

Mark W. Pugsley (8253)
Ryan B. Bell (9956)
RAY, QUINNEY & NEBEKER
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543

Attorneys for Life Partners, Inc. and Life Partners Holdings, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DIVISION OF SECURITIES
UTAH DEPARTMENT OF COMMERCE,

Plaintiff,

vs.

LIFE PARTNERS, INC., a Texas Corporation
LIFE PARTNERS HOLDINGS, INC., a
Texas Corporation, and
MARK BRUCE SUTHERLAND, a Nevada
resident,

Defendants.

**AMENDED
NOTICE OF REMOVAL**

Judge: Paul G. Cassell

Civil No.: 2:06cv00968 PGC

I. AMENDED NOTICE OF REMOVAL

Defendants Life Partners, Inc. (“LPI”), and Life Partners Holdings, Inc. (“LPHI”), both Texas corporations, hereby give amended notice of removal of the above-captioned action to the United States District Court for the District of Utah, Central Division, pursuant to 28 U.S.C. §§ 1441, 1446 and 1653. Defendant Mark Bruce Sutherland (“Sutherland”), a citizen of Nevada, consents to removal. Removal is based on diversity jurisdiction and federal question jurisdiction.

II. INTRODUCTION

1. Plaintiff initiated this action through a Notice of Agency Action and issuing an Order to Show Cause (collectively “Order to Show Cause”). In accordance with 28 U.S.C. § 1446(a), a complete copy of the file in this action, including the Order to Show Cause, is attached as Exhibit A. No further proceedings have taken place as of the date of this Notice.

2. In accordance with 28 U.S.C. § 1446(b), and 28 U.S.C. § 1653, this amended Notice of Removal is being filed within thirty (30) days of the receipt through service of Plaintiff’s Order to Show Cause.

3. Plaintiff filed the Order to Show Cause on or about October 20, 2006. The defendants received a copy of the Order to Show Cause via registered mail on the following dates:

- Life Partners, Inc. – October 24, 2006;
- Life Partners Holdings, Inc. – October 24, 2006; and
- Mark Bruce Sutherland – October 24, 2006.

4. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice is being filed with Jeffery Buckner, Esq., Assistant Attorney General, 160 E. 300 South, Fifth Floor, P.O. Box 140872, Salt Lake City, UT 84114-0872, and served on Plaintiff at Administrative Court Clerk, c/o Pam Radzinski, Utah Division of Securities, P.O. Box 146760, Salt Lake City, UT 84114-6760.

5. Removal of this action to the United States District Court for the District of Utah, Central Division, is proper pursuant to 28 U.S.C. § 1441(a). This is the district and division “embracing the place where [the state action] is pending.” 28 U.S.C. § 1441(a).

6. All defendants in the action consent to removal. Defendants LPI and LPHI expressly consent to removal by the filing of this motion. The written consent to removal of Sutherland is attached hereto as Exhibit B.

7. This Court has original jurisdiction over this case based on diversity jurisdiction and federal question jurisdiction. None of the defendants is a citizen of the same state as Plaintiff and the purported amount in controversy exceeds \$75,000. Second, the Court also has federal question jurisdiction. Plaintiff’s claims, if any, arise under the federal securities laws. *See*, National Securities Markets Improvement Act (“NSMIA”), 15 U.S.C.S. § 77r(a).

III. PARTIES

8. LPI is a Texas corporation whose principal, and only, place of business is Waco, Texas. LPI assists purchasers who desire to buy interests in life insurance policies placed for sale on the national market by sellers located across the United States. LPI conducts transactions on behalf of its clients in interstate commerce through the United States Postal Service and

commercial mail service, the telephone, telefax and Internet solely from its headquarters in Texas. In accordance with Texas law, LPI is licensed and regulated in Texas. At no time has LPI maintained any offices or facilities in Utah. At no time has LPI employed employees or agents in Utah. LPI does not discuss, negotiate, or execute contracts for viatical or life settlements in Utah. LPI does not target the Utah market for advertising or other marketing efforts.

9. LPI is wholly-owned by LPHI. LPHI is a Texas corporation with its principal place of business in Waco, Texas. LPHI is publicly traded on the NASDAQ market under the symbol LPHI.

10. Sutherland is a resident of Nevada. Sutherland is an independent contractor and is not an employee or agent of LPI or LPHI.

11. The Division of Securities of the Department of Commerce of the State of Utah (“Division of Securities”) is charged with the responsibility of enforcing the Utah Securities Act. Utah Code § 61-1-18.

IV. BRIEF FACTS

12. On October 20, 2006, the Division of Securities issued an Order to Show Cause to LPI and LPHI (and the third party Sutherland) alleging that they had violated the Utah Securities Act.

13. The Order to Show Cause against LPI and LPHI (and the third party Sutherland) seeks to regulate LPI, a Texas corporation, and impose a \$250,000 fine on LPI because it assisted non-residents of Utah in their purchase of interests in life insurance policies owned by

non-residents of Utah, and seeks to regulate LPHI, a Texas corporation, and impose a \$250,000 fine on LPHI without describing a single act taken by LPHI in Utah or anywhere else.

14. The Order to Show Cause alleges that LPI facilitated the purchase of interests in insurance policies at a total purchase price of \$10,000 for one individual who resides in Utah, and \$28,000 for another individual who resides in Connecticut.

15. The Order to Show Cause does not allege that either of these two purchasers lost money as result of purchasing interests in insurance policies.

16. The Order to Show Cause does not allege that LPHI had any contact with purchasers or potential purchasers, or that it performed any functions related to any purchaser or potential purchaser in Utah or anywhere else.

17. The Order to Show Cause does not allege that LPI or LPHI made any representations to purchasers or potential purchasers regarding the legal treatment of their purchases under Utah law.

18. The Order to Show Cause seeks to impose two fines totaling \$500,000 against LPI and LPHI, a fine of over 13 times the alleged amount of total purchase money.

19. LPI and LPHI believe that enforcement of the Utah Securities Act in this manner operates in an unconstitutionally extraterritorial fashion and violates the *Commerce Clause*, the National Securities Markets Improvement Act (“NSMIA”), and the excessive fines Clause of the 8th and 14th Amendments to the United States Constitution.

IV. GROUNDS FOR REMOVAL

20. Removal of a case to federal court is an issue of federal subject matter jurisdiction. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1194 (9th Cir. 1988). The removal statute states:

Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(b). In this case, removal is proper based on both diversity jurisdiction and federal question jurisdiction.

21. This action may be removed pursuant to 28 U.S.C. § 1441 because this Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332. Removal is appropriate, therefore, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446.

22. District courts have original jurisdiction over civil actions where the matter in controversy: (a) exceeds \$75,000, exclusive of interest and costs; and (b) is between citizens of different states. 28 U.S.C. § 1332. Here, Plaintiff alleges that each of the three defendants is liable for \$250,000 in fines for the alleged violations of the Utah Securities Act, for a total of \$750,000 in fines. *See* Order to Show Cause p.9. Accordingly, the amount in controversy exceeds \$75,000.

23. Plaintiff's dispute with the defendants is between citizens of different states. Plaintiff is a citizen of Utah. None of the defendants were, or are, citizens of Utah.

24. At the time Plaintiff initially commenced this action, through the date of the filing of this Notice, the citizenship of the various defendants was as follows:

a. Life Partners, Inc. – a Texas corporation with its principal place of business in Texas;

b. Life Partners Holdings, Inc. – a Texas corporation with its principal place of business in Texas; and

c. Mark Bruce Sutherland – a resident of Nevada.

25. Removal of this action also is proper based on federal question jurisdiction. District courts have original jurisdiction over cases “arising under the Constitution, laws, or treaties of the United States.” *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 163 (1997). “Even though state law creates a party’s cause of action, its case might still arise under the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law.” *Id.* (quoting *Franchise Tax Bd. of Cal. v. Construction Laborers Vac. Trust for S. Cal.*, 463 U.S. 1, 13 (1983)); *see also Mountain Fuel Supply Co. v. Johnson*, 586 F.2d 1375, 1381 (10th Cir. 1978) (“A case arises under the laws of the United States if it clearly and substantially involves a dispute or controversy respecting the validity, construction, or effect of such laws which is determinative of the resulting judgment.”).

26. Plaintiff cannot avoid federal jurisdiction by “artfully pleading” a claim under state law when state law affords no basis for determining whether the defendants’ conduct was unlawful. *See Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998) (plaintiff may not

avoid federal jurisdiction by omitting a necessary federal question or pleading state claims that are preempted); *see also Sheet Metal Workers Int'l Assn. v. Seay*, 696 F.2d 780, 782 (10th Cir. 1983) (removal proper where it is clear the “action is controlled by federal substantive law even though brought in state court”).

27. Here, Plaintiff’s claims require resolution of substantial questions of federal law. Plaintiff accuses the defendants of violation of state securities registration requirements that are preempted by NSMIA.

28. Finally, removal is proper because federal law completely preempts Plaintiff’s state law claims. *See Cisneros v. ABC Rail Corp.*, 217 F.3d 1299, 1302 (10th Cir. 2000) (removal proper where a federal statute completely preempts state law claims). “The comprehensive scheme of statutes and regulations designed to police the securities industry is indicative of a strong federal interest.” *Friedlander v. Troutman, Sanders, Lockerman & Ashmore*, 788 F.2d 1500, 1504 (11th Cir. 1986); *see also Sable v. General Motors Corp.*, 90 F.3d 171, 174-75 (6th Cir. 1996) (holding a plaintiff’s state law claim “arises under” federal law if it is premised on the defendant’s breach of a duty created under federal law). The “federal regulation of the stock market” is a “matter of intense federal concern.” *Frayler v. New York Stock Exchange, Inc.*, 118 F. Supp. 2d 448, 451 (S.D.N.Y. 2000). “Where the resolution of a federal issue in a state-law cause of action could, because of different approaches and inconsistency, undermine the stability and efficiency of a federal statutory regime, the need for uniformity becomes a substantial federal interest, justifying the exercise of jurisdiction by federal

court.” *In re Wireless Tel. Radio Frequency Emissions Prods. Liab. Litig.*, 216 F. Supp. 2d 474, 490 (D. Md. 2002).

29. Allowing Plaintiff to impose new rules for securities registration would seriously undermine the stability and consistency promoted by the federal government’s regulatory and statutory scheme.

WHEREFORE, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants remove the proceeding titled *In the matter of Life Partners, Inc., Life Partners Holdings, Inc., Mark Bruce Sutherland.*, No. SD-06-0083, 0084, 0085, from the Division of Securities of the Department of Commerce of the State of Utah, to the United States District Court for the District of Utah, Central Division.

Dated this 22nd day of November, 2006

RAY, QUINNEY & NEBEKER

/s/ Ryan B. Bell

Mark W. Pugsley

Ryan B. Bell

*Attorneys for Life Partners, Inc.
and Life Partners Holdings, Inc.*

Of counsel

Lee E. Goodman (VSB No. 31695)(Pro Hac Vice)
Robert P. Howard, Jr. (VSB No. 40216)(Pro Hac Vice)
Cameron S. Matheson (VSB No. 47145)(Pro Hac Vice)
LeClair Ryan, a Professional Corporation
1701 Pennsylvania Avenue, N.W., Suite 1045
Washington, DC 20006
Phone: (202) 659-6707
Fax: (202) 659-4130

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2006, I electronically filed the foregoing **AMENDED NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Jeffery Buckner, Esq.
Assistant Attorney General
160 E. 300 South, Fifth Floor
P.O. Box 140872
Salt Lake City, UT 84114-0872

And mailed, postage prepaid, to the following:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
P.O. Box 146760
Salt Lake City, UT 84114-6760

John A. Snow
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144

/s/ Jeanette Evans

902084

EXHIBIT B

Mark W. Pugsley (8253)
Ryan B. Bell (9956)
RAY, QUINNEY & NEBEKER
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543

Attorneys for Life Partners, Inc. and Life Partners Holdings, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DIVISION OF SECURITIES
UTAH DEPARTMENT OF COMMERCE,

Plaintiff,

vs.

LIFE PARTNERS, INC., a Texas Corporation
LIFE PARTNERS HOLDINGS, INC., a
Texas Corporation, and
MARK BRUCE SUTHERLAND, a Nevada
resident,

Defendants.

**DEFENDANT MARK BRUCE
SUTHERLAND'S CONSENT TO
REMOVAL**

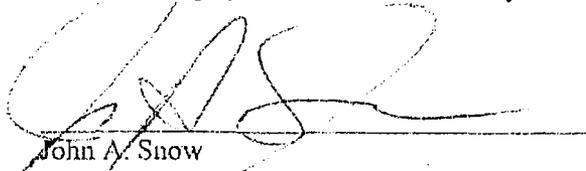
Civil No.: _____

Judge: _____

By the signature of his counsel below, Defendant Mark Bruce Sutherland hereby acknowledges his consent to and joinder in the removal of this action to the U.S. District Court for the District of Utah, for the reasons stated in LPI's and LPHI's Notice of Removal.

Dated this 30 day of November, 2006

Van Cott, Bagley, Cornwall & McCarthy

A handwritten signature in black ink, appearing to read "John A. Snow", is written over a horizontal line. The signature is stylized and somewhat cursive.

John A. Snow

Van Cott, Bagley, Cornwall & McCarthy

50 South Main Street, Suite 1600

Salt Lake City, Utah 84144

Telephone: (801) 532-3333

Facsimile: (801) 540-4691

Attorneys for Mark Bruce Sutherland