

NO. D-1-GV-09-00904

STATE OF TEXAS	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
	§	345th JUDICIAL DISTRICT
V.	§	
	§	
TEXAS MEMORIAL LIFE	§	OF TRAVIS COUNTY, TEXAS
INSURANCE COMPANY,	§	
MEMORIAL ADMINISTRATORS,	§	
LLC d/b/a TEXAS MEMORIAL	§	
ADMINISTRATORS, LLC and TME	§	
HOLDINGS, INC.	§	
Defendants.	§	

**SPECIAL DEPUTY RECEIVER'S FIRST AMENDED FINAL REPORT
AND APPLICATION TO MAKE FINAL DISTRIBUTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Jack M. Webb & Associates, Inc., Special Deputy Receiver of Texas Memorial Life Insurance Company, Memorial Administrators, LLC d/b/a Texas Memorial Administrators, LLC and TME Holdings, Inc. (the “SDR”, and “Texas Memorial”, “Memorial Administrators” and “TME Holdings”, respectively) files this *First Amended Final Report and Application to Make Final Distribution* (the “Application”).

I. INTRODUCTION

1.1 Summary of Relief Requested

The SDR requests this Court to accept its financial reports and authorize a final distribution of Texas Memorial’s remaining assets. Neither Memorial Administrators nor TME Holdings have any assets to distribute. Following the distribution, the SDR will submit a final accounting and an application to cancel Texas Memorial’s license, dissolve the charters for

Texas Memorial, Memorial Administrators and TME Holdings, discharge the Receiver and the SDR and terminate this proceeding.

1.2 The SDR files this First Amended Application to update the financial exhibits filed with the original application from May 31, 2012 to June 30, 2012. No other substantive changes were made.

II. AUTHORITY

2.1 Statutory Authority

The SDR files this Application pursuant to Tex. Ins. Code § 443.302, which provides for the Court's approval of a distribution of assets. The SDR is authorized to file this Application under Tex. Ins. Code § 443.154 (a). Unless otherwise indicated, all statutory references are to the Texas Insurance Code.

2.2 Reference to Master

The subject matter of the Application has been referred to the Special Master appointed in this proceeding in accordance with the *Order to Reference to Master* entered on June 11, 2009 ("Order of Reference").

III. BACKGROUND

3.1 Company History

Texas Memorial was organized as a stipulated premium insurance company under Chapter 884 of the Texas Insurance Code on October 10, 1974 with the original name of The Texas Owens-Brumley Funeral Insurance Company. On June 30, 1975 its name was changed to Owens-Brumley Funeral Insurance Company ("Owens-Brumley"). Effective October 20, 2005 Landmark Life Insurance Company acquired control of Owens-Brumley as approved under Commissioner's Order No. 05-0881. Effective August 1, 2006 Texas Memorial Enterprises

Holding, Inc. acquired control of Owens-Brumley as approved under Commissioner's Order No. 06-0811. Texas Memorial's current name was adopted in 2006 as approved under Commissioner's Order No. 06-0811. Texas Memorial was only licensed to write life insurance policies in the State of Texas. It wrote policies used to fund prepaid funeral contracts issued by its affiliate, Memorial Administrators, as well as a small number of annuities.

Memorial Administrators was incorporated on June 21, 2006 and became a licensed third party administrator under Chapter 4151 of the Texas Insurance Code. It also held a Prepaid Funeral Benefits Contract Permit issued by the Texas Department of Banking. Its TPA certificate was canceled by Commissioner's Order No. 10-0820 during the course of the receivership proceeding. Texas Memorial and Memorial Administrators wrote no life insurance policies or prepaid funeral contracts outside the State of Texas.

TME Holdings was incorporated June 21, 2006 as a Texas corporation and was the parent company of Texas Memorial and Memorial Administrators. It held no licenses or certificates of authority. Texas American Memorial Group, LLC f/k/a Texas Memorial Enterprises Holdings, LLC, a Texas corporation not in receivership, was the ultimate controlling entity of Texas Memorial, Memorial Administrators and TME Holdings.

3.2 Initiation of Delinquency Proceeding and Appointment of Liquidator and SDR

Texas Memorial, Memorial Administrators and TME Holdings were placed in permanent receivership on June 10, 2009 by this Court's entry of an *Agreed Order Appointing Liquidator and Permanent Injunction* in the above referenced cause. The order appointed the Commissioner of Insurance for the State of Texas ("Commissioner") as Liquidator. On the same date, the Commissioner declared Texas Memorial to be an "impaired insurer". The Commissioner designated Jack M. Webb & Associates, Inc. as SDR of Texas Memorial, Memorial

Administrators and TME Holdings on June 10, 2009. The three estates were consolidated solely for administrative purposes and are not substantively consolidated.

As a consequence of the Liquidation Order and/or the impairment order, the Texas Life, Accident, Health and Hospital Services Insurance Guaranty Association (subsequently renamed the Texas Life and Health Insurance Guaranty Association) and hereinafter referred to as the (“TLHIGA” or the “guaranty association”) became obligated to pay covered claims of Texas Memorial in accordance with its governing statute. TLHIGA provided continuous coverage to Texas Memorial policyholders from June 10, 2009, including accepting premiums, processing and paying valid claims to policyholders and assignees, subject to the terms, limitations and conditions of the guaranty association statute until August 5, 2010. Thereafter, TLHIGA entered into an Assumption Reinsurance Agreement with Investors Heritage Life Insurance Company (“IHLIC”) to reinsure and assume the guaranty association’s Covered Obligations with respect to TML’s policies and annuities. On July 30, 2010, the Court granted the SDR’s application to assign all prepaid funeral contracts, and related records, free and clear of all liens to IHLIC.

IV. FINANCIAL STATEMENTS

4.1 The Statement of Net Assets and Statement of Net Liabilities for Texas Memorial, are attached as “Exhibit 1A” and “Exhibit 1B”, respectively. The Statement of Net Assets and Statement of Net Liabilities for Memorial Administrators are attached as “Exhibit 1C” and “Exhibit 1D”, respectively. The Statement of Net Assets and Statement of Net Liabilities for TME Holdings are attached as “Exhibit 1E” and “Exhibit 1F”, respectively. The exhibits reflect the financial condition of the receivership estates as of June 30, 2012. The Consolidated Cash Sources and Uses of Statement for Texas Memorial is attached as “Exhibit 2A”. The

Consolidated Cash Sources and Uses Statement for Memorial Administrators is attached as “Exhibit 2B”. The Consolidated Cash Sources and Uses Statement for TME Holdings is attached as “Exhibit 2C”. These statements list all funds received and disbursed from the three receivership estates through June 30, 2012. These exhibits are incorporated herein by reference and are submitted in accordance with § 443.016.

V. ASSETS

5.1 Inventory of Assets

The SDR prepared Inventories of Assets for Texas Memorial, Memorial Administrators and TME Holdings listing their respective assets and liabilities at the time of receivership. The Inventories are attached as “Exhibit 3A, Exhibit 3B and Exhibit 3C”, respectively. According to “Exhibit 3A”, incorporated herein by reference, Texas Memorial’s assets totaled \$3,489,719 as of June 10, 2009. According to “Exhibit 3B”, incorporated herein by reference, Memorial Administrator’s assets totaled \$1,142,935 as of June 10, 2009. According to “Exhibit 3C”, incorporated herein by reference, TME Holding’s assets had no value as of June 10, 2009 because of the insolvencies of its subsidiaries.

5.2 Disposition of Assets

Disposition of Assets Schedules for Texas Memorial, Memorial Administrators and TME Holdings are attached as “Exhibit 4A, Exhibit 4B and Exhibit 4C”, respectively, and incorporated herein by reference. These schedules set forth all asset transactions by year since June 10, 2009.

5.3 Unliquidated Assets

Lists of Known Unliquidated Assets for Texas Memorial, Memorial Administrators and TME Holdings are attached as “Exhibit 5A, Exhibit 5B and Exhibit 5C”, respectively, and

incorporated herein by reference. These exhibits identify assets with estimated and/or recorded values of \$2,125,721 for Texas Memorial, \$81,260 for Memorial Administrators and \$749,742 for TME Holdings, respectively, which remain uncollectable at this time, and which will be assigned to the Commissioner or TLHIGA at closing in the manner described in Paragraphs 9.2 and 9.3 below. The principal unliquidated assets are default judgments taken against agents indebted to Texas Memorial, which the SDR has been unable to collect.

VI. CLAIMS

6.1 Notice of Claims Filing Deadline

This Court established April 30, 2010, as the deadline to file proofs of claims (“POCs”) with the SDR under its *Order Approving Application to Provide Notice, Set Claims Filing Deadline and Establish a Claims Processing Procedure*. The Court also established September 1, 2010 as the deadline for filing late claims under Sec. 443.251(c) and December 1, 2010 as the deadline for filing contingent and unliquidated claims under Sec. 443.255(c). In accordance with this Order, the SDR provided notice of the claim filing deadlines to all persons who may have had claims as shown by the books and records of Texas Memorial, Memorial Administrators and TME Holdings, Inc.

6.2 Filing of Claims

A total of 173 Proofs of Claims (“POCs”) were timely filed with the SDR. The SDR reviewed all POCs and notified all claimants in writing of his determination of the amount and classification of their claims pursuant to Sec. 443.253. No claims were rejected and all actions on claims that were given a classification that would not allow the claimant to share in any distribution of assets have been concluded. No appeals were taken and the SDR’s determination of all POCs is final.

6.3 Report of Claims

On April 24, 2012, this Court entered its *Order Granting Special Deputy Receiver's Report of Claims Report* (the "Report") pursuant to §443.258. As stated in the Report, the approved Class 1 and 2 claims in the Texas Memorial, Memorial Administrators and TME Holdings receivership estates totaled \$2,483,007. TLHIGA's approved Class 1 claim totaled \$543,418, and its approved Class 2 claim totaled \$1,939,589. There were no Class 2 claims filed by other claimants.

6.4 Early Access and Statutory Deposits

On or about July 20, 2010, this Court entered an order authorizing the SDR to enter into an Early Access Agreement with TLHIGA and to make a \$1,000,000 early access distribution to it. Pursuant to the order, the SDR entered into an agreement with TLHIGA and distributed \$1,000,000 as an early access distribution. Pursuant to this Court's August 24, 2012 order the SDR has made one additional early access distribution from the Texas Memorial estate to the guaranty association in the amount of \$600,000. The early access distributions paid or credited to date to TLHIGA totals \$1,600,000.

6.5 Release of Federal Claims

The SDR entered into a Release Agreement with the U.S. Department of Justice, which is attached as "Exhibit 6", and incorporated herein by reference. Under this agreement, the United States releases the SDR and the Receiver from any federal claims arising under 31 U.S.C. § 3713(b). The agreement is subject to any required approval by this Court. The SDR requests that the Court approve the terms of the Release Agreement.

VII. EXPENSES

7.1 Approval and Payment of Expenses

The SDR filed Statements of Expenses pursuant to Section 443.015, and the terms of compensation of the SDR and subcontractors that were approved in accordance with this Court's order entered on July 22, 2009. Section 443.015 (g) requires that Statements of Expenses be filed quarterly, or as otherwise provided by this Court. The last Statements of Expenses for the three estates were filed in this proceeding as of May 31, 2012. The SDR requests that the next and final Statements of Expenses be filed with the final accounting.

7.2 Reserves for Final Expenses

The fees and expenses of the receivership have been paid through June 30, 2012. After reserving for accrued expenses, the SDR proposes to reserve \$73,899.00 from the distribution to pay the costs of the closing of the receivership estates. Attached as Exhibit 7 and incorporated by reference is the SDR's Summary of Closing Costs. The SDR will submit final Statements of Expenses pursuant to § 443.015 with the final accounting.

VIII. PROPOSED FINAL DISTRIBUTION OF ASSETS

8.1 Classes Eligible for Distribution

Only the Texas Memorial estate has funds available for distribution and only one claimant, TLHIGA, holds approved Class 1 and Class 2 claims. Accordingly, all distributable assets will be paid or assigned to TLHIGA.

8.2 Residual Funds

It is possible that there may be additional funds in the receivership account after the distribution ("Residual Funds"). Such funds may result from interest on the receivership account, excess reserves for closing expenses, or the collection of assets after the distribution has commenced. Such funds will be handled as described in Paragraphs 8.3 and 8.4, below.

8.3 Supplemental Distribution

If it is economically feasible to distribute Residual Funds to the creditors, the SDR will make a supplemental pro-rata distribution from any such residual funds, after reserving for distribution expenses. Any supplemental distribution will be subject to a de minimis distribution threshold approved by the Court.

8.4 Transfer of Remaining Funds

In the event that there are any funds remaining after the final distribution, and it is not economically feasible to distribute such funds, the SDR requests that such funds be transferred to the Commissioner for deposit in an account established under § 443.304 (c). Such funds will be available to pay any expenses exceeding the expense reserve, or for activities after the closing of the receivership, such as responding to inquiries and handling unclaimed funds.

8.5 Method of Distribution

Upon approval of this Application, distributions will be made by wire transfer to TLHIGA.

IX. ASSIGNMENTS

9.1 Section 443.154 authorizes the SDR to transfer, abandon or otherwise dispose of property on terms and conditions that are fair and reasonable. Further, § 443.352 permits the Court to enter orders in connection with an application to terminate a receivership proceeding, including orders to transfer any remaining assets that are uneconomic to distribute.

9.2 The SDR proposes to assign to TLHIGA, in partial satisfaction of its unpaid Class 2 claim, (i), certain judgments taken against agents owing commissions to Texas Memorial and (ii) certain accounts receivable from agents who entered payout arrangements with the SDR to satisfy their commission obligations. Pursuant to a separate agreement with TLHIGA, these assets will be reassigned to the Commissioner if and when TLHIGA's remaining unpaid Class 2

claim has been fully satisfied. This assignment is attached as Exhibit 8 and incorporated by reference.

9.3. Following the assignment to TLHIGA, the SDR requests that this Court approve the assignment of all remaining non-cash assets of the estates to the Commissioner pursuant to § 443.352. Attached as “Exhibit 9” and incorporated by reference is the proposed Assignment to the Commissioner of all remaining non-cash assets of the Texas Memorial, Memorial Administrators and TME Holdings receivership estates.

X. UNCLAIMED FUNDS

10.1 The SDR will close Texas Memorial’s accounts after transferring distributable assets to the guaranty association by wire transfer and after paying to the SDR the closing budget amount described in Exhibit 7. Any funds in the closing budget not utilized by the SDR in closing the receivership estates will be remitted to the Commissioner pursuant to Paragraph 8.4. The SDR does not believe there will be any funds that are unclaimed as of the closing of the account

XI. RECORDS

11.1 Requested Approvals

The SDR requests the Court to (1) authorize the disposition of records transferred to TLHIGA, (2) authorize it to destroy certain categories of records, and (3) convey title of remaining records to the Commissioner or to TLHIGA, as applicable, at closing.

11.2 Records Transferred to TLHIGA

After the entry of the Liquidation Order, TLHIGA required certain records of Texas Memorial to fulfill its statutory obligations. The SDR transferred custody of these records to

TLHIGA. The SDR requests that this Court authorize it to transfer title of these records to TLHIGA, and authorize it to retain or dispose of such records at its discretion.

Subsequently, TLHIGA entered into an Assumption Reinsurance Agreement with IHLIC under which that company took over responsibility for paying covered claims. In connection with that transaction, pursuant to this Court's order of July 30, 2010, the SDR transferred certain prepaid funeral contract records of Memorial Administrators to IHLIC.

11.3 Disposal of Non-Essential Records

The SDR has identified records that will not be needed after the termination of this proceeding. Attached as "Exhibit 10, and incorporated herein by reference, is the SDR's Inventory of Non-Essential Records held at the Houston location of the document storage company, Safesite. The SDR requests authority to dispose of such records by shredding after the approval of this application.

11.4 Transfer of Records to the Commissioner

The records that are not either destroyed or transferred to TLHIGA will be delivered to the Commissioner pursuant to § 443.354 (b). The SDR estimates that the cost of retaining such records will be \$1,944.00, and requests that such amount be reserved for the maintenance of the records. The SDR requests that this Court authorize it to transfer such records and funds to the Commissioner. Pursuant to § 443.354 (b), the Commissioner shall have discretion to retain or dispose of these records as appropriate.

XII. TAX RETURNS

12.1 The SDR has filed income tax returns with the Internal Revenue Service for years 2009 through 2011. The final tax return for 2012 will be filed prior to the filing of the final accounting. No taxes are owed to the Internal Revenue Service.

XIII. CHARTER AND LICENSES

13.1 The SDR has determined that a sale of the charter of Texas Memorial is not feasible. The SDR will request that this Court dissolve the charter pursuant to § 443.153 (e) upon the termination of this proceeding. Memorial Administrator's TPA certificate has previously been canceled, and the SDR requests the Court to cancel its Prepaid Funeral Benefits Contract Permit issued by the Texas Department of Banking.

XIV. NOTICE

14.1 Notice of the Application

Pursuant to § 443.007(d), this Application has been served on the entire service list for this proceeding, including without limitation, TLHIGA, in the manner shown on the Certificate of Service. It has also been posted on the SDR's website.

In addition, the SDR will send notice of this Application to taxing authorities in the form attached as "Exhibit 11", which is incorporated by reference. The SDR requests that the Court find that Exhibit 11 constitutes adequate notice to such parties.

14.2 Notice of Electronic Service Requirement

Pursuant to the *Order Granting Special Deputy Receiver's Application to Require Electronic Service of Pleadings and Notices* entered on June 22, 2009, all pleadings filed in response to this application or in regards to this estate shall be served on the undersigned counsel and all parties shown on the attached Certificate of Service.

XV. OFFER OF PROOF

15.1 Robert Loiseau, President of Jack M. Webb & Associates, Inc., as Special Deputy Receiver, submits his affidavit and certification pursuant to § 443.017(b) verifying the statements in this Application and authenticating the attached exhibits.

XVI. CONCLUSION

16.1 In summary, the SDR has completed the administration of the estate. The SDR has made early access distributions of \$1,600,000, representing a 100% distribution on the TLHIGA's Class 1 claim and approximately 55% distribution on its Class 2 claim. The SDR proposes to distribute \$96,970.00 to the IGA on its approved Class 2 claim, which will result in a total Class 2 distribution of approximately 59%.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the SDR respectfully requests this Court to enter an order as follows:

1. Granting the Application;
2. Accepting Exhibits 1A through 1F and Exhibits 2A through 2C as the final statements under §443.016, subject to the final accounting;
3. Accepting Exhibits 3A through 3C, 4A through 4C and 5A through 5C;
4. Approving the agreement with the United States attached as Exhibit 6;
5. Approving the reserve for estimated expenses described in Exhibit 7;
6. Authorizing the SDR to distribute the non-reserved cash assets of the receivership in accordance with § 443.302, as described in the Application;
7. Authorizing the assignment to TLHIGA of (i) certain judgments taken against agents owing commissions to Texas Memorial and (ii) agents balances and certain accounts receivable from agents who entered payout arrangements with the SDR to satisfy their commission obligations in a form substantially similar to Exhibit 8;
8. Authorizing the assignment of Texas Memorial's remaining unliquidated and unknown assets to the Commissioner in a form substantially similar to Exhibit 9;

9. Authorizing the SDR to dispose of the records listed in Exhibit 10;
10. Authorizing the SDR to transfer to TLHIGA title to Texas Memorial's records in its possession, and authorizing it to retain or dispose of such records at its discretion;
11. Authorizing the SDR to deliver the remaining records of Texas Memorial, Memorial Administrators and TME Holdings to the Commissioner, approving the reserve for estimated expenses to maintain such records after the termination of this proceeding, and authorizing the Commissioner to maintain or dispose of such records at her discretion;
12. Approving the SDR's proposed Notice of the Application, including Exhibit 11, and finding that it constitutes adequate notice;
13. Authorizing the SDR to file the next expense report with the final accounting;
14. Authorizing the SDR to execute and file a tax return and other tax forms as may be necessary; and
15. Granting such further relief to which the SDR may be entitled.

Respectfully submitted,

By: Christopher Fuller

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Special Deputy Receiver of Texas Memorial Life Insurance Company, Memorial Administrators and TME Holdings, Inc.

CERTIFICATE OF SERVICE

I certify that on August 20, 2012, a true and correct copy of this Application was served pursuant to the Order of Reference, the Court's order on e-service, the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by electronic mail, except as specifically noted.

Christopher Fuller

Christopher Fuller

<p><i>Via Email:</i> Jean.Sustaita@tdi.state.tx.us Jean Sustaita Texas Department of Insurance 582 Liquidation Oversight PO Box 149104 Austin, Tx 78714-9104</p>	<p><i>Via Email:</i> Tanikqua.Young@tdi.state.tx.us Tanikqua.Young Texas Department of Insurance PO Box 149104 Austin, Texas 78714-9104</p>
<p><i>Via Email:</i> Rachel.Giani@tdi.state.tx.us Rachel Giani Texas Department of Insurance Financial Counsel/Legal Services - 821 PO Box 149104 Austin, TX 78714-9104</p>	<p><i>Via Email:</i> Kathy.Gartner@tdi.state.tx.us Kathy Gartner Texas Department of Insurance 582 - Rehabilitation & Liquidation Oversight 305-1C PO Box 149104 Austin, TX 78714-9104</p>
<p><i>Via Email:</i> jrixen@rixenlaw.com Jackie Rixen The Law Office of Jacqueline Rixen 8500 N. Mopac, Suite 605 Austin, TX 78759 Counsel to TLHIGA</p>	<p><i>Via Email:</i> jennifer.jackson@oag.state.tx.us Jennifer Jackson Ass't. Attorney General PO Box 12548 Austin, TX 78711-2548</p>
<p><i>Via Email:</i> SNewberg@banking.state.tx.us Stephanie Newberg Texas Department of Banking</p>	<p><i>Via Email:</i> froan@winstead.com Forrest Roan Winstead PC 401 Congress Avenue, Ste. 2100 Austin, TX 78701</p>
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Brenham National Bank PO Box 2568 Brenham, TX 77834-2568	P.O. Box 1644 Dripping Springs, TX 78620-1644
<i>Via Email:</i> abanda@rentealaw.com Ana Banda Legal Assistant Rentea & Associates 1002 Rio Grande St. Austin, TX 78701	<i>Via Email:</i> bobl@jackwebb.com Robert Loiseau Jack M. Webb & Associates, Inc. 110 Cypress Station Dr. Ste 160 Houston, TX 77090

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the SDR's *Final Report and Application to Make Final Distribution* (the "Application") is hereby set for written submission before the Special Master, Tom Collins, on September 10, 2012.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served **by e-mail** by such date on:
 - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita at Jean.Sustaita@tdi.state.tx.us;
 - (b) The undersigned counsel, Christopher Fuller, at cfuller@fullerlaw.org; and
 - (c) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the Master's Docket Clerk [(512) 463-6450] to obtain an oral hearing, unless the Master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on Applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.
5. Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

Christopher Fuller
Christopher Fuller