

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

LAWYERS TITLE INSURANCE CORP.

V.

CIVIL ACTION NO. 1:09-170-JMR

PRESTIGE TITLE, INC.,ADVANCED TITLE
& ESCROW, LLC, TITLE 1, INC., PRESTIGE
TITLE OF ALABAMA, LLC, STEPHEN R. COLSON,
TED A. MARTIN AND JOHN DOES # 1-10

**MOTION TO INTERVENE AS PLAINTIFF PURSUANT TO FED. R. CIV. P. 24(a)(2), or
ALTERNATIVELY, PURSUANT TO FED. R. CIV. P. 24(b)(1)(B)**

COME NOW the Movants, A&O Bonded Life Assets Management, LLC, et al. (hereafter “Movants”)¹ pursuant to Fed. R. Civ. P. 24, and move the Court for an order allowing them to intervene as a plaintiff in this pending action on the grounds that Movants deposited Four Million Six Hundred Thousand Dollars (\$4,600,000.00) with Defendant, Prestige Title, Inc. (“Prestige Title”), as escrow agent for the Movants, and despite amicable demand, said monies have neither been returned to the Movants nor properly disbursed to the appropriate third parties as provided for in the escrow agreement between Movants and Prestige Title. Further, on information and belief, and as alleged in paragraphs 30, 31 and 36 of the Plaintiff’s Complaint, said funds have become commingled in the bank accounts sequestered by the Court in this action.

As of the date of this motion, Movants are owed approximately Three Million Dollars

¹ The Movants herein are: A&O Bonded Life Assets Management, LLC, A&O Bonded Life Assets, LLC; A&O Bonded Life Settlements Management, LLC; A&O Bonded Life Settlements, LLC; A&O Capital Management, LLC ; A&O Capital Management, LLC; A&O Life Fund Management, LLC; A&O Life Fund, LLC; A&O Life Funds Management, LLC; A&O Life Funds, LLC; A&O Resource Management, Ltd.; Houston Tanglewood Partners, LLC; Life Fund 5.1 Management, LLC; Life Fund 5.1, LLC; Life Fund 5.2 Management, LLC; and Life Fund 5.2, LLC, all of which have a direct, substantial and legally cognizable interests in the subject matter of the instant suit.

(\$3,000,000.00) of the remaining balance from Prestige Title. On information and belief, less than one-half ($\frac{1}{2}$) that amount has so far been sequestered by the Court in this action, and it is questionable whether any other funds exist to satisfy the debt owed to Movants by Prestige Title. Thus, Movants are so situated that disposing of this action without the Movants' intervention will severely impair their ability to protect their interests. Further, Movants submit that the present plaintiff has a competing claim to the sequestered funds such that its interests are adverse to Movants, and the Movants' interests will not be adequately represented without their own intervention in this action. Finally, as set forth in the attached Urgent and Necessitous Motion for Partial Release of Funds, Movants are in dire need of a portion of the monies owed in order to pay certain life insurance premiums on policies which are in imminent danger of lapsing and being forever lost to the Movants. Thus, Movants will be irreparably harmed if not allowed to intervene as requested herein.

In further support of their motion to intervene, Movants would show the following, to wit:

1.

Movants are the beneficial owners of certain life insurance policies (the "Policies") insuring the lives of various individuals. As the Policies mature, Movants distribute the funds realized from the relevant policies to numerous individual investors. However, for the Policies to remain in force until maturity, periodic premiums must be paid on the Policies. In order to ensure proper and timely payment of premiums for the benefit of their investors; Movants entered into an Escrow Management Services Agreement (the "Agreement") with Prestige Title on February 15, 2008. A true and correct copy of the Agreement is attached hereto as Exhibit A.

2.

Under the terms of the Agreement, Prestige Title acted as escrow agent for the Movants and accepted deposits of funds from Movants, from which funds Prestige Title agreed to pay premiums on the Policies as they came due, and to discharge other duties in connection with the Policies for a period of six (6) years. In exchange, Prestige Title was paid a flat fee One Hundred Fifty Thousand Dollars (\$150,000.00) and was required to increase the liability limits on its “errors and omissions” insurance and its “officers and directors” insurance during the term of the Agreement to \$10,000,000. See Exhibit A.

3.

In accordance with the Agreement (and as alleged in paragraph thirty (30) of the Complaint in this case), in February 2008, Movants did, in fact, deposit funds with Prestige Title for the purpose of paying premiums on the Policies as they came due. Specifically, on February 29, 2008, Movants deposited Four Million Six Hundred Thousand Dollars (**\$4,600,000.00**) with Prestige Title as escrow agent for Movants.² True and correct copies of the wire transfer orders establishing the deposit of said monies are attached hereto as Exhibit B.

4.

Pursuant to the Agreement, the premium escrow funds were to be deposited by Prestige Title in separate, federally insured interest-bearing accounts for the purpose of paying periodic premiums on the Policies as they came due. See Agreement, Exhibit A, page 1. Receipt of said funds by Prestige Title as escrow agent was verified by an independent accounting firm as of March 31, 2008.

² The Complaint incorrectly alleges that only Three Million Six Hundred Thousand Dollars (\$3,600,000.00) was deposited with Prestige Title. Compare Complaint paragraph 30 with Exhibit B attached hereto.

A true and correct copy of the audit result is attached hereto as Exhibit C.

5.

During calendar year 2008, Movants caused periodic audits to be conducted by an independent accounting firm to assure that the Policies remained in full force and effect, that the Policies had not lapsed, and that required premiums were being paid by Prestige Title as required under the Agreement. See Exhibit C.

6.

However, in February 2009, Movants were alerted to potential irregularities in Prestige Title's handling of the funds Movants deposited under the Agreement, and Movants subsequently began making inquiries to assure that the Agreement was being properly performed, that all Policies remained in force, and that all Policy premiums were being paid when due. In the course of their investigation, Movants discovered that the instant suit had been filed against Prestige Title and others, and that the funds it had deposited with Prestige Title had been sequestered by this Court. Further, Movants discovered that premiums for several of its Policies had not been paid when due, which placed them in immediate danger of lapsing.

7.

Prestige Title has failed to meet its obligation of timely paying the periodic premiums on the Policies as they come due. Currently, there are fifty-seven (57) active policies involved with a total payout value of **One Hundred Seventy-nine Million Twenty-Five Thousand Dollars (\$179,025,000.00)**. See Exhibit D. Of these fifty-seven (57) policies, at least ten (10) policies with a total payout value of **Twenty-nine Million Dollars (\$29,000,000.00)** are in imminent danger of

lapsing unless the respective premium payments are timely made. See Exhibit E.³

8.

Despite amicable demand, Prestige Title has failed and refused to either pay the premiums due or to return to the Movants the balance of the funds initially deposited with Prestige Title as escrow agents for the Movants, which balance totals approximately \$3 million.

9.

Pursuant to Fed. R. Civ. Proc. 24(a)(2), Movants submit that they have a direct, substantial, legally cognizable interest in the instant proceeding, that disposition of this matter without the Movants' intervention will impair the Movants' ability to protect their interests, and that the Movants' interests will not be adequately protected by any of the parties currently involved in this suit. Alternatively, Movants submit that they have a claim which presents a question of law or fact in common with the ongoing action, which claim will not be adequately represented unless Movants are permitted to intervene. Accordingly, Movants should be allowed to intervene, either as of right or permissively, in order to adequately protect said interests.

10.

In further support of their motion, Movants incorporate by reference, as if fully copied herein, their Memorandum In Support Of Motion To Intervene, which is filed contemporaneously herewith.

WHEREFORE, Movants, A&O Bonded Life Assets Management, LLC, A&O Bonded Life Assets, LLC, A&O Bonded Life Settlements Management, LLC, A&O Bonded Life Settlements, LLC, A&O Capital Management, LLC, A&O Capital Management, LLC , A&O Life Fund

³ Several of the policies have technically lapsed, but are currently in a "grace period" during which they may be re-activated by payment of the premiums due.

Management, LLC, A&O Life Fund, LLC, A&O Life Funds Management, LLC, A&O Life Funds, LLC, A&O Resource Management, Ltd., Houston Tanglewood Partners, LLC, Life Fund 5.1 Management, LLC, Life Fund 5.1, LLC, Life Fund 5.2 Management, LLC and Life Fund 5.2, LLC request an order of this Court, pursuant to Fed. R. Civ. Proc. 24, allowing them to intervene in this case in order to protect their interests, seek recovery of the monies owed to them by the Defendants as set forth above, and to seek immediate emergency relief in the form of release of a portion of the funds owed for insurance premiums, as set forth in the attached pleading as required by Fed. R.Civ. P. 24 (c). Movants further request such other relief, either general or special, to which they may be entitled in law or equity.

Respectfully submitted:

/s/ Donald C. Dornan

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Life Fund 5.1 Management, LLC
Life Fund 5.1, LLC
Life Fund 5.2 Management, LLC
Life Fund 5.2, LLC

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 5th day of May, 2009 served a copy of the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to counsel for all parties.

/s/ John M. Herke
