

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68449 / December 17, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3431 / December 17, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15133

In the Matter of

J. Brian Laib, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 4C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against J. Brian Laib, CPA (“Respondent” or “Laib”) pursuant to Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

A. SUMMARY

1. This matter involves improper professional conduct by J. Brian Laib in connection with audits conducted by Murrell Hall, McIntosh & Co. PLLP and Eide Bailly LLP of the financial statements of Life Partners Holdings, Inc. (“Life Partners” or the “Company”) for fiscal years ended February 28, 2005 through 2009. Laib failed to conduct Murrell Hall’s fiscal year 2005 through 2008 audits and Eide Bailly’s fiscal year 2009 audit in accordance with Public Company Accounting Oversight Board (“PCAOB”) standards,⁴ and Life Partners’ fiscal year 2006 through 2009 financial statements did not present fairly, in all material respects, Life Partners’ financial position, operating results, and cash flows in conformity with generally accepted accounting principles (“GAAP”).

2. On January 3, 2012, the Commission filed a complaint against Life Partners and three of its senior executives for their involvement in a fraudulent disclosure and accounting scheme involving life settlements.⁵ The Commission alleges, in part, that Life Partners materially misstated net income from fiscal year 2007 through the third quarter of fiscal year 2011 by prematurely recognizing revenues and understating impairment expense related to its investments in life insurance policies. The Commission also alleges that Life Partners backdated certain transactional documents to hide the Company’s premature revenue recognition from its auditors from 2004 through 2010.

³ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ Citations to PCAOB Standards and Rules refer to standards and rules in effect at the time of the conduct discussed herein.

⁵ See Litigation Release No. 22219, January 4, 2012.

B. RESPONDENT

J. Brian Laib, 48, is a certified public accountant licensed in the state of Oklahoma. From January 2005 to August 1, 2008, Laib was a partner with Murrell Hall, McIntosh & Co. PLLP, an accounting firm that was registered with the PCAOB. Laib became a partner with Eide Bailly LLP, a PCAOB-registered accounting firm, on August 1, 2008, following Eide Bailly's acquisition of Murrell Hall's assets.

C. RELEVANT ENTITY

Life Partners Holdings, Inc. is a Texas corporation headquartered in Waco, Texas. Life Partners' common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and the Company is subject to the reporting requirements of the Exchange Act. Since 2000, Life Partners' common stock has traded on the NASDAQ exchange under the ticker symbol "LPHI."

D. FACTS

Life Partners' Revenue Recognition

1. Life Partners brokers the sale of life insurance policies by policy owners to investors in the secondary market, in transactions referred to as "life settlements." Life Partners derives its revenues from the difference between the amounts investors pay to acquire an interest in a life settlement and the amounts for which policy owners agree to sell their policies.

2. In a typical life settlement transaction brokered by the Company, a policy owner interested in selling his or her policy executes a "Seller Agreement," which grants Life Partners an option to purchase the policy on behalf of investors at an agreed upon price. The Company's standard Seller Agreement defines the "Closing Date" as "the date upon which the consideration for the transaction described herein is transferred from the Escrow Agent to the Seller." Prior to the Closing Date, neither the policy owner nor Life Partners are contractually obligated to proceed with the sale, as each may rescind the agreement at any time and for any reason without incurring a penalty. Additionally, during the 15-day period following the Closing Date (the "Rescission Period"), the policy owner has the option to rescind his or her agreement to sell the policy for any reason without penalty. Moreover, death of the insured covered by the policy prior to or during the Rescission Period triggers an automatic rescission under the Seller Agreement (collectively, the "Rescission Rights").

3. Life Partners typically identifies potential investors in life settlements through its network of independent buyers' agents. Potential investors generally deposit funds with Life Partners' escrow agent and deliver signed, but undated, "Policy Funding Agreements" to the Company in advance of identifying specific policies in which they intend to purchase an interest. The Policy Funding Agreement specifies the policy to be purchased, the acquisition price, and the escrow arrangements for receipt and disbursement of funds.

4. After receipt of the Policy Funding Agreement, the Seller Agreement, and the accompanying assignment documents, Life Partners forwards to the escrow agent the documents necessary for closing. A life settlement transaction closes when the seller gets paid – i.e., on the Closing Date, as defined in the Seller Agreement.

5. Rather than wait until the Closing Date to recognize revenues, Life Partners routinely recognized revenue as of the date listed on the Policy Funding Agreement. This date purportedly represented the date the investor committed to purchase an interest in the policy; however, Life Partners routinely backdated Policy Funding Agreements and other transaction documents. Additionally, the Company did not wait until it had identified investors to purchase 100% of a policy to recognize revenue. Instead, Life Partners recognized a pro rata portion of the total revenue it expected to earn when it completed the sale of 100% of the interests in that policy. According to Life Partners' policy, if the Company had received Policy Funding Agreements from purchasers to acquire 2% of a policy and certain other transaction documents, the Company would recognize 2% of the total revenue anticipated from that life settlement transaction.

Applicable Authoritative Accounting Literature

6. Under GAAP, revenue can be recognized only when it is both (i) realized or realizable and (ii) earned. Revenue is “realized or realizable” when products or services (in this case, life settlements) are exchanged or readily convertible to known amounts of cash or claims to cash. Revenues are “earned” when “the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues” (*See* Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 605-10-25, Revenue Recognition (also contained in FASB Statement of Financial Accounting Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises, paragraphs 83(a) and 83(b)) and Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins*, Chapter 1A, Paragraph 1.

Life Partners' Improper Revenue Recognition

7. Life Partners' revenue recognition policy is contrary to GAAP because the Company recognized revenues prior to being (i) realized or realizable and (ii) earned, which occurred, at the earliest on the Closing Date. Revenue is not realized or realizable before the Closing Date because Life Partners receives no cash, and has no claim to cash, until a life settlement is purchased by investors and the policy owner/seller is paid by the escrow agent, which occurs on the Closing Date. Similarly, revenue is not earned before the Closing Date because the policy owner is not obligated to sell the policy to Life Partners prior to the Closing Date. Additionally, Life Partners' revenues do not qualify as “earned” until such time as it fully brokers the sale of 100% of a policy. Policy owners sell their policies in a single transaction under the Seller Agreement, not on a prorated basis, as Life Partners identifies investors interested in purchasing fractional interests in the policy. Consequently, after the Company identifies one or more interested investors in a given policy, Life Partners has substantial continuing obligations to identify additional investors sufficient to purchase any unsold interests in the policy before it becomes entitled to any portion of the proceeds from the sale. Life Partners is not entitled to any

proceeds from the sale until investors purchase 100% of a policy, which does not happen until the Closing Date, at the earliest.

Life Partners' Restatement

8. In its Form 10-K filed on November 22, 2011 for its fiscal year ended February 28, 2011, Life Partners restated its financial statements for fiscal years 2007 through 2010 and for the first three quarters of 2011 to correct accounting errors related to revenue recognition, accounts receivable, impairment of investments in Company-owned policies, accrued liabilities, and the related tax impact. The Company's restatement of revenues resulted from changing the date of revenue recognition from the date that purchasers commit to buy policies to the date that policy closings are funded, i.e., the Closing Date.

Audits of Life Partners Fiscal Year 2005 through 2009 Financial Statements

9. Laib served as the engagement partner and supervised and conducted Murrell Hall's fiscal year 2005 through 2008 audits and Eide Bailly's fiscal year 2009 audit of Life Partners' financial statements.

10. An auditor is required to plan and perform the audit "to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud" (See PCAOB Auditing Standards, *Responsibilities and Functions of the Independent Auditor*, AU § 110.02). "The auditor's response to the assessment of the risks of material misstatement due to fraud involves the application of professional skepticism in gathering and evaluating audit evidence." (See PCAOB Auditing Standards, *Consideration of Fraud in a Financial Statement Audit* AU § 316.46).⁶ "Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence" (See PCAOB Auditing Standards, *Consideration of Fraud in a Financial Statement Audit* AU § 316.13). The auditor's response should be general, by, for example, considering management's selection and application of significant accounting principles and whether management's accounting policies are being applied in an inappropriate manner to create a material misstatement of the financial statements, and specific, by impacting the nature, timing, and extent of auditing procedures to address identified risks, including the risk of management override of controls (See AU § 316.48-67).

11. In connection with the 2005 audit, Laib identified risks of material misstatements due to fraud but failed to maintain an attitude of professional skepticism in assessing such risks and failed to respond appropriately to such risks related to revenue recognition. For example, in planning the 2005 audit, Murrell Hall concluded that management was very aggressive in recording revenue based, in part, on identified business and fraud risk factors. Yet, Murrell Hall's work papers do not document the auditor's evaluation of whether management's revenue recognition policies comply with GAAP or any changes to planned procedures to address identified fraud risks. Laib also became aware during planning the 2005 audit that a member of management had alleged to Murrell Hall that the dates on Policy Funding Agreements had been changed in order to process life settlement transactions in another period. Yet again, Murrell

⁶ See also PCAOB Auditing Standards, *Due Professional Care in the Performance of Work*, AU §230.07.

Hall's work papers document no procedures performed to address the identified risk of management override of controls or any inquiries of other members of management or any discussions with the audit committee. Instead, Murrell Hall's work papers document only that it was unable to verify the practice. Murrell Hall's 2006 audit work papers contain identical documentation. Despite management's efforts to obstruct Laib by concealing improper revenue recognition practices (i.e., backdating documents), had he appropriately planned and performed Murrell Hall's audits, Laib may have discovered that Life Partners prematurely recognized revenue.

12. An auditor is to obtain sufficient competent evidential matter to afford a reasonable basis for an opinion regarding the financial statements under audit (*See PCAOB Auditing Standards, Evidential Matter*, AU § 326.01). Although evidential matter includes representations from management, management's representations are not a substitute for performing sufficient auditing procedures to afford a reasonable basis for an opinion regarding the financial statements under audit (*See PCAOB Auditing Standards, Management Representations*, AU § 333.02). The nature, timing, and extent of the procedures to be applied, as well as the validity and sufficiency of required evidence, depend on the circumstances and the auditor's judgment (*See PCAOB Auditing Standards*, AU § 326.13 and .21-22). With respect to such judgment, however, the procedures adopted should be adequate to obtain evidential matter sufficient for the auditor to form conclusions concerning the validity of the individual assertions embodied in the components of financial statements (*See PCAOB Auditing Standards*, AU § 326.13). Furthermore, due professional care requires the auditor to exercise professional skepticism, which requires the auditor to conduct the engagement with a mindset that recognizes the possibility that a material misstatement due to fraud could be present and an ongoing questioning of whether the information and evidence obtained suggests that a material misstatement due to fraud has occurred (*See PCAOB Auditing Standards*, AU § 316.13). In developing his or her opinion, the auditor should consider relevant evidential matter regardless of whether it appears to corroborate or to contradict the assertions in the financial statements (*See PCAOB Auditing Standards*, AU § 326.25).

13. Murrell Hall and Eide Bailly's 2005 through 2009 audit work papers document certain testing that was designed to confirm the existence, completeness, and accuracy of signed transaction documents, including Sales Agreements, Policy Funding Agreements, and funding status reports that purportedly reflected investor commitments to purchase policies prior to period-end. Laib, nonetheless, failed to evaluate whether Life Partners' revenue recognition policy was in accordance with GAAP. Laib understood that Life Partners recognized revenues prior to the Closing Date. When he initially became involved with the Life Partners' engagement, Laib recalls looking at example transactional files to get familiar with documents related to life settlement transactions. Laib, however, did not read, and did not direct an assistant to read, the transactional documents in sufficient detail to identify and document contractual provisions relevant to the timing of revenue recognition under GAAP. Had Laib done so, he would have identified contractual provisions that contradict management's representations as to when revenue can be recognized. In particular, he would have discovered the Seller Agreement was nonbinding on both the seller and the Company and he would have identified the seller's Rescission Rights. Accordingly, Laib would have known a life settlement is not legally sold prior to the Closing Date and that the Company's revenue recognition policy was not consistent with GAAP. Additionally, Laib also failed to notice or ignored indications in Murrell Hall's and Eide Bailly's work papers

that should have raised questions about Life Partners' revenue recognition policies. Murrell Hall's and Eide Bailly's work papers include schedules detailing, by month, each life settlement transaction which Life Partners recognized revenue. The schedules include adjustments for rescissions and other items to reconcile the total anticipated revenue for each transaction to the revenue the Company actually recorded for each month, including adjustments related to rescissions of life settlement for which Life Partners had recognized revenues in prior quarters. There is no documentation that Laib questioned the circumstances of the rescissions or whether rescissions contradicted management's representation concerning the timing of revenue recognition.⁷

14. Laib did not consider or respond to adequately the possibility of illegal acts in connection with the 2005 through the 2009 audits (*See* PCAOB Auditing Standards, AU § 317, *Illegal Acts by Clients*). Specifically, Laib reviewed Murrell Hall and Eide Bailly work papers documenting the existence of loans to certain executive officers; however, he failed to consider whether such loans violated Section 13(k) of the Securities Exchange Act of 1934, which prohibits any issuer to make, directly or indirectly, "personal loans" to any executive officer.

15. PCAOB Auditing Standard No. 3, *Audit Documentation*, requires, in part, that "documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement: (a) to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review" (*See* PCAOB Auditing Standard No. 3, paragraph 6). Laib failed to adequately document the nature, timing, and extent of procedures performed, the evidence obtained, and the underlying rationale for certain conclusions reached in connection with the 2005 through 2009 audits. The 2005 through 2009 audit work papers fail to adequately document consideration as to whether revenues were recognized in accordance with GAAP, whether receivables from officers were prohibited transactions under Section 13(k) of the Exchange Act of 1934, or whether receivables from officers should be disclosed as related party transactions.

E. VIOLATIONS

Rule 102(e) of the Commission's Rules of Practice and Section 4C of the Exchange Act

16. Rule 102(e)(1)(ii) of the Commission's Rules of Practice and Section 4C of the Exchange Act authorize the Commission to censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to accountants who are found to have engaged in improper professional conduct. Under Rule 102(e)(1)(iv), the term "improper professional conduct" means, in part, "repeated instances of unreasonable conduct, each resulting

⁷ Murrell Hall and Eide Bailly's work papers identify one to five rescissions per year of the approximately 200 life settlement transactions reported as being closed in each of fiscal years 2005 through 2009. As a result of the rescissions, Life Partner's quarterly revenues were misstated in 15 of the 20 quarters during this period, including three quarters in which revenues, net of brokerage fees, were misstated in excess of 10%, as Life Partners transitioned to policies with larger face amounts which generate larger net revenues per transaction.

in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.”

17. Laib’s conduct during Murrell Hall’s fiscal year 2005 through 2008 audit engagements and Eide Bailly’s fiscal year 2009 audit engagement is unreasonable and fails to conform to applicable professional standards. Laib failed to (i) obtain sufficient competent evidential matter with respect to revenues and cost of revenues; (ii)) comply with PCAOB Auditing Standards, AU § 317, *Illegal Acts by Clients*, with respect to certain loans to executive officers; and (iii) comply with PCAOB Auditing Standard No. 3, *Audit Documentation*.

F. FINDINGS

18. Based on the foregoing, the Commission finds that Laib engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the Commission’s Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Laib is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After three years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company’s financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent’s work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary