FORMULATING, CONFIRMING AND IMPLEMENTING COMPLEX PLANS: LESSONS FROM LIFE PARTNERS

David M. Bennett
Thompson & Knight LLP, Dallas, TX

Michael D. Napoli
Dykema Cox Smith, Dallas, TX

Joseph J. Wielebinski Jr.
Munsch Hardt Kopf & Harr, P.C., Dallas, TX

36TH ANNUAL JAY L. WESTBROOK BANKRUPTCY CONFERENCE
November 16–17, 2017
Four Seasons Hotel - Austin, Texas

36TH ANNUAL JAY L. WESTBROOK
BANKRUPTCY CONFERENCE

TABLE OF CONTENTS

36TH ANNUAL JAY L. WESTBROOK BANKRUPTCY CONFERENCE

Formulating, Confirming and Implementing Complex Plans: Lessons from Life Partners

I. Introduction of Speakers

II. Brief Introduction of the Life Partners case

A. <u>Filed in Fort Worth in January 2015 for public parent company.</u>

1. Filing was designed to avoid SEC's appointment of Receiver based on $40M adverse judgment.

2. SEC and US Trustee filed separate motions to appoint Trustee (which Committee joined).

3. Management removed after 6 day trial for mismanagement.

4. 3,400 life insurance policies (aggregate face amount of approximately $2.4 billion). Material portion of the policy portfolio was at risk.

5. 22,000 investors with over 100,000 outstanding Fractional Positions.

6. 24,000 Proofs of Claim totaling over 7 billion ($7,842,196,217.21).

7. $1.4 billion of invested capital at risk.

8. 90,000 parties in interest.

B. <u>Case complexities.</u>

C. <u>Post-effective (12/9/2016) activity:</u>

1. First three weeks post-Effective Date.

2. First three months post-Effective Date.

III. Introduction of the Topic

A. <u>Two areas of focus.</u>

1. What's required to get the vote/plan confirmed?

2. What's required to make the plan a workable vehicle post-confirmation?

IV. Discussion

A. <u>What's required to get the vote / plan confirmed.</u>

1. Consensus Building

   (a) Early consensus through plan term sheet proved critical.

   (b) Short-term operational issues vs. longer-term plan goals.

   (c) Cast the net broadly.

   (d) Foster an atmosphere of shared risk and open exchange of ideas.

   (e) Patience was key.

   (f) The easiest path is not always the most successful path.

2. Ballot / Elections

   (a) Don't lose sight of the mechanics of the solicitation process.

   (b) Take advantage of your claims agent's experience and expertise.

   (c) Educate and engage your voters (to the extent permissible) before and during voting period.

3. Post-Confirmation Governance

   (a) Critical issues in most cases.

   (b) Not unusual that existing fiduciaries/other key players want a post-confirmation role.

   (c) Consensus building not always possible.

   (d) Structure

      (i) 2 Trustees: one to handle litigation and one to handle insurance portfolio.

      (ii) Governing Trust Board to oversee Trustees and implementation of plan.

      (iii) Governing Trust Board was not advisory but had veto power over major issues.

   (e) Participants

      (i) Governing Trust Board: key requirement that actual investors be given <u>board seats</u>.

         (A) 3 Committee members.

(B) 2 industry professionals with different capabilities and experience.

(ii) Final decisions on Board members was not made until last days of confirmation.

(f) Trustees

(i) Easier process with general agreement on top candidates.

(ii) E. Espinosa and Alan Jacobs.

4. Exclusivity

(a) Always a critical advantage to the Debtor, but an extension may not always be available especially when third parties purport to offer a "better" deal.

(b) Consensus not always available.

(c) Denial of exclusivity extension opened a "can of worms."

(d) In the end, it actually facilitated confirmation.

B. <u>What's required to make a plan workable post-confirmation?</u>

1. Specificity of Plan language.

(a) Need enough specificity to ensure that the plan operates as intended but enough flexibility to allow the new fiduciaries to respond to changed or unanticipated circumstances and to operate the new entity efficiently.

(b) Important deal and economic terms need to be as specific as possible.

(c) Operational terms should be written broadly.

2. Get fiduciaries identified and involved early.

3. Forced interaction of key participants – early and often.

4. Plan for transition.

(a) Keep existing management on board for an interim period.

(b) Thoughtful selection of substantial consummation date.

(c) Continuity.

V. Conclusion

David M. Bennett
Texas Bar No. 02139600
Richard Roper
Texas Bar No. 17233700
Katharine Battaia Clark
Texas Bar No. 24046712
Jennifer R. Ecklund
Texas Bar No. 24045626
THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
214.969.1700 (telephone)
214.969.1751 (facsimile)
david.bennett@tklaw.com
richard.roper@tklaw.com
katharine.clark@tklaw.com
jennifer.ecklund@tklaw.com

**ATTORNEYS FOR CHAPTER 11
TRUSTEE H. THOMAS MORAN II
AND THE SUBSIDIARY DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH**

IN RE:	§	**CHAPTER 11**
	§	
LIFE PARTNERS HOLDINGS, INC.,	§	**CASE NO. 15-40289-RFN-11**
et al.	§	
DEBTORS	§	**JOINTLY ADMINISTERED**

**TRUSTEE'S REPORT CONCERNING HIS INVESTIGATION
<u>OF THE DEBTORS' PRE-PETITION BUSINESS CONDUCT</u>**

H. Thomas Moran II ("Moran" or the "Trustee"), as chapter 11 Trustee for Life Partners Holdings, Inc. ("LPHI"),[1] and as sole director for Life Partners, Inc. ("LPI") and LPI Financial Services, Inc. ("LPIFS," and together with LPI, the "Subsidiary Debtors") (collectively "Life Partners"), files the following Report Concerning His Investigation of the Debtors' Pre-Petition Business Conduct pursuant to 11 U.S.C. § 1106(a)(3)-(4). The Trustee reserves his right to update this Report as appropriate.

I. Introduction and summary.[2]

Life Partners was built by Brian Pardo ("Pardo") and those acting in concert with him as a vehicle for profiting themselves at the expense of tens of thousands of individual investors ("Investors"), who were exploited, lied to, and misled at every turn. Many of the Investors who were hurt the worst are elderly Americans who relied on Pardo and his accomplices when they invested a material part of, or in some cases, all of their life savings with Life Partners.

Life Partners sold its investment contracts by misleadingly generating expectations of "double digit returns" that would be realized from the investment and the length of time it would take for the investment to "mature." For its typical investor, Life Partners never adequately disclosed the significant risks that accompany life settlement investments in general, and "fractional" interests in particular, including that premiums would have to be paid well after the initial escrow was exhausted, the limitation of life expectancy reports, and the fact that, unless all Investors who have premium payment obligations relating to a policy continue to pay premiums, the policy may lapse and never pay out a dime. Instead, Life Partners and its sales force described what it offered as "safe" investments.

---

[1] Case No. 15-40289-RFN-11.

[2] *See* Exhibit 1, Life Partners Chronology, Appendix at App 1-App 21.

The life expectancies ("LEs" or "LE") that Life Partners used to market its investments were misleadingly short in most instances and often were significantly shorter than those provided to Life Partners on the same insureds by independent, third-party LE providers in the industry. For most of its history, Life Partners did not disclose to its Investors that it had a longer LE in its possession which Life Partners had used to purchase the underlying policy, nor that the doctor that provided LEs to Life Partners was untrained and had no qualifications, expertise, or experience whatsoever rendering LEs before Life Partners hired him to do so.

Life Partners also hid its massive fees and commissions, never disclosing that roughly one-third of all investment dollars were pocketed by Life Partners and its accomplices.[3] Instead, Investors were led to believe that Life Partners used Investor funds to purchase the policies and to escrow for anticipated future premiums.

Because Life Partners had misled Investors about the actual LE of the insureds, the Investors' escrowed funds were rarely sufficient to pay the needed premiums. Investors were therefore frequently called upon to make additional premium payments, thereby further increasing the investment cost and reducing the potential return with each additional premium payment. Investors that had invested money through their IRAs sometimes had no more money in their IRAs, and couldn't fund the premium obligations even if they had the money outside their IRA accounts to do so. Others simply couldn't afford the ongoing and increasing burden of the premiums coming due, and were forced to sell or "abandon" their investments at a loss.

When Investors could not or would not meet the unexpected, continuing premium obligations (thereby putting the policy at risk of lapse), Life Partners propped up the "distressed policies" by paying premiums with fees taken from other Investors' money. In Ponzi fashion,

[3] Exhibit 2, Bridgepoint Consulting Analysis of the Distribution of Investor Funds, Appendix at App 22-App 23.

Title search: Formulating, Confirming and Implementing Complex Plans: Lessons From Life Partners

Also available as part of the eCourse
2017 Jay L. Westbrook Bankruptcy eConference

First appeared as part of the conference materials for the
36th Annual Jay L. Westbrook Bankruptcy Conference session
"Formulating, Confirming and Implementing Complex Plans: Lessons From *Life Partners*"