

19 But we're going to pursue and use every
20 discovery device available to retrieve as much
21 information as we can, because as the FIOD has
22 outlined, the extent of the transfers, the extent of
23 misappropriation of investor funds, is certainly
24 alarming, and is more than half of the total of
25 investor funds that were processed through Ms. Peck's

1 25th e-mail, or March 25th letter to investors, is to
2 collectivize premiums, and basically to use premiums
3 to pay off lapsing policies on an imminent danger, or
4 imminent danger of lapsing basis, which again, is not
5 authorized by -- it doesn't authorize her to do that
6 under the prospectuses. It's also again, a
7 co-mingling of investor funds in a way that was not
8 the bargain that was struck, was not the contractual
9 expectation that the investors had with her.

10 More to the point though, we don't again, we
11 just don't know the providence of where the moneys are
12 coming for any particular premium payment. In this
13 particular instance, maybe the right one has been
14 made. We don't know what the source of the money is.

15 Point two, and just as important for today,
16 as Your Honor touched on when we had our discussion
17 about service, this particular entity has been
18 administratively dissolved for more than a year on the
19 Florida Secretary of State's web site. And as our
20 difficulties trying to get this alleged debtor served
21 with notice of hearing today, that's become all too
22 clear.

23 We don't have an operating debtor here. The
24 potential harm, or the kind of things that Rule 2001
25 and Section 303(g) talk about regarding a debtor don't

1 trust accounts.

2 So in essence, yes, we're here today to
3 appoint a trustee over this particular alleged debtor,
4 but the implications of that are obviously much
5 grander, much more serious. And we're not hiding the
6 fact that we're telegraphing a much larger effort
7 here.

8 MR. CHARBONNEAU: Your Honor, may I have a
9 moment with Mr. Gold?

10 THE COURT: Yes, of course.

11 MR. CHARBONNEAU: Beg your pardon, Your
12 Honor.

13 MR. GOLD: I'm sorry, Your Honor.

14 Two more points to be made. One, in
15 relation to the sort of general allegations of fraud
16 and the extent of, certainly suspect transfers, the
17 fact that a payment may have been made to preserve
18 this policy, as I pointed out before, doesn't sanitize
19 the origin of payment.

20 Like I said before, we don't know where the
21 money for that payment came from. We don't know if
22 it's our investor's money, we don't know if it's other
23 investors' money. But what we do know is that Ms.
24 Peck herself has represented to the investors that she
25 would be, the word she used in, I believe in a March

1 apply here. In this instance Ms. Peck has held
2 herself out as a fiduciary for the investors. As
3 we've pointed out, based on her representations to
4 them, the facts as found by other investigatory
5 bodies, they have no confidence in her to act as their
6 fiduciary.

7 In this instance we need an independent
8 fiduciary to start investigating not just the
9 transactions of this particular debtor, but the
10 debtors in general. This is an intertwined,
11 inextricably intertwined network of companies. The
12 extent, the volume, the magnitude of intercompany
13 transfers, this is something that certainly has to
14 start being investigated. We don't know what it will
15 find.

16 Certainly we're skeptical that we're going
17 to see the adherence to corporate formalities, the
18 authorizations that would be required for some of the
19 transfers to have been made. There were clearly a lot
20 of words here, Your Honor.

21 And in this particular instance, we don't
22 have an operating debtor. In fact, we don't even have
23 a debtor that's up to date with the Florida Secretary
24 of State.

25 What we have is a debtor whose affairs need

1 to be wound down. And the Florida statutes, even for
2 an administratively dissolved entity, will allow that
3 debtor to, in essence, be a party to a lawsuit for the
4 very purpose of winding down its affairs.

5 THE COURT: The solution doesn't prevent
6 from being a defendant in any lawsuit.

7 MR. GOLD: That's correct, Your Honor.

8 So part of the factors that compel
9 appointment of a trustee is, this debtor has held
10 itself out as basically being defunct at the 11th hour
11 through Ms. Peck. It takes an action to hopefully
12 preserve a policy, may be fend off a proceeding just
13 like this. But the hour is just too late.

14 We need our independent fiduciary in there.
15 We need to start discovery right away. We need to get
16 to the bottom of the magnitude, the type, and the
17 authorization for the transfers. And as I just said,
18 this is one among what will be dozens of cases.

19 And Your Honor, if you would like to
20 consider it now, the exhibits that we have attached to
21 our motion, we've prepared an exhibit register, I'd
22 like to move those in. I don't think that there's
23 dispute regarding them. Since the source of several
24 of them is Ms. Peck, I think if I had to I could put
25 her on the stand to authenticate them, but I'll leave

1 THE COURT: So that's a hearsay objection?

2 MR. ELAM: Yes, sir.

3 MR. CHARBONNEAU: Your Honor, it falls under
4 the hearsay objection under 803, I can't recall right
5 this second the subsection, as an official document of
6 an official government agency. Even one that is
7 extrajudicial outside of the United States can be
8 admitted through judicial notice by the Court.

9 THE COURT: So I would normally -- let's
10 assume hearsay applies just for a moment. I would
11 normally consider evidence in connection with how it
12 was maintained and why. I can conclude that based
13 solely on the report.

14 MR. CHARBONNEAU: Judge, as I understand it,
15 we're looking at Federal Rule of Evidence 9025, and it
16 says, a foreign public document is considered self
17 authenticating if it is evidenced by an official
18 publication or it purports to be executed in an
19 official capacity by a person authorized to do so by
20 the laws of the foreign country, and is accompanied by
21 a final certification of genuineness by a diplomatic
22 or consular agent of the United States, or by a
23 diplomatic or consular official of a country foreign
24 assigned or accredited to the Unites States.

25 So Judge, the certification as to the

1 that up to your discretion. What I would like to do
2 now is present you with an exhibit register.

3 THE COURT: You can hand it up has. Has Mr.
4 Elam had a chance to look at this? Is it identical to
5 what's attached?

6 MR. GOLD: It is identical to what's
7 attached.

8 THE COURT: Take a moment, Mr. Elam, and let
9 me know if you have an objection.

10 THE COURT: Over here is fine. And they're
11 numbered identically?

12 MR. GOLD: These are numbered. I believe
13 when they were attached to the motion they were
14 lettered, but they're in the same order.

15 THE COURT: Yes, Mr. Elam.

16 MR. ELAM: Your Honor, I have an objection
17 to the FIOD report. There's nobody here to testify to
18 the accuracy of this report. It's been translated.
19 There's nobody here to testify.

20 THE COURT: Well, the translation is
21 certified.

22 MR. ELAM: But there's nobody to testify
23 to the accuracy of the underlying report. The person
24 that kept it under the business records, I don't think
25 that that's --

1 translation is --

2 THE COURT: Is from a consular body, is that
3 what you're saying?

4 MR. CHARBONNEAU: The certification?

5 THE COURT: Yes.

6 MR. CHARBONNEAU: May I have a moment, Your
7 Honor?

8 THE COURT: Just let me ask this question.
9 It wasn't an authentication objection, it was hearsay?

10 MR. CHARBONNEAU: It was. It was. And
11 Judge --

12 THE COURT: Mr. Elam, are you suggesting
13 it's not authentic?

14 MR. ELAM: Both, Your Honor.

15 THE COURT: Oh, you are?

16 MR. ELAM: Yes. I'm sorry, yes, both.

17 MR. CHARBONNEAU: There are a number of
18 cases that I can cite to the Court where similar
19 documents were offered into evidence and the Court
20 took judicial notice of them, if the Court has a
21 moment to --

22 THE COURT: I'd be glad to take that. Let
23 me just point out to you that at least I view this
24 motion to be very similar to a preliminary injunction.
25 A preliminary injunction standard does not directly

1 apply, but when you read the case law in connection
2 with requests for appointment of a trustee during the
3 gap period, the standard is very, very similar.

4 Two Circuits have ruled that the hearsay
5 rule doesn't apply at all in that context, and one, I
6 can't remember which, either the 7th or the 10th, has
7 ruled that no rules of evidence apply at the
8 preliminary injunction stage. I don't see why the
9 standard should be different here.

10 And let me say why, but I don't think it
11 should be different. The 11th Circuit has not ruled
12 on this, by the way. The reason I don't think it
13 should be any different, although the case law in this
14 context does not use the phrase, substantial
15 likelihood of success on the merits, the weighing
16 process is very, very similar. And in general what
17 I'm looking at is, reason to believe one way or
18 another.

19 And if I had to have evidence which
20 satisfied the hearsay standard in every regard, there
21 would never be an interim trustee appointed, because
22 by the time we had a hearing on it, if the allegations
23 were true, there wouldn't be any assets left in the
24 case.

25 So I will overrule both objections. But if

1 you wish to point out for the record, it may be
2 helpful, reasons why this is not hearsay, and why it
3 is self authenticating, please do it.

4 MR. CHARBONNEAU: Judge, one of the cases
5 that we would rely on is United States versus Pluta,
6 P-1-u-t-a. It's a 3rd -- excuse me, 2nd Circuit case,
7 Your Honor, 176 F 3d 43. And in that case the Court
8 held that the hearsay exception of Rule 8038 includes
9 public records kept by the United Nations and foreign
10 governments.

11 FIOD, being a public agency of the
12 Netherlands, and this report issued by them, falls
13 within that, the purview of the ruling of the Pluta
14 case.

15 Similar cases, Judge, In Re Korean Airlines
16 Disaster of September 1st, 1983. And Your Honor, as
17 Mr. Gold points out, the very top of the first page of
18 the FIOD report says, official report of finding
19 detailed description of money trails. So it is an
20 official report, Your Honor, of a governmental agency
21 of the Netherlands.

22 THE COURT: All right. But the
23 authentication provision that you cited to me before
24 requires that there be essentially a consular
25 certification, doesn't it?

1 MR. CHARBONNEAU: Your Honor, it does.

2 THE COURT: I don't think I have that. I
3 have a translation certification, which is Exhibit 2,
4 or what's referred to as Exhibit 2, and that's
5 certified. Otherwise -- certified? I'm sure that it
6 is. I don't think it's certified under 902, it's self
7 authenticating.

8 MR. CHARBONNEAU: I just want to make sure,
9 Your Honor, that we don't have something else in that
10 regard.

11 THE COURT: Absolutely.

12 MR. CHARBONNEAU: Judge, we'd rest on, and
13 we feel that the Court can make an easy ruling, that
14 8038, the exception to the hearsay rule, applies for
15 this public record kept by a foreign government.

16 With respect to authentication, Judge, I'm
17 not sure, perhaps we could sidestep that issue under
18 9025 by the Court simply taking judicial notice, as I
19 believe the Courts in Pluta and the Korean Airlines
20 Disaster case did.

21 THE COURT: Which provision did you cite in
22 902? Foreign public documents?

23 MR. CHARBONNEAU: Yes, sir.

24 THE COURT: Sub 3?

25 MR. CHARBONNEAU: I had 5, Judge, but that

1 could be a misprint.

2 THE COURT: I hope I have the most current
3 one. I'm not sure it satisfies. I had it as to 902
4 Sub 3.

5 MR. ELAM: 902 Sub 3, Your Honor.

6 THE COURT: I don't think it satisfies
7 necessarily 902 Sub 3. There is a savings provision
8 which would allow the parties, meaning Mr. Elam and
9 his client, to test the document and let me know
10 whether they believe this is not authentic.

11 MR. CHARBONNEAU: Right. The savings
12 provision of 902, is that correct, Judge?

13 THE COURT: Correct, yes.

14 MR. CHARBONNEAU: Reasonable opportunity.

15 THE COURT: Correct. And it's specifically
16 addressed in 902 Sub 3, or isn't it to be treated as
17 presumptively authentic, if all parties have been
18 given as a reasonable opportunity to investigate,
19 well, you would have to -- an investigation didn't
20 happen between yesterday and today.

21 MR. CHARBONNEAU: Right. So the way I'm
22 reading the rule, Your Honor, then is if we
23 conditionally admit it subject to whatever reasonable
24 efforts Mr. Elam wants to undertake to test the
25 validity and the authenticity of the document.

1 THE COURT: Right. But you want me to rely
 2 on it.
 3 MR. CHARBONNEAU: For purposes of today,
 4 Judge. The interim relief we're looking for --
 5 THE COURT: I understand. I understand.
 6 And that's not what the rule says.
 7 Mr. Elam, you were standing.
 8 MR. ELAM: No, Your Honor, I was just going
 9 to say that there's no signature and there's no final
 10 certification on this document, and I don't think that
 11 it can conditionally be entered, and I do not think
 12 that we've had reasonable time to inquire to the
 13 validity of the document. So I don't think you can
 14 rely on it for today.
 15 THE COURT: Well, there are signatures.
 16 They're just not on the translation part. They're at
 17 the back of proposed Exhibit 1. It is signed. And I
 18 should point out that the language above it appears to
 19 be effectively an affidavit. So it's signed.
 20 MR. ELAM: We don't think there's a consular
 21 certification then.
 22 THE COURT: I agree with that. And I also
 23 agree that the condition that would allow me to find
 24 that it is presumptively authentic has not happened.
 25 I don't see how there could be an investigation. It

1 seems to me that there would have to be a reasonable
 2 opportunity to investigate it. I kind of doubt that
 3 it's been fabricated, but nonetheless, the
 4 authentication rule is there.
 5 Let me point out to you that the 10th
 6 Circuit ruled in a case called Heideman,
 7 H-e-i-d-e-m-a-n, at 348 F 3d 1182, which is the
 8 preliminary injunction context, that none of the
 9 Federal Rules of Evidence apply, the entire document,
 10 nothing. And there's a good reason for that. And
 11 I think this is a parallel standard. Have I gone to
 12 look and see whether that law is the same in this
 13 context? I have not. And I may take a break and go
 14 and do that. But let's go on with the presentation.
 15 Anything else you would object to, Mr. Elam?
 16 MR. ELAM: Not at this point, Your Honor.
 17 THE COURT: So it is acceptable to your
 18 client, I admit everything other than 1 at this point?
 19 MR. ELAM: No, Your Honor, we have no
 20 objection.
 21 THE COURT: Okay. I'm going to admit 2
 22 through 12, inclusive.
 23 (Exhibits No. 2 thru 12 admitted.)
 24 THE COURT: Do you wish to call any
 25 witnesses, Mr. Gold?

1 MR. GOLD: Yes, Your Honor. Ms. Peck is
 2 in the courtroom. We would like to call Ms. Peck.
 3 THE COURT: Okay. Ms. Peck. Good morning.
 4 Why don't you come over to the witness stand. Please
 5 remain standing. The court reporter will swear you in
 6 and then you may have a seat.
 7 THEREUPON,
 8 DEBORAH C. PECK,
 9 being by the undersigned notary first duly sworn to
 10 testify the whole truth, as hereinafter certified,
 11 testified as follows:
 12 THE WITNESS: I do.
 13 THE COURT: Please have a seat. Just a
 14 moment.
 15 Ms. Feinman, are you still on the telephone?
 16 MS. FEINMAN: I am, Your Honor.
 17 THE COURT: Is there a transmission concern
 18 with the sound today?
 19 MS. FEINMAN: It's just very fuzzy,
 20 Your Honor. It's in and out, but I can hear it, it's
 21 just noisy, that's all.
 22 THE COURT: Is it bad enough that we should
 23 dial back in and see if it's the line that that we've
 24 used to call in?
 25 MS. FEINMAN: I'm fine, Your Honor, you

1 don't need to do that.
 2 THE COURT: Everybody is moving, including
 3 Ms. Peck, I'm about to ask you to move the microphone
 4 close to you anyway, try to remember to use the
 5 microphone. It's hard -- it's often easy to forget
 6 that we have someone listening in on the telephone.
 7 But those of you who have tried it in the past know
 8 that it's often very difficult to hear what's
 9 happening here unless you get as close as, I don't
 10 really have a God complex, I get this close to the
 11 microphone because I know that people can't hear on
 12 the telephone unless I do it.
 13 And Ms. Peck, make yourself comfortable. It
 14 is useful to me and the court reporter if you use the
 15 microphone. If there is any objection during your
 16 testimony, do not answer until I've made it clear that
 17 you should do so. Understood?
 18 THE WITNESS: Yes, sir.
 19 THE COURT: Any questions?
 20 THE WITNESS: No, sir.
 21 THE COURT: Thank you. Whenever you're
 22 ready.
 23 DIRECT EXAMINATION
 24 BY MR. O'QUINN:
 25 Q. Good morning, Ms. Peck.

1 A. Good morning.
 2 Q. Can you tell me your full legal name?
 3 A. Deborah Catherine Peck.
 4 Q. Please describe your educational background.
 5 A. Starting from high school.
 6 Q. Starting from high school.
 7 A. Graduated Kimberly School in Monte Claire,
 8 New Jersey. Do you want the dates too?
 9 Q. No.
 10 A. Graduated and went to -- well, graduated
 11 Yale University with a BA. Went to Columbia
 12 University for a Masters Degree. Did not complete it.
 13 However, simultaneously went to Seton Hall University
 14 Law School for a JD, which I did complete. And that's
 15 my professional.
 16 Q. What year did you obtain your JD?
 17 A. I think 1984. It's been awhile.
 18 Q. After obtaining your JD did you sit for any
 19 state bar exams?
 20 A. I did.
 21 Q. How many?
 22 A. One.
 23 Q. In your entire life how many bar exams have
 24 you sat for?
 25 A. Just New Jersey.

1 Q. Are you a member of any bar?
 2 A. New Jersey.
 3 Q. How long have you been a member of the New
 4 Jersey Bar?
 5 A. Since 1984, I believe.
 6 Q. Have you been a member of the New Jersey Bar
 7 continuously from 1984 until today?
 8 A. I was inactive when I took maternity
 9 leave.
 10 Q. What time period was that?
 11 A. My first daughter was born in 1992.
 12 Q. Was that the only time that you were
 13 inactive?
 14 A. Well, through my second daughter's birth,
 15 which was 1995, and I remained inactive for a few
 16 years after that until they were both in school. I
 17 don't know the exact date that I became active.
 18 Q. Focusing on the time period from 2005 until
 19 today, have you been an active member of the New
 20 Jersey Bar?
 21 A. Correct.
 22 Q. Have you maintained an address of a law
 23 office in New Jersey during that time period?
 24 A. I have not.
 25 Q. At any time during that time period

1 did you have a law office or a law address in New
 2 Jersey?
 3 A. At first I did. The home office rule in New
 4 Jersey permits an attorney to have a foreign office,
 5 so I had it at my parents' home initially. There was
 6 a question about whether I was moving back to New
 7 Jersey because I was divorced. I ended up staying in
 8 Florida. The children continued to go to school here.
 9 And I maintained an office here in Florida
 10 until it became -- it came to my attention, through
 11 other attorneys who I counseled with, that it was not
 12 appropriate to have an office in Florida. What I did
 13 was, continue to remain as trustee, because anyone can
 14 be a trustee, you don't need to be an attorney, so
 15 there is a time line where you see that I have a law
 16 firm, as well as a trustee office, administrative
 17 office.
 18 Q. So to go back to my question, from 2005
 19 until today, have you had an office in New Jersey?
 20 A. I have not.
 21 Q. Your sole law office was in the State of
 22 Florida?
 23 A. As I said, I had a law office here until the
 24 changes, although they're not a legal change, but it
 25 was a committee change from the Florida Bar

1 Association was such that I never practiced law in
 2 Florida, ever, however, they were not as friendly to
 3 foreign attorneys, even though New Jersey permits a
 4 New Jersey attorney to have a foreign office.
 5 Q. When did you make that change?
 6 A. I don't know the exact date.
 7 Q. What year?
 8 A. I don't even -- I have to look back. I
 9 don't know.
 10 Q. Was it more than a year ago?
 11 A. Probably about that.
 12 Q. So it was approximately 2011?
 13 A. I'd have to look back. I can't give you an
 14 exact date.
 15 Q. And prior to this change where you ceased
 16 having a law office in the State of Florida, you
 17 conducted your business from an office in the State of
 18 Florida; is that correct?
 19 MR. ELAM: Objection, Your Honor.
 20 Relevance. We can stipulate that she's an attorney.
 21 I don't know where he's going with this.
 22 THE COURT: Overruled.
 23 THE WITNESS: I'm sorry, what was the
 24 question?
 25 BY MR. O'QUINN:

1 Q. Prior to this change that you described in
2 your law office in South Florida, you maintained a law
3 office from 2005 until that date in approximately 2011
4 here in South Florida; is that correct?

5 A. I can't say I maintained a law office,
6 because I did not practice law here or in New Jersey.
7 I just maintained my duties as a trustee.

8 Q. Did you have a web site during that time
9 period?

10 A. I did, but I don't know the exact date. I
11 took the web site down.

12 Q. What was the title of that web site?

13 A. I believe it was Deborah C. Peck, Esq, P.A.

14 Q. And on that web site did you describe your
15 business as the Law Office of Deborah Peck?

16 A. I would have to look back, but I'm sure it
17 did.

18 Q. In the marketing materials that were given
19 to -- well, let's talk about, when did you first meet
20 Dennis Moens?

21 A. Probably around 2004 or 5.

22 Q. In what context did you meet Dennis Moens?

23 A. He was introduced to me by a Dutch
24 individual, and they were interested in life
25 settlements. And we had the Dutch fellow who was here

1 in the states was involved in Holland in life
2 settlements.

3 My family is involved in the health care
4 business, and many life settlements emerge out of the
5 senior market, which includes out of assisted living
6 facilities, as well as nursing care facilities. So I
7 spoke to them about life settlements in general.

8 By the way, our facilities often will have
9 brokers contacting us about giving lectures to the
10 seniors or their guardians or families about the
11 possibilities of using life settlement to continue the
12 quality of life for the insured.

13 Q. So that scenario that you just described, in
14 that your family runs assisted living facilities; is
15 that correct?

16 A. Yes.

17 Q. And other senior care facilities?

18 A. Amongst other things.

19 Q. And at your facilities brokers, who are
20 people that are looking to help people sell life
21 insurance policies, come and give seminars; is that
22 right?

23 A. They have in the past.

24 Q. And they teach the seniors how they can
25 obtain a life insurance policy and sell that policy;

1 is that correct?

2 A. No, that's not correct.

3 Q. So they don't teach that at your assisted
4 living facilities?

5 A. I never heard that.

6 Q. Do you attend the seminars?

7 A. I haven't. But I know -- in order to give a
8 seminar they provide us with the material that they're
9 going to be discussing. They primarily focus on
10 whether the insured has an asset life, in which case
11 if the senior's estate is being spun down, which it
12 often does as they grow elderly, and the family can no
13 longer support the mother or father, they will ask
14 about -- if they have life insurance, which is capable
15 of being sold into the marketplace for a marketable
16 price, and that money can continue to support the
17 insured.

18 Q. So with this background in life settlements
19 through your assisted living facilities, you came to
20 meet an individual, you said a Dutch individual. Who
21 is that Dutch individual?

22 A. The one that you named.

23 Q. Dennis Moens?

24 A. Correct.

25 Q. But you indicated that there was another

1 Dutch individual that introduced you to Dennis Moens;
2 correct?

3 A. That's correct.

4 Q. Who was that Dutch individual?

5 A. Bolosh Veto (phonetic). I don't know how to
6 pronounce his name, or spell his name.

7 Q. And when you first met with Dennis Moens,
8 what did he tell you he wanted to do in the life
9 settlement industry?

10 A. I don't believe he told me anything about
11 his intentions. They were from Holland. They were
12 involved in the life settlement business there.

13 I believe, I don't know if I knew at the
14 time, that they had a business there in Holland that
15 was quite active.

16 Q. Was Dennis Moens already in the life
17 settlement industry when you met him in 2004?

18 A. I don't know if I knew it at that time, but
19 I found out either right around then or thereafter,
20 yes.

21 Q. Was he involved in the life settlement
22 industry here in the United States?

23 A. No, sir.

24 Q. What was his role in the life settlement
25 industry?

1 A. He owned a company, and the company, as far
2 as I know, because I don't know that much about the
3 prior company, would sell life insurance policies. I
4 believe they were predominately, maybe all on U.S.
5 senior citizens.

6 Q. What was the name of that company?

7 A. That I would have to look up too, I'm
8 sorry.

9 Q. Was that company Watershed, LLC at that
10 time?

11 A. No, it was not.

12 Q. A prior company that he operated?

13 A. No, it was not.

14 Q. It was not a different company?

15 A. It was a different company. It wasn't
16 Watershed.

17 Q. Based on your conversations with Dennis
18 Moens, did you enter into the life settlement industry
19 yourself?

20 A. What do you mean by that, purchasing
21 policies?

22 Q. Yes.

23 A. No.

24 Q. Did you join forces with Dennis Moens in a
25 business endeavor?

1 A. No.

2 Q. So what was your relationship with Dennis
3 Moens after you met him in 2004?

4 A. At some point they asked me if I would like
5 to be the trustee, Watershed is the grantor, and I
6 agreed to that. Prior to their request they had
7 worked with a title company in Chicago. They weren't
8 happy with the title company, it was very arduous to
9 work with them, and they asked me if I would be
10 willing to be custodian for the policies, to service,
11 maintain, and track the lives of the insured. And I
12 agreed.

13 Q. What year was that?

14 A. Approximately 2005, 2006. Right in there.
15 Probably 2006.

16 Q. Can you describe for me exactly what your
17 role was going to be in the collection of money from
18 investor creditors?

19 A. Watershed was, as I mentioned, the grantor.
20 The grantor opened accounts, escrow accounts. Those
21 accounts were to hold moneys. Watershed's role was
22 primarily as a financing entity. The entity,
23 Watershed, would purchase the life insurance policies,
24 service and maintain them.

25 At that time, you've heard testimony about

1 the PCI, Provident Capital Indemnity, which provided
2 reinsurance component to each policy, which we
3 provided in turn for the structured investment, which
4 ultimately was deemed bogus. And by the way, I
5 testified in that trial as a witness for the federal
6 government.

7 Watershed would package these policies and
8 essentially place them on the shelf for the marketing
9 entity, which is Quality Investments in Holland.
10 Watershed, I believe was located in Dubai, maybe
11 originally it was in Holland, I don't know. And
12 Quality Investments would do the marketing and sales
13 of the policies to exclusively European investors.

14 Q. Now, why was it that they were going to
15 market the investments exclusively to European
16 investors?

17 A. They're Europeans, and their business, as
18 far as I know, was solely in Europe prior to that.

19 Q. At any time did you discuss the U.S.
20 regulatory landscape in 2005 and 2006 with these
21 individuals?

22 A. In terms of coming into the United States
23 for sales?

24 Q. Yes.

25 A. They never raised it. They had no

1 interest.

2 Q. So you indicated that Watershed itself would
3 buy policies from selling insureds; is that correct?

4 A. No, I did not say that. I said Watershed
5 was a financing entity, and what Watershed did was
6 approach providers, and as you know, a provider is a
7 licensed entity in any jurisdiction, and those
8 providers have the license to sell and purchase life
9 insurance policies. So they never went directly to an
10 insured.

11 Q. So where did Watershed source its
12 policies?

13 A. Through licensed providers in the
14 United States, and there are several. There are
15 many.

16 Q. Can you give a few examples?

17 A. Of names of companies?

18 Q. Yes.

19 A. Let's see, All Settled in New York. They're
20 licensed in New York. They were licensed. They're no
21 longer a provider. Parkside Equity. They're licensed
22 in New York. Sun Start Financial. They're
23 licensed -- well, many of them are licensed nationally
24 in all jurisdictions so that they can buy and sell
25 policies. But this is where their home office is

1 located. Sun Star Financial, I believe is in either
 2 Washington State or Oregon. I think there were
 3 several in other states, but I would have to look
 4 back.
 5 Q. You identified an entity called Parkside.
 6 What was the name of that entity?
 7 A. Parkside Equity, I believe.
 8 Q. Do you have an ownership interest in
 9 Parkside Equity?
 10 A. I do not.
 11 Q. Do you have an ownership interest in any
 12 entity with the name Parkside as its name?
 13 A. I do not.
 14 Q. Or Parkside as part of its name?
 15 A. In an entity? I do not.
 16 Q. Do you know if Dennis Moens has an ownership
 17 interest in Parkside?
 18 A. As far as my information and understanding
 19 is, no.
 20 Q. So if I understand you correctly, your
 21 understanding was that Dennis Moens, operating
 22 Watershed, acquired policies from these various
 23 entities you just listed?
 24 A. That's correct.
 25 Q. And then he turned around and sold those

1 policies to investors that were found through the
 2 Quality Investments offering?
 3 A. No, I did not say that. I said Watershed is
 4 a financing entity. All they did was package the
 5 policy with the reinsurance component. Naturally
 6 Quality Investments had that particular job in getting
 7 the reinsurance. And then Watershed at some point
 8 took it over. That wasn't my business.
 9 Watershed never solicited anyone in Holland
 10 or elsewhere in Europe, to my knowledge. The
 11 marketing entity, as I said, was Quality Investments.
 12 Q. That was a little different than my
 13 question. My question was -- let me break it down.
 14 Did Watershed take title of the insurance policies?
 15 A. Yes.
 16 Q. And then did it sell those insurance
 17 policies?
 18 A. To a trust, correct.
 19 Q. Okay. And were you the trustee of that
 20 trust?
 21 A. Correct.
 22 Q. And was the money that was used to purchase
 23 those policies from Watershed acquired through the
 24 marketing efforts of Quality Investments?
 25 A. No. Watershed started their business by

1 using their own money. I'm sorry if I'm
 2 misunderstanding your question, because you're rolling
 3 your eyes, but if you can clarify.
 4 Q. Sure. You just indicated that Watershed
 5 took titled policies and then it sold them to the
 6 trust. And my question is, where did the trust get
 7 the money to purchase the policies?
 8 A. Early on Watershed had its own funds and
 9 purchased policies. That's how they began their
 10 business. They also had a prior business, and I
 11 assume that some of that profit was used to purchase
 12 policies.
 13 So the first few policies that Watershed
 14 purchased for this endeavor with Quality Investments
 15 was, as far as I know, from their own money. It did
 16 not come from any investors.
 17 Q. And my question relates then to the second
 18 sale where Watershed sells the policies to the trust
 19 that you referenced. Do you remember that second
 20 sale?
 21 A. I certainly do. And as far as I know, it's
 22 through the profit of Watershed.
 23 Q. So you're telling me that the profits of
 24 Watershed were used to purchase policies from
 25 Watershed?

1 A. Say that again. The profits of Watershed
 2 were used to --
 3 Q. Well, I'm trying to get an understanding,
 4 after Watershed has acquired title to the policy, and
 5 then is engaging in a second transaction; is that
 6 correct?
 7 A. Correct.
 8 Q. And that second transaction is to convey
 9 title of the policy into the trust; right?
 10 A. Correct.
 11 Q. And Watershed is paid in exchange for
 12 exchanging that policy; is that right?
 13 A. Yes.
 14 Q. And where does the money that is paid to
 15 Watershed come from?
 16 A. Whatever profit Watershed was earning was
 17 used to purchase ongoing policies. There were times
 18 when they did not purchase policies, and other times
 19 when they had policies sitting on shelf.
 20 Q. Did the trust use any money acquired from
 21 investors to purchase policies?
 22 A. Did the trust use any money -- the money
 23 that came into the escrow accounts were Watershed's
 24 funds, came into Watershed's escrow accounts to pay
 25 back Watershed. Watershed then had the responsibility

1 of creating a buffer account, which they did, and
2 whatever else their business operation required. It
3 was their business to work out their financial
4 situation.

5 All I did was give them notice as to what
6 premiums were due. We optimized premiums on a regular
7 basis with the carriers, and they then instructed me
8 to pay those carriers.

9 Q. So are you telling me that the money that
10 was in the escrow accounts over which you were trustee
11 belonged to Watershed?

12 A. That's correct.

13 Q. Can you describe for me what Quality
14 Investments did?

15 A. I was never invited to their boardroom, but
16 sitting from afar and watching them, they are a
17 marketing entity. They -- I don't read Dutch, but I
18 know they were marketing in various financial
19 magazines. They received quite a bit of attention.
20 So they're on the radio, and they were interviewed, I
21 believe on TV, and they were the, again, the marketing
22 entity is really the only way I know to describe
23 them.

24 Q. Did they offer investments?

25 A. The sales of life insurance policies,

1 told that their money should be wired to you as
2 trustee?

3 A. Yes.

4 Q. Yes, you know that, or yes, that was told to
5 investors?

6 A. Yes, I -- no, I don't know what they told
7 the investors. I never saw their marketing material
8 or was privy to their conversations with the
9 investors, but I did receive money from the investors,
10 so I can assume that they were told.

11 Q. How much money did you receive from
12 investors?

13 A. I don't have the figures in front of me.

14 Q. Was it more than 10 million dollars?

15 A. I believe so.

16 Q. Was it more than 100 million dollars?

17 A. I don't know that. I would have to do the
18 calculations.

19 Q. You don't know how much money you received
20 from investors?

21 A. I don't.

22 Q. Do you know why investors were sending you
23 money?

24 A. Yes.

25 Q. Why were they sending you money?

1 correct.

2 Q. So Quality Investments offered investors the
3 opportunity to buy life settlements; is that right?

4 MR. ELAM: Objection, Your Honor. We're
5 here for this alleged debtor to determine whether the
6 assets have been depleted, converted or secreted.

7 THE COURT: And the basis of the rules of
8 evidence is?

9 MR. ELAM: Relevance.

10 THE COURT: Overruled.

11 Could you move closer to the microphone,
12 please, or move it closer to you, whichever is more
13 comfortable. Go ahead, counsel.

14 BY MR. O'QUINN:

15 Q. Am I correct in saying that Quality
16 Investments offered investments in life settlements to
17 investors in Europe?

18 A. Yes.

19 Q. And they made representations about that
20 investment to investors?

21 A. What kind of representations?

22 Q. I'm asking you if you know whether or not
23 they made any representations to investors?

24 A. I don't know that.

25 Q. Do you know whether or not investors were

1 A. Paying back Watershed for the packaging of
2 the life insurance policy, payment for the
3 reinsurance, payment for administrative fees, payment
4 to hold the buffer and to pay premiums.

5 Q. Did you become a trustee owing fiduciary
6 duties to the investors who were sending you money?

7 A. My fiduciary duties were to a closed fund.
8 And this is where I would like to speak, if I may.

9 THE COURT: Well, you should answer the
10 questions that are asked, and Mr. Elam can ask you
11 other questions later, but stick to the questions that
12 are asked.

13 THE WITNESS: My duties were to the closed
14 fund. There's a closed fund that was attached to each
15 trust, not individual investors. I had no contact
16 with the investors, or rare contact. On occasion they
17 would -- Quality Investments would ask if I would be
18 willing to speak with someone who was traveling in the
19 area. I was happy to provide them with an opportunity
20 to visit us at the office.

21 However, QI, Quality Investments, had a
22 management office in Holland, there were several
23 different ones over the years, but it was an
24 administrative office to handle the investors, to
25 basically provide customer service, to let them know,

1 I don't know, whatever else, whatever contact or
 2 communications needed to be shared with them.
 3 BY MR. O'QUINN:
 4 Q. I'd like to ask you a yes or no question,
 5 okay. Are you able to answer yes or no to a
 6 question?
 7 THE COURT: You don't need to go that far.
 8 It's obvious that she's able to answer a yes or no
 9 question. Ask the question.
 10 BY MR. O'QUINN:
 11 Q. Do you have a fiduciary relationship with
 12 the investors who participated in the Quality
 13 Investments offering?
 14 A. I have a fiduciary relationship to the
 15 closed fund, and that closed fund -- I didn't know if
 16 there was one person in the closed fund or 50.
 17 Q. Do you owe a fiduciary duty to the investors
 18 who invested in the Quality Investments offering?
 19 A. I believe I answered that.
 20 Q. Is that a yes or a no?
 21 A. To the closed fund who had -- the closed
 22 fund has investors in it. My duty is first to the
 23 closed fund.
 24 Q. When an individual investor wired money to
 25 your trust account, did that individual develop a

1 fiduciary relationship with you as trustee?
 2 A. No, he did not, or she.
 3 Q. Have you ever seen the prospectus that was
 4 used to market the investments to the Quality
 5 Investments investors?
 6 A. I did.
 7 Q. When did you first see this?
 8 A. I believe when it was first written.
 9 Q. Have you read it?
 10 A. Not in awhile.
 11 THE COURT: Does the witness have a copy of
 12 all the exhibits?
 13 BY MR. O'QUINN:
 14 Q. Have you ever read it?
 15 THE COURT: Let's hand her the book first,
 16 so we know what it is. I assume it's Exhibit 12. And
 17 let me just correct one thing for the record. Earlier
 18 I said that 2 through 12 were admitted inclusive. 1
 19 and 2 are the same. And so 2 is not currently
 20 admitted. I'm withholding ruling on that at the
 21 moment.
 22 (Exhibits No. 3 through 12 admitted.)
 23 THE COURT: You may ask questions about it.
 24 But if I exclude it, then I will treat the evidence as
 25 though the content of the document was not admitted.

1 BY MR. O'QUINN:
 2 Q. Have you ever read that document before?
 3 THE COURT: And by that document he means
 4 Exhibit 12, I assume.
 5 MR. O'QUINN: Yes, Your Honor.
 6 THE WITNESS: Exhibit 12? I'm looking at
 7 No. 3.
 8 MR. GOLD: Sorry, it's Exhibit 3, your
 9 Honor.
 10 THE COURT: Oh, it's 3, sorry.
 11 THE WITNESS: Not recently, but yes, I
 12 have.
 13 BY MR. O'QUINN:
 14 Q. Are you the trustee that's identified in
 15 this document?
 16 A. Where would you like me to turn?
 17 Q. Looking at page 5.
 18 THE COURT: Could you point where on the
 19 page?
 20 MR. O'QUINN: Yes, Your Honor. Under
 21 management and custody on behalf of CLSF Trust III IV
 22 in America.
 23 BY MR. O'QUINN:
 24 Q. Do you see that?
 25 A. Yes, I see that.

1 Q. Are you the trustee that's identified in
 2 that prospectus?
 3 A. I believe so.
 4 Q. Were you aware that investors were told that
 5 you would be the trustee in that prospectus?
 6 A. I don't remember that. I'm sure -- I don't
 7 know that. I did not create this document.
 8 Q. But you said that you read this document at
 9 the time it was created; is that right?
 10 A. Whenever they provided it to me. I wasn't
 11 involved in the structure of the investment. What
 12 they required me, or they asked of me to provide them
 13 with is on page 16, and they built this prospectus
 14 without my input.
 15 Q. So if I understand your testimony today,
 16 during the entire time you were acting as trustee
 17 for the Quality Investments offering, you were under
 18 the impression that you did not owe a fiduciary duty
 19 to the individual investors in Quality Investments?
 20 A. Again, I had a duty -- my understanding --
 21 we're talking about my understanding?
 22 Q. Yes.
 23 A. The closed fund was the beneficiary. It's a
 24 Dutch closed fund governed by Dutch rules, and the
 25 fund was the beneficiary. I had no contact with any

1 investors. I did not even know who was a member of
2 the closed fund. That was all handled by Quality
3 Investments in Holland by their administrative
4 company.

5 THE COURT: Just so I understand, what is
6 the entity that you -- when you say the closed fund,
7 what do you mean? What is the entity?

8 THE WITNESS: Much like the Belgium MQIC,
9 which I believe is a partnership, they have Dutch
10 rules for --

11 THE COURT: I don't mean that. Here is
12 there a name -- what is the name of the closed fund?

13 THE WITNESS: What's the name -- they're all
14 different.

15 THE COURT: The one we're talking about
16 potentially today, I assume.

17 THE WITNESS: I don't even -- I believe
18 it's -- I'd have to look.

19 THE COURT: On page 5 above your name it
20 says CLSF Trust III/IV. Is that the name of the
21 closed fund that you're talking about?

22 THE WITNESS: I'm on a different page, but
23 I think you're correct, Your Honor. I have to go
24 back.

25 THE COURT: I just want to understand, what

1 THE COURT: Okay. Under General
2 Information, in the third paragraph, is the closed
3 fund you're talking about, which is what this whole
4 prospectus is about, I believe --

5 THE WITNESS: Yes.

6 THE COURT: CLSF Trust III/IV Foundation,
7 Closed Life Settlement Fund III/IV UA, dated July 9,
8 2007.

9 THE WITNESS: I believe that's the trust
10 name, because it's UA dated July 9th. However, the
11 fund was created in Holland, and that would be, and
12 I'd have to confirm it, but I believe it would be CLSF
13 Trust III-IV, without the slash maybe, Foundation, but
14 then it would be in Dutch, stichting, which means
15 closed fund, I believe.

16 THE COURT: All right. S-t-i-c-h-t-i-n-g.

17 Why don't you go ahead with your
18 questioning. I'd love to know, however, how -- the
19 fund, I assume, only has a single asset in it, maybe
20 I'm wrong, and how it relates to the debtor legally.

21 MR. O'QUINN: Yes, Your Honor.

22 BY MR. O'QUINN:

23 Q. So to make sure I understand your
24 understanding during the operation of this business of
25 your own fiduciary obligations, I understand that you

1 is meant by the closed fund, is it the debtor, is it
2 not the debtor?

3 THE WITNESS: The closed, that's -- I don't
4 think that's the full name. You were looking at CLSF
5 Trust III-IV, is that what you're referring to?

6 THE COURT: Yes. III/IV, correct.

7 THE WITNESS: It has a longer name, like
8 stichting, blah, blah, blah, blah. And that would be
9 the closed fund that was organized under the Dutch
10 rules and laws. And that closed fund had members.
11 They had a contract and it governed their involvement
12 in that fund. They were restricted to transferring
13 their participations to other members within the fund
14 or to family members. So I might add, they could
15 transfer to MQIC.

16 THE COURT: Well, turn back -- I promise I
17 will not hijack your entire questioning. I just want
18 to understand how this fits.

19 If you turn back a few pages there's one
20 page, there's repetitive numbering, it has a 5 at the
21 bottom and it has 1. Summary, at the top. I don't
22 know if you found that. And then it says, the
23 headings on the page are Summary and General
24 Information.

25 THE WITNESS: I'm there.

1 have now said that your sole beneficiary was a
2 stichting in Europe. Is that correct?

3 A. I believe that's what the contract states.

4 Q. And who was the administrator or director of
5 that stichting?

6 A. As I said, it changed over the years. I
7 believe there were one or two, maybe -- no, not one.
8 There were at least two or three different companies,
9 but it was a management company that Quality
10 Investments hired. I think at the end it was AD
11 Consultancy. Prior to that I think Quality
12 Investments handled that work initially, and then they
13 changed.

14 Q. And what individual gave you direction in
15 the management of the trust accounts that were under
16 your control?

17 A. Within the stichting?

18 Q. Who did you deal with when you needed
19 authorization to take actions as a trustee?

20 A. No one in the stichting gave me
21 instructions. The trustee provides that I have the
22 authority to maintain service and care for the assets.
23 The stichting solely the beneficiaries.

24 Q. So did anyone ever provide you with
25 authority to remove funds from those trust accounts

1 for purposes other than the purchase of policies and
2 the maintenance of policies?

3 A. Again, the escrow accounts were in the name
4 of the grantor, Watershed. Watershed gave me
5 instructions as to everything, including the payment
6 of premiums, payment to providers for purchase of
7 policies, payment to accountants that needed to be
8 paid to care for the servicing of the trust.

9 Q. How about the payment for personal items,
10 like boats, did you ever get instructions to make
11 payments for boats?

12 A. Watershed had their own account, and they,
13 as far as I know, they conducted their business
14 according to their organizational rules and good
15 business sense. So whatever they would like to do
16 with their money is their business, it's not my
17 business.

18 Q. Did that include their ability to tell you
19 to make wires to locations or recipients that they
20 identified?

21 A. Many. Many of them were brokers who were
22 paid as part of commissions. Quality Investments
23 apparently had a long line of brokers. Those were
24 paid as part of the fees for the business.

25 Q. How about payments that didn't relate to the

1 life settlement industry, for instance payments for
2 boats, did anyone ever ask you to make payments out
3 of the trust accounts or escrow accounts for personal
4 items like boats?

5 A. Watershed did a number of times pay for
6 their own personal, I don't know if it was personal or
7 business, I don't know what they held the entity in,
8 if it was Watershed's name, but Watershed did have --
9 they had profit there. They were entitled to use it
10 as they decided.

11 Q. And who would call you or direct you to make
12 wires to fund those payments?

13 A. Dennis Moens.

14 Q. Did you speak with the beneficiaries who had
15 invested in Quality Investments about those transfers
16 prior to making those transfers?

17 MR. ELAM: Objection, Your Honor. This is
18 immaterial.

19 THE COURT: Is it? Overruled. But I have
20 to tell you that I think that Ms. Peck is answering
21 questions based on a whole bunch of accounts, and
22 you're asking her questions focused on the investor
23 related accounts, and I don't think the answers are
24 lining up with your questions.

25 MR. O'QUINN: Well, I think that's right,

1 Your Honor. I'm doing my best to try to narrow in on
2 it.

3 BY MR. O'QUINN:

4 Q. Are we talking about trusts and escrow
5 accounts that relate to money you received from
6 European investors?

7 A. Yes. They're all escrow accounts.
8 Watershed has an escrow account, and Watershed would
9 have several -- they set up several sub accounts. And
10 those sub accounts, I would have to go back and look,
11 but Watershed had control over those accounts and
12 would indicate to me what transfers they would want to
13 make and for what purposes. That included personal
14 items based on, I assume, the profit they earned. It
15 also included obviously, fees that were required for
16 the maintenance and servicing of the policies.

17 Q. Let me narrow the questioning in. Let's
18 talk about CLSF III/IV, Inc. Okay. Was there an
19 escrow account that was used to pay premiums on the
20 CLS -- the policy held in CLSF III/IV, Inc.?

21 A. There was never an escrow account set up
22 with each individual investor. That was very clear to
23 me, that it was Watershed's escrow accounts, there was
24 never an effort made to create individual escrow
25 accounts either with the particular fund or with

1 particular investors. Does that answer your question?

2 Q. It does. So there are no escrow accounts
3 that are safeguarding funds for the benefit of
4 investors that you're aware of?

5 A. Watershed did create several escrow
6 accounts, sub accounts. One was named a buffer
7 account for premiums. Another one, and this is
8 something that evolved, they had an account they would
9 place money in for reinsurance. They had their own
10 account that they would use for whatever purposes they
11 chose.

12 Q. Was there an account ever created to
13 safeguard the money sent to you for payment of
14 premiums on the policy held in CLSF III/IV, Inc.?

15 A. When money was sent, that money included a
16 number of items, including payment back to Watershed
17 for the work it had done, which included the purchase
18 of the policy, the purchase of the reinsurance that
19 they coordinated with Quality Investments. So they
20 would take that out. They would need to take that out
21 as a profit, and then they would escrow moneys for the
22 use of premium funds.

23 Q. And when you say they would take that out,
24 you're talking about taking money out of an account
25 that you're the trustee of; is that correct?

1 A. Misuse of words. They, meaning Dennis Moens
 2 and whomever is Watershed, and however -- whatever
 3 formula they had to determine, okay, this is our
 4 profit, okay, this goes to an escrow for premiums,
 5 okay, this goes for reinsurance, they would advise me
 6 accordingly.
 7 Q. And based on the advice that you received
 8 from Dennis Moens and others you would then wire money
 9 to Watershed out of that trust account?
 10 A. Are you talking about for profit payment, or
 11 what are you talking about?
 12 Q. For any purpose whatsoever.
 13 A. Absolutely. Watershed received commissions,
 14 or profit, however they determined -- just as Quality
 15 received payment and the brokers received payment.
 16 Q. Now, you talked about profits. Are you
 17 talking about profits that were generated by the
 18 maturity of an insurance policy, or are you talking
 19 about profits generated through some other
 20 transaction?
 21 A. Whenever a policy was purchased by
 22 Watershed, it was packaged and Quality Investments
 23 would sell it. I don't know how they determined the
 24 pricing. But there would be a profit margin. I don't
 25 know what the formula was used to determine who got

1 A. Correct.
 2 Q. And was that attorney trust account at
 3 Commerce Bank initially?
 4 A. It was until it was taken over by TD.
 5 Q. Were all of the accounts that relate to
 6 investor payments from Europe, were they all at
 7 Commerce Bank and now TD Bank?
 8 A. And now Wells Fargo. As far as I know. I
 9 don't know what you're suggesting, but that's what I
 10 know.
 11 Q. You said, and now Wells Fargo. Have new
 12 accounts been opened at Wells Fargo?
 13 A. They were closed at, well, TD Bank, and I
 14 opened my accounts at Wells Fargo.
 15 Q. Why were they closed at TD Bank?
 16 A. TD Bank asked me to close those accounts.
 17 Q. Do you know why?
 18 A. I do not.
 19 Q. Do you know whether or not they filed a
 20 suspicious activity report in connection with that
 21 closure?
 22 A. I do not.
 23 Q. Did they discuss that with you?
 24 A. They did not.
 25 Q. Have you ever been sued in connection with

1 what. I was instructed to pay accordingly, and I did
 2 so.
 3 Q. And who gave you that instruction?
 4 A. Dennis Moens.
 5 Q. Who is Frank Laan?
 6 A. I believe he's the principal of Quality
 7 Investments.
 8 Q. Have you ever met with Frank Laan?
 9 A. I have.
 10 Q. When?
 11 A. I believe I met him first in 2005.
 12 Q. Was he involved in the initial organization
 13 of the Quality Investments offering?
 14 A. Since I wasn't involved in the initial
 15 organization of the Quality Investments offering, I
 16 don't know who was involved. I know they had
 17 attorneys, and I assume, which again, is an
 18 assumption, which I shouldn't make, that they all were
 19 involved, but I don't know from personal knowledge.
 20 Q. Now, throughout the operation of Quality
 21 Investments you knew that you received wires from
 22 investors in Europe; is that correct?
 23 A. Yes.
 24 Q. And those wires were coming into your
 25 attorney trust account; is that right?

1 your role as a trustee?
 2 A. Yes.
 3 Q. How many times?
 4 A. Three times.
 5 Q. And in what states were you sued?
 6 A. New Jersey.
 7 Q. Is that all three cases?
 8 A. I believe so.
 9 Q. What was the first case that you were sued
 10 in?
 11 A. I don't remember which one was which, which
 12 was first, but Sprinturf, I believe was one of them.
 13 Q. Why don't you tell me all three of the names
 14 of the names of the plaintiffs in the suits, if you
 15 would?
 16 A. Sprinturf was one, Arie Schoon was another,
 17 and Fred Koman (phonetic) was the third.
 18 Q. In each of those lawsuits were you alleged
 19 to have breached your fiduciary duty?
 20 A. It was breach of contract, escrow.
 21 Q. In any of those cases were you alleged to
 22 have breached your fiduciary duty?
 23 A. I don't recall all the allegations, but it
 24 was ultimately breach of contract.
 25 Q. And what was the nature of the contract that

1 you'd breached?
 2 A. They were all involved in a transaction
 3 which took place in, obviously the parties were in the
 4 United States, although Fred Koman and Arie Schoon
 5 were in Holland. Arie Schoon, by the way, is a cousin
 6 or cousin-in-law of Dennis Moens. And the transaction
 7 involved acquiring a financial guarantee from a
 8 company in Canada, whom I have a summary -- I have a
 9 judgment against at this point. They acquired money
 10 from all the investors to acquire this financial
 11 guarantee. That financial guarantee would be acquired
 12 from ABN Ambro, and then given to a bank, in this case
 13 it was CIBC, I believe, in Canada, and that guarantee
 14 would fund a loan for a particular project.
 15 Q. Were those projects related to the life
 16 settlement industry?
 17 A. I don't know what all the projects were, so
 18 I can't say. I don't think so though.
 19 Q. Were those plaintiffs ultimately paid the
 20 money they were seeking in those lawsuits?
 21 A. All but one.
 22 Q. Let's look at Mr. Schoon. Was he ultimately
 23 paid?
 24 A. Yes.
 25 Q. And then the next one you said, what was the

1 other name that came after Schoon?
 2 A. Sprinturf.
 3 Q. Was he paid?
 4 A. Yes.
 5 Q. Was it paid -- who paid those settlements?
 6 A. I did.
 7 Q. With what funds?
 8 A. Funds that I earned through my work as an
 9 escrow attorney for Watershed.
 10 Q. So ultimately the money that you used to
 11 settle those payments ultimately came from
 12 Watershed?
 13 A. I would have to go back and check on the
 14 Sprinturf, I'm not a hundred percent sure on that.
 15 Q. How about the Schoon settlement, was that
 16 paid out of funds from Watershed?
 17 A. Yes.
 18 Q. And were those funds generated through the
 19 offer and sale of investments to investors through
 20 Quality Investments?
 21 A. It was their profit.
 22 May I say something to the Court?
 23 THE COURT: Let's wait until -- if you want
 24 to consult with your counsel --
 25 THE WITNESS: I would like to, because I

1 believe --
 2 THE COURT: Not right now. Later.
 3 THE WITNESS: Can I take a bathroom break?
 4 THE COURT: Not so you can talk to your
 5 lawyer, is that what you're asking?
 6 THE WITNESS: No. To go to the bathroom.
 7 THE COURT: Yes, we may take a break to go
 8 to the bathroom. You're instructed not to discuss
 9 your testimony with anyone during the break.
 10 THE WITNESS: I won't.
 11 THE COURT: We'll be back in five minutes.
 12 (A recess was taken.)
 13 THE COURT: Welcome back, everyone. Let's
 14 have a seat in the courtroom. Ms. Feinman, you're
 15 still on the telephone.
 16 MS. FEINMAN: Yes, sir.
 17 THE COURT: And how is the sound so far?
 18 MS. FEINMAN: It's still fuzzy, Your Honor,
 19 but I'm bearing with it.
 20 THE COURT: You're coming through loud and
 21 clear here and there's no echo like there was
 22 yesterday.
 23 MS. FEINMAN: I really wanted that God
 24 sound, but I understand.
 25 THE COURT: Yesterday about half of the

1 people that appeared in my, only about half, which is
 2 even more strange, that appeared in my motion
 3 calendar, 50 or 60 matters, had this echo that sounded
 4 like it had been added electronically, so if you're
 5 doing that in your offices, don't do that.
 6 All right. We're back. You remain under
 7 oath. You understand?
 8 THE WITNESS: Yes, sir.
 9 THE COURT: Go ahead.
 10 BY MR. O'QUINN:
 11 Q. Ms. Peck, did you ever have any
 12 communications, whether written or oral, with
 13 investors prior to their making an investment in
 14 Quality Investments?
 15 A. Not typically. There may have been on
 16 occasion where they asked me to speak to an investor
 17 so that the investor knew that a trustee actually
 18 existed.
 19 Q. Is that a yes? You did speak with investors
 20 prior to --
 21 A. I have to qualify it, because it was very
 22 rare. It wasn't a routine.
 23 Q. Earlier you testified that there came a time
 24 where you changed the nature of your office here in
 25 Florida. Is it your testimony today that you were not

1 holding yourself out as an attorney while you worked
2 here in Palm Beach County?

3 A. I don't think I did. I didn't practice law
4 here, and I made clear that I was an attorney with an
5 asterisk after my name that would show that I'm
6 licensed in New Jersey.

7 Q. Did you, at your office here, hold yourself
8 out as working at a law firm?

9 A. To who?

10 Q. To the public.

11 A. I don't think so.

12 Q. How about to investors?

13 A. As I said early on, I did represent myself
14 as an attorney with an office here in Florida, because
15 New Jersey continues to allow home office to be in an
16 outside jurisdiction.

17 Q. As of today, do you owe a fiduciary duty to
18 Marc Vandoorne, one of the petitioning creditors in
19 this matter?

20 A. I don't know who Mr. Vandoorne is, however,
21 in receiving this information as of 4:09 yesterday,
22 and taking a look at the paperwork all evening, **my**
23 **administrative office in Holland** provided to me
24 information on his nonpayment of premiums over the
25 last several quarters as an investor.

1 Q. Do you owe a fiduciary duty today to Marc
2 Vandoorne, one of the petitioning creditors in this
3 matter, today?

4 A. I believe I do.

5 Q. What is the basis of that fiduciary duty?

6 A. To all of the investors ever since this
7 crisis I have pooled the policies, and have pooled the
8 investors, so that I'm working on behalf of all of the
9 investors, not a splintered group of investors.

10 Q. When you say that you pooled or co-mingled
11 all of the policies, and you pooled or co-mingled all
12 of the investors, did you speak with Marc Vandoorne
13 before doing that?

14 A. Under the Florida statutes which permit me
15 to have discretionary powers to do what I need to do
16 in an emergency, I did what I needed to do to protect
17 the assets, which was my first fiduciary duty,
18 preserve the assets.

19 Q. Just a moment ago you said you were not a
20 Florida lawyer, but just now you cited Florida law.
21 On whose opinion are you relying when you make that
22 statement about your legal rights?

23 A. I've never said that I wasn't a trustee.
24 I've always been a trustee. And that opinion, which
25 is Mike Glazer's opinion, is based on Florida

1 statutory law which applies to a trustee.

2 Q. Is Mr. Glazer licensed to practice law
3 in the State of Florida?

4 A. Not to my knowledge.

5 Q. Today do you owe a fiduciary duty to
6 Mrs. M.A.H. Ortman's?

7 A. I don't know who that is. I believe it's
8 Mr. Ortman's wife. However, to my knowledge, I have
9 never known Mrs. Ortman to own a participation.

10 Q. Today do you believe that you have a
11 fiduciary obligation to her individually?

12 A. I don't know if she's an investor or not.
13 I've just received this last night. I would have to
14 go through -- I'd have to contact Holland and have
15 them go through the software to determine if she's an
16 investor. I don't know.

17 Q. Do you have a fiduciary obligation
18 individually to each of the investors, including the
19 petitioning creditors in this case?

20 A. Since this emergency action, I believe I
21 do.

22 Q. So your understanding, when you say since
23 this emergency action, what action are you talking
24 about?

25 A. **I shouldn't say emergency action. Ever**

1 **since the portfolio became a distressed portfolio, I**
2 **was obligated to do what I needed to do to preserve**
3 **the assets. In order to preserve the assets I needed**
4 **to collectivize the money that was coming in, and use**
5 **that money on an emergency basis to pay premiums.**

6 Q. So prior to your collectivization of the
7 premium moneys, did you have a fiduciary duty to the
8 individual investors in Quality Investments, including
9 the petitioning creditors?

10 A. I believe my fiduciary duty was to the
11 closed fund, which continues to remain to be the
12 beneficiary of each trustee.

13 However, in collectivizing the pool, which
14 was essential, I certainly am involved more intimately
15 with investors than I've ever been.

16 MR. CHARBONNEAU: Your Honor --

17 THE COURT: One lawyer per witness. If you
18 want to consult with your co-counsel, go right
19 ahead.

20 MR. CHARBONNEAU: May I?

21 THE COURT: Yes. Mr. Elam is starting to
22 look very lonely over there.

23 THE WITNESS: I feel like I'm being ganged
24 up on.

25 MR. O'QUINN: Your Honor, we feel that

1 we are entitled to a yes or no answer to a yes or no
2 question. We would ask that the Court instruct the
3 witness to answer a yes or no if the question calls
4 for a yes or no. We have no objection to her
5 explaining that answer after she answers yes or no.

6 THE COURT: If the question is one that can
7 be answered with a yes or no, you need to say so.
8 Understood?

9 THE WITNESS: Understood, Your Honor. I'll
10 try to do that.

11 THE COURT: And if you raise the issue in
12 connection with a specific question, then we can
13 address it then.

14 MR. O'QUINN: Thank you, Your Honor.

15 BY MR. O'QUINN:

16 Q. I'd like you to turn your attention to tab
17 No. 8. May I approach, Your Honor?

18 THE COURT: Yes. Oh, you have.

19 BY MR. O'QUINN:

20 Q. Do you recognize that document?

21 A. I believe it's the trust deed -- you know
22 what, I apologize, it seems very blurry to my eyes,
23 but I believe it's the trust itself.

24 Q. Do you recognize that document?

25 A. I'm trying to.

1 Q. Is that a yes or a no?

2 A. I haven't read it through, sir.
3 It's the trust.

4 Q. Is it a true and complete copy of the
5 trust?

6 A. I did not -- I don't know. You provided it
7 to me, so I'm going to make an assumption that you
8 copied it from somewhere. I don't know if this is
9 complete.

10 Q. Could you turn to the third to last page
11 of that document?

12 A. Okay.

13 Q. Do you see a signature at the top?

14 A. Yes.

15 Q. Whose signature is that?

16 A. That's me.

17 Q. Can you turn to the second -- the page just
18 following that, Exhibit 1, do you see that?

19 A. Yes.

20 Q. What is that?

21 A. Exhibit 1?

22 Q. Yes.

23 A. It's a schedule life insurance.

24 Q. Is it identifying the policy that's owned by
25 CLSF III/IV, Inc., the debtor in this case?

1 A. It doesn't have a policy number, although it
2 says Lincoln National Life Insurance.

3 Q. What is the face value of that policy?

4 A. It says here 10 million.

5 MR. O'QUINN: Your Honor, we've identified
6 it. She may have a redacted copy. We'd like to make
7 sure that she's got a full and complete copy so that
8 she can see this document. This is redacted because
9 of the privacy issues.

10 THE COURT: I understand. I have an
11 unredacted one; correct?

12 MR. GOLD: I believe you do not, Your Honor,
13 but I'm handing one up to you as we speak, the
14 unredacted copy.

15 MR. O'QUINN: We will mark that 13, Your
16 Honor.

17 THE COURT: Just a moment. Let me just
18 see -- I may already have it. So this is -- hold on,
19 I'm a little confused. Oh, I see, correct, the one
20 just handed to me is, the only difference is that
21 components have been whited out, for example, in
22 Exhibit 1, I can see now.

23 MR. GOLD: Yes.

24 THE COURT: Does Mr. Elam a copy of this?

25 MR. GOLD: I'll give it to him, Your Honor.

1 And just by way of very brief explanation,
2 as I'm sure Your Honor could fill in the gaps of why
3 we did what we did there --

4 THE COURT: Oh, I understand.

5 MR. GOLD: I redacted the copy to protect
6 everyone.

7 THE COURT: It has an individual's name, who
8 is not likely to be involved in this action in any
9 way, and the actual policy number, and otherwise, the
10 only difference is between what's been admitted 8 and
11 what's now marked 13; correct?

12 MR. GOLD: Correct, Your Honor.

13 THE COURT: Mr. Elam, I assume you don't
14 have any objection.

15 MR. ELAM: No.

16 THE COURT: Thank you.

17 BY MR. O'QUINN:

18 Q. Now that you've had an opportunity to see
19 that unredacted versus, do you recognize that as the
20 policy owned by the debtor in this case, the alleged
21 debtor?

22 A. I don't see Mr. Vandoorne's name on here, so
23 you're saying alleged debtor, I assume you're
24 referring to all of them?

25 Q. I'm not talking about the petitioning

1 creditors, I'm talking about CLSF III/IV, Inc., the
 2 alleged debtor. Is this policy the policy that is
 3 owned by the alleged debtor?
 4 A. Yes, it is.
 5 Q. Turning to the next page, what is that?
 6 A. Exhibit 2.
 7 Q. Can you describe it for me?
 8 A. I can read it to you. The following are the
 9 income and corpus beneficiaries of this trust.
 10 Q. And listed there do you see the names of the
 11 petitioning creditors in this case?
 12 A. I see Mrs. -- I see Mr. Ortmans and
 13 Mrs. Ortmans, and I don't see the other one. Maybe
 14 I'm missing it. Mr. Vandoorne, isn't he a creditor?
 15 Q. I'm focusing my questions on the Ortmans.
 16 Do you see the Ortmans there?
 17 A. Excuse me, you said the creditors, I
 18 thought --
 19 Q. Are they two of the petitioning creditors?
 20 THE COURT: You need to speak one at a
 21 time.
 22 MR. O'QUINN: Yes, Your Honor.
 23 THE WITNESS: I don't have the petition in
 24 front of me, but I believe it had three names, or four
 25 names, the Ortmans, Mr. and Mrs., Mr. Vandoorne, I

1 believe, and MQIC.
 2 BY MR. O'QUINN:
 3 Q. Do you know is it possible that Mr.
 4 Vandoorne invested at a later time and was added on as
 5 a beneficiary of this trust?
 6 A. I don't know that, but I will take your
 7 answer. I don't know that.
 8 Q. Did that happen from time to time?
 9 A. Since I never handled the investors, I don't
 10 know.
 11 Q. I'm sorry. Turning back again, that is your
 12 signature on this document, is it not?
 13 A. Yes.
 14 Q. So in connection with this particular trust
 15 document, you signed a document that had at least two
 16 of the petitioning creditors listed as beneficiaries
 17 of the trust; right?
 18 A. No. That's not how it works.
 19 Q. Help me to understand how it works.
 20 A. The trust would be created, and there may or
 21 may not be a closed fund attached. That is something
 22 that Quality Investments handled in Holland, and the
 23 management company would put together the exhibits,
 24 and if they changed from time to time, I would never
 25 be advised because they handled the investors.

1 Q. So is it fair to say that you don't know who
 2 the investors are in each of the companies set up for
 3 the Quality Investments offering?
 4 A. At this point, since it became a distressed
 5 portfolio, we acquired the software in Holland, and we
 6 went through every contract and found out who were the
 7 investors in each fund. So I do know now.
 8 Q. During the operation of this business did
 9 you even know the identity of the investors who were
 10 tied to the various offerings?
 11 A. Not necessarily. If an investor contacted
 12 me and said, I'm on a cruise coming to Florida, I'm an
 13 investor in III IV -- CLSF III IV, I would confirm
 14 that with the office in Holland, and I would welcome
 15 them to visit me. But otherwise, no.
 16 Q. I'd like you to turn to tab 6 of the binder.
 17 What is that? Do you recognize that?
 18 A. That's a letter I wrote on July 7th, 2012.
 19 Q. Who is it addressed to?
 20 A. The investors.
 21 Q. At the top it identifies you as trustee; is
 22 that right?
 23 A. Correct.
 24 Q. I would like you to focus on the second to
 25 last sentence of the first paragraph. Can you read

1 that out loud?
 2 A. "However, without your premium moneys being
 3 wired" -- is that what you're referring to?
 4 Q. You can start there, that'll work.
 5 A. "However, without your premium moneys being
 6 wired to the trustee account I can not service the
 7 policies and keep them in force. The only action left
 8 to me is to begin to sell policies in order to
 9 preserve other policies. This is not a solution, but
 10 a method for immediate preservation of the assets".
 11 Q. So help me to understand it. This is a
 12 letter between you and the investors and the Quality
 13 Investment fund; is that correct?
 14 A. Correct.
 15 Q. And including the petitioning creditors?
 16 A. Correct.
 17 Q. And in this what you are doing is asking
 18 individuals who you've told us prior to the failure of
 19 this investment vehicle that you didn't even know were
 20 investors in the funds. Is that right?
 21 A. At this point I did. I explained to you
 22 that we were able to acquire the software.
 23 Q. Right. So you're now writing to these newly
 24 discovered investors and you're asking them to send
 25 you additional funds; is that right?

1 A. Correct.
 2 Q. And you're telling them that if they don't
 3 send you additional funds that they could lose their
 4 entire investment?
 5 A. Correct.
 6 Q. And when they send that money in, you're
 7 taking that money and pooling it together; is that
 8 right?
 9 A. Correct.
 10 Q. And you're using it as you think is
 11 appropriate to try to pay premiums on various
 12 policies; is that right?
 13 A. On an emergency basis, case by case,
 14 correct.
 15 Q. So you are making the determination how to
 16 spend the limited assets, because there's not enough
 17 assets to pay all the premiums for all of the policies
 18 for the life expectancies of those insureds; is that
 19 right?
 20 A. That's not really my decision. As I said,
 21 it was a case by case emergency basis. If a policy
 22 was being lapsed, that's the policy that would be
 23 paid.
 24 Q. And you were making that decision?
 25 A. Based on the lapsed policies, yes.

1 Q. Turning to the tab 7, if you would. What is
 2 that? Do you recognize it?
 3 A. It's a letter from January 25th, 2011. Dear
 4 Beneficiaries.
 5 Q. Whose signature is at the bottom?
 6 A. It's mine.
 7 Q. Is this the letter that you sent to the
 8 investors in the Quality Investment fund offering?
 9 A. Yes, I did.
 10 Q. The header, the letterhead, do you recognize
 11 that?
 12 A. Yes.
 13 Q. What does it say there in the center?
 14 A. Peck Law Firm.
 15 Q. What is the address of the Peck Law Firm?
 16 A. 631 U.S. Highway 1, Suite 303.
 17 Q. At the time that you wrote this letter were
 18 you authorized to practice law in the State of
 19 Florida?
 20 A. No. But you'll note, I have the little
 21 asterisk there, licensed to practice in New Jersey.
 22 Q. Do you know whether or not New Jersey has a
 23 requirement that active attorneys maintain an office
 24 in New Jersey?
 25 A. I do.

1 Q. Do they have that rule?
 2 A. They do not.
 3 Q. This letter is addressed to Dear
 4 Beneficiaries. To whom were you sending this
 5 letter?
 6 A. To beneficiaries.
 7 Q. Beneficiaries of what?
 8 A. The life insurance trust that held the
 9 policies, the funds, the members of closed life
 10 settlement funds.
 11 Q. And you were the trustee of those trusts?
 12 A. Correct.
 13 Q. So these are your beneficiaries that you're
 14 writing to?
 15 A. Yes.
 16 Q. And did you send these directly to the
 17 investors?
 18 A. I did not.
 19 Q. How did you distribute them?
 20 A. I don't speak Dutch, I don't speak German, I
 21 don't speak French, I don't speak Spanish, which are
 22 the primary languages of the investors. As I
 23 mentioned before, we have a management company that I
 24 had to put together, because I was living on an island
 25 when this occurred, with no contact with Europe nor

1 any investors. They were able to acquire the Dutch
 2 software, which was held by a technology company, and
 3 in going through the software piece by piece were able
 4 to put together the puzzle of each fund and who were
 5 the members of those funds.
 6 Q. And then once you completed that, did you
 7 send this out directly to the investors in the
 8 funds?
 9 A. Sorry, I didn't finish. The company, the
 10 management company would then, by either certified
 11 mail or however they did it there, registered mail, or
 12 mail, I'm not exactly sure, sent that out. I don't
 13 believe they used e-mail. So I didn't do it
 14 personally, but the management company that I have in
 15 Holland did.
 16 Q. And you said, I have in Holland. This is an
 17 agency that's working at your direction; is that
 18 right?
 19 A. I don't call it an agency. It's a
 20 management company. They manage the investors.
 21 Q. But it's working as your agent?
 22 A. It is my agent.
 23 Q. And so you're causing them to distribute
 24 this directly to the investors?
 25 A. I'm causing them to do that, yes.

1 Q. Under the title, Dear Beneficiaries?
 2 A. Under the title of Dear Beneficiaries.
 3 Q. Can you take a look at tab No. 9. Take a
 4 moment to look through it, if you would. When you're
 5 done, feel free to look up and let me know.
 6 A. I have to tell you, the print is very small,
 7 and I didn't bring glasses, so I'll do the best that I
 8 can. I didn't think I would be sitting here reading
 9 documents in tiny print. Okay.
 10 Q. What is that?
 11 A. Contract for sale and purchase of life
 12 insurance, Watershed to CLSF Trust.
 13 Q. Do you recognize it?
 14 A. I do.
 15 Q. Is it a document you've seen before?
 16 A. They all look alike, so I'm sure I've seen
 17 this one. I can't specify that this one exactly I've
 18 seen recently.
 19 Q. Looking at the bottom right hand corner, do
 20 you see a signature?
 21 A. My signature.
 22 Q. That is your signature?
 23 A. My signature.
 24 Q. Turning to the second page of the document,
 25 paragraph 2, title purchase price, are you able to see

1 that?
 2 A. I do.
 3 Q. Do you see where it says 6 million
 4 dollars?
 5 A. Yes.
 6 Q. Is that the purchase price that investors
 7 are being told is being paid in connection with the
 8 acquisition of the policy at issue in this case?
 9 A. I don't know what the investors are being
 10 told. All I know is what is -- what the contract
 11 price is between Watershed and the trust. I didn't
 12 deal with any contracts or marketing policies, nor do
 13 I know any pricing on the assets.
 14 Q. When you're saying you didn't deal with
 15 contracts, you signed this contract; right?
 16 A. Between Watershed and the trust. But I'm
 17 telling you, I don't have any contact with the
 18 investors and what the marketing price was for their
 19 participation for investment.
 20 Q. Is it your understanding that that 6 million
 21 dollars is, in fact, the purchase price for the
 22 insurance policy?
 23 A. I really don't know. I can't attest to
 24 that.
 25 Q. And I asked what your understanding is. Is

1 it your understanding that that was the purchase price
 2 for the policy paid to the seller?
 3 A. My understanding is that they had the right
 4 to change the purchase price. I don't know if they
 5 sold it for more or for less.
 6 Q. This is a contract for sale and purchase,
 7 and my question to you is, is it your understanding
 8 that 6 million dollars describes the purchase price
 9 being paid by the buyer to the seller?
 10 MR. ELAM: Objection, Your Honor. Asked and
 11 answered.
 12 THE COURT: Well, it's in the documents.
 13 Why does it matter what she thinks? Counsel, why does
 14 it matter what the witness thinks, it's in the
 15 document, which is admitted.
 16 MR. O'QUINN: That is true, Your Honor.
 17 However, she's the purchaser, so I'm trying to get an
 18 understanding.
 19 BY MR. O'QUINN:
 20 Q. Did you engage in the purchase of this
 21 transaction as trustee, were you the purchaser?
 22 A. What do you mean by that?
 23 Q. Look at the front page of the document.
 24 Were you the purchaser purchasing this insurance
 25 policy?

1 A. Well, Watershed purchased the policy. Then
 2 Watershed sold it to the trust, and I was asked to
 3 serve, by the grantor, Watershed, to be the trustee.
 4 Q. And in connection with that role as trustee,
 5 would you have been the person that paid the purchase
 6 price for this policy, that caused the payment to be
 7 made?
 8 A. I don't -- no, I don't see that. The policy
 9 could sit there on a shelf and it may not be sold. I
 10 don't know if it was sold into the marketplace. This
 11 one obviously was.
 12 Q. I'm asking you about the sale that is
 13 described in this document. Were you the purchaser in
 14 a transaction described by this agreement?
 15 A. I was the trustee.
 16 Q. Okay. And in connection with your role as
 17 trustee and purchaser, did you cause money to be paid
 18 to the seller?
 19 A. I don't even know how to answer that. I
 20 have to think about that. Sorry.
 21 Q. Take your time.
 22 A. As trustee I -- I was asked to be trustee,
 23 and I don't -- all I know was this policy was sold by
 24 Quality Investments.
 25 THE COURT: I have no idea what that answer

1 means. I have in front of me an Exhibit 9. It shows
2 the seller as Watershed, and the purchaser as a trust
3 identifying you as the trustee, and defined with the
4 word purchaser. There's a purchase price shown. How
5 did the purchase price get paid? That's the question,
6 isn't it?

7 MR. O'QUINN: It is.

8 THE WITNESS: Okay. Thank you, Your Honor.
9 It's a lot easier when he talks.

10 Quality Investments would market the asset.
11 I don't know what they charged to the public, or how
12 they solicit or marketed their policy. Funds would be
13 received into the escrow account.

14 THE COURT: Held by you?

15 THE WITNESS: Held by me. The management
16 company would keep track of what investors were
17 involved in a particular fund. Not me.

18 THE COURT: Well, ignore that. This is the
19 acquisition of the policy by the trust?

20 THE WITNESS: Right.

21 THE COURT: Correct?

22 MR. O'QUINN: Yes, Your Honor.

23 THE COURT: Okay. So here's the trust
24 acquiring the policy. Watershed was paid for the
25 policy, I assume, that's what the contract says. Who

1 A. Correct.

2 Q. Now, Dennis Moens was involved in the
3 organization of Quality Investments; is that right?

4 A. I don't know that. I don't know that
5 at all. I know Watershed to be separate and distinct
6 from Quality Investments.

7 Q. Do you know whether or not investors were
8 told that Dennis Moens, who had such an integral part
9 in your role as trustee, whether he was the recipient
10 of that purchase price?

11 A. I don't know that.

12 Q. Do you know how much of that purchase price
13 went directly to Dennis Moens as a related party
14 to the offering?

15 A. I don't know that.

16 Q. Do you know whether or not investors were
17 disclosed that the purchase price was being paid to a
18 related party in the offering?

19 A. I don't know that.

20 THE COURT: Let me tell you all, I have a
21 half day trial starting at 1:30, and I do intend to
22 take a break about 15 minutes from now, which means if
23 you're not close to done, you're going to be waiting
24 until after that half day trial.

25 MR. O'QUINN: I'm very close to done.

1 actually made the payment?

2 THE WITNESS: The investors. Investor money
3 came in and that money would pay back Watershed for
4 its purchase of the policy.

5 THE COURT: It went into your escrow
6 account?

7 THE WITNESS: Yes.

8 THE COURT: So you must have caused the
9 transfer to be made to pay Watershed. Isn't that what
10 you're asking?

11 MR. O'QUINN: Yes, Your Honor.

12 THE WITNESS: Okay.

13 THE COURT: Is that accurate?

14 THE WITNESS: I guess, yeah. I don't --

15 THE COURT: I hand it back to you, Counsel.

16 BY MR. O'QUINN:

17 Q. And the purchaser who received that funds,
18 that was Watershed -- I mean, excuse me, the seller
19 that received that funds is Watershed; right?

20 A. Correct.

21 Q. That's Dennis Moens; right?

22 A. Correct.

23 Q. He's the guy that you met with back in 2005,
24 around the same time you were talking with Frank Laan
25 in discussing the life settlement industry?

1 THE COURT: Hold on. And if that goes
2 to the end of the day, I'm not doing this at the end
3 of the day.

4 MR. O'QUINN: Yes, Your Honor.

5 THE COURT: I'll have you back on Monday.
6 So you should focus on what you want to ask.

7 MR. O'QUINN: Yes, Your Honor.

8 THE COURT: Let me tell you all ahead of
9 time what I want to hear about. I have Exhibit 13,
10 which by the way, is admitted. And it's a trust
11 agreement, is it not?

12 MR. O'QUINN: Yes, Your Honor.

13 THE COURT: Okay. I want to know how many
14 trust agreements there are, and whether this
15 particular trust agreement is associated solely with
16 the debtor, and then I want to know about the
17 co-mingling, and I want to know whether it's
18 consistent with this agreement or not consistent with
19 this agreement. And by the way, the agreement
20 incorporates Florida statutory law. That's what I
21 want to know.

22 MR. O'QUINN: Yes, Your Honor. Let's start
23 at the beginning of that.

24 BY MR. O'QUINN:

25 Q. The trust agreement that we've discussed

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1 here today, Exhibit 13, let's go back to that. That
2 is the trust agreement --
3 MR. ELAM: I don't have an Exhibit 13.
4 THE COURT: It's the unredacted -- Mr. Elam,
5 it's just the unredacted version of 8. Do you have a
6 copy?
7 MR. ELAM: Yes, sir, I do.
8 THE COURT: I'm not sure the names add
9 anything for any of us, but they are there.
10 MR. O'QUINN: It does help to tie into the
11 petitioning creditors, Your Honor.
12 THE COURT: Okay, understood. Well, right,
13 two of them are listed.
14 MR. O'QUINN: Yes, Your Honor. And we can
15 provide additional documentation to extend, but I will
16 try to narrow this down.
17 THE COURT: Well, even Exhibit 8, that's not
18 redacted, the identity of the two beneficiaries.
19 MR. O'QUINN: That's true, Your Honor.
20 Thank you.
21 BY MR. O'QUINN:
22 Q. This trust agreement, is it similar to the
23 trust agreements that were executed in connection with
24 the other life settlement transactions undertaken by
25 Watershed and Quality Investments?

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1 A. I believe so.
2 Q. And was your role in connection with those
3 trust agreements consistent with your handling of this
4 trust agreement?
5 A. Yes.
6 Q. And your interpretation of your duties in
7 connection with those other trusts, how many of them
8 are there?
9 A. I'd have to count, but it's over, I believe
10 over 55.
11 Q. Was your handling of those other 55 trust
12 accounts and agreements similar to your handling of
13 this trust agreement?
14 A. Yes.
15 Q. Were all of those trust agreements pursuant
16 to Florida law?
17 A. Yes.
18 Q. Did they all involve Florida entities in the
19 same manner that the petitioning creditors are
20 involved?
21 A. Yes.
22 Q. I mean, excuse me, the alleged debtor is
23 involved?
24 A. Yes.
25 Q. In connection with the revelation that PCI

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1 was not going to be providing adequate maturity
2 coverage, were you involved in discussions with the
3 investors following that date?
4 A. Concerning what?
5 Q. Concerning the payment of premiums.
6 A. Yes.
7 Q. And did you solicit additional premiums from
8 investors?
9 A. Initially, no.
10 Q. At any point?
11 A. Later on, yes.
12 Q. And in connection with the solicitation of
13 additional premium funds, did you discuss with each
14 investor how you would use those premium funds?
15 A. No.
16 Q. Did you collect funds from investors and put
17 them together in a single pot that you could use to
18 administer the 50 some odd trusts that you were
19 dealing with?
20 A. Grantor set up the escrow accounts and I
21 followed their instructions in placing -- in receiving
22 those moneys and allocating them accordingly.
23 Q. And when you say the grantor, who are you
24 identifying?
25 A. Dennis Moens.

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1 Q. Do you know where Dennis Moens is today?
2 A. I believe in Spain.
3 Q. Do you know where Frank Laan is today?
4 A. I don't know.
5 Q. Have they been criminally charged for their
6 conduct in connection with this offering?
7 A. They have.
8 Q. In what country?
9 A. Holland.
10 Q. Have you informed investors that there were
11 imminent lapse problems with the policies that you're
12 dealing with?
13 A. Yes.
14 Q. Have you informed investors that those
15 lapses threatened the very res that would pay up their
16 payments?
17 A. I'd have to read my letters again, but
18 I think I made it clear that the preservation of the
19 assets required additional premiums to be made.
20 Q. And when you collect those moneys, you're
21 putting those moneys into a collective pot and using
22 them as you believe is necessary in the immediate
23 moment?
24 A. For lapsing policies, correct.
25 Q. Without obtaining consent from individual

1 investors related to the various policies affected?
 2 A. Correct.
 3 Q. Ms. Peck, have you ever told investors that
 4 you were tired of being in the role of trustee?
 5 A. Publicly?
 6 Q. In any context.
 7 A. I believe I had a couple of conversations
 8 where I was terrorized by investors and I may have
 9 said it in my emotional state.
 10 Q. Did you tell investors in Holland by a skype
 11 that you would be glad to give up of the reins of
 12 these trusts if you could find somebody willing to do
 13 it?
 14 A. I don't recall that.
 15 Q. How much money have you personally been paid
 16 for your role as trustee for these 50 some odd
 17 trusts?
 18 A. Over the course of six years, is that what
 19 you're referring to?
 20 Q. Yes.
 21 A. About 3 million dollars -- \$500,000 a
 22 year.
 23 Q. And have you received any other pecuniary
 24 benefits, other than \$500,000 a year as compensation
 25 for being a trustee?

1 A. There are perks along with the position.
 2 Q. Can you describe the perks?
 3 A. Dennis Moens would take a trip. I would
 4 take it with him, and of course, his associates, and
 5 he may charter a plane.
 6 Q. Is that a private jet?
 7 A. Yes. It was for business purposes.
 8 Q. How about boats, did you ever go out on a
 9 boat with Dennis Moens?
 10 A. Yes.
 11 Q. Were they boaters?
 12 A. Were they boaters? Sorry.
 13 Q. Did they own catamarans?
 14 A. Not here in the States, and I've never been
 15 on one in Europe.
 16 Q. How about your home, did you receive any
 17 assistance in paying for real estate from Dennis
 18 Moens?
 19 A. I owned my home since the end of 1999, which
 20 is several years before I met Dennis Moens.
 21 Q. Do you own any property jointly with Dennis
 22 Moens?
 23 A. I do.
 24 Q. Where is that property?
 25 A. He's a member of a corporation in Pahokee,

1 which was intended to be a neurological facility for
 2 the neurologically impaired, and it's struggling.
 3 Q. Do you act as trustee for any trusts for
 4 Dennis Moens, other than those related to the Quality
 5 Investments offering directly?
 6 A. He asked me to be the trustee for a small
 7 home he bought in West Palm Beach, who, I believe the
 8 beneficiaries are his three daughters.
 9 Q. Are you aware of funds being wired abroad,
 10 over 20 million dollars wired abroad?
 11 A. Yes.
 12 MR. ELAM: Objection, Your Honor.
 13 THE COURT: It was a very general question.
 14 What do you mean, when?
 15 BY MR. O'QUINN:
 16 Q. Are you aware of 20 million dollars of funds
 17 that were ultimately collected from investors being
 18 wired abroad?
 19 A. Yes, and I will explain. When the -- there
 20 was the PCI arrest of the principals. The U.S.
 21 Attorney General's Office, and whoever was doing the
 22 investigation, started freezing some of Watershed's
 23 assets believing they might be a co-conspirator.
 24 It was discussed amongst the group whether
 25 to protect the ability for Watershed to continue to

1 service the assets and pay premiums, whether that
 2 money should be wired to the offshore Dubai accounts,
 3 which they were, and Watershed continued to pay the
 4 premiums and take care of the assets and everything
 5 else they were obligated to pay until those assets,
 6 those accounts were frozen by the Dutch government
 7 sometime in, I think it was September, 2011.
 8 Q. And did you cause those wires to take
 9 place?
 10 A. Yes.
 11 MR. O'QUINN: Your Honor, no further
 12 questions.
 13 THE COURT: Mr. Elam, we're going to take a
 14 break, and I'll give you another 15 minutes, if you're
 15 not done we'll figure out how to deal with it.
 16 CROSS EXAMINATION
 17 BY MR. ELAM:
 18 Q. Ms. Peck, I have a just a few general
 19 questions for you. Have you ever been criminally
 20 charged with fraud or breach of your fiduciary duty?
 21 A. In the United States or Holland?
 22 Q. Holland.
 23 A. I have not. As a matter of fact, I hired a
 24 law firm, Simmons and Simmons, who made application to
 25 the Court to acquire the file from the Dutch

1 authorities. The Dutch authorities made a motion
2 before the Court that I was neither a criminal suspect
3 nor a suspect.

4 Q. Have you ever testified for any entity in a
5 prosecution case?

6 A. I have. In March of 2012 I was asked by the
7 Attorney General's Office --

8 MR. O'QUINN: Objection, Your Honor.
9 Relevance.

10 THE COURT: Isn't it the exact set of
11 transactions that I've been hearing about this
12 morning?

13 MR. O'QUINN: No, Your Honor. The question
14 was whether or not she testified -- sorry, Your Honor.
15 The question was whether she testified on behalf of a
16 government agency.

17 THE COURT: I don't know what's happening
18 next. Overruled. Go ahead.

19 BY MR. ELAM:

20 Q. Have you ever testified on behalf of a
21 government agency relating to any kind of fraud as to
22 any of the trusts that you have been related -- or
23 connected with?

24 A. Yes, I have. In March of 2012 there was the
25 PCI, Private Capital Indemnity trial in the U.S.

1 District Court in Virginia. I testified there on
2 behalf of the prosecution.

3 THE COURT: Which she had already said on
4 your direct examination. Go ahead.

5 BY MR. ELAM:

6 Q. Ms. Peck, the alleged debtor, is it your
7 knowledge that this type of entity is a collective
8 pool?

9 A. I think you're referring to MQIC. I have
10 hired a law firm in Holland, Clifford and Chance, who
11 has put MQIC on notice that they violated the
12 contractual agreements of the closed funds, as well as
13 Dutch laws for their organization. As far as I know,
14 there is an injunction that's being prepared that
15 should be filed against MQIC in the next few days.
16 Members against -- Members of MQIC against MQIC.

17 So the question of standing has been a very
18 important one, because the investors were not
19 permitted to organize as they have, and it is a
20 splinter group, meaning its one group amongst many,
21 and MQIC has paid very little in premium, I have a
22 stack of invoices, they owe several million dollars.

23 Their policies that their members are
24 beneficiaries of have been supported by the other 30
25 percent of the pool, there are approximately a

1 thousand investors, and that is Herkowitz, which is
2 the policy in question before the Court today, was
3 paid, not by MQIC, who was put on notice as of June
4 and July of the potential lapses of many policies,
5 including Herkowitz, and this policy was paid pay the
6 other investors.

7 Q. When you requested premiums to be paid by
8 all of the participants, did all of the participants
9 make extra premium payments?

10 A. No, they did not. Many of them withheld
11 their money. Some very affluent who refused to pay,
12 and on that basis whatever moneys we were able to
13 acquire through the investors who understood the
14 problem and wanted to preserve the assets, we used
15 their funds to preserve the assets. For eight months
16 I was able to keep the portfolio in good standing
17 without a single lapse, approximately eight months.

18 At that point, because there was MQIC
19 primarily, who was withholding their premium payments,
20 we started experiencing lapsing. We again put them on
21 notice that we required premium payments. They
22 surreptitiously have paid two policies, I should that
23 two lives, four policies, and let the others lapse.

24 At the same time, about two weeks ago, they
25 sent me a transfer agreement, and that agreement would

1 essentially carve out the policies for a preferential
2 group, namely MQIC. I refused to do that, because
3 from my standpoint as a trustee, I'm preserving the
4 assets for all, and I have all of the beneficiaries at
5 heart.

6 Q. What actions have you taken to preserve the
7 policy that's part of the alleged debtor here, the
8 Herkowitz policy?

9 A. Well, this policy came very close to
10 lapsing. MQIC was put on notice that this policy was
11 lapsing. I contacted the carrier every single day.

12 There was a -- I'll back up. There was a
13 meeting in Holland about a month ago, maybe a little
14 less, where the chairman of MQIC -- and by the way,
15 the board consists of all brokers. The brokers are
16 now possibly -- well, they were under investigation in
17 Holland -- or Belgium. These are primarily Belgium
18 investors, it's a Belgium organization, they're under
19 investigation for their own role in selling the
20 policies. They consist of the board of MQIC.

21 MQIC was put on notice about lapsing
22 policies. They agreed to pay the carriers directly.
23 I said -- they asked me if they could pay the carriers
24 directly. I said that's great. We provided them with
25 wire coordinates, which we can confirm, and they did

1 not pay a single policy.
 2 We experienced over 52 million dollars in
 3 lapsing due to MQIC's behavior, or actions, or
 4 inaction, I should say. And again, I continued to
 5 perform my duties as trustee with the moneys that I
 6 received to keep what policies I could from lapsing.
 7 If the premium was too high, as many were,
 8 it lapsed. If the premium was within the boundaries
 9 or realm of what I currently had in my escrow account,
 10 we paid the money. In this case Herkowitz, we had the
 11 money. I, of course, had no notice of this petition.
 12 On Tuesday MQIC certainly had knowledge of the lapsing
 13 policy, and I was able to pay the premiums.
 14 Mr. Ortman and Mr. Vandoorne, and I don't
 15 know about Mrs. Ortman, that's a new one to me, but
 16 both of them I have a stack of e-mails where my
 17 attorney, as well as MQI, put them on notice of not
 18 only the lapsing policies, but the deficiency that
 19 they had in not giving us their premium funds.
 20 MR. O'QUINN: Your Honor, I would just ask
 21 that this be in a question and answer format. This
 22 appears to be a narrative, so we object.
 23 THE COURT: Well, overruled, because it was
 24 somewhat responsive, but it would be nice if you asked
 25 questions.

1 Let me interpose a few questions of my own,
 2 because there's some basic things that I don't
 3 understand.
 4 The alleged debtor is a corporation?
 5 THE WITNESS: Correct.
 6 THE COURT: It's a Florida Corporation?
 7 THE WITNESS: Correct.
 8 THE COURT: What is its relationship with
 9 the trust?
 10 THE WITNESS: The trust owns all the shares
 11 of the corporation, and the corporation is a
 12 beneficiary of the trust.
 13 That was created, I'll tell you why, because
 14 you'll probably wonder why, there's a ruling that came
 15 out, IRS Ruling 2009-14, at that time there was
 16 concern, it applied -- the ruling was an IRS ruling
 17 that dealt with life settlements. There was a concern
 18 that there could be taxable consequences to the
 19 foreign investors. The accountants considered, and
 20 they came up with a vehicle whereby they thought this
 21 would continue to protect the, I'm not a CPA, by the
 22 way, protect the investors' interest, the
 23 beneficiaries.
 24 THE COURT: Hold on. Hold on. But the
 25 policy is held by the trust?

1 THE WITNESS: Correct.
 2 THE COURT: And the trust also owns the
 3 corporation?
 4 THE WITNESS: The trust owns all the shares
 5 in the corporation.
 6 THE COURT: All right. Not the other way
 7 around, obviously. It doesn't own the beneficial
 8 interest?
 9 THE WITNESS: No.
 10 THE COURT: Okay. We need to have a little
 11 aside here. So does our debtor own anything?
 12 MR. O'QUINN: Your Honor, it's our position
 13 that the debtor corporation is the record owner of the
 14 policy and the record beneficiary of the insurance
 15 policy.
 16 THE COURT: Is that accurate?
 17 THE WITNESS: I'm sorry, I wasn't listening.
 18 I got a little --
 19 THE COURT: Is the corporate entity the
 20 record owner of the insurance policy?
 21 THE WITNESS: In the eyes -- I always look
 22 at the eyes of the carrier, because the carrier will
 23 identify the owner, and that is the corporation, I
 24 believe --
 25 THE COURT: Okay. Good. All right.

1 Understood.
 2 MR. O'QUINN: I direct the Court to Exhibit
 3 10.
 4 THE COURT: All right. And this is actually
 5 from Lincoln and it identifies the holder of the
 6 policy; correct?
 7 MR. O'QUINN: Yes, Your Honor, as the
 8 alleged debtor.
 9 THE COURT: Very good.
 10 MR. GOLD: Again, it's redacted, but --
 11 THE COURT: All right. But Ms. Peck just
 12 said that this was the case.
 13 Now, this corporate entity that is the
 14 alleged debtor, is this the only policy related to it?
 15 THE WITNESS: Absolutely.
 16 THE COURT: Is there a separate corporation
 17 for each of the 55 plus number of trusts that you
 18 testified about earlier?
 19 THE WITNESS: Almost all. I think there are
 20 two that have remained trusts.
 21 THE COURT: All right. I'm going to tell
 22 you all what my focus is going to be. I've heard that
 23 there are assets of these various entities, which are
 24 trusts, that have been used to assist the other
 25 entities. There's been money transferred back and

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1 forth. Why is that okay? That's going to be my
2 focus. Why is that okay?
3 I'm familiar with Florida law. There's only
4 one way as far as I can tell that it would be okay,
5 and that's if the trust document says that it's okay.
6 Otherwise, you've taken money from one entity and
7 given it another.
8 The filing of a petition, including an
9 involuntary petition, results in the formation of an
10 estate. It doesn't wait until the order for relief is
11 entered. There's an estate right now. And that
12 estate cannot be used to fund anything else. It is
13 sacrosanct. The stay applies to it in the meantime.
14 So if what would be happening tomorrow or
15 Sunday, probably impossible, Monday, Tuesday and
16 Wednesday, would be the use of anything from this
17 entity, the debtor and the related trust, for the
18 benefit of any other trust, I want to know why that's
19 okay. Because unless you can convince me it's okay,
20 then there will definitely be an interim trustee
21 appointed.
22 And based on the testimony I've heard, the
23 motion for continuance is denied.
24 BY MR. ELAM:
25 Q. Ms. Peck, based upon the questions, or the

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1 statement we heard, have you used any other funds in
2 any of the other trusts to fund any premiums for other
3 trusts or any lapsing policies that might be owned by
4 a separate entity?
5 A. As I've stated, the funds that came in for
6 premiums were placed into a collective pool for the
7 benefit. My duty under the trustee is to preserve the
8 asset. And I understand that my discretionary powers
9 are to do whatever I can in my power to do that. And
10 therefore, I would, on a case by case basis, as a
11 policy was lapsing, do my utmost to preserve the
12 asset.
13 Now, I have to point out that there are any
14 number of investors in any given policy. Because of
15 that, if one investor out of ten, I don't know how
16 many are here, but say there are ten, sent in money,
17 that would not keep the asset alive. This is a
18 perfect -- Herkowitz is a perfect example of that.
19 They're here today to preserve the asset, and yet they
20 did not pay a premium to us, and others, the
21 collective pool, kept it in force.
22 And there still remain 30 percent of the
23 investors that are not party to or have memberships in
24 MQIC.
25 Q. What did you base your knowledge upon to

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1 transfer or use funds of other trusts to make payments
2 based upon lapsing policies?
3 A. I consulted with other attorneys, given the
4 exigent circumstances and the need -- well, just to
5 back up. Watershed's assets accounts were frozen. We
6 were no longer receiving moneys from Watershed after
7 their arrest, therefore there was no money to keep any
8 assets in force.
9 I consulted with the attorneys in Holland
10 about what my duties would be, and they said simply to
11 notify the investors, the beneficiaries of the closed
12 funds, of the need for premiums to keep the policies
13 in force. I have done that consistently for the last
14 eight plus months.
15 MR. ELAM: Just a second, Your Honor.
16 THE WITNESS: And I will also add that that
17 remaining 30 percent would be damaged by this asset
18 being claimed by MQIC, who does not represent a
19 hundred percent of the pool. And again, it was those
20 30 percent that kept this policy in force.
21 THE COURT: You may have answered this
22 question a few minutes ago. Where did the funds come
23 from this week to pay --
24 THE WITNESS: The 30 percent MQIC consists
25 of --

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1 THE COURT: Outside of what you already
2 held. None of the funds used to pay the premium were
3 in an account that you already held, it arrived this
4 week and then it was used to pay the premium?
5 THE WITNESS: Over the last several, I mean,
6 I have to go back and check exactly, but it started
7 accumulating. The remaining 30 percent were
8 consistent in sending in their premiums. The MQIC,
9 Mr. Ortman, Mr. Vandoorne, and Mrs. Ortman did not
10 send in any premiums. So their asset was preserved by
11 the remaining 30 percent.
12 Can I ask myself a question?
13 THE COURT: No.
14 MR. ELAM: Your Honor, I have no further
15 questions.
16 THE COURT: All right. Do you have anything
17 you wish to ask?
18 THE WITNESS: Do I have a right to add
19 something?
20 THE COURT: You can consult with your
21 counsel, and if he wishes to call you as a witness on
22 behalf of the debtor, he may do so. Wait until you're
23 down from the stand though. You're not excused yet.
24 THE WITNESS: Sorry.
25 MR. O'QUINN: No, Your Honor, nothing

1 further.
 2 THE COURT: You're excused for the purposes
 3 of having been called by the movant. Why don't you go
 4 and talk to Mr. Elam and then you can tell him what
 5 you want to do.
 6 I'm going to take a break. If we need to,
 7 I'm going to eat into the 1:30 trial a little bit
 8 in order to resolve this matter, because I think you
 9 might be done.
 10 MR. GOLD: With testimony, we certainly are
 11 done as the movants, Your Honor.
 12 THE COURT: And then you can tell me if you
 13 need to recall Ms. Peck in order to address any issues
 14 at that point. We'll come back at 1:30.
 15 My question to the alleged debtor is going
 16 to be, there's some interesting things in this trust
 17 agreement. For example, there's an absolute
 18 prohibition on requesting additional premium from the
 19 beneficiaries, and I didn't see anything in here which
 20 would allow the trustee -- remember, a trustee is a
 21 fiduciary independent to each trust. You have Sun
 22 Trust is a good example, has thousands of corporate
 23 trust accounts. They don't get to share the money
 24 from one with another one, unless there's a group of
 25 pools, common trust funds or the like, that

1 specifically say that. I did not see that in this
 2 trust agreement. Strangely --
 3 MS. FEINMAN: Your Honor.
 4 THE COURT: Yes, Ms. Feinman, I'm sorry, I
 5 was actually leaning way back.
 6 MS. FEINMAN: Thank you. It is fading in
 7 and out, and I don't know if it's because people are
 8 not talking right into the microphone.
 9 THE COURT: Understood. All I was saying
 10 is, that the trust agreement that I have does not, as
 11 far as I could see, does not specifically empower the
 12 trustee of this particular trust to use any of its
 13 assets anyplace else. Strangely, it may be that the
 14 trust benefitted by this practice. But I would be
 15 concerned about what happens after today. I don't
 16 want to hear about that right now.
 17 I'm going to come back at 1:30. You've all
 18 forced me to go to Walgreens for lunch. So I'm going
 19 to take a brief break. I'll see you at 1:30.
 20 Anything before I depart?
 21 MR. GOLD: I was just going to say, in terms
 22 of the remainder of our presentation, it would just be
 23 closing argument, based on what we've heard here
 24 today.
 25 THE COURT: Understood. Right. But I want

1 to give Mr. Elam a chance to consult with Ms. Peck.
 2 MR. GOLD: Absolutely.
 3 MS. FEINMAN: And Your Honor, since I am the
 4 only one that is on court call, and since it is fading
 5 in and out, is it possible for you just to call me
 6 back?
 7 THE COURT: Absolutely. Give Ms. Klopp the
 8 telephone number. Very good. See you all at 1:30.
 9 Court is in recess.
 10 (A lunch recess was taken, after which the following
 11 proceedings were had.)
 12 THE COURT: Welcome back, everyone. Please
 13 a seat. I assume, Mr. Gold, that you should go first.
 14 Oh, wait a minute. Did you wish to call Ms.
 15 Peck, I'm sorry?
 16 MR. ELAM: Yes, Your Honor, I would like to
 17 call Ms. Peck.
 18 THE COURT: Ms. Peck, if you could please
 19 come back. Do I have Ms. Feinman on the telephone?
 20 MS. FEINMAN: Yes, you do, Your Honor.
 21 THE COURT: Hopefully the sound is better.
 22 MS. FEINMAN: It is much clearer. Thank
 23 you.
 24 THE COURT: Ms. Peck, please remember you
 25 remain under oath. Understood?

1 THE WITNESS: Yes.
 2 THE COURT: Thank you. Mr. Elam, whenever
 3 you're ready.
 4 DIRECT EXAMINATION
 5 BY MR. ELAM:
 6 Q. Ms. Peck, could you please turn to Exhibit 3
 7 in the petitioning creditors' exhibit register?
 8 A. I have it.
 9 Q. Could you turn to page 25 in that, looking
 10 at Article 10?
 11 A. Okay.
 12 Q. Would you read number 1?
 13 A. Of Article 10?
 14 Q. Yes, ma'am.
 15 A. 1, "A transfer of the title of
 16 participations will only be possible to the other
 17 participants, the fund itself, or to the next of kin
 18 in the direct line of the participant". You want me
 19 to read the next one?
 20 Q. Yes.
 21 A. 2, "In case participations constitute part
 22 of an undivided estate for the joint rightful
 23 claimants can only have themselves represented towards
 24 the fund by a person duly appointed by them in
 25 writing".

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1 Q. Is it your belief that based upon this
2 article that a participant may not transfer its
3 interest in the fund to any other person other than
4 someone next of kin?
5 A. That's the legal opinion I have from a Dutch
6 law firm, yes.
7 Q. Please turn to Article 12. Do you mind
8 reading number 1, management and custody?
9 A. 1, "The custodian can, following
10 consultation with the manager, in case, at the
11 discretion of the custodian and the manager, of an
12 unequal proportion between active and inactive
13 participants impose all measures which the custodian
14 and the manager deem necessary in order to guarantee
15 the continuity of the fund. One of the measures which
16 the custodian and the manager may impose in this case
17 is to pledge the policy to an American bank who will
18 take over the premium obligation whereby the fund will
19 be held to pay the bank a compensation equal to at
20 least 7 percent of the final payment effectuated by
21 the insurer".
22 Q. Does the statement, impose all measures, did
23 you feel that that gave you the right to use any of
24 the pooled funds to pay the lapsing premiums?
25 A. I don't believe I relied on this

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1 specifically, but I'm glad to see that it provides
2 discretionary powers to protect the assets. I have
3 relied on my duties as a fiduciary to the assets and
4 to the funds to do everything within my power to
5 preserve them.
6 THE COURT: Okay, you've now lost me. This
7 fund has only a single policy?
8 MR. ELAM: Right.
9 THE COURT: Aren't you asking questions
10 about co-mingling of assets between --
11 MR. ELAM: Yes, Your Honor.
12 THE COURT: -- this particular fund and the
13 related trust and --
14 MR. ELAM: Right.
15 THE COURT: Hold on, let me finish the
16 question -- and related corporation, fund trust
17 incorporation, which has a single policy, with other
18 similar funds, trusts, and corporate entities that
19 have other policies. Isn't that different from this?
20 MR. ELAM: Well, each one of the different
21 corporations would be signing the same policy. So it
22 would be our position that she can take whatever
23 measures to --
24 THE COURT: Well, there's different
25 policies.

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1 MR. ELAM: Right. I'm sorry, I misspoke.
2 THE COURT: Different insurance policies.
3 MR. ELAM: I misspoke. The different
4 entities. Like here it's the SLF. Each entity would
5 execute one of these documents, and we think that
6 that's what gives her the right to --
7 THE COURT: It doesn't reference any other
8 documents; correct?
9 MR. ELAM: Well, it represents -- or it
10 references the fund, and that's, to us, it gives us
11 the right to transfer --
12 THE COURT: Isn't the fund just this fund
13 related to this particular --
14 MR. ELAM: Right. But we think that each
15 one of the different entities had signed the same
16 document, and they're all in a pool.
17 THE COURT: How are they in a pool? That's
18 what I want to know.
19 BY MR. ELAM:
20 Q. Ms. Peck, could you explain how each
21 document, or each policy, is in a pool?
22 A. I did not write this participation
23 agreement. All I know is that the participants signed
24 it. So to that extent, I do understand that there's
25 certain items that would apply to all investors by

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1 virtue of this contract that they signed, namely,
2 restrictions against transfer, et cetera.
3 My actions were honestly taken to preserve
4 the assets to the best of my ability for the benefit
5 of the beneficiaries within the closed funds. And I
6 would -- I haven't, given that I'm here with very
7 little notice, and I had little time, and my attorney,
8 he's totally new to all of this, even knowing what a
9 life settlement was overnight, we have had little time
10 to prepare and to offer a more definite explanation.
11 MR. ELAM: We have no more questions, Your
12 Honor.
13 THE COURT: Anything else?
14 MR. O'QUINN: No further questions, Your
15 Honor.
16 THE COURT: Thank you, Ms. Peck. You can
17 step down. Let's have Mr. Gold go first.
18 MR. CHARBONNEAU: Your Honor, your exhibits
19 are unredacted?
20 THE COURT: I have all redacted exhibits,
21 except for what is now admitted as 13, which is
22 otherwise identical to 8. Do I need anything else
23 unredacted?
24 MR. CHARBONNEAU: I don't think so, Judge.
25 If there was an unredacted copy I wanted the Court to

1 have it, but --
2 THE COURT: Okay. I'm not concerned because
3 all it is is the name of the insured, policy number,
4 and we've had some testimony about that as well.

5 MR. GOLD: As Your Honor just heard through
6 Ms. Peck's last series of answers to direct by her
7 counsel, and as Your Honor pointed out, those actions
8 that she has taken that are supposedly covered by the
9 clauses that her counsel had her read, as you point
10 out, refer to the fund.

11 The fund as identified in that particular
12 prospectus is the CLSF III/IV fund. It is not funds.
13 It is not every CLSF fund. It is that fund. And each
14 prospectus that I believe Your Honor will perhaps have
15 the displeasure of seeing over the course of this
16 case, will have similar language, but identify a
17 different fund.

18 So to come back to that point, Your Honor,
19 I think you were getting at Ms. Peck's authority to
20 co-mingle funds, to use investor funds from one fund
21 to pay the premiums of another fund.

22 In this particular instance it may seem
23 fortuitous and perhaps to Ms. Peck it seemed
24 fortuitous, that the policy, the Herkowitz policy that
25 we've been talking about, that is the property of the

1 alleged debtor, that that premium has been paid, and
2 that premium was paid on Monday, just before a
3 termination, or just before a lapse.

4 A couple of points to be made about that,
5 Your Honor. It doesn't cleanse, it doesn't serve the
6 purpose that Mr. Elam had mentioned at the beginning
7 of the hearing, to basically remove the danger, remove
8 the threat of irreparable harm to the investors,
9 because we may very well be back here in another few
10 months when Ms. Peck, as is consistent with her
11 testimony, once again is without funds to pay the
12 premiums, to preserve that policy on a going forward
13 basis.

14 Mr. O'Quinn asked her on direct whether she
15 had adequate reserves going forward to pay premiums
16 for the various life insurance policies. Her
17 testimony was that she does not.

18 THE COURT: Well, that's not surprising in
19 light of the letters. I mean, what she says is that
20 she's attempting to bring in the funds in order to do
21 that.

22 MR. GOLD: That's right. And that's
23 important for a couple of reasons. One, as I pointed
24 out, if we don't get the relief we're seeking today,
25 we could be back here in the next quarter when the

1 next premiums are due, because as we've indicated to
2 you before, our clients just will not pay her more
3 money to preserve the policies.

4 Now, the flip side of that is our clients
5 certainly would pay an interim trustee, or a trustee,
6 an independent fiduciary appointed to protect their
7 interests, those very funds to preserve -- to preserve
8 that policy on a going forward basis, Your Honor, and
9 create the adequate reserves where that trustee could
10 administer the alleged debtor going forward. That's
11 point one.

12 Point two is, as Your Honor heard through
13 Ms. Peck's testimony over and over, through her
14 efforts to collectivize premiums for the benefit of,
15 as she characterized it, all of the investors, that
16 action is, we would submit, ultra vires, and not
17 supported by the individual trust documents. In this
18 instance, as Your Honor looked through the trust
19 agreement for CLSF III/IV, you pulled out the
20 provision itself that prohibits her from doing so.

21 So in this particular instance, while our
22 alleged debtor may be the beneficiary of that
23 transfer, there is another debtor -- or, I'm sorry,
24 there is another fund out there and another trust out
25 there, which is now the victim of a fraudulent

1 transfer. So our alleged debtor here may very well be
2 a defendant in a fraudulent transfer action. And if
3 we don't have a trustee appointed in this case, we may
4 very well have one appointed in another who turns
5 around and would sue this alleged debtor, and this
6 alleged debtor may or may not be in bankruptcy at that
7 point.

8 But I think what Your Honor is seeing is
9 that the actions taken by Ms. Peck to do what she
10 terms is in the best interest of the investors
11 generally, is not supported by the trust documents,
12 is, in fact, a violation of her duty to the individual
13 beneficiaries that have been identified under the
14 trust document that Your Honor has in front of you.
15 Those beneficiaries are named.

16 For Ms. Peck to claim that she is receiving
17 exhibits to trust documents that she is signing ahead
18 of time, without seeing who those named beneficiaries
19 are, who are, by her testimony, tacked on after the
20 fact, strange credibility, certainly that's a
21 determination for Your Honor to make.

22 But I would imagine any trustee, who is also
23 a licensed attorney, whether or not in the appropriate
24 state, would probably take the extra step of seeing
25 who it is to whom she owes that fiduciary duty,

1 especially when those beneficiaries are referenced
2 in the trust document itself.

3 So the point about the investors being made
4 known to her, if it was not made known to her, she
5 owed them duties anyway. She owes them duties now.
6 And she doesn't just owe them duties from the time
7 that the PCI fraud was discovered.

8 Let's talk about that for a second. Your
9 Honor had asked up front about sort of the situation
10 regarding what are the structure of these funds, how
11 are the premiums paid, how are investor moneys taken
12 care of, what was the flow of money, just explain the
13 structure to me. We did that, and certainly Ms. Peck
14 did that through her testimony.

15 One of the very last things she testified
16 about on Mr. O'Quinn's direct was a specific transfer
17 of, I believe it was 29 million dollars, overseas.
18 And her testimony was that after the PCI fraud was
19 discovered, her testimony was, we became concerned
20 that the authorities would not let us make more
21 transfers out of the Watershed trust accounts, and as
22 a result, through, I believe her testimony was the
23 direction of Mr. Moens, transferred money out of the
24 trust account.

25 And I couldn't tell you whether you it was

1 the trust account pinned to our particular alleged
2 debtor, because it sounds like there's really just one
3 trust account that she claims is owned by Watershed,
4 but that transfer was made to Dubai, it was made to
5 Dubai after the PCI fraud was discovered, how that
6 transfer could be justified.

7 It could have been made to protect
8 investors, and how that could have been somehow either
9 disclosed that a transfer like that could be made
10 either in the prospectus or any of the other offering
11 documents that our investors received, or how it would
12 have been justified under the trust document to which
13 our debtors -- I'm sorry, our petitioning creditors
14 are appended as beneficiaries. I don't think under
15 any of those documents a transfer of that sort would
16 have been justified, or could be approved even after
17 disclosure.

18 I think what we've seen, Your Honor, are
19 multiple violations of Ms. Peck's fiduciary duties.
20 Certainly not just to these petitioning creditors, but
21 to the investor body in general.

22 I think what we're looking at is a situation
23 where, if she's allowed to stay in control of this
24 particular debtor, and certainly of the debtors who
25 are out there on the horizon, and I believe going to

1 be pulled into this case at some point very soon, to
2 allow her to remain in a position of fiduciary trust
3 just flies in the face of what real fiduciary duty is.
4 She's acting in a way that's in violation of the trust
5 documents. She's facilitated transfers that are in
6 violation of her fiduciary duty.

7 We haven't heard anything from her today
8 that would cast any doubt of the findings in the FIOD
9 report. I know it's not in evidence right now, but
10 certainly, as the case unfolds, I believe everything
11 we'll see will vindicate the findings in that
12 report.

13 For purposes of today, Your Honor, I think
14 you've heard enough to appoint an interim trustee. As
15 Your Honor pointed out with one of your more pointed
16 questions before, unless through counsel and through
17 her testimony she could tell you how it is that those
18 intertrust transfers were okay, you would appoint an
19 interim trustee. I don't believe that explanation has
20 been made. She hasn't justified those actions. She
21 hasn't shown why, under the trust documents, or even
22 the prospectuses, why those transfers are okay. I see
23 no alternative but to appoint an interim trustee, Your
24 Honor.

25 THE COURT: Mr. Elam. And Ms. Feinman, I

1 will ask you for any input after Mr. Elam. Yes.

2 MR. ELAM: Your Honor, we're here on an
3 emergency motion to appoint a trustee.

4 We have gone through different background
5 and things that I don't think really are focusing the
6 point on this debtor. We're here under one entity and
7 one entity only. And we're here to look to see if the
8 assets have been diverted, depleted or secreted. They
9 haven't. We've shown that she's actually taken steps
10 that would save them.

11 Your Honor, we would point out that the
12 balancing test that you had mentioned when we first
13 started, that if she is not allowed to continue as the
14 trustee, that, as of September the 22nd, these
15 assets -- these policies will lapse.

16 I'm sure the petitioning creditors can stand
17 here today and say, we're going to, you know, put
18 money in. That doesn't mean that they're going to
19 when we need to. And we think that if we don't, that
20 this policy will end up lapsing.

21 Ms. Peck is the trustee that has working
22 knowledge of what's going on. She knows what she
23 needs to do to maintain the status quo. We think that
24 the petitioning creditors have not shown anything
25 that's happened to this debtor. They may have shown

1 something to other debtors, but that's not properly
 2 before the Court.
 3 We do challenge the standing, which, in our
 4 answer to the involuntary, we will challenge standing.
 5 I think we've shown that MQIC is violating the trust
 6 documents themselves by the transfers to them. We
 7 don't think that it's a proper creditor before the
 8 Court.
 9 THE COURT: They're not the only movant, are
 10 they?
 11 MR. ELAM: Right.
 12 THE COURT: So I think it's multiple.
 13 MR. ELAM: And we would like to be given
 14 certain -- some time to review the actions of allowing
 15 Ms. Peck to transfer payments from other debtors.
 16 Other than that, we feel that the
 17 petitioning creditors have not met their
 18 burden of proof.
 19 THE COURT: Understood. And before I ask
 20 Ms. Feinman for any input, I need to make sure, Ms.
 21 Peck, that you understand that Mr. Elam does not
 22 represent you. He does not represent you
 23 individually. He does not represent the trustee. He
 24 does not even represent the trust. His role here is
 25 to represent the alleged debtor, which is a

1 corporation that holds this particular insurance
 2 policy.
 3 There are inherent conflicts that arise that
 4 makes it very difficult for him, and in fact, anybody
 5 who represents a debtor in a Chapter 11 or a Chapter 7
 6 corporate case, particularly in an 11, or under this
 7 context. You need to keep that in mind. Mr. Elam
 8 does not represent you personally. And I want to make
 9 sure you don't get into that gray area. Ms. Feinman.
 10 MS. FEINMAN: Yes, Your Honor.
 11 The U.S. Trustee really is appearing today
 12 just to ensure that if the Court does direct the
 13 appointment, that we're aware of it and that Section
 14 303 and all of the requirements are followed.
 15 I don't have -- at this point I don't have a
 16 position with respect to whether the Court should
 17 direct the appointment of a gap trustee.
 18 THE COURT: All right. Very good.
 19 Thanks.
 20 There were two matters, two documents,
 21 proposed Exhibits 1 and 2, which I withheld ruling on.
 22 First of all, let me address the specific evidentiary
 23 issues, and then evidentiary issues in general.
 24 They are documents 1 and 2. One of them is a report
 25 in Dutch, and 2 is a certified translation of the same

1 report. There were two objections, a hearsay
 2 objection and also an authentication objection.
 3 Assuming that the Rules of Evidence apply in
 4 general on this context, and I'm going to get to that
 5 issue next, the hearsay objection is overruled. I
 6 believe that under 8038 it satisfies the public
 7 records exception. I did look at the case law which
 8 was tendered, and I think that it's an appropriate
 9 response to that objection.
 10 With regard to authentication, assuming that
 11 901 and 902 apply in general in a prophylactic way in
 12 which they would otherwise apply in a trial on the
 13 merits in the District Court or here, I do not believe
 14 that the authentication objection is overcome.
 15 There are specific rules governing this kind
 16 of document. It is possible to allow conditional
 17 admission of the document, but I think that the
 18 requirement for investigation means a reasonable
 19 opportunity to investigate, which has not happened
 20 here.
 21 Now, I mentioned earlier that the 10th
 22 Circuit, in a statement that I would probably never
 23 doc, I'm going to read you the sentence that is in the
 24 10th Circuit decision, "The Federal Rules of Evidence
 25 do not apply to preliminary injunction hearings".

1 Period. At all. I don't think I would ever go quite
 2 that far, but I do think that this, and I'm going to
 3 get to the connection between this, a 303(f), 303(g)
 4 matter, I know this is (g) and not (f), and how
 5 they are related to a preliminary injunction matter.
 6 I think the 1st Circuit in the preliminary
 7 injunction context put it in an appropriate light, and
 8 I'll give you the cite, it's 805, Fed 2d 23, it's a
 9 1986 decision, and the plaintiff is A-s-s-e-o, Asseo
 10 against Pan American Grain.
 11 The Court made it clear around page 25 that
 12 when you have an injunction context where you're
 13 considering emergency relief, taking into account the
 14 kind of weight and factors that are also inherent in
 15 303(f) and (g) actions, that the Court doesn't look
 16 solely at the Rules of Evidence, you have to back up
 17 from it a little bit, and determine, given the
 18 expediency, what weight you're going to give to
 19 things.
 20 Remember, this is not a jury trial. It's a
 21 judicial action, a Judge acting on his own, and I am,
 22 I think I'm allowed to take into account the context.
 23 There are a number of cases you can find that say a
 24 303(f) action is essentially a preliminary injunction
 25 matter. I think (g) falls under the same.

1 So I would overrule the objection with
 2 regard to 1 and 2 and admit the report.
 3 (Exhibits No. 1 and 2 admitted.)
 4 THE COURT: In the end, I don't think it
 5 matters. I don't think that's dispositive. That is
 6 not, although it's helpful in me reaching a decision
 7 here, I can reach a decision without referring at all
 8 to Exhibit 2. I don't need to look at it.
 9 Let's look just briefly at what's been
 10 requested. We have a petition. The summons actually
 11 is not yet served. I assume it will be served. Let
 12 me make it clear that service by mail at the address
 13 given at the beginning of this hearing, will be
 14 sufficient for purposes of the rules.
 15 And you may -- that does not mean that you
 16 are prohibited from serving it any other way that's
 17 allowed under the rules, including personal service if
 18 you so desire, but service on that address will be
 19 deemed sufficient, and will begin the clock ticking
 20 with regard to the response.
 21 The request here is that an interim trustee
 22 be appointed. And 303(g) governs that. We need to
 23 know that there's been adequate notice, notice of
 24 service provision is not necessarily implicated in the
 25 statutory requirement, to the debtor, to the United

1 There is a fiduciary obligation involved. There's no
 2 ongoing obtaining new business. The business is to
 3 deal with a single insurance policy and to take the
 4 legal rights associated with the underlying investment
 5 and take advantage of them for the benefit of a
 6 specific list of beneficiaries. It's not the usual
 7 kind of harm that I see in one of these cases.
 8 And so I think that the balancing side
 9 favors the appointment of an interim trustee. That's
 10 sort of really backwards, frankly.
 11 Looking at substantial harm. Admittedly,
 12 when I read the motion the thing that I focused on was
 13 Exhibit 2. But during the presentation today the
 14 facts which came out with regard to the co-mingling of
 15 assets among the various entities was very troubling
 16 to me.
 17 I'm going to go back to what I said during
 18 the presentation earlier. This is an involuntary
 19 bankruptcy case. Under Section 541 as soon as the
 20 petition is filed, we have an estate. That estate is
 21 the assets only of this entity.
 22 What is the entity? It is a Florida
 23 corporation. It essentially owns only, there may have
 24 been some money that it owned, but it owns only a
 25 particular life insurance policy on the life of an

1 States Trustee, and that, in my view, has occurred.
 2 The standard stated in the statute is, if
 3 necessary to preserve the property of the estate or to
 4 prevent loss to the estate. It seems very simple when
 5 you read those two things. In reality the Courts have
 6 applied a gloss to those, as you all know. And it
 7 really boils down to two different steps in the
 8 analysis.
 9 The first is whether there will be
 10 substantial likelihood of loss or some other harm to
 11 the estate unless the status quo is maintained by the
 12 appointment of an interim fiduciary answering to the
 13 Court. And the second is to balance that harm, to see
 14 what harm there might be to the alleged debtor.
 15 I'm going to jump briefly to the balancing,
 16 just to comment. The balancing, as many of you know,
 17 because we've had an amazing number of involuntaries
 18 in this District in the last couple of years, usually
 19 the harm is, we have an operating entity whose
 20 reputation will be substantially harmed by having a
 21 pending bankruptcy, by having somebody who has taken
 22 control of the entity.
 23 This is not your usual entity, operating
 24 entity. Its sole purpose is to facilitate a specific
 25 investment with a specific set of beneficiaries.

1 individual. That entity is, in turn, controlled by a
 2 trust, and the beneficiaries of that trust have the
 3 benefit of the life insurance policy. It's the entire
 4 purpose of the trust.
 5 The trust itself, and I have it admitted at
 6 both 8 and 13, 13 is an unredacted version, is a very
 7 simple trust agreement. Ms. Peck is the trustee.
 8 There are specifically listed beneficiaries. There
 9 are a limited number of enumerated duties and controls
 10 in this particular trust agreement. Otherwise, it
 11 incorporates the Florida Trust Code.
 12 The Florida Trust Code reflects essentially
 13 this statement of trust. It's very straightforward.
 14 The primary duty of a trustee -- the primary two
 15 duties are protection of trust assets and duty of
 16 loyalty. We have, I believe a concern in both regards
 17 in this case.
 18 Each trustee is a fiduciary independent of
 19 his or her actions as trustee in any other matter for
 20 which they may act as trustee, unless the trust
 21 specifically provides otherwise. So if you have a
 22 hundred trusts, you are a different person for each
 23 trust. The trustee is an independent person for
 24 purposes of each trust.
 25 That independent person owes a specific

1 fiduciary duty to the beneficiaries of each and every
 2 trust. That duty of loyalty and that duty to protect
 3 the trust assets applies solely to the corpus of that
 4 trust.
 5 It is inappropriate to give away the assets
 6 of the trust. You can make loans, of course. The
 7 Florida Trust Code allows for loans and investments.
 8 In fact, the trust agreement specifically allows for
 9 investments which are, I think prudent is the word
 10 that it uses.
 11 Nothing I've heard suggests that the
 12 co-mingling amounted to prudent investments. In fact,
 13 there was nothing that would lead me to believe
 14 there's any thought given to whether or not the funds
 15 would be repaid among the entities.
 16 Does it matter, as Mr. Elam, I think you
 17 made the best possible argument, and I suggested it
 18 before the break as well, does it matter that this
 19 particular debtor may have, in fact, benefited from
 20 that? It does not.
 21 And the reason it does not is because if it,
 22 in fact, did benefit, that's an ephemeral benefit. It
 23 actually subjects the debtor to a claim. So the
 24 trustee has put the debtor in the position of being
 25 sued, and I think that is inconsistent with a

1 fiduciary duty.
 2 So what do I have? I have a debtor that is
 3 potentially part of what may become a web of a number
 4 of related cases. We don't know, we'll see where that
 5 goes. But in the meantime, a number of related
 6 entities where the debtor's principal and the trustee
 7 of the trust has testified today that funds have been
 8 co-mingled, and that her intention, in fact, was to
 9 continue to do so.
 10 I think that that poses a risk of
 11 substantial harm to the estate on an ongoing basis,
 12 and certainly supports the appointment of an interim
 13 trustee. And so based solely on that, I would appoint
 14 an interim trustee.
 15 Based on my admission of Exhibit 2, I have
 16 to say that that can only add to the analysis under
 17 303(g). It appears to be a credible report that at
 18 various times funds are transferred out of accounts
 19 that were maintained in connection with the debtor's
 20 business in a manner that places a great deal of doubt
 21 on whether those were appropriate transfers. There
 22 are concerns about the payment of premiums here.
 23 I'll address Mr. Elam's, one other argument
 24 that you made, Mr. Elam, suggesting that we may not --
 25 we don't know whether these particular creditors will

1 pay premiums, and pay in money to allow the debtor to
 2 make premium payments, but they didn't the last time
 3 apparently, either, but there's no reason for me to
 4 believe that in order to protect their investment the
 5 same parties who made payment over the last week in
 6 order to facilitate premium payment earlier this week
 7 would not do the same thing. I think I'd be guessing
 8 in either way, but given what I heard in terms of
 9 testimony today, I would be concerned about what's
 10 going to happen next.
 11 So I will direct the United States Trustee
 12 to appoint an interim trustee in this particular case.
 13 Is there any question before I go on to one
 14 last matter? I'm going to address the bond issue
 15 next. No questions? All right.
 16 If you go and look at the rules, you'll see
 17 that Rule 2001, it actually sounds like a command,
 18 Rule 2001(b) says that I have to set a bond in an
 19 amount approved by the Court, and it's designed to
 20 indemnify for potential claims under 303(i), but it
 21 doesn't say how much that bond needs to be.
 22 In my view, given what I've heard today, and
 23 given the fact that there's only one asset, I do not
 24 think that -- and the asset is an insurance policy,
 25 which apparently is still in play, I do not believe

1 that a bond is necessary in this case. I would
 2 require a bond of zero in this particular case.
 3 It appears to me extremely unlikely that the
 4 debtor is going to be able to effectively oppose an
 5 entry for order for relief in this particular case,
 6 based solely on the evidence admitted, other than
 7 Exhibits 1 and 2, I should point out. It appears that
 8 the debtor has, through its principal, admitted a dire
 9 financial condition, and might make it very easy for
 10 the petitioning creditors to prove their case under
 11 Section 303.
 12 I do not see how there is any potential for
 13 harm to the alleged debtor under the circumstances of
 14 this case. I don't see how there could possibly be a
 15 claim under Section 330(i). It is extremely unlikely,
 16 and therefore a bond of zero is appropriate.
 17 Now, the Code is set up to provide that, and
 18 I think it's appropriate to say in the order, that if
 19 the debtor wishes to reobtain control over its assets,
 20 that it can post a bond in order to do so.
 21 Based on the limited data I have, I do not
 22 know whether there's other assets that were
 23 potentially the debtor's assets. I do know there's
 24 this one insurance policy and its face value is 10
 25 million dollars, and that seems to be undisputed. And

1 therefore, the conditional bond will be 10 million
 2 dollars. The debtor may reobtain control over the
 3 assets by posting a bond of 10 million dollars, and
 4 the order shall so provide.
 5 Any questions? All right. Thank you all
 6 very much.
 7 Yes, Ms. Feinman.
 8 MS. FEINMAN: Your Honor, I just am curious,
 9 who is going to prepare that order?
 10 THE COURT: If you can address the two bond
 11 issues, then I'm glad to have you do it. If you would
 12 prefer that I do it, I will do it.
 13 MS. FEINMAN: I would prefer that the Court
 14 do it, because I don't know if you want to put
 15 anything else in there.
 16 THE COURT: I will do it. I think I would
 17 rather do the order then.
 18 Mr. Elam, you may not know the answer to
 19 this, is the petition going to be contested when it's
 20 served?
 21 MR. ELAM: I don't know the answer to that,
 22 Your Honor.
 23 THE COURT: All right. Thank you.
 24 MR. GOLD: Thank you, Your Honor.
 25 THE COURT: Thank you all very much.

1 I know there was a little bit of levity at
 2 the beginning of the hearing, but you should be clear,
 3 and I know Mr. Elam knows me well enough, that I did
 4 not intend that to reflect poorly on the case.
 5 Everybody has done a very good job, particularly Mr.
 6 Elam, who had five opponents, four, and had only
 7 learned of the matter yesterday.
 8 I think given what I've heard today, I would
 9 have been very uncomfortable in continuing the matter
 10 until next week. I'm putting that as mildly as
 11 possible. Very good. Thank you all. Have a good
 12 weekend.
 13 (The proceedings were concluded.)
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 2 CERTIFICATE
 3
 4 The State of Florida)
 5 County of Palm Beach)
 6
 7 I, JACQUELYN ANN JONES, Court Reporter,
 8 certify that I was authorized to and did
 9 stenographically report the foregoing hearing; and
 10 that the transcript is a true record of my
 11 stenographic notes.
 12 I further certify that I am not a relative,
 13 employee, attorney or counsel of any of the parties,
 14 nor am I a relative or employee of any of the parties'
 15 attorney or counsel connected with the action, nor am
 16 I financially interested in the action.
 17
 18 In witness whereof I have hereunto set my
 19 hand and seal this 30th day of August, 2012.
 20
 21
 22 _____
 23 JACQUELYN JONES
 24 Commission DD 846540
 25 Expires Feb 18, 2013