



1. **The Examiner's Current Opposition to the Stay Motion is Inconsistent With His Prior Support for the 3 Week Proposal.** The Examiner supported the Agency's 3 Week Proposal during the Sale Hearing. Now, the Examiner suddenly opposes the Agency's Stay Motion on the grounds that it is allegedly "against the best interests of the investors." This new position by the Examiner is inconsistent with the Examiner's prior position just a few weeks ago. Nothing has changed in the interim, other than the Agency's efforts to secure reconsideration and appeal of the Sale Order. The Examiner, like the Receiver before him, seeks to penalize the investors for the delay in securing relief from the Sale Order. That is not appropriate.

2. **The Examiner's Conclusion That the Stay Motion is "Directly Against the Best Interests of the Investors" is a Paternalistic Falsehood.** The Examiner was appointed by the Court to represent the voice and interests of the investors. This he has failed to do. During his tenure as Examiner, the only pleadings filed by the Examiner in the case (until just before the Sale Hearing) were the Examiner's requests for compensation. Nowhere on the docket is there any demonstration that the Examiner has ever had the investors' best interests in mind. His sole report filed with the Court is properly characterized as a paternalistic abdication of his responsibilities to the investors he was appointed to represent.

3. Here is an Examiner who is flooded with a mandate to support the 3 Week Proposal from the 3,500 investors he purportedly represents, and who (along with the Receiver) now "knows better than the investors what the investors truly need." Forget the fact that we are dealing with the investors' money – not the Examiner's, not the

Receiver's. The 3,500 investors want the Stay Motion granted, the Sale Order set aside, and the 3 Week Proposal implemented.<sup>1</sup> The Examiner may do a lot of things – but he does not represent the best interests of the investors.

4. **The Examiner Offers Inadmissible Hearsay to Justify His “Best Interests” Argument.** The Examiner states that he has conducted his own due diligence to determine whether the Stay Order is in the best interests of the investors. Low and behold, the Examiner has interviewed SGI (the current high bidder), who has allegedly informed the Examiner that “the buyer would very likely not close if afforded any excuse to be released from the current contract.” Such a statement is inadmissible hearsay for purposes of this Stay Motion. For purposes of argument only, if one were to assume that SGI made this statement, then what did the Examiner expect SGI to say – “No, go ahead and delay the closing and invite additional competing bidders to bid against us in a second round auction so we can pay a substantially higher price?” This is absurd and extremely transparent. The Examiner is doing what he always does – attempting to provide cover for himself against possible action by the investors later on.

5. **The Examiner’s Conclusion is Without Merit.** The Examiner concludes that the “chance of such a buyer [higher than SGI’s current bid] is nil.”<sup>2</sup> It is noteworthy that the Examiner did not make the same conclusion at the Sale Hearing. How do we know what the chance is of such a buyer if we do not allow the investors to implement

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<sup>1</sup> According to the Receiver at the Sale Hearing, he was only aware of 2 of the 3,500 investors who supported the Sale Motion. The Agency (which represents 400 Puerto Rican investors) together with the 2,600 Taiwanese Investors represent over 85% of the total investor class, all of whom are opposed to the Sale Order and in support of the Stay Order and 3 Week Proposal..

<sup>2</sup> The Receiver testified that if the Court denied the Sale Motion, his credit facility at Sovereign Bank would allow him to continue marketing the Portfolio for 8 months. He further testified that he could also implement a “Plan B” to seek authority to sell five of the policies. The record reflects that the Receiver never implemented Plan B; rather, he merely provided options for bidding by dividing the Portfolio into specific groups and, alternatively, offer the entire Portfolio.

the 3 Week Proposal and test the true market with updated life estimates. The Examiner, as with the Receiver, is more interested in closing down this case than he is in securing the highest value for the Portfolio. The Examiner's "worst case scenario," where he has SGI walking their bid, no additional bidder appearing, and the estate suffering a \$6 million loss by having to accept the Silverpoint stalking horse bid, is just that – a hypothetical "scenario" with no evidentiary support in the record. It is contrary to the Receiver's own testimony at the Sale Hearing - that SGI would be present at any supplemental auction.

### **Conclusion**

6. The Examiner's argument is based upon speculation and inadmissible hearsay, and is contrary to the position he took just a few weeks ago. He does not represent the voice of the investors – much less their best interests – in his current opposition to the Stay Motion. If the Court confines its review of the Stay Motion and the objections thereto to the evidentiary record, then the only conclusion would be to grant the Stay Motion, set aside the Sale Order, order the implementation of the 3 Week Proposal, and order the parties to appear for a supplemental auction three weeks later.

Dated: this 24th day of October, 2008.

Respectfully submitted,

/s/ John S. Brannon

John S. Brannon

Texas Bar No. 0289550

Rachelle H. Glazer

Texas Bar No. 09785900

Will A. Pruitt

Texas Bar No. 24056165

THOMPSON & KNIGHT LLP

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, Texas 75201

(214) 969-1700 Telephone

(214) 969-1799 Facsimile

ATTORNEYS FOR ANGELO DIAZ  
GONZALEZ AND AGENCY

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served upon the following parties by fax and first class mail, postage prepaid on this 24th day of October, 2008.

/s/ John S. Brannon  
John S. Brannon

Michael J. Quilling  
Quilling Selander Cummiskey  
& Lownds  
2001 Bryan St., Suite 1800  
Dallas, Texas 75201  
Fax: 214.871.2111  
Email: [mquilling@qsclpc.com](mailto:mquilling@qsclpc.com)  
COURT APPOINTED RECEIVER

Bruce S. Kramer  
Borod & Kramer, PLC  
Brinkley Plaza  
80 Monroe Ave., Suite G-1  
Memphis, TN 38103  
Fax: 901.523.0043  
Email: [bkramer@borodandkramer.com](mailto:bkramer@borodandkramer.com)  
SPECIAL COUNSEL FOR THE RECEIVER

D. Dee Raibourn, III  
Quilling Selander Cummiskey  
& Lownds  
2001 Bryan St., Suite 1800  
Dallas, Texas 75201  
Fax: 214.871.2111  
Email: [draibourn@qsclpc.com](mailto:draibourn@qsclpc.com)  
COUNSEL FOR THE RECEIVER

Harold R. Loftin, Jr.  
U.S. Securities & Exchange Commission  
Fort Worth Regional Office  
801 Cherry St., Suite 1900  
Fort Worth, Texas 6102  
Fax: 817.978.4927  
Email: [loftinh@sec.gov](mailto:loftinh@sec.gov)  
LEAD COUNSEL FOR THE  
SECURITIES & EXCHANGE COMMISSION

Dennis L. Roossien  
Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 N. Akard St.  
Dallas, Texas 75201  
Fax: 214.855.7584  
Email: [droossien@munsch.com](mailto:droossien@munsch.com)  
COUNSEL FOR THE EXAMINER

Steven A. Harr  
Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Fax: 214.855.7584  
Email: [sharr@munsch.com](mailto:sharr@munsch.com)  
COURT APPOINTED EXAMINER