

APR 30 2008

IN THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION STATE OF MISSOURI

MO. DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

In Re:)
Lincoln Memorial Life Insurance Company.) Case No. 08-0429339C
Serve at:)
Lincoln Memorial Life Insurance Company)
c/o Randy Singer, President)
1250 S. Capital of Texas Hwy)
Bldg 1, Suite 470)
Austin, Texas 78746)

STATEMENT OF CHARGES

The Insurance Market Regulation Division of the Department of Insurance, Financial Institutions and Professional Registration ("Division"), by and through counsel, requests the Director of the Department of Insurance, Financial Institutions and Professional Registration ("Director") to issue a summary order and other such orders as are warranted against Lincoln Memorial Life Insurance Company to protect consumers in Missouri, and to order the payment of a monetary penalty and costs of investigation, all pursuant to § 374.046 RSMo (Supp. 2007),¹ based on the following statement of charges:

JURISDICTION

1. The jurisdiction of the Director to initiate and administer this proceeding is found in § 374.046, which provides, in part:

1. If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or

¹ All statutory references are to RSMo (Supp. 2007) unless otherwise indicated.

course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:

- (1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;
- (2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;
- (3) Order a civil penalty or forfeiture as provided in section 374.049; and
- (4) Award reasonable costs of the investigation.

* * *

3. Unless the director determines that a summary order is appropriate under subsection 4 of this section, the director shall provide notice of the intent to initiate administrative enforcement by serving a statement of the reasons for the action upon any person subject to the proceedings. A statement of reasons, together with an order to show cause why a cease and desist order and other relief should not be issued, shall be served either personally or by certified mail on any person named therein. The director shall schedule a time and place at least ten days thereafter for hearing, and after notice of and opportunity for hearing to each person subject to the order, the director may issue a final order under subsection 6 of this section.

4. If the director determines that sections 375.014, 375.144, or 375.310, RSMo, are being violated and consumers are being aggrieved by the violations, the order issued under subdivision (1) of subsection 1 of this section may be summary and be effective on the date of issuance. Upon issuance of the order, the director shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered.

2. Pursuant to § 374.280, the Director, after a hearing under § 374.046, may order a civil penalty or forfeiture payable to the state of Missouri authorized by § 374.049.

3. Section 374.049 authorizes the Director to impose a monetary penalty or forfeiture depending on the level of the violation.

4. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

5. Under § 375.145, the Director may issue such administrative orders as authorized under § 374.046 if he determines “that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of section 375.012 to 375.144.” Moreover, a violation of § 375.144 is a level four violation under section 374.049.

6. Section 375.445 states, in relevant part:

1. It is unlawful for any insurance company transacting business under the laws of this state to:

- (1) Conduct its business fraudulently;
- (2) Fail to carry out its contracts in good faith; or
- (3) Habitually and as a matter of business practice compelling claimants under policies or liability judgment creditors of the insured to either accept less than the amount due under the terms of the policy or resort to litigation against the company to secure payment of the amount due.

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. Each practice in violation of this section is a level two violation under section 374.049, RSMo. Each act as

a part of a practice does not constitute a separate violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.

7. This proceeding is in the public interest.

DEFINITIONS APPLICABLE TO ALL COUNTS

8 A “preneed contract” as used herein is defined by § 436.005(5) RSMo 2000, which states, in relevant part:

(5) “Preneed contract”, any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities,

9. “Consumer” as used herein includes a purchaser or a provider.

10. “Purchaser” as used herein is a person who purchased a preneed contract.

11. “Seller” as used herein is defined in § 436.005(9) RSMo 2000, which states: “[T]he person who sells a preneed contract to a purchaser and who is obligated to collect and administer all payments made under such preneed contract.”

12. “Provider” as used herein is defined in § 436.005(7) RSMo 2000, which states: “[T]he person obligated to provide the disposition and funeral services, facilities, or merchandise described in a preneed contract.”

13. A “preneed trust” as used herein is defined in § 436.005(6) RSMo 2000, which states: “[A] trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.”

14. As used herein, the terms replace or replacement refer to the surrendering or causing the surrender of a whole life insurance policy insuring the life of a purchaser and the

subsequent issuance of a term life insurance policy with substantially the same death benefits insuring the life of the same purchaser.

COUNT I
Replacement Policies as a Violation of § 375.144(2)

15. For all times relevant herein, Lincoln Memorial Life Insurance Company (“Lincoln Memorial”) is an insurance company organized pursuant to the laws of the state of Texas and transacting insurance business in the state of Missouri pursuant to a Certificate of Authority issued by the Director.

16. Lincoln Memorial issued whole life insurance policies in this state on the lives of persons who purchased preneed contracts from National Prearranged Services, Inc. (“NPS”).

17. NPS is Missouri corporation engaged in the business of selling preneed funeral services through preneed contracts.

18. The whole life insurance policies were purchased with funds that NPS received from purchasers and such policies were placed into one or more preneed trusts. A preneed trust is for the benefit of consumers including purchasers who purchased the preneed contracts and providers who are obligated to provide the funeral services to purchasers pursuant to the preneed contracts.

19. According to the records of Lincoln Memorial, the policyowner of each such whole life insurance policy was the trustee for one or more of the trusts.

20. In or about June, 2000, December, 2006, September 2007, and perhaps at other times, Lincoln Memorial surrendered approximately \$2.25 million, \$32 million, and \$70 million, respectively, in whole life insurance policies and after such dates, Lincoln Memorial replaced the whole life insurance policies with term life insurance policies.

21. Lincoln Memorial made such replacements at the request of NPS or its investment advisor and without the prior consent or authorization of the trustee who was the policyowner of the whole life insurance policies which were replaced.

22. Replacing whole life insurance policies with term life insurance policies to be used to fund preneed contracts for funeral services for purchasers by providers, without the prior consent or authorization of the owner of the whole life insurance policies, is a material fact, because the trustee as policyowner had an interest in adequately funding the preneed contracts and the term life insurance policies afforded lesser protection for the funding of those preneed contracts.

23. The conduct by Lincoln Memorial constitutes the use of suppression as to a material fact in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(2).

COUNT II
Replacement Policies as a Violation of § 375.144(4)

24. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 21 as though fully set forth herein.

25. By failing to obtain actual prior consent or authorization of the trustee to replace the whole life insurance policies with term life insurance policies, Lincoln Memorial engaged in a course of business which operated as a deceit upon consumers where such term life insurance policies afforded lesser protection for the funding of the preneed contracts.

26. By its conduct, Lincoln Memorial has engaged and continues to engage in an act, practice or course of business which operates as a deceit upon any person in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(4).

COUNT III
Policy Loans as a Violation of § 375.144(2)

27. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 19 as though fully set forth herein.

28. Lincoln Memorial made loans to NPS or NPS's investment advisor secured by the cash value and death benefits of one or more whole life insurance policies purchased with funds that NPS received from consumers and such policies were placed into one or more preneed trusts.

29. Lincoln Memorial made such loans at the request of NPS or its investment advisor and without the prior consent or authorization of the trustee who was the policyowner of the whole life insurance policies.

30. Making loans against whole life insurance policies for the funding of preneed contracts for funeral services for purchasers by providers, without the prior consent or authorization of the owner of the whole life insurance policies, is a material fact, because the trustee had an independent interest in the appropriateness of investment activity to secure the funding obligations.

31. The conduct by Lincoln Memorial constitutes the use of suppression as to a material fact in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(2).

COUNT IV
Policy Loans as a Violation of § 375.144(4)

32. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 19, 28 and 29 as though fully set forth herein.

33. By failing to obtain actual prior consent or authorization of the trustee to make loans against the whole life insurance policies, Lincoln Memorial engaged in a course of business which operated as a deceit upon consumers where such policy loans reduced the value of the whole life insurance policies for funding of the preneed contracts.

34. By its conduct, Lincoln Memorial has engaged and continues to engage in an act, practice or course of business which operates as a deceit upon any person in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(4).

COUNT V
Original Term Life Policies as a Violation of § 375.144(2)

35. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 15, 17, and 19 as though fully set forth herein.

36. Within approximately the last two years, Lincoln Memorial issued term life insurance policies in this state on the lives of consumers who purchased preneed funeral contracts from NPS.

37. Such term life insurance policies were purchased with funds that NPS received from consumers and such policies were placed into one or more preneed trusts. A preneed trust is for the benefit of consumers.

38. According to the records of Lincoln Memorial, the policyowner of each such term life insurance policy was the trustee of one or more of the trusts.

39. Lincoln Memorial issued such policies to a trustee without providing the trustee “an unconditional right to return the coverage within at least ten (10) days of its delivery for a full refund of all premium paid” as required by 20 CSR 400-1.010(1)(D), a rule promulgated by the Department of Insurance, Financial Institutions and Professional Registration.

40. Such unconditional right is material to the interests of the policyowner and trustee in determining whether such term life insurance policies are appropriate to secure the funding obligations for funeral services for consumers.

41. The conduct of Lincoln Memorial constitutes the use of suppression as to a material fact in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(2).

COUNT VI
Replacement Policies as a Violation of § 375.445.1(1)

42. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 21 as though fully set forth herein.

43. By failing to obtain actual prior consent or authorization of the trustee to replace the whole life insurance policies with term life insurance policies and by failing to disclose the replacement to the trustee, Lincoln Memorial conducted its insurance business fraudulently.

44. By its conduct, Lincoln Memorial has engaged and continues to engage in an act, practice or course of business constituting a violation of § 375.445.1(1).

COUNT VII
Policy Loans as a Violation of § 375.445.1(1)

45. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 19, 28 and 29 as though fully set forth herein.

46. By failing to obtain actual prior consent or authorization of the trustee to make loans against the whole life insurance policies, and by failing to disclose the replacement to the trustee, Lincoln Memorial conducted its insurance business fraudulently.

47. By its conduct, Lincoln Memorial has engaged and continues to engage in an act, practice or course of business constituting a violation of § 375.445.1(1).

COUNT VIII
Replacement Policies as a Violation of § 375.445.1(2)

48. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 21 as though fully set forth herein.

49. By failing to obtain actual prior consent or authorization of the trustee to replace the whole life insurance policies with term life insurance policies and by failing to disclose the replacement to the trustee, Lincoln Memorial failed to carry out its contracts in good faith.

50. By its conduct, Lincoln Memorial has engaged and continues to engage in an act, practice or course of business constituting a violation of § 375.445.1(2).

COUNT IX
Policy Loans as a Violation of § 375.445.1(2)

51. The Division restates, alleges, and incorporates by reference, its allegations contained in paragraphs 1 through 19, 28 and 29 as though fully set forth herein.

52. By failing to obtain actual prior consent or authorization of the trustee to make loans against the whole life insurance policies, and by failing to disclose the replacement to the trustee, Lincoln Memorial failed to carry out its contracts in good faith.

53. By its conduct, Lincoln Memorial has engaged and continues to engage in an act, practice or course of business constituting a violation of § 375.445.1(2).

VIOLATIONS ARE CONTINUING IN NATURE

54. Because § 375.144 is being violated by Lincoln Memorial and consumers (purchasers and providers) are being aggrieved by the violations, a summary order under § 374.046.4 is necessary to stop further violations of the law and prevent further harm to consumers.

55. Approximately 46,000 Missouri consumers hold preneed contracts sold to them by NPS. Lincoln Memorial's replacement of the whole life insurance policies with the term life insurance policies (as alleged in Counts I and II) and Lincoln Memorial's policy loans made against the whole life insurance policies (as alleged by Counts III and IV) without the consent or authorization by the trustee, has greatly diminished the value of the trust funds which by law were and are required to be conserved for the benefit of the consumers (purchasers and providers). Should Lincoln Memorial's unlawful acts, practices, omissions, and courses of business continue, the security of the preneed trust will be compromised and the preneed contracts will suffer loss of cash value, all to the detriment of Missouri consumers.

REQUEST FOR RELIEF

WHEREFORE, the Insurance Market Regulation Division respectfully requests that the Director grant the following relief:

1. Issue an order finding that Lincoln Memorial has engaged and is engaging in acts practices, omissions or courses of business constituting a violation of the laws this state relating to insurance in Chapters 374 to 376 and in violation of rules adopted pursuant to such chapters.
2. Issue an order finding that § 375.144 is being violated by Lincoln Memorial and that consumers and providers are being aggrieved by the violations.
3. Issue a summary order, effective upon its issuance, prohibiting the continuation of Lincoln Memorial's acts, practices, omissions and courses of business and immediately:
 - a. reversing the replacement of whole life insurance policies that occurred on or after August 28, 2005 until the present; and

- b. reversing any policy loans that were made against the whole life insurance policies.

4. Issue a curative order or other orders directing Lincoln Memorial to take other action necessary or appropriate to comply with the insurance laws of this state, including, but not limited to, the following:

- a. reversing the replacement of whole life insurance policies that occurred prior to August 28, 2005; and
- b. Refund all premiums paid for term life insurance policies where such policy was the only type of policy issued on preneed contracts.

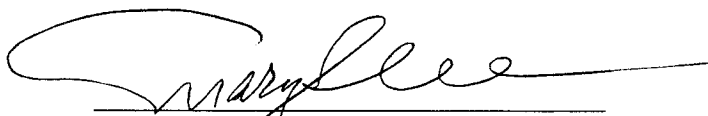
5. Issue an order directing Lincoln Memorial to show cause why: (1) any summary order issued against Lincoln Memorial should not be made final; (2) a curative order or other orders should not be issued; and (3) other relief, including penalties and costs of investigation, should not be granted against Lincoln Memorial. In such order to show cause, this matter should be set for hearing at least ten (10) days after the service of the Statement of Charges pursuant to § 374.046.3.

6. Issue an order ordering the payment of monetary penalties pursuant to §§ 374.046, 374.049, 374.280, 375.145, 375.445.

7. Issue an order ordering the payment of reasonable costs of the investigation of this matter pursuant to § 374.046.

8. Such other relief as the Director deems just and appropriate in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary S. Erickson", written over a horizontal line.

Mary S. Erickson, Mo. Bar # 42579
Missouri Department of Insurance, Financial
Institutions & Professional Registration
P.O. Box 690
Jefferson City, MO 65102-0690
Ph: (573) 751-1924
Fax: (573) 526-5492

ATTORNEY FOR INSURANCE
MARKET REGULATION DIVISION