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Utah Department of Commerce  
Division of Securities

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Conestoga Settlement Services, LLC,  
Michael C. McDermott, Walter C. Young,  
Creative Wealth Designs, LLC,  
Dayspring Financial, LLC and  
Michael John Woods*

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

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**IN THE MATTER OF:**

**CONESTOGA SETTLEMENT TRUST;  
CONESTOGA SETTLEMENT SERVICES,  
LLC;  
MICHAEL C. MCDERMOTT;  
WALTER C. YOUNG;  
CREATIVE WEALTH DESIGNS, LLC;  
DAYSRING FINANCIAL, LLC;  
MICHAEL JOHN WOODS; and  
PROVIDENT TRUST GROUP, LLC**

**Respondents.**

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**RESPONSE TO ORDER TO SHOW  
CAUSE**

**Docket Nos. SD-12-0061  
Docket Nos. SD-12-0062  
Docket Nos. SD-12-0063  
Docket Nos. SD-12-0064  
Docket Nos. SD-12-0065  
Docket Nos. SD-12-0066  
Docket Nos. SD-12-0067  
Docket Nos. SD-12-0068**

## **RESPONSE TO ORDER TO SHOW CAUSE**

Pursuant to Utah Code Ann. § 63G-4-204 and the *Notice of Agency Action* dated November 1, 2012, but not mailed until November 5, 2012, respondents Conestoga Settlement Trust (the “Trust”), Conestoga Settlement Services, LLC (“CSS”), Michael C. McDermott (“McDermott”), Walter C. Young (“Young”), Creative Wealth Designs, LLC (“CWD”), Dayspring Financial, LLC (“Dayspring”), and Michael John Woods (“Woods”) (as used in this *Response to Order to Show Cause*, collectively “Respondents”), through counsel, respond to the *Order to Show Cause*, dated November 1, 2012, but not mailed until November 5, 2012 (the “Order to Show Cause”), issued by the Director of the Utah Division of Securities (the “Division”), as follows:

### **FIRST DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the Order to Show Cause fails to state a claim upon which relief may be granted against any of the Respondents. All Respondents except for Young hereby adopt and incorporate by reference *Respondent Provident Trust Group, LLC’s Motion to Dismiss* and the *Memorandum in Support of Respondent Provident Trust Group, LLC’s Motion to Dismiss* as if fully stated herein and applicable to all Respondents except for Young.

### **SECOND DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3), the *Notice of Agency Action*, the Utah Uniform Securities Act (the “Act”), Utah Code Ann. § 61-1-101 *et seq.* and in response to the individually numbered paragraphs of the Order to Show Cause, Respondents admit, deny and aver as follows:

1. In response to the allegations of ¶ 1, Respondents admit the Trust was formed in 2010 as a Delaware-based trust. Respondents admit that the Austin, Texas law firm of De Leon & Washburn (“DLW”) serves as the trustee and legal counsel of the Trust.

2. In response to the allegations of ¶ 2, Respondents admit that CSS is a Delaware limited liability company that serves as trustor and manager of the Trust. Respondents deny the averment in ¶ 2 that neither entity is licensed in the securities industry in any capacity. Among other things, CSS filed the appropriate securities document when it filed its Notice of Rule 506 Exemption to Regulation D in Utah.

3. In response to the allegations of ¶ 3, Respondents admit that McDermott was a Dallas, Texas resident during the period relevant to this matter. Respondents also admit that McDermott is the manager of CSS and person responsible for establishing the Trust. Respondents deny the remaining allegations in the Order to Show Cause to the extent they imply that McDermott was required to be licensed in any capacity under the Act. In response to Footnote 1 of the Order to Show Cause, Respondents affirmatively aver that information regarding the Amended Form D filed in April 2012 (the “Amended Form D”) speaks for itself; therefore, Respondents deny the averments contained in Footnote 1 of the Order to Show Cause to the extent they are contrary to the information contained in the Amended Form D.

4. In response to the allegations of ¶ 4, Respondents admit that Young is a Seattle, Washington resident and an insurance agent. Respondents admit that Young is not licensed in the securities industry in any capacity. Respondents further affirmatively aver that at all times relevant to this proceeding Young held a Washington Insurance Agent License and a Utah Non-Resident Producer License, through which Young in good faith believed he had complied with all applicable licensure requirements for the State of Utah.

5. With respect to ¶ 5 of the Order to Show Cause, Respondents deny that CWD continues to exist as a Washington limited liability company. Respondents affirmatively aver that CWD became inactive as an entity on December 1, 2011. Respondents further deny that Young was the sole member and manager of CWD, which allegation is not consistent with the records on file with the Washington Secretary of State. Respondents deny the remaining

allegations in ¶ 5 of the Order to Show Cause to the extent they imply that CWD was required to be licensed in Utah in any capacity under the Act.

6. In response to the allegations of ¶ 6, Respondents admit that Dayspring is a Texas limited liability company. Respondents deny the remaining allegations in ¶ 6 of the Order to Show Cause to the extent they imply that Dayspring was required to be licensed in Utah in any capacity under the Act.

7. In response to the allegations of ¶ 7, Respondents admit that Woods is a Texas resident and manager of Dayspring. Respondents deny the remaining allegations in ¶ 7 of the Order to Show Cause to the extent they imply that Woods was required to be licensed in Utah in any capacity under the Act.

8. In response to the allegations of ¶ 8, Respondents admit that Provident is a limited liability company with its place of business in Las Vegas, Nevada. Respondents deny the remaining allegations in ¶ 8 of the Order to Show Cause to the extent they imply that Provident was required to be licensed in Utah as a “broker dealer” or in any other capacity under the Act.

9. With respect to ¶ 9 of the Order to Show Cause, Respondents affirmatively aver that information regarding the Form D the Division received on or about June 14, 2011, Division File No. B01024166 (the “Form D”) speaks for itself; therefore, Respondents deny the averments contained in ¶ 9 of the Order to Show Cause to the extent they are contrary to the information contained in the Form D.

10. With respect to ¶ 10 of the Order to Show Cause, Respondents deny the averments contained in ¶ 10. Respondents affirmatively aver that the Form D and disclosure statement speak for themselves; therefore, Respondents deny the averments contained in ¶ 10 of the Order to Show Cause to the extent they are contrary to the information contained in the Form D and the disclosure statement. Respondents further affirmatively aver that the life settlement product at issue in this proceeding (the “Product”) does not constitute a “pooled investment

vehicle.” Respondents further affirmatively aver that the Product is not referred to in any disclosure document to potential purchasers as a “pooled investment vehicle.” Rather, purchasers of the Product (“Participants”) select from a number of life insurance policies owned by the Trust to participate in a fixed percentage fractional interest of each policy selected separately.

11. In response to the allegations of ¶ 11, Respondents affirmatively aver that the DLW cover letter accompanying the notice of filing and the Form D speak for themselves; therefore, Respondents deny the averments contained in ¶ 11 of the Order to Show Cause to the extent they are contrary to the information contained in the Form D and the DLW cover letter. Respondents further affirmatively aver that Young was not listed on the Form D because the electronic form only allows for 100 entries. As these agents were added alphabetically, the final entry begins with “L.” As such, the electronic form did not provide sufficient entries to include Young on the Form D.

12. In response to the allegations of ¶ 12, Respondents admit that DLW sent a letter to the Division on behalf of the Trust following an inquiry from the Division. Respondents affirmatively aver that the DLW letter speaks for itself; therefore, Respondents deny the averments contained in ¶ 12 of the Order to Show Cause to the extent they are contrary to the information contained in the DLW letter. Responding to Footnote 2, Respondents further affirmatively aver that at all times relevant to this proceeding Young held a Washington Insurance Agent License and a Utah Non-Resident Producer License, through which Young in good faith believed he had complied with all applicable licensure requirements for the State of Utah.

13. In response to the allegations of ¶ 13, Respondents admit that the Division requested additional information about sales of the Product in Utah, Young, and whether any parties received sales compensation. Respondents affirmatively aver that the July 25, 2011

DLW letter speaks for itself; therefore, Respondents deny the averments contained in ¶ 13 of the Order to Show Cause to the extent they are contrary to the information contained in the July 25, 2011 DLW letter.

14. In response to the allegations of ¶ 14, Respondents affirmatively aver that the July 25, 2011 DLW letter and the Form D speak for themselves; therefore, Respondents deny the averments contained in ¶ 14 of the Order to Show Cause to the extent they are contrary to the information contained in the July 25, 2011 DLW letter and the Form D. Respondents further affirmatively aver that while some Product sales were made to “unaccredited investors” during the infancy of CSS and the Trust, no sales to unaccredited investors were made in the State of Utah. Respondents therefore object to this allegation on the ground that it is not relevant and unfairly prejudicial. Respondents further affirmatively aver that in September 2010, CSS changed its policy to permit only sales to accredited investors. At the time of the July 25, 2011 DLW letter, CSS and the Trust only allowed sales to accredited investors. In response to Footnote 3 of the Order to Show Cause, Respondents affirmatively aver that the participation agreements speak for themselves; therefore, Respondents deny the averments contained in Footnote 3 of the Order to Show Cause to the extent they are contrary to the information contained in the participation agreements. Respondents further affirmatively aver that on October 29, 2012, Husband and Wife (as defined in the Order to Show Cause) signed a letter confirming that they were accredited investors at the time of their participation. Husband and Wife have not complained or sought to refund or invalidate their participation and remain satisfied with their purchase of the Product.

15. In response to the allegations of ¶ 15, Respondents affirmatively aver that the Independent Contractor Agreement between CSS, CWD and Young speaks for itself; therefore, Respondents deny the averments contained in ¶ 15 of the Order to Show Cause to the extent they are contrary to the information contained in the Independent Contractor Agreement.

Respondents further affirmatively aver that a portion of the charge and/or cost of a participation is used for fees, commissions, and field and marketing expenses associated with the acquisition of the fractional interests in a life insurance policy and the closing of the transaction. These charges, which are an expense to CSS, do not exceed ten percent of the face value of the policies, and do not affect the value of the fractional interest in the life insurance or policies by the participants.

16. With respect to ¶ 16 of the Order to Show Cause, Respondents affirmatively aver that the only respondent that had any direct contact with Husband and Wife was Young. Young admits that on June 17, 2010, about one month after the inception of CSS and the Trust, Young filled out participation paper work to make the first and only sale of the Product in Utah to Husband and Wife, who were accredited investors at the time. Young further avers that the sale was finalized on August 4, 2010, and that Husband and Wife used retirement monies to fund their purchase of the Product.

17. In response to the allegations of ¶ 17, Respondents admit the averments in ¶ 17.

18. In response to the allegations of ¶ 18, Respondents admit the averments in ¶ 18.

19. In response to the allegations of ¶ 19, Respondents admit the averments in ¶ 19.

Respondents further affirmatively aver that Provident is the escrow agent for CSS and the Trust, and its express purpose is to hold the funds collected for payment on behalf of the Trust and to disperse funds held pursuant to instructions from the trustor and the Trust.

20. In response to the allegations of ¶ 20, Respondents deny the averments in ¶ 20. Respondents affirmatively aver that Husband and Wife had knowledge of and consented to all commissions that would be included in their participation. Respondents further affirmatively aver that as accredited investors, Husband and Wife were aware that compensation is paid to those involved in making a sale of the Product. Respondents further affirmatively aver that commissions are a cost of the business of CSS and the Trust and do not affect the value of the

fixed percentage fractional interest in the life insurance policies selected by Husband and Wife. Respondents further affirmatively aver that Husband and Wife have not complained or sought to refund or invalidate their participation and remain satisfied with their purchase of the Product. In response to Footnote 4 of the Order to Show Cause, Respondents further affirmatively aver that information regarding the Amended Form D speaks for itself; therefore, Respondents deny the averments contained in Footnote 4 of the Order to Show Cause to the extent they are contrary to the information contained in the Amended Form D.

21. In response to the allegations of ¶ 21, Respondents deny the averments in ¶ 21 of the Order to Show Cause to the extent they imply that McDermott and Woods were required to be licensed as securities agents in Utah or that Dayspring was required to be licensed as a “broker-dealer” in Utah under the Act. Respondents further affirmatively aver that at all times relevant to this proceeding Young held a Washington Insurance Agent License and a Utah Non-Resident Producer License, through which Young in good faith believed he had complied with all applicable licensure requirements for the State of Utah.

22. In response to the allegations of ¶ 22 and Footnote 5, Respondents affirmatively aver that information regarding the Outsourcing Services Agreement speaks for itself; therefore, Respondents deny the averments contained in ¶ 22 and Footnote 5 of the Order to Show Cause to the extent they are contrary to the information contained in the Outsourcing Services Agreement. Respondents admit Provident paid sales commissions to Young, McDermott and Dayspring/Woods. Respondents further affirmatively aver that commissions are a cost of the business of CSS and the Trust and do not affect the value of the fixed percentage fractional interest in the life insurance policies selected by Husband and Wife.

23. In response to the allegations of ¶ 23 and Footnote 6, Respondents affirmatively aver that information regarding the documents provided to prospective purchasers of the Product speak for themselves; therefore, Respondents deny the averments contained in ¶ 23 of the Order

to Show Cause to the extent they are contrary to the information contained in those documents or, as in the case of Footnote 6, constitute speculation and not factual allegations. Respondents object to the Division's characterization of the documents as "very limited" or containing "minimal disclosures," as the documents speak for themselves. Respondents further object to the extent the averments in ¶ 23 imply that provision of a Private Placement Memorandum (a "PPM") was required under Utah law or other applicable law. Respondents further affirmatively aver that at the time of the sale of the Product to Husband and Wife, CSS and the Trust did not provide PPMs to prospective purchasers and that such disclosure is not customary practice in the life settlement industry.

24. In response to the allegations of ¶ 24, Respondents object to the phrase "investors are presented with a policy list" on the ground that it is stated in the passive voice and does not identify who would present potential purchasers of the Product with a policy list. Respondents further object that the Division's generic description of what information purchasers of the Product generally act upon does not constitute a factual allegation capable of being affirmed or denied. Respondents further affirmatively aver that the only respondent that had any direct contact with Husband and Wife was Young. Respondents further affirmatively aver that information regarding policy lists and Policy Purchase Agreements speak for themselves; therefore, Respondents deny the averments contained in ¶ 24 of the Order to Show Cause to the extent they are contrary to the information contained in those documents. Respondents affirmatively aver that Participants select from a number of life insurance policies owned by the Trust to participate in a fixed percentage fractional interest of each policy selected separately. Respondents deny that the link between a Participant and a specific policy is merely "purported."

25. With respect to the heading titled "Misrepresentations and Omissions of Material Facts" immediately preceding ¶ 25, Respondents deny that any such misrepresentations or omissions occurred. In response to the allegations of ¶ 25, Respondents deny the averments in ¶

25 of the Order to Show Cause. Respondents further specifically deny the averments in ¶ 25(a). Respondents further affirmatively aver that the allegations in ¶ 25(a) incorrectly are predicated on a calculation of commission on funds placed rather than the value of Husband and Wife's account, *i.e.*, the fixed fractional percentage interest in the proceeds at maturity of the policies selected by Husband and Wife. The commission payable on the value of Husband and Wife's account is no more than ten percent of the face value purchased. Respondents further affirmatively aver that Husband and Wife had knowledge of and consented to all commissions that would be included in their participation. Respondents further affirmatively aver that as accredited investors, Husband and Wife were aware that compensation is paid to those involved in making a sale of the Product. Respondents further affirmatively aver that commissions are a cost of the business of CSS and the Trust and do not affect the value of the fixed percentage fractional interest in the life insurance policies selected by Husband and Wife. Respondents further specifically deny the averments in ¶ 25(b). Respondents affirmatively aver that the only respondent that had any direct contact with Husband and Wife was Young. Respondents further affirmatively aver that at all times relevant to this proceeding Young held a Washington Insurance Agent License and a Utah Non-Resident Producer License, through which Young in good faith believed he had complied with all applicable licensure requirements for the State of Utah. Respondents further affirmatively aver that McDermott and Dayspring/Woods did not sell securities or give investment advice. Respondents further specifically deny the averments in ¶ 25(c). Respondents affirmatively aver that Respondents did not fail to disclose relevant information about the Trust, its financial condition or its liabilities. Respondents further affirmatively aver that Husband and Wife made no complaint regarding any alleged failure of disclosure. As accredited investors, Husband and Wife had reason to know that Young was affiliated with CSS and the Trust and were aware of the nature and extent of that relationship.

Respondents further affirmatively aver that whatever facts were allegedly omitted in connection with the offer and sales were not material.

26. In response to the allegations of ¶ 26, Respondents affirmatively aver that information regarding the Confidential Participant Capacity Information Forms speak for themselves; therefore, Respondents deny the averments contained in ¶ 26 of the Order to Show Cause to the extent they are contrary to the information contained in those documents.

27. In response to the allegations of ¶ 27, Respondents deny the averments in ¶ 27 of the Order to Show Cause. Respondents affirmatively aver that the only respondent that had any direct contact with Husband and Wife was Young. Respondents further affirmatively aver that the Confidential Participant Capacity Information Forms speak for themselves; therefore, Respondents deny the averments contained in ¶ 27 of the Order to Show Cause to the extent they are contrary to the information contained in those documents. Respondents affirmatively aver that Husband and Wife had knowledge of and consented to all commissions that would be included in their participation. Respondents further affirmatively aver that Husband and Wife made no complaint regarding any alleged failure of disclosure. As accredited investors, Husband and Wife had reason to know that Young was affiliated with CSS and the Trust and were aware of the nature and extent of that relationship. Respondents deny that to the extent the Participant Information Forms allegedly false information, that any respondent knew such information was false. Respondents affirmatively aver that Young had sufficient expertise regarding the Product. Respondents affirmatively aver that the only respondent that had any direct contact with Husband and Wife was Young. Respondents further affirmatively aver that at all times relevant to this proceeding Young held a Washington Insurance Agent License and a Utah Non-Resident Producer License, through which Young in good faith believed he had complied with all applicable licensure requirements for the State of Utah. Respondents further affirmatively aver that McDermott and Dayspring/Woods did not sell securities or give investment advice.

28. In response to the allegations of ¶ 28, Respondents deny the averments in ¶ 28 of the Order to Show Cause. Respondents affirmatively aver that the statements provided by Provident in connection with Husband and Wife's account did not contain false information. Respondents further affirmatively aver that the allegations in ¶ 28 incorrectly are predicated on a calculation of commission on funds placed rather than the value of Husband and Wife's account, *i.e.*, the fixed fractional percentage interest in the proceeds at maturity of the policies selected by Husband and Wife. The commission payable on the value of Husband and Wife's account is no more than ten percent of the face value purchased. Respondents further affirmatively aver that Husband and Wife had knowledge of and consented to all commissions that would be included in their participation. Respondents further affirmatively aver that as accredited investors, Husband and Wife were aware that compensation is paid to those involved in making a sale of the Product. Respondents further affirmatively aver that commissions are a cost of the business of CSS and the Trust and do not affect the value of the fixed percentage fractional interest in the life insurance policies selected by Husband and Wife.

29. In response to the allegations of ¶ 29, Respondents deny the averments in ¶ 29 of the Order to Show Cause.

30. In response to the allegations of ¶ 30, Respondents deny the averments in ¶ 30 of the Order to Show Cause.

31. In response to the allegations of ¶ 31, Respondents deny the averments in ¶ 31 of the Order to Show Cause.

32. In response to the allegations of ¶ 32, Respondents deny the averments in ¶ 32 of the Order to Show Cause.

33. In response to the allegations of ¶ 33, Respondents deny the averments in ¶ 33 of the Order to Show Cause.

### **THIRD DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that McDermott, Young, CWD, Woods and Dayspring were not required to be licensed as agents under the Act, and CWD and Dayspring were not required to be licensed as broker-dealers under the Act. As such, Issuer and CSS did not violate the Act by engaging such entities and offering to pay compensation to such agents.

### **FOURTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that the transactions at issue in this proceeding were exempt under Utah Code Ann. § 61-1-14, including without limitation Utah Code Ann. § 61-1-14(2)(n), and there was no public offering.

### **FIFTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that Husband and Wife were accredited investors and were functionally equivalent to insiders, and there was no public offering.

### **SIXTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that Respondents relied in good faith upon the advice of counsel that the Product did not constitute a security and sale of the Product in Utah was otherwise exempt from the requirements of the Act. Any purported violation of the Act by Respondents was inadvertent, unintentional and done without malice. All

Respondents believed that the Product was governed by the Utah insurance code and not the Act. As such, the respondents involved in the sale of the Product to Husband and Wife had insurance licenses.

#### **SEVENTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that CSS filed the Form D in good faith and out of an abundance of caution in an attempt to comply with Utah and other applicable law—the Division would likely have been unaware of the sale of the Product to Husband and Wife if CSS had not endeavored to self-report the alleged error.

#### **EIGHTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that Husband and Wife did not suffer harm as a result of Respondents alleged error. Husband and Wife are satisfied with their participation, have not complained, and wish to continue in their participation.

#### **NINTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that the fines the Division seeks against Respondents constitute “excessive fines” under the United States Constitution and the Utah Constitution.

#### **TENTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that other than Young, none of the other respondents had any direct contact with Husband and Wife.

**ELEVENTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that none of the Respondents made any misrepresentations or omissions of material fact to Husband and Wife.

**TWELFTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied on the ground that there exists no law, rule, or regulation that requires Respondents to disclose commissions to Participants.

**THIRTEENTH DEFENSE**

Pursuant to Utah Code Ann. § 63G-4-204(3) and the *Notice of Agency Action*, the relief requested in the Order to Show Cause should be denied to the extent it relies upon any law or rule for which Respondents did not have fair notice, as this would violate due process of law.

**FOURTEENTH DEFENSE**

Respondents reserve the right to assert additional defenses to the extent that such defenses become known as a result of discovery or otherwise.

**STATEMENT OF ADDITIONAL FACTS RELEVANT TO ALLEGATIONS**

1. A life settlement transaction is the sale of an existing life insurance policy by its owner to a third party for an amount that is more than the cash surrender value under the policy but less than the face amount of the policy. A life settlement is a way for the original policy holder to obtain value of out of his or her policy during his or her lifetime. The term “life settlement” refers to the fact that the policy has been “settled” with respect to the original policyholder during his or her lifetime.

2. Once the policy has been acquired, the life settlement company (the company that purchased the policy from the original policyholder) has the right to collect the benefits payable

under the policy when the insured person dies. The life settlement company also has the right to sell the policy to another party. Fractional interests in the policy may be sold to accredited investors (the “Participants”). These fractional interests in the policy comprise the product made available by CSS and the Trust.

3. Fractional interests in policy benefits involve payout of a known quantity. For example, if a Participant chooses to participate in ten percent of a policy with a \$1,000,000 face value, the payout necessarily is \$100,000. The only variable is date the policy matures, *i.e.*, when the insured person dies.

4. A portion of the charge/cost of a participation is used for fees, commissions, and field and marketing expenses associated with the acquisition of the fractional interest in the policy and the closing of the transaction. These charges, which are an expense to CSS, do not exceed ten percent of the face value of the policies and do not affect the value of the fractional interest in the life insurance policy or policies selected by the Participants.

5. CSS was established by McDermott in May 2010 to be the trustor for policies purchased between May 2010 and July 2011.<sup>1</sup> McDermott also established the Trust at or around that time to own the life insurance policies and make the proceeds available to Participants. CSS has contractual agreements with independent contractors in various states who sell the Product to accredited investors.<sup>2</sup>

6. An independent entity, Wilmington Trust Company, is the custodian of the actual policies. Provident is the escrow agent for CSS, and its express purpose is to hold the funds collected from payment on behalf of the Trust and disperse funds held pursuant to instructions from the trustor and the Trust.

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<sup>1</sup> Conestoga International, LLC, also managed by McDermott, acts as trustor for all policies purchased after July 16, 2011.

<sup>2</sup> Several sales were made to non-accredited investors in CSS’s infancy, but CSS formally changed its policy in September 2010 only to accept participations from accredited investors.

7. Policies made available to Participants have been acquired from previous life settlement transactions. CSS makes available to Participants certain fixed fractional interests in the proceeds at maturity of the life insurance policies owned by the Trust. The Product does not constitute a “pooled investment vehicle” and the Product is not referred to in any disclosure document to potential purchasers as a “pooled investment vehicle.” Rather, Participants select from a number of life insurance policies owned by the Trust to participate in a fixed percentage fractional interest of each policy selected separately.

8. CSS does not advertise to the general public or solicit from the general public participations in the Product. From its inception, CSS has made one brochure available that describes the Product that only is available on a password-protected website. The Product only is available through independent contractors who contract with CSS. CSS never has made any sort of “public offering” of its Product in Utah or in any other state.

9. At the time of its formation in May 2010, on the advice of counsel CSS operated with the understanding that the Product was regulated as an insurance product rather than a security. In Texas and other states, it is established that the Product does not constitute a security. This also was the accepted position of the life settlement industry in 2010. As such, CSS required all of its independent contractors to have the proper insurance license prior to selling the Product and accepting participations.

10. In June 2010, Young was an independent contractor with CSS and held a Washington Insurance Agent License and a Utah Non-Resident Producer License. Young was affiliated with Woods and his company Dayspring. Woods and Young had an agreement that Woods received a specific percentage for commissions for any sale by Young. Any commission payable is a business cost for CSS. Any commission paid to Young or any other independent contractor does not affect the value of a Participant’s fixed fractional interest in the proceeds of a life insurance policy at maturity.

11. On June 17, 2010, Young filled out Participation paperwork for Husband and Wife, who were accredited investors and Utah residents. This was the first and only sale of the Product in the State of Utah. The sale was finalized on August 4, 2010.

12. In June 2011, in good faith and out of an abundance of caution, CSS caused to be filed the Form D. Counsel for the Trust also filed a Notice of the Form D filing with the Division, including a copy of the Form D and a payment of \$500, in the event the Division concluded that a sale within the purview of the Act was made more than fifteen days prior to the filing.

13. Soon after the Form D filing, the Division sought additional information from DLW. To date, DLW fully has complied with all of the Division's requests and at no time has refused to provide information to the Division.

14. On October 29, 2012, Husband and Wife signed a letter confirming that they were accredited investors at the time they purchased their participation. Husband and Wife have not complained or sought to refund or invalidate their participation. They remain satisfied with their purchase of the Product.

#### **REQUEST FOR RELIEF AND BASIS FOR RELIEF**

WHEREFORE, Respondents request relief as follows:

A. that the First Cause of Action in the Order to Show Cause be dismissed, with prejudice, as to all named Respondents based on the defenses and additional facts asserted above;

B. that Second Cause of Action in the Order to Show Cause be dismissed, with prejudice, as to all named Respondents based on the defenses and additional facts asserted above;

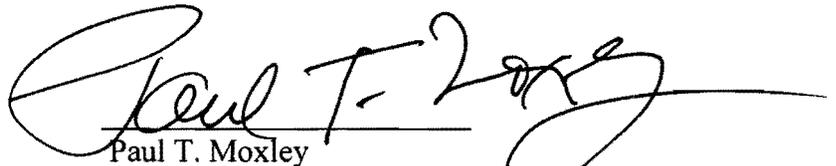
C. in the alternative, that the Division affirmatively find and conclude that no Respondents have violated the Act as alleged in the First Cause of Action and Second Cause of Action based on the defenses and additional facts asserted above;

D. in the second alternative, that the Division affirmatively find and conclude that even if any of the Respondents violated the Act, an order to pay the fines requested by the Division on the ground that such fines are not appropriate under the circumstances; and

E. that the Division order such other and further relief as the Division deems just and equitable.

DATED this 5th day of December, 2012.

**PARSONS KINGHORN HARRIS**  
A Professional Corporation

A handwritten signature in black ink, appearing to read "Paul T. Moxley", written over a horizontal line. The signature is stylized and cursive.

Paul T. Moxley  
*Attorneys for Conestoga Settlement Trust,  
Conestoga Settlement Services, LLC,  
Michael C. McDermott, Walter C. Young,  
Creative Wealth Designs, LLC,  
Dayspring Financial, LLC and  
Michael John Woods*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of December, 2012, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE** to:

Administrative Court Clerk  
c/o Julie Price  
Utah Division of Securities  
160 East 300 South, 2nd Floor  
Box 146760  
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*Attorneys for Respondent Provident Trust  
Group, LLC*

Dated this 5<sup>th</sup> day of December, 2012.

  
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