
BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

IN THE MATTER OF:

LIFE PARTNERS, INC.;
LIFE PARTNERS HOLDINGS, INC.;
MARK BRUCE SUTHERLAND;

Respondents.

ORDER OF RECUSAL

Docket No. SD-06-0083

Docket No. SD-06-0084

Docket No. SD-06-0085

This case was commenced on October 20, 2006 with the filing of an Order to Show Cause by the Division. Since that time, the claims underlying the Division's Order to Show Cause have been the subject of substantial litigation in federal court, including 1) a removal of this administrative proceeding to federal court and a subsequent remand of the action back to the Division, and 2) a lawsuit by Life Partners and Life Partners Holdings against Wayne Klein, the Director of the Division (Director), seeking to enjoin the Division from proceeding with its administrative case. The second action was commenced in Texas, but is now pending before the federal district court in Utah.

In proceedings up to this point, the Director has not acted as the hearing officer in any capacity. He has not presided over any hearings and has not considered or ruled on any motions in this proceeding. In an attempt to avoid the appearance of having an influence on proceedings, the Director abstained from taking action on a request by the Division to amend the Order to Show Cause, leaving it to the designated administrative law judge to execute the signatures necessary to permit the Division to amend its cause of action.

Respondents have made arguments in federal court asserting that the Director should have recused himself from a decision-making role in this case, but have not filed any motion in these proceedings requesting such recusal. The Director notes his concern over the public policy implications of seeking to force disqualification of the Director from his statutory role as decision-maker by naming him individually as the defendant in federal litigation and by making accusations about his fairness and impartiality in the course of those judicial proceedings. However, the Director acknowledges that in this case it is appropriate for him to formally remove himself from any decision-making role.

Therefore, Wayne Klein, Director of the Division of Securities, hereby gives notice of his decision to recuse himself from acting as the hearing officer in any proceedings in this matter. All further proceedings in this matter will be considered and decided by the administrative law judge assigned to hear this matter. However, because Life Partners has argued that the Director is the only one statutorily authorized to issue certain orders,¹ such as an order after a hearing (see Utah Code Ann. §61-1-20(1)(e)), the Director agrees that he will not exercise his right to make an independent decision regarding the recommended findings of fact and conclusions of law of the administrative law judge. The Director will adopt the recommendations of the administrative law judge as to findings of fact, conclusions of law, and a remedy (if any) resulting from any hearing in this matter.

IT IS SO ORDERED

DATED this 12th day of December, 2007.


WAYNE KLEIN
Director, Presiding Officer



¹ See Plaintiffs' (Respondents herein) Memorandum in Support of Motion for Emergency Preliminary Injunction, Utah Federal District Court Case No. 2:07cv508, Docket No. 28, at 8.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 12th day of December, 2007 copies of the foregoing Order of Recusal were served on the parties as follows:

Hand Delivered

Jeff Buckner
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84111
Counsel for the Division of Securities

Jen Korb
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Joni J. Jones
Matthew D. Bates
Scott D. Cheney
Assistant Attorneys General
160 East 300 South, 6th Floor
Salt Lake City, UT 84111
Counsel for Defendant Klein

Via U.S. Mail

Lee E. Goodman
Robert P. Howard, Jr.
Cameron S. Matheson
LeClair Ryan, P.C.
Suite 600
1101 Connecticut Ave, N.W.
Washington, D.C. 20036
**Counsel for Respondents Life Partners
and Life Partners Holdings**

Mark Pugsley
Ryan B. Bell
Ray Quinney & Neeker, P.C.
Suite 1400
36 South State Street
Salt Lake City, UT 84145-0385
**Counsel for Respondents Life Partners
and Life Partners Holdings**

Sam Meziani
VanCott Bagley Cornwall & McCarthy
Suite 1900
36 South State Street
Salt Lake City, UT 84111
Counsel for Respondent Sutherland

Pamela Roidzinski