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January 23-26, 2013

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United States Court of Appeals

FOURTEENTH CIRCUIT
OFFICE OF THE CLERK

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October 8, 2012

Via: Email to Counsel

2013 Judicial Panel No. 35
603 Gavel Road
Princeton, New Tejas 77002

Re: Cause No. 12-20784; *Don Juan W. Hicks v. Guaranty Life Company*; In The United States District Court of New Tejas, Fourteenth Circuit; USDC No. 2012-cv-2073

Dear 2013 Judicial Panel No. 35:

Upon your recommendation, the Office of the Clerk scheduled the above captioned matter for oral argument during the January 24-26, 2013, judicial sessions. During these sessions, the Fourteenth Circuit will preside over all cases as guests of the United States District Court for the Southern District of Texas at:

United States Courthouse
515 Rusk Avenue
Houston, Texas 77002

The above captioned matter preserved two issues on appeal:

1. Did the District Court properly declare the subject policy void for lack of an insurable interest.¹
2. Did the District Court properly order Guaranty Life to return all life insurance premium payments made on the Policy to the Trust?

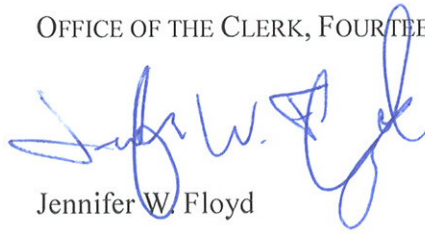
Despite the competing appeals filed by the parties, the Court will consider The Hicks Irrevocable Life Insurance Trust as the Appellant and Guaranty Life Insurance Company as the Appellee pursuant to Local Rule 1. The relevant portions of the record are included and numbered for your reference. All documents attached in the record are admissible and properly submitted to the District Court during Summary Judgment Briefing.

¹ Notably, The parties do not dispute whether Guaranty Life, after the contestability period, may contest the validity of the subject policy.

Please contact me at (485) 867-5309 should you have any questions or concerns.

Very truly yours,

OFFICE OF THE CLERK, FOURTEENTH CIRCUIT

A handwritten signature in blue ink, appearing to read "Jennifer W. Floyd", is written over the typed name below.

Jennifer W. Floyd

JWF/
Enclosures

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF N. TEJAS**

FRANK KIPP, AS TRUSTEE FOR THE HICKS IRREVOCABLE LIFE INSURANCE TRUST, and PRESIDENTIAL HOLDINGS, LLC.)	
)	
Plaintiffs,)	
)	
v.)	
)	
GUARANTY LIFE INSURANCE COMPANY)	CASE NO.: 28-cv-9563
)	
Defendant.)	
)	
)	
)	
)	

ORDER

The above styled matter is presently before the Court on Plaintiffs/Counter Defendants’ Frank Kipp and Presidential Holdings, LLC’s (collectively “Investors”) Motion for Summary Judgment [docket no. 169] and Guaranty Life Insurance Company’s (“Guaranty Life”) Motion for Summary Judgment [docket no. 171].

JURISDICTION

1. This Court has jurisdiction over all parties of this lawsuit under 28 U.S.C. § 1332(a)(1) because Guaranty Life and the Plaintiffs are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of attorneys’ fees, interest and costs. All parties are subject to the personal jurisdiction of this Court.

2. Plaintiff/Cross-Defendant Frank Kipp (“Kipp”), a resident of New Tejas, is trustee for The Hicks Irrevocable Life Insurance Trust (“Trust”), a citizen of New Tejas within the meaning and intent of 28 U.S.C. § 1332. The situs of the Trust is in New Tejas.

3. Plaintiff Presidential Holdings, LLC (“Presidential”) is a Limited Liability Company organized and existing under the laws of the state of New York and has members who are

citizens of the State of Connecticut.

4. Guaranty Life Insurance Company (“Guaranty Life”) is a Texas insurance company authorized to transact the business of insurance in New Tejas. Guaranty Life is incorporated in and maintains its principal place of business in Texas. As such, Guaranty Life is a citizen of the State of Texas within the meaning and intent of 28 U.S.C. § 1332.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (3) because (i) New Tejas is a judicial district in which a substantial part of the events or omissions giving rise to this action occurred or (ii) there is no district in which this action may otherwise be brought and Guaranty Life is subject to this Court's personal jurisdiction with respect to this action.

STANDARD OF REVIEW

6. Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be granted, “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56. Rule 56 does not require the moving party to negate its opponent’s claim. *Celotex Corp. v. Catrette*, 477 U.S. 317, 323 (1986). Instead, the party seeking summary judgment bears the burden of demonstrating the absence of a genuine dispute as to any material fact. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001). Once the moving party has met this burden, the non-movant must demonstrate that summary judgment is inappropriate by designating specific facts showing a genuine issue for trial. *Id.* To demonstrate a genuine issue of material fact, the nonmoving party “must do more than simply show there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

STRANGER OWNED LIFE INSURANCE

7. This case relates to a life insurance policy purchased on the life of Don Juan W. Hicks’s (“Mr. Hicks”) life for the purported benefit of his biological son, Sydney Hicks.

8. In recent years, a derivative market for life insurance has developed in which existing life insurance policies and certificates are sold to third parties who lack an insurable interest in the life of the insured. Typically referred to as a “life settlement,” these sales are generally lawful, assuming that the policy was procured for legitimate purposes and that there was an insurable interest at the policy’s inception.

9. As this derivative market has developed, however, there has been a proliferation of life insurance policies that are not sought for legitimate insurance needs, but rather for re-sale to strangers in the secondary market. Policies procured under these circumstances have become known as stranger originated life insurance (“STOLI”) policies and are illegal wagering contracts that lack an insurable interest at inception. As such, STOLI policies are void.

10. Although the STOLI market has only recently come into existence, the underlying concept has persisted for over a century. Indeed, in the late nineteenth and early twentieth centuries, the United States Supreme Court opined against unlawful “wagering contracts,” and the “sinister counter interest” in the death of the insured that results from the issuance of such policies.¹ In an effort to prevent investors from speculating on the lives of others, many states have enacted insurable interest laws to protect the integrity of life insurance by requiring that a policy owner have a cognizable interest in the longevity of the insured at the time the policy is issued. However, STOLI promoters have attempted to circumvent these laws by carefully constructing their transactions to hide the fact that the policies are not being procured to satisfy legitimate insurance needs, but instead are being procured as impermissible wagers on human life.

¹ See *Grisby v. Russell*, 222 U.S. 149, 154–55 (1911) (explaining that an insurance policy lacking an insurable interest at inception merely serves as a cover for a “pure wager,” which contradicts the precise purpose of a life insurance policy because it “gives the [policyholder] a sinister counter interest in having the insured’s life come to an end.”); *Warnock v. Davis*, 104 U.S. 775, 779 (1881) (condemning wagering contracts because they “have a tendency to create a desire for the [death of the insured] and are, therefore, independently of any statute on the subject, condemned, as being against public policy.”).

11. In order to maximize their potential return on investment, STOLI promoters will seek out individuals aged seventy years or older who are purportedly financially qualified for high face amount insurance policies. This in turn allows STOLI promoters to acquire multi-million dollar life insurance policies on individuals who, actuarially speaking, are expected to have a relatively limited lifespan. The perverse result is that the shorter life expectancy of these individuals makes them a more attractive investment to those who would gamble on the lives of these insureds.

12. Insurers will not issue coverage unless there is a legitimate need for the insurance applied for, such as estate conservation or income replacement. As such, in an effort to prevent issuing STOLI policies, insurers require insurance applicants to respond to specific questions during the application process regarding the insured's net worth and income, the purpose of the insurance sought and any intent to transfer the policy. STOLI promoters and applicants often falsely answer these questions in order to obtain the insurance sought.

13. Notably, not all insurance fraud involving senior citizens qualifies as a STOLI scheme. For example, some individuals attempt to use life insurance to impermissibly create wealth. Under such a scenario, a low-income family may over insure an elderly family member by fraudulently reporting the insureds financial status in hopes of realizing a windfall upon death. By misrepresenting the financial status of the putative insured, the applicant may succeed in procuring a multi-million dollar policy when underwriting of the actual finances would only allow for a \$250,000 policy. Upon the passing of the contestability period, most states prevent the insurer from avoiding payment of the death benefit for such misrepresentations.

14. Here Guaranty Life claims this is a STOLI matter that requires thoughtful statutory interpretation and relief in equity. The Investors claim this is nothing more than a breach of contract case in which an insurance company is attempting to engage in post contestable

underwriting of a \$20,000,000 life insurance policy. The Court is of the opinion that the answer lies somewhere between.

APPLICABLE STATUTES

15. New Tejas has four statutes that impact the outcome of litigation. Those statutes are as follows:

N. Tej. § 1407 - Incontestability

All life insurance policies, delivered or issued for delivery in this state, shall contain in substance a provision stating that the policy shall be incontestable after being in force during the life of the insured for a period of two years from its date of issue, and that, if a policy provides that the death benefit provided by the policy may be increased, or other policy provisions changed, upon the application of the policyholder and the production of evidence of insurability, the policy with respect to each such increase or change shall be incontestable after two years from the effective date of such increase or change, except in each case for nonpayment of premiums or violation of policy conditions relating to service in the armed forces.

N. Tej. § 1408 – Rescission

If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time the representation becomes false.

N. Tej. § 1409 – Insurable Interest

(a) An insurable interest, with reference to life and disability insurance, is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person's death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law

(b) An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.

(c) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

Notably, New Tejas amended its insurable interest laws in 2009 under N. Tej. § 1409. The amendments took effect August 28, 2009, states:

N. Tej. § 1409 – Insurable Interest (Amended August 28, 2009)

(a) An insurable interest, with reference to life and disability insurance, is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person's death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law

(b) An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.

(c) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(d) Trusts and special purpose entities that are used to apply for and initiate the issuance of policies of insurance for investors, where one or more beneficiaries of those trusts or special purpose entities do not have an insurable interest in the life of the insured, violate the insurable interest laws and the prohibition against wagering on life.

(e) Any device, scheme, or artifice designed to give the appearance of an insurable interest where there is no legitimate insurable interest violates the insurable interest laws.

(f) This section shall not be interpreted to define all instances in which an insurable interest exists.

(g) The 2009 Amendments are not to be applied retroactively.

FACTS

16. In light of the foregoing, the Court makes the following findings of fact:

A. PRE-LITIGATION FACTS.

17. On February 5, 2007, the Trust was created,² naming Mr. Hicks as the grantor, Sydney Hicks as the sole beneficiary and attorney Bryan Jones as the Trustee.³ The following day, the Trust (through life insurance agent Reggie Hightower of Top Gun –Executive Insurance Agency) submitted a written insurance application (“Application”) to Guaranty Life seeking the issuance of an insurance policy with a face amount of \$20 million insuring the life of Mr. Hicks. Naming the Sydney Hicks as the sole beneficiary, the Application represented that Mr. Hicks was a 72-year old self employed entrepreneur with a Net worth of \$1.2 billion and an annual earned income of \$8.5 million. The Application also represented that Mr. Hicks lived in an oceanfront property on Jupiter Island, New Tejas.

18. As part of the application process, Reggie Hightower also submitted to Guaranty Life a Statement of Client Intent (“SOCI”) form (executed by the Trust and Mr. Hicks) on February 6, 2007, that represented that none of the first year or subsequent premiums for the policy would “be borrowed by the proposed owner or proposed insured or by any other individual, trust, partnership, corporation or similar or related entity, including by a policy beneficiary or trust beneficiary.” The SOCI also stated that the policy was not “being purchased in connection with any formal or informal program under which the proposed owner or proposed insured have been advised of the opportunity to transfer the policy to a third party within five years of its issuance.”

19. Following an independent underwriting process based entirely on the information provided in the Application and a medical exam of Mr. Hicks on February 8, 2007, Guaranty Life offered Policy No. UT8675309 (“Policy”) to the Trust, with a planned first year premium of

² The Trust has no assets other than the subject life insurance policy.

³ All 7 deponents questioned on the creation of the Trust either (1) pled their Fifth Amendment Rights, (2) could not remember any details regarding the creation of the Trust, or (3) denied knowledge of the Trust’s existence.

\$955,827, a policy issue date of February 16, 2007, and face amount of \$20,000,000.⁴ The Policy named the Trust as the owner and sole beneficiary. On March 5, 2007, Guaranty Life delivered the Policy and a Policy Acceptance Form to the Trust.⁵ That same day, Guaranty Life received its first 3-month premium payment of \$238,956.75 from the Sydney Hicks. Also on March 5, 2007, Reggie Hightower also returned to Guaranty Life a fully executed Policy Acceptance form which stated:

The Inured(s) declares that the statements made in the application remain full, complete, and true as of this date; that since the date of the application, no insured has applied to any insurance company or society without receiving the exact policy applied for or had any symptoms, diseases or disorders for which advice has been sought.⁶

20. On March 7, 2007, and unbeknownst to Guaranty Life, Sydney Hicks executed a Beneficial Interest Transfer Agreement (“BITA”), officially giving 100% of the beneficial interest in the Policy to Presidential Holdings. In executing the BITA, Sydney Hicks affirmed:

I hereby affirm and represent that (1) at no time prior to the issuance of the Policy to the Trust did Presidential solicit me, directly or indirectly, to obtain the Policy for the specific purpose of transferring the Beneficial Interest in the Trust to Presidential, and Presidential did not participate in any way with the decision to obtain the Policy or the procurement of the Policy by the Trust, (2) I did not become aware of Presidential through any sort of general advertisement or marketing, (3) prior to issuance of the Policy to the Trust, I did not communicate (directly or indirectly) with Presidential or its employees or agents, and the identity of the Purchaser and its activities was unknown to me, and (4) I did not receive any form of inducement or consideration from Presidential or its agents in connection with the issuance of the Policy to the Trust, nor was I provided any documents in connection with the sale of the Beneficial Interest to the Purchaser prior to issuance.⁷

⁴ Following issuance of the Policy, Guaranty Life paid Reggie Hightower a total of \$1.4 million in commissions related to the sale of the Policy. Since the start of this litigation, Reggie Hightower passed away, leaving behind an estate with no assets to speak of.

⁵ Guaranty Life’s Chief Underwriter testified that Guaranty Life will not place a life insurance policy “in force” until the executed Policy Acceptance Form is received.”

⁶ The Policy Acceptance Form also made several amendments to the Policy.

⁷ Subsequent deposition testimony of Sydney Hicks revealed that he does not remember whether Reggie Hightower sent him the BITA before or after the Policy issue and delivery dates.

In exchange for the executed BITA, Presidential Holdings provided Sydney Hicks with payment of \$838,956.75 (the equivalent of the first 3-month's premiums and 3% of the face value of the policy). Also on March 7, 2007, Trustee Bryan Jones resigned and appointed Frank Kipp as the successor Trustee.

21. On October 21, 2008, Presidential submitted a Designation of Owner and Designation of Beneficiary form to Guaranty Life stating that Sydney Hicks, as the original Trust beneficiary, previously sold all beneficial interest in the Policy to Presidential. The Designation of Owner and Designation of Beneficiary form also sought to transfer the ownership of the Policy from the Trust to Presidential. In response, Guaranty Life notified the Trust on November 19, 2008, that it needed to analyze whether the previously undisclosed sale of beneficial interest raised any questions related to the issuance of the Policy. On December 8, 2008, the Trust stated that pursuant to Sections 17 and 18 of the Policy, the Trust maintained a contractual right to change the ownership and the beneficiary of the Policy. The Trust further stated that Guaranty Life's failure to submit to its request and acknowledge in writing the validity and enforceability of the Policy would result in a lawsuit to recover damages.

22. Rather than process Presidential's request, Guaranty Life provided the Trust with a December 22, 2008, letter demanding, within 14-days, production of 18 categories of documents/information purporting to "confirm the accuracy" of representations made to Guaranty Life during the underwriting process and, among other things, threatened to seek rescission of the Policy if the information was not provided by January 5, 2009.

23. In Response, Presidential and the Trust filed their lawsuit on January 5, 2009.

B. POST-LITIGATION FACTS.

24. Guaranty Life began investigating Mr. Hicks's background after receiving the Designation of Owner and Designation of Beneficiary form on October 21, 2008, illustrating that

the original Trust beneficiary had sold all beneficial interest in the Trust to a third-party (Presidential), and attempted to transfer the ownership of the Policy from the trust to that third party. Upon instigation of this lawsuit, Guaranty Life's investigation was severely limited to the tools available through the litigation discovery rules. Discovery in this case revealed that on January 4, 2007, Reggie Hightower,⁸ contacted Sydney Hicks to discuss matters of estate planning for his 72 year old father. Sydney testified that Mr. Hightower did not seem to mind the fact that Hicks had no discernable estate that needed planning. This January 4, 2007, meeting culminated with Sydney agreeing to discuss the virtues of life insurance with his father. The same day, Reggie Hightower sent an application and SOCI to Sydney Hicks.

25. On January 10, 2007, Mr. Hicks agreed to purchase a \$500,000 life insurance policy if his son agreed to pay the premiums. In an email dated January 11, 2007, Sydney told his father:

Don't worry about the premium payments. I will take care of them.
An insurance agent will be in touch and send you some forms to sign.

The same day, Sydney emailed the executed Application and SOCI form to Reggie Hightower.⁹ Also that same day, Mr. Hightower sent an email to Timmy Chung, Vice President of Business Development at Presidential that stated:

Tim, Nice work starting Romo over Brees this week. How did those five picks taste?

Talked to Sydney Hicks, and we should be able to flip his old man's policy for 3% of the face value of the policy. Confirmed \$20 million for the face value.

Sydney Hicks testified that he does not recall whether he discussed the Policy face value with Mr. Hightower. Sydney's father testified that he had no idea that (1) a trust had been created naming him as grantor, (2) that a \$20 million life insurance policy had been issued in his name (he

⁸ Mr. Hightower pled his Fifth Amendment right to each and every question raised during his two and one-half hour deposition.

⁹ Sydney Hicks testified that he could not recall if he signed blank documents or if the relevant information was already filled in.

understood that the policy would be for \$500,000), and (3) that his son no longer carried beneficial rights to the Policy. Mr. Hicks also was not aware that the Policy had been issued until notified by Guaranty Life following the initiation of this lawsuit. Mr. Hicks simply signed the forms presented to him.

26. Discovery also demonstrated misrepresentations in the Application related to the net worth and income of Mr. Hicks. Rather than being millionaires with a \$1.2 billion net worth and an \$8 million yearly income, Mr. Hicks was, in reality, a 72 year old retiree and former cab driver living on social security, without a million-dollar net worth and without a seven-figure income.¹⁰ Mr. Hicks also resided in low-rent apartments rather than a beachside estate. Discovery revealed two interesting emails referencing Mr. Hicks' background as a cab driver and Guaranty Life's underwriting efforts. One email from Carl Strum to Ted Fink, two Guaranty Life underwriters, dated February 8, 2007 stated:

A \$1.2 billion cab driver? Game over.

Finally, the day before the policy issue date, Ted Fink emailed the following to Carl Strum:

Have we looked at any third parties that may be driving the Hicks application?

No evidence exists to suggest what if any actions were taken as a result of these emails. Mr. Fink and Mr. Strum could not remember any information related to these emails.

27. Sydney Hicks is also an individual with relatively modest means. Sydney Hicks is an engineer at a local petrochemical plant making \$60,000 per year and living in a \$150,000 house in the suburbs. The only other significant asset held by Sydney Hicks is a 401K plan currently valued at \$19,000. Sydney Hicks testified that Mr. Hightower arranged to reimburse him for the initial premium payment because he could not afford policy premiums reaching almost \$1 million. In fact, Sydney Hicks received a wire transfer equaling the first 3-month premium payment the two

¹⁰ The Investors do not dispute the misrepresentations related to Mr. Hicks's net worth and income.

days after Sydney Hick's paid Guaranty Life. Sydney further testified that he never would have purchased the Policy if Reggie Hightower did not agree to immediately reimburse his premium payments.

28. Guaranty Life's Chief Underwriter testified that Guaranty Life would not have issued the Policy had it known about the misrepresentations in the Application, SOCI, and Policy Acceptance Form or that the Policy was being purchased with the intent that a third-party investor, who lacked an insurable interest in Mr. Hicks's life, would obtain interest in and control over the Policy. Guaranty Life's Chief Underwriter also testified that Guaranty Life would not have issued the Policy had Guaranty Life known that Sydney Hicks would receive cash or other inducement in connection with the application for and purchase of the Policy.

29. Following discovery of the misrepresentations, Guaranty Life filed a counterclaim on June 6, 2009 (3 months after the contestability period of the Policy) seeking for the Court to declare the Policy void for the lack of an insurable interest and retention of the Policy premiums.

The Counterclaim stated:

Upon information and belief, Mr. Hicks did not have any significant assets or income. The Trust knew that Mr. Hicks did not have a net worth of \$1.2 billion or income of \$8 million at the time it executed the Application, but falsely recorded this information on the Application in order to obtain a life insurance policy for which Mr. Hicks was not qualified. Upon information and belief, the Trust intended to transfer the Policy to a third-party investor. The Trust made false representations to the contrary in order to obtain the Policy. Upon information and belief, the Trust knew that Mr. Hicks or a related party or entity would receive cash or other inducement in connection with the application for and purchase of the Policy. The Trust made false representations to the contrary in order to obtain the Policy. Upon information and belief, the Trust knew that the Policy was being purchased with the intent that a third-party investor, which lacked an insurable interest in Mr. Hicks's life, would obtain an interest in and control over the Policy. The Trust made false representations to the contrary in order to obtain the Policy.

As part of the Counterclaims, Guaranty Life seeks to retain the premiums paid under the Policy. To date, Guaranty Life received \$4,779,135 in premiums on the Policy as a result of a yearly premium

payment made by Presidential to Guaranty Life on March 5. Discovery ultimately revealed that Presidential funded all premium payments made by the Trust for the Policy.

PROCEDURAL HISTORY

30. The Investors initiated this lawsuit on January 5, 2009. The Trust alleges claims against Guaranty Life for breach of contract, conversion, breach of the covenant of good faith and fair dealing, and fraud. Presidential also alleges fraud, as well as intentional and negligent interference with contract and prospective economic advantage. These claims are all based upon Guaranty Life's refusal to immediately record the change of ownership forms. The Investors seek as damages the \$4.7 million that the Trust paid in Policy premiums to Guaranty Life and the additional \$600,000 paid to Sydney Hicks in exchange for the execution of the BITA.

31. Guaranty Life filed its Counterclaim on June 6, 2009 [docket no. 32].¹¹ Guaranty Life seeks a declaration that the Policy is void for lack of insurable interest. Guaranty Life also seeks to retain the premiums paid under the Policy.

32. On May 12, 2011, the Investors filed a Motion for Summary Judgment [docket no. 169] on its claims for breach of contract and monetary damages resulting from the loss of the Policy value in the secondary market. The same day, Guaranty Life filed its Motion for Summary Judgment [docket no. 171] for rescission and to keep the premiums paid on the Policy to date. Following additional briefing, the parties argued this case before this Court on August 8, 2011.

DISCUSSION

33. The court will first address Guaranty Life's claims that the Policy is void because if the Court grants Guaranty Life's Motion for Summary Judgment [docket no. 171] on this ground, each of the Investors' affirmative claims fail as a matter of law.

A. IS THE POLICY VOID FOR LACK OF INSURABLE INTEREST.

¹¹ With its June 6, 2009, Counterclaim, Guaranty Life notified Presidential that the Policy was rescinded and that no further premiums would be due on the Policy. Guaranty Life also entered the \$4,779,135 in premiums received to date into the Registry of the Court. Presidential continued to pay premiums through 2011.

34. This is an issue of first impression in New Tejas.

35. Guaranty Life would have this court believe that the Policy lacks insurable interest, and is void. *See* Counterclaim [docket no. 32], at p. 3. Here, the Court finds that, as a matter of law, the Policy failed for a lack of insurable interest at its inception due to the pre-arranged deal of the investors to procure ownership and beneficial interest in the Policy. As such, the Policy violated the insurable interest laws of New Tejas. *Pruco Life Ins. Co. v. Brasner*, No. 10-80804, 2011 WL 134056 (S.D. Fla. Jan. 7, 2011). (“Such facts would demonstrate that the Berger Policy was not procured in good faith, and that there was therefore no valid insurable interest”). This court disagrees with the analysis of contrary cases such as *Lincoln Nat’l Life Ins. Co. v. The Gordon R.A. Fishman Irrevocable Life Trust*, 638 F. Supp. 2d 1170, 1170–71 (C.D. Cal. 2009).

36. For these reasons, the Court grants Guaranty Life’s Motion for Summary Judgment [docket no. 169] and declares the Policy void *ab initio*. Consistent with this holding, the court denies the Investor’s Motion for Summary Judgment [docket no. 171] related to each of its affirmative claims.

B. SHOULD GUARANTY LIFE RETAIN THE PREMIUMS PAID IN THIS CASE.

37. This is also an issue with no precedent in New Tejas.

38. The Court holds as a matter of law that there is no legal basis for Guaranty Life’s request, among others, for equitable balancing of the parties following rescission of the Policy. General principles of rescission require the parties to be returned the positions prior to formation of the contract. These principles require an insurer to return all premiums following a policy rescission. *Hartford Life & Annuity Ins. Co. v. Doris Barnes Family 2008 Irrevocable Trust*, No. CV 10-7560 PSG (DTBx), 2012 WL 688817, at * 5 (C.D. Cal. Feb. 3, 2012); *See PHL Variable Ins. Co. v. Jolly*, 800 F. Supp. 2d 1205, 1207–16 (N.D. Ga. 2011) (stating, “no factual, legal or equitable basis for permitting [PHL] to obtain policy premiums.”). For the same reasons, the Court finds *PHL Variable Ins. Co. v. Lucille E. Morello 2007 Irrevocable Trust*, 645 F.3d 965 (8th Cir.

2011), *TTSI Irrevocable Trust v. Reliastar Life Ins. Co.*, 60 So. 3d 1148, 1150 (Fla. Dist. Ct. App. 2011) and similar cases unpersuasive. As such, the Court orders Guaranty Life to return all premiums to the Trust within thirty (30) days of this Order.

39. For these reasons, the Court denies Guaranty Life's Motion for Summary Judgment [docket no. 171] to the extent that it seeks to retain the Policy premiums. The Court also orders the Registry of the Court to release all funds to the Trust.

This is a final Judgment.

So Ordered this 14 day of December, 2011.

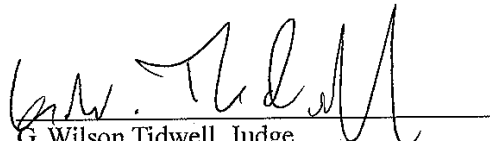

G. Wilson Tidwell, Judge
United States District Judge

EXHIBIT 1

Application Signature Page

Authorization to Obtain Information

I authorize any licensed physician, health care practitioner, hospital, medical laboratory, clinic or other medically-related facility, Insurance company or The Medical Information Bureau (MIB), having any records or knowledge of me or my health, to provide any such Information to Guaranty Life Insurance Company (GLIC), its affiliated Insurers or its reinsurers. The information requested may include information regarding diagnosis and treatment of physical or mental condition, including consultations occurring after the date this authorization is signed. I authorize any of the above sources to release to GLIC or Its reinsurers any of my information relating to alcohol use, drug use and mental health care. Medical information will be used only for the purpose of risk evaluation and determining eligibility for benefits under any policies Issued. GLIC may disclose information it has obtained to others as permitted or required by law, including the MIB, our reinsurers and other persons or entities performing business or legal services in connection with this application, any contract issued pursuant to it or in connection with the determination of eligibility for benefits under an existing policy. Information that is not personally identifiable may be used for insurance statistical studies.

To facilitate rapid submission of information, I authorize, all of the above sources, except MIB, to give such records or knowledge to any agency employed by GLIC to collect and transmit such Information.

I authorize consumer reporting agencies insurance companies, motor vehicle departments, my attorney, accountants and business associates and the MIB to provide any information to GLIC or Its reinsurers that may affect my insurability. This may include Information about my occupation, participation in hazardous activities, motor vehicle record, foreign travel, finances, and other Insurance coverage in place.

I acknowledge that I have received a copy of the Notice of Information Practices, including information about Investigative Consumer Reports and the Medical Information Bureau. I authorize, the preparation of an Investigative consumer report I understand that upon written request, I am entitled to receive a copy of the investigative consumer report.

This, authorization shall continue to be valid for 30 months from the date it is signed unless otherwise required by law. A photocopy of this signed authorization shall be as valid as the original. This authorization may be revoked by writing to GLIC prior to the time the Insurance coverage has been placed in force. I understand my authorized representative or I may receive a copy of this authorization on request.

() I do () I do Not (check one) require that I be interviewed in connection with any investigative consumer report that may be prepared.

Signature

I have reviewed this application, and the statement made herein are those of the proposed insured and all such statements made by the proposed insured in Part I or and in Part II of this application are full, complete, and true to the best knowledge and belief of the undersigned and have been correctly recorded.

I understand that I) no statement made to, or information acquired by any Licensed Producer who takes this application, shall bind the Company unless stated in Part I and/or Part II of this application, the Licensed Producer has no authority to make, modify, alter or discharge any contract thereby applied for.

I understand and agree that the Insurance applied for shall not take effect unless and until each of the following has occurred: 1) the policy has been issued by the Company; 2) the premium required for issuance of the policy has been paid in full during the lifetime of the insured; 3) all the representations made in the application remain true, complete and accurate as of the latest of such dates; 4) the insured is alive when the policy is issued; and 5) there has been no change in the health of any proposed insured that would change the answers to any of the questions in this application. I understand that if there is any change in my health or physical condition, or if I visit a physician or am hospitalized, subsequent to the date I complete the application to provide any information to be contained in the application, I will inform the Company as soon as possible.

Under penalty of perjury, I confirm that 1) the Social Security or Tax Identification Number shown is correct, and 2) that I am not subject to back-up withholding. If I have applied for the Living Benefit Rider, I confirm that I have received a copy of the disclosure form, Summary of Coverage for Accelerated Benefit Rider.

Proposed Insured's Signature <i>Douglas W. Hick</i>	State Signed In <i>N.J.</i>	Witness Signature Must be signed in presence of Proposed Insured	Date <i>2-6-07</i> (mm/dd/yyyy)
Owner's Signature (If other than Proposed Insured) <i>Barbara Jones, Trustee</i>	State Signed In <i>N.J.</i>	Witness Signature Must be signed in presence of Proposed Insured	Date <i>2-6-07</i> (mm/dd/yyyy)
Parent's Signature (for minor insured)	State Signed In	Witness Signature Must be signed in presence of Proposed Insured	Date (mm/dd/yyyy)

Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application of files a claim containing a false or deceptive statement may be guilty of insurance fraud as determined by a court of competent jurisdiction.

The producer hereby confirms he/she has truly and accurately record on the application the information supplied by the proposed insured; and that he/she is qualified and authorized to discuss the contract herein applied for.

Licensed Producer's Name (Print First, Middle, Last) <i>Rebecca Hightower</i>	Licensed Producer's Email Address <i>RH@Hightower.com</i>
Licensed Producer's Signature <i>[Signature]</i>	Date (mm/dd/yyyy) <i>2-6-07</i>
Licensed Producer's I.D. # <i>23473</i>	Licensed Producer's Telephone #

EXHIBIT 2

Policy Excerpts

Guaranty Life Insurance Company

Insured	Don Juan W. Hicks	TOTAL FACE AMOUNT AT ISSUE: \$20,000,000
Policy Number	UT8675309	Policy Date: February 16, 2007
Death Benefit	Option a	Issue date: February 16, 2007
Plan	Guaranty Life XLR	

The Guaranty Life Insurance Company ("The Company") agrees, subject to the conditions and provisions of this policy, to pay the Death Benefit to the Beneficiary in a lump sum upon the death of the insured if such death occurs while the policy is in force, and to provide the other benefits, rights, and privileges of the policy. If the Company makes other plans of payment available other than a lump sum, The Death Benefit will be payable on receipt at the Main Administrative Office of the Company of due proof of the Insured's death.

We are issuing the policy in consideration of the application and our receipt of the Minimum Initial Premium at our Main Administrative Office. The provisions of this and the following pages and any attachments make up your contract.

RIGHT TO RETURN THIS POLICY. This policy may be returned within 10 days (20 days for replacements) after you receive it for a refund of any premium received, less any withdrawals and loans made under this policy. This policy will be void from its beginning. You may return the policy by delivering or mailing it to us at the address below or by returning it to the agent or agency office through which it was delivered.

Main Administrative Office

Guaranty Life Insurance Company
Variable and Universal Life Administration
PO Box 4954
Houston, Texas 77002
Telephone: 713-999-8963

Signed for Guaranty Life Insurance Company at One Rocket Way, Houston, Texas 77002



President



Secretary

READ YOUR POLICY CAREFULLY

It is a legal contract between the Owner and Guaranty Life Insurance Company

Universal Life Insurance Policy
Flexible Premiums
Death Benefit payable at death of Insured
Nonparticipating – not eligible for dividends
Benefits, premiums, and the Risk Classification are shown in Section 1

SECTION 17: Owner(s) and Beneficiary(ies)

The Insured is the owner of this policy, unless otherwise provided in the application or if ownership is changed by later transfer of ownership. You may change the beneficiary by written notice filed with us at our Main Administrative Office. When we receive it, the change will take effect as of the date it was signed by you.

SECTION 18: Assignment

Except as otherwise provided in this policy, you may by written notice, assign any interest in this policy without the consent of any person other than an irrevocable Beneficiary. The assignment or a certified copy of it must be filed with us at our Main Administrative Office. When filed, it will bind us as of the date of the assignment, subject to any action taken by us before such filing. We shall not be responsible for the validity or sufficiency of any assignment. The interest of the assignee shall be prior to the interest of any beneficiary not irrevocably named or any contingent owner. An assignee cannot change the beneficiary, owner, or contingent owner.

SECTION 21: Incontestability

This policy shall be incontestable after it has been in force during the Insured's lifetime for two years from the Issue Date, except for nonpayment of premiums or violation of policy conditions relating to service in the armed forces.

While insurance is contestable, we may either rescind the insurance or deny a claim on the basis of:

1. A misstatement in the application or supplemental application for this policy or any face amount increase; or
2. A misstatement in the reinstatement application if there has been a reinstatement of this policy.

If we contest the validity of all or a portion of the face amount provided under this policy, the amount we pay with respect to the contested amount will be limited to the higher of a return of any paid premium required by us for the contested face amount or the sum of any Monthly Deductions made under this policy for the contested face amount.

EXHIBIT 3

Statement of Client Intent

Guaranty Life Insurance Company

Guaranty Life Insurance Company at One Rocket Way, Houston, Texas 77002

Statement of Client Intent

Notice: As a matter of public policy and to protect the interests of our existing policyholders, our shareholders and our industry, Guaranty Life will not knowingly participate in sales programs or strategies, including premium financing arrangements, designed primarily to facilitate the eventual sale or transfer of the policy to investors. The purpose of this form is to provide Guaranty Life with the information it needs to implement that policy. Any misstatement or concealment will be treated as a material misrepresentation for which Guaranty Life may seek any and all sanctions available to it.

This form must be completed, signed and submitted with each application for a life Insurance policy with Guaranty Life and its subsidiaries for Insureds age 65 and over and amounts of \$2,000,000 and up.

The undersigned, J. W. Hicks (proposed insured) and Hicks Trust (proposed owner) in connection with an application for life insurance being submitted to Guaranty Life or a subsidiary, hereby certify as follows.

1. Borrowing. Will any of the first year or subsequent premiums for the policy be borrowed by the proposed owner or proposed Insured or by any other individual, trust partnership, corporation or similar or related entity, including by a policy beneficiary or trust beneficiary? ___ Yes No

• If yes, provide the name of the Premium Financing Program or Lender: _____

Notice: Submission of this form constitutes written authorization to Guaranty Life by the proposed owner and proposed Insured to contact the program sponsor and/or lender to obtain further information regarding the loan and the terms and conditions of the financing program.

2. Source of Funding.

A. Who will contribute the funds? (check all that apply).

___ i. Proposed Insured ___ ii. Proposed Owner

___ iii. Grant of the trust (if trust is the owner)

iv. Another individual and/or entity, including a trust or policy beneficiary:
(Name, relationship and reason for the contribution):

Sydney Hicks - Ben.

B. Identify the source of funding for the premiums (check all that apply).

___ Current Income Cash and Equivalents

___ Marketable Securities ___ Non-Readily Marketable Securities

___ Retirement Accounts ___ Other Assets (explain): _____

Note: If any such funds are being borrowed that borrowing must be disclosed in Question 1 above.

3. Formal or Informal Programs Is the policy being purchased in connection with any formal or informal program under which the proposed owner or proposed Insured have advised of the opportunity to transfer the policy to a third party within five years of its Issuance? ___ Yes No

• If yes, give details: _____

4. Intention to Transfer Interest to a Third Party. Do the proposed insured or proposed owner have any understanding or agreement providing for a party, other than the owner, to obtain any legal or equitable right, title or interest in the policy or entity owning the policy? ___ Yes No

• If yes, give details: _____

5. Life Expectancy Valuation. Has any entity, including, for example, any life expectancy valuation company or premium financing company, conducted (or made plans to conduct in the future) a life expectancy evaluation of the insured within the past two years? ___ Yes No

If yes, identify the entity or entities (including a contact name and telephone number) that provided the life expectancy valuations

6. Prior Life Settlement Transactions. Have either the proposed insured or the proposed owner, in the past five years, sold a policy to a life settlement, viatical, or other secondary market provider? ___ Yes No

• If yes, give details: _____

7. Bona Fide Insurance Need. State in detail what bona fide need the proposed owner or proposed insured has for this insurance.

Attach additional statements or documentation if necessary.

8. Inducements. Have the proposed insured or proposed owner or any individual, trust, partnership, corporation or similar or related entity received cash or other financial inducements in connection with this application or the purchase of this insurance? ___ Yes No

• If yes, give details: _____

9. Trust Agreement. Will the policy be owned by a trust? Yes ___ No

- If yes, please submit 8 copy of the trust agreement. The signature of the proposed insured and proposed owner below authorizes Guaranty Life to review the trust agreement solely for the purpose of confirming that the terms of the trust agreement do not indicate that the policy is being purchased primarily to facilitate the eventual sale or transfer of the policy to investors. Guaranty Life will limit its review to that issue and treat any information contained in the trust agreement as strictly confidential.

By signing below, the undersigned declare and certify that the information contained in this Statement of Client Intent is true, correct and complete to the best of their knowledge, information and belief. The undersigned further declare that each of them understand, acknowledge and agree that Guaranty Life is relying on the information contained in this Statement of Client Intent in making its determination to issue the policy applied for and that the statements contained herein shall continue to be true correct and complete as the time of issuance and delivery of the policy. In the event that prior to issuance and delivery of the policy, the answers to any of the above questions are no longer true, accurate and correct, each of the undersigned warrants that they shall notify Guaranty Life immediately of such changed answers and that such notification shall occur prior to delivery of any policy.

Stephen W. Hoke
Proposed Insured

Date: 2-6-07

Stephen W. Hoke, Trustee
Proposed Owner

Date: 2-6-2007

[Signature]
Producer

Date: 2-6-2007

EXHIBIT 4

Policy Acceptance Form

Guaranty Life Insurance Company

Guaranty Life Insurance Company at One Rocket Way, Houston, Texas 77002

POLICY ACCEPTANCE FORM

Agency: E4563	Insured(s): Don Juan W. Hicks
Policy Number: UT 867 5309	

DECLARATION:

The Insured(s) declares that the statements made in the application remain full, complete, and true as of this date; that since the date of the application, no insured has applied to any insurance company or society without receiving the exact policy applied for or had any symptoms, diseases or disorders for which advice has been sought.

All Insured(s) must attest to the above declaration. If any insured cannot attest to the above statement, please so indicate by checking the box next to that insured's signature below and complete a Health Statement Form for that insured. PLEASE NOTE: Home office approval of the Health Statement Form is necessary before the policy is in effect.

AMENDMENTS: The application for Policy No. UT8675309 is amended as follows:

Part 2 of this application is considered to have been done for Guaranty Life Insurance Company. Policy Option is not applicable to this plan of Insurance. The owner and beneficiary is The Hicks Irrevocable Life Insurance Trust, dated February 5, 2007, Bryan Jones as Trustee. The application Part 1 is hereby amended to reflect the company name as Guaranty Life Insurance Company.

ENDORSEMENTS:

Delivery expiry is March 20, 2007 on policy UT8675309.

It is agreed that the above declaration and amendments are part of the application and shall be part of the policy.

DELIVERY RECEIPT: To be completed when policy is delivered. If a Health Statement Form is required, please consult with your agent before completing this section.

This certifies that as the policy owner, (check ONE only):

I have received delivery of the insurance policy listed above, which includes a statement of Policy Cost and Benefit information
 I have received delivery of the insurance policy listed above, which includes a statement of Policy Cost and Benefit Information, and authorize _____ to hold such policy on my behalf.

Date March 5, 2007
Signed at N. Tex
Witness _____
Owner Bryan Jones Trustee
Owner _____

Insured(s) Don Juan W. Hicks

If owner is a firm or corporation, please give the name of the firm or corporation and the title of the officer signing for the firm or corporation

EXHIBIT 5

October 21, 2008 Letter

October 21, 2008

Guaranty Life Insurance Company
Variable and Universal Life Administration
PO Box 4954
Houston, Texas 77002

Re: Insured: Don Juan W. Hicks
Policy No.: UT8675309

Dear Sir/Madam:

Enclosed please find completed Designation of Owner and Designation of Beneficiary forms in connection with the above-referenced policy that are intended to change the ownership and beneficiary of the policy to Presidential Holdings, LLC ("Presidential").

As trustee of the Hicks Irrevocable Life Insurance Trust (the "Trust"), I have signed the forms on behalf of the current owner. Enclosed please find a copy of the Trustee Resignation and Appointment of Successor Trustee form dated March 7, 2007 that provided that I succeeded Bryan Jones as trustee after his resignation on March 7, 2008.

Finally, I have enclosed a copy of the Beneficial Interest Transfer Agreement dated March 7, 2007. Pursuant to this agreement, the original beneficiary of the Trust sold his beneficial interest in the Trust to Presidential Holdings, LLC for \$838,956.75. This transaction occurred approximately 19 days after the policy was issued. Following such transaction, Presidential became the sole beneficiary of the Trust and the sole source of premiums for the policy.

Please let me know if you have any questions regarding the foregoing.

Sincerely,



Frank Kipp, CPA
Trustee of the Hicks Irrevocable Life Insurance Trust

Enclosures

3600 Lime Street, Suite 711 Riverside, New Tejas 92501 Phone 931.745.3608 Fax 931.686.3304
www.FKippCPA.com

BENEFICIAL INTEREST TRANSFER AGREEMENT

Dated: March 7, 2007

Reference is made to the Trust Agreement of The Hicks Irrevocable Life Insurance Trust (the "Trust") dated February 5, 2007 (the "Agreement"), among Don Juan W. Hicks as Grantor and Sydney Hicks, as the initial holder of the Beneficial Interest in the Trust and Bryan Jones, as Trustee. Unless otherwise defined herein, terms defined in the Agreement are used herein as therein defined.


Sydney Hicks (the seller) and Presidential Holdings LLC (the "Purchaser") agree as follows:

1. In consideration of the payment of \$838,956.75, the Seller hereby sells and assigns to the Purchaser, and the Purchaser hereby; purchases and assumes from the Seller. (i) the Beneficial Interest in the Trust and (ii) the Seller's rights and obligations with respect thereto (such Beneficial Interest and related rights and obligations being the "Purchased Assets").
2. As of the date hereof, (i) the Purchaser shall be and become the Beneficiary' of the Trust for all purposes of the Agreement, (ii) the Seller shall relinquish all of its rights with respect to the Purchased Assets for all purposes of the Agreement and (iii) the Trustee shall cancel the existing Certificate of Beneficial Interest and issue a new Certificate of Beneficial Interest in the name of the Purchaser.
3. This Beneficial Interest Transfer Agreement shall be governed by, and construed in accordance with, the laws of the State of New Tejas without regard to principles of conflict of laws.
4. I hereby affirm and represent that (1) at no time prior to the issuance of the Policy to the Trust did Presidential solicit me, directly or indirectly, to obtain the Policy for the specific purpose of transferring the Beneficial Interest in the Trust to Presidential, and Presidential did not participate in any way with the decision to obtain the Policy or the procurement of the Policy by the Trust, (2) I did not become aware of Presidential through any sort of general advertisement or marketing, (3) prior to issuance of the Policy to the Trust, I did not communicate (directly or indirectly) with Presidential or its employees or agents, and the identity of the Purchaser and its activities was unknown to me, and (4) I did not receive any form of inducement or consideration from Presidential or its agents in connection with the issuance of the Policy to the Trust, nor was I provided any documents in connection with the sale of the Beneficial Interest to the Purchaser prior to issuance.

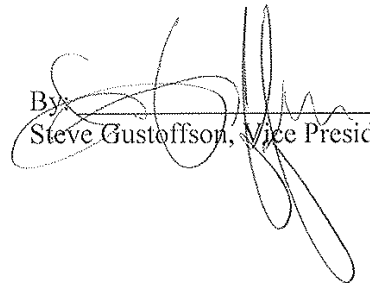
Signature page follows on next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Agreement to be duly executed and delivered by their respective duly authorized officers or agents as of the date first written above.

Sydney Hicks, as Seller

By: 
Sydney Hicks

Presidential Holdings LLC,
as Purchaser

By: 
Steve Gustoffson, Vice President

TRUSTEE RESIGNATION AND APPOINTMENT OF SUCCESSOR TRUSTEE

WHEREAS, the Hicks Irrevocable Life Insurance Trust (the "Trust") was entered into on February 5, 2007 and provides that Bryan Jones shall act as Trustee; and

WHEREAS, Article VI (6.2) of the Trust provides that the trustee by an instrument in writing may resign as trustee at any time; and


WHEREAS, Article VI (6.1) provides that any successor trustee shall execute an instrument accepting its appointment, and thereupon such successor trustee shall become vested with all the properties, rights, powers, duties and trust of the predecessor trustee,

NOW THEREFORE, BE IT RESOLVED that:

1. Bryan Jones has tendered his resignation effective March 7, 2007; and
2. Frank Kipp shall be appointed as successor trustee.

Resignation of Predecessor Trustee:

This document shall serve as my resignation as trustee of the Trust effective March 7, 2007.



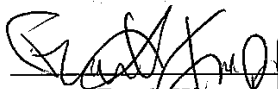
Bryan Jones, Predecessor Trustee

Dated this 7 day of March, 2007

Acceptance of Appointment by Successor Trustee:

Frank Kipp hereby accepts his/her appointment as the successor trustee of the Trust.

Dated this 7 day of Mar, 2007

Successor Trustee: 

Frank Kipp

Guaranty Life Insurance Company

Guaranty Life Insurance Company at One Rocket Way, Houston, Texas 77002

Designation of Beneficiary

A. Policy Information

Don Juan W. Hicks
Insured/Annuitant Name(s)

VT 8675309
Policy/Contact Number(s)

566-23-9842
Tax ID No. / Social Security No.

Date of Birth

B. Beneficiary Designation

I hereby designate the following as beneficiary(ies) to receive any death benefit that becomes payable under this policy/contract. Payment will be made to the beneficiaries that survive the Insured, successively, in the following order:

• Primary Beneficiaries

- then 1st Contingent Beneficiaries (If no Primary Beneficiary living at the death of the Insured)
- then 2nd Contingent Beneficiaries (If no 1st Contingent Beneficiary living at the death of the Insured)
- then The owner or owner's Estate (If no 2nd Contingent Beneficiary living at the death of the Insured)

I reserve the right to revoke or change any beneficiary designation in the future. I revoke any previous beneficiary designations and settlement agreements that apply to the amount payable under the policy/contract in the event of my death.

Presidential Holdings, LLC
Beneficiary Name (First, Middle Initial, Last) or Entity Name

100 NA 27-0312633
Percent % Date of Birth/Date of Trust Social Security No./Tax ID No.

Relationship to Insured Spouse Child Trust Other Limited Liability Company

27 West 40th Street, 8th Floor New York, NY 10018
Street Number Street Name City State Zip Code

Check One: (If nothing checked, the designation will be Primary) Primary 1st Contingent 2nd Contingent

Beneficiary Name (First, Middle Initial, Last) or Entity Name

Percent % Date of Birth/Date of Trust Social Security No./Tax ID No.

Relationship to Insured Spouse Child Trust Other

Street Number Street Name City State Zip Code

Check One: (If nothing checked, the designation will be Primary) Primary 1st Contingent 2nd Contingent

Beneficiary Name (First, Middle Initial, Last) or Entity Name

Percent % Date of Birth/Date of Trust Social Security No./Tax ID No.

Relationship to Insured Spouse Child Trust Other

Street Number Street Name City State Zip Code

Check One: (If nothing checked, the designation will be Primary) Primary 1st Contingent 2nd Contingent

B. Beneficiary Designation – *continued* Policy/Contract Number(s) _____

Beneficiary Name (First, Middle Initial, Last) or Entity Name _____

Percent % _____ Date of Birth/Date of Trust _____ Social Security No./Tax ID No. _____
 Relationship to Insured ___ Spouse ___ Child ___ Trust ___ Other _____

Street Number Street Name City State Zip Code
 Check One: (If nothing checked, the designation will be Primary) Primary 1st Contingent 2nd Contingent

Beneficiary Name (First, Middle Initial, Last) or Entity Name _____

Percent % _____ Date of Birth/Date of Trust _____ Social Security No./Tax ID No. _____
 Relationship to Insured ___ Spouse ___ Child ___ Trust ___ Other _____

Street Number Street Name City State Zip Code
 Check One: (If nothing checked, the designation will be Primary) Primary 1st Contingent 2nd Contingent

Beneficiary Name (First, Middle Initial, Last) or Entity Name _____

Percent % _____ Date of Birth/Date of Trust _____ Social Security No./Tax ID No. _____
 Relationship to Insured ___ Spouse ___ Child ___ Trust ___ Other _____

Street Number Street Name City State Zip Code
 Check One: (If nothing checked, the designation will be Primary) Primary 1st Contingent 2nd Contingent

If any additional pages/attachments are needed to complete this change, please sign, date and provide the policy number on each page.

C. Signature and Date Individual Owner

Signature: _____ Print Name: _____ Date: _____

Owner _____

Joint Owner _____

Disinterested Witness (Required in Massachusetts) _____

Signature: _____ Non- Individual Owner *Presidential Holdings, LLC* Print Name: _____ Date: _____

Owner _____ *10-21-08*

Joint Owner _____

Disinterested Witness _____

Guaranty Life Insurance Company

Guaranty Life Insurance Company at One Rocket Way, Houston, Texas 77002

DESIGNATION OF OWNER

A. Policy Information

Don Juan W. Hick
Insured/Annuitant Name(s)

VT 8675309
Policy/Contact Number(s)

Date of Birth

566-23-9842
Tax ID No. / Social Security No.

B. To change the owner choose ONE of the following categories

The ownership designation of each of the above numbered policies shall be changed so that the new owner shall be as shown below: Ownership rights shall be exercised by all primary owners, jointly, or the survivors, while living and after their death by all contingent owners, jointly, or the survivors, while living. The final owner shall become the owner after the death of all other owners herein designated. (Please check and complete one subsection only. For sections 4-6 the new owner will also become the new Beneficiary.)

1. Change the owner to the *INSURED(s)/Annuitant*:

The new owner shall be the Insured(s)/Annuitant(s).

2. Change the owner to an *INDIVIDUAL* other than the *INSURED(s)/Annuitant*:

The new owner shall be _____

Contingent Owner (optional) _____

Final Owner: If nothing is checked, the final owner shall be the estate of the surviving owner

The Insured Estate of Surviving owner

3. Change the owner to more than one the *INDIVIDUAL*:

The new owners shall be the following individuals, jointly, survivors, or survivor:

Final Owner: If nothing is checked, the final owner shall be the estate of the survivor. the Insured Estate of Survivor

4. Change the owner and beneficiary to a *CORPORATION* (please provide corporate resolution):

Complete Legal Name _____ / Its successors or assigns.

State of Incorporation _____

5. Change the owner to an *Partnership*: (Please provide general partnership agreement, if applicable)

Complete Legal Name Presidential Holdings LLC

6. Change of owner and beneficiary to a *SOLE PROPRIETORSHIP*:

Complete Name of Sole Proprietor: _____

7. Change of owner and beneficiary to a *PENSION PLAN*: "PENSION PLAN" (form PT352 also required):

Complete Name of Pension Plan: _____

UT 8675309

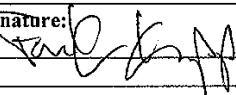
C. SIGNATURE AND DATE

Individual Owner

Signature:	Print Name:	Date:
_____	_____	_____
Owner	_____	_____
Joint Owner	_____	_____
Disinterested Witness	_____	_____

If not currently owned by an individual

Full name of the Entity or Corporations Hicks Irrevocable Life Insurance Trust
 Signing in the capacity as Trustee Officer Partner Other _____
(list corporate title)

Signature:	Please Print Name:	Date:
A) 	Frank Kipp	10-21-08
B) _____	_____	_____
C) _____	_____	_____
D) _____	_____	_____

D. NEW OWNER information, Signature and Date

27 West 40th St, 8th Floor, New York, NY 10018
 New Owner's Full Address
27-0312633
 New Owner's Taxpayer ID or Social Security Number
(enter ONE TIN or SSN only)

 New Owner's Date of Birth
(not applicable if New Owner is non-individual)

I am aware that there may be tax consequences resulting from this transaction. Under penalty of perjury, I certify that my correct Social Security / Taxpayer Identification number is shown on this form. (If firm or Corporation please indicate name and title of officer.) . .

If the New Owner is an INDIVIDUAL, please complete the following

Print Name	Signature	Date
_____	_____	_____
New Owner	_____	_____
New Joint Owner	_____	_____
Disinterested Witness	_____	_____

If the Owner is a NON-INDIVIDUAL, please complete the following

Signing below in the capacity of: Partner Officer _____
 Other _____

(Use Lines B through D for Partnerships or Multiple Owners/Trustees.)

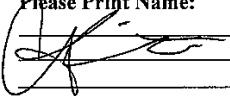
Signature:	Please Print Name:	Date:
A) _____	_____	_____
B) <u>Presidential Holdings</u>		10-21-08
C) _____	_____	_____
D) _____	_____	_____
Disinterested Witness	_____	_____

EXHIBIT 6

November 19, 2008 Letter

Guaranty Life Insurance Company

Guaranty Life Insurance Company
Variable and Universal Life Administration
PO Box 4954
Houston, Texas 77002

November 19, 2008

Frank Kipp
Trustee Hicks Irrevocable Life Insurance Trust
3600 Lime Street, Suite 711
Riverside, New Tejas 92501

Re: Insured: Don Juan W. Hicks
Policy No.: UT8675309

Dear Mr. Kipp:

We are in receipt of your letter of October 21, 2008, and the accompanying documentation notifying Guaranty Life of a change of Owner and Beneficiary relating to the above-referenced policy.

Please be advised that Guaranty Life is reviewing your correspondence and evaluating whether this previously undisclosed information raises any questions regarding the issuance of the policy. Accordingly, we cannot process your change requests at this time until we complete our analysis.

We may be contacting you and other related parties in connection with our ongoing review.

Sincerely,



Joshua M. Davis
Vice-President, Policy Services

EXHIBIT 7

December 8, 2008 Letter

December 8, 2008

Joshua M. Davis
Vice-President, Policy Services
Guaranty Life Insurance Company
Variable and Universal Life Administration
PO Box 4954
Houston, Texas 77002

Re: Insured: Don Juan W. Hicks
Policy No.: UT8675309

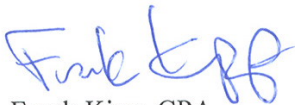
Dear Mr. Davis:

Guaranty Life's November 19, 2008, response to the change of ownership and beneficiary form that was submitted by the Trust to Guaranty Life is contrary to Guaranty Life's obligations under the terms of the Policy and is unacceptable. As the owner of the Policy, the Trust has the right to change the ownership and beneficiary of the Policy. Accordingly, we demand that prior to January 1, 2010, Guaranty Life confirms in writing that it has processed our request and updated its records to reflect that Presidential Holdings is the current owner and beneficiary of the Policy and that Guaranty Life will honor payment of any death benefits when due.

If Guaranty Life fails to provide such written confirmation or otherwise disputes Presidential Holdings' status as the lawful owner and beneficiary of the Policy, then we will seek to recover the damages we have suffered due to Guaranty Life's material breach of its obligations and commitments under the terms of the Policy, including any premiums paid to date on the Policy, plus interest beginning from the date the Policy was initially issued.

Please let me know if you have any questions regarding the foregoing.

Sincerely,



Frank Kipp, CPA
Trustee of the Hicks Irrevocable Life Insurance Trust

3600 Lime Street, Suite 711 Riverside, New Tejas 92501 Phone 931.745.3608 Fax 931.686.3304
www.FKippCPA.com

EXHIBIT 8

December 22, 2008 Letter

Guaranty Life Insurance Company

Guaranty Life Insurance Company
Variable and Universal Life Administration
PO Box 4954
Houston, Texas 77002

December 22, 2008

Frank Kipp
Trustee Hicks Irrevocable Life Insurance Trust
3600 Lime Street, Suite 711
Riverside, New Tejas 92501

Re: Insured: Don Juan W. Hicks
Policy No.: UT8675309

Dear Mr. Kipp:

Guaranty Life Insurance Company ("Guaranty Life") issued life insurance policy No. UT8675309 insuring the life of Don Juan W. Hicks (the "Policy") with an effective date of February 16, 2007. Guaranty Life's decision to insure Don Juan W. Hicks's life was based on, among other things, representations made to the Company during the application process.

To confirm the accuracy of these representations, Guaranty Life requests that you provide it with the following information or documentation:


- a list of Don Juan W. Hicks's financial advisors, including certified public accountants, over the past three years;
- documents confirming the source of funds for payment of Policy premiums;
- if applicable, all documents relating to financing payment of Policy premiums, if any, including a copy of the promissory note or lending agreement;
- all documents relating to any life insurance policy insuring Don Juan W. Hicks's life at any time since February 5, 2007;
- all documents relating to any life insurance application seeking insurance coverage on Don Juan W. Hicks's life submitted to an insurance carrier since February 5, 2007;
- all documentation relating to Don Juan W. Hicks Irrevocable Life Insurance Trust (the "Trust"), including any trust agreement supplements, amendments, sub-trusts or changes in the beneficial interest of the Trust or any sub-trusts;
- an explanation of why the beneficial interest in the Trust was sold for \$838,956.75 less than one week after delivery of the Policy;
- all communications with or documents relating to Presidential Holdings, LLC;
- all documents relating to any transfer of the ownership interest in the Trust;
- all documents relating to any sale of the beneficial interest in the Trust;

- documents substantiating the representation that Don Juan W. Hicks had a net worth of \$1.2 billion on February 6, 2007;
- documents substantiating Don Juan W. Hicks's annual income, both earned and unearned, as of February 6, 2007;
- all documents regarding ownership of the Policy;
- any life expectancy evaluations or reports done on Don Juan W. Hicks since January 1, 2006;
- documentation of any funds or other consideration paid to Don Juan W. Hicks or any trust/entity affiliated with Don Juan W. Hicks in exchange for his willingness to consent to coverage under the Policy;
- documents reflecting Don Juan W. Hicks's past or present ownership of any real estate;
- documents relating to any rental applications and/or rental agreements submitted or signed by Don Juan W. Hicks since January 1, 2006; and
- any and all correspondence between you (and the Trust), Don Juan W. Hicks, Timmy Chung, and/or Sydney Hicks and Robert Hollins.

Please provide the information requested within fourteen (14) days from the date of this letter. Failure to provide the information requested in the time specified may require Guaranty Life to consider all legal options available to it, including but not limited to seeking to rescind the Policy. We regret any inconvenience this request may cause you and ask that you call Joshua M. Davis at 713-999-8988 with any questions you might have.

Thank you in advance for your cooperation.

Very truly yours,


Joshua M. Davis
Vice President, Policy Services

cc: Robert Hollins
Presidential Holdings, LLC
27 West 40th St., 8th Floor
New York, NY 10018