

# JUDGE SUPPORTS CONFIRMING LIFE PARTNERS' PLAN WITH VIDA WITH WAIVER OF EARLY-TERMINATION FEE

The judge again blasted Transparency Alliance, saying it tried to sabotage the trustee's plan with Vida.

**BY DONNA HOROWITZ**

After a long-running and contentious process, a bankruptcy judge gave his blessing Friday, Oct. 7, to a reorganization plan for Life Partners Holdings Inc. with Vida Capital Inc. providing the financing and servicing.

Judge Russell Nelms of U.S. District Court in Fort Worth, Texas, said only one relatively small item needed to be cleared up: the trustee plan proponents must either delete an early-termination fee for Vida on servicing work or send the plan back to 22,000 investors for re-solicitation.

But on virtually all points, the judge said he supported the plan, saying he believes it's a superior plan with Vida and he was prepared to confirm it.

Nelms also said that he believed that trustee Tom Moran conducted a competitive process. Moran has faced persistent and unending criticism by opponents.

Nelms lambasted Transparency Alliance LLC for breaking an agreement to support the trustee's plan in return for a proposed \$1.5 million significant contribution claim and taking over providing a \$25 million line of credit for the estate from Vida, saying it tried to "sabotage" the trustee's plan with Vida.

That agreement, announced Aug. 29 just before the start of the five-week confirmation process, was dropped days later as Transparency again sought to compete against Vida for the servicing and financing work. The significant contribution claim would have required the judge's approval.

"This is a complete victory for the trustee and the committee. Complete," David Bennett, an attorney with the Thompson & Knight LLP law firm in Dallas, representing Moran, said in an e-mail following the decision.

"We are very optimistic that we will not have to resolicit and that the early termination fee will be waived," he said, adding he is awaiting final confirmation on that.

Neither Dan Young, vice president of asset management for Vida of Austin, Texas, nor his attorney, Jason Brookner of the Gray Reed & McGraw PC law firm in Dallas, responded about whether Vida would forgo the early-termination fee that would be charged for policies that were lapsed or sold.

Nelms said the early-termination fee should have been disclosed. It only had been raised by opponents of the trustee's plan at the final day of the confirmation hearing on Sept. 30. But Nelms said he understood the reason for the fee, saying that Vida would be doing servicing for lapsed policies without getting anything for it. Vida is to be paid for servicing based on maturities.

Brookner only said in an e-mail: "Vida is extremely pleased with the court's finding and conclusions."

"Judge Nelms' ruling was a huge victory for the investors because they now have a clear path to exit bankruptcy with a battle tested Plan," Joe Wielebinski, an attorney with the Munsch Hardt Kopf & Harr PC law firm in Dallas representing the Official Unsecured Creditors' Committee, said in an e-mail. "The Trustee and the Committee are very pleased with this historic ruling."

Transparency didn't respond specifically to the judge's harsh criticism, but defended its actions.

"We based our proposal upon our professional assessment of the pool and we stand by that," Tom Vogel, a spokesman for Transparency, said in an e-mail. "The Trustee and Vida's projections of maturities are unlikely to materialize but we wish them and investors well."

Nelms said the plan proponents did not stifle competition, adding that "the Vida agreement was negotiated at arm's length and in good faith."

He said he found that Moran and the committee exercised "sound judgment" in coming up with the Vida collaboration agreement. It calls for charging 11% interest on \$55 million in exit financing and a \$25 million credit facility, 2.65% on maturities as well as providing a \$4 million payment for the servicing rights--all terms that had been improved on Sept. 26 from an earlier agreement.

He said he found the argument "curious," which was raised by opponents, that Vida was not qualified to service the \$2.3 billion life settlement portfolio. He said the individual retirement account investors who objected to Vida just wanted Vida to lower its price for servicing to 2.2% of maturities instead of 2.65% of maturities.

Transparency, an affiliate of BroadRiver Asset Management LP of New York, had undercut Vida in its one-page term sheet presented shortly after the confirmation hearing began by offering to do the servicing work for 2.2% of maturities. It also offered financing at 11% interest. Vida originally proposed charging 2.8% of maturities before reducing it to 2.65% of maturities.

Nelms said that Vida already services 1,400 policies so he said he was rejecting the argument that Vida wasn't qualified. In addition, he noted that Vida planned to retain the Life Partners employees in Waco, Texas, who have done the work for years.

In response to a request by David Elrod of the Gruber Elrod Johansen Hail Shank LLP law firm in Dallas, the judge said he would not allow 800 of his IRA investor clients to change their votes to now oppose the plan with Vida in it.

"It's too late for them to change votes," he said, adding that he would construe their request as being against Vida and for Newco, a company that would be set up post-confirmation if Vida wasn't chosen.

Nelms said he didn't buy the arguments that Moran failed to adequately market the servicing and financing work.

"Why would the committee want to pay more?" he asked, saying the objection didn't ring true to him.

Three of the committee members are among the 22,000 investors who hold 100,000 positions in the 3,400 Life Partners policies with \$2.3 billion in face value.

Nelms also asked when was the trustee supposed to have organized an auction, pointing out that the ownership issue had to be resolved first. A class-action settlement has been approved allowing investors to own their interests if they so choose. Moran originally said the estate owned the policies, but the settlement resolved that central issue that had stymied progress in the case.

"The notion that any bidding process would have been quick and easy is belied by the case," Nelms said.

As to competition for the servicing work, he asked where were all the competitors who had wanted to do servicing earlier in the case.

"They were on the sidelines," Nelms said. "They jumped in after Vida made the DIP [loan for \$10 million], after Vida agreed to pay \$5 million and fund the exit facility and went on the road to explain the plan."

He added: "After Vida had spent untold sums of money to get to this point, now we have bidders who say they will do Vida's plan for less--maybe."

Nelms said Transparency's and Q Capital Strategies LLC's proposals for

servicing are based on Vida's template.

And, he said, any suggestion that Vida would not have thought of making a substantial contribution claim can be dismissed.

Nelms said Vida is much more deserving of any substantial contribution claim than Transparency.

"I disagree that better offers are out there. It's no secret that Moran is not a fan of Transparency," Nelms said. He pointed to an Aug. 15 filing by Transparency saying it was likely the position holder trust running the estate under the trustee's plan would result in insolvency.

"Today Transparency embraces this [plan] as long as it's the servicer and lender," the judge added.

The judge said Transparency agreed in its Aug. 29 term sheet not to oppose confirmation of the trustee's plan with Vida, saying it "required Transparency to be a potted plant in these proceedings."

"Transparency at every point tried to sabotage the trustee's plan with Vida," Nelms said. "It should have done nothing."

He said that "any opinion I hold of Transparency was brought on by Transparency by itself," adding that he held up solicitation so Transparency could catch up with the trustee's plan.

Nelms said, however, he questioned Moran's judgment when he supported the \$1.5 million substantial contribution claim for Transparency.

"Transparency chose to breach the agreement. It charted its own course. It was the wrong decision and, yes, it did affect my view of Transparency," Nelms said. "I would not lean toward Newco so Transparency can have another shot at servicing."

He said he found the plan proponents distrust of Transparency was "well-founded."

And except for Transparency, all other suitors for the servicing work have submitted one-page term sheets and none has offered to pay for servicing rights. Vida originally offered to pay \$5 million for the right to the servicing business, but scaled back the offer to \$4 million after cutting its servicing fee and interest on the loans. Transparency offered to pay \$5 million as well for the servicing rights.

"At what point does all of this end?" Nelms asked.

Although the Gruber law firm and the Susan B. Hersh PC law firm, also of Dallas, aren't satisfied with the trustee's proposed board members to oversee the estate after bankruptcy, he said he rejected the idea that selecting Newco over Vida would "lead to a feel-good solution."