

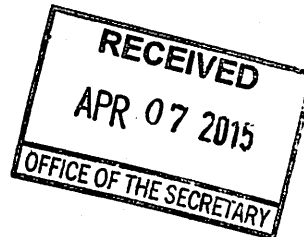
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16374

In the Matter of

DAVID R. WULF

Respondent



**DIVISION OF ENFORCEMENT'S MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION FOR SUMMARY
DISPOSITION AGAINST RESPONDENT DAVID R. WULF**

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INTRODUCTION

The Division of Enforcement (“Division”), pursuant to Rule 250 of the Securities and Exchange Commission’s Rules of Practice, submits this memorandum of law in support of its motion for summary disposition against Respondent David R. Wulf (“Wulf” or “Respondent”). On August 22, 2013, a federal jury in the Eastern District of Missouri found Wulf guilty on eighteen counts of mail fraud, wire fraud, bank fraud, conspiracy to commit mail fraud affecting a financial institution, and conspiracy to commit wire fraud affecting a financial institution in violation of 18 U.S.C. §§ 1343, 1344, and 1349. *See U.S. v. Sutton et al.*, Case No. 4:09-cr-00509-JCH-6 (E.D. Mo.) (“District Court”). The District Court sentenced Wulf to 120 months in prison, followed by five years of supervised release, and ordered him to pay \$435,515,234 in restitution.

This criminal conviction and sentence stemmed entirely from Wulf’s activities as an investment adviser. During the period of his misconduct, Wulf was associated both with a dually registered broker-dealer and investment adviser, and with a registered investment adviser. Based on Wulf’s criminal conviction and his egregious securities-related misconduct that precipitated it, the Division moves to bar Wulf from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (“NRSRO”), and from participating in any offering of a penny stock.

STATEMENT OF UNDISPUTED FACTS

I. WULF’S CRIMINAL CONVICTION

On November 18, 2010, the United States Attorney for the Eastern District of Missouri filed a Second Superseding Indictment (“Indictment”) naming Wulf as a defendant in *U.S. v.*

Sutton et al., Case No. 4:09-cr-00509-JCH-6 (E.D. Mo.). (Div. Ex. A.) Wulf's indictment and conviction relates to his active participation in a prepaid funeral scheme, through his role at Wulf Bates & Murphy Inc. ("Wulf Bates"). Wulf Bates was an investment adviser once registered with the state of Missouri and the Securities and Exchange Commission. Wulf was its CEO. (Id. at 7-8.)

In June 1988, National Prearranged Services, Inc. ("National Prearranged") retained Wulf Bates as its investment adviser. (Id.) National Prearranged sold contracts for prearranged funeral services. These contracts offered certain funeral services and merchandise at agreed upon prices. (Id. at 3.) As National Prearranged's investment adviser, Wulf – through Wulf Bates – assisted in the creation of trusts for the prearranged funeral services, and maintained certain authority over the trusts' assets. (Id. at 23-32.)

The Indictment alleged that Wulf conspired with his co-defendants to enable National Prearranged and others to administer, manage, control, remove and use the assets in the prearranged funeral trusts for their own benefit, to the detriment of the trusts' intended beneficiaries. (Id. at 35-36.) The Indictment alleged that Wulf allowed over \$400,000,000 in investor money to be misappropriated for the benefit of his co-defendants and their affiliates. (Id. at 40.)¹

Following a three week trial, the jury found Wulf guilty on all counts against him - mail fraud; wire fraud; bank fraud; conspiracy to commit mail fraud affecting a financial institution;

¹ Like other businesses operating in the prepaid funeral industry, National Prearranged was regulated by various state government agencies. (Div. Ex. A at 8.) On February 1, 1994, the Missouri Attorney General filed suit against National Prearranged in Missouri state court arising out of National Prearranged's business practices. The suit resulted in a Consent Judgment entered against National Prearranged ("Consent Decree.") (Id. at 10-11.) The Consent Decree required National Prearranged to appoint an investment adviser that was wholly independent. (Id. at 24.) Further, Missouri state law required all prearranged funeral trusts exceeding \$250,000 to be managed by an investment adviser that was registered, independent and qualified. (Id. at 23-24.) The Indictment alleged that Wulf, in violation of both Missouri law and the express terms of the Consent Decree, maintained business ties to National Prearranged and its affiliates. (Id. at 23-32.)

and conspiracy to commit wire fraud affecting a financial institution. (Div. Ex. B.) The Court sentenced Wulf to a prison term of 120 months followed by five years of supervised release. (Id. at 4-6.) The Court further ordered Wulf to make restitution in the amount of \$435,515,234. (Id. at 7.)

II. THE COMMISSION'S ORDER INSTITUTING PROCEEDINGS

On February 4, 2015, the Commission filed an Order Instituting Proceedings and Notice of Hearing pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") ("OIP"). (Div. Ex. C.) Wulf filed an Answer. (Div. Ex. D.) On March 10, 2015, the parties participated in a telephonic prehearing conference. (Div. Ex. E.) The Court thereafter issued an order setting a briefing schedule for summary disposition. (Div. Ex. F.)

ARGUMENT

In light of Wulf's criminal conviction, the Division seeks summary disposition to bar him from the securities industry.

I. SUMMARY DISPOSITION IS APPROPRIATE PURSUANT TO RULE 250

Rule 250(a) of the Commission's Rules of Practice permits a party, with leave of the hearing officer, to move for summary disposition on any or all of the OIP's allegations. A motion for summary disposition under Rule 250(a) of the Commission's Rules of Practice should be granted when there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." (Rule of Practice 250(b)).

The Commission has repeatedly upheld the use of the summary disposition procedure in cases in which the respondent has been criminally convicted. See Gary M. Kornman, Exchange Act Release No. 59403, 2009 WL 367635, at *12 (Feb. 13, 2009) ("We have repeatedly upheld

the use of summary disposition by a law judge in cases...where the respondent has been enjoined or convicted of an offense listed in Exchange Act Section 15(b) and Advisers Act Section 203, the sole determination is the proper sanction, and no material fact is genuinely disputed.”), pet. denied Kornman v. SEC, 592 F.3d 173 (D.C. Cir. 2010); Martin A. Armstrong, Initial Decision Release No. 372, 2009 WL 482831, at *6 (Feb. 25, 2009) (respondent barred based on his conviction of conspiracy to commit securities fraud, wire fraud and commodities fraud); John S. Brownson, Exchange Act Release No. 46161, 2002 WL 1438186, at **3-4 (July 3, 2002) (respondent barred based on his conviction for conspiracy to commit securities fraud, mail fraud and wire fraud).

Wulf was convicted on all eighteen counts charged against him. In his Answer, Wulf does not deny the criminal conviction. He instead challenges its validity, and seeks a stay pending his collateral challenge to the conviction. (Div. Ex. D.)

Once a criminal conviction is entered, a bar is appropriate notwithstanding the existence of a pending appeal. *See Elliott v. SEC*, 36 F.3d 86, 87 (11th Cir. 1994) (“Nothing in the statute’s language prevents a bar [from being] entered if a criminal conviction is on appeal.”); Hunt v. Liberty Lobby, Inc., 707 F.2d 1493, 1497 (D.C. Cir. 1983) (“Under well-settled federal law, the pendency of an appeal does not diminish the *res judicata* effect of a judgment rendered by a federal court.”).

Moreover, Wulf may not relitigate or collaterally attack his criminal conviction before this tribunal. Gregory Bartko, Initial Decision Release No. 467, 2012 WL 3578907 at *2 (Aug. 21, 2012) (“The findings and conclusions made in the underlying action are immune from attack in a follow-on administrative proceeding ... The Commission does not permit a respondent to relitigate issues that were addressed in a previous proceeding against the respondent.”); Jose P.

Zollino, Exchange Act Release No. 55107, 2007 WL 98919, at *4 (Jan. 16, 2007) (a party may not challenge a criminal conviction in an administrative proceeding); William F. Lincoln, Exchange Act Release No. 39629, 1998 WL 80228, at *2 (Feb. 9, 1998) (in proceedings based on a criminal conviction, a respondent “is collaterally estopped from attacking here the merits of the criminal proceeding against him”).

Thus, summary disposition is appropriate here. The only remaining issue is the appropriate sanctions.

II. WULF’S CONVICTION COMPELS BARRING HIM FROM THE SECURITIES INDUSTRY.

Under Section 203(f) of the Advisers Act, the Commission has authority bar any person under certain conditions. First, the person must be convicted of a felony or misdemeanor for any of the offenses specified in Section 203(e)(2) of the Advisers Act, among which is wire fraud, an offense of which Wulf was convicted. (Div. Ex. B.) Second, the conviction date must be within 10 years from the date the Division instituted the OIP. Wulf was convicted in 2013 and the judgment was entered in November 2013. (Div. Ex. B.) Third, the person must have been associated with an investment adviser during the period of his misconduct. Wulf’s conviction was predicated on conduct that occurred between early 1992 through approximately May 2008. (Div. Ex. A at 1.) Wulf has not and cannot deny that he was associated with an investment adviser during this period. (Div. Ex. G.) His misconduct arose from his activities as Wulf Bates’s CEO. (Div. Ex. A at 23-32.)

Section 15(b)(6)(A)(ii) of the Exchange Act grants the Commission authority to bar any person under circumstances similar to those provided under the Advisers Act.²

² First, the person must be convicted of a felony or misdemeanor for any of the offenses specified in Section 15(b)(4)(B) of the Exchange Act – including violations predicated on 18 U.S.C § 1343. Wulf was convicted, among other offenses, of wire fraud. *See* (Div. Ex. B.) Second, the conviction date must be within 10 years from the date

Accordingly, the only remaining issue is whether barring Wulf from the securities industry serves the public interest. *See e.g., Shaw Tehrani*, Initial Decision Release No. 42, 1993 WL 528211, at *2 (Dec. 15, 1993).

Barring Wulf from the securities industry would unquestionably further the public interest. That determination, in turn, is informed by the *Steadman* factors: (a) the egregiousness of the defendant's actions; (b) the isolated or recurrent nature of the infraction; (c) the degree of scienter involved; (d) the sincerity of the defendant's assurances against future violations; (e) the defendant's recognition of the wrongful nature of his conduct; and, (f) the likelihood that the defendant's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th. Cir. 1979). Each of these factors supports a bar against Wulf.

A. The Egregious and Intentional Nature of Wulf's Malfeasance

Wulf knowingly committed egregious crimes. To find that Wulf committed wire fraud, the members of the jury were instructed that Wulf's guilt depended upon their finding that he acted "with the intent to defraud," defined as "to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party..." (Div. Ex. I at 15-16.) The jury found him guilty of wire fraud – and thus necessarily found that Wulf acted with the intent to defraud. Moreover, at Wulf's sentencing hearing, the District Court stated that Wulf's offenses were of a "serious nature" and "involved fraud and substantial losses to investors." (Div. Ex. J at 15:2; 15:20-22.) This finding makes sense, given the jury's finding that he conspired with others to allow over \$400 million of investor money to

the Division instituted the OIP. Wulf was convicted in 2013 and therefore falls well within this 10 year time frame. (*Id.*) Third, the person must be associated with a broker or dealer during the period of his misconduct. Wulf was a registered representative with Moloney Securities Co., Inc. ("Moloney"), a dually registered firm during the period of his misconduct. (Div. Ex. H.) Wulf has not and cannot deny his association with Moloney. (*Id.*)

be misappropriated. (Div. Ex. A at 40.)

B. The Recurrent Nature of Wulf's Wrongdoing

Wulf's crimes were not isolated incidents. Rather, Wulf's malfeasance – spanning more than a decade, from 1992 through 2008 – is the epitome of recurrent wrongdoing. (Div. Ex. A at 1.); See Richard J. Daniello, Exchange Act Release No. 27049, 50 S.E.C. 42, 46 (July 21, 1989) (four months of misappropriating employer's funds was not isolated); Brion G. Randall, Advisers Act Release No. 3632, 2013 WL 3776679 (July 18, 2013) (a scheme lasting over five years constituted recurring and egregious conduct).

C. Wulf's Refusal to Accept Responsibility for His Wrongdoing

Wulf has yet to accept responsibility for his crimes. He pled not guilty in his criminal case, and continues to challenge his criminal conviction. The Court specifically noted Wulf's refusal to accept responsibility for his actions in the course of imposing its sentence. (Div. Ex. J at 16:10-11.) His refusal to accept responsibility thus bespeaks his propensity to commit the same violations upon his release.

D. The High Likelihood of Wulf's Future Violations

Critically, the District Court found it necessary to impose specific conditions and restrictions on Wulf's professional activities upon his release. During Wulf's sentencing, the District Court stated that, "Upon release to the community, [Wulf] will need close monitoring, therefore, the standard conditions of supervision are ordered." (Div. Ex. J at 15:15-17.) In this regard, the court explained: "As the offense involved [Wulf's] lack of oversight of a business, it is ordered that he be barred from owning or managing a business and barred from self-employment." (Id. at 16:12-15.)

The circumstances that compelled the District Court to impose such restrictions on

Wulf's post-incarceration activities compels the imposition of a bar here. At the risk of stating the obvious, the securities industry is no place for someone convicted of facilitating the misappropriation of more than \$400 million of investor proceeds. *See* Bruce Paul, Exchange Act Release No. 21789, 48 S.E.C. 126, 128 (Feb. 26, 1985) ("the securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants.").

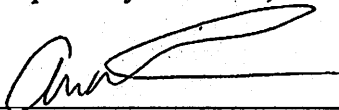
In light of these factors, a bar is appropriate and necessary, and would best serve the public interest. *See e.g.*, Shaw Tehrani, 1993 WL 528211, at *3 (barring the respondent from the brokerage business based on his past conduct because he posed a "threat to the investing public, and the public needs to be protected from the potential of further misconduct at his hands"); Daniel J. Gallagher, Initial Decision Release No. 644, 2014 SEC LEXIS 2736, at *11 (July 31, 2014) (barring the respondent from the brokerage business based on his securities and wire fraud convictions, since "The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business."); Elliot, 36 F.3d at 87 (barring the defendant was in the public interest because he was convicted of "serious violations of the securities laws ...").

CONCLUSION

For these reasons, the Division requests that its motion for summary disposition be granted, and that the Court bar Wulf from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO, and from participating in any offering of a penny stock.

Dated: April 6, 2015

Respectfully submitted,



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**DIVISION OF ENFORCEMENT'S MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION FOR SUMMARY
DISPOSITION AGAINST RESPONDENT DAVID R. WULF**

EXHIBITS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED
NOV 18 2010
U. S. DISTRICT COURT
E. DIST. OF MO.
ST. LOUIS

| | | |
|-----------------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| RANDALL K. SUTTON, |) | |
| SHARON NEKOL PROVINCE, |) | No. S2-4:09CR00509 JCH (TCM) |
| JAMES DOUGLAS CASSITY, a/k/a DOUG |) | |
| CASSITY, |) | |
| BRENT DOUGLAS CASSITY, |) | |
| HOWARD A. WITTNER, and |) | |
| DAVID R. WULF, |) | |
| |) | |
| Defendants. |) | |

SECOND SUPERSEDING INDICTMENT

COUNT 1

The Grand Jury charges:

1. Beginning on or about sometime prior to 1992, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree together and with each other to commit various offenses against the United States, that is, mail fraud affecting a financial institution, in

violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

MANNER AND MEANS OF THE CONSPIRACY

The allegations of Paragraphs 1 through 41 of Count 2 of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

In violation of Title 18, United States Code, Section 1349.

COUNT 2

The Grand Jury charges:

A. INTRODUCTION

1. Beginning on or about sometime prior to 1992, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises from purchasers of prearranged funeral contracts from National Prearranged Services, Inc., funeral homes which did

business with National Prearranged Services, Inc., policy holders of Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, and financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., and which scheme and artifice to defraud affected financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Service, Inc., and knowingly executed and attempted to execute a scheme and artifice to defraud financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of such financial institutions, by means of materially false and fraudulent pretenses, representations, and promises.

2. This scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises was carried out in the following manner:

B. ENTITIES INVOLVED IN SCHEME

3. On or about sometime in 1979, with the exact date unknown to the Grand Jury, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, acquired an interest in National Prearranged Services, Inc., a Missouri corporation. National Prearranged Services, Inc. was engaged in the business of selling contracts for prearranged funeral services, which involved the sale for an agreed upon price of funeral services and merchandise to be provided in the future upon the death of the person for whom such services and merchandise were to be provided.

4. On or about sometime in 1980, with the exact date unknown to the Grand Jury, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, transferred ownership of his

interest in National Prearranged Services, Inc., and other assets which he owned or controlled to a trust named RBT Trust for the benefit of his wife and children, including defendant BRENT DOUGLAS CASSITY. On or about September 28, 1990, the wife and children of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, including defendant BRENT DOUGLAS CASSITY, transferred their interests in RBT Trust to a new trust which was named RBT Trust II. Defendant HOWARD A. WITTNER was designated as trustee of RBT Trust II.

5. Among the assets of RBT Trust II was National Heritage Enterprises, Inc., a Missouri corporation. National Heritage Enterprises, Inc. was a holding company which owned controlling interests in various corporations, including National Prearranged Services, Inc., Lincoln Memorial Services, Inc., and Forever Enterprises, Inc.

6. Lincoln Memorial Services, Inc., an Illinois corporation, was primarily used by defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and his wife and children, including defendant BRENT DOUGLAS CASSITY, to make investments. Defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, had complete discretion regarding the investment portfolio and decisions of Lincoln Memorial Services, Inc.

7. Forever Enterprises, Inc., a Texas corporation, owned various other corporations, including Memorial Service Life Insurance Company, a Texas insurance company. Memorial Service Life Insurance Company owned Lincoln Memorial Life Insurance Company, which was also a Texas insurance company. Forever Enterprises, Inc. also owned various corporations which provided funeral, cemetery, and other related services and products, including Forever Network, Inc., a Missouri corporation.

8. Forever Network, Inc. owned various corporations which provided funeral, cemetery,

and other related services and products, such as Hollywood Forever, Inc., and Forever Marin, Inc., both California corporations; Forever Oak Hill, Inc., and Mount Washington Forever LLC, both Missouri corporations; and Texas Forever, Inc., a Texas corporation.

9. In 2004, RBT Trust II purchased Professional Liability Insurance Company of America, hereinafter referred to as PLICA, a New York medical malpractice insurance company. On or about April 28, 2010, the Supreme Court of New York (New York County) placed PLICA in rehabilitation.

10. On or about May 14, 2008, at the request of the Texas Department of Insurance, the District Court of Travis County, Texas placed Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc. in rehabilitation due to the hazardous financial condition of these companies. A Special Deputy Receiver was subsequently appointed to take possession of the assets of Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and National Prearranged Services, Inc.

C. DEFENDANTS AND THEIR ROLES IN THE SCHEME

11. Beginning on or about sometime in 1981, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, defendant RANDALL K. SUTTON served at various times as Chief Financial Officer, Director, and President of National Prearranged Services, Inc.; as Vice President, Chief Executive Officer, and Director of Lincoln Memorial Life Insurance Company; Vice President and Director of Memorial Service Life Insurance Company; and as Treasurer and Assistant Vice President of PLICA. During this period, defendant RANDALL K. SUTTON's duties for National Prearranged Services, Inc. included senior

management responsibilities relating to operations and finances. Defendant RANDALL K. SUTTON also served at various times since 1974 as Chief Financial Officer for the family of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY.

12. Beginning on or about sometime in 1990, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008, defendant SHARON NEKOL PROVINCE served at various times as Office Manager, Assistant Secretary, and President of National Prearranged Services, Inc.; Vice President of Lincoln Memorial Life Insurance Company; Vice President of Memorial Service Life Insurance Company; Vice President of Lincoln Memorial Services, Inc.; and a Director of PLICA. During this period, defendant SHARON NEKOL PROVINCE's duties for National Prearranged Services, Inc. included personnel, operations and financial responsibilities.

13. From 1979 to 1982, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, served as an owner and Director of Operations of National Prearranged Services, Inc. After on or about sometime in 1982, with the exact date unknown to the Grand Jury, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, had no official position with National Prearranged Services, Inc., and other companies which were part of RBT Trust II. Nevertheless, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, continued to exercise control over National Prearranged Services, Inc., Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, and PLICA. Defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, received compensation by agreement from National Prearranged Services, Inc., and other companies which were part of RBT Trust II.

14. Beginning on or about sometime in 1989, with the exact date unknown to the Grand

Jury, and continuing until on or about May 14, 2008, defendant BRENT DOUGLAS CASSITY, served as Marketing President of National Prearranged Services, Inc., Chief Executive Officer, Chairman, President, and Director of Forever Enterprises, Inc., and Director of Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company. During this period, defendant BRENT DOUGLAS CASSITY's duties for National Prearranged Services, Inc. included senior management responsibilities related to sales, operations and finances.

15. At all times pertinent herein, defendant HOWARD A. WITTNER was an attorney at law who was licensed to practice law in the State of Missouri. Defendant HOWARD A. WITTNER provided personal legal services to defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant BRENT DOUGLAS CASSITY, and also served as trustee of RBT Trust II. Defendant HOWARD A. WITTNER served as Vice President, Secretary and General Counsel of PLICA. Defendant HOWARD A. WITTNER served as a Director of National Prearranged Services, Inc., Forever Enterprises, Inc., Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company, and PLICA. Defendant HOWARD A. WITTNER also provided legal services for National Prearranged Services, Inc., and PLICA.

16. At all times pertinent herein, defendant DAVID R. WULF was registered as an Investment Advisor with the United States Securities and Exchange Commission and the Missouri Secretary of State. Defendant DAVID R. WULF was Chief Executive Officer of the investment firm of Wulf, Bates & Murphy, Inc., whose offices were leased from National Prearranged Services, Inc., and were located in the same office building in Clayton, Missouri as the home office of National Prearranged Services, Inc. On or about June 2, 1988, National Prearranged Services, Inc. appointed Wulf, Bates & Murphy, Inc. as the Investment Advisor for

the prearranged funeral trusts which it established.

D. STATE REGULATION OF PREARRANGED FUNERAL CONTRACTS

17. The risk to purchasers of prearranged funeral contracts was that the money which the purchasers provided to sellers of such contracts would not be available when the funeral services were needed which potentially could be many years after the contracts were purchased. The prearranged funeral industry was regulated by state government agencies throughout the United States. The purpose of state regulation of the prearranged funeral services industry was to insure that money provided by purchasers of prearranged funeral services would be available at a later date when the services were needed.

18. Although the particulars of state regulation of the prearranged funeral services industry differed from state to state, one common feature of the various regulatory schemes was that money received from purchasers of prearranged funeral contracts was to be held by independent entities whose activities were monitored by governmental agencies. These independent entities included financial institutions, such as banks, which were regulated by the Federal Deposit Insurance Corporation (FDIC), and state departments of finance, and insurance companies, which were regulated by state departments of insurance.

19. Some states, including Missouri, required that all money received from purchasers of prearranged funeral contracts, less a percentage of which the seller was permitted by state law to retain for the payment of expenses and overhead, was to be held in trust to be invested for the benefit of the purchasers. Other states permitted the purchasers of prearranged funeral contracts to buy a life insurance policy in order to fund the funeral services and merchandise to be

provided under the contract.

E. MANNER IN WHICH NATIONAL PREARRANGED SERVICES, INC.'S PREARRANGED FUNERAL CONTRACTS WERE CREATED AND ADMINISTERED

20. An individual who was interested in purchasing a prearranged funeral contract from National Prearranged Services, Inc. would execute a written document which set forth the terms of the contract. As part of the contract, the total price for the funeral services and merchandise was agreed upon, and would remain constant regardless of when the funeral services and merchandise would be needed. A purchaser could pay the agreed upon price either in full, or by periodic installments. The purchaser deposited funds with National Prearranged Services, Inc. to obtain the funeral services and merchandise at the agreed upon price. National Prearranged Services, Inc. agreed to arrange for the funeral with the funeral home designated in the agreement upon the death of the person for whom the contract was purchased.

21. In order to secure the performance of the prearranged funeral contract, a third party received the deposited funds. The third party provisions of the prearranged funeral contract typically were derived from the requirements of the applicable statutes and regulations of the particular state where the prearranged funeral contract was entered into. In Missouri, the purchaser and National Prearranged Services, Inc. agreed that the payments made under the prearranged funeral contract after the initial twenty per cent (20%) were to be deposited into a trust with a financial institution, such as a bank, as trustee. Missouri law provided that the seller of a prearranged funeral contract was permitted to retain for its own use the initial twenty per cent (20%) deposited by the purchaser.

22. In other states, such as Ohio, Illinois, and Tennessee, the purchaser and National

Prearranged Services, Inc. agreed that the purchaser would apply for a life insurance policy on the life of the person for whom the funeral services and merchandise were to be provided that would fund the prearranged funeral contract when the funeral services and merchandise were needed. In these states, the purchaser would execute both a written contract, and an application for a life insurance policy with the understanding that all funds paid under prearranged funeral contract were insurance premium payments to the insurance company which issued the life insurance policy.

23. Beginning on or about January 3, 1983, National Prearranged Services, Inc. entered into agreements with several financial institutions to act as trustees of the various trusts which were established to hold the funds paid by the purchasers of prearranged funeral services who were located in the State of Missouri. The following financial institutions served as trustees of these trusts: United Missouri Bank of Kansas City, N.A., Mark Twain Bank, Bremen Bank and Trust Company, Allegiant Bank, and Marshall & Ilsley Trust Company N.A. At all times while serving as trustees of National Prearranged Service, Inc.'s prearranged funeral trusts, United Missouri Bank of Kansas City, N.A., Mark Twain Bank, Bremen Bank and Trust Company, Allegiant Bank, and Marshall & Ilsley Trust Company N.A. were financial institutions which were insured by the Federal Deposit Insurance Corporation (FDIC).

F. BOONE COUNTY CONSENT JUDGMENT

24. Beginning in 1992, the Office of the Missouri Attorney General brought civil lawsuits against National Prearranged Services, Inc. in the Circuit Courts of Cole County, Missouri, and Boone County, Missouri. This litigation culminated in the entry of a Consent Judgment in the Circuit Court of Boone County, Missouri, hereinafter referred to as the "Boone County Consent

Judgment,” on or about February 1, 1994. Under the terms of the Boone County Consent Judgment, all funds received on or after February 1, 1994, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts, excluding certain fees, sold by National Prearranged Services, Inc. to Missouri purchasers, were to be deposited in the form of cash payments into a preneed trust which was to be separate from the existing preneed trusts of National Prearranged Services, Inc. These payments were to be deposited into the trust within forty-five (45) days after receipt by National Prearranged Services, Inc. The trust which was to contain funds from Missouri residents received on or after February 1, 1994 was subsequently referred to as “National Prearranged Services, Inc. Trust IV.”

25. Another provision of the Boone County Consent Judgment provided for the appointment of an accounting firm to monitor National Prearranged Services, Inc.’s compliance with the Boone County Consent Judgment. This court ordered monitoring began shortly after the entry of the consent judgment in 1994, and continued until on or about May 15, 2000, at which time the monitor made its final report to the Circuit Court of Boone County, Missouri.

G. DEFENDANTS FAILED TO FULLY FUND THE TRUSTS AND INSURANCE COMPANIES WHICH WERE TO HOLD AND INVEST THE MONEY PROVIDED BY PURCHASERS OF PREARRANGED FUNERAL CONTRACTS BY WITHHOLDING MONEY WHICH SHOULD HAVE BEEN PAID INTO SUCH TRUSTS AND INSURANCE COMPANIES AND BY REMOVING MONEY WHICH HAD BEEN PREVIOUSLY PAID INTO SUCH TRUSTS AND INSURANCE COMPANIES

26. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the trusts and insurance companies

which were to hold money provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc. to be funded in amounts less than the amounts required by the laws in the jurisdictions where National Prearranged Services, Inc. operated. Money provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc. which should have been paid into and maintained by these trusts and insurance companies to be available for the payment of funeral expenses was withheld and removed from these trusts and insurance companies by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, in the following manner:

a. One of the types of investments for money obtained from purchasers of prearranged funeral contracts which was permitted under the laws of many states was individual whole life insurance policies on the lives of the persons for whom prearranged funeral contracts were purchased. In states such as Missouri, where money provided by persons who purchased prearranged funeral contracts was to be held in trust, the purchase of whole life insurance policies was to be made by the trust, as a trust investment, using funds which National Prearranged Services, Inc. was required to deposit into the prearranged funeral trusts which it established. In non-trust states, the purchaser applied directly for an individual whole life insurance policy, and made the premium payment through National Prearranged Services, Inc. The insurance policies which National Prearranged Services, Inc. obtained to provide funding for its prearranged funeral contracts were acquired from Lincoln Memorial Life Insurance Company, and Memorial Service

Life Insurance Company, both of which were part of RBT Trust II, as was National Prearranged Services, Inc.

b. Instead of making the required deposits into trust or forwarding the insurance premiums as paid, National Prearranged Services, Inc. obtained insurance in a manner that allowed it to retain money received from purchasers of prearranged funeral contracts that should have been deposited into trust or paid as a premium to an insurance company. Because National Prearranged Services, Inc., and the insurance companies from whom policies were obtained were controlled by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, National Prearranged Services, Inc. was able to not use all of the money received from purchasers, less amounts which it was able to retain under state law, to purchase insurance policies. The amounts of the premiums that were ultimately sent by National Prearranged Services, Inc. to the insurance companies were substantially less than the amounts which should have either been deposited into the trusts or to the insurance companies. The difference in these amounts was retained by National Prearranged Services, Inc. National Prearranged Services, Inc.'s retention of these funds violated laws of the various states where National Prearranged Services, Inc. sold prearranged funeral contracts, the Boone County Consent Judgment, the terms of the written contracts entered into by the purchasers with National Prearranged Services, Inc., and the applications for insurance policies which were executed by the purchasers, and which specifically designated that all of the money paid to National Prearranged Services, Inc. was premium payments on an insurance policy.

c. National Prearranged Services, Inc. obtained life insurance policies from Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company on behalf of the persons who purchased prearranged funeral contracts. Many of these policies provided that their premiums were to be paid in installment payments over a period of time, even though the purchasers actually paid much more than the amounts of these minimum installment premium payments to National Prearranged Services, Inc. at the time of purchase, and while the prearranged funeral contract was in effect. National Prearranged Services, Inc. retained the difference between the money which it received from the purchasers in non-trust states, and the premiums which it actually paid to Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company in connection with such insurance policies.

d. This difference should have been deposited with the trusts and insurance companies which were to hold the money provided by the purchasers of prearranged funeral contracts from National Prearranged Services, Inc. The retention of these funds prevented the insurance policies from being fully funded, and also required future premium payments to be made from a source other than the trusts and the individual purchasers of the prearranged funeral contract in order to provide a source of funds to reimburse funeral homes for the funeral services and merchandise which they were contractually obligated to provide. The retention of these funds by National Prearranged Services, Inc. violated laws of the various states where National Prearranged Services, Inc. sold prearranged funeral contracts, the Boone County Consent Judgment, the terms of the written contracts between the purchasers and National Prearranged Services, Inc., and the applications for insurance policies which were executed by the purchasers.

e. National Prearranged Services, Inc. initially obtained "whole life insurance"

policies with the money provided by purchasers of prearranged funeral contracts. Whole life insurance is insurance that remains in effect while the insured is alive. One of the features of a whole life insurance policy is that a portion of the premiums is used to fund a cash reserve, which is also referred to as the "cash surrender value" of the policy. This cash surrender value is available to be borrowed by the owner of the policy. However, any money borrowed from a policy's cash surrender value has the effect of reducing the amount of the death benefit payable upon the death of the insured person by the amount of money borrowed on the policy.

f. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to borrow large amounts of the cash surrender values of these policies. These loans reduced the death benefits which would be available to pay for funeral services and merchandise after the deaths of the purchasers. The loans also caused all rights, title and interest in the policies to be removed from the policy owners, and to be assigned to the insurance companies as security for the repayment of the loans with interest. National Prearranged Services, Inc. had no legal right to borrow the cash surrender values of these insurance policies because the owners of these policies were the trusts and individuals who actually purchased the policies.

g. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R.

WULF, and other persons known and unknown to the Grand Jury, failed to disclose to the purchasers of its prearranged funeral contracts the material fact that National Prearranged Services, Inc. borrowed large amounts of the cash surrender values of the insurance policies which were intended to be the source of the payments for the prearranged funeral services and merchandise which its customers purchased.

h. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, concealed from insurance regulators the practice at National Prearranged Services, Inc. of taking and receiving policy loans from insurance policies issued by Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, without the policy owners' knowledge and consent. The concealment of this practice from insurance regulators included the booked "repayment" of loans taken by National Prearranged Services, Inc. on Ohio policies after receiving an investigation inquiry from the Ohio Department of Insurance. To avoid disclosing the existence of policy loans in Ohio material to the inquiry, and providing documentation pertaining to those loans to regulators, National Prearranged Services, Inc. caused the loans on Ohio policies to be credited as having been paid on Lincoln Memorial Life Insurance Company's books and records by transferring the loans to insurance policies owned by persons who resided in states other than Ohio. National Prearranged Services, Inc. then caused Lincoln Memorial Life Insurance Company to respond to the Ohio Department of Insurance's investigative inquiry by denying the existence of loans taken against Ohio policies issued by Lincoln Memorial Life Insurance

Company, thereby concealing the practice of obtaining policy loans with the intent of avoiding further inquiry and regulatory action.

i. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, purchased large blocks of prearranged funeral contracts from funeral homes in Missouri that had previously entered into prearranged funeral contracts with their customers. These purchases were commonly referred to as "roll-overs" because the prearranged funeral contracts were "rolled over" from the prearranged funeral trusts established by the originating funeral homes to the prearranged funeral trusts established by National Prearranged Services, Inc. National Prearranged Services, Inc. obtained these roll-overs by falsely and fraudulently representing to the originating funeral homes that the assets and funds in these accounts would be invested in life insurance policies. However, only a small portion of the funds and assets rolled over into the prearranged funeral trusts established by National Prearranged Services, Inc. was actually used to obtain life insurance policies on the lives of the originating funeral homes' customers. Instead, Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the funds and assets rolled over to be removed from the original funeral homes' prearranged funeral trusts, and transferred to entities ultimately owned and controlled by RBT Trust II, such as Lincoln Memorial Services, Inc., and Forever Enterprises, Inc. Funds which

RBT Trust II used to purchase PLICA included funds obtained from roll-overs.

j. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused large amounts of money to be removed from National Prearranged Services, Inc. Trust IV, and transferred to entities ultimately owned and controlled by RBT Trust II, such as Lincoln Memorial Services, Inc., and Forever Enterprises, Inc. Some of the money removed from the prearranged funeral trusts established by National Prearranged Services, Inc. was used to purchase shares of publicly traded corporate stocks of corporations such as Arch Communications Group, Dell Computer Corporation, Conseco, Inc., and E-Trade Group, Inc. from Forever Enterprises, Inc. The values of these stocks had declined substantially shortly before these purchases. The amounts paid for these stocks by National Prearranged Services, Inc. Trust IV were their values before the decline in the stock prices, rather than the substantially lower prices for which such stocks could have been obtained on the open market at the time of such purchases. The effect of these stock purchases was to transfer the losses incurred by the stock market decline in 2000 from Forever Enterprises, Inc. to National Prearranged Services, Inc. Trust IV. Other money removed from prearranged funeral trusts established by National Prearranged Services, Inc. was used to purchase PLICA, to purchase commercial real estate for affiliated companies, to finance business projects for affiliated companies, to enable defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, to purchase residential real estate, and to pay personal expenses of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and members of his family, including

defendant BRENT DOUGLAS CASSITY.

k. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to surrender many of the life insurance policies which it did not own in order to obtain the cash surrender values of these policies. The surrendering of these life insurance policies avoided the need to pay premium payments on the policies in the future, and eliminated the obligation to repay loans which had been obtained on such policies. Loans against surrendered policies were recorded by Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company as "repaid" at the time of surrender even though no actual payment was received from National Prearranged Services, Inc. The effect of surrendering life insurance policies was to deprive the trusts which owned the policies of the assets they had invested in, and to deprive individual purchasers of the insurance policies of the death benefits necessary to fund their prearranged funeral contracts even though they had paid the premiums as agreed.

l. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused many of the whole life insurance policies which were obtained with funds provided by persons who purchased prearranged funeral contracts, and then subsequently surrendered, to be replaced with "term life

insurance” policies. Term life insurance is insurance which provides death benefits in the event that the insured individual dies within the particular period of time in which the insurance policy is in effect. Unlike a whole life insurance policy which has a cash surrender value, a term life insurance policy has no present cash surrender value because it develops value only upon the death of the insured during the term of the policy. The premiums for term life insurance policies are usually substantially less than the premiums for whole life insurance policies because term life insurance policies do not accumulate a cash surrender value during the duration of the policies.

m. The use of term life insurance policies as the source of funds for the payment of the purchasers’ funeral expenses required that National Prearranged Services, Inc. continue to pay the premiums on the policies as they came due, and, upon the expiration of the terms of such policies, obtain and pay the premiums on new insurance policies on the lives of the purchasers until the times of their deaths in order to keep the term life insurance policies in force until the time of death. Any premiums which would be used to purchase such term life insurance would have to come from a source other than the original purchasers of the prearranged funeral contracts. The continued viability of this term insurance coverage was totally dependent on National Prearranged Service, Inc.’s ability and willingness to pay premiums in the future, its renewal of the term insurance policies as they expired, and on the solvency of Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company, both of which were part of the same corporate family as National Prearranged Services, Inc.

n. From on or about November 1, 2007, and continuing until on or about May 14, 2008, when National Prearranged Services, Inc. was placed in rehabilitation in Texas, National

Prearranged Services, Inc. did not deposit any of the money which it received from purchasers of prearranged funeral contracts who resided in Missouri into any of the prearranged funeral trusts which it established to hold and invest money received from Missouri purchasers. Instead, National Prearranged Services, Inc. only deposited term life insurance policies into such trusts. The premiums for these term life insurance policies were substantially less than the amounts which National Prearranged Services, Inc. received from its Missouri customers, less the twenty percent (20%) which it was entitled to retain under Missouri law. National Prearranged Services, Inc. retained for its own use the difference between what should have been deposited to such trusts, and the premiums for the term life insurance policies which it purchased.

o. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to use money which was obtained from new purchasers of prearranged funeral contracts to pay premiums of insurance policies on the lives of previous purchasers of prearranged funeral contracts, and also to reimburse funeral homes for the cost of funeral services and merchandise for previous purchasers of prearranged funeral contracts.

p. In both trust and non-trust states, National Prearranged Services, Inc., provided a "Paid in Full Certificate" to the purchaser and to the funeral home designated to provide the funeral services and merchandise when the purchaser made full payment as required under the prearranged funeral contract. In trust states, the "Paid in Full Certificate" referenced the funeral home as a full participant in the "Permanent Trust Fund" established under the laws of the

applicable state. In non-trust states, the "Paid in Full Certificate" stated that the purchaser was entitled to "all benefits and full performance described in the prearranged funeral contract."

q. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to present "Evidence of Insurance" forms to the banks which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc. These forms falsely and fraudulently misrepresented the cost, value and status of insurance owned by the banks which served as trustees, and were intended to mislead the banks about the existence of policy loans, the replacement of whole life insurance policies with term life insurance policies, and other actions taken and caused by National Prearranged Services, Inc. which affected the cost, value, and status of assets which were owned by the banks.

r. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, made the materially false and fraudulent representation to its purchasers that their prearrangement funds will be kept in a secure trust or insurance policy in order to pay for their funerals. In trust states, customers were promised that the funds they paid would be deposited into a trust with a financial institution, such as a bank, serving as trustee in accordance with state law. The deposits made to the trust would secure the performance of the prearranged funeral contract. In non-trust states, customers were

promised that if they agreed to purchase a life insurance policy and pay the required premiums, then the death benefits from the life insurance policy would fund the prearranged funeral contract. The trusts established by National Prearranged Services, Inc. eventually became unable to pay the obligations which it promised in its prearranged funeral contracts because defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, underfunded these trusts, and also caused the assets of the trusts to be transferred to other entities which were part of RBT Trust II. In non-trust states, the insurance policies which were purchased to secure the performance of the prearranged funeral contracts were unable to do so because defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the value of these life insurance policies to be reduced and ultimately eliminated as a result of their failure to send all of the premiums received from purchasers to the insurance companies, policy loans which lowered the amount of available death benefits, and their decision to surrender large amounts of insurance policies.

H. USE OF AN INVESTMENT ADVISOR WHOSE INDEPENDENCE WAS COMPROMISED

27. At all times pertinent herein, Missouri law provided that when the principal and interest in a prearranged funeral trust exceeded two hundred fifty thousand dollars (\$250,000),

investment decisions regarding the principal and undistributed income may be made by a federally registered or Missouri-registered independent qualified investment advisor designated by the seller who established the prearranged funeral trusts. Missouri law further provided that title to all investment assets shall remain with the trustee, that the investment assets shall not be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in, and that a trustee shall exercise such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their own funds, considering the probable income therefrom as well as the probable safety of their capital.

28. At all times pertinent herein, the trust agreement for the prearranged funeral trusts established in Missouri by National Prearranged Services, Inc. provided that National Prearranged Services, Inc. may appoint an independent qualified investment advisor so long as the requirements of Missouri law are met.

29. At all times pertinent herein after February 1, 1994, the Boone County Consent Judgment required that any investment advisor appointed by National Prearranged Services, Inc. as the investment advisor to the prearranged funeral trusts established in Missouri by National Prearranged Services, Inc. must be wholly independent of National Prearranged Services, Inc.

30. Pursuant to this authority, on or about June 2, 1988, National Prearranged Services, Inc. appointed Wulf, Bates & Murphy, Inc., of which defendant DAVID R. WULF was Chief Executive Officer, as the independent investment advisor for all funds and investments held in prearranged funeral trusts established by National Prearranged Services, Inc. Wulf, Bates &

Murphy, Inc. served as the investment adviser for the prearranged funeral trusts established by National Prearranged Services, Inc. until May 14, 2008, when National Prearranged Services, Inc. was placed in rehabilitation by the Travis County, Texas District Court.

31. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to make the materially false and fraudulent representation that Wulf, Bates & Murphy, Inc., of which defendant David R. Wulf was Chief Executive Officer, was an independent investment advisor.

32. The representation by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, that Wulf, Bates & Murphy, Inc. was an independent investment advisor was materially false and fraudulent because the independence of defendant DAVID R. WULF and Wulf, Bates & Murphy, Inc. from National Prearranged Services, Inc. was compromised in the following ways:

a. Between 2002 and 2008, Wulf, Bates & Murphy, Inc. of which defendant DAVID R. WULF was Chief Executive Officer, received approximately \$1,000,000 in fees for investment advice and services from National Prearranged Services, Inc., Forever Enterprises, Inc., Memorial Service Life Insurance Company, Lincoln Memorial Life Insurance Company, and PLICA, all of which were companies that were part of RBT Trust II. This amount included

the \$15,000 per year in fees which Wulf, Bates & Murphy, Inc. received from serving as the investment advisor for prearranged funeral trusts established by National Prearranged Services, Inc.

b. The offices of defendant DAVID R. WULF, and Wulf, Bates & Murphy, Inc. were leased from National Prearranged Services, Inc., and were located in the same office building in Clayton, Missouri, in which National Prearranged Services, Inc. maintained its offices.

c. Defendant DAVID R. WULF, and other employees of Wulf, Bates & Murphy, Inc. obtained their health insurance benefits through National Prearranged Services, Inc.'s employee benefits plan.

d. Wulf, Bates & Murphy, Inc. received compensation from Memorial Service Life Insurance Company and Lincoln Memorial Life Insurance Company for its work as investment advisor for those companies on a quarterly basis based on a percentage of the aggregate investment account holdings of the insurance companies. These insurance companies issued almost all of the life insurance policies which were purchased and owned by the prearranged funeral trusts established by National Prearranged Services, Inc., and which were purchased and owned by individuals who purchased prearranged funeral contracts from National Prearranged Services, Inc.

e. Wulf, Bates & Murphy, Inc. received compensation from PLICA for its work as investment advisor for PLICA on a quarterly basis based on a percentage of the aggregate investment account holdings of PLICA. Monies used by RBT Trust II to purchase PLICA came from National Prearranged Services, Inc. Trust IV for which Wulf, Bates & Murphy served as the

investment advisor.

f. Defendant DAVID R. WULF personally owned stock of Forever Enterprises, Inc., which owned, among other things, Memorial Service Life Insurance Company, and Lincoln Memorial Life Insurance Company. These insurance companies issued almost all of the life insurance policies which were purchased and owned by the prearranged funeral trusts established by National Prearranged Services, Inc., and individuals who purchased prearranged funeral contracts from National Prearranged Services, Inc.

g. Defendant DAVID R. WULF was a partner of Caymus Fund, L.P., a hedge fund into which he caused money from National Prearranged Services, Inc. Trust IV to be invested. Defendant DAVID R. WULF, and Wulf, Bates & Murphy received commissions, fees, and incentive payments as a result of funds which were invested into Caymus Fund, L.P.

h. On or about February 1, 1994, the same day that the Boone County Consent Judgment against National Prearranged Services, Inc. was entered, and specified that the investment advisor be wholly independent of National Prearranged Services, Wulf, Bates & Murphy, Inc., in its capacity as the Investment Advisor for the prearranged funeral trusts established by National Prearranged Services, Inc., and pursuant to a written document executed by defendant DAVID R. WULF, appointed defendant RANDALL K. SUTTON, who was President of National Prearranged Services, Inc. and Vice President of Lincoln Memorial Life Insurance Company at the time, to perform ministerial acts on a daily basis which would otherwise require the approval of Wulf, Bates & Murphy, Inc.

i. This delegation of ministerial functions to defendant RANDALL K. SUTTON was utilized by persons affiliated with National Prearranged Services, Inc. including defendant

RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, to control the acquisition and disposition of the assets in the prearranged funeral trusts established by National Prearranged Services, Inc. After this delegation of authority to defendant RANDALL K. SUTTON, persons affiliated with National Prearranged Services, Inc., including defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, were able to determine which insurance policies on the lives of purchasers of prearranged funeral contracts from National Prearranged Services, Inc. to pay premiums on, to determine how much to pay in premiums, to obtain policy loans and to decide the amount, if any, of the loans to repay, to surrender insurance policies, to replace surrendered whole life insurance policies with term life insurance policies, and to take all of these actions without the policy owners' knowledge and consent.

j. Persons affiliated with National Prearranged Services, Inc., including defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant HOWARD A. WITTNER, drafted documents for defendant DAVID R. WULF to sign in his capacity as the independent investment advisor for the prearranged funeral trusts established by National Prearranged Services, Inc. Among the documents which were drafted by persons affiliated with National Prearranged Services, Inc. which defendant DAVID R. WULF signed were letters to

regulatory agencies and insurance companies, and an affidavit which was used in an arbitration proceeding involving National Prearranged Services, Inc.

k. On or about November 1, 1999, Wulf, Bates & Murphy, Inc., National Prearranged Services, Inc., and Allegiant Bank, the trustee at the time of prearranged funeral trusts established by National Prearranged Services, Inc., entered into a written agreement to transfer custody of all life insurance policies obtained with money provided by persons who purchased prearranged funeral contracts. The signatories to this document were defendant DAVID R. WULF, on behalf of Wulf, Bates & Murphy, Inc., defendant RANDALL K. SUTTON, on behalf of National Prearranged Services, Inc., and the President of Allegiant Trust Company, a Division of Allegiant Bank, on behalf of Allegiant Bank. This agreement further provided that defendant RANDALL K. SUTTON, and defendant SHARON NEKOL PROVINCE, were among the employees of National Prearranged Services, Inc. who were its authorized agents to take custody of the life insurance policies which were being held as investments in the prearranged funeral trusts which National Prearranged Services, Inc. established. This agreement violated the requirement of Missouri law that all property in preneed trusts shall be held, administered, and invested by the trustee, and circumvented the laws governing prearranged funeral contracts by permitting the seller of prearranged funeral contracts to acquire possession of the funds provided by the purchasers of such contracts. This agreement was provided to Bremen Bank and Trust Co. when it agreed to serve as successor trustee for the prearranged funeral trusts established by National Prearranged Services, Inc.

l. On or about November 5, 1999, defendant DAVID R. WULF sent a letter to the President of Allegiant Trust Company which provided that Allegiant Bank take direction from

representatives of either Wulf, Bates & Murphy, Inc., or National Prearranged Services, Inc. with regard to the depositing and distribution of assets, and settlement of trades. This letter also violated Missouri law because it permitted National Prearranged Services, Inc., a seller of prearranged funeral contracts, to control and manage the property obtained from purchasers in prearranged funeral trusts which it established. This letter was provided to Bremen Bank and Trust Co. when it agreed to serve as successor trustee for the prearranged funeral trusts established by National Prearranged Services, Inc.

m. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused National Prearranged Services, Inc. to present wire transfer requests to the banks which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc. to transfer money out of such trusts. These wire transfer requests falsely and fraudulently represented the material fact that a copy of the wire transfer request had been sent to defendant DAVID R. WULF, when, in fact, defendant DAVID R. WULF was not copied on such wire transfer requests, and did not require and expect to be copied on wire transfer requests. Instead, defendant DAVID R. WULF permitted National Prearranged Services, Inc. to use the statutory authority vested in Wulf, Bates & Murphy, Inc. as the independent investment advisor to direct the banks which served as trustees to make transfers and distributions from the trusts.

33. The trustees of the National Prearranged Services, Inc. prearranged funeral trusts would have been responsible for the investment of all of the trust deposited money which the

purchasers of prearranged funeral contracts in trust states, such as Missouri, paid to National Prearranged Services, Inc., less any amounts which National Prearranged Services, Inc. was entitled to retain under state law, if an independent investment advisor had not been appointed. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, enabled persons affiliated with National Prearranged Services, Inc. to assume full power to administer, manage, control, remove, and use for their own benefit all of the assets in the prearranged funeral trusts established by National Prearranged Services, Inc. as well as the money which should have been deposited into such trusts, but which was not, by appointing Wulf, Bates & Murphy, Inc., which was not independent as required by Missouri law, as the investment advisor for the prearranged funeral trusts established by National Prearranged Services, Inc.

34. The appointment of Wulf, Bates & Murphy, of which defendant DAVID R. WULF was Chief Executive Officer, enabled defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, to cause money in prearranged funeral trusts established by National Prearranged Services, Inc. to not be invested in accordance with the standards for investments in prearranged funeral trusts as provided by Missouri law, but rather, enabled defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons affiliated with National Prearranged Services, Inc., known and unknown to the Grand Jury, to transfer money from such trusts to entities which were part of RBT Trust II, such as Lincoln Memorial Services, Inc., and Forever Enterprises, Inc.

I. **DEFENDANTS' FALSE REPRESENTATION OF A MATERIAL FACT AND FAILURE TO DISCLOSE MATERIAL FACTS AFFECTED THE FINANCIAL INSTITUTIONS WHICH SERVED AS TRUSTEES OF PREARRANGED FUNERAL TRUSTS ESTABLISHED BY NATIONAL PREARRANGED SERVICES, INC.**

35. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, falsely represented the material fact that Wulf, Bates & Murphy, Inc. was an independent investment advisor as required by Missouri law. This false representation of a material fact to the trustees caused the trustees to transfer their investment authority over trust assets to Wulf, Bates & Murphy, Inc., an investment advisor which was barred from exercising investment authority over prearranged funeral trusts under Missouri law because of the lack of independence of defendant DAVID R. WULF, and Wulf, Bates & Murphy, Inc. from National Prearranged Services, Inc.

36. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, failed to disclose to the trustees of the

prearranged funeral trusts established by National Prearranged Services, Inc. the material fact that under the terms of the Boone County Consent Judgment, all funds received on or after February 1, 1994, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts sold by National Prearranged Services, Inc. to Missouri purchasers, were to be deposited in the form of cash payments into a prearranged funeral trust within forty-five (45) days after receipt. The failure to disclose this material fact prevented the trustees from requiring that all funds, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts, be deposited in the form of cash payments into prearranged funeral trusts established by National Prearranged Services, Inc. within forty-five (45) days after receipt.

37. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, failed to disclose to the purchasers of prearranged funeral contracts from National Prearranged Services, Inc., funeral homes which did business with National Prearranged Services, Inc., policy holders of Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, financial institutions which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., and state regulators of insurance and prearranged funerals, the material fact that large amounts of money were removed from prearranged funeral trusts established by National Prearranged Services, Inc., and used for purposes other than the payment of funeral services and merchandise, and investments authorized under Missouri law.

38. Allegiant Bank, Bremen Bank and Trust Co., and Marshall & Ilsley Trust Company,

N.A., all of which served as trustees of prearranged funeral trusts established by National Prearranged Services, Inc., were affected by the false and fraudulent misrepresentations of material facts, and failure to disclose material facts by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, in the following respects:

a. Missouri law provided that a trustee of a prearranged funeral trust was subject to demand from a purchaser of a prearranged funeral contract, and to a provider of funeral services and merchandise, such as a funeral home, if the seller of the contract failed to pay for the funeral services and merchandise which had been previously purchased;

b. A financial institution such as a bank which served as a trustee of a prearranged funeral trust in Missouri had statutory and fiduciary obligations to the purchasers and providers, and the failure of a trustee to perform those obligations may subject the financial institution to liability;

c. The receiver for National Prearranged Services, Inc., Memorial Service Life Insurance Company, and Lincoln Memorial Services, Inc., and various health and life insurance guarantee associations filed a lawsuit against Bremen Bank and Trust Company, National City Bank, which acquired Allegiant Bank through merger, and Marshall & Ilsley Trust Company N.A. for damages and other relief in connection with the service of Bremen Bank and Trust Co., Allegiant Bank, and Marshall & Ilsley Trust Company N.A. as trustees of prearranged funeral trusts established by National Prearranged Services, Inc.

J. DEFENDANT'S CONTROL OVER THE MONEY PROVIDED BY PURCHASERS OF PREARRANGED FUNERAL CONTRACTS ENABLED THEM TO USE THIS MONEY FOR THEIR OWN BENEFIT

39. The control over the assets in the National Prearranged Services, Inc. prearranged funeral trusts, as well as the money provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc., the ownership and control over Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company, the money paid as premiums for insurance policies purchased from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company, and funds and assets which were acquired as a result of "roll-overs," by Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, enabled National Prearranged Services, Inc. to engage in the following activities in which it would not have been able to engage in the absence of such control:

a. to retain the difference between the cost of the premiums for insurance policies on the lives of purchasers of prearranged funeral contracts, and the amounts which should have been deposited into prearranged funeral trusts established by National Prearranged Services, Inc., and paid to insurance companies in the form of premium payments, and to do so without the knowledge and consent of the trustees and the purchasers;

b. to borrow money from these insurance policies in order to receive their cash surrender values, and to receive the proceeds of such policy loans without the knowledge and

consent of the trustees, and the purchasers who owned the policies;

c. to surrender whole life insurance policies which were purchased and owned by trusts and individual policy holders;

d. to retain money paid as insurance premiums;

e. to authorize the purchase of term life insurance policies, which had no cash surrender value, to replace surrendered whole life insurance policies without the knowledge and consent of the trustees and purchasers;

f. to cause the transfer of large amounts of money from prearranged funeral trusts established by National Prearranged Services, Inc. for purposes other than the payment of funeral services and merchandise, and investments authorized under Missouri law.

K. MEANS BY WHICH DEFENDANTS EXECUTED THEIR SCHEME TO DEFRAUD

40. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, utilized various means to execute their scheme to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises. Some of the means by which the scheme was executed, are as follows:

a. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R.

WULF, and other persons known and unknown to the Grand Jury, failed to notify the financial institutions which were trustees of the trusts which were established to hold and invest the funds which the purchasers of prearranged funeral contracts paid to National Prearranged Services, Inc. of the provisions of the Boone County Consent Judgment. Under the terms of the Boone County Consent Judgment, all funds received on or after February 1, 1994, in excess of the first twenty percent (20%) of the face value of the prearranged funeral contracts sold by National Prearranged Services, Inc. to Missouri purchasers, were to be deposited in the form of cash payments into a preneed trust which was to be separate from the existing preneed trusts of National Prearranged Services, Inc. within forty-five (45) days after receipt.

b. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, obtained access to the funds which were held in trust for purchasers of prearranged funeral services from National Prearranged Services, Inc. by means of the delegation of ministerial investment advisor responsibilities from Wulf, Bates & Murphy, Inc. to defendant RANDALL K. SUTTON, the transfer of custody of all life insurance policies purchased with funds provided by persons who purchased prearranged funeral contracts from National Prearranged Services, Inc., and the instructions to the trustees to take direction from representatives of National Prearranged Services, Inc., including defendant RANDALL K. SUTTON, and defendant SHARON NEKOL PROVINCE, and Wulf, Bates & Murphy, Inc.

c. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL

PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused promissory notes and debentures issued by entities which were part of RBT Trust II to be deposited and booked as assets of the prearranged funeral trusts which National Prearranged Services, Inc. established. These promissory notes and debentures were intended to replace assets which should have been held in such trusts.

d. In some instances, promissory notes which reflected a promise to repay the amounts removed from the National Prearranged Services, Inc.'s prearranged funeral trusts were created close to the time when the money was removed from the trusts. These promissory notes reflected promises to make payments on the debts reflected in the notes in designated amounts, at designated times, and at designated interest rates. In other instances, back dated promissory notes which reflected a promise to repay the amounts removed from the National Prearranged Services, Inc.'s prearranged funeral trusts were created after significant amounts of time, such as more than one year, had elapsed after the money had been removed from the trusts.

e. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, utilized assets of prearranged funeral trusts established by National Prearranged Services, Inc. to make some of the payments on these promissory notes. In other instances, payments were not made as required under the terms of these promissory notes.

f. In other situations, financial instruments entitled "debentures," which are unsecured promises to repay debt that were issued by entities which were part of RBT Trust II, were deposited and booked as assets of the prearranged funeral trusts which National Prearranged Services, Inc. established to replace assets which should have been held in such trusts. There were also situations when assets were removed from such trusts in which no financial instruments, such as promissory notes and debentures, were ever deposited and booked as assets of the prearranged funeral trusts which National Prearranged Services, Inc. established to replace assets which should have been held in such trusts.

g. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused material information relating to the persons for whom prearranged funeral contracts were purchased, such as the dates of birth of such persons, and the amounts paid in connection with such contracts, to be changed in Prearranged Funeral Agreements and applications for life insurance policies so that National Prearranged Services, Inc. could retain a larger amount of the payments made by the purchasers of prearranged funeral contracts. This was done by having employees of National Prearranged Services, Inc. white out and cross out the dates of birth of such persons, and the amounts paid in connection with such contracts, and replace those dates and amounts with false dates and amounts.

h. Defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant

BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, caused the names of the beneficiaries and assignees of the life insurance policies which were purchased with funds provided by the purchasers of prearranged funeral contracts to be changed from the purchasers and the funeral homes which were to provide funeral services and merchandise to National Prearranged Services, Inc. without the knowledge and consent of such beneficiaries and assignees in an attempt to legitimize the misappropriation of funds from these policies. This was done by having employees of National Prearranged Services, Inc. white out and cross out the names of the designated beneficiaries and assignees, and replace those names with National Prearranged Services, Inc.

41. In April 2008, shortly before National Prearranged Services, Inc. was placed in rehabilitation by the District Court of Travis County, Texas, National Prearranged Services, Inc.'s approximate obligations under active prearranged funeral contracts exceeded \$600,000,000. After taking into account insurance and trust assets expected to be available to pay for future funeral services and merchandise under prearranged funeral contracts sold by National Prearranged Services, Inc., the approximate loss to purchasers, funeral homes, and state insurance guarantee associations attributable to the scheme set forth above may range from \$450,000,000 to \$600,000,000.

42. On or about December 1, 2000, in the Eastern District of Missouri,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and

DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Allegiant Bank, by means of materially false and fraudulent pretenses, representations and promises, by providing Allegiant Bank with a Letter of Direction to sell two thousand five hundred (2,500) shares of Dell Computer Corporation stock which were owned by Forever Enterprises, Inc. to National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, for \$124,837.50, when such stock could have been purchased by National Prearranged Services, Inc. Trust IV on the open market for substantially less money.

In violation of Title 18, United States Code, Section 1344.

COUNT 3

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about June 22, 2001, in the Eastern District of Missouri,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Allegiant Bank, a financial

institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Allegiant Bank, by means of materially false and fraudulent pretenses, representations and promises, by instructing Allegiant Bank, to wire transfer \$900,000.00 from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Wittner, Poger, Rosenblum, Spewak, & Maylack, P.C., at First National Bank of St. Louis, Clayton, Missouri, so that Rhonda L. Cassity, Inc., a corporation owned by the wife of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, could purchase residential real estate located in Nantucket, Massachusetts.

In violation of Title 18, United States Code, Section 1344.

COUNT 4

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about January 22, 2002, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of

Allegiant Bank, by means of materially false and fraudulent pretenses, representations and promises, by instructing Allegiant Bank, to wire transfer \$135,000.00 from an account of National Preranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Hollywood Forever, Inc., at Bank of America, Hollywood, California, in order to provide funds for Forever Enterprises, Inc.'s business projects.

In violation of Title 18, United States Code, Section 1344.

COUNT 5

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. Beginning on or about January 8, 2004, and continuing until on or about January 15, 2004, in the Eastern District of Missouri,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, through a series of transactions, knowingly executed and attempted to execute a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Allegiant Bank, by means of materially false and fraudulent pretenses, representations and promises, by instructing Allegiant Bank to execute wire transfers totaling \$4,600,000 from an account of National Preranged Services, Inc. Trust IV at Allegiant Bank,

St. Louis, Missouri, to an account of Lincoln Memorial Services, Inc., at Truman Bank, St.

Louis, Missouri, in order to provide money for the purchase of PLICA by RBT Trust II.

In violation of Title 18, United States Code, Section 1344.

COUNT 6

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about March 23, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Allegiant Bank, by means of materially false and fraudulent pretenses, representations and promises, by instructing Allegiant Bank to wire transfer \$582,592.60 from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Hollywood Forever, Inc., at Bank of America, Hollywood, California, in order to provide funds for Forever Enterprises, Inc.'s business projects.

In violation of Title 18, United States Code, Section 1344.

COUNT 7

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about April 1, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Allegiant Bank, by means of materially false and fraudulent pretenses, representations and promises, by obtaining policy loans from Lincoln Memorial Life Insurance Co. in the amount of \$3,027,149.00 on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, without the knowledge and consent of Allegiant Bank, the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies.

In violation of Title 18, United States Code, Section 1344.

COUNT 8

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about October 26, 2004, in the Eastern District of Missouri,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co., a financial institution insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by instructing Bremen Bank and Trust Co. to wire transfer \$49,000.00 from National Prearranged Services, Inc. Trust IV to a bank account of National Prearranged Services, Inc. at Jefferson Bank & Trust in St. Louis, Missouri in order to pay expenses of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Section 1344.

COUNT 9

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about October 5, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by obtaining policy loans from Lincoln Memorial Life Insurance Co. in the amount of \$2,138,516.77 on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, without the knowledge and consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies.

In violation of Title 18, United States Code, Section 1344.

COUNT 10

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. Beginning on or about July 31, 2007, and continuing until on or about August 6, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co.,

a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by causing assets which were part of National Prearranged Services, Inc. Trust IV to be liquidated, and transferring \$1,569,000 of the net proceeds of such liquidation to Forever Enterprises, Inc. in order to pay a debt of Forever Enterprises, Inc.

In violation of Title 18, United States Code, Section 1344.

COUNT 11

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about September 26, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by, or under the control of Bremen Bank and Trust Co., by means of materially false and fraudulent pretenses, representations and promises, by causing the surrender of approximately 56,514 life insurance policies which included policies which were part of National Prearranged Services, Inc. Trust IV,

without the consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such whole life insurance policies.

In violation of Title 18, United States Code, Section 1344.

COUNT 12

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about December 10, 2002, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,800,000, from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A. in Austin, Texas, to an account of National Prearranged Services, Inc. Trust IV, at Allegiant Bank, St. Louis, Missouri, which constituted proceeds of loans on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, and which were obtained without the knowledge and consent of Allegiant Bank, the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies, and which affected Allegiant Bank, a financial

institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 13

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about September 25, 2003, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$600,000.00, between an account of Lincoln Memorial Services, Inc. at Truman Bank, St. Louis, Missouri, to an account of Lincoln Memorial Services, Inc., at Harris Trust and Savings Bank, Chicago, Illinois, which constituted assets that were previously wire transferred from National Prearranged Services, Inc. Trust IV, and which affected Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 14

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about January 20, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$187,843.19, from an account of National Prearranged Services, Inc. Trust IV at Allegiant Bank, St. Louis, Missouri, to an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A. in Austin, Texas, which constituted the only portion of the assets valued at \$2,419,395.74 that were transferred to National Prearranged Services, Inc. in connection with its purchase of existing prearranged funeral contracts from Price Funeral Home, Maryville, Missouri, that was used to pay premiums on life insurance policies that were intended to provide a source of funding for the death benefits which were to be provided by such contracts, and which affected Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 15

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about October 28, 2004, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,451,089.10, from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A. in Austin, Texas, to an account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, which constituted proceeds of loans on life insurance policies which were part of National Prearranged Services, Inc. Trust IV, and which were obtained without the knowledge and consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust IV, which owned and had title to such insurance policies, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 16

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about August 3, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,700,000.00, from an account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, to an account of Forever Enterprises, Inc. at JP Morgan Chase Bank, Houston, Texas, to pay a debt owed by Forever Enterprises, Inc., and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 17

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about October 6, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,531,668.01, from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A., Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, Missouri, which constituted proceeds of loans on life insurance policies on the lives of non-Missouri customers of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 18

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. Beginning on or about December 1, 2006, and continuing until on or about January 23, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$283,191.55, from an account of Lincoln Memorial Life Insurance Company, at Chase Bank of Texas, N.A., Austin, Texas, to an account of National Prearranged Services, Inc. Trust III, at Bremen Bank and Trust Co., St. Louis, Missouri, which constituted proceeds of loans on life insurance policies which were part of National Prearranged Services, Inc. Trust III, which were obtained without the knowledge and consent of Bremen Bank and Trust Co., the trustee of National Prearranged Services, Inc. Trust III, which owned and had title to such insurance policies, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 19

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about May 14, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,803,057.41, from an account of Lincoln Memorial Life Insurance Company at Chase Bank of Texas, N. A. Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, Missouri, which contained the proceeds of loans on insurance policies on the lives of non-Missouri customers of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 20

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about June 7, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose

of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, a wire transfer of funds in the amount of \$1,000,000.00, from an account of Lincoln Memorial Life Insurance Company at Chase Bank of Texas, N. A., Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, which contained the proceeds of loans on insurance policies on the lives of non-Missouri customers of National Prearranged Services, Inc.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 21

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about July 9, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain signs, signals and sounds, that is, an email communication between the office of National

Prearranged Services, Inc., in Clayton, Missouri, and the office of the Ohio Department of Insurance, in Columbus, Ohio, which set forth the response of Lincoln Memorial Life Insurance Company to a regulatory inquiry concerning policy loans, and which stated the following, "There are no Ohio life insurance policies sold by Lincoln Memorial Life Insurance Company that have loans against them.", which statement was false and fraudulent as to a material matter in that this statement concealed the fact that there were policy loans in existence on Ohio policies at the time of the regulatory inquiry which were removed by transferring the loan repayment obligation from Ohio policies to life insurance policies that were owned by persons who resided in states other than Ohio.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 22

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about February 8, 2008, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and in attempting to do so, caused to be transmitted by means of wire communication in interstate commerce, certain

signs, signals and sounds, that is, a wire transfer of funds in the amount of \$60,000.00, from an account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, to an account of National Prearranged Services, Inc. at Bank of America, Dallas, Texas, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT 23

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about April 10, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 2011 Greenville Rd., Bristolville, OH 44402, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer A.N., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc.

to A.N. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 24

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about April 10, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 1324 W. 37th St., Lorain, OH 44053, which contained a "Paid in Full Certificate" for National Preranged Services, Inc. customer R.L., when in fact, the life insurance policy which was to fund the benefits promised by National Preranged Services, Inc. to R.L. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 25

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about April 30, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to Grand View Funeral Home, 1116 Highway 61, Hannibal, Missouri, which contained a regular statement concerning Grand View Funeral Home's customers' trust accounts that falsely indicated many accounts were current, and that some were paid in full, whereas in truth and fact, a large amount of the funds in Grand View Funeral Home's customers' trust accounts had been extracted for other purposes, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 26

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about May 1, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 205 S. River Road, Des Plaines, IL 60016, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.B., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to E.B. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 27

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about May 1, 2006, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and

DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 2409 State Street, Alton, IL 62002, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer M.H., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to M.H. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 28

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about February 28, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises,

did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to James and Gahr Mortuary, 117 Seymour Street, St. James, Missouri 65559, which contained a regular statement concerning James and Gahr Mortuary's customers' trust accounts that falsely indicated many accounts were current, and that some were paid in full, whereas in truth and fact, a large amount of the funds in James and Gahr Mortuary's trust accounts had been extracted for other purposes, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 29

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about March 22, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service,

mail matter addressed to 554 Washington Avenue, Washington Court House, OH 43160, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.M., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to E.M was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 30

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about May 18, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to Reliable Funeral Home, 3964 Washington Blvd., St. Louis, Missouri, 63108, which contained a regular statement concerning Reliable Funeral Home's customers' trust accounts that falsely indicated many accounts were current, and that some were paid in full, whereas in truth and fact, a large amount of the funds in Reliable Funeral Homes' trust accounts

had been extracted for other purposes, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 31

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about June 5, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 303 Marfreesboro Road, Woodbury, TN 37190, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer Z.D., when in fact, the life insurance policy which was to fund the benefits promised by National Prearranged Services, Inc. to Z.D. was not fully funded.

In violation of Title 18, United States Code, Section 1341.

COUNT 32

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.
2. On or about November 20, 2007, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to P.O. Box 446, Blue Springs, MO 64013, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.L, when in fact, National Prearranged Services, Inc. failed to deposit funds received from customer E.L. into National Prearranged Services, Inc. Trust IV, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 33

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about December 3, 2007, in the Eastern District of Missouri,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be placed in an authorized depository for mail matter in Clayton, Missouri, and delivered according to the directions thereon by the United States Postal Service, mail matter addressed to 444 N. Church St., LaPlata, MO 63549, which contained a "Paid in Full Certificate" for National Prearranged Services, Inc. customer E.H., when in fact, National Prearranged Services, Inc. failed to deposit funds received from customer E.H. into National Prearranged Services, Inc. Trust IV, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 34

The Grand Jury charges:

1. The Grand Jury realleges and incorporates herein by reference paragraphs 1 through 41 of Count 2.

2. On or about March 3, 2008, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, for the purpose of executing this scheme and artifice to defraud, and in attempting to do so, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be sent and delivered, according to the directions thereon by a private and commercial interstate carrier, that is, United Parcel Service, an envelope with a return address of R K Sutton, Memorial Service Life, 10 Brentwood Blvd, Saint Louis, MO 63105, which was addressed to American Express, US Pymt Center Florida, 2965 W. Corporate Lakes Blvd., Weston, FL 33331, which contained a check in the amount of \$35,489.34 payable to American Express, to pay a personal account of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and which affected Bremen Bank and Trust Co., a financial institution which was insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 1341.

COUNT 35

The Grand Jury charges:

On or about October 10, 2006, in the Eastern District of Missouri,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$260,000, into a bank account

of RBT Trust II at First Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 36

The Grand Jury charges:

On or about July 7, 2008, in the Eastern District of Missouri,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$57,423.23, into a personal bank account of defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, at Southwest Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 37

The Grand Jury charges:

On or about October 10, 2006, in the Eastern District of Missouri,

BRENT DOUGLAS CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$260,000.00, into a personal bank account of defendant BRENT DOUGLAS CASSITY, at Southwest Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 38

The Grand Jury charges:

On or about May 15, 2008, in the Eastern District of Missouri,

BRENT DOUGLAS CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction,

... ..

affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$20,000.00, into a personal bank account of defendant BRENT DOUGLAS CASSITY, at Regions Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 39

The Grand Jury charges:

On or about July 7, 2008, in the Eastern District of Missouri,

BRENT DOUGLAS CASSITY,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of Bayside Capital Management LLC, at First Bank, St. Louis, Missouri, a financial institution, in the amount of \$57,423.23, into a personal bank account of defendant BRENT DOUGLAS CASSITY, at Regions Bank, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section

1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 40

The Grand Jury charges:

On or about January 9, 2006, in the Eastern District of Missouri,

HOWARD A. WITTNER,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of HAW LLC, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, in the amount of \$200,000.00, into a personal account of defendant HOWARD A. WITTNER, at Smith Barney, St. Louis, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 41

The Grand Jury charges:

On or about April 18, 2007, in the Eastern District of Missouri,

HOWARD A. WITTNER,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of HAW LLC, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, in the amount of \$177,500.00, into a personal account of defendant HOWARD A. WITTNER, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 42

The Grand Jury charges:

On or about July 17, 2008, in the Eastern District of Missouri,

HOWARD A. WITTNER,

the defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the deposit of a check drawn on a bank account of HAW LLC, at First National Bank of St.

Louis, Clayton, Missouri, a financial institution, in the amount of \$713,235.00, into a personal account of defendant HOWARD A. WITTNER, at First National Bank of St. Louis, Clayton, Missouri, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 43

The Grand Jury charges:

On or about August 2, 2007, in the Eastern District of Missouri,

RANDALL K. SUTTON,
BRENT DOUGLAS CASSITY, and
DAVID R. WULF,

the defendants herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the wire transfer of funds from a bank account of National Prearranged Services, Inc. Trust IV, at Bremen Bank and Trust Co., St. Louis, Missouri, a financial institution, in the amount of \$670,000, to a bank account of Forever Enterprises, Inc. at JP Morgan Chase Bank, N.A., Austin, Texas, a financial institution, such property having been derived from specified unlawful activity, that is, mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud

... ..
affecting a financial institution, in violation of Title 18, United States Code, Section 1343; wire fraud, in violation of Title 18, United States Code, Section 1343; and bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 44

The Grand Jury charges:

INTRODUCTION

1. Lincoln Memorial Life Insurance Company, Memorial Service Life Insurance Company, Professional Liability Insurance Company of America, hereinafter referred to as PLICA, Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, and HAW LLC were entities engaged in the business of insurance, which consisted of the writing of insurance and the reinsuring of risks, including all acts necessary and incidental to such writing and reinsuring.
2. Beginning on or about sometime before January 1, 2000, with the exact date unknown to the Grand Jury, and continuing until on or about May 14, 2008,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, were engaged in the business of insurance whose activities affected interstate commerce as a result of their acting and being officers, directors, agents and employees of Lincoln Memorial Life Insurance Companies, and Memorial Service Life Insurance Company, both of which were Texas insurance companies.

3. Beginning on or about sometime in 2004, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY
BRENT DOUGLAS CASSITY, and
HOWARD A. WITTNER,
DAVID R. WULF,

the defendants herein, were engaged in the business of insurance whose activities affected interstate commerce as a result of their acting and being officers, directors, agents and employees of PLICA, a New York insurance company.

4. Beginning on or about sometime in 2004, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and
BRENT DOUGLAS CASSITY,

the defendants herein, were engaged in the business of insurance whose activities affected interstate commerce as a result of their being officers, directors, agents and employees of Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, a Missouri limited liability company that managed PLICA. Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, received as compensation a percentage of all direct business written by PLICA.

4. Beginning on or about sometime in 2004, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010,

HOWARD A. WITTNER,

the defendant herein, was engaged in the business of insurance whose activities affected

interstate commerce as a result of his being an officer, director, agent and employee of HAW LLC, a Missouri limited liability company. HAW LLC was used to compensate defendant HOWARD A. WITTNER for his services as Vice President, Secretary, and General Counsel of PLICA. HAW LLC was also used to pay expenses incurred in the operations of PLICA.

THE CONSPIRACY AND ITS OBJECTS

5. Beginning on or about sometime before January 1, 2000, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY
BRENT DOUGLAS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, did knowingly and willfully combine, conspire, confederate and agree together and with each other, and with other persons known and unknown to the Grand Jury, to commit various offenses against the United States, that is, being engaged in the business of insurance whose activities affect interstate commerce, and knowingly, with the intent to deceive, making a false material statement and report, and willfully and materially overvaluing any land, property and security, in connection with a financial report and document presented to an insurance regulatory official and agency, and an agent and examiner appointed by such official and agency to examine the affairs of such person, in violation of Title 18, United States Code, Section 1033(a)(1); and acting as, and being an officer, director, agent, and employee of a person engaged in the business of insurance whose activities affect interstate commerce, and being engaged in the business of insurance whose activities affect interstate commerce, and being

involved in a transaction relating to the conduct of affairs of such a business, willfully embezzling, abstracting, purloining and misappropriating the moneys, funds, premiums, credits, and other property of a person engaged in the business of insurance, in violation of Title 18, United States Code, Section 1033(b)(1).

MANNER AND MEANS OF THE CONSPIRACY

1. It was part of the conspiracy that beginning on or about March 10, 2004, and continuing until on or about May 19, 2004, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, submitted financial statements of RBT Trust II to the New York Department of Insurance, in order to obtain the approval of the New York Department of Insurance for RBT Trust II's proposed purchase of PLICA. These financial statements were false and fraudulent as to a material matter in that they only included the assets and liabilities of two of the entities which were part of RBT Trust II, that is, National Prearranged Services, Inc., and Forever Enterprises, Inc., and failed to include the assets and liabilities of many of the other entities which were part of RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc. If the assets and liabilities of the other entities which were part of RBT Trust II had been included in these financial statements, the amount of the beneficiaries' equity of RBT Trust II which was reported to the New York Department of Insurance would have been substantially less than what was actually reported. The New York Department of Insurance probably would not have approved the purchase of PLICA by RBT Trust II if it had been aware of the true financial

condition and position of RBT Trust II, and the true amount of its beneficiaries' equity.

2. It was part of the conspiracy that defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, submitted yearly and quarterly financial statements of PLICA to the New York Department of Insurance which were false and fraudulent as to material matters in that such financial statements asserted that all affiliated transactions which were required to be disclosed had been disclosed whereas in truth and in fact, said statements failed to disclose numerous transactions between PLICA and entities which were affiliates of PLICA. This failure to disclose transactions between PLICA and its affiliates prevented the New York Department of Insurance from effectively overseeing and regulating the operations and finances of PLICA. The following transactions should have been disclosed, but were not:

a. From on or about February 15, 2007 through on or about December 14, 2007, PLICA engaged in transactions with Forever Enterprises, Inc., an affiliated party, totaling approximately \$612,573.20, which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

b. From on or about January 4, 2005 through on or about December 2, 2005, PLICA engaged in transactions with Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, an affiliated party, totaling approximately \$2,202,233.80, which were not disclosed on the 2005 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

c. From January 17, 2006 through December 18, 2006, PLICA engaged in transactions with Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, an affiliated party, totaling approximately \$4,393,356.06, which were not disclosed on the 2006 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

d. From January 8, 2007 through December 14, 2007, PLICA engaged in transactions with Bayside Capital LLC, which subsequently became known as Bayside Capital Management LLC, an affiliated party, totaling approximately \$3,499,899.29 which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

e. From January 4, 2005 through December 31, 2005, PLICA engaged in transactions with Lincoln Memorial Services, Inc., an affiliated party, totaling approximately \$1,530,296.00, which were not disclosed on the 2005 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

f. On or about January 5, 2006, PLICA engaged in a transaction with Lincoln Memorial Services, Inc., an affiliated party, totaling \$1,300,000 which was not disclosed on 2006 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

g. On or about January 2, 2007, PLICA engaged in transactions with Lincoln Memorial Services, Inc., an affiliated party, totaling \$1,350,000, which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

h. From January 1, 2006 through December 31, 2006, PLICA engaged in transactions with HAW LLC, an affiliated party, totaling approximately \$2,402,517.67 which were not disclosed on the 2006 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

i. From January 1, 2007 through December 31, 2007, PLICA engaged in transactions with HAW LLC, an affiliated party, totaling approximately \$4,385,337.80 which were not disclosed on the 2007 quarterly and annual statements of PLICA that were submitted to the New York Department of Insurance.

3. It was part of the conspiracy that from on or about certain times in 2004 through on or about certain times in April 2008, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, submitted inaccurate and false information to the New York Department of Insurance regarding the ownership and control of PLICA, including information in Annual Statements and Holding Company Registration Statements, which was false and fraudulent as to material matters in that the statements failed to properly identify ownership and control of PLICA, and to disclose PLICA's parents, subsidiaries and affiliates, as well as the management agreements, service contracts and cost sharing agreements that PLICA entered into with parents, subsidiaries and affiliates, and other entities and persons who exercised control over PLICA.

4. It was part of the conspiracy that defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG

CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, embezzled, abstracted, purloined and misappropriated money from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company by causing unauthorized policy loans to be taken by National Prearranged Services, Inc. on insurance policies purchased from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company which were purchased and owned by individuals and trusts in order to provide a source of funds to pay for the funeral services and merchandise which were promised under prearranged funeral contracts with National Prearranged Services, Inc. These policy loans were obtained without the knowledge and consent of the owners' of the insurance policies.

5. It was part of the conspiracy that defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, embezzled, abstracted, purloined and misappropriated money from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company by causing National Prearranged Services, Inc. to forward to Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company only a portion of premium payments paid on life insurance policies which were purchased from Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company by individuals and trusts in order to provide a source of funds to pay for the funeral services and merchandise promised under prearranged funeral contracts with National Prearranged Services, Inc. In many instances, customers of National

Prearranged Services, Inc. paid their insurance premiums on policies issued by Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company in full at the time of purchase. The decision by defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, and other persons known and unknown to the Grand Jury, to cause National Prearranged Services, Inc. to obtain and retain for its own use a portion of insurance premium payments that should have been paid to Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company was made without the knowledge and consent of the owners of such policies, who were the persons and trusts who purchased the insurance policies.

OVERT ACTS

In connection with the above conspiracy, and to effectuate the objectives thereof, the following overt acts occurred in the Eastern District of Missouri and elsewhere:

1. On or about March 4, 2004, defendant BRENT DOUGLAS CASSITY executed a Biographical Affidavit which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.
2. On or about March 5, 2004, defendant HOWARD A. WITTNER executed a Biographical Affidavit which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.
3. Beginning on or about March 10, 2004, and continuing until on or about May 19, 2004, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant HOWARD A. WITTNER directed a certified public accountant to prepare three financial

statements of RBT Trust II, which only included assets and liabilities of two of the entities which were part of RBT Trust II, that is National Prearranged Services, Inc., and Forever Enterprises, Inc., and which failed to include the assets and liabilities of many of the other entities which were part of RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc.

4. On or about March 16, 2004, defendant HOWARD A. WITTNER executed a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.

5. On or about April 28, 2004, defendant HOWARD A. WITTNER executed a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer which was submitted to the New York Department of Insurance as part of RBT Trust II's request for approval of its application to purchase PLICA.

6. On or about May 10, 2004, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and another person, discussed the language to be used by a certified public accountant to affirm the financial statement of RBT Trust II that was submitted to the New York Department of Insurance in support of RBT Trust II's request for approval of its application to purchase PLICA.

7. On or about May 10, 2004, defendant HOWARD A. WITTNER notarized the signature of a certified public accountant on an affirmation of a financial statement of RBT Trust II.

8. On or about May 16, 2004, defendant HOWARD A. WITTNER caused a draft

agreement to be sent to a certified public accountant to indemnify and hold harmless the certified public accountant from, and any claims made as result of the 2002-2003 audit of RBT Trust II by the certified public accountant.

9. Sometime between on or about June 1, 2004, and on or about July 12, 2004, defendant HOWARD A. WITTNER executed an Incentive Agreement between defendant HOWARD A. WITTNER, Trustee of RBT Trust II, and defendant HOWARD A. WITTNER.

10. On or about June 30, 2004, defendant RANDALL K. SUTTON requested that \$1,310,740 be wire transferred from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. as an advance on policy loans.

11. On or about July 1, 2004, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant BRENT DOUGLAS CASSITY, executed an Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital LLC.

12. On or about July 1, 2004, defendant HOWARD A. WITTNER executed an Agreement between PLICA Management Company, and defendant HOWARD A. WITTNER.

13. On or about some time in February, 2005, with the exact date unknown to the Grand Jury, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER, caused the Annual Statement of PLICA for the year ended December 31, 2004, to be submitted to the New York Department of Insurance.

14. On or about November 10, 2005, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, and defendant BRENT DOUGLAS CASSITY, executed an Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital LLC.

15. On or about sometime in February, 2006, with the exact date unknown the the Grand Jury, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER, caused the Annual Statement of PLICA for the year ended December 31, 2005, to be submitted to the New York Department of Insurance.

16. On or about March 13, 2006, defendant RANDALL K. SUTTON caused to be mailed a "Paid In Full" Certificate in the name of E.M., of Mendota, Illinois, who purchased a prearranged funeral contract from National Prearranged Services, Inc., and an insurance policy from Lincoln Memorial Life Insurance Company.

17. On or about April 10, 2006, defendant RANDALL K. SUTTON caused to be mailed a "Paid In Full" Certificate in the name of A.N., of Bristolville, Ohio, who purchased a prearranged funeral contract from National Prearranged Services, Inc., and an insurance policy from Lincoln Memorial Life Insurance Company.

18. On or about June 28, 2006, defendant RANDALL K. SUTTON requested policy loans from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. in the amount of \$4,500,000.

19. On or about October 3, 2006, defendant RANDALL K. SUTTON requested policy loans from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. in the amount of \$5,596,197.19.

20. On or about January 23, 2007, defendant RANDALL K. SUTTON requested policy loans from Lincoln Memorial Life Insurance Company to National Prearranged Services, Inc. in the amount of \$2,432,501.32.

21. On or about sometime in February, 2007, with the exact date unknown to the Grand Jury, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER, caused the Annual Statement of PLICA for the year ended December 31, 2006, to be submitted to the New York Department of Insurance.

22. On or about April 15, 2008, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, and defendant HOWARD A. WITTNER executed an Amendment to Administrative Agreement between PLICA Management Company, PLICA, and Bayside Capital Management LLC.

23. On or about January 15, 2009, acting as Trustee of Division 1 of RBT Trust II, defendant HOWARD A. WITTNER executed the First Amendment to Division 1 of RBT Trust II Irrevocable Living Trust Agreement.

In violation of Title 18, United States Code, Section 371.

COUNT 45

The Grand Jury charges:

Beginning on or about March 10, 2004, and continuing until on or about May 19, 2004, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLASS CASSITY,
HOWARD A. WITTNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, being engaged in the business of insurance whose activities affected interstate commerce, knowingly and with

the intent to deceive, did make a false material statement and report, and willfully and materially did overvalue land, property and security, in connection with financial reports and documents presented to the New York Department of Insurance, an insurance regulatory agency, for the purpose of influencing the actions of the New York Department of Insurance, that is, in financial statements submitted as part of RBT Trust II's application for approval to purchase Professional Liability Insurance Company of America, hereinafter referred to as PLICA, to the New York Department of Insurance, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, only included the assets and liabilities of two of the entities which were part of RBT Trust II, that is, National Prearranged Services, Inc., and Forever Enterprises, Inc., in determining the amount of the beneficiaries' equity of RBT Trust II, whereas in truth and in fact, as defendant RANDALL K. SUTTON, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, well knew, the actual amount of the beneficiaries' equity in RBT Trust II was substantially less than the amounts reported in such financial statements because the stated beneficiaries' equity did not include assets and liabilities of numerous entities which were part of RBT Trust II, including National Heritage Enterprises, Inc., and Lincoln Memorial Services, Inc., that should have been included in determining the beneficiaries equity of RBT Trust II, and which false material statement and report jeopardized the safety and soundness of PLICA, an insurer, and was a significant cause of PLICA being placed in conservation and rehabilitation by the Supreme Court of the State of New York (New York County), on or about April 28, 2010.

In violation of Title 18, United States Code, Sections 1033(a)(1) and (a)(2) and 2.

COUNT 46

The Grand Jury charges:

On or about some time in February, 2007, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLASS CASSITY, and
HOWARD A. WITTNER,
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, being engaged in the business of insurance whose activities affected interstate commerce, knowingly and with the intent to deceive, did make a false material statement and report, and willfully and materially did overvalue land, property and security, in connection with financial reports and documents presented to the New York Department of Insurance, an insurance regulatory agency, for the purpose of influencing the actions of the New York Department of Insurance, that is, in the 2006 Annual Statement for Professional Liability Insurance Company of America, hereinafter referred to as PLICA, a financial statement which was submitted to the New York Department of Insurance, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITNER, and defendant DAVID R. WULF, the defendants herein, stated "Not Applicable," when required to disclose to the New York Department of Insurance information pertaining to its parent, subsidiaries and affiliates, including information detailing transactions greater than one half per cent (½%) of admitted

assets, and information regarding management agreements, service contract agreements and cost sharing agreements and information regarding guarantees or contingencies for related parties, whereas in truth and in fact, as defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, well knew, that agreements existed, and transactions had occurred with affiliates, persons and entities that were related to and controlled PLICA, and were required to be disclosed in the 2006 Annual Statement for PLICA, and which false material statement and report jeopardized the safety and soundness of PLICA, an insurer, and was a significant cause of PLICA being placed in conservation and rehabilitation by the Supreme Court of the State of New York (New York County), on or about April 28, 2010.

In violation of Title 18, United States Code, Sections 1033(a)(1) and (a)(2) and 2.

COUNT 47

The Grand Jury charges:

On or about June 28, 2006, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE,
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLASS CASSITY, and
HOWARD A. WITTNER,
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, acting as and being officers, directors, agents, and employees of Lincoln Memorial Life Insurance Company, a person engaged in the business of insurance whose activities affected interstate commerce, and being engaged in the business of insurance whose activities affected interstate commerce in a

transaction relating to the conduct of affairs of Lincoln Memorial Life Insurance Company, did willfully embezzle, abstract, purloin and misappropriate moneys, funds, premiums, credits and other property of Lincoln Memorial Life Insurance Company in excess of \$5,000, by causing National Prearranged Services, Inc. to obtain the proceeds of unauthorized policy loans from Lincoln Memorial Life Insurance Company in the amount of \$4,500,000, and which embezzlement and misappropriation jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company, an insurer, and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis County, Texas, on or about May 14, 2008.

In violation of Title 18, United States Code, Sections 1033(b)(1) and (b)(2) and 2.

COUNT 48

The Grand Jury charges:

On or about February 20, 2006, in the Eastern District of Missouri, and elsewhere,

RANDALL K. SUTTON,
SHARON NEKOL PROVINCE
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
BRENT DOUGLASS CASSITY,
HOWARD A. WITNER, and
DAVID R. WULF,

the defendants herein, and other persons known and unknown to the Grand Jury, acting as and being officers, directors, agents, and employees of Lincoln Memorial Life Insurance Company, a person engaged in the business of insurance whose activities affected interstate commerce, and being engaged in the business of insurance whose activities affected interstate commerce in a transaction relating to the conduct of affairs of Lincoln Memorial Life Insurance Company, did willfully embezzle, abstract, purloin and misappropriate moneys, funds, premiums, credits and

other property of Lincoln Memorial Life Insurance Company in excess of \$5,000, by causing National Prearranged Services, Inc. to obtain and retain insurance premiums paid in full with a life insurance application made by E. M. to Lincoln Memorial Life Insurance Company in the amount of \$10,242.48, of which only \$192.56 was forwarded and paid in premiums to Lincoln Memorial Life Insurance Company when the application was received, and the policy was issued by Lincoln Memorial Life Insurance Company, and which embezzlement and misappropriation jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company, an insurer, and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis County, Texas, on or about May 14, 2008.

In violation of Title 18, United States Code, Sections 1033(b)(1) and (b)(2) and 2.

COUNT 49

The Grand Jury charges:

Beginning on or about sometime prior to January 1, 1998, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010, in the Eastern District of Missouri, and elsewhere,

JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,

the defendant herein, having been convicted of a criminal felony involving dishonesty and a breach of trust, that is, willfully, knowingly and unlawfully conspiring to use and using fraudulent letters of credit, in violation of Title 18, United States Code, 371, and falsifying an income tax return, in violation of Title 26, United States Code, Section 7206(1), in the United States District Court for the Western District of Missouri, on or about January 29, 1982, did

willfully engage in the business of insurance whose activities affected interstate commerce, and participate in such business.

In violation of Title 18, United States Code, Section 1033(e)(1)(A).

COUNT 50

The Grand Jury charges:

Beginning on or about sometime prior to January 1, 1998, with the exact date unknown to the Grand Jury, and continuing until on or about April 28, 2010, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri and elsewhere,

RANDALL K. SUTTON
BRENT DOUGLAS CASSITY, and
HOWARD A. WITTNER,

the defendants herein, being engaged in the business of insurance whose activities affect interstate commerce, did willfully permit James Douglas Cassity, a/k/a Doug Cassity, not named as a defendant in this count, who was convicted of a criminal felony involving dishonesty and a breach of trust, that is, willfully, knowingly and unlawfully conspiring to use and using fraudulent letters of credit, in violation of Title 18, United States Code, 371, and falsifying an income tax return, in violation of Title 26, United States Code, Section 7206(1), in the United States District Court for the Western District of Missouri, on or about January 29, 1982, to engage in the business of insurance whose activities affected interstate commerce and participate in such business.

In violation of Title 18, United States Code, Sections 1033(e)(1)(B) and 2.

FORFEITURE

The allegations contained in Counts 1 through 34 of this Indictment are hereby realleged

and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(a)(2).

The allegations contained in Counts 35 through 43 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(1).

Upon conviction of the offenses in violation of Title 18, United States Code, Section 1341, Title 18, United States Code, Section 1343, Title 18, United States Code, Section 1344, and Title 18, United States Code, Section 1349, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

Upon conviction of the offenses in violation of Title 18, United States Code, Section 1341, Title 18, United States Code, Section 1343, Title 18, United States Code, Section 1344, and Title 18, United States Code, Section 1349, affecting a financial institution, defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2), any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violation.

Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of an offense in violation of Title 18, United States Code, Section 1957, defendant RANDALL K. SUTTON, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITNER, and defendant DAVID R. WULF, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in such offense, and any property traceable to such property.

Specific property alleged to be forfeited pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) and pursuant to Title 18, United States Code, Section 982(a)(1) and (a)(2), includes, but is not limited to, the following:

1. All ownership shares in Professional Liability Insurance Corporation of America (PLICA), a New York insurance company, and all the assets of PLICA, including, but not limited to, any recognized or anticipated surplus;
2. The assets of the following trusts: RBT Trust II; RBT Trust II, Division 1 and 2; and PLICA Equity Trust;
3. Real property
 - a. Real Property located at 4201 Gulf Shore Blvd., Naples, FL more particularly described as:

Unit No. 1103, (Type C), LE JARDIN, a condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 2406, Page 433, of the Public Records of Collier County, Florida. Together with the exclusive right to use Parking Space Numbers 35 and 36;
 - b. Real Property located at 120 Linden, St. Louis, MO more particularly described as:

Lot 16 in Block "A" of Bemiston, a subdivision in St. Louis County, Missouri, according to the plat thereof recorded in Plat Book 3, page 64 of the St. Louis County Records.

- c. Real Property located at 18 Cliff Road, Nantucket, MA more particularly described as:

That certain parcel of land, together with the buildings thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 18 Cliff Road, bounded and described as follows:

| | |
|---------------|---|
| NORTHEASTERLY | by Cliff Road, thirty and 57/100 (30.57) feet; |
| SOUTHEASTERLY | by the line of Folger Lane, in three courses, one hundred seventy-two and 82/100 (172.82) feet; |
| WESTERLY | by Lot 2 on plan hereinafter mentioned, in two courses, fifty and 53/100 (50.53) feet; and |
| NORTHWESTERLY | by said Lot 2 and by land now or formerly of Jean Murray Lewis, one hundred twenty-four and 95/100 (124.95) feet; |

- d. Real Property located at #5 Francis, Nantucket, MA more particularly described as:

That certain parcel of land situated in Nantucket, Nantucket County, Massachusetts, with the buildings thereon now known and numbered as 5 Francis Street, bounded and described as follows:

| | |
|---------------|--|
| SOUTHEASTERLY | by Francis Street, seventy-one and 13/100 (71.13) feet; |
| SOUTHWESTERLY | by land now or formerly of Donald C. Bohnsack et al., seventy-one and 34/100 (71.34) feet; |
| NORTHWESTERLY | by Meader Street, seventy and 52/100 (70.52) feet; and |
| NORTHEASTERLY | by land now or formerly of Hans C. Christensen et al., seventy-two and 6/100 (72.06) feet; |

- e. Real Property located at 1315 Wildhorse Parkway, Chesterfield, MO more particularly described as:

That certain parcel of land situated in Chesterfield, Missouri, with the buildings thereon now known and numbered as 1315 Wildhorse Parkway, Chesterfield, Missouri, bounded and described as follows:

Lot 618 of Wildhorse Village Plat Four, according to the plat thereof recorded

in Plat Book 316, page 51 of the St. Louis County Records.

f. Real Property located at 6000 Santa Monica Boulevard, Los Angeles, CA

more particularly described as:

THAT PORTION OF THE NORTH HALF OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SANTA MONICA BOULEVARD, 80 FEET WIDE, WITH THE EASTERLY LINE OF GOWER STREET, 55.00 FEET WIDE, AS SAID INTERSECTION IS SHOWN ON CITY OF LOS ANGELES ENGINEERS FIELD BOOK 16031 PAGE 34; THENCE NORTH 89 DEGREES 59 MINUTES 00 SECONDS EAST 900.41 FEET ALONG SAID SOUTHERLY LINE; TO THE TRUE POINT OF BEGINNING; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89 DEGREES 59 MINUTES 00 SECONDS WEST 456.00 FEET; THENCE LEAVING SAID LINE SOUTH 0 DEGREE 01 MINUTE 00 SECONDS EAST 102.33 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 57.80 FEET; THENCE SOUTH 0 DEGREE 10 MINUTES 27 SECONDS WEST 4.86 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 11.16 FEET; THENCE SOUTH 0 DEGREE 10 MINUTES 27 SECONDS WEST 2.51 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 53.07 FEET; THENCE NORTH 0 DEGREE 10 MINUTES 27 SECONDS EAST 7.37 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS WEST 322.25 FEET TO A POINT ON SAID EASTERLY LINE OF GOWER STREET DISTANT SOUTH 0 DEGREE 05 MINUTES 29 SECONDS EAST 100.85 FEET FROM SAID INTERSECTION OF THE SOUTHERLY LINE OF SANTA MONICA BOULEVARD AND THE EASTERLY LINE OF GOWER STREET; THENCE ALONG SAID EASTERLY LINE SOUTH 0 DEGREE 05 MINUTES 29 SECONDS EAST 1,178.82 FEET TO THE NORTHERLY LINE OF TRACT NO. 3688, IN SAID CITY, AS PER MAP RECORDED IN BOOK 40 PAGE 22 OF MAPS, RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT AND ALONG THE NORTHERLY LINES OF TRACT NO. 9885, TRACT NO. 12154 AND THE MARLBOROUGH TRACT, ALL IN SAID CITY AS PER MAPS RECORDED IN BOOK 147 PAGES 31 AND 32, BOOK 259 PAGE 32 AND BOOK 10 PAGE 9, ALL OF MAPS, RECORDS OF SAID COUNTY RECORDER, NORTH 89 DEGREES 59 MINUTES 12 SECONDS EAST 1,922.68 FEET TO THE WESTERLY LINE OF VAN NESS AVENUE, 60.00 FEET WIDE; THENCE ALONG SAID WESTERLY LINE NORTH 0

DEGREE 05 MINUTES 00 SECONDS WEST, 1,177.86 FEET TO A POINT DISTANT SOUTH 0 DEGREE 05 MINUTES 00 SECONDS EAST 102.11 FEET FROM THE INTERSECTION OF SAID WESTERLY LINE WITH THE SOUTHERLY LINE OF SANTA MONICA BOULEVARD 80.00 FEET WIDE AS SHOWN ON CITY OF LOS ANGELES ENGINEERS FIELD BOOK 13938, PAGE 20; THENCE LEAVING SAID LINE SOUTH 89 DEGREES 58 MINUTES 21 SECONDS WEST, 1,022.49 FEET TO A POINT WHICH IS DISTANT SOUTH 0 DEGREE 00 MINUTES 27 SECONDS WEST 102.18 FEET FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 0 DEGREE 00 MINUTE 27 SECONDS EAST 102.18 FEET BACK TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, IN OR UNDER THAT PORTION OF SAID LAND LAYING WITHIN THE BOUNDARIES DESCRIBED IN DEED IN FAVOR OF TRANS AMERICAN PETROLEUM CO., A CORPORATION, RECORDED JUNE 13, 1958 AS INSTRUMENT NO. 3791 AND AS PARTIALLY QUITCLAIMED IN DEEDS RECORDED MAY 31, 1960 AS INSTRUMENT NO. 4719 AND NO. 4720, AND LYING BELOW 500 FEET BELOW THE SURFACE THEREOF TOGETHER WITH RIGHT TO EXPLORE, DRILL FOR AND PRODUCE SAME IN AREA OF SAID PREMISES, 500 FEET BELOW THE SURFACE THEREOF.

- g. Real property located at 301 Tennessee Valley Road, Mill Valley, CA.

more particularly described as:

PARCEL ONE:

ALL THAT PORTION of Lots 1 and 2 in Block 190, as shown upon that certain map entitled, "Official Map of Lands of the Sausalito Land and Ferry Company", filed for record April 26, 1869 in Rack 1 of Maps, at Pull 9, Marin County Records, lying Westerly of the lands taken in the Action entitled, "United States of America vs. Sausalito Land and Ferry Company, et al", Case No. 22280-R, U.S. District Court.

PARCEL TWO:

ALL OF LOTS 10 and 11, in Block 191, as shown upon that certain map entitled, "Official Map of Lands of the Sausalito Land and Ferry Company", filed for record April 26, 1869 in Rack 1 of Maps, at Pull 9, Marin County Records.

EXCEPTING THEREFROM and thereout that portion of Lot 10 as described in the Deed to Sausalito Cemetery Association, recorded July 7, 1893 in Book 26 of Deeds, at Page 331, Marin County Records.

PARCEL THREE:

COMMENCING at the Southeast corner of the tract of land conveyed by the Sausalito Land and Ferry Company to the Sausalito Cemetery Association on March 18, 1892, the description of which is on file in the Office of the Recorder of Deeds in and for the County of Marin, State of California, which point lies 0°00' East distant 15.40 feet from a concrete monument set in the South line of said tract; running thence 0°00' West 649.40 feet to the East line of the County Road; thence along the County Road, North 11°35' East 212.60 feet; thence North 6°58' West 102.90 feet; thence North 26°13' West 110.80 feet; thence North 32°18' West 156.50 feet; thence leaving the County Road and running North 53°07' East 138.10 feet; thence South 64°45' East 209.90 feet; thence South 21°55' East 98.70 feet; thence South 40°15' East 135.60 feet; thence South 57°45' East 159.90 feet; thence 0°00' West 28.00 feet; thence 0°00' South 14.00 feet; thence 0°00' East 50.00 feet; thence South 28°40' East 163.40 feet; thence South 44°00' East 131.15 feet to the point of commencement.

BEING the most Southwesterly portion of the tract of land conveyed by Sausalito Land and Ferry Company to the Sausalito Cemetery Association on March 18, 1892.

EXCEPTING THEREFROM all of that portion of land described in the Deed conveyed to the Sausalito Land and Ferry Co. in Book 181 of Official Records, at Page 415, Marin County records, lying Northerly and Easterly of the following described agreement line:

BEGINNING at 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" lying on the Southerly line of the Sausalito Cemetery as said line is shown on the "Section Map No. 1, Sasalito Cemetery" Book 1 of Maps, at Page 68, and as said 2" pipe is shown on the Survey of the Sausalito Cemetery by Engineering Field Services, San Rafael, California, Job #645 in April, 1973; thence North 197.06 feet to an 8" X 8" concrete monument with brass pin as shown on said Section Map No. 1; thence West 17.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 20°55' West 133.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 34°56' West 35.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 3°37' West 151.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence 93.59 feet along a tangent curve to the left having a radius of 70.00 feet, through a central angle of 76°36' to a 2" iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" (the midpoint along said curve also being marked by a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence North 80°13' West 83.00 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence South 53°7' West 63.67 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775"; thence continuing South 53°7' West 71.34 feet to a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" set on the Easterly line of

Tennessee Valley Road, a distance of 30 feet East of the existing centerline of pavement as surveyed by said Engineering Field Services.

Reference is made to the Record of Survey to be filed; being the results of the Engineering Field Services Survey of the Cemetery.

EXCEPTING FROM Parcels One, Two and Three above described, the following described property:

BEGINNING at a point on the East line of Tennessee Valley Road which point is distant South $15^{\circ}20'$ West 3.44 feet from the Northwest corner of Lot 10, shown upon the Record of Survey filed December 29, 1978 in Volume 15 of Surveys, at Page 43, Marin County Records; running thence from said point of beginning and leaving said road line South $73^{\circ}01'55''$ East 250.26 feet; thence South $0^{\circ}02'50''$ West 230.00 feet; thence South $19^{\circ}57'44''$ East 80.00 feet; thence South $46^{\circ}26'40''$ East 70.88 feet; thence South $60^{\circ}00'$ East 110.00 feet; thence South 110.00 feet to a point on the Northerly line of Tamalpais Avenue; thence along said Northerly Avenue line and the Easterly line of Tennessee Valley Road the following course and distances, on a curve to the right with a radius of 800 feet, a central angle of $16^{\circ}40'$ for an arc distance of 232.71 feet; thence on a curve to the left with a radius 260 feet, a central angle of $17^{\circ}57'35''$ for an arc distance of 81.50 feet; thence South $82^{\circ}47'$ West 34.50 feet; thence on a curve to the right with a radius of 20 feet, a central angle of 90° for an arc distance of 31.42 feet; thence North $7^{\circ}13'00''$ West 428.24 feet; thence on a curve to the right with a radius of 364 feet, a central angle of $22^{\circ}33'$ for an arc distance of 143.26 feet to the point of beginning.

PARCEL FOUR:

ALL of that portion of land described in the Deed conveyed to the Sausalito Land & Ferry Co. in Book 181 of Official Records, at Page 415, Marin County Records, lying Northerly and Easterly of the following described agreement line:

BEGINNING at a 2" I.D. iron pipe with brass cap stamped "Agreement Line Cemetery LS 3775" lying on the Southerly line of the Sausalito Cemetery as said line is shown on the 'Section Map No. 1 Sausalito Cemetery', Book 1 of Maps, Page 68, and as said 2" iron pipe is shown on the Survey of the Sausalito Cemetery by Engineering Field Services, San Rafael, California Job #645 in April, 1973; thence North 197.06 feet to an 8" X 8" concrete monument with brass pin as shown on said Section Map No. 1; thence West 17.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence North $20^{\circ}55'$ West 133.00 feet to a 20" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence North $34^{\circ}56'$ West 35.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence North $3^{\circ}37'$ West 151.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence 93.58 feet along a tangent curve to the left having a radius of 70.00 feet, through a central angle of $76^{\circ}36'$ to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775' (the midpoint along said curve also being marked by a 2" I.D. iron pipe

with brass cap stamped 'Agreement Line Cemetery LS 3775'); thence North 80°13' West 83.00 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence South 53°7' West 63.67 feet to a 2" I.D. iron pipe with brass cap stamped 'Agreement Line Cemetery LS 3775'; thence continuing South 53°7' West 71.34 feet to a 2" I.D. iron pipe with a brass cap stamped 'Agreement Line Cemetery LS 3775' set on the Easterly line of Tennessee Valley Road a distance of 30 feet East of the existing centerline of pavement as surveyed by said Engineering Field Services Survey.

PARCEL FIVE:

NON-EXCLUSIVE EASEMENT for access purposes as contained in that certain Easement Agreement made by and between William L. Gamble, et al, and Daphne Fernwood, Inc., a California Corporation, recorded June 7, 1996 as Recorder's Serial No. 96-030209, Marin County Records.

- h. Real property at 10301 and 10305 Big Bend Road, St. Louis, MO more

particularly described as:

A tract of land being Lots 59, 60 and 64 and part of Lots 57, 58, 61, 62, 63 and 65 of EAST KIRKWOOD, a subdivision according to the plat thereof recorded in Plat Book 5 page 32 of the St. Louis City (former County) Records, part of Short Avenue, part of Elliott Avenue and part of Gordon Avenue, in Section 12, Township 44 North, Range 5 East, and Section 7, Township 44 North, Range 6 East, City of Kirkwood, St. Louis County, Missouri, and being more particularly described as:

Beginning at the intersection of the North line of Big Bend Road, 60 feet wide, with the centerline of Elliott Avenue, 60 feet wide, vacated by Ordinance No. 3443 recorded in Book 2212 page 601 of the St. Louis County Records, being the Southeast corner of "Hillside Acres Plat No. 2", a subdivision according to the plat thereof recorded in Plat Book 43 page 33 of the St. Louis County Records; then North 00 degrees 40 minutes 00 seconds East 605.20 feet along said centerline of vacated Elliott Avenue and said East line of "Hillside Acres Plat No. 2" and the East line of "Hillside Acres Plat No. 3", a subdivision according to the plat thereof recorded in Plat Book 47 page 54 of the St. Louis County Records, to the South line of James Avenue, 30 feet wide, being the Northeast corner of Lot 31 of said Hillside Acres Plat No. 3; thence North 75 degrees 45 minutes 58 seconds East 31.04 feet along said South line of James Avenue to the East line of Elliott Avenue, 60 feet wide; thence North 00 degrees 40 minutes 00 seconds East 391.22 feet along said East line of Elliott Avenue to the centerline of Short Avenue, 60 feet wide, as vacated by Ordinance 5369 recorded in Book 6490 page 1987 of the St. Louis County Records; thence North 49 degrees 10 minutes 59 seconds East 79.44 feet along said centerline of vacated Short Avenue to the South line of St. Louis and San Francisco Railroad right-of-way, 100 feet wide; thence North 72 degrees 02

minutes 20 seconds East 1176.84 feet along said South line of St. Louis and San Francisco Railroad right-of-way to the most Western corner of property conveyed to the City of Kirkwood by deed recorded in Book 6760 page 2389 of the St. Louis County Records; thence South 61 degrees 20 minutes 18 seconds East 98.00 feet along the South line of said City of Kirkwood property to the most Southern corner thereof; thence North 29 degrees 44 minutes 19 seconds East 4.00 feet along the East line of said City of Kirkwood property to the Southwest line of Leffingwell Avenue, 60 feet wide; thence South 54 degrees 21 minutes 21 seconds East 469.64 feet along said Southwest line of Leffingwell Avenue to the most Western corner of property conveyed to Michael Fay by deed recorded in Book 441 page 200 of the St. Louis City (former County) Records; thence South 34 degrees 57 minutes 15 seconds East 262.36 feet along the Southwest line of said Fay property to the Western line of Gordon Avenue, 60 feet wide; thence South 68 degrees 48 minutes 28 seconds East 30.00 feet to the centerline of Gordon Avenue; thence South 21 degrees 11 minutes 32 seconds West 335.50 feet along said centerline of Gordon Avenue to a point; thence North 89 degrees 10 minutes 28 seconds West 102.00 feet along the centerline of said Gordon Avenue to a point; thence South 00 degrees 47 minutes 32 seconds West 289.83 feet along the East line of said Lot 57 of East Kirkwood and the West right-of-way of Missouri Interstate Highway 44 to the most Northern corner of property conveyed to the State of Missouri by deed recorded in Book 6291 page 1754 of the St. Louis County Records; thence South 41 degrees 05 minutes 20 seconds West 281.76 feet along the Northwest line of said State of Missouri property to a point; thence South 81 degrees 44 minutes 06 seconds West 301.53 along the North line of said State of Missouri property to the aforesaid North line of Big Bend Road; thence North 89 degrees 29 minutes 24 seconds West 1048.99 feet along said North line of Big Bend road to a point; thence South 75 degrees 31 minutes 59 seconds West 112.98 feet along said North line of Big Bend Road to the point of beginning and containing 46.482 acres according to a survey by Volz, Inc. during November, 1997, and updated during November, 2001.

4. Personal property

- a. 2003 36' boat, "Haus of the C" hull no. THC36282F303;
- b. Square emerald cut diamond engagement ring, diamond weight 7.15, clarity VS1, color I, shape emerald purchased from Jacob and Co. on or about November 1, 2005;
- c. 1 pair of diamonds stud earrings (2=10.62 weight) purchased from Albarre on

or about May 17, 2002;

- d. All funds and investments in the name of Wellstream, Inc., account no. XXXX9360, at Wachovia Bank and any funds or investments recently withdrawn from same;
- e. All funds and investments in the name of Wellstream, Inc., account no. XXXX2573, at Truman Bank and any funds or investments recently withdrawn from same;
- f. All funds and investments in the name of Rhonda L. Cassity, account no. XXXX1581, at Truman Bank and any funds or investments recently withdrawn from same;
- g. All funds and investments in the name of Rhonda L. Cassity, account no. XXXX3353, at Northern Trust and any funds or investments recently withdrawn from same;
- h. All funds and investments in the name of Howard and Joan Wittner, account no. XXXX4793 at Morgan Stanley Smith Barney and any funds or investments recently withdrawn from same;
- i. All funds and investments in the name of Howard and Joan Wittner, account no. XXXX7738, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;
- j. All funds and investments in the name of Howard and Joan Wittner, account no. XXXX5742, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;

- k. All funds and investments in the name of Howard and Joan Wittner, account no. XXXXX2058, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;
- l. All funds and investments in the name of Gregory N. Wittner Irrevocable Trust, account no. XXXX9581, at First National Bank of St. Louis and any funds or investments recently withdrawn from same;
- m. All funds and investments in the name of Howard A. Wittner and Joan R. Wittner, account no. XXXX9858, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- n. All funds and investments in the name of Greg N. Wittner, account no. XXXX4604, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- o. All funds and investments in the name of Gregory Wittner and Jennifer Wittner, account no. XXXX0540, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- p. All funds and investments in the name of Kirk J. Wittner, account no. XXXX4418, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- q. All funds and investments in the name of Kirk J. Wittner, account no. XXXX0531, at Invest Financial Corp. and any funds or investments recently withdrawn from same;
- r. Investment holdings in KBS REIT II in the name of Howard A. Wittner and

- Joan R. Wittner, account no. XXXX2560, with KBS Real Estate Investment Trusts and any funds or investments recently withdrawn from same;
- s. Investment holdings in KBS REIT II in the name of Gregory Wittner Revocable Trust, Account No. XXXX7970, with KBS Real Estate Investment Trusts and any funds or investments recently withdrawn from same;
 - t. Investment holdings in KBS REIT II in the name of Kirk J. Wittner Irrevocable Trust, Account No. XXXX6465, with KBS Real Estate Investment Trusts and any funds or investments recently withdrawn from same;
 - u. Investment in TEC Executive Investor, LLC in the name of Howard and Joan Wittner, as set forth in the subscription agreement executed on or about February 22, 2010 and any funds or investments recently withdrawn from same;
 - v. All funds and investments at Dardenne Creek Partnership, LLP, received on or after September 1, 2010, from Rhonda L. Cassity or Wellstream, Inc. and any funds or investments recently withdrawn from same.
5. Intellectual property:
- a. Trademark registered with United States Patent and Trademark Office, Registration No. 3,141,062, the mark consists of the mathematical/scientific symbol for infinity;
 - b. Trademark registered with United States Patent and Trademark Office, Registration No. 3,244,747, the mark consists of a stylized mark with three interconnected swirls;
 - c. Trademark registered with United States Patent and Trademark Office,

Registration No. 3,220,157, the mark consists of the standard characters
“PLICA”.

- d. “Family Tree Memorials” and “Library of Lives” related technology and
intellectual property.

MONEY JUDGMENT

A money judgment as to defendant RANDALL K. SUTTON, defendant SHARON
NEKOL PROVINCE, defendant JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY,
defendant BRENT DOUGLAS CASSITY, defendant HOWARD A. WITTNER, and defendant
DAVID R. WULF, a sum of money equal to approximately \$600,000,000 or more in United
States Currency, in that such sum in the aggregate is property constituting, or derived from, any
proceeds the defendants obtained, directly or indirectly, as a result of the offenses alleged.

SUBSTITUTE ASSETS

If any of the property described above, as a result of any act or omission
of defendant RANDALL K. SUTTON, defendant SHARON NEKOL PROVINCE, defendant
JAMES DOUGLAS CASSITY, a/k/a DOUG CASSITY, defendant BRENT DOUGLAS
CASSITY, defendant HOWARD A. WITTNER, and defendant DAVID R. WULF:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided
without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

A TRUE BILL.

FOREPERSON

RICHARD G. CALLAHAN
United States Attorney

STEVEN A. MUCHNICK
Assistant United States Attorney

CHARLES S. BIRMINGHAM
Assistant United States Attorney

STEPHEN R. CASEY
Assistant United States Attorney

MICHAEL W. REAP
Assistant United States Attorney

United States District Court

Eastern District of Missouri

UNITED STATES OF AMERICA

v.

JUDGMENT IN A CRIMINAL CASE

DAVID R. WULF
AMENDED

CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*

USM Number: 38227-044

Joseph Hogan and Ethan B. Corlija
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) 1,2,5,6,7,8,9,10,11,12,13,14,15,16,17,19,20 and 22.
after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|----------------------------|---|---|------------------------|
| 18 U.S.C. § 1349 | Conspiracy to Commit Mail Fraud Affecting a Financial Institution, Wire Fraud Affecting a Financial Institution, and Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | One(1) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Two(2) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Five(5) |

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 14, 2013

Date of Imposition of Judgment

GREGORY J. LINHARES, CLERK
 A TRUE COPY OF THE ORIGINAL
 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF MISSOURI
 BY: Elizabeth Bushland
 DEPUTY CLERK

Jean C. Hamilton
 Signature of Judge
 Honorable Jean C. Hamilton
 United States District Judge
 Name & Title of Judge

November 18, 2013 (AMENDED DATE)

Date signed

DAVID R. WULF

Judgment-Page 2 or 8DEFENDANT: ****AMENDED****CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*District: Eastern District of Missouri

ADDITIONAL COUNTS OF CONVICTION

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|--|---|----------------|
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Six(6) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Seven(7) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Eight(8) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Nine(9) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Ten(10) |
| 18 U.S.C. § 1344 | Bank Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Eleven(11) |
| 18 U.S.C. § 1343 | Wire Fraud Affecting a Financial Institution | Prior to 1992 and continuing until on or about May 14, 2008 | Twelve(12) |
| 18 U.S.C. § 1343 | Wire Fraud Affecting a Financial Institution | Prior to 1992 and continuing until on or about May 14, 2008 | Thirteen(13) |
| 18 U.S.C. § 1343 | Wire Fraud Affecting a Financial Institution | Prior to 1992 and continuing until on or about May 14, 2008 | Fourteen(14) |
| 18 U.S.C. § 1343 | Wire Fraud Affecting a Financial Institution | Prior to 1992 and continuing until on or about May 14, 2008 | Fifteen(15) |
| 18 U.S.C. § 1343 | Wire Fraud Affecting a Financial Institution | Prior to 1992 and continuing until on or about May 14, 2008 | Sixteen(16) |
| 18 U.S.C. § 1343 | Wire Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Seventeen(17) |
| 18 U.S.C. § 1343 | Wire Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Nineteen(19) |
| 18 U.S.C. § 1343 | Wire Fraud | Prior to 1992 and continuing until on or about May 14, 2008 | Twenty(20) |
| 18 U.S.C. § 1343 | Wire Fraud Affecting a Financial Institution | Prior to 1992 and continuing until on or about May 14, 2008 | Twenty-two(22) |

DAVID R. WULF
DEFENDANT: ****AMENDED****
CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*
District: Eastern District of Missouri

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months.

This term consists of a term of 120 months on each of counts 1, 2, 5 through 17, 19, 20, and 22, all such terms to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:

It is recommended that the defendant participate in the Financial Responsibility Program while incarcerated, if that is consistent with Bureau of Prisons policies. It is further recommended the defendant be placed in a minimum security correctional facility located in either Marion, Illinois or Pekin, Illinois, if that is consistent with Bureau of Prisons policies.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m./p.m on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal Designation requested to be extended past the Holidays after Jan. 1, 2014.

as notified by the Probation or Pretrial Services Office

MARSHALS RETURN MADE ON SEPARATE PAGE

DAVID R. WULF
DEFENDANT: ****AMENDED****
CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*
District: Eastern District of Missouri

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five years.

This term consists of a term of five years on each of counts 1, 2, 5-16, and 22, and three years on each of counts 17, 19, and 20, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DAVID R. WULF

DEFENDANT: ****AMENDED****

CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*

District: Eastern District of Missouri

SPECIAL CONDITIONS OF SUPERVISION

While on supervision, the defendant shall comply with the standard conditions that have been adopted by this Court and shall comply with the following additional conditions. If it is determined there are costs associated with any services provided, the defendant shall pay those costs based on a co-payment fee established by the probation office.

1. The defendant shall participate in a cognitive behavioral treatment program as directed by the probation office.
2. The defendant shall provide the probation office and the Financial Litigation Unit (FLU) of the U.S. Attorney's Office access to any requested financial information. The defendant is advised that the probation office may share financial information with FLU.
3. The defendant shall be prohibited from incurring new credit charges or opening additional lines of credit without the approval of the probation office so long as there is a balance on the Court-imposed financial obligation.
4. The defendant shall apply all monies received from any anticipated and/or unexpected financial gains, including any income tax refunds, inheritances, or judgments, to the outstanding Court-ordered financial obligation. The defendant shall immediately notify the probation office of the receipt of any indicated monies.
5. The defendant shall pay the restitution as previously ordered by the Court.
6. The defendant shall submit his person, residence, office, or vehicle to a search conducted by the probation office based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
7. The defendant shall not create, operate, manage or participate in the creation, operation or management of any business entity, including a family business without the written permission of the probation office.
8. The defendant shall not be self-employed or be employed as a "consultant" without the written permission of the probation office.
9. Based on the low risk the defendant poses for future substance abuse, the COURT SUSPENDS the mandatory statutory drug testing requirements.

DAVID R. WULF
 DEFENDANT: ****AMENDED****
 CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*
 District: Eastern District of Missouri

Judgment-Page 6 of 8

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on sheet 6

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|---------|-------------------|-----------------------------|-------------------------|
| Totals: | <u>\$1,800.00</u> | <u> </u> | <u>\$435,515,234.00</u> |

The determination of restitution is deferred until _____ . *An Amended Judgment in a Criminal Case (AO 245C)*
 will be entered after such a determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|---|-----------------------------|----------------------------|-------------------------------|
| Jo Ann Howard and Associates, P.C. Attn: Special Deputy Receiver P.O. Box 160050 Austin, Texas 78716 | | \$435,515,234.00 | |
| Totals: | <u> </u> | <u>\$435,515,234.00</u> | |

Restitution amount ordered pursuant to plea agreement _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the. fine restitution.

The interest requirement for the fine restitution is modified as follows:

This obligation is joint and several with Brent Douglas Cassity, James Douglas Cassity, Sharon Nekol Province, Randall Sutton, and Howard Wittner in this case, meaning that no further payments shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injuries. Payments of restitution shall be made to the Clerk of the Court for transfer to the victims. The interest requirement for the restitution is waived. THE COURT FINDS that the defendant does not have the ability to pay a fine.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DAVID R. WULF
DEFENDANT: ****AMENDED****
CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*
District: Eastern District of Missouri

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

IT IS FURTHER ORDERED that pursuant to 18 U.S.C. § 3663A, for each of counts 1, 2, 5 through 16, 17, 19, 20, and 22, the defendant shall make restitution in the total amount of \$435,515,234.

This obligation is joint and several with Brent Douglas Cassity, James Douglas Cassity, Sharon Nekol Province, Randall Sutton, and Howard Witner in this case, meaning that no further payments shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injuries. Payments of restitution shall be made to the Clerk of the Court for transfer to the victims. The interest requirement for the restitution is waived.

All criminal monetary penalties are due in full immediately. The defendant shall pay all criminal monetary penalties through the Clerk of Court. If the defendant cannot pay in full immediately, then the defendant shall make payments under the following minimum payment schedule: the defendant shall make a lump sum payment of \$100,000 within 30 days of sentencing; during incarceration, it is recommended that the defendant pay criminal monetary penalties through an installment plan in accordance with the Bureau of Prisons' Inmate Financial Responsibility Program at the rate of 50% of the funds available to the defendant. If the defendant owes any criminal monetary penalties when released from incarceration, then the defendant shall make payments in monthly installments of at least \$500, or no less than 10% of the defendant's gross earnings, whichever is greater, with payments to commence no later than 30 days after release from imprisonment. Until all criminal monetary penalties are paid in full, the defendant shall notify the Court and this district's United States Attorney's Office, Financial Litigation Unit, of any material changes in the defendant's economic circumstances that might affect the defendant's ability to pay criminal monetary penalties. The defendant shall notify this district's United States Attorney's Office, Financial Litigation Unit, of any change of mailing or residence address that occurs while any portion of the criminal monetary penalties remains unpaid.

It is recommended that the defendant participate in the Financial Responsibility Program while incarcerated, if that is consistent with Bureau of Prisons policies.

DAVID R. WULF
DEFENDANT: ****AMENDED****
CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*
District: Eastern District of Missouri

Judgment-Page 8 or 8

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$435,517,034.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, or E below; or F below; or
- B Payment to begin immediately (may be combined with C, D, or E below; or F below; or
- C Payment in equal _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after Release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

IT IS FURTHER ORDERED that the defendant shall pay to the United States a special assessment of \$100 on each of counts 1, 2, 5 through 17, 19, 20, and 22, for a total of \$1,800, which shall be due immediately. Restitution ordered in the amount of \$435,515,234 see pgs. 6&7.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are made to the clerk of the court.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several**
Defendant and Co-defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

This obligation is joint and several with Brent Douglas Cassity, James Douglas Cassity, Sharon Nekol Province, Randall Sutton, and Howard Wittner in this case, meaning that no further payments shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injuries. Payments of restitution shall be made to the Clerk of the Court for transfer to the victims. The interest requirement for the restitution is waived.

- The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):

- The defendant shall forfeit the defendant's interest in the following property to the United States:

Under 21 U.S.C. § 853, the defendant has forfeited all of his right, title and interest in the property previously identified in the Preliminary Order of Forfeiture granted on November 14, 2013.

Payments shall be applied in the following order: (1) assessment; (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



DAVID R. WULF
DEFENDANT: ****AMENDED****
CASE NUMBER: 4:09CR00509-JCH-6*AMENDED*
USM Number: 38227-044

UNITED STATES MARSHAL
RETURN OF JUDGMENT IN A CRIMINAL CASE

I have executed this judgment as follows:

The Defendant was delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

- The Defendant was released on _____ to _____ Probation
- The Defendant was released on _____ to _____ Supervised Release
- and a Fine of _____ and Restitution in the amount of _____

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

I certify and Return that on _____, I took custody of _____
at _____ and delivered same to _____
on _____ F.F.T. _____

U.S. MARSHAL E/MO

By DUSM _____

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74207 / February 4, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4020 / February 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16374

In the Matter of

DAVID R. WULF,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934, SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against David R. Wulf ("Respondent" or "Wulf").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Wulf is 62 years old. From September 1999 through August 2013, Wulf was a registered representative with Moloney Securities Company, Inc. ("Moloney"), a broker-dealer and an investment adviser registered with the Commission. From February 1986 through August 2013, Wulf was also the Chief Executive Officer and an advisory representative of Wulf Bates & Murphy, Inc. ("Wulf Bates"), which was an investment adviser formerly registered with the Commission and the state of Missouri. Between June 1988 and August 1999, Wulf was a registered representative with Birchtree Financial Services, Inc., which was a broker-dealer previously registered with the Commission. Between February 1986 through June 1988, Wulf was a registered representative with American Capital Equities, Inc., which was a broker-dealer previously registered with the Commission. From December 1982 through February 1986, Wulf was a registered representative with Shearson Lehman Brothers Inc., which was a broker-dealer and investment adviser registered with the Commission. From April 1979 through December 1982, Wulf was a registered representative with Merrill Lynch, Pierce, Fenner & Smith Incorporated, which was a broker-dealer and investment adviser registered with the Commission. Finally, from January 1978 through November 1978, Wulf was a registered representative with Cigna Securities Inc., which was a broker-dealer registered with the Commission.

Thus, Wulf was associated with broker-dealers from June 1978 through August 2013. Likewise, Wulf was associated with investment advisers from February 1986 through August 2013. During the relevant time period, Wulf was a Missouri resident. On February 4, 2014, Wulf was committed to the custody of the US Bureau of Prisons in Terre Haute, Indiana.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On August 22, 2013, a federal jury found Wulf guilty of eighteen counts of mail fraud, wire fraud, conspiracy to commit mail fraud affecting a financial institution, and conspiracy to commit wire fraud affecting a financial institution in violation of 18 U.S.C. §§ 1343, 1344, and 1349 before the United States District Court for the Eastern District of Missouri in U.S. v. Sutton et al., Case No. 4:09-cr-00509-JCH-6.

2. Wulf's conviction arose from his role as an investment adviser for National Prearranged Services, Inc. ("National Prearranged") through Wulf Bates. National Prearranged was in the business of selling contracts for prearranged funeral services. As National Prearranged's designated investment adviser, Wulf established trusts for these prearranged funeral services and maintained certain authority over the assets maintained in these trusts. The trustees were financial institutions and/or insurance companies.

3. The indictment against Wulf alleged, *inter alia*, that from approximately some time before 1992 and continuing until on or about May 14, 2008, Wulf conspired with his co-defendants and others regarding a scheme to defraud purchasers and trustees of National Prearranged's contracts and trusts. Moreover, Wulf was Chief Executive Officer of a registered investment adviser and associated with a dually registered broker-dealer and investment adviser

during the period of his misconduct. The underlying conduct that gave rise to Wulf's conviction includes, but is not limited to: (i) Wulf's failure to serve as an independent investment adviser for National Prearranged as mandated under state law and a binding consent decree; and (ii) Wulf enabling National Prearranged, and related entities and individuals, to assume the full power to administer, manage, control, remove, and/or use the assets in the preneed funeral trusts established by National Prearranged for their own benefit. Consequently, Wulf knowingly allowed nearly \$600,000,000 of the money invested by purchasers to be misdirected for the use by National Prearranged, and related entities and individuals, for their own benefit. The indictment further alleged that Wulf and his co-defendants committed various federal offenses incidental to the misconduct described above including, but not limited to, conspiracy, mail fraud and wire fraud.

4. On November 18, 2013, the Court entered the judgment against Wulf based on the jury verdict. The Court sentenced Wulf to a prison term of 120 months followed by five years of supervised release. The Court further ordered Wulf to make restitution in the amount of \$435,515,234.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

- A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;
- B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and
- C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act; and
- D. Whether, pursuant to Section 15(b) of the Exchange Act, it is appropriate and in the public interest to bar Wulf from participating in any offering of penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

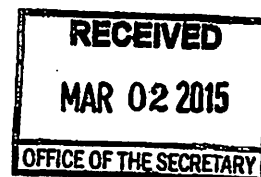
David R. Wulf
[REDACTED]
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Received

MAR 02 2015

Office of Administrative
Law Judges

Jonathan Polish, Esq.
Chicago Regional Office
Securities and Exchange Commission
175 W. Jackson Boulevard, Floor 900
Chicago, IL 60604



Dear Mr. Polish:

Regarding file #3-16374, I am in receipt of the Securities and Exchange Commission's "Order Instituting Administrative Proceedings" dated February 4, 2015 and its corresponding Notice of Hearing. This letter comprises my required answer pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. 201.202.

First and foremost, I categorically deny any and all charges that arose from my criminal trial. As I believe I was woefully misrepresented by my defense attorney, a pro se motion under 28 USC 2255 has been filed in Federal Court; Eastern Missouri District. A copy of that motion is included in this mailing for your review. As of this writing, the government has requested two extensions to respond citing: "at least 20 discrete claims of either prosecutorial misconduct or ineffective assistance of counsel.

Because of these events, I am requesting that any commission hearings be stayed pending resolution or adjudication of my motion. Additionally, in the related "sister" civil trial (4:09CV01252 ERW), I have been "dismissed with prejudice" from the case. The plaintiffs and the presiding judge have formally recognized my non-involvement in any bank fraud, wire fraud or conspiracy. A copy of that dismissal is enclosed herewith also for your perusal.

Finally, as far as my appearance at any hearings, I am currently incarcerated in a Federal Camp in Terre Haute, Indiana. Due to my present circumstance, I am unable to personally attend.

I will keep you notified of any developments. Feel free to write to me as necessary or required.

Sincerely,

David R. Wulf.

CC: Honorable Brenda P. Murray
Ana D. Petrovic, Esq.

1 APPEARANCES:
 2
 3 On behalf of the Securities and Exchange Commission:
 4 ANA PETROVIC, ESQ.
 5 JONATHAN S. POLISH, ESQ.
 6 Division of Enforcement
 7 175 West Jackson Blvd., Suite 900
 8 Chicago, IL 60604
 9 (312) 353-0831
 10
 11 Also Present:
 12 Lynette Nichols, SEC Paralegal
 13 David R. Wulf, Respondent
 14 Karen Hart
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1 MS. PETROVIC: It is our understanding that
 2 it was served on February 9th, 2015. We also served a
 3 courtesy copy which we received confirmation which was
 4 served on February 10, 2015.
 5 JUDGE GRIMES: All right. Do you think you
 6 could submit a declaration or some sort of evidence of
 7 that for the record for our file here?
 8 MS. PETROVIC: Yes.
 9 JUDGE GRIMES: Okay, that would be great.
 10 And I received an Answer to the Order Instituting
 11 Proceedings on March 2nd, I think. Has the
 12 investigative file been made available to Mr. Wulf?
 13 MS. PETROVIC: Yes, Your Honor. The
 14 investigative file was also produced the same day,
 15 February 10th, 2015.
 16 JUDGE GRIMES: Mr. Wulf, have you received
 17 that?
 18 MR. WULF: I believe I have. I'm not sure
 19 that that's what I received from the standpoint of the
 20 exact name of it, but I received quite a bit from the
 21 SEC.
 22 JUDGE GRIMES: All right.
 23 MR. WULF: Is that the one that directs the
 24 charges; in other words, that says about the conviction
 25 on the felony?

1 PROCEEDINGS
 2 JUDGE GRIMES: Today is March 10, 2015, and
 3 we're holding a telephonic pre-hearing conference in
 4 the matter of David R. Wulf, Administrative Proceeding
 5 File No. 3-16374. My name is James Grimes, and I am
 6 the Administrative Law Judge assigned to preside in
 7 this matter.
 8 Could I have appearances of Counsel for the
 9 Division of Enforcement?
 10 MS. PETROVIC: This is Ana Petrovic and
 11 Jonathan Polish on behalf of the Commission.
 12 JUDGE GRIMES: All right, thank you very
 13 much. And, Mr. Wulf, am I correct that you're not
 14 represented by Counsel at this time?
 15 MR. WULF: Yes, sir, that is correct.
 16 JUDGE GRIMES: All right, very good. Well,
 17 what we're going to do is talk about how your case is
 18 going to be handled, and if you don't follow anything
 19 that's being said, please speak up and ask, I want to
 20 make sure that you understand what's going on. Is that
 21 clear enough for you?
 22 MR. WULF: It is indeed, yes, sir.
 23 JUDGE GRIMES: Very good. I guess I'll
 24 direct this question to the Division. Could you tell
 25 me when the Order Instituting Proceedings was served?

1 JUDGE GRIMES: Well, that would be the Order
 2 Instituting Proceedings. It's a three or four page
 3 document that's called Order Instituting Administrative
 4 Proceedings that, yes, lists the charges, but the
 5 investigative file -- well, I'll let the Division
 6 explain what's in the investigative file.
 7 MR. WULF: Sure.
 8 MS. PETROVIC: Yes, Your Honor. We produced
 9 the investigative file along with a courtesy copy of
 10 the Order Instituting Proceedings. The investigative
 11 file was produced to both Mr. Wulf via certified mail,
 12 and we also served an additional copy to his case
 13 manager, Chris Perdue, as well.
 14 MR. POLISH: Your Honor, this is Jonathan
 15 Polish on behalf of the Division. Investigative file
 16 in this case, Your Honor, is a little bit of a misnomer
 17 because really this matter simply relates to Mr. Wulf's
 18 conviction, so there wasn't much by way of an
 19 investigation except for verification of the fact of
 20 the conviction.
 21 JUDGE GRIMES: Got you.
 22 MS. PETROVIC: So it's a slim file, but
 23 everything we have in that regard Mr. Wulf now has, and
 24 I suspect it wasn't anything he didn't already have.
 25 JUDGE GRIMES: Okay. Well, Mr. Wulf, if you

1 haven't already done so, and I don't know how difficult
2 this would be for you, but I recommend you take a look
3 of the Rules of Practice for the Commission. They're
4 on the Commission's website. Obviously I don't know
5 how difficult it would be for you to access it.

6 MR. WULF: It's not possible.

7 MR. POLISH: Your Honor, if you want, we
8 would be happy to supply Mr. Wulf with a written copy
9 of the Rules of Practice.

10 JUDGE GRIMES: I would very much appreciate
11 that, that would be great. And, Mr. Wulf, when you
12 receive that, it would be a good idea for you to take a
13 look at the Rules of Practice because those are the
14 rules that the Division of Enforcement is going to
15 follow, so you'll need to follow them too. I
16 appreciate the Division being willing to send those to
17 Mr. Wulf.

18 MR. WULF: As do I, thank you.

19 JUDGE GRIMES: The rules are going to tell
20 you how we're going to do things, the form papers have
21 to be in and the way you can submit them to the
22 secretary's office, so if you submit a document to me,
23 you need to submit a copy to the Division of
24 Enforcement or vice versa, so that's one of the most
25 important things is whatever you send in, you should

1 send it to both of us.

2 MR. WULF: I did send in a substantial amount
3 of data. I don't know if we're at the point now where
4 you want to hear about that or not.

5 JUDGE GRIMES: Well, you can go ahead. If
6 you have any questions at any point along the
7 proceedings, go ahead and ask, or if there is something
8 you want to say, go ahead.

9 MR. WULF: Yes, sir. What we're doing right
10 now is fighting the conviction for a variety of
11 reasons. There is a 2255 on file we filed on November
12 14, 2014. The judge responded the next day. It
13 basically makes charges that the prosecution withheld
14 data, withheld exculpatory evidence. It also makes
15 charges that there was ineffective counsel. And then
16 since that filing, we have all kinds of new exculpatory
17 information.

18 The reason that --

19 JUDGE GRIMES: Hold on, Mr. Wulf, let me just
20 cut you off and maybe give you some background
21 information you may not know. I don't sit and review
22 the district court's decision in your case. You
23 certainly can take an appeal to the Court of Appeals or
24 pursue further remedies you think are appropriate, but
25 you cannot attack a district court's judgment before

1 me. I have to take the district court's judgment as a
2 given as it currently stands.

3 That doesn't mean that you cannot attack in
4 another forum, another appropriate forum like the Court
5 of Appeals, but you just wouldn't do so before me.

6 MR. WULF: Yes, sir.

7 JUDGE GRIMES: And I certainly understand
8 that you are attempting to do that now and that's fine,
9 but since I take it as a given, it really doesn't make
10 a difference for our purposes in this proceeding
11 whether or not you're doing that. Does that make
12 sense?

13 MR. WULF: It does make sense. And what I
14 ask in the letter that I wrote back -- because I did
15 respond to the letter -- and I just ask that it be
16 delayed until we get a final answer on our motion,
17 that's all I ask.

18 JUDGE GRIMES: And I understand that.
19 Unfortunately the way we proceed here is I have my own
20 deadline that I have to follow which is I have to issue
21 a decision within 120 days -- I'm sorry, 210 days of
22 service in your case of the charge. And I understand
23 you're pursuing other remedies, and if you are
24 successful, that would certainly be something I would
25 want to know, or if I were to issue a decision adverse

1 to you, then certainly that would be something you
2 would want to present to the Commission if you take an
3 appeal of that decision, if there is an adverse
4 decision.

5 Does that make sense to you, Mr. Wulf?

6 MR. WULF: I think it does, Your Honor. The
7 way I understand what you just said is you have a
8 certain number of days in which to respond from the
9 date that I was served, which was February 9th, 2015,
10 perhaps 210 days, and whether or not we have filed with
11 the district court is not the deciding factor for your
12 decision. If you do make a decision and we would have
13 a favorable response, for example, let's say I would be
14 exonerated, which is what we're shooting for, then I
15 could come back to the SEC. That's my understanding of
16 what you just said. Is that correct?

17 JUDGE GRIMES: That sounds about right. Does
18 the Commission have any comment on the exchange Mr.
19 Wulf and I just had?

20 MR. POLISH: No, that all sounds right to us.

21 JUDGE GRIMES: All right. Well, in that
22 case, what I propose to do, Mr. Wulf, this is what we
23 would call a follow-on proceeding in that it follows
24 either a conviction or a civil judgment that could lead
25 to a proceeding before the Commission; and so what I

1 propose to do is to set a schedule for filing motions
2 for summary disposition because the Commission has said
3 that cases of this type are appropriate for decision by
4 summary disposition.

5 And so what I would propose is that the
6 Division file a motion for summary disposition four
7 weeks from today which would be Tuesday, April 7th, and
8 then, Mr. Wulf, you would then have four weeks after
9 that to file any response to the Division's motion.

10 And if Mr. Wulf does file an opposition, the reply
11 would be due two weeks later which would be May 19th.

12 And, Mr. Wulf, you would also, if you wish,
13 you don't have to, would have the opportunity to file a
14 motion of your own for summary disposition following
15 the same schedule. If you were to file one, then it
16 would be due April 7th and the opposition would be due
17 May 5th, but you do not have to.

18 And I'll say this to the Division, if you
19 file your motion for summary disposition, you should
20 give me more than simply the indictment and the
21 judgment. If there is a separate sentencing
22 memorandum, a sentencing hearing transcript,
23 stipulations, a memorandum opinion, jury instructions
24 relevant to the underlying criminal proceeding, those
25 would be things that would be appropriate for you to

1 much exculpatory information is because after the
2 criminal trial was over, this case came into play in a
3 very large way, and they've spent a large deal of money
4 and time and effort interviewing people that knew what
5 was going on, and essentially that case was decided
6 yesterday in Texas' favor.

7 I have e-mails from the attorneys. The two
8 key attorneys are Riley Posner. They're thanking me
9 for my help, and they make all kinds of positive
10 comments, and I think we're going to try to get an
11 affidavit from them. I know my daughter talked to
12 them, and after extensive work and files, my daughter
13 asked Larry Posner, the main attorney with Texas,
14 whether he felt that I was -- had made a criminal
15 mistake, and his answer was no.

16 He did say that "your father was foolish, and
17 that's different than being a criminal." So I'm hoping
18 that he's going to put that into an affidavit, and I
19 think he will, but that came out yesterday, and there
20 has been a lot of -- and, by the way, I was dismissed
21 from the civil suit with prejudice, so all good things.

22 In other words, I think you'll see from my
23 record, and, you know, I was with the SEC for a very
24 long time, and we always did everything by the rules
25 and we still do. I do here at camp, I do everywhere.

1 file in support of your motion.

2 MR. WULF: May I --

3 JUDGE GRIMES: Certainly, go ahead, Mr. Wulf.

4 MR. WULF: I have a couple other things, if I
5 may.

6 JUDGE GRIMES: You may.

7 MR. WULF: I was very helpful in -- there is
8 a very large civil case, I would call it a sister case
9 of this criminal case, and it was decided yesterday,
10 the verdict was out, and I helped the State of Texas
11 against the banking industry. And it was a very large,
12 very long, very expensive suit which I spent a lot of
13 time helping the State of Texas because I know what
14 went on, and my position was directly opposed to the
15 position of the banks.

16 And the decision that came out yesterday from
17 Judge Weber's courthouse in the Eighth District Court
18 was that Texas won 100 percent. They got a \$600
19 million judgment against the bank, they got \$100
20 million against the company that I worked -- that was
21 my customer, and they got a conviction of a key
22 witness, government witness, against me, and all those
23 are good things for my motion with the government, and
24 we're going to be bringing them up.

25 The reason that I have so much data and so

1 But what I'm saying is I think what the record of my
2 SEC would show that I always have tried to follow
3 the rules, and in this case, I want to do the same
4 thing.

5 So if it's something along the line of
6 banning me for life, it looks terrible from a
7 reputational standpoint and a legacy standpoint for me,
8 and that's really the reason that it's important to me,
9 but I want to help and I want to do whatever is the
10 best for the SEC and Dave Wulf.

11 JUDGE GRIMES: Well, Mr. Wulf, I appreciate
12 that. I'm pretty sure the Division of Enforcement will
13 look out for the interests of --

14 MR. WULF: I know that. I just want to let
15 you know how I feel about it.

16 JUDGE GRIMES: Well, I appreciate that. I
17 just want to make sure you look out for your best
18 interest and present the case in whichever way you
19 think is best, and I appreciate hearing your comments.

20 Are there any other matters you would like to
21 address with us this morning?

22 MR. WULF: Unless there is questions, no,
23 sir, Your Honor, nothing that I can think of.

24 JUDGE GRIMES: All right. What I'm going to
25 do is I will issue a written order including these

1 dates that I've discussed.
2 MR. WULF: That will be helpful.
3 JUDGE GRIMES: Hopefully you're clear on
4 what's going on. And I'll ask the Division, does the
5 Division have any other matters that it wishes to
6 address this morning?
7 MS. PETROVIC: We do not.
8 JUDGE GRIMES: All right. Well, I'll wish
9 you luck, Mr. Wulf, and a good day to the parties, and
10 I thank you for your time.
11 MR. WULF: And I thank you all for your time.
12 MR. POLISH: Thank you very much, Your Honor.
13 (Whereupon, at 10:30 a.m., the pre-hearing
14 conference was concluded.)
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1 PROOFREADER'S CERTIFICATE
2
3 In the Matter of: DAVID R. WULF
4 ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE
5 File Number: 3-16374
6 Date: Tuesday, March 10, 2015
7 Location: Chicago, IL 60604
8 This is to certify that I, Donna S. Raya,
9 (the undersigned), do hereby swear and affirm that the
10 attached proceedings before the U.S. Securities and
11 Exchange Commission were held according to the record
12 and that this is the original, complete, true and
13 accurate transcript that has been compared to the
14 reporting or recording accomplished at the hearing.
15
16 _____
17 (Proofreader's Name) (Date)
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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2396/March 10, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16374

In the Matter of

DAVID R. WULF

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 4, 2015, the Securities and Exchange Commission issued an Order Instituting Administrative Proceedings against David R. Wulf, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

A telephonic prehearing conference was held today and attended by the Division of Enforcement and Mr. Wulf. The parties agreed to the following briefing schedule for motions for summary disposition:

April 7, 2015: Motions for summary disposition are due;
May 5, 2015: Oppositions are due; and
May 19, 2015: Replies, if any, are due.

SO ORDERED.

James E. Grimes
Administrative Law Judge



Investment Adviser Representative Public Disclosure Report

DAVID RICHARD WULF

CRD# 850098

Report #15346-94632, data current as of Tuesday, February 03, 2015.

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IAPD Information about Investment Adviser Representatives

IAPD offers information on all current-and many former-Investment Adviser Representatives. Investors are strongly encouraged to use IAPD to check the background of Investment Adviser Representatives before deciding to conduct, or continue to conduct, business with them.

- **What is included in a IAPD report?**

IAPD reports for individual Investment Adviser Representatives include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards.

It is important to note that the information contained in an IAPD report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the Investment Adviser Representative, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

The information contained in IAPD comes from the Investment Adviser Registration Depository (IARD) and FINRA's Central Registration Depository, or CRD®, (see more on CRD below) and is a combination of:

- information the states require Investment Adviser Representatives and firms to submit as part of the registration and licensing process, and
- information that state regulators report regarding disciplinary actions or allegations against Investment Adviser Representatives.

- **How current is this information?**

Generally, Investment Adviser Representatives are required to update their professional and disciplinary information in IARD within 30 days.

- **Need help interpreting this report?**

For help understanding how to read this report, please consult NASAA's IAPD Tips page <http://www.nasaa.org/IAPD/IARReports.cfm>.

- **What if I want to check the background of an Individual Broker or Brokerage firm?**

To check the background of an Individual Broker or Brokerage firm, you can search for the firm or individual in IAPD. If your search is successful, click on the link provided to view the available licensing and registration information in FINRA's BrokerCheck website.

- **Are there other resources I can use to check the background of investment professionals?**

It is recommended that you learn as much as possible about an individual Investment Adviser Representative or Investment Adviser firm before deciding to work with them. Your state securities regulator can help you research individuals and certain firms doing business in your state. The contact information for state securities regulators can be found on the website of the North American Securities Administrators Association <http://www.nasaa.org>.



Investment Adviser Representative Report Summary

DAVID RICHARD WULF (CRD# 850098)

The report summary provides an overview of the Investment Adviser Representative's professional background and conduct. The information contained in this report has been provided by the Investment Adviser Representative, investment adviser and/or securities firms, and/or securities regulators as part of the states' investment adviser registration and licensing process. The information contained in this report was last updated by the Investment Adviser Representative, a previous employing firm, or a securities regulator on 05/28/2014.

CURRENT EMPLOYERS

This individual is not currently registered as an Investment Adviser Representative.

QUALIFICATIONS

This individual is not currently registered as an Investment Adviser Representative.

Note: Not all jurisdictions require IAR registration or may have an exemption from registration. Additional information including this individual's qualification examinations and professional designations is available in the Detailed Report.

REGISTRATION HISTORY

This Investment Adviser Representative was previously registered with the following Investment Adviser firms:

| FIRM (IARD#) - LOCATION | REGISTRATION DATES |
|---|-------------------------|
| WULF BATES & MURPHY INC (IARD# 107678) - ST. LOUIS, MO | 08/21/2012 - 08/23/2013 |
| MOLONEY SECURITIES CO., INC. (IARD# 38535) - MANCHESTER, MO | 08/20/2012 - 08/23/2013 |
| WULF BATES & MURPHY INC (IARD# 107678) - ST. LOUIS, MO | 11/02/2000 - 12/31/2008 |

For additional registration and employment history details as reported by the individual, refer to the Registration and Employment History section of the Detailed Report.

DISCLOSURE INFORMATION

Disclosure events include certain criminal charges and convictions, formal investigations and disciplinary actions initiated by regulators, customer disputes and arbitrations, and financial disclosures such as bankruptcies and unpaid judgments or liens.

Are there events disclosed about this Investment Adviser Representative? **Yes**

The following types of events are disclosed about this Investment Adviser Representative:

| Type | Count |
|------------------|-------|
| Criminal | 1 |
| Civil Event | 3 |
| Customer Dispute | 1 |



Investment Adviser Representative Qualifications

REGISTRATIONS

This section provides the states and U.S. territories in which the Investment Adviser Representative is currently registered and licensed, the category of each registration, and the date on which the registration became effective. This section also provides, for each firm with which the Investment Adviser Representative is currently employed, the address of each location where the Investment Adviser Representative works.

This individual is not currently registered as an Investment Adviser Representative.



Investment Adviser Representative Qualifications

PASSED INDUSTRY EXAMS

This section includes all required state securities exams that the Investment Adviser Representative has passed. Under limited circumstances, an Investment Adviser Representative may attain registration after receiving an exam waiver based on a combination of exams the Investment Adviser Representative has passed and qualifying work experience. Likewise, a new exam requirement may be grandfathered based on an Investment Adviser Representative's specific qualifying work experience. Exam waivers and grandfathering are not included below.

This individual has passed the following exams:

| Exam | Category | Date |
|--|-----------|------------|
| Uniform Securities Agent State Law Examination (S63) | Series 63 | 05/12/1983 |
| Uniform Investment Adviser Law Examination (S65) | Series 65 | 08/18/2012 |

PROFESSIONAL DESIGNATIONS

This section details that the Investment Adviser Representative has reported 0 professional designation(s).

No information reported.



Investment Adviser Representative Registration and Employment History

PREVIOUSLY REGISTERED WITH THE FOLLOWING INVESTMENT ADVISER FIRMS

This section indicates that state registration records show this Investment Adviser Representative previously held registrations with the following firms:

| Registration Dates | Firm Name | IARD# | Branch Location |
|-------------------------|------------------------------|--------|-----------------|
| 08/21/2012 - 08/23/2013 | WULF BATES & MURPHY INC | 107678 | ST. LOUIS, MO |
| 08/20/2012 - 08/23/2013 | MOLONEY SECURITIES CO., INC. | 38535 | MANCHESTER, MO |
| 11/02/2000 - 12/31/2008 | WULF BATES & MURPHY INC | 107678 | ST. LOUIS, MO |
| 11/30/1998 - 12/31/2002 | WULF BATES & MURPHY INC | 107678 | CLAYTON, MO |

EMPLOYMENT HISTORY

Below is the Investment Adviser Representative's employment history for up to the last 10 years.

Please note that the Investment Adviser Representative is required to provide this information only while registered and the information is not updated after the Investment Adviser Representative ceases to be registered, with a state regulator. Therefore, an employment end date of "Present" may not reflect the Investment Adviser Representative's current employment status.

| Employment Dates | Employer Name | Employer Location |
|-------------------|------------------------------|-------------------|
| 08/1999 - Present | MOLONEY SECURITIES CO., INC. | ST. LOUIS, MO |
| 02/1986 - Present | WULF, BATES & MURPHY | ST. LOUIS, MO |

OTHER BUSINESS ACTIVITIES

This section includes information, if any, as provided by the Investment Adviser Representative regarding other business activities the Investment Adviser Representative is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent, or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious, or fraternal and is recognized as tax exempt.

MOLONEY SECURITIES CO., INC. INVESTMENT RELATED REGISTERED BROKER/DEALER - MEMBER FINRA/SIPC 13537 BARRETT PARKWAY DR SUITE 345 ST. LOUIS, MO 63021 UNITED STATES DAVID R. WULF IS A REGISTERED REPRESENTATIVE WITH MOLONEY SECURITIES CO., INC. (1999-PRESENT). HE CONDUCTS AND EXECUTES INVESTMENT RELATED TRANSACTIONS (IE; BUYING/SELLING STOCKS,BONDS,LOAD MUTUAL FUNDS AND OPTIONS)ON A FULLY DISCLOSED BASIS THROUGH MOLONEY SECURITIES. TYPICALLY THESE TRANSACTIONS WILL INVOLVE A COMMISSION OR A MARK-UP/MARK-DOWN. APPROXIMATELY 120 HOURS/MONTH IS SPENT CONDUCTING BUSINESS THROUGH MOLONEY. THIS IS ON A DAILY BASIS ON BEHALF OF IA ACCOUNTS AS WELL AS NON-IA ACCOUNTS

VERITAS HOLDINGS, LLC IS A SHELL CORPORATION THAT IS CURRENTLY DORMANT AND CONDUCTING NO BUSINESS ACTIVITIES. 13537 BARRETT PARKWAY DR SUITE 345 ST. LOUIS, MO 63021 DAVID R. WULF IS A CO-OWNER AND GENERAL PARTNER OF VERITAS HOLDINGS



Investment Adviser Representative Disclosure Summary

Disclosure Information

What you should know about reported disclosure events:

(1) Certain thresholds must be met before an event is reported to IARD, for example:

- A law enforcement agency must file formal charges before an Investment Adviser Representative is required to report a particular criminal event.;
- A customer dispute must involve allegations that an Investment Adviser Representative engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least \$5,000.

(2) Disclosure events in IAPD reports come from different sources:

As mentioned in the "About IAPD" section on page 1 of this report, information contained in IAPD comes from Investment Adviser Representatives, firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the IAPD report. The different versions will be separated by a solid line with the reporting source labeled.

(3) There are different statuses and dispositions for disclosure events:

- A disclosure event may have a status of *pending*, *on appeal*, or *final*.
 - A "pending" disclosure event involves allegations that have not been proven or formally adjudicated.
 - A disclosure event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
 - A "final" disclosure event has been concluded and its resolution is not subject to change.
- A final disclosure event generally has a disposition of *adjudicated*, *settled* or *otherwise resolved*.
 - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
 - A "settled" matter generally represents a disposition wherein the parties involved in a dispute reach an agreement to resolve the matter. Please note that Investment Adviser Representatives and firms may choose to settle customer disputes or regulatory matters for business or other reasons.
 - A "resolved" matter usually includes a disposition wherein no payment is made to the customer or there is no finding of wrongdoing on the part of the Investment Adviser Representative. Such matters generally involve customer disputes.

(4) You may wish to contact the Investment Adviser Representatives to obtain further information regarding any of the disclosure events contained in this IAPD report.



DISCLOSURE EVENT DETAILS

When evaluating this information, please keep in mind that some items may involve pending actions or allegations that may be contested and have not been resolved or proven. The event may, in the end, be withdrawn, dismissed, resolved in favor of the Investment Adviser Representative, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to the Investment Adviser Registration Depository. Some of the specific data fields contained in the report may be blank if the information was not provided.

The following types of events are disclosed about this Investment Adviser Representative:

| Type | Count |
|------------------|-------|
| Criminal | 1 |
| Civil Event | 3 |
| Customer Dispute | 1 |

Criminal

This disclosure event involves a criminal charge against the Investment Adviser Representative that has resulted in a dismissal, plea, acquittal or conviction. The criminal matter may relate to any felony or certain misdemeanor offenses (e.g., bribery, perjury, forgery, counterfeiting, extortion, fraud, wrongful taking of property).

Disclosure 1 of 1

| | |
|---------------------------------|--|
| Reporting Source: | Regulator |
| Formal Charges were brought in: | Federal Court |
| Name of Court: | U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI |
| Location of Court: | ST. LOUIS, MO. |
| Docket/Case #: | 4:09CR509 |
| Charge Date: | 11/18/2010 |
| Charge(s) 1 of 9 | |
| Formal Charge(s)/Description: | CONSPIRACY TO COMMIT MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION, WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION AND BANK FRAUD AFFECTING A FINANCIAL INSTITUTION |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 2 of 9 | |
| Formal Charge(s)/Description: | BANK FRAUD |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 3 of 9 | |



| | |
|-------------------------------|---|
| Formal Charge(s)/Description: | FRAUD BY WIRE AFFECTING A FINANCIAL INSTITUTION |
| No of Counts: | 3 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 4 of 9 | |
| Formal Charge(s)/Description: | FRAUD BY WIRE |
| No of Counts: | 2 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 5 of 9 | |
| Formal Charge(s)/Description: | INSURANCE FRAUD WHICH JEOPARDIZES THE SOUNDNESS OF AN INSURER |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 6 of 9 | |
| Formal Charge(s)/Description: | MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION |
| No of Counts: | 4 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 7 of 9 | |
| Formal Charge(s)/Description: | MONEY LAUNDERING |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 8 of 9 | |
| Formal Charge(s)/Description: | CONSPIRACY TO COMMIT INSURANCE FRAUD |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |



| | |
|--------------------------------------|---|
| Disposition of charge: | Convicted |
| Charge(s) 9 of 9 | |
| Formal Charge(s)/Description: | MAIL FRAUD |
| No of Counts: | 4 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Current Status: | Final |
| Status Date: | 08/22/2013 |
| Disposition Date: | 08/22/2013 |
| Sentence/Penalty: | N/A |
| Regulator Statement | <p>WULF WAS APPOINTED IN THE 1980S TO SERVE AS THE INDEPENDENT INVESTMENT ADVISER TO THE PRENEED FUNERAL TRUSTS ESTABLISHED PURSUANT TO MISSOURI STATUTES BY A COMPANY. AS THE TRUSTS' ADVISER, WULF WAS RESPONSIBLE FOR PROTECTING, INVESTING, AND MANAGING THE TRUSTS' ASSETS, WHICH INCLUDED MORE THAN \$150 MILLION PAID BY CUSTOMERS WHO WERE TOLD THEIR FUNDS WOULD BE KEPT SAFE UNTIL THE TIME OF NEED. THE GOVERNMENT'S EVIDENCE AT TRIAL, HOWEVER, ESTABLISHED THAT WULF CONTINUALLY AUTHORIZED THE USE OF TRUST FUNDS TO PAY UNRELATED DEBTS OF AFFILIATED COMPANIES TO ENRICH HIS CO-DEFENDANTS AND ULTIMATELY TO PERPETUATE A MASSIVE PONZI SCHEME THAT SPANNED MORE THAN A DOZEN STATES AND AFFECTED THOUSANDS OF INDIVIDUAL CUSTOMERS. ACCORDING TO COURT DOCUMENTS AND TESTIMONY PRESENTED AT TRIAL, BEGINNING AS EARLY AS 1992 AND CONTINUING UNTIL 2008, THE COMPANY SOLD PREARRANGED FUNERAL CONTRACTS IN SEVERAL STATES, INCLUDING MISSOURI, ILLINOIS, AND OHIO. DURING THAT TIME, INSURANCE COMPANIES AFFILIATED WITH THE COMPANY ISSUED LIFE INSURANCE POLICIES RELATED TO THOSE PREARRANGED FUNERAL CONTRACTS. AS PART OF THE CONTRACTS, THE TOTAL PRICE FOR FUNERAL SERVICES AND MERCHANDISE FOR AN INDIVIDUAL WAS AGREED UPON, AND THAT PRICE WOULD REMAIN CONSTANT REGARDLESS OF WHEN THE FUNERAL SERVICES AND MERCHANDISE WOULD BE NEEDED. CUSTOMERS ENTERING INTO PREARRANGED FUNERAL CONTRACTS WOULD USUALLY PAY A SINGLE SUM OF MONEY UP-FRONT TO THE COMPANY EITHER DIRECTLY OR THROUGH A FUNERAL HOME THAT WAS ALSO A PARTY TO THE CONTRACT. THE COMPANY REPRESENTED TO INDIVIDUAL CUSTOMERS, FUNERAL HOMES, AND STATE REGULATORS THAT FUNDS PAID BY CUSTOMERS UNDER THE PREARRANGED FUNERAL CONTRACTS WOULD BE KEPT IN A SECURE TRUST OR INSURANCE POLICY AS REQUIRED UNDER STATE LAW. COURT DOCUMENTS DISCLOSE, HOWEVER, THAT THE COMPANY MADE USE OF FUNDS PAID BY CUSTOMERS IN WAYS THAT WERE INCONSISTENT BOTH WITH ITS PRIOR AND CONTINUING REPRESENTATIONS AND WITH THE APPLICABLE STATE LAWS AND REGULATIONS. THE COMPANY OPERATED AS A FRAUDULENT PONZI-LIKE SCHEME, WHERE CUSTOMER FUNDS WERE NEITHER KEPT SAFE IN BANK TRUSTS OR INSURANCE POLICIES BUT INSTEAD WERE UTILIZED FOR UNAUTHORIZED PURPOSES AND THE PERSONAL ENRICHMENT OF ITS OFFICERS AND OTHERS. IN TURN, NEW BUSINESS BECAME THE SOURCE OF FUNDING FOR FUNERALS THAT PRIOR CUSTOMERS HAD PREVIOUSLY PAID FOR IN ADVANCE. VICTIMS OF</p> |



THE SCHEME INCLUDE INDIVIDUAL CUSTOMERS, FUNERAL HOMES, AND STATE INSURANCE GUARANTEE ASSOCIATIONS ACROSS THE COUNTRY. WULF WAS CONVICTED ON 18 COUNTS, INCLUDING BANK FRAUD, WIRE FRAUD, WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION, AND CONSPIRACY TO COMMIT THOSE CRIMES. EACH COUNT OF BANK FRAUD, CONSPIRACY, AND WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION CARRIES A MAXIMUM PENALTY OF 30 YEARS' IMPRISONMENT. THE WIRE FRAUD COUNTS EACH CARRY A MAXIMUM PENALTY OF 20 YEARS. WULF'S SENTENCING HAS BEEN SET FOR NOVEMBER 7, 2013.

Reporting Source: Firm

Formal Charges were brought in: Federal Court

Name of Court: U.S DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Location of Court: ST. LOUIS, MISSOURI

Docket/Case #: 4:09CR509

Charge Date: 11/18/2010

Charge(s) 1 of 9

Formal Charge(s)/Description: CONSPIRACY TO COMMIT MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION, WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION AND BANK FRAUD AFFECTING A FINANCIAL INSTITUTION

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 2 of 9

Formal Charge(s)/Description: BANK FRAUD

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 3 of 9

Formal Charge(s)/Description: FRAUD BY WIRE AFFECTING A FINANCIAL INSTITUTION

No of Counts: 3

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 4 of 9

Formal Charge(s)/Description: FRAUD BY WIRE

No of Counts: 2



| | |
|--------------------------------------|---|
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 5 of 9 | |
| Formal Charge(s)/Description: | INSURANCE FRAUD WHICH JEOPARDIZES THE SOUNDNESS OF AN INSURER |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 6 of 9 | |
| Formal Charge(s)/Description: | MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION |
| No of Counts: | 4 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 7 of 9 | |
| Formal Charge(s)/Description: | MONEY LAUDERING |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 8 of 9 | |
| Formal Charge(s)/Description: | CONSPIRACY TO COMMIT INSURANCE FRAUD |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 9 of 9 | |
| Formal Charge(s)/Description: | MAIL FRAUD |
| No of Counts: | 4 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Current Status: | Final |
| Status Date: | 08/22/2013 |



Disposition Date: 08/22/2013

Sentence/Penalty: SENTENCED TO BE IMPRISONED FOR A TOTAL TERM OF 120 MONTHS; SENTENCE STARTED 01/14/2014;END DATE 01/14/2024; SUBJECT ASSESSED A MONETARY PENALTY OF \$1,800.00 AND RESTITUTION IN THE AMOUNT OF \$435,515,234.00, SUCH OBLIGATION BEING JOINT AND SEVERAL WITH THE FIVE CO-DEFENDANTS. COURT RECORDS INDICATE THAT, AS OF 05/02/2014, SUBJECT HAS PAID A TOTAL OF \$32,852.00.

Firm Statement SUBJECT DOES NOT HAVE THE MEANS TO SATISFY THE RESTITUTION PENALTY AND SO IS SUBJECT TO PAYMENTS THROUGH AN INSTALLMENT PLAN IN ACCORDANCE WITH THE BUREAU OF PRISON'S INMATE FINANCIAL RESPONSIBILITY PLAN.

Reporting Source: Individual

Formal Charges were brought in: Federal Court

Name of Court: U.S. DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

Location of Court: ST. LOUIS, MO

Docket/Case #: S2-4:09CR00509 JCH (TCM)

Charge Date: 11/18/2010

Charge(s) 1 of 4

Formal Charge(s)/Description: MAIL FRAUD

No of Counts: 13

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Pled not guilty

Charge(s) 2 of 4

Formal Charge(s)/Description: CONSPIRACY

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Pled not guilty

Charge(s) 3 of 4

Formal Charge(s)/Description: WIRE FRAUD

No of Counts: 11

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Pled not guilty



Charge(s) 4 of 4

| | |
|--------------------------------------|-----------------|
| Formal Charge(s)/Description: | BANK FRAUD |
| No of Counts: | 10 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Pled not guilty |
| Current Status: | Pending |
| Status Date: | |

**Civil Event**

This disclosure event involves an injunction issued by a foreign or domestic court in connection with investment-related activity, a finding by a domestic or foreign court of a violation of any investment-related statute or regulation, or an action dismissed by a domestic or foreign court pursuant to a settlement agreement.

Disclosure 1 of 3

Reporting Source: Individual
Initiated By: HANNOVER LIFE REASSURANCE COMPANY OF AMERICA
Relief Sought: Monetary Penalty other than Fines
Date Court Action Filed: 09/01/2009
Date Notice/Process Served: 09/01/2009
Product Type: No Product
Type of Court: State Court
Name of Court: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION
Location of Court: ST. LOUIS, MO
Docket/Case #: 4:07-CV-01434 JCH
Employing firm when activity occurred which led to the action: WULF, BATES & MURPHY, INC.
Allegations: COUNT 1 - CONSPIRACY TO COMMIT FRAUD
COUNT 2 - RICO §1962(C)
COUNT 3 - RICO §1962(D)
COUNT 4 - TORTIOUS INTERFERENCE WITH CONTRACT
COUNT 5 - UNJUST ENRICHMENT
Current Status: Pending
Limitations or Restrictions in Effect During Appeal: CASE IS STAYED BY ORDER OF THE COURT
Broker Statement PLAINTIFFS ARE NOT NOW, NOR HAVE THEY EVER BEEN, CLIENTS OF WULF, BATES & MURPHY, INC., OR DAVID R. WULF. ADVISOR DENIES ANY AND ALL ALLEGATIONS ASSERTED IN PLAINTIFF'S PETITION, MOST SPECIFICALLY THAT ADVISOR EVER CONSPIRED (DIRECTLY OR INDIRECTLY) WITH ANY OF THE OTHER NAMED DEFENDANTS.

Disclosure 2 of 3

Reporting Source: Individual
Initiated By: BROUSSARD'S MORTUARY, INC.
Relief Sought: Monetary Penalty other than Fines
Date Court Action Filed: 09/08/2008
Date Notice/Process Served: 09/08/2008
Product Type: No Product
Type of Court: State Court
Name of Court: DISTRICT COURT OF JEFFERSON COUNTY, TEXAS, 136TH JUDICIAL DISTRICT



Location of Court: BEAUMONT, TX 77701

Docket/Case #: D-0181676

Employing firm when activity occurred which led to the action: WULF, BATES & MURPHY, INC.

Allegations: COUNT 1 - BREACH OF CONTRACT
COUNT 2 - FRAUDULENT INDUCEMENT/Common Law Fraud
COUNT 3 - RICO DECEPTIVE TRADE PRACTICES ACT/TEXAS INSURANCE CODE

Current Status: Pending

Limitations or Restrictions in Effect During Appeal: CASE IS STAYED WHILE MEMORIAL LIFE INSURANCE CO. AND LINCOLN MEMORIAL LIFE INSURANCE COMPANY ARE IN RECEIVERSHIP WITH THE SPECIAL DEPUTY RECEIVER FOR THE STATE OF TEXAS

Broker Statement PLAINTIFFS ARE NOT NOW, NOR HAVE THEY EVER BEEN, CLIENTS OF WULF, BATES & MURPHY, INC., OR DAVID R. WULF. ADVISOR DENIES ANY AND ALL ALLEGATIONS ASSERTED IN PLAINTIFF'S PETITION, MOST SPECIFICALLY THAT ADVISOR EVER CONSPIRED (DIRECTLY OR INDIRECTLY) WITH ANY OF THE OTHER NAMED DEFENDANTS.

Disclosure 3 of 3

Reporting Source: Individual

Initiated By: DONNA J. GARRETT, SPECIAL DEPUTY RECEIVER OF LINCOLN MEMORIAL LIFE INSURANCE COMPANY, MEMORIAL SERVICE LIFE INSURANCE COMPANY

Relief Sought: Monetary Penalty other than Fines

Date Court Action Filed: 08/06/2009

Date Notice/Process Served: 08/06/2009

Product Type: No Product

Type of Court: State Court

Name of Court: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

Location of Court: ST. LOUIS, MISSOURI

Docket/Case #: 4:09-CV-1252 ERW

Employing firm when activity occurred which led to the action: WULF, BATES & MURPHY, INC.

Allegations: COUNT 1 - CONSPIRACY TO COMMIT FRAUD
COUNT 2 - RICO §1962(C)
COUNT 3 - RICO §1962(D)
COUNT 4 - TORTIOUS INTERFERENCE WITH CONTRACT
COUNT 5 - UNJUST ENRICHMENT
COUNT 1 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT ("RICO"), 18 U.S.C. §1962(C)
COUNT 2 - CONSPIRACY TO VIOLATE RICO UNDER 18 U.S.C. §1962(D)
COUNT 3 - VIOLATION OF RICO 18 U.S.C. §1962(A)
COUNT 4 - LANHAM ACT VIOLATION OF 15 U.S.C. §1125(A)
COUNT 5 - FRAUDULENT OMISSIONS/NONDISCLOSURE



COUNT 6 - FRAUDULENT MISREPRESENTATIONS
COUNT 7 - CONSPIRACY TO COMMIT FRAUD
COUNT 8 - AIDING AND ABETTING FRAUD
COUNT 9 - NEGLIGENT MISREPRESENTATIONS AND OMISSIONS
COUNT 10 - BREACH OF PROMISSORY NOTES
COUNT 11 - CONSUMER PROTECTION ACT VIOLATIONS
COUNT 12 - TEXAS RECEIVERSHIP ACT VIOLATIONS (TEX. INS. CODE § 443.202 TO 205)
COUNT 13 - VIOLATION OF TEXAS INSURANCE CODE § 463.302 ("DISTRIBUTIONS TO SHAREHOLDERS AND AFFILIATES")
COUNT 14 - FRAUDULENT TRANSFER ACT VIOLATIONS
COUNT 15 - BREACH OF FIDUCIARY DUTY BY OFFICERS AND DIRECTORS
COUNT 16 - GROSS NEGLIGENCE BY OFFICERS AND DIRECTORS
COUNT 17 - BREACH OF FIDUCIARY DUTY BY INVESTMENT ADVISORS
COUNT 18 - GROSS NEGLIGENCE BY INVESTMENT ADVISORS
COUNT 19 - BREACH OF FIDUCIARY DUTY BY TRUSTEE BANKS
COUNT 20 - GROSS NEGLIGENCE BY TRUST BANKS
COUNT 21 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY BY INVESTMENT ADVISORS
COUNT 22 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY BY TRUSTEE BANKS
COUNT 23 - LEGAL MALPRACTICE
COUNT 24 - BREACH OF FIDUCIARY DUTY BY ATTORNEYS
COUNT 25 - PROFESSIONAL NEGLIGENCE AGAINST AUDITORS
COUNT 26 - INTERFERENCE WITH BUSINESS RELATIONSHIPS (TORTIOUS INTERFERENCE WITH CONTRACT)
COUNT 27 - CONVERSION
COUNT 28 - UNJUST ENRICHMENT
COUNT 29 - MONEY HAD AND RECEIVED
COUNT 30 - CONSTRUCTIVE TRUST

Current Status:

Pending

Limitations or Restrictions in Effect During Appeal:

VARIOUS MOTIONS TO DISMISS, INCLUDING WULF BATES & MURPHY AND DAVID WULF'S MOTION FOR MORE DEFINITE STATEMENT, ARE FULLY BRIEFED AND PENDING.

Broker Statement

VARIOUS MOTIONS TO DISMISS, INCLUDING WULF BATES & MURPHY AND DAVID WULF'S MOTION FOR MORE DEFINITE STATEMENT, ARE FULLY BRIEFED AND PENDING.
PLAINTIFFS ARE NOT NOW, NOR HAVE THEY EVER BEEN, CLIENTS OF WULF, BATES & MURPHY, INC., OR DAVID R. WULF. ADVISOR DENIES ANY AND ALL ALLEGATIONS ASSERTED IN PLAINTIFF'S PETITION, MOST SPECIFICALLY THAT ADVISOR EVER CONSPIRED (DIRECTLY OR INDIRECTLY) WITH ANY OF THE OTHER NAMED DEFENDANTS.

**Customer Dispute**

This section provides information regarding a customer dispute that was reported to the Investment Adviser Registration Depository (IARD) by the Investment Adviser Representative (IAR), an investment adviser and/or securities firm, and/or a securities regulator. The event may include a consumer-initiated, investment-related complaint, arbitration proceeding or civil suit that contains allegations of sales practice violations against the individual.

The customer dispute may be pending or may have resulted in a civil judgment, arbitration award, monetary settlement, closure without action, withdrawal, dismissal, denial, or other outcome.

Disclosure 1 of 1

Reporting Source: Individual

Employing firm when activities occurred which led to the complaint: WULF BATES & MURPHY, INC.

Allegations: FORMER CLIENT ALLEGED THAT MR. WULF AND THE FIRM BREACHED VARIOUS DUTIES OWED TO IT AS A CLIENT OF THE FIRM, SPECIFICALLY, (I) BY NOT INFORMING [CUSTOMER] THAT IT WAS PAYING MARK-UPS AND MARK-DOWNS ON SECURITIES PURCHASED THROUGH MOLONEY SECURITIES CO., INC.; AND (II) THAT CERTAIN INVESTMENTS PURCHASED BY THE FIRM FOR [CUSTOMER'S] ACCOUNT WERE UNSUITABLE GIVEN WHAT IT ALLEGES WERE ITS CONSERVATIVE INVESTMENT OBJECTIVES.

Product Type: Debt-Corporate

Alleged Damages: \$0.00

Alleged Damages Amount Explanation (if amount not exact): "NOT QUANTIFIED IN PLAINTIFF'S PETITION"

Civil Litigation Information

Type of Court: State Court

Name of Court: DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 126TH JUDICIAL DISTRICT

Location of Court: AUSTIN, TX

Docket/Case #: GN-304588

Date Notice/Process Served: 01/06/2004

Litigation Pending? No

Disposition: Settled

Disposition Date: 04/19/2006

Monetary Compensation Amount: \$788,497.30

Individual Contribution Amount: \$0.00

Broker Statement: CONTRARY TO ALLEGATIONS, CLIENT RECEIVED FIRM'S ADV PARTII DISCLOSING COMMISSIONS OR MARK-UPS ON TRANSACTIONS EFFECTED THROUGH MOLONEY SECURITIES. SECURITIES PURCHASED FOR CLIENT'S NON-DISCRETIONARY ACCOUNT WERE CONSISTENT WITH STATED INVESTMENT OBJECTIVE. SUBJECTS WULF AND MOLONEY SECURITIES WERE SUCCESSFUL IN SUBSEQUENT ACTION AGAINST INSURER AND THEIR ASSIGNED COUNSEL TO THE EXTENT THAT WULF SUFFERED NO OUT OF POCKET EXPENSE FROM THE SETTLEMENT



End of Report

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BrokerCheck Report

DAVID RICHARD WULF

CRD# 850098

Report #22129-39278, data current as of Tuesday, February 03, 2015.

| <u>Section Title</u> | <u>Page(s)</u> |
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| Broker Qualifications | 2 - 3 |
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About BrokerCheck®

BrokerCheck offers information on all current, and many former, registered securities brokers, and all current and former registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**

BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:

- information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
- information that regulators report regarding disciplinary actions or allegations against firms or brokers.

- **How current is this information?**

Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <http://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P455414>.

- **Are there other resources I can use to check the background of investment professionals?**

FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.

Thank you for using FINRA BrokerCheck.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at

brokercheck.finra.org



For additional information about the contents of this report, please refer to the User Guidance or www.finra.org/brokercheck. It provides a glossary of terms and a list of frequently asked questions, as well as additional resources. For more information about FINRA, visit www.finra.org.

DAVID R. WULF
CRD# 850098

Report Summary for this Broker



This broker is not currently registered.

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

Broker Qualifications

This broker is not currently registered.

This broker has passed:

- 3 Principal/Supervisory Exams
- 3 General Industry/Product Exams
- 2 State Securities Law Exams

Registration History

This broker was previously registered with the following securities firm(s):

MOLONEY SECURITIES CO., INC.
CRD# 38535
MANCHESTER, MO
09/1999 - 08/2013

BIRCHTREE FINANCIAL SERVICES, INC.
CRD# 15014
MINNEAPOLIS, MN
06/1988 - 09/1999

AMERICAN CAPITAL EQUITIES, INC.
CRD# 13272
02/1986 - 06/1988

Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? **Yes**

The following types of disclosures have been reported:

| Type | Count |
|------------------|-------|
| Criminal | 1 |
| Civil Event | 3 |
| Customer Dispute | 1 |

Investment Adviser Representative Information

The information below represents the individual's record as a broker. For details on this individual's record as an investment adviser representative visit the SEC's Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov>

Broker Qualifications



Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered.



Registration and Employment History

Registration History

The broker previously was registered with the following firms:

| Registration Dates | Firm Name | CRD# | Branch Location |
|--------------------|---|-------|-----------------|
| 09/1999 - 08/2013 | MOLONEY SECURITIES CO., INC. | 38535 | MANCHESTER, MO |
| 06/1988 - 09/1999 | BIRCHTREE FINANCIAL SERVICES, INC. | 15014 | MINNEAPOLIS, MN |
| 02/1986 - 06/1988 | AMERICAN CAPITAL EQUITIES, INC. | 13272 | |
| 12/1982 - 03/1986 | SHEARSON LEHMAN BROTHERS INC. | 7506 | |
| 11/1978 - 01/1983 | MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED | 7691 | |
| 03/1978 - 10/1978 | CG EQUITY SALES COMPANY | 145 | |

Employment History

This section provides up to 10 years of an individual broker's employment history as reported by the individual broker on the most recently filed Form U4.

Please note that the broker is required to provide this information only while registered with FINRA or a national securities exchange and the information is not updated via Form U4 after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

| Employment Dates | Employer Name | Employer Location |
|-------------------|------------------------------|-------------------|
| 08/1999 - Present | MOLONEY SECURITIES CO., INC. | ST. LOUIS, MO |
| 02/1986 - Present | WULF, BATES & MURPHY | ST. LOUIS, MO |

Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

MOLONEY SECURITIES CO., INC. INVESTMENT RELATED REGISTERED BROKER/DEALER - MEMBER FINRA/SIPC 13537 BARRETT PARKWAY DR SUITE 345 ST. LOUIS, MO 63021 UNITED STATES DAVID R. WULF IS A REGISTERED REPRESENTATIVE WITH MOLONEY SECURITIES CO., INC. (1999-PRESENT). HE CONDUCTS AND EXECUTES INVESTMENT RELATED TRANSACTIONS (IE; BUYING/SELLING STOCKS, BONDS, LOAD MUTUAL FUNDS AND OPTIONS) ON A FULLY DISCLOSED BASIS THROUGH MOLONEY SECURITIES. TYPICALLY THESE TRANSACTIONS WILL INVOLVE A COMMISSION OR A MARK-UP/MARK-DOWN. APPROXIMATELY 120 HOURS/MONTH IS SPENT CONDUCTING BUSINESS THROUGH MOLONEY. THIS IS ON A DAILY BASIS ON

Registration and Employment History



Other Business Activities, continued

BEHALF OF IA ACCOUNTS AS WELL AS NON-IA ACCOUNTS

VERITAS HOLDINGS, LLC IS A SHELL CORPORATION THAT IS CURRENTLY DORMANT AND CONDUCTING NO BUSINESS ACTIVITIES. 13537 BARRETT PARKWAY DR SUITE 345 ST. LOUIS, MO 63021 DAVID R. WULF IS A CO-OWNER AND GENERAL PARTNER OF VERITAS HOLDINGS



Disclosure Events

What you should know about reported disclosure events:

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
 - o A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
 - o A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least \$5,000.
3. **Disclosure events in BrokerCheck reports come from different sources:**
 - o As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
 - o A disclosure event may have a status of *pending, on appeal, or final*.
 - A "pending" event involves allegations that have not been proven or formally adjudicated.
 - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
 - A "final" event has been concluded and its resolution is not subject to change.
 - o A final event generally has a disposition of *adjudicated, settled or otherwise resolved*.
 - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
 - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
 - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

| | Pending | Final | On Appeal |
|----------|---------|-------|-----------|
| Criminal | 0 | 1 | 0 |



| | | | |
|------------------|---|---|-----|
| Civil Event | 3 | 0 | 0 |
| Customer Dispute | 0 | 1 | N/A |



Disclosure Event Details

When evaluating this information, please keep in mind that a disclosure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

Criminal - Final Disposition

This type of disclosure event involves a criminal charge against the broker that has resulted in a conviction, acquittal, dismissal, or plea. The criminal matter may pertain to any felony or certain misdemeanor offenses, including bribery, perjury, forgery, counterfeiting, extortion, fraud, and wrongful taking of property.

Disclosure 1 of 1

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|---------------------------------|--|
| Reporting Source: | Regulator |
| Formal Charges were brought in: | Federal Court |
| Name of Court: | U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI |
| Location of Court: | ST. LOUIS, MO. |
| Docket/Case #: | 4:09CR509 |
| Charge Date: | 11/18/2010 |
| Charge(s) 1 of 9 | |
| Formal Charge(s)/Description: | CONSPIRACY TO COMMIT MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION, WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION AND BANK FRAUD AFFECTING A FINANCIAL INSTITUTION |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 2 of 9 | |
| Formal Charge(s)/Description: | BANK FRAUD |

No of Counts: 1
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Convicted
Charge(s) 3 of 9
Formal Charge(s)/Description: FRAUD BY WIRE AFFECTING A FINANCIAL INSTITUTION

No of Counts: 3
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Convicted
Charge(s) 4 of 9
Formal Charge(s)/Description: FRAUD BY WIRE

No of Counts: 2
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Convicted
Charge(s) 5 of 9
Formal Charge(s)/Description: INSURANCE FRAUD WHICH JEOPARDIZES THE SOUNDNESS OF AN INSURER

No of Counts: 1
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Convicted
Charge(s) 6 of 9
Formal Charge(s)/Description: MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION

No of Counts: 4
Felony or Misdemeanor: Felony



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| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 7 of 9 | |
| Formal Charge(s)/Description: | MONEY LAUNDERING |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 8 of 9 | |
| Formal Charge(s)/Description: | CONSPIRACY TO COMMIT INSURANCE FRAUD |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 9 of 9 | |
| Formal Charge(s)/Description: | MAIL FRAUD |
| No of Counts: | 4 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Current Status: | Final |
| Status Date: | 08/22/2013 |
| Disposition Date: | 08/22/2013 |
| Sentence/Penalty: | N/A |
| Regulator Statement | WULF WAS APPOINTED IN THE 1980S TO SERVE AS THE INDEPENDENT INVESTMENT ADVISER TO THE PRENEED FUNERAL TRUSTS ESTABLISHED PURSUANT TO MISSOURI STATUTES BY A COMPANY. AS THE TRUSTS' ADVISER, WULF WAS RESPONSIBLE FOR PROTECTING, INVESTING, AND |



MANAGING THE TRUSTS' ASSETS, WHICH INCLUDED MORE THAN \$150 MILLION PAID BY CUSTOMERS WHO WERE TOLD THEIR FUNDS WOULD BE KEPT SAFE UNTIL THE TIME OF NEED. THE GOVERNMENT'S EVIDENCE AT TRIAL, HOWEVER, ESTABLISHED THAT WULF CONTINUALLY AUTHORIZED THE USE OF TRUST FUNDS TO PAY UNRELATED DEBTS OF AFFILIATED COMPANIES TO ENRICH HIS CO-DEFENDANTS AND ULTIMATELY TO PERPETUATE A MASSIVE PONZI SCHEME THAT SPANNED MORE THAN A DOZEN STATES AND AFFECTED THOUSANDS OF INDIVIDUAL CUSTOMERS. ACCORDING TO COURT DOCUMENTS AND TESTIMONY PRESENTED AT TRIAL, BEGINNING AS EARLY AS 1992 AND CONTINUING UNTIL 2008, THE COMPANY SOLD PREARRANGED FUNERAL CONTRACTS IN SEVERAL STATES, INCLUDING MISSOURI, ILLINOIS, AND OHIO. DURING THAT TIME, INSURANCE COMPANIES AFFILIATED WITH THE COMPANY ISSUED LIFE INSURANCE POLICIES RELATED TO THOSE PREARRANGED FUNERAL CONTRACTS. AS PART OF THE CONTRACTS, THE TOTAL PRICE FOR FUNERAL SERVICES AND MERCHANDISE FOR AN INDIVIDUAL WAS AGREED UPON, AND THAT PRICE WOULD REMAIN CONSTANT REGARDLESS OF WHEN THE FUNERAL SERVICES AND MERCHANDISE WOULD BE NEEDED. CUSTOMERS ENTERING INTO PREARRANGED FUNERAL CONTRACTS WOULD USUALLY PAY A SINGLE SUM OF MONEY UP-FRONT TO THE COMPANY EITHER DIRECTLY OR THROUGH A FUNERAL HOME THAT WAS ALSO A PARTY TO THE CONTRACT. THE COMPANY REPRESENTED TO INDIVIDUAL CUSTOMERS, FUNERAL HOMES, AND STATE REGULATORS THAT FUNDS PAID BY CUSTOMERS UNDER THE PREARRANGED FUNERAL CONTRACTS WOULD BE KEPT IN A SECURE TRUST OR INSURANCE POLICY AS REQUIRED UNDER STATE LAW. COURT DOCUMENTS DISCLOSE, HOWEVER, THAT THE COMPANY MADE USE OF FUNDS PAID BY CUSTOMERS IN WAYS THAT WERE INCONSISTENT BOTH WITH ITS PRIOR AND CONTINUING REPRESENTATIONS AND WITH THE APPLICABLE STATE LAWS AND REGULATIONS. THE COMPANY OPERATED AS A FRAUDULENT PONZI-LIKE SCHEME, WHERE CUSTOMER FUNDS WERE NEITHER KEPT SAFE IN BANK TRUSTS OR INSURANCE POLICIES BUT INSTEAD WERE UTILIZED FOR UNAUTHORIZED PURPOSES AND THE PERSONAL ENRICHMENT OF ITS OFFICERS AND OTHERS. IN TURN, NEW BUSINESS BECAME THE SOURCE OF FUNDING FOR FUNERALS THAT PRIOR CUSTOMERS HAD PREVIOUSLY PAID FOR IN ADVANCE. VICTIMS OF THE SCHEME INCLUDE INDIVIDUAL CUSTOMERS, FUNERAL HOMES, AND STATE INSURANCE GUARANTEE ASSOCIATIONS ACROSS THE COUNTRY. WULF WAS CONVICTED ON 18 COUNTS, INCLUDING BANK FRAUD, WIRE FRAUD, WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION, AND CONSPIRACY TO COMMIT THOSE CRIMES. EACH COUNT OF BANK FRAUD, CONSPIRACY, AND WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION CARRIES A MAXIMUM PENALTY OF 30 YEARS' IMPRISONMENT. THE WIRE FRAUD COUNTS EACH CARRY A MAXIMUM PENALTY OF 20 YEARS. WULF'S SENTENCING HAS BEEN SET FOR NOVEMBER 7, 2013.



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Reporting Source: Firm

Formal Charges were brought in: Federal Court

Name of Court: U.S DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Location of Court: ST. LOUIS, MISSOURI

Docket/Case #: 4:09CR509

Charge Date: 11/18/2010

Charge(s) 1 of 9

Formal Charge(s)/Description: CONSPIRACY TO COMMIT MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION, WIRE FRAUD AFFECTING A FINANCIAL INSTITUTION AND BANK FRAUD AFFECTING A FINANCIAL INSTITUTION

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 2 of 9

Formal Charge(s)/Description: BANK FRAUD

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 3 of 9

Formal Charge(s)/Description: FRAUD BY WIRE AFFECTING A FINANCIAL INSTITUTION

No of Counts: 3

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted



Charge(s) 4 of 9

Formal Charge(s)/Description: FRAUD BY WIRE

No of Counts: 2

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 5 of 9

Formal Charge(s)/Description: INSURANCE FRAUD WHICH JEOPARDIZES THE SOUNDNESS OF AN INSURER

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 6 of 9

Formal Charge(s)/Description: MAIL FRAUD AFFECTING A FINANCIAL INSTITUTION

No of Counts: 4

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 7 of 9

Formal Charge(s)/Description: MONEY LAUDERING

No of Counts: 1

Felony or Misdemeanor: Felony

Plea for each charge: NOT GUILTY

Disposition of charge: Convicted

Charge(s) 8 of 9

Formal Charge(s)/Description: CONSPIRACY TO COMMIT INSURANCE FRAUD



No of Counts: 1
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Convicted
Charge(s) 9 of 9
Formal Charge(s)/Description: MAIL FRAUD

No of Counts: 4
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Convicted
Current Status: Final
Status Date: 08/22/2013
Disposition Date: 08/22/2013

Sentence/Penalty: SENTENCED TO BE IMPRISONED FOR A TOTAL TERM OF 120 MONTHS; SENTENCE STARTED 01/14/2014;END DATE 01/14/2024; SUBJECT ASSESSED A MONETARY PENALTY OF \$1,800.00 AND RESTITUTION IN THE AMOUNT OF \$435,515,234.00, SUCH OBLIGATION BEING JOINT AND SEVERAL WITH THE FIVE CO-DEFENDANTS. COURT RECORDS INDICATE THAT, AS OF 05/02/2014, SUBJECT HAS PAID A TOTAL OF \$32,852.00.

Firm Statement SUBJECT DOES NOT HAVE THE MEANS TO SATISFY THE RESTITUTION PENALTY AND SO IS SUBJECT TO PAYMENTS THROUGH AN INSTALLMENT PLAN IN ACCORDANCE WITH THE BUREAU OF PRISON'S INMATE FINANCIAL RESPONSIBILITY PLAN.

Reporting Source: Broker
Formal Charges were brought in: Federal Court
Name of Court: U.S. DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION
Location of Court: ST. LOUIS, MO



Docket/Case #: S2-4:09CR00509 JCH (TCM)
Charge Date: 11/18/2010
Charge(s) 1 of 4
Formal Charge(s)/Description: MAIL FRAUD
No of Counts: 13
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Pled not guilty
Charge(s) 2 of 4
Formal Charge(s)/Description: CONSPIRACY
No of Counts: 1
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Pled not guilty
Charge(s) 3 of 4
Formal Charge(s)/Description: WIRE FRAUD
No of Counts: 11
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Pled not guilty
Charge(s) 4 of 4
Formal Charge(s)/Description: BANK FRAUD
No of Counts: 10
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Pled not guilty



Current Status: Pending

Status Date:

Civil - Pending

This type of disclosure event involves a pending civil court action that seeks an injunction in connection with any investment-related activity or alleges a violation of any investment-related statute or regulation.

Disclosure 1 of 3

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|--|---|
| Reporting Source: | Broker |
| Initiated By: | HANNOVER LIFE REASSURANCE COMPANY OF AMERICA |
| Relief Sought: | Monetary Penalty other than Fines |
| Date Court Action Filed: | 09/01/2009 |
| Date Notice/Process Served: | 09/01/2009 |
| Product Type: | No Product |
| Type of Court: | State Court |
| Name of Court: | UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION |
| Location of Court: | ST. LOUIS, MO |
| Docket/Case #: | 4:07-CV-01434 JCH |
| Employing firm when activity occurred which led to the action: | WULF, BATES & MURPHY, INC. |
| Allegations: | COUNT 1 - CONSPIRACY TO COMMIT FRAUD COUNT 2 - RICO §1962(C) COUNT 3 - RICO §1962(D) COUNT 4 - TORTIOUS INTERFERENCE WITH CONTRACT COUNT 5 - UNJUST ENRICHMENT |
| Current Status: | Pending |
| Limitations or Restrictions in Effect During Appeal: | CASE IS STAYED BY ORDER OF THE COURT |
| Broker Statement | PLAINTIFFS ARE NOT NOW, NOR HAVE THEY EVER BEEN, CLIENTS OF WULF, BATES & MURPHY, INC., OR DAVID R. WULF. ADVISOR DENIES ANY AND ALL ALLEGATIONS ASSERTED IN PLAINTIFF'S PETITION, MOST SPECIFICALLY THAT ADVISOR EVER CONSPIRED (DIRECTLY OR INDIRECTLY) WITH ANY OF THE OTHER NAMED DEFENDANTS. |

Disclosure 2 of 3



Reporting Source: Broker

Initiated By: BROUSSARD'S MORTUARY, INC.

Relief Sought: Monetary Penalty other than Fines

Date Court Action Filed: 09/08/2008

Date Notice/Process Served: 09/08/2008

Product Type: No Product

Type of Court: State Court

Name of Court: DISTRICT COURT OF JEFFERSON COUNTY, TEXAS, 136TH JUDICIAL DISTRICT

Location of Court: BEAUMONT, TX 77701

Docket/Case #: D-0181676

Employing firm when activity occurred which led to the action: WULF, BATES & MURPHY, INC.

Allegations: COUNT 1 - BREACH OF CONTRACT
COUNT 2 - FRAUDULENT INDUCEMENT/Common Law Fraud
COUNT 3 - RICO DECEPTIVE TRADE PRACTICES ACT/TEXAS INSURANCE CODE

Current Status: Pending

Limitations or Restrictions in Effect During Appeal: CASE IS STAYED WHILE MEMORIAL LIFE INSURANCE CO. AND LINCOLN MEMORIAL LIFE INSURANCE COMPANY ARE IN RECEIVERSHIP WITH THE SPECIAL DEPUTY RECEIVER FOR THE STATE OF TEXAS

Broker Statement PLAINTIFFS ARE NOT NOW, NOR HAVE THEY EVER BEEN, CLIENTS OF WULF, BATES & MURPHY, INC., OR DAVID R. WULF. ADVISOR DENIES ANY AND ALL ALLEGATIONS ASSERTED IN PLAINTIFF'S PETITION, MOST SPECIFICALLY THAT ADVISOR EVER CONSPIRED (DIRECTLY OR INDIRECTLY) WITH ANY OF THE OTHER NAMED DEFENDANTS.

Disclosure 3 of 3

Reporting Source: Broker

Initiated By: DONNA J. GARRETT, SPECIAL DEPUTY RECEIVER OF LINCOLN MEMORIAL LIFE INSURANCE COMPANY, MEMORIAL SERVICE LIFE INSURANCE COMPANY

Relief Sought: Monetary Penalty other than Fines



Date Court Action Filed: 08/06/2009
Date Notice/Process Served: 08/06/2009
Product Type: No Product
Type of Court: State Court
Name of Court: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION
Location of Court: ST. LOUIS, MISSOURI
Docket/Case #: 4:09-CV-1252 ERW
Employing firm when activity occurred which led to the action: WULF, BATES & MURPHY, INC.

Allegations:

- COUNT 1 - CONSPIRACY TO COMMIT FRAUD
- COUNT 2 - RICO §1962(C)
- COUNT 3 - RICO §1962(D)
- COUNT 4 - TORTIOUS INTERFERENCE WITH CONTRACT
- COUNT 5 - UNJUST ENRICHMENT
- COUNT 1 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT ("RICO"), 18 U.S.C. §1962(C)
- COUNT 2 - CONSPIRACY TO VIOLATE RICO UNDER 18 U.S.C. §1962(D)
- COUNT 3 - VIOLATION OF RICO 18 U.S.C. §1962(A)
- COUNT 4 - LANHAM ACT VIOLATION OF 15 U.S.C. §1125(A)
- COUNT 5 - FRAUDULENT OMISSIONS/NONDISCLOSURE
- COUNT 6 - FRAUDULENT MISREPRESENTATIONS
- COUNT 7 - CONSPIRACY TO COMMIT FRAUD
- COUNT 8 - AIDING AND ABETTING FRAUD
- COUNT 9 - NEGLIGENT MISREPRESENTATIONS AND OMISSIONS
- COUNT 10 - BREACH OF PROMISSORY NOTES
- COUNT 11 - CONSUMER PROTECTION ACT VIOLATIONS
- COUNT 12 - TEXAS RECEIVERSHIP ACT VIOLATIONS (TEX. INS. CODE § 443.202 TO 205)
- COUNT 13 - VIOLATION OF TEXAS INSURANCE CODE § 463.302 ("DISTRIBUTIONS TO SHAREHOLDERS AND AFFILIATES")
- COUNT 14 - FRAUDULENT TRANSFER ACT VIOLATIONS
- COUNT 15 - BREACH OF FIDUCIARY DUTY BY OFFICERS AND DIRECTORS
- COUNT 16 - GROSS NEGLIGENCE BY OFFICERS AND DIRECTORS
- COUNT 17 - BREACH OF FIDUCIARY DUTY BY INVESTMENT ADVISORS
- COUNT 18 - GROSS NEGLIGENCE BY INVESTMENT ADVISORS
- COUNT 19 - BREACH OF FIDUCIARY DUTY BY TRUSTEE BANKS
- COUNT 20 - GROSS NEGLIGENCE BY TRUST BANKS



COUNT 21 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY BY INVESTMENT ADVISORS
COUNT 22 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY BY TRUSTEE BANKS
COUNT 23 - LEGAL MALPRACTICE
COUNT 24 - BREACH OF FIDUCIARY DUTY BY ATTORNEYS
COUNT 25 - PROFESSIONAL NEGLIGENCE AGAINST AUDITORS
COUNT 26 - INTERFERENCE WITH BUSINESS RELATIONSHIPS (TORTIOUS INTERFERENCE WITH CONTRACT)
COUNT 27 - CONVERSION
COUNT 28 - UNJUST ENRICHMENT
COUNT 29 - MONEY HAD AND RECEIVED
COUNT 30 - CONSTRUCTIVE TRUST

Current Status:

Pending

Limitations or Restrictions in Effect During Appeal:

VARIOUS MOTIONS TO DISMISS, INCLUDING WULF BATES & MURPHY AND DAVID WULF'S MOTION FOR MORE DEFINITE STATEMENT, ARE FULLY BRIEFED AND PENDING.

Broker Statement

VARIOUS MOTIONS TO DISMISS, INCLUDING WULF BATES & MURPHY AND DAVID WULF'S MOTION FOR MORE DEFINITE STATEMENT, ARE FULLY BRIEFED AND PENDING.
PLAINTIFFS ARE NOT NOW, NOR HAVE THEY EVER BEEN, CLIENTS OF WULF, BATES & MURPHY, INC., OR DAVID R. WULF. ADVISOR DENIES ANY AND ALL ALLEGATIONS ASSERTED IN PLAINTIFF'S PETITION, MOST SPECIFICALLY THAT ADVISOR EVER CONSPIRED (DIRECTLY OR INDIRECTLY) WITH ANY OF THE OTHER NAMED DEFENDANTS.



Customer Dispute - Settled

This type of disclosure event involves a consumer-initiated, investment-related complaint, arbitration proceeding or civil suit containing allegations of sale practice violations against the broker that resulted in a monetary settlement to the customer.

Disclosure 1 of 1

Reporting Source: Broker
Employing firm when activities occurred which led to the complaint: WULF BATES & MURPHY, INC.

Allegations: FORMER CLIENT ALLEGED THAT MR. WULF AND THE FIRM BREACHED VARIOUS DUTIES OWED TO IT AS A CLIENT OF THE FIRM, SPECIFICALLY, (I) BY NOT INFORMING [CUSTOMER] THAT IT WAS PAYING MARK-UPS AND MARK-DOWNS ON SECURITIES PURCHASED THROUGH MOLONEY SECURITIES CO., INC.; AND (II) THAT CERTAIN INVESTMENTS PURCHASED BY THE FIRM FOR [CUSTOMER'S] ACCOUNT WERE UNSUITABLE GIVEN WHAT IT ALLEGES WERE ITS CONSERVATIVE INVESTMENT OBJECTIVES.

Product Type: Debt-Corporate

Alleged Damages: \$0.00

Alleged Damages Amount Explanation (if amount not exact): "NOT QUANTIFIED IN PLAINTIFF'S PETITION"

Civil Litigation Information

Type of Court: State Court
Name of Court: DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 126TH JUDICIAL DISTRICT
Location of Court: AUSTIN, TX
Docket/Case #: GN-304588
Date Notice/Process Served: 01/06/2004
Litigation Pending? No
Disposition: Settled
Disposition Date: 04/19/2006
Monetary Compensation Amount: \$788,497.30
Individual Contribution Amount: \$0.00



Broker Statement

CONTRARY TO ALLEGATIONS, CLIENT RECEIVED FIRM'S ADV PARTII DISCLOSING COMMISSIONS OR MARK-UPS ON TRANSACTIONS EFFECTED THROUGH MOLONEY SECURITIES. SECURITIES PURCHASED FOR CLIENT'S NON-DISCRETIONARY ACCOUNT WERE CONSISTENT WITH STATED INVESTMENT OBJECTIVE. SUBJECTS WULF AND MOLONEY SECURITIES WERE SUCCESSFUL IN SUBSEQUENT ACTION AGAINST INSURER AND THEIR ASSIGNED COUNSEL TO THE EXTENT THAT WULF SUFFERED NO OUT OF POCKET EXPENSE FROM THE SETTLEMENT


End of Report

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NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

NO. 2

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

NO. 3

The charges in this case are as follows:

Under Count 1, the indictment charges that defendant committed the crime of conspiracy to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, and bank fraud.

Under Counts 2-9, the indictment charges that defendant committed the crime of bank fraud.

Under Counts 10-14, and 18, the indictment charges that defendant committed the crime of wire fraud affecting a financial institution.

Under Counts 15-17, the indictment charges that defendant committed the crime of wire fraud.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

NO. 4

The Indictment in this case charges several other individuals with the same crimes for which the defendant is on trial, and also alleges that other unnamed individuals participated in the crimes for which the defendant is on trial. Please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crimes charged, not for anything else. You should not guess about or concern yourselves with the disposition of any charges against other individuals named or mentioned in the Indictment. You are not to consider the disposition of any such charges when deciding if the Government has proved, beyond a reasonable doubt, the charges against this defendant. This defendant is entitled to be treated separately from the other individuals named or mentioned in the Indictment. You must give separate consideration to the evidence about this defendant, and you must return a verdict as to this defendant alone.

NO. 5

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

NO. 6

The government and the defendant have stipulated -- that is, they have agreed -- that certain facts are as stated in the Second and Fourth Stipulations of the Parties. You must therefore treat those facts as having been proved.

NO. 7

You have heard evidence that Darci Greco and Tony Lumpkin have received a promise from the Government that their testimony will not be used against them in a criminal case. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the Government's promise is for you to determine.

NO. 8

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

NO. 9

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

If you wish to review any exhibits during your deliberations, please notify the Court and those exhibits will be provided to you.

NO. 10

The crime of bank fraud, as charged in Counts 2-9 of the indictment, has three elements, which are:

One, the defendant knowingly participated in a scheme to defraud an institution or to obtain monies, funds, credits, assets or other property under the custody and control of an institution by means of material false or fraudulent representations or promises, which scheme is described in Count 2 of the Indictment;

Two, the defendant did so with intent to defraud; and

Three, the institution was a financial institution.

The parties have stipulated that at all times between January 1, 1992, and May 14, 2008, Allegiant Bank and Bremen Bank and Trust Company were financial institutions.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from a financial institution by means of material false pretenses, representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A representation, pretense or promise is "false" when it is untrue when made or effectively conceals or omits a material fact. A representation, pretense or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the institution in deciding whether to engage or not to engage in a particular transaction. However, whether a representation, pretense or promise is "material" does not depend on whether the institution was actually deceived.

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known that the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

The bank fraud counts of the indictment charge that the defendant, along with other persons, devised or participated in a scheme. The Government need not prove, however, that all of these persons met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the execution of the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

It is not necessary that the Government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, or that the alleged scheme actually succeeded in defrauding anyone.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant as to any of the crimes charged under Counts 2-9, then you must find the defendant guilty of those crimes; otherwise you must find the defendant not guilty of those crimes.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

NO. 11

The crime of wire fraud affecting a financial institution, as charged in Counts 10-14, and 18, of the indictment, has four elements, which are:

One, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature, or participated in a scheme to obtain money, property or property rights by means of material false representations or promises which scheme is described in Count 2 of the indictment;

Two, the defendant did so with the intent to defraud;

Three, the defendant used, or caused to be used, interstate wire communication facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme; and

Four, the scheme affected a financial institution.

The parties have stipulated that at all times between January 1, 1992, and May 14, 2008, Allegiant Bank and Bremen Bank and Trust Company were financial institutions.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A representation or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not

to engage in a particular transaction. However, whether a representation or promise is "material" does not depend on whether the person was actually deceived.

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

It is not necessary that the use of interstate wire communication facilities by the participants themselves be contemplated or that the defendant do any actual wiring or sending of material by wire, or specifically intend that interstate wire communication facilities be used. It is sufficient if interstate wire communication facilities were in fact used to carry out the scheme and the use of interstate wire communication facilities by someone was reasonably foreseeable.

Each separate use of an interstate wire communication facility in furtherance of the scheme to defraud constitutes a separate offense.

The wire fraud counts of the indictment charge that the defendant, along with other persons, devised or participated in a scheme. The Government need not prove, however, that these persons met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the operation of the scheme and the use of an interstate wire communication facility for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

It is not necessary that the Government prove all of the details alleged in the indictment

concerning the precise nature and purpose of the scheme, that the material sent by interstate wire communication facilities was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the use of the interstate wire communication facility was intended as the specific or exclusive means of accomplishing the alleged fraud.

The term “affected a financial institution” means exposing a financial institution to a risk of loss, causing it to spend time and money to investigate the scheme, or causing it to sustain legal expenses. A financial institution need not have actually suffered a loss in order to have been affected by the scheme.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant as to any of the crimes charged under Counts 10-14, and 18, then you must find the defendant guilty of those crimes; otherwise you must find the defendant not guilty of those crimes.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

NO. 12

The crime of wire fraud, as charged in Counts 15-17 of the indictment, has three elements, which are:

One, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature, or participated in a scheme to obtain money, property or property rights by means of material false representations or promises which scheme is described in Count 2 of the indictment;

Two, the defendant did so with the intent to defraud; and

Three, the defendant used, or caused to be used, interstate wire communication facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A representation or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or promise is "material" does not depend on whether the person was actually deceived.

To act with "intent to defraud" means to act knowingly and with the intent to deceive

someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

It is not necessary that the use of interstate wire communication facilities by the participants themselves be contemplated or that the defendant do any actual wiring or sending of material by wire, or specifically intend that interstate wire communication facilities be used. It is sufficient if interstate wire communication facilities were in fact used to carry out the scheme and the use of interstate wire communication facilities by someone was reasonably foreseeable.

Each separate use of an interstate wire communication facility in furtherance of the scheme to defraud constitutes a separate offense.

The wire fraud counts of the indictment charge that the defendant, along with other persons, devised or participated in a scheme. The Government need not prove, however, that these persons met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the operation of the scheme and the use of an interstate wire communication facility for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

It is not necessary that the Government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, that the material sent by interstate wire communication facilities was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the use of the interstate wire communication facility was

intended as the specific or exclusive means of accomplishing the alleged fraud.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant as to any of Counts 15-17, then you must find the defendant guilty of those crimes; otherwise you must find the defendant not guilty of those crimes.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

NO. 13

The crime of mail fraud affecting a financial institution, which is one of the crimes that the defendant is alleged to have conspired to commit in Count 1, has four elements, which are:

One, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature, or participated in a scheme to obtain money, property or property rights by means of material false representations or promises which scheme is described in Count 2 of the indictment;

Two, the defendant did so with the intent to defraud;

Three, the defendant used, or caused to be used, the mail in furtherance of, or in an attempt to carry out, some essential step in the scheme; and

Four, the scheme affected a financial institution.

The parties have stipulated that at all times between January 1, 1992, and May 14, 2008, Allegiant Bank and Bremen Bank and Trust Company were financial institutions.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A representation or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not

to engage in a particular transaction. However, whether a representation or promise is "material" does not depend on whether the person was actually deceived.

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

It is not necessary that the use of the mail by the participants themselves be contemplated or that the defendant do any actual mailing or sending of material by mail, or specifically intend that the mail be used. It is sufficient if the mail was in fact used to carry out the scheme and the use of the mail by someone was reasonably foreseeable.

The count of the indictment which charges conspiracy to commit mail fraud affecting a financial institution charges that the defendant, along with other persons, conspired to devise or participate in a scheme. The Government need not prove, however, that these persons met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the operation of the scheme and the use of the mail for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

It is not necessary that the Government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, that the material sent by the mail was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged

fraud.

The term “affected a financial institution” means exposing a financial institution to a risk of loss, causing it to spend time and money to investigate the scheme, or causing it to sustain legal expenses. A financial institution need not have actually suffered a loss in order to have been affected by the scheme.

NO. 14

The crime of mail fraud, which is one of the crimes that the defendant is alleged to have conspired to commit in Count 1, has three elements, which are:

One, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature, or participated in a scheme to obtain money, property or property rights by means of material false representations or promises which scheme is described in Count 2 of the indictment;

Two, the defendant did so with the intent to defraud; and

Three, the defendant used, or caused to be used, the mail in furtherance of, or in an attempt to carry out, some essential step in the scheme.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A representation or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or promise is "material" does not depend on whether the person was actually deceived.

To act with "intent to defraud" means to act knowingly and with the intent to deceive

someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

It is not necessary that the use of the mail by the participants themselves be contemplated or that the defendant do any actual mailing or sending of material by mail, or specifically intend that the mail be used. It is sufficient if the mail was in fact used to carry out the scheme and the use of the mail by someone was reasonably foreseeable.

The count of the indictment which charges conspiracy to commit mail fraud charges that the defendant, along with other persons, devised or participated in a scheme. The Government need not prove, however, that these persons met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the operation of the scheme and the use of the mail for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

It is not necessary that the Government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, that the material sent by mail was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud.

NO. 15

The crime of conspiracy as charged in Count 1 of the indictment, has three elements, which are:

One, two or more persons reached an agreement or came to an understanding to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find defendant guilty of the crime charged under Count 1; otherwise you must find defendant not guilty of this crime under Count 1.

NO. 16

The Government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is named in the Indictment. You do not have to find that all of the persons charged were members of the conspiracy.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision,

you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

NO. 17

Count 1 of the indictment charges defendant and others who are not presently defendants in this case with the charge of conspiracy to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, and bank fraud. Earlier in these instructions I defined the elements of mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, and bank fraud, in relation to the charges that the defendants participated in a scheme to defraud. You may use those definitions in considering whether defendant and others conspired to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud, keeping in mind that the charges in Count 1 charge a conspiracy to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, and bank fraud, and not that mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud, were committed.

NO. 18

Count 1 of the indictment charges a conspiracy to commit five separate crimes. It is not necessary for the Government to prove a conspiracy to commit all of those crimes. It would be sufficient if the Government proves, beyond a reasonable doubt, a conspiracy to commit at least *one* of those crimes. In that event, to return a verdict of guilty, you must unanimously agree *which* of the five crimes was the subject of the conspiracy. If you are unable to unanimously agree, you cannot find the defendant guilty of conspiracy. In this case, you must decide which of the crimes of mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud, if any, defendant conspired to commit, and record your unanimous verdict on the form provided.

NO. 19

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

NO. 20

You may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements of co-conspirators which are made before the conspiracy began or after it ended should not be considered by you against the defendant.

NO. 21

A member of a conspiracy to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud is responsible for crimes committed by other members of the conspiracy, if the government proves each of the following elements beyond a reasonable doubt:

One, another person committed the crime of bank fraud, as set forth in Instruction No. 10; wire fraud affecting a financial institution, as set forth in Instruction No. 11; wire fraud, as set forth in Instruction No. 12; or mail fraud affecting a financial institution, as set forth in Instruction No. 13; or mail fraud, as set forth in Instruction No. 14.

Two, this other person was a member of the conspiracy at the time bank fraud, wire fraud affecting a financial institution, wire fraud, mail fraud affecting a financial institution, or mail fraud, was committed;

Three, this other person committed the crime of bank fraud, wire fraud affecting a financial institution, wire fraud, mail fraud affecting a financial institution, or mail fraud, in furtherance of the conspiracy;

Four, the commission of bank fraud, wire fraud affecting a financial institution, wire fraud, mail fraud affecting a financial institution, or mail fraud, was within the scope of the conspiracy, or was reasonably foreseeable as a necessary or natural consequence of the conspiracy; and

Five, the defendant was also a member of the conspiracy at the time the bank fraud, wire fraud affecting a financial institution, wire fraud, mail fraud affecting a financial institution, or mail fraud was committed.

If all of these essential elements have been proved beyond a reasonable doubt as to the

defendant as to any of the crimes charged under Counts 2-18, then you must find the defendant guilty of those; otherwise you must find the defendant not guilty of those.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

NO. 22

You may find that defendant acted knowingly for purposes of Counts 1-18 if you find beyond a reasonable doubt that defendant was aware of a high probability that he was participating in a fraudulent scheme and that he deliberately avoided learning the truth. The element of knowledge may be inferred if defendant deliberately closed his eyes to what would otherwise have been obvious to him. You may not find the defendant acted "knowingly" if you find he was merely negligent, careless or mistaken as to the fraudulent nature of the scheme.

NO. 23

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

NO. 24

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the charges of conspiracy to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, and bank fraud (Count 1), bank fraud (Counts 2-9), wire fraud affecting a financial institution (Counts 10-14 and 18), and wire fraud (Counts 15-17) if it is inconsistent with the defendant acting to conspire with one or more persons to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud under the second element of conspiracy (Count 1), intent to defraud under the second element of bank fraud (Counts 2-9), intent to defraud under the second element of wire fraud affecting a financial institution (Counts 10-14 and 18), or intent to defraud under the second element of wire fraud (Counts 15-17).

Fraudulent intent is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of fraudulent intent. Good faith constitutes a complete defense to one charged with an offense of which fraudulent intent is an essential element. One who acts with honest intention is not chargeable with fraudulent intent. One who acts according to an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though such opinion is erroneous and such belief is a mistaken belief. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent. In order to establish fraudulent intent on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

Evidence that the defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not he acted with intent to defraud.

NO. 25

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous.

given to you in my instructions. The verdict whether guilty or not guilty must be unanimous.

Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict forms are simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

1 UNITED STATES OF AMERICA
2 EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 vs.) No. 4:09-CR-509 JCH
6 DAVID R. WULF,)
7 Defendant.)

8 TRANSCRIPT OF SENTENCING HEARING
9 BEFORE THE HONORABLE JEAN C. HAMILTON
10 UNITED STATES DISTRICT JUDGE

11 November 14, 2013

12 APPEARANCES:

13 For Plaintiff: Mr. Charles S. Birmingham
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17 For Defendant: Mr. Joseph M. Hogan
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24 Proceedings recorded by mechanical stenography, produced by
25 computer-aided transcription.

1 (The following proceedings were held in open court
2 on November 14, 2013 at 11:43 a.m.):)

3 THE COURT: United States versus Wulf.

4 MR. HOGAN: Good morning, Your Honor.

5 THE COURT: Good morning. United States versus
6 David R. Wulf. Mr. Wulf is here this morning with his
7 attorneys, Mr. Hogan and Mr. Corlija. And Mr. Birmingham is
8 representing the government.

9 This matter is here for sentencing. It's my
10 understanding there are no objections to the report?

11 MR. HOGAN: That's correct, Your Honor.

12 MR. BIRMINGHAM: That's correct.

13 THE COURT: Okay. For the record, the total offense
14 level as found in the report is level 43, and the criminal
15 history category is Category I. The Court will adopt those
16 findings.

17 I have also received and reviewed a number of
18 letters on behalf of Mr. Wulf. I've also received the
19 memorandum filed by the defendant and the memorandum filed by
20 the government. I've reviewed each of those.

21 At this time, Mr. Hogan, is there anything you would
22 like to state on behalf of Mr. Wulf?

23 MR. HOGAN: I would, Your Honor.

24 THE COURT: Go ahead.

25 MR. HOGAN: Your Honor, I know the Court has read my

1 sentencing memorandum. And I know the Court is aware of the
2 case law cited therein.

3 Mr. Wulf stands here in a very different position
4 than the other defendants. I'm not here to argue what he did
5 or didn't do or come up here after someone has been found
6 guilty and say, well, we didn't do this or we didn't do that.

7 Your Honor, I stand here before the Court to tell
8 you that before the trial, the three-week trial, the
9 government recommended a sentence to Mr. Wulf of 60 months.
10 We had a *Frye* hearing. I explained it to Mr. Wulf. And I
11 explained what would happen if you lose when you go to trial.

12 Now, at the same time, Your Honor, the government's
13 sentence -- I'm a former prosecutor. I prosecuted for years
14 in St. Louis County. And when I would make recommendations
15 on felony cases, I would make those recommendations based
16 upon the facts and the evidence and the criminal history.
17 And it would be a recommendation that reflected the
18 seriousness of the offense. Now, I never worked in the U.S.
19 Attorney's Office, but that's what prosecutors do; they make
20 recommendations. They make recommendations based upon what
21 they believe a case is worth.

22 They believe -- and I'm not making this up -- this
23 is what the government requested, 60 months maximum sentence
24 for Mr. Wulf based upon his role in the conspiracy, based
25 upon what he did and crimes he committed, that's what they

1 thought the case was worth, 60 months.

2 Now, Mr. Wulf went to trial. I've had numerous
3 conversations with Mr. Birmingham, with Mr. Finneran. They
4 are requesting a Guideline sentence. So based -- Mr. Wulf's
5 role in the conspiracy was worth 60 months. Mr. Wulf
6 exercising his right to a trial in a courtroom in the United
7 States of America, well, now they think that is worth 505
8 more years. So basically sentence him to 60 months for his
9 role in the conspiracy, but give him 510 months (sic) if he
10 has the nerve to go to trial.

11 Your Honor, you've presided over many pleas. I've
12 been in this courtroom many times taking pleas. And it's not
13 lip service when a judge says, do you know what your rights
14 are, let me talk to you about those rights. And the Court
15 will sit there and they'll tell them, well, this is your
16 right to a trial and these are your rights, and you're giving
17 up them, do you understand that? And that's a very important
18 right. It's not lip service. It's your right as an American
19 citizen.

20 He exercised his right. Mr. Kessler says, oh, we
21 would have tried the case. I wish they would have. I'm not
22 going to sit here and insult the Court and say, well, we
23 would have done this or would have done -- Mr. Wulf fought,
24 okay. Mr. Wulf exercised his rights, his Sixth Amendment
25 right, his Fourteenth Amendment right. They are being

1 violated now by a sentence of -- a recommended sentence of
2 510 years. That is ridiculous. There's nothing close to a
3 sentencing disparity like this ever that I could find. And
4 I've researched this case, Your Honor, for months, I couldn't
5 find one anywhere near this.

6 Mr. Wulf has a criminal history score of zero.
7 Zero. He has never been in trouble. 60 years old. He
8 raised five kids. Put all his kids through college. They
9 are all here with him. They all support him. As we know as
10 parents, and as the older we get, probably the best way to
11 judge someone's life is you look at their kids. And he has
12 great children who all support him. He's been a good
13 citizen. He's been a model citizen.

14 The government's evidence against him, which they
15 argued at trial, they asked for an instruction of willful
16 blindness. You were here for the three-week trial. We're
17 not going to go through everything again, but you know, no
18 one ever took the stand, Your Honor, and said that Mr. Wulf
19 conspired with them. The government actually argued to the
20 jury that he was willfully blind. They submitted that
21 instruction. That was their instruction, not mine. And they
22 said, he may have known about it, by not being the leader of
23 it, but he went along with it.

24 The presentence investigation, which Mr. Kessler
25 commented on what a great job they did. And Megan Rosenberg

1 prepared Mr. Wulf's. They listed an order of culpability.
2 They listed James Douglas Cassity as number one in
3 culpability as a leader and organizer. Then they listed
4 Randall Sutton and Howard Wittner as leaders and organizers.
5 And in that PSI they said my client was the third in
6 culpability, in the middle. And they said he took direction
7 from Howard Wittner, Sutton, and Cassity. That's what the
8 government, the evidence they provided to the PSI. That's
9 their case.

10 So now we have a case where he is in the middle of
11 culpability. He was not listed as a leader. He was listed
12 as an organizer. Your Honor, you know I disputed all these
13 facts as trial, but I'm just arguing now the absurdity of the
14 government's position on sentencing as my basis here for you
15 today.

16 When you're offered five years, you turn it down,
17 and you exercise your rights -- and to say that everyone else
18 accepted responsibility, it's a joke. It's a joke and it's
19 an insult to your intelligence. This case was pending since
20 '09. Two people were indicted, then the rest were indicted,
21 okay. These were last minute plea deals. Mr. Wulf went to
22 trial August 5th. Everyone accepted responsibility and
23 worked a deal out in July, Your Honor, with the exception of
24 Ms. Province who pled in June. And I'm not trying to cast
25 stones on the other defendants and their counsel, but unlike

1 many of the other defense lawyers here, I believe there was a
2 conspiracy, Your Honor. I was here for the evidence. I
3 think crimes were committed. You heard the witnesses; I
4 heard the witnesses. People were duped.

5 Mr. Wulf, as the government said, willful blindness.
6 Not exactly calling him a leader or organizer during the
7 trial, Your Honor. So that's where he sits based upon what
8 they are arguing.

9 Everyone else could have went to trial if they chose
10 to. If they were innocent, they could have exercised their
11 right, and they didn't.

12 You know, maybe I'm not a very good lawyer. Maybe I
13 should have had Mr. Wulf plead guilty too and I wouldn't be
14 here begging you not to give him 510 years in prison, and
15 then I could get up here and make up stories how he's an
16 alcoholic and that he needs RDAP and he needs everything else
17 to lessen his sentence.

18 His crime is what he was convicted of, but his
19 sentence, the sentencing range they want is because of a
20 different crime, his crime of going to trial. We are trial
21 lawyers. Prosecutors are trial lawyers. That's what real
22 lawyers do, real lawyers go into courtrooms and they try
23 cases. That's what we do. And that's not a bad thing. And
24 they said, oh, well, Mr. Hogan, I put the victims through
25 three weeks of a trial. Your Honor, Mr. Meyers, who came in

1 and testified, and as the Court knows, most people want to
2 come in and tell their stories. Most people want to come in
3 and be heard. And I don't think that's worth 505 additional
4 years for exercising your rights and having people come in
5 and having the government prove their case.

6 No one else here accepted responsibility, Your
7 Honor. I mean, think about that. A last minute plea deal,
8 oh, we accepted. I know the case has been pending for 32
9 months and 40 -- I think 46 or 48 months against others, but,
10 hey, we've accepted responsibility, we're sorry. No, they
11 worked deals out. Okay. I wasn't able to get my client to
12 work that deal out. But that doesn't mean he should get 500
13 more years than everybody else. It's absurd.

14 Your Honor, Mr. Wulf has been a good citizen in his
15 life. He got involved with NPS and here he stands today.
16 And he didn't profit. He didn't make millions of dollars.
17 You read the presentence investigative report. You saw who
18 made what, and you know what Mr. Wulf made.

19 I would ask if -- the level the government offered
20 would have put him at a Level 24. And as is customary in
21 this courthouse, people when they go trial usually get three
22 points added on for acceptance of responsibility, and usually
23 an additional two points for obstruction of justice, which
24 would put Mr. Wulf at a range of 29. That is a common custom
25 in this courthouse, and I don't object to that, that's not

1 draconian, and that's not insane. But to ask for a Guideline
2 sentence after they've investigated a case for five years and
3 thought Mr. Wulf's role was worthy of 60 months maximum, to
4 ask for 510 now is punitive, it violates his Sixth Amendment
5 and it violates his Fourteenth Amendment.

6 Your Honor, in my sentencing memorandum, you're
7 familiar with the law, it allows you to grant a sentencing
8 variance. Ms. Rosenberg listed it in paragraph -- in the
9 paragraph 127 listed a downward departure.

10 Your Honor, I ask that you grant the sentencing
11 variance. I ask that you sentence Mr. Wulf like anyone would
12 be if they went to trial. He started off as a 24 based upon
13 the government's recommendation. I believe now he should be
14 in a range of around 29, and for you to sentence him in that
15 range. I don't think he should get more than Douglas
16 Cassity. Unlike Mr. Cassity, he's never been convicted
17 before of a felony, of multiple felonies. Unlike Randall
18 Sutton, he did not -- was not the leader and organizer. He's
19 in the middle. Should he get an increased sentence for going
20 to trial? Yes. But not something that violates his rights,
21 Your Honor.

22 That's all I have to say.

23 THE COURT: Mr. Wulf, is there anything you would
24 like to state to the Court at this time?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Mr. Birmingham, anything on behalf of
2 the government?

3 MR. BIRMINGHAM: Your Honor, you've heard the
4 evidence as to Mr. Wulf and you've heard the closing
5 arguments. You know the actual arguments that the government
6 put forward, and you actually know the story of the trust and
7 the \$150 million that should be in trusts, but because of
8 Mr. Wulf is not.

9 To the extent the Court wants a recommendation, we'd
10 be happy to offer it. But, Your Honor, the Guidelines are
11 the Guidelines. To the extent that the Court seeks from the
12 government a non-Guideline recommendation, our recommendation
13 would be a sentence of 12 or more years. But the Court has
14 not sought that recommendation, and I don't want to presume.
15 But I offer that simply to say that that is the government's
16 position. Thank you, Your Honor.

17 THE COURT: Thank you. Pursuant to the Sentencing
18 Reform Act of 1984 and the provisions of 18 USC Section
19 3553(a), it is the judgment of the Court that the defendant,
20 David R. Wulf, is hereby committed to the custody of the
21 Bureau of Prisons to be imprisoned for a term 120 months.
22 This term consists of a term of 120 months on each of Counts
23 1, 2, 5 through 17, 19, 20, and 22, the terms to be served
24 concurrently.

25 Upon release from imprisonment, the defendant shall

1 be placed on supervised release for a term of five years.
2 This term consists of a term of five years on each of Counts
3 1, 2, 5 through 16, and 22; and three years on each of Counts
4 17, 19, and 20, the terms to run concurrently.

5 Within 72 hours of release from the custody of the
6 Bureau of Prisons, the defendant shall report in person to
7 the probation office in the district into which he is
8 released.

9 It is further ordered that pursuant to 18 USC
10 Section 3663(a), for each of Counts 1, 2, 5 through 16, 17,
11 19, 20, and 22, the defendant shall make restitution in the
12 total amount of \$435,515,234 to Jo Ann Howard & Associates,
13 PC, Attention Special Deputy Receiver, P.O. Box 160050,
14 Austin, Texas, 78716, in the amount of \$435,515,234. This
15 obligation is joint and several with Brent Douglas Cassity,
16 James Douglas Cassity, Sharon Nekol Province, Randall Sutton,
17 and Howard Wittner in this case, meaning that no further
18 payments shall be required after the sum of the amounts
19 actually paid by all defendants has fully covered the
20 compensable injuries. Payments of restitution shall be made
21 to the Clerk of Court for a transfer to the victims. The
22 interest requirement for the restitution is waived.

23 All criminal monetary penalties are due in full
24 immediately. The defendant shall pay all criminal monetary
25 penalties through the Clerk of Court. If the defendant

1 cannot pay in full immediately, then the defendant shall make
2 payments under the following minimum payment schedule. The
3 defendant shall make a lump sum payment of \$100,000 within 30
4 days of sentencing. During incarceration, the defendant
5 shall pay criminal monetary penalties through an installment
6 plan in accordance with the Bureau of Prisons Inmate
7 Responsibility Program at the rate of 50 percent of the funds
8 available to the defendant.

9 If the defendant owes any criminal monetary
10 penalties when released from incarceration, then the
11 defendant shall make payments in monthly installments of at
12 least \$500 or no less than 10 percent of the defendant's
13 gross earnings, whichever is greater, with payments to
14 commence no later than 30 days after release from
15 imprisonment. Until all criminal monetary penalties are paid
16 in full, the defendant shall notify the Court and this
17 district's United States Attorney's Office, Financial
18 Litigation Unit, of any material changes in the defendant's
19 economic circumstances that might affect the defendant's
20 ability to pay criminal monetary penalties.

21 The defendant shall notify this district's United
22 States Attorney's Office, Financial Litigation Unit, of any
23 change of mailing or residence address that occurs while any
24 portion of the criminal monetary penalties remains unpaid.

25 The defendant is ordered to participate in the

1 financial responsibility program while incarcerated if that
2 is consistent with Bureau of Prisons policies.

3 While on supervision the defendant shall comply with
4 the standard conditions adopted by this court and the
5 following additional conditions:

6 If it is determined there are costs associated with
7 any services provided, the defendant shall pay those costs
8 based on a copayment fee established by the probation office.

9 The defendant shall participate in a cognitive
10 behavioral treatment program as directed by the probation
11 office. The defendant shall provide the probation office and
12 the Financial Litigation Unit of the U.S. Attorney's Office
13 access to any requested financial information. The defendant
14 is advised that the probation office may share financial
15 information with the Financial Litigation Unit.

16 The defendant shall be prohibited from incurring new
17 credit charges or opening additional lines of credit without
18 the approval of the probation office so long as there is a
19 balance on the Court imposed financial obligation.

20 The defendant shall apply all moneys received from
21 any anticipated or unexpected financial gains, including any
22 income tax refunds, inheritances, or judgments to the
23 outstanding court ordered financial obligation. The
24 defendant shall immediately notify the probation office of
25 the receipt of any indicated moneys. The defendant shall pay

1 restitution as previously ordered by the Court.

2 The defendant shall submit his person, residence,
3 office or vehicle to a search conducted by the probation
4 office based upon reasonable suspicion of contraband or
5 evidence of a violation of a condition of release. The
6 defendant shall warn any other residents that the premises
7 may be subject to searches pursuant to this condition.

8 The defendant shall not recreate, operate, manage, or
9 participate in the creation, operation, or management of any
10 business entity, including a family business, without the
11 written permission of the probation office. The defendant
12 shall not be self-employed or be employed as a consultant
13 without the written permission of the probation office.

14 Based on the low risk the defendant poses for future
15 substance abuse, the Court suspends the mandatory statutory
16 drug testing requirements.

17 The Court finds the defendant does not have the
18 ability to pay a fine.

19 It is further ordered that the defendant shall pay
20 to the United States a special assessment of \$100 on each of
21 Count 1, 2, 5 through 17, 19, 20, and 22, for a total of
22 \$1,800, which shall be due immediately.

23 A variance to a non-Guideline sentence of 120 months
24 is ordered in order to avoid a sentencing disparity with the
25 defendant's codefendants in this case. As such, in light of

1 the advisory Guidelines range and the provisions of 18 USC
2 Section 3553(a), based upon the serious nature of the instant
3 offense, which involved a conspiracy to commit mail fraud,
4 bank fraud, and wire fraud, which affected financial
5 institutions resulting in losses to the victims in the amount
6 \$435,515,234, and in consideration of the defendant's lack of
7 criminal history, an aggregate sentence of 120 months
8 imprisonment, which represents a variance from the low end of
9 the Guideline range, followed by a five-year term of
10 supervised release and payment of full restitution, would
11 seem to address the sentencing objectives of just punishment,
12 general deterrence, and incapacitation.

13 The maximum term of supervised release is ordered in
14 view of the substantial amount of restitution.

15 Upon release to the community, the defendant will
16 need close monitoring, therefore, the standard conditions of
17 supervision are ordered. Based upon the low risk the
18 defendant poses for future substance abuse, the Court
19 suspends the mandatory statutory drug testing requirements.
20 Further, as the offense involved fraud and substantial losses
21 to victims, a search condition is imposed to ensure
22 compliance with the law.

23 Based upon the defendant's current counseling
24 treatment, a special condition for participation in a mental
25 health program is ordered. It is also ordered that the

1 defendant participate in the financial responsibility program
2 at a rate determined by the Bureau of Prisons' staff in
3 accordance with the requirements of the Inmate Responsibility
4 Program.

5 Based upon the mandatory restitution, the Court
6 orders the special conditions regarding financial disclosure,
7 credit restrictions, and financial gains. Further, the
8 defendant is to pay restitution as previously ordered by the
9 Court.

10 As the defendant has not accepted responsibility for
11 his actions, a special condition for cognitive behavioral
12 therapy is ordered. As the offense involved the defendant's
13 lack of oversight of a business, it is ordered that he be
14 barred from owning or managing a business and barred from
15 self-employment. Since it does not appear the defendant has
16 the present ability to pay a fine in addition to restitution,
17 no fine is imposed.

18 Is there anything further at this time?

19 MR. HOGAN: Your Honor, I would ask that Mr. Wulf be
20 placed in a minimum security institution as close to St.
21 Louis as possible. I know that's a decision for the Bureau
22 of Prisons, but I'd ask the Court make that recommendation.

23 THE COURT: I will make that recommendation.

24 MR. HOGAN: And, Your Honor, I spoke to
25 Mr. Birmingham, and he agreed to self surrender for Mr. Wulf.

1 And as Mr. Rosenblum stated, after the holidays. We would
2 ask for the same leeway from the Court, Your Honor.

3 THE COURT: And I would be happy to allow that.

4 MR. HOGAN: Thank you, Your Honor.

5 THE COURT: Mr. Wulf, you'll be on your present
6 conditions of bond until you report to the Bureau of Prisons.

7 THE DEFENDANT: Yes, ma'am.

8 MR. BIRMINGHAM: Your Honor, we would ask that the
9 Court pronounce forfeiture as to Mr. Wulf.

10 THE COURT: And the forfeiture, which I signed this
11 morning, will and does apply to this case.

12 MR. BIRMINGHAM: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. HOGAN: Thank you, Your Honor.

15 (Court in recess at 12:02 p.m.)
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C E R T I F I C A T E

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2 I, Susan R. Moran, Registered Merit Reporter, in
3 and for the United States District Court for the Eastern
4 District of Missouri, do hereby certify that I was present
5 at and reported in machine shorthand the proceedings in the
6 above-mentioned court; and that the foregoing transcript is
7 a true, correct, and complete transcript of my stenographic
8 notes.

9 I further certify that I am not attorney for, nor
10 employed by, nor related to any of the parties or attorneys
11 in this action, nor financially interested in the action.

12 I further certify that this transcript contains
13 pages 1 - 18 and that this reporter takes no responsibility
14 for missing or damaged pages of this transcript when same
15 transcript is copied by any party other than this reporter.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 at St. Louis, Missouri, this 17th day of December, 2013.

18
19
20 _____
/s/ Susan R. Moran
Registered Merit Reporter
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23
24
25