

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

ANNE B. POPE, as Liquidator of
Franklin American Life Insurance
Company;)
)
)
GEORGE DALE, as Liquidator of First)
National Life Insurance Company, Family)
Guaranty Life Insurance Company and)
Franklin Protective Life Insurance)
Company;)
)
KEITH WENZEL, as Liquidator of)
International Financial Services Life)
Insurance Company; and)
)
CARROLL FISHER, as Receiver of)
Farmers & Ranchers Life Insurance)
Company, in Liquidation,)
)
Plaintiffs,)
)
v.)
)
LEUTY AND HEATH, PLLC,)
JAMES LEUTY, and STEWART HEATH)
)
Defendants.)

FILED
 2000 MAY -2 PM 2:02
 CLARK & HASTER
 DAVIDSON CO. CHANCERY CT.
 D.C.B.M.

JURY DEMANDED
Case No. 00-1370-H

COMPLAINT

I. Introduction

COME NOW, Anne B. Pope, Commissioner of Commerce and Insurance for the State of Tennessee, in her capacity as Liquidator of Franklin American Life Insurance Company ("FAL"); George Dale, Commissioner of Insurance for the State of Mississippi, in his capacity as Liquidator of First National Life Insurance Company of America ("FNL"), Family Guaranty Life Insurance Company ("FGL") and Franklin Protective Life Insurance Company ("FPL"); Keith Wenzel, Director of Insurance for the State of Missouri, in his capacity as Liquidator of International Financial Services Life Insurance Company ("IFS"); and Carroll Fisher, Commissioner of Insurance for the State of Oklahoma, in his capacity as Receiver of Farmers and Ranchers Life Insurance Company, in Liquidation, formerly Farmers and Ranchers Life Insurance Company ("F & R"), by and through their attorneys of record herein, and file this Complaint alleging counts of professional negligence as against the Defendants. Such companies are collectively referred to herein as the "Insurance Companies."

II. Jurisdiction and Venue

1. Subject matter jurisdiction is appropriate in this Court pursuant to T.C.A. § 16-11-102.
2. Personal jurisdiction over the Defendants exists in that Leuty and Heath, PLLC, is a Tennessee company located in Tennessee and Mr. Leuty and Mr. Heath are residents and citizens of the State of Tennessee.
3. Venue is appropriate in this judicial district pursuant to T.C.A. § 20-4-101, Defendants having sufficient contacts in this district to constitute being found herein.

III. Parties

4. Franklin American Life Insurance Company is a life insurance company domiciled in the State of Tennessee which has been subject to an Agreed Order of Liquidation in the Chancery Court of Davidson County, Tennessee since October 22, 1999 (State of Tennessee ex rel Pope v. Franklin American Life Insurance Company, #99-1326-II). Plaintiff Pope is the statutory Receiver/Liquidator of that entity.
5. First National Life Insurance Company of America, Family Guaranty Life Insurance Company and Franklin Protective Life Insurance Company are life insurance companies domiciled in the State of Mississippi which have been subject to an Order of Liquidation in the Chancery Court of Hinds County, Mississippi since June 29, 1999 (Dale v. First National Life Insurance Company, #G99-908, Dale v. Family Guaranty Life Insurance Company, #G99-909, and Dale v. Franklin Protective Life Insurance Company, #G99-907). Plaintiff Dale is the statutory Receiver/Liquidator of those entities.
6. International Financial Services Life Insurance Company is a Missouri domiciled insurance company that has been subject to an Order of Liquidation in the Circuit Court of Cole County, Missouri since November 30, 1999 (Wenzel v. International Financial Services Life Insurance Company, #199-623CC). Plaintiff Wenzel is the statutory Receiver/Liquidator of that entity.
7. Farmers and Ranchers Life Insurance Company is an Oklahoma domiciled insurance company that has been subject to an Order of Liquidation in District Court for Oklahoma County, Oklahoma since January 14, 2000 (Fisher v. Farmer and Ranchers Life Insurance Company, in Liquidation, #CJ-99-3401-61). Plaintiff Fisher is the statutory Receiver of that entity.

8. Leuty and Heath, P.L.L.C. is a Tennessee professional limited liability company with its offices in Franklin, Tennessee. James Leuty is a citizen of Tennessee and is a shareholder in Leuty & Heath, PLLC. Stewart Heath is a citizen of Tennessee and is a shareholder in Leuty & Heath, PLLC. The Defendants are certified public accountants who are engaged in the profession of accounting in and around the Nashville, Tennessee, area.

IV. General Background

9. In 1991, the Thunor Trust (a Tennessee trust with John A. Hackney as its sole trustee) purchased an approximate 85% interest in Franklin American Corporation (FAC). FAC was 100% owner of Franklin American Life Insurance Company (FAL).

10. In subsequent years, the Thunor Trust, through either FAC or International Financial Corporation (IFC) (an Oklahoma entity established by Thunor Trust and those working in concert with or control of said trust), acquired 100% of Family Guaranty Life Insurance Company (FGL), Franklin Protective Life Insurance Company (FPL), International Financial Services Life Insurance Company (IFSLIC), Farmers and Ranchers Life Insurance Company (F & R) and First National Life Insurance Company of America (FNL).

11. Through these transactions, all of the Insurance Companies trace common ownership to Thunor Trust in the following manner: Thunor Trust owns approximately 85% of FAC and FAC owns 100% of FAL, FGL and FPL; Thunor Trust owns 100% of IFC and IFC owns 100% of IFSLIC, F & R and FNL. Collectively, the Insurance Companies and the other companies owned in whole or in part by the Thunor Trust are referred to herein as the "Thunor-related Companies."

12. Thunor Trust and various, if not all, of the Thunor-related Companies were controlled by Martin Frankel and others. Mr. Frankel, who has been the focus of a well-publicized scheme regarding the Insurance Companies, is subject to a multi-count criminal indictment in the United States District Court for the District of Connecticut and a state-court indictment in Williamson County, Tennessee.

V. Factual Allegations

13. Beginning in 1992, Defendants were engaged to perform independent auditing services for FAC and FAL.

14. As each additional Insurance Company was purchased as described above, Defendants were also engaged to perform independent auditing services for the additional Insurance

Companies such that eventually the Defendants performed such services for all of the Insurance Companies.¹

15. During the same time frame, Defendants also provided tax accounting and preparation services for various of the Thunor-related Companies, including the Insurance Companies.

16. As independent certified public accountants, each of the Defendants was obligated to perform all accounting services rendered to the Plaintiffs in accordance with applicable accounting standards. Furthermore, by accepting employment with the Insurance Companies, Defendants held themselves out as having the requisite skill to perform their services in accordance with the state and federal laws, regulations and/or requirements applicable to the insurance industry.

17. As part of their audits and related accounting services, Defendants had access to the books and records and related information of all of the Thunor-related Companies. Indeed, as a result of providing the auditing and related accounting services to all of the Thunor-related Companies, Defendants were in the unique position of having broad knowledge of the operation of the Thunor-related Companies and the interaction of transactions amongst and between all of the various entities within the Thunor-related Companies.

18. While performing the independent audits of the Thunor-related Companies, Defendants became aware or should have become aware of many matters. First, they became aware that the overwhelming bulk of Insurance Company assets were purportedly being held and invested by an entity known as Liberty National Securities. (LNS).² Defendants knew or should have known that the exclusive vehicle of investments by LNS were government bonds, yet those "bonds"³ were not being held to maturity, as would be typical of a life insurance company asset; that instead, there were an extremely high number of buy/sell transactions in high dollar amounts by LNS regarding

¹ The entities are FAC, IFC, FAL, FGL, FPL, FNL, IFSLIC, F & R, as well as the Thunor Trust itself. Also of note is that Defendant also provided independent auditing services to entities known as the Saint Francis of Assisi Foundation (SFAF) and Jupiter Capital Investments, Ltd. These entities were also controlled by Mr. Frankel and perhaps others. SFAF was established in either 1998 or 1999 ostensibly to have assigned to it all interest in the Thunor Trust, to provide a vehicle of providing funds (supposedly from Vatican sources) to purchase additional Insurance Companies and to direct charitable donations regarding profits realized through the operations of the insurance companies.

² LNS is yet another entity controlled by Mr. Frankel, and perhaps others and was part of the overall scheme of fraud perpetrated upon Plaintiffs.

³ Upon information and belief, LNS never actually purchased these bonds, rather the funds transferred to it supposedly for investment purposes were converted by Frankel and perhaps others and sent to bank accounts in Switzerland.

those "bonds." Defendants also knew that such a course of investment was extremely sensitive to changes in interest rates. Defendants also knew or should have known that abnormally small transaction fees were charged by LNS regarding the supposed transactions by LNS. Defendants also became aware that over a four to five year period, LNS issued Insurance Company account statements and information from four different locations ranging from Ohio, to Michigan, to two different sites in New York.

19. Defendants also became aware of numerous transactions and transfers of money amongst and between the various Thunor-related Companies as well as amounts that were recorded as capital contributions and/or capital surpluses into the various Thunor-related Companies.

20. Moreover, Defendants knew that funds received by Thunor Trust were funds wired to it from bank accounts located in Switzerland.

21. It further appears that in various instances, Defendants vouched for the existence of assets being held at LNS based upon telephone confirmation with persons supposedly associated with LNS. Defendants made no effort to understand, consider or otherwise verify any aspect of the operations of LNS, including the internal controls and operating policies of that entity.

22. Also, with regard to various matters and transactions, it appears that Defendants failed to appropriately note or otherwise disclose the related party nature of those transactions.

23. Defendants, in many instances, did insufficient planning or establishing of programs for the audits of various of the Thunor Trust related entities.

VI. Causes of Action

a) Malpractice Regarding Auditing Services

24. Plaintiffs incorporate ¶'s 1-23 above.

25. The above-described matters constitute warning areas and/or failures relating to the standards and duties of an independent auditor of insurance companies and/or insurance holding companies. Specifically, these matters implicate auditing standards addressing areas such as 1) adequate audit programs and planning, 2) consideration and examination of concentration of risk, 3) detection of material fraud or suspicious activity, 4) consideration and examination of internal controls and risk assessment of an outside party (e.g., LNS) that performs material functions for the audited entity, 5) consideration and examination of unusual and large transactions (e.g. capital

infusions), 6) consideration and examination of related party transactions, 7) adequate confirmation of assets procedures and 8) maintaining an adequate degree of professional skepticism.

26. Upon information, investigation and belief, Defendants were negligent in not fulfilling the duties incumbent upon auditors of insurance companies and/or insurance holding companies in the above-listed areas and perhaps other areas that relate to Defendants performance of auditing services. Defendants were further negligent in not becoming aware of or otherwise not recognizing reportable conditions and/or material weaknesses in the audited entities, and further in not reporting those matters to management, boards of directors, and/or appropriate regulatory authorities. Defendants also were negligent in not discovering or otherwise not recognizing information that would have had material impact upon previously-issued audits, and further in not reporting those matters to management, boards of directors, and/or appropriate regulatory authorities.

27. Said negligence has proximately caused damages in the millions of dollars to the Plaintiffs, their policyholders and creditors.

b) Malpractice Regarding Tax Accounting

28. Plaintiffs incorporate ¶'s 1-27 above.

29. Defendants also were engaged by various of the Insurance Companies to provide tax accounting and preparation services. Defendants provided those services in relation to taxes owed to various state revenue departments and in relation to taxes owed to the federal government.

30. Specifically, but without limitation, Defendants were engaged to prepare the 1995 federal tax return for FAL.

31. Review of that work reveals errors in the calculations and computations for that tax year which resulted in an underpayment of federal tax aggregating to approximately \$70,000.

32. The errors discovered in this specific FAL tax return were in an area unique to life insurance tax accounting, which Defendants should have known about.

33. The errors discovered constitute malpractice on behalf of Defendants and have proximately caused damage to FAL, its policy holders and its creditors.

34. Through this allegation of malpractice regarding tax accounting and the preparation of tax returns, the other Plaintiffs give notice to Defendants that other allegations of such malpractice may exist.

VII. Prayer for Relief

WHEREFORE, Plaintiffs pray for the following relief:

- a. The ability to amend this Complaint regarding further facts, allegations and causes of action which arise from and relate to the engagement of and performances of auditing services and tax preparation services by Defendants to Plaintiffs;
- b. the empaneling of a jury of appropriate number to hear this matter at trial;
- c. judgment against Defendants regarding liability for the acts of malpractice as alleged herein and/or as further amended;
- d. award of damages consistent with the proof presented at the trial of this cause; and
- e. all further relief as dictated by equity and justice.

Respectfully submitted,

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