

JONI J. JONES (USB No. 7562)
MATTHEW DAVID BATES (USB No. 9861)
Assistant Utah Attorneys General
MARK L. SHURTLEFF
Utah Attorney General
P. O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101

WILLIAM C. HUNTER (TSB No. 10304400)
Assistant Attorney General
Office of the Texas Attorney General
P. O. Box 12548
Austin, Texas 78711
Telephone: (512) 463-2018
Facsimile: (512) 477-2348

Attorneys for Defendant, R. Wayne Klein

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS, WACO DIVISION

**LIFE PARTNERS INC., a Texas
Corporation, and LIFE PARTNERS
HOLDINGS, INC., a Texas Corporation,**

Plaintiffs,

vs.

**R. WAYNE KLEIN, in his Official Capacity
as Director, Division of Securities of the
Department of Commerce of the State Of
Utah,**

Defendant.

**MOTION TO STAY RULING ON
SUMMARY JUDGMENT**

Civil No. W06CA339

Judge Walter S. Smith, Jr.

Pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, R. Wayne Klein, in his official capacity as Director of the Division of Securities of the Utah Department of Commerce, by and through undersigned counsel, respectfully moves this Court to stay its ruling on Plaintiffs' motions for summary judgment. The grounds for this motion are that, in order to properly oppose Plaintiffs' summary judgment motions, Klein needs to conduct discovery on: Plaintiffs relationship to the individuals who marketed and offered Plaintiffs' viaticals for sale in Utah; Plaintiffs' relationship to the company Alpha and Omega, which processed the purchases of viaticals from Utah, Plaintiffs' relationship to Sterling Trust, where funds for the viaticals that Utah residents purchased were deposited; the capitalization of Life Partners Inc. and Life Partners' Holding Inc. (collectively "Life Partners"), of the relationship between Mark Sutherland and others who marketed and promoted Life Partners' products in Utah, and on Life Partners' role in advertising events in Utah where Life Partners' products were sold.

Klein asks the Court to stay its ruling on Plaintiffs' pending motion for summary judgment until the close of discovery, which the Court has ordered be completed October 1, 2007. In the alternative, Klein asks the Court to stay its ruling until Klein has had an opportunity to conduct discovery in the areas identified in this motion and in the accompanying memorandum, which are needed to fully respond to Plaintiffs' motion for summary judgment.

The basis for Klein's motion is detailed in his memorandum of authorities, filed concurrently.

DATED this 2nd day of April, 2007.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL

/s/ Joni J. Jones _____

Joni J. Jones
Matthew D. Bates
Assistant Attorneys General
Attorneys for R. Wayne Klein

CERTIFICATE OF MAILING

I hereby certify that, on April 2nd, 2007, I served a copy of the foregoing **MOTION TO STAY RULING ON SUMMARY JUDGMENT** upon the following by mailing a copy, with postage prepaid, to the following:

Vance Dunnam
4125 West Waco Dr.
P. O. Box 8418
Waco, TX 76714-8418

David M. Guinn
One Bear Place #97288
Waco, TX 76798-7288

Lee E. Goodman
Robert P. Howard, Jr.
Cameron S. Matheson
LeClair Ryan, P. C.
1701 Pennsylvania Avenue, N. W., Suite 1045
Washington, D. C. 20006

/s/ Yvonne Schenk

JONI J. JONES (USB No. 7562)
MATTHEW DAVID BATES (USB No. 9861)
Assistant Utah Attorneys General
Litigation Division
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, Sixth Floor
P.O. box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

WILLIAM C. HUNTER (TSB No. 10304400)
Assistant Attorney General
Financial Litigation Division
Office of the Texas Attorney General
300 West 15th Street, 6th Floor
P.O. Box 12548
Austin, TX 78711
Telephone: 512-463-2018
Facsimile: 512-477-2348
Attorneys for R. Wayne Klein

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS, WACO DIVISION

LIFE PARTNERS, INC., a Texas
Corporation,

LIFE PARTNERS, HOLDINGS, INC., a
Texas Corporation,

Plaintiffs,

vs.

R. WAYNE KLEIN, in his official capacity
as Director of the Division of Securities of
the Department of commerce³ of the State of
Utah,

Defendant.

DECLARATION OF JONI J. JONES

Civil No. 6:06-CV-00339-WWS

Judge Walter S. Smith

Joni J. Jones, being first duly sworn upon oath, deposes and states:

1. I am an attorney in the Litigation Division of the Utah Attorney General's Office for the state of Utah and lead counsel in the above-captioned case.
2. I have personal knowledge of the matters stated herein.
3. I am the chief of the civil rights section in Litigation, and in that capacity I am responsible for overseeing the civil rights cases that are assigned to the Litigation Division.
4. The above-captioned case was not originally assigned to Litigation, because the Litigation Division normally handles only cases involving damages.
5. Because of the threshold jurisdictional issues, Klein initially filed motion to dismiss for lack of personal jurisdiction rather than filing an answer.
6. After the *ex parte* temporary restraining order was granted against Klein and his motion to dismiss based on lack of personal jurisdiction was denied, the Department of Commerce requested that the Litigation Division take over representation of Klein in the above-captioned case.
7. Along with co-counsel, I filed on Klein's behalf a motion to dismiss based on *Younger* abstention, a motion to certify the denial of the motion to dismiss based on lack of personal jurisdiction, and a motion to change venue.
8. By the time I took over the case, the time for responding to the motion for summary judgment had expired. I obtained a very brief extension from Plaintiffs' counsel to respond to their pending motion for summary judgment.

9. I filed a memorandum in opposition to Plaintiffs' motion for summary judgment.

10. Soon after Plaintiffs filed their reply memorandum, on March 26, 2007, the Court entered a scheduling order in this case.

11. That Order sets a discovery cut off of October 1, 2007.

12. The fact that no discovery has been conducted in this case has not been caused by any inattention or dilatoriness by me or by Klein, but rather is due to the fact that Plaintiffs filed their motion for summary judgment before Klein filed an answer.

13. I have reviewed Plaintiffs' recently filed reply memorandum in support of their motion for summary judgment.

14. Based on Plaintiffs' arguments, I believe there are several material issues of fact so as to make ruling on Plaintiffs' motion, prior to discovery, premature.

15. Specifically, discovery on the "context" of Plaintiffs' marketing materials including, but not limited to, who Plaintiffs' target clientele is, how Plaintiffs' market their products, how Plaintiffs sell the securities in question and how the marketing materials reach the target audience is required.

16. In addition, Klein seeks discovery on the capitalization of Plaintiffs, financial information for both companies, information on corporate policies and procedures that will show the relationship between the parent and holding companies, and whether Life Partners Holdings, Inc. is in fact the real corporate entity in this case.

17. Klein also seeks discovery on the relationship between Mark Surtherland, MBC, and others who marketed viaticals in Utah.

20. Based upon the forgoing, I have requested in Klein's *Motion to Stay Ruling on Summary Judgment*, that the Court decline to rule on Plaintiffs' motion for summary judgment until the conclusion of discovery, currently set for October 1, 2007. In the alternative, I have requested that the Court stay its ruling until Klein has an opportunity to conduct discovery on those areas described above and in the memorandum supporting Klein's motion.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

Dated this 2nd day of April, 2007.

/s/ Joni J. Jones
JONI J. JONES
Assistant Utah Attorney General