Court File No.: 08-CL-7878

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF UNIVERSAL SETTLEMENTS INTERNATIONAL INC.

Applicant

AFFIDAVIT OF MARIO THOMAIDIS
(affirmed June 10, 2009)

I, Mario Thomaidis, of the City of Toronto, in the Province of Ontario, AFFIRM and SAY:

1. I am an associate with the law firm Rueter Scargall Bennett LLP, counsel for Universal Settlements International Inc. ("USI") and, as such, have personal knowledge of the facts to which I hereinafter depose, except where I depose to facts based on information provided to me, and in which case I have stated the source of the information and do believe that all such information is true.

<u>Background</u>

2. I understand from the Initial Order dated December 2, 2008, which is attached hereto as Exhibit "A" (the "Initial Order"), that USI was granted protection under the *Companies' Creditors*

Arrangement Act, R.S.C. 1985, c. C-36, as amended ("CCAA"), by the Ontario Superior Court of Justice.

3. The business of USI and the circumstances leading up to the Initial Order are described in the affidavit of Christopher Halas, the Vice-President and Secretary of USI, sworn December 2, 2008 (the "Halas Affidavit"), which is attached hereto as Exhibit "B".

4. Shortly after USI was granted the Initial Order, USI, along with its counsel and the Monitor, began discussions with respect to how to formulate a plan of compromise and arrangement (the "Plan") pursuant to the CCAA. USI has recently finalized the Plan and obtained an Order of this Court (the "Meeting Order") permitting it to distribute the Plan to its creditors for the purposes of holding a meeting of creditors to vote on the Plan. A copy of the Meeting Order, which includes the Plan at Schedule "A", is attached hereto as Exhibit "C". Any terms that are not otherwise defined herein have the meanings defined in the Plan.

5. The Plan contemplates paying Premiums and proceeds from Life Settlements in a different manner than USI has done in the past. Specifically, the Plan contemplates paying Premiums on an "as due" basis instead of on a "policy-by-policy" basis and contemplates paying proceeds from Life Settlements to all Purchasers as they become generally available. See Exhibit "C", Schedule "A".

6. The proposed changes may raise some issues with respect to whether Purchasers have a direct or beneficial interest in Policies purchased by USI and are entitled to: (a) have their Premium Reserves allocated to the specific policies; and (b) receive proceeds from Life Settlements from specific policies. See Exhibit "C", Schedule "A".

7. In anticipation of questions from Purchasers in this regard, USI asked me to review all Purchase Agreements and identify any provisions that might suggest that Purchasers have a direct or beneficial ownership in the policies purchased by USI ("Possible Ownership Provisions"). This affidavit:

(a) describes my review process with respect to the Purchase Agreements;

(b) describes the categories of Purchase Agreements that I have identified; and

(c) identifies Possible Ownership Provisions in each category of Purchase Agreements.

Review Process

8. On account of changes to its programs over time, USI employed different versions of Purchase Agreements, several of which were translated into languages other than English. For the purposes of my review, the Purchase Agreements in languages other than English that contained Possible Ownership Provision were translated into English by a certified translator. Copies of the original and translated Purchase Agreements, along with the declaration of the certified translator, are attached to my affidavit as Exhibits "H", "I", "K", "L", and "N".[1]

9. My review commenced on December 4, 2008 and continued through to approximately January 14, 2009. I reviewed one final group of Purchase Agreements on May 15, 2009. I was assisted from time to time by my colleague, Ms. Sara J. Erskine.

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[1] As described below, the different Purchase Agreements containing Possible Ownership Provisions are categorized based on similarities between the agreements, so the order of these translated Purchase Agreements as exhibits is based on that categorization.

10. To facilitate our review, USI provided Ms. Erskine and I with a list of Purchasers that included the insurance policy number associated with each purchase. In addition, USI provided us with a list of the policies and associated Premium Reserves. Using these lists as our starting point, we sorted and compared the various Purchase Agreements.

11. During my review I examined 4,092 Purchase Agreements. Initially, Ms. Erskine and I collated the Purchase Agreements on the basis of immediately identifiable differences on the face of the documents (*e.g.*, because of differences in formatting). We identified 84 different versions of Purchase Agreements in this manner.

12. Next, I compared the 84 different versions of Purchase Agreements so as to determine whether any of the agreements contained Possible Ownership Provisions. I determined that 14 of the 84 different versions did contain Possible Ownership Provisions, and I was able to categorize the 14 different versions of Purchase Agreements as follows:

(a) USI M-Series Purchase Agreements;

(b) Standard Purchase Agreements;

(c) Purchase Order/Purchase Agreements; and

(d) a Policy Funding Agreement.

13. The following describes the Possible Ownership Provisions within these four groups of Purchase Agreements.

The Purchase Agreements and Possible Ownership Provisions

(i) USI M-Series Purchase Agreements

14. USI launched the USI M-Series ("M-Series") in 2008. Purchasers of the M-Series are not affected by the Plan as the M-Series specifically allows Purchasers to own a direct interest in the trust that holds the policies. The policies in the M-Series are held in trust for Purchasers and are being administered by the program's Trustee in accordance with the USI M-Series Purchase Agreements. A copy of an M-Series Purchase Agreement is attached hereto as Exhibit "D". See also Exhibit "C".

(ii) Standard Purchase Agreements

15. The Standard Purchase Agreements described below contain the same or very similar provisions and have no material differences with respect to Possible Ownership Provisions. However, in some cases, there are slight differences in structure or layout. Where this is the case, I have attached more than one copy of the Standard Purchase Agreement as an Exhibit to my affidavit, and these versions can be found at Exhibits "E" to "M".

16. Section four of the Standard Purchase Agreements gives the instructions for purchasing a Life Settlement.[2] Pursuant to this section, Purchasers are required to pay a Purchase Deposit into an escrow account. Purchase Deposit is defined in the Standard Purchase Agreements as the amount of funds deposited by the Purchaser into an escrow account pursuant to the Standard Purchase Agreement.

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17. The escrow accounts vary among the Standard Purchase Agreements. Depending on which Standard Purchase Agreement a Purchaser enters into, they are required to forward the Purchase Deposit to one of:

(a) Universal Trust;

(b) Universal Settlements Trust;

(c) Mills, Potoczak & Co. Universal Settlements Escrow Account;

(d) Mills, Potoczak & Company, in Trust; and

(e) Deutschmann & Kelly Law Firm in Trust (collectively referred to herein as, the "Escrow Accounts").

See Exhibits "E"-"G", "H"-"I", "J", "K" and "L"-"M", respectively.

18. In the Standard Purchase Agreements that require Purchasers to pay the Purchase Deposit to either Universal Trust or Universal Settlements Trust, the Purchasers acknowledge that the "trustee" or the "Trustee", respectively, do not act on their behalf. Further, pursuant to these Purchase Agreements, Purchasers authorize either the "trustee" or the "Trustee" to take instructions from USI with respect to the Purchase Deposit. See Exhibits "E"- "I".

19. In all of the Standard Purchase Agreements, the "Trustee" is defined as a third-party administrator. See Exhibits "E"-"M".

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[2] With the exception of the Purchase Agreement at Exhibit "H" where the purchase instructions are in "Section 3".

20. In the Standard Purchase Agreements that require the Purchasers to pay the Purchase Deposit to either Mills, Potoczak & Co. ("Mills") or Deutschmann & Kelly Law Firm ("Deutschmann"), the Purchasers acknowledge that Mills or Deutschmann, respectively, do not act on their behalf. The Purchasers authorize either Mills or Deutschmann to take instructions from USI with respect to the Purchase Deposit. See Exhibits "J"-"M".

21. In all of the Standard Purchase Agreements, the Purchase Deposit is stated to be intended *"for the purpose of Universal Settlements purchasing the death benefit of one or more U.S. Policies (or portions thereof) and completing Life Settlements on behalf of Purchaser[s]"*.[3] See Exhibits "E"-"M".

22. In all of the Standard Purchase Agreements, the same provision quoted immediately above also states that the *"firm named in the escrow/trust agreement is authorized to pay closing costs and fees and expenses, and upon closing of each purchase agreement for Life Settlements or parts thereof to release the monies intended for the purchase."* [4]

(iii) Purchase Order/Purchase Agreements

23. Purchase Order/Purchase Agreements are comprised of both a Purchase Order and a Purchase Agreement. The majority of the Purchase Order/Purchase Agreements in USI's records included only a written copy of the Purchase Order rather than both documents, and the Purchase Agreements were included by reference in the Purchase Order. A copy of the Purchase Order/Purchase Agreement is attached hereto as Exhibit "N".

[3] There are minor, immaterial variances to the language used in some exhibits (*e.g.* "executing" rather than "completing"); some such variances appear to result from the translation to English.

24. Pursuant to the Purchase Order, the Purchasers authorize USI's financial advisor, Universal Settlements Vermogensberatung Gmbh ("USE"), to *"buy beneficial rights in US life insurance policies"* in accordance with the Purchase Agreement.

25. The Purchase Agreement is divided into a preamble, fifteen sections, and Schedules "A" to "G". The relevant provisions are as follows.

26. The preamble advises Purchasers that:

(a) USI has established "US Trust" under the laws of Ohio, which is administered by a Trustee;

(b) no direct contractual relationship exists between the Trustee and the Purchaser;

(c) USE authorizes USI to acquire Life Settlements for Purchasers; and

(d) US Trust holds ownership and/or beneficial rights to the (pro-rated) insured sum of these policies for Purchasers.

27. The preamble also expresses the Purchasers' intention to acquire ownership and/or beneficial rights to the insured sums of policies through the US Trust under the terms of the Purchase Agreement.

28. Section one of the Purchase Agreement describes the purposes of the agreement, including:

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[4] Again, there are minor, immaterial variances to the language used. See note 3, above.

(a) US Trust becoming the owner and/or beneficiary of the policies;

(b) US Trust holding the policies in trust for the Purchaser;

(c) USE's intention to grant the Purchaser the irrevocable (pro-rated) beneficial rights; and

(d) the Purchaser claiming the disbursement of the insured sum from the insurance company that issued the policy.

29. Section two of the Purchase Agreement describes the purchase amount, program, category and beneficial rights associated with the purchase. It refers specifically to providing detailed information about the assigned beneficial rights to the Purchaser in an "Information about the Assignment".

30. Section three of the Purchase Agreement refers to, among other things, the payment of the purchase amount. Specifically, it refers to the minimum purchase amount for acquiring a (pro-rated) beneficial right in a single policy.

31. Section four describes the "premium escrow account" and "premium reserve fund". It states that ongoing premiums are covered by the purchase price and that the monies are allocated to a separate account administered by the Trustee, from which the premiums are paid when they are due.

32. Section fifteen is the Purchaser information. It states that *"where not otherwise specified, the Purchaser is also the beneficiary."*

33. Schedule "A" describes the Purchaser's representations. It includes the Purchaser's understanding that "the Trustee is the irrevocable beneficiary of the policies in relation to the insurance company and that the Trustee will disburse [the Purchaser's] share of the insured sum directly to [the Purchaser] or to the beneficiaries designated by [the Purchaser] once the Trustee has received the death benefits at policy maturity."

34. Schedule "D" describes the procedure for purchasing a policy. It states that at the end of the rescission period (15 to 30 days, depending on state, from the receipt of the purchase monies), the Purchaser will receive a closing certificate certifying the sellers' waiver of claims to the insured sum and an assignment of an irrevocable (pro-rated) beneficial right in favour of the Purchaser, collectively referred to in Schedule "D" as the Certificate of Assignment.

35. Schedule "D" also states that Purchasers have Internet access to additional information about, among other things, the beneficial rights of the policy to US Trust.

36. Schedule "F" is the Glossary of terms. The relevant terms and their definitions are:

(a) "Beneficial Right: Right to receive payment of the insured amount";

(b) "Beneficiary: The person designated by the purchaser as the policyholder (generally the purchaser) to receive payment of the death benefit based [on] the (pro-rated) beneficial rights to a Life Settlement";

(c) "Closing Package: Package of final documentation containing all information needed for the transfer of the beneficial rights";

(d) "Trust: A corporation established under US law that holds the rights of the Purchaser in relation to the insurance company, and that upon the death of the insured receives the death benefit and forwards it on to the Purchaser as beneficiary"; and

(e) "Assignment: Consummation of the Purchase Agreement by designation of the purchaser as the irrevocable beneficiary".

(iv) Policy Funding Agreements

37. The Policy Funding Agreement is divided into the Recitals and the Agreement. The Recitals describe four circumstances of the agreement, which are listed as points A to D. The Agreement has eighteen sections.

38. Points B, C and D in the Recitals are as follows:

> *B. Whereas, Purchaser is in the business of purchasing existing life insurance policies. Said life insurance policies may be held by Purchaser or sold and/or otherwise transferred to other entities that may further resell said life insurance policies as allowed by law and or benefits there under.*
>
> *C. Whereas, USI will sell to or facilitate the sale to the purchaser of the following described life insurance policies and or partial benefits of the policies.* [It then names the specific policy that the Purchaser will purchase pursuant to the agreement];
>
> *D. Whereas, USI desires to sell or facilitate the sale of the Policies to Purchasers and Purchaser desires to purchase all rights, title, and interest in and to the Policies in accordance with the terms and conditions of this Agreement.*

39. Section one to the Agreement reads:

> *Funding Costs: Purchaser hereby agrees to immediately deposit the sum of $________ ("Funding Cost") for the purpose of acquiring all rights, title and interest in and to the Policies as documented in Section C above." Said funds shall be held in escrow by Mills, Potoczak and Company (the "Escrow Agent") and disbursed immediately to USI upon Escrow Agent's proper recording of new added Beneficiary of the Policies.*

40. Section two is the Purchaser's Representations and Warranties and is divided into three points. Points b and c read in part:

> *(b) Purchaser represents and agrees that USI is not the agent of the Purchasers;*
>
> *(c) Purchaser represents and warrants that if Purchaser directly or indirectly resells the Policies or any interest therein, Purchaser shall comply with any and all state, federal and/or international laws applicable to such resale.*

41. Section three describes USI's Fees and Duties and states, in part:

> *Purchaser will also incur costs beyond the amount tendered as the Funding Costs for Purchaser's proportionate share (15%) of any on-going premiums required on this policy after August 16, 2010 (this date represents life expectancy plus 12 months from the Life Expectancy Evaluation Date.)*
>
> *After the transaction contemplated by this agreement is complete, USI shall have no further specific duties to Purchaser and Purchaser shall have no further specific duties to USI other than those set forth in the following Section headed "Confidentiality and Non-Solicitation.*

Other Purchase Agreements

42. In the course of my review I was not able to examine 48 Purchase Agreements. I am informed by Jeffrey Panos, President of USI, and do verily believe, that USI does not have copies of these Purchase Agreement for the following reasons:

(a) Six (6) have never been located by USI since the former principal of USI, Mr. Tony Duscio, left the company [NTD: need to verify this statement vs. whether the agreements have never been located since Jeff and Chris joined the company].

(b) Fifteen (15) relate to a negotiated settlement between the purchaser and USI. The original purchase agreements were between the purchaser and Future First or Mutual Benefits, companies that were formerly also in the business of selling whole or fractional interests in Life Settlements. The settlements were facilitated by Mr. Duscio who kept the documentation in his possession. The settlement agreements for 12 of 15 such purchases were reviewed but no Possible Ownership Provisions were found; the settlement agreements for 3 cannot now be located by USI;

(c) Eight (8) were between USI and Mr. Duscio or various members of Mr. Duscio's family. Mr. Duscio kept these files in his possession, and USI was not, therefore, able to locate them;

(d) Three (3) were between USI and Mr. Derek O'Brien's wife. Mr. O'Brien was a former principal of USI. Mr. O'Brien kept these files in his possession and USI was not, therefore, able to locate them;

(e) Six (6) relate to a particular insured person. Mr. Duscio kept these agreements along with the insurance policy in his possession. These agreements and the insurance policy itself were removed by Mr. Duscio upon his termination;

(f) Eight (8) relate to investments by USI employees. There are no written agreements between USI and the employee. The oral agreement between USI and each employee is that the employee must wait until the insured has passed away to receive a maturity; and

(g) Two (2) relate to a change in interest from the insured person mentioned at (e), above, to another insured person. USI only has the documentation relating to this change in interest, not the original Purchase Agreement.

Although the Purchase Agreements related to the above 48 purchases were not available to be examined, the information related to each, *e.g.* investment amount, maturity, insurance policy, *etc.*, is included in USI's records and was reviewed.

43. This affidavit is affirmed in support of USI's Application pursuant to the CCAA and for no other or improper purpose.

AFFIRMED before me at the City of Toronto, in the Province of Ontario, this 10th day of June, 2009.	)))))	
A Commissioner for Taking Affidavits, etc. Jordan Nichols		**Mario Thomaidis**

Re Universal Settlements International Inc.

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PROCEEDINGS COMMENCED AT Toronto

AFFIDAVIT OF MARIO THOMAIDIS
(affirmed June 10, 2009)

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