

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

JAMES & GAHR MORTUARY, INC.,)	
on behalf of itself and all others similarly)	Case No.
situated,)	
)	Jury Trial Demanded
Plaintiff,)	
)	
vs.)	
)	
)	
NATIONAL HERITAGE)	
ENTERPRISES, INC.; FOREVER)	
ENTERPRISES, INC.; MEMORIAL)	
SERVICE LIFE INSURANCE)	
COMPANY; LINCOLN MEMORIAL)	
LIFE INSURANCE COMPANY;)	
NATIONAL PREARRANGED)	
SERVICES, INC.; RBT TRUST II;)	
BREMEN BANK AND TRUST)	
COMPANY; ALLEGIANT TRUST)	
COMPANY, A NATIONAL CITY)	
CORPORATION BANK;)	
SOUTHWEST BANK, AN M&I)	
BANK; MARSHALL AND ILSLEY)	
TRUST COMPANY; HOWARD)	
WITTNER AS TRUSTEE OF THE RBT)	
TRUST II; BRENT CASSITY; TYLER)	
CASSITY; RHONDA CASSITY; DOUG)	
CASSITY; RANDALL SUTTON;)	
DAVID R. WULF; and WULF, BATES)	
& MURPHY, INC.,)	
)	
Defendants.		

CLASS ACTION COMPLAINT

Plaintiff James & Gahr Mortuary, Inc., a Missouri funeral home (hereinafter “Plaintiff”), on behalf of itself and all others similarly situated, for its Class Action Complaint (“Complaint”) against National Prearranged Services, Inc. (“NPS”);

Lincoln Memorial Life Insurance Company; Memorial Service Life Insurance Company; National Heritage Enterprises, Inc. (“National Heritage”); Forever Enterprises, Inc. (“Forever”); RBT Trust II; Howard Wittner as Trustee of the RBT Trust II; Brent Cassity; Tyler Cassity; Rhonda Cassity; Doug Cassity; Randall Sutton (the previous Defendants are collectively referred to herein as “the NPS Defendants”); Bremen Bank and Trust Company; Allegiant Trust Company, A National City Corporation Bank; Southwest Bank, an M&I Bank; Marshal Ilsley Trust Company; David R. Wulf; and Wulf, Bates & Murphy, Inc. (collectively “Defendants”) allege as follows, upon information and belief and the investigation of counsel:

I. FACTUAL SUMMARY

1. This case stems from a massive fraudulent conspiracy among all Defendants to defraud providers of services for pre-need funeral benefit contracts (“PFBCs”). The scheme to defraud Plaintiff and members of the Class was conducted through a pattern of racketeering activity (mail and wire fraud) and was accomplished through the efforts of an association-in-fact enterprise.

2. A PFBC is an arrangement which requires current payment of money for future delivery of funeral or burial services.

3. The NPS Defendants are engaged in the business of selling PFBCs secured by life insurance policies. As further explained herein, Defendants are inextricably intertwined and engaged in complex financial relationships with the purpose and intent of concealing their fraudulent scheme.

4. NPS has sold tens of thousands of PFBCs in numerous states, including Missouri, California, Texas, Tennessee, Pennsylvania, Oklahoma, Nebraska, Louisiana, Kentucky, Kansas, Iowa, Illinois, Indiana, Georgia, Arizona and Florida. Upon information and belief, in Missouri alone, NPS has sold over 60,000 PFBCs.

5. Upon information and belief, NPS utilized substantially similar form contracts for the PFBCs sold to Plaintiff and the other members of the Class. The provisions contained in the form contracts require, among other things, that: (a) NPS shall deposit all payments required to be placed in trust to secure the performance of the PFBC with a financial institution including, but not limited to, Bremen Bank and Trust Company; Allegiant Trust Company, A National City Corporation Bank; Southwest Bank, an M&I Bank; and Marshall and Ilsley Trust Company; (b) all amounts deposited in trust with a particular financial institution shall be held in trust according to a Trust Agreement and state law; (c) no later than thirty days after the funeral home and a witness certifies in writing to NPS that the funeral home has provided services as provided in the PFBC, then NPS shall pay the funeral home for delivering the funeral services and merchandise described in the PFBC; and (d) the trustee or investment advisor is authorized to name the PFBC beneficiary as the insured in regard to any insurance policy which may be purchased as an investment in the trust fund. (*See Exhibit A, Prearranged Funeral Agreement*).

6. NPS insured its PFBCs through life insurance purchased *only* from two life insurance companies that are controlled by NPS: Defendants Memorial and Lincoln. NPS ostensibly used the insurance products sold by Memorial and Lincoln

to ensure that the benefits conveyed through PFBCs would always be available, even if NPS went out of business.

7. Defendant Lincoln is a wholly-owned subsidiary of Defendant Memorial. Defendant Memorial is one of at least fifteen entities held by Defendant Forever. Forever and at least seven other entities, including Defendant NPS, are owned by Defendant National Heritage. The ultimate controlling person of the NPS Defendants is the RBT Trust II. (See Exhibit B, Organizational Chart of Entities under RBT Trust II). Upon information and belief, the grantor of Defendant RBT Trust II is Defendant Doug Cassity and the beneficiaries are Defendants Rhonda Cassity, Brent Cassity and Tyler Cassity; the trustee is Howard A. Wittner.

8. In 1993, NPS issued a form letter to “accontholders” responding to allegations regarding its financial status. (See Exhibit C, NPS Letter to Accountholders). The letter provides, in pertinent part:

First, (NPS) wants to assure you that your pre-arranged funeral service policy is, just as it has been and always will be, fully protected through the insurance provisions established in your trust arrangements. As you know, NPS has purchased whole life insurance that grows in value, which guarantees that the funeral services you have selected will be available at the time of need, despite rising costs.

The news report was filled with errors and misrepresentations that could lead you to believe that the insurance trust in question is under-funded when – in fact – it is over-funded by more than \$22 million to further ensure that YOU and YOUR FAMILY are fully protected in the years ahead.

More importantly, your funds the YOU and 90,000 other policy holders have paid to NPS over the years is in a fully funded trust handle each and every contracted funeral service. In other words, it is guaranteed.

...

That your pre-need fund is fully protected and guaranteed, because NPS is overfunded. This ensures that you and other consumers receive exactly what you paid for and are fully protected now and in the future.

That NPS's methods of funding your plan (whole life insurance) are LEGAL, the SAFEST and SMARTEST WAY to protect the services you have selected. These methods are endorsed by the AARP and other major consumer organizations. And, most important, they GUARANTEE that YOU and YOUR family will be protected.

9. Defendants misrepresented to and omitted from Plaintiff and the members of the Class specific facts regarding the nature and flow of premiums being paid on the policies.

10. Specifically, Defendants misrepresented and/or failed to disclose the delay of premium payments and ultimate elimination of premium payments, thereby causing the policies to lapse.

11. Defendants, upon information and belief, also fraudulently siphoned cash out of these policies and replaced such policies with other unsuitable policies (including term insurance) issued by an affiliated insurer.

12. As a result of the Defendants' complex business relationship, they had an incentive to churn the business by (a) selling policies and collecting high commissions and marketing fees; (b) systematically stopping premium payments of the policies causing the policies to lapse; and then (c) replacing those policies with other policies which were inappropriate substitutes and failed to provide the security of the initial policies.

13. Defendants also conflated the financials of the various corporate forms in order to make it appear as if the entities had improved financial positions. For example, Lincoln's books reflect that it is due a large sum due from NPS, while Memorial's books reflect receivables from both Lincoln and NPS.

14. As described below, all of the above mentioned "debts" are past due and there is no indication the responsible entities can cover the obligations.

15. Under Defendants' scheme, NPS contracted with funeral homes such as Plaintiff and other members of the Class to market and execute PFBCs to individual consumers.

16. For example, in Missouri, Defendants were to have placed 80% of funds collected for PFBCs in trust at a state or federally chartered financial institution. Upon information and belief, Defendants Bremen Bank and Trust Company; Allegiant Trust Company, a National City Corporation Bank; Southwest Bank, an M&I Bank; Marshal & Ilsley Trust Company; and other unknown financial institutions (hereinafter the "Trust Defendants") serve or served as trustees for the NPS Defendants' Trusts. The Trust Defendants were allegedly independent trustees who (i) had fiduciary responsibilities as to the handling of the pre-need contracts and (ii) would pay those funds as premiums to purchase policies or other suitable investments.

17. Upon information and belief, the Trust Defendants improperly supervised, handled and/or misappropriated the pre-need contract funds by, *inter alia*, failing to pay the funds as premiums, allowing whole life policies to be replaced with unsuitable term life policies, allowing cash to be siphoned out of policies through policy loans and/or allowing an affiliated entity/person manage the assets of the trusts.

18. In Missouri, a seller of PFBCs such as the NPS Defendants may appoint a federally registered or state-registered *independent* qualified investment advisor to make investment decisions for the trust. However, in such circumstances, the trustees such as the Trust Defendants continue to retain title to all investment assets and continue to have a fiduciary duty to Plaintiff and members of the Class.

19. Upon information and belief, Defendant David R. Wulf and Wulf, Bates & Murphy, Inc. (“Wulf Bates”) served as investment advisors for NPS’s Missouri Trusts.

20. Wulf Bates was supposed to be an independent advisor who (i) had fiduciary responsibilities as to the handling of the pre-need contract funds received and (ii) would use those funds to pay premiums on related insurance policies and would otherwise invest these funds in suitable investments which would be available to pay claims to Plaintiff and the other members of the Class for rendering funeral services pursuant to pre-need contracts.

21. Rather than providing independent, qualified advice in the best interests of the Trusts’ beneficiaries, Wulf Bates joined with Defendants in a fraudulent enterprise which accomplished the goal of defrauding Plaintiff and the other members of the Class.

22. Specifically, although Wulf Bates and the Trust Defendants had a fiduciary duty to Plaintiff and the other members of the Class, these Defendants breached this duty by, *inter alia* (i) abdicating their responsibilities to provide independent advice and control over the Trusts’ assets through the appointment of Randall Sutton (President and Director of NPS since June 23, 1983; President of Lincoln from May 26, 2000, through March 31, 2005; Chief Executive Officer of Lincoln since March 31, 2001; and Director of Lincoln since August 19, 1999) as Wulf Bates’s “agent” to perform daily

“administrative” functions on behalf of the Trusts; (ii) purchasing stock in Defendant Forever on behalf of the Missouri Trusts; (iii) wasting the assets of the Missouri Trusts by allowing thousands of life insurance policies to lapse for the benefit of the NPS Defendants as described herein; and (iv) siphoning the assets of the Missouri Trusts and the NPS Defendants for the benefit of the NPS Defendants and their ultimate beneficiary, the RBT Trust II and its owners Brent Cassity, Tyler Cassity, Rhonda Cassity, and Doug Cassity.

23. Many of the insurance policies at issue in this case were subject to “reinsurance”, which means that a separate insurance company or companies assumed the risk of the issued policies.

24. Under this structure, large amounts of cash were paid by the reinsurer to the NPS Defendants, in the form of commissions and marketing fees.

25. Reinsurers had an incentive to enter into these agreements because the reinsurer’s contracts with the insurers, if fully performed, would in the long term yield greater returns than the initial contracts between the purchaser and the initial insurer.

26. Simply put, the companies issuing the policies at the time of the PFBC sale earned large sums of cash, very quickly, by transferring policies to reinsurers.

27. In order for reinsurers and funeral homes like Plaintiff to realize the benefits of their bargain, the insurance policies had to remain in effect for the contemplated duration. Policies rarely lapsed but, when they did, it was most often due to failure to timely pay premiums. As set forth below, Defendants either directly

or indirectly controlled whether premiums were paid and therefore whether reinsurers and funeral homes like Plaintiff were able to realize the benefits of their bargains.

28. Through a maze of corporate forms, Defendants concocted and realized a scheme whereby whole life insurance policies that ostensibly secured performance of the PFBCs were cancelled or otherwise replaced with unsuitable term policies, which did not secure the requisite performance. Defendants also took out massive policy loans from these policies, thereby siphoning off assets which were supposed to be held in trust for the benefit of Plaintiff and the other members of the Class.

29. On October 24, 2007, the Commissioner of Insurance for the State of Texas placed Defendants Memorial and Lincoln under confidential supervision.

30. On April 8, 2008, Defendants Memorial, Lincoln and NPS consented to a Chapter 404 Order in the State of Texas that formally designated these three companies as in “hazardous financial condition.”

31. This Order stated that Defendants NPS, Memorial, and Lincoln “are all owned and managed by the same core group of executives and staff, including Brent Cassity, Tyler Cassity, Rhonda Cassity, Doug Cassity, [and] Randall Sutton...and that Brent Cassity, Tyler Cassity, Rhonda Cassity, [and] Doug Cassity have represented that they will pledge personal assets to [NPS, Memorial and Lincoln] to ensure that ‘everyone receives the benefit they purchased.’” The Order further states that these Defendants “have also represented that they will continue to make up any shortfall in funds necessary to pay claims under insurance policies and under pre-need contracts.”

32. On April 19, 2008, the Missouri State Board of Embalmers and Funeral Directors entered into a Memorandum of Understanding with NPS which prohibited NPS from continuing to sell PFBCs in Missouri.

33. On April 30, 2008, the State of Missouri's Department of Insurance, Financial Institutions & Professional Registration ordered Lincoln to "reverse previous business transactions to protect the financial security of consumers" who purchased PFBCs from NPS.

34. The Missouri State Board of Embalmers and Funeral Directors has further stated that it "has received information that NPS may have shortages in their pre-need trust accounts. Specifically, the Board has reason to believe that the trust accounts contain a **substantially and significantly** lower amount than the 80% of pre-need funds that are statutorily required to be in trust. The Board has received information that the trust primarily consists of term insurance policies and not cash. The trust may also have far less than the amount of pre-need funds that were transferred to the trust by other pre-need sellers/funeral establishments through 'rollovers.'" (emphasis in original).

35. Notably, in this same document, the Board states that "**consumers and licensees should obtain their own, independent assessment of their legal rights and potential remedies.**" (emphasis in original).

36. For the reasons stated herein, it is now clear that the instant lawsuit is the only way to protect the financial security of funeral home providers like Plaintiff.

II. JURISDICTION AND VENUE

37. This Court has subject matter jurisdiction pursuant to 28 U.S.C. Section 1332(d) because the Class Action Fairness Act of 2005 confers diversity jurisdiction upon this Court, as members of the proposed nationwide Class are citizens of states that are different from Defendants' state(s) of citizenship, and the aggregate amount in controversy exceeds \$5,000,000. In addition, this Court has jurisdiction over Plaintiff's claims based on 28 U.S.C. §1331 and/or 28 U.S.C. §1337, which provide jurisdiction for Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C. §1961 *et seq.*; and 29 U.S.C. §1367, which provides jurisdiction for supplemental state claims, including common-law fraud and conspiracy claims.

38. Personal jurisdiction comports with due process under the United States Constitution and the long-arm statutes of Missouri.

39. Without limiting the generality of the foregoing, Defendants (directly or through agents who were at the time acting with actual and/or apparent authority and within the scope of such authority) have:

- a. transacted business in Missouri;
- b. contracted to supply or obtain services or goods in Missouri;
- c. availed themselves intentionally of the benefits of doing business in Missouri;
- d. produced, promoted, sold, marketed, and/or distributed their products or services in Missouri and, thereby, have purposefully profited from their access to markets in Missouri;
- e. caused tortious damage by act or omission in Missouri;
- f. caused tortious damage in Missouri by acts or omissions committed outside such jurisdiction while (i) regularly doing or soliciting business in

such jurisdiction, and/or (ii) engaging in other persistent courses of conduct within such jurisdiction, and/or (iii) deriving substantial revenue from goods used or consumed or services rendered in such jurisdiction;

- g. committed acts and omissions which Defendants knew or should have known would cause damage (and, in fact, did cause damage) in Missouri to Plaintiff and members of the Class while (i) regularly doing or soliciting business in such jurisdiction, and/or (ii) engaging in other persistent courses of conduct within such jurisdiction, and/or (iii) deriving substantial revenue from goods used or consumed or services rendered in such jurisdiction;
- h. engaged in a conspiracy with others doing business in Missouri that caused tortious damage in Missouri; and
- i. otherwise had the requisite minimum contacts with Missouri such that, under the circumstances, it is fair and reasonable to require Defendants to come to this Court to defend this action.

40. Venue is proper under 28 U.S.C. § 139, because acts giving rise to the causes of action alleged in this complaint arose in, among other places, the Western District of Missouri, and the harmful effects of Defendants' fraud and wrongful conspiracy were felt in, among other places, the Western District of Missouri.

III. THE PARTIES

A. Plaintiff

41. Plaintiff James & Gahr Mortuary, Inc. is a Missouri corporation with offices located at 288 4C Regatta Bay Circle, Lake Ozark, Missouri 65049.

42. During the relevant time period, Plaintiff entered into PFBCs with NPS and customers which require Plaintiff to provide certain funeral services. Plaintiff has rendered and will continue to render these services and submit valid claims to NPS for

payment. NPS and the Trust Defendants have failed and will continue to fail to make payment to Plaintiff for these services.

43. NPS has also failed to make other payments due Plaintiff pursuant to rollover PFBCs.

B. Defendants

44. Defendant Howard Wittner is the trustee of Defendant RBT Trust II (“RBT”). Upon information and belief, Mr. Wittner is a citizen and resident of Missouri. Through various means, RBT controls the actions of all other defendants.

45. Defendant National Heritage Enterprises, Inc. (“NHE”) is a corporation incorporated under the laws of the State of Missouri. Its principal place of business is located at 10 S. Brentwood, St. Louis, Missouri. RBT owns NHE. NHE owns, among other things, National Prearranged Services and Forever Enterprises.

46. Defendant National Prearranged Services, Inc., (“NPS”) is a corporation incorporated under the laws of the State of Missouri. Its principal place of business is located at 10 S. Brentwood, St. Louis, Missouri. NPS sells "pre-need" contracts, which allows individuals to pre-pay for their funeral expenses.

47. Defendant Forever Enterprises, Inc. (“Forever”) is a corporation incorporated under the laws of the State of Texas. Its principal place of business is located at 1250 S. Capitol of Texas Highway, Austin, Texas. Upon information and belief, Forever also maintains corporate offices at 10 S. Brentwood, St. Louis, Missouri. Forever is the indirect parent of Lincoln and is a sister company to NPS.

48. Defendant Memorial Service Life Insurance Company (“Memorial”) is a corporation incorporated under the laws of the State of Texas. Its principal place of

business is located at 1250 South Capital Of Texas Highway, Austin Texas. Memorial is owned by Forever, which is owned by NHE, which is owned by RBT.

49. Defendant Lincoln Memorial Life Insurance Company (“Lincoln”) is a corporation incorporated under the laws of the State of Texas. Its principal place of business is located at 1250 South Capital Of Texas Highway, Austin Texas. Lincoln is owned by Memorial, which is owned by Forever, which is owned by NHE, which is owned by RBT.

50. Defendant Wulf, Bates & Murphy, Inc. ("Wulf Bates") is a Missouri corporation with its principal place of business at 10 S. Brentwood, Suite 406, St. Louis, Missouri.

51. Defendant Marshall and Ilsley Trust Company (“Marshall”), an affiliate of Marshall and Ilsley Corporation, is a Wisconsin corporation with its principal place of business at 770 North Water Street, Milwaukee, Wisconsin.

52. Defendant Bremen Bank and Trust Company ("Bremen") is a corporation incorporated under the laws of the State of Missouri. Its principal place of business is located at 3529 N. Broadway, St. Louis, Missouri.

53. Defendant Allegiant Trust Company, a National City Corporation Bank, is a corporation incorporated under the laws of the State of Delaware. Its principal place of business is located at 13205 Manchester Rd., St. Louis, Missouri.

54. Defendant Southwest Bank, an M&I Bank, is a corporation incorporated under the laws of the State of Missouri. Its principal place of business is located at 1900 East 9th Street, Cleveland, Ohio.

55. Defendant David R. Wulf, an individual, is a resident of the State of Missouri and is registered with the State of Missouri to act as an investment advisor. Wulf is also a Registered Investment Advisor under the United States Securities and Exchange Investment Advisor Act of 1940 and is the Secretary and Director of Wulf Bates.

56. Defendant Brent D. Cassity, an individual is, upon information and belief, a resident and citizen of the State of Missouri.

57. Defendant J. Tyler Cassity, an individual, is, upon information and belief, a resident and citizen of the State of Missouri.

58. Defendant Randall K. Sutton, an individual, is, upon information and belief, a resident and citizen of the State of Missouri.

59. Defendant Rhonda Cassity, an individual, is, upon information and belief, a resident and citizen of the State of Missouri.

60. Defendant Doug Cassity, an individual, is, upon information and belief, a resident and citizen of the State of Missouri.

IV. CLASS ACTION ALLEGATIONS

61. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, as a representative of the following Class (“National Class”):

All funeral homes obligated to provide services pursuant to pre-need funeral benefit contracts marketed or sold by the NPS Defendants.

Excluded from the Class are: Defendants; Defendants’ parents, subsidiaries, and affiliates; and federal governmental entities.

62. Plaintiff also brings this action on its own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or respective state statute(s), on behalf of all members of the National Class residing in the State of Missouri (“Missouri Sub-Class”).

63. The National Class and the Missouri Sub-Class are collectively referred to herein as “the Class.”

64. Plaintiff does not know the exact size of the Class at the present time. However, Plaintiff believes that in each class there are hundreds if not thousands of class members geographically dispersed throughout the United States such that joinder is impracticable. These class members may be identified from information and records maintained by Defendants or third-parties.

65. Plaintiff is a member of each Class, and Plaintiff’s claims are typical of those of the Class it seeks to represent and all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal and state laws. All members of the Class were deprived of the benefits of having the pre-needs contracts at issue honored as a result of Defendants’ unlawful conduct.

66. Plaintiff, as a representative of each Class, will fairly and adequately protect the interests of their Class. Plaintiff has engaged counsel highly experienced in complex class action litigation. Plaintiff’s interests are consistent with, and not antagonistic to, those of the members of the Class. An effective and practicable manner of notice to all members of each Class can be fashioned by the Court.

67. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Such common questions of law and fact include:

- a. Whether Defendants engaged in a pattern of deceptive and fraudulent activity intended to defraud Plaintiff and other members of the Class;
- b. Whether Defendants formed an enterprise for the purpose of effectuating their fraudulent scheme;
- c. Whether Defendants used the U.S. mails and interstate wire facilities and commerce to carry out their fraudulent scheme;
- d. Whether the Defendants engaged in conduct that violated the federal racketeering laws as alleged herein;
- e. Whether the Defendants breached fiduciary duties to Plaintiff and other members of the Class;
- f. Whether the Defendants breached their contracts with the Plaintiff;
- g. Whether Plaintiff and the other members of the Class were injured by the conduct of Defendants and, if so, the appropriate class-wide measure of damages; and
- h. Whether Plaintiff and the other Class members are entitled to injunctive relief.

68. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

69. Defendants have acted on grounds generally applicable to all Class members in that Defendants' conduct uniformly impacted all members of the respective Class. Accordingly, injunctive relief is necessary to protect all Class members from further injury.

70. Plaintiff knows of no difficulty that would prevent this case from being maintained as a class action. Class action treatment is a superior method for the fair and efficient adjudication of this controversy. Class action treatment will, among other things, allow a large number of similarly situated funeral homes to prosecute their common claims in a single forum, thus avoiding the unnecessary duplication of resources that numerous individual actions would require. Moreover, class action treatment allows injured funeral homes the ability to seek redress on claims that might be impracticable to pursue individually.

V. FACTUAL ALLEGATIONS

A. Overview of Pre-Need Funeral Benefit Contracts and the NPS Defendants

71. NPS has marketed and sold hundreds of thousands of PFBCs in a number of states since 1979. NPS primarily sells PFBCs with the assistance of funeral homes like Plaintiff.

72. Under the PFBC, individuals are able to guarantee the future price of their funerals, and pay for those funerals prior to their death. Parties to a PFBC include NPS (the seller), an individual who is purchasing pre-need funeral services (the buyer) and a funeral home like Plaintiff, who agrees to provide certain funeral services in the future in exchange for payment from NPS and/or a trust holding the proceeds of PFBCs.

73. During the relevant time period, NPS utilized form contracts for sales of PFBCs by funeral homes like Plaintiff to consumers.

74. Properly administered PFBCs serve public policy in that individuals are able to defray or eliminate the burden of funeral expenses for surviving family members.

75. Individuals pay NPS for the PFBCs in either a single lump sum payment or installments.

76. NPS received, by U.S. Mail, tens of thousands of pre-need contracts.

77. NPS received, by U.S. Mail, at least tens of thousands of pre-need contract payments from individual pre-need contract purchasers.

78. Upon information and belief, NPS inputted into its Contract Tracking System information regarding the pre-need contract payments, and made that information available electronically to another intermediary system located in the same St. Louis, Missouri offices where NPS is located. The intermediary system imported information from the Contract Tracking System, processed it and produced files of either (1) new insurance policies or (2) premium payment information on existing policies. Those files were routinely e-mailed as text files from NPS's offices in St. Louis to Lincoln's offices in Texas.

79. Pursuant to statutory requirements, NPS established one or more trusts and placed the proceeds from the PFBCs (minus a statutorily allowed commission) into these Trusts.

80. State statutory and common-law requires independent oversight and administration of the Trusts so that proceeds of the Trusts grow over time to pay funeral homes like Plaintiff the full amount of their services at the time they are rendered including inflation.

81. Pursuant to their form contracts with NPS, Plaintiff and members of the Class were entitled to the face amount of any PFBC, plus an agreed upon growth or interest rate to account for inflation during the life of the purchaser.

82. The fraud on Plaintiff and the Class was accomplished through the use of complex, overlapping and interlocking relationships within the conglomerate of related companies.

83. The NPS Defendants formed a web of mutually beneficial relationships and inter-relationships.

84. Defendant Randall Sutton held multiple positions of power and influence within the NPS Defendants that participated in, and benefited from, the Defendants' scheme.

85. Specifically, Sutton has served as President and a Director of Defendant NPS since June 26, 1983. Sutton simultaneously served as President of Defendant Lincoln and Defendant NPS from May 26, 2000 through March 31, 2005. Sutton has been Chief Executive Officer of Defendant Lincoln since March 31, 2001 and has served as a Director of Defendant Lincoln since August 19, 1999. In addition, Sutton has been Vice President of Defendant Forever since October 7, 1996 and a Director of Defendant Forever since May 18, 2000.

86. The NPS Defendants are all ultimately owned by the same entity, the RBT Trust II. Upon information and belief, the grantor of Defendant RBT Trust II is Doug Cassity and the beneficiaries of Defendant RBT Trust II are Defendants Brent Cassity, Tyler Cassity, and Rhonda Cassity. The illegal profits resulting from the scheme discussed herein redounded to the benefit of Defendant RBT Trust II and its beneficiaries.

B. The Role of the Trust Defendants

87. NPS utilized the Trust Defendants as trustees for one more Missouri Trusts during the relevant time period. As trustees, the Trust Defendants had a duty to the Plaintiff and the Class to ensure that the assets of the trust were managed properly by an independent investment advisor and were otherwise invested for the benefit of beneficiaries of these trusts like Plaintiff and the Class.

88. NPS designated Wulf Bates as the advisor charged with making investment decisions regarding the principal and undistributed income of one or more of these Missouri Trusts. Notwithstanding this designation, the Trust Defendants had, at all relevant times, a fiduciary duty to Plaintiff and members of the Class to ensure that the assets of the trust were managed properly by an independent investment advisor and were otherwise held for the benefit of beneficiaries of these trusts like Plaintiff and the Class.

89. Defendant Wulf Bates purchased tens of thousands of life insurance policies from Lincoln which insured the lives of the PFBC holders. These policies secured NPS's funeral payment obligations assumed through the individual PFBCs.

90. In this example, the Trust owned the actual policies, and Wulf Bates, as the Trust's investment advisor, controlled the policies and the payment of premium on those policies. Wulf, as Wulf Bates' Secretary and Director, directed Wulf Bates' actions as to the Missouri Trust.

91. Although purporting to act as independent investment advisors, Defendants Wulf and Wulf Bates, were, in fact, participants in Defendants' scheme. Specifically, Defendant Wulf personally owned stock in Forever, Lincoln's ultimate

parent company. To the extent Defendants Lincoln and Forever benefited from the scheme, Defendant Wulf personally benefited.

92. Defendant Wulf Bates, on behalf of the Missouri Trust, also held stock in Defendant Forever.

93. After Defendants Sutton and NPS appointed Defendant Wulf Bates to serve as investment advisor to the Missouri Trust, Wulf Bates in turn appointed Defendant Sutton its agent to perform certain “administrative functions” on behalf of the Missouri Trust that would otherwise require the signature of Wulf Bates, thereby joining the scheme and abdicating all duties to Plaintiff and members of the Class. As previously noted, during the relevant time, Defendant Sutton served as President of Defendants NPS and Lincoln.

94. In joining the enterprise, Defendant Wulf Bates worked with the NPS Defendants, including Defendant Sutton, when deciding to purchase, pay for, and lapse the life insurance policies described herein. Upon information and belief, this information was imported into NPS’ Contract Tracking System, processed and produced in the form of a “batch file” that was sent from St. Louis, Missouri to Lincoln’s offices in Austin, Texas. The batch files dictated Lincoln’s issuance of policies and what premiums would be processed. In addition, the batch files communicated to Lincoln the decisions the Defendants had made about when to pay premium wither to cause policies to lapse and whether to buy new policies. Without the batch files, the Defendants’ decisions about the policies would not have been effectuated.

95. Indeed, were Defendants Wulf and Wulf Bates truly independent advisors to the Missouri Trusts seeking to protect and maximize the return on the PFBCs, Wulf

and Wulf Bates would not have caused the whole life policies described herein to lapse because doing so negated the Missouri Trusts' investment in the policies.

96. By causing the policies to lapse and replacing them with term life policies, Defendants Wulf and Wulf Bates were benefiting the NPS Defendants (and Wulf) rather than protecting the value in the Missouri Trusts.

97. In causing the policies to lapse, Defendants Wulf and Wulf Bates were giving up the policies' full death benefits for which the Missouri Trusts had been paying premiums. The residual value of the lapsed policies did not exceed—or even equal—the amount of the Missouri Trusts had paid for the policies.

98. As explained below, this breach of fiduciary duty and the corresponding breach by the other Trust Defendants in failing to properly supervise the Trusts' assets, enabled the NPS Defendants to systematically loot the trusts to the detriment of Plaintiff and members of the Class.

99. In other states, even where there was no sham trust, Defendants directly held title to the insurance policies and allowed payments for these policies to lapse, siphoned cash out of these policies and/or converted these policies from whole life to term life policies which are insufficient to afford full payments for PFBCs to Plaintiff and members of the Class.

C. Defendants' Scheme Comes to Light

100. In recent months, details of Defendants' scheme have slowly to come to light as the Missouri Attorney General and other regulators have begun to investigate Defendants' practices.

101. For example, on June 13, 2008, the Missouri Attorney General's Office announced that it had notified the Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP) that the Attorney General is seeking the authorization necessary to bring legal action against any insurance companies or banks involved with NPS.

102. The Attorney General's Office states that its investigation has revealed "suspect business practices by companies working with NPS, including banks and life insurance companies, whose actions have contributed to the potential threat facing Missouri consumers."

103. Other publicly available documents indicate that the NPS Defendants and Defendants Wulf and Wulf Bates, engaged in a scheme to defraud Plaintiff and members of the Class by taking out policy loans from whole life insurance policies issued by Defendants Memorial and Lincoln.

104. In 2004, alone, Defendant Sutton and NPS took out millions of dollars in policy loans, thereby dramatically reducing the cash surrender value of the policies and the resulting assets available for payment to Plaintiff and the other members of the Class.

105. As of the Fall 2004, many of the policies had virtually no cash surrender value given the loans taken and the premium owed.

106. In December 2004, the NPS Defendants including Sutton, Wulf Bates, and Wulf stopped paying premium on thousands of policies thereby causing the policies to be lapsed *en masse*.

107. For many of these policies, NPS and the Missouri Trust were holding the funds to pay the premium, as they had already received the corresponding payments from the consumers of the PFBCs.

108. In January 2005, NPS, Sutton, Wulf Bates and Wulf again did not pay premiums due on thousands of policies. As of early 2005, tens of thousands—all or nearly all of the policies under the control or direction of Sutton and NPS—were lapsed.

109. In February 2005, right after the majority of the lapses had occurred, Defendants NPS, Sutton, Wulf Bates and Wulf began secretly replacing the lapsed whole-life policies with term life policies purchased from Defendant Lincoln. These term policies have no cash value and are insufficient to reimburse Plaintiff and other members of the Class for the services they have rendered and will render under NPS PFBCs.

110. Defendant Sutton signed many of the replacement policy applications and employees of NPS signed many others.

111. The concerted mass non-payment of premium, lapsing and replacement of the policies enabled the NPS Defendants to wrongfully reap millions of dollars in fees and funds from the trusts.

112. On April 3, 2008, the Oklahoma Insurance Department issued an emergency order suspending the insurance company license of Defendant Lincoln and, thereby, prohibiting the insurer and the insurer's agent from the sale of any new policies underwritten by Lincoln Memorial Life Insurance Company.

113. On April 15, 2008, a Consent Order was entered by the Commissioner of Commerce and Insurance for the State of Tennessee suspending Defendant Lincoln's

Certificate of Authority for two years and ordering that Defendant NPS' pre-need seller registration will not be issued by the Commissioner for a period of two years.

114. On April 30, 2008, the Missouri Department of Insurance Financial Institutions & Professional Registration issued a press release stating that Defendant Lincoln had been ordered "to reverse business transactions to protect the financial security of consumers who have purchased pre-need contracts from National Prearranged Services. The order states that Lincoln...issued whole life policies to the pre-need trust to cover the lives of those who purchased pre-need contracts through National Prearranged Services (NPS). Beginning in June 2000, Lincoln Memorial began replacing whole life insurance policies with term life insurance policies...The insurance company also made loans to NPS or NPS' investment advisor secured by the cash value and benefits of one or more of the whole life insurance policies...."

115. On May 1, 2008 the Iowa Department of Insurance announced that it had accepted Defendant NPS's surrender of its business entity agency license.

116. On May 1, 2008, the Ohio Department of Insurance announced that it had accepted Defendant NPS's surrender of its business entity agency license.

117. On May 14, 2008, the District Court of Travis County, Texas granted an Agreed Order Appointing Rehabilitator and Permanent Injunction with the State of Texas by and between Defendants NPS, Lincoln and Memorial and the State of Texas which placed these entities under the control of the Texas Commissioner of Insurance.

118. On May 15, 2008, the Texas Commission of Insurance appointed Donna J. Garrett as Special Deputy Receiver for Defendants NPS, Lincoln and Memorial.

119. On June 6, 2008, the Texas Department of Insurance stated that “[*ff*]unreal providers are not receiving, and should not expect to receive additional compensation in the form of contract growth payment from NPS.” (emphasis added).

120. Thus, as a direct result of the NPS Defendants’ scheme and the association-in-fact enterprise described herein, Plaintiff and other members of the Class have been injured through the loss of payments for services rendered and for the loss of contract growth payments.

VI. TRADE AND COMMERCE

121. At all material times, Defendants engaged in interstate commerce and effectuated their fraudulent conspiracy across state lines.

122. During the relevant time period, in connection with the purchase and sale of pre-need funeral benefit contracts, monies as well as contracts, bills and other forms of business communication and transactions were transmitted in continuous and uninterrupted flow across state lines.

123. During the relevant time period, various devices were used to effectuate the illegal acts alleged herein, including the United States mail, wires, and interstate commerce. The activities of Defendants as charged in this Complaint were within the flow of, and have substantially affected, interstate commerce.

VII. CO-CONSPIRATORS

124. Whenever in this Complaint reference is made to any act, deed, or transaction of any business entity, the allegation means that the business entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or

representatives while they were actively engaged in the management, direction, control, or transaction of the business' affairs.

125. The acts alleged in this Complaint to have been done by Defendants were authorized, ordered and condoned by their parent business entities and authorized, ordered and performed by their officers, directors, agents, employees, or representatives while engaged in the management, direction, control or transaction of their business affairs.

VIII. DAMAGES

126. As a consequence of Defendants' conduct and racketeering violations, Plaintiff and the members of the Class have sustained substantial losses and damage to their business and property in the form of being burdened with the obligation to provide services for which the bargained-for consideration has not and/or will never be provided. Alternatively, as alleged herein, in deciding to provide services for which the bargained-for consideration has not and/or will never be provided, Plaintiffs and the Class relied upon written representations made by the Defendants. All members of the Class were affected in the same manner by Defendants' fraudulent conduct.

IX. FRAUDULENT CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS

127. Plaintiff and the other members of the Class had no knowledge of Defendants' unlawful scheme and could not have discovered Defendants' unlawful conduct at an earlier date by the exercise of due diligence. As described above, Defendants affirmatively concealed their illegal acts and these acts only recently became known to the public through the diligence of the Attorney General of the State of Missouri and other state regulators. As a result of Plaintiff's lack of knowledge of the

effects of Defendants' unlawful scheme, Plaintiff asserts the tolling of any applicable statutes of limitations affecting the right of action by Plaintiff and other members of the respective Class.

128. Moreover, Defendants' actions constitute a continuing violation in that Defendants' fraudulent scheme resulted in financial harm to the Plaintiff and other members of the respective Class, and each and every sale of fraudulent pre-need funeral benefit was an overt act that injured Plaintiff and other members of the respective Class. Upon each and every instance that Defendants failed to disclose their illegal conduct, Defendants knew or should have known that the undisclosed information was material to those consumers or funeral homes who reasonably believed Defendants' conduct to be lawful and not fraudulent.

129. In addition to its ongoing pattern and practice of fraud, Defendants committed numerous additional overt acts in furtherance of their conspiracy, both within and prior to four years from the date of the filing of this Complaint. Such overt acts include the illegal actions regarding the fraudulent scheme described herein.

130. Therefore, each instance in which Defendants engaged in the conduct complained of herein and each instance in which a Class member unknowingly relied upon representations that the pre-need funeral contracts sold by Defendants were lawful constitutes part of a continuing violation and operates to toll any applicable statutes of limitation.

131. Furthermore, Defendants are estopped from relying on any statute of limitations defense because of their unfair and deceptive conduct.

X. VIOLATIONS ALLEGED

COUNT 1

Fraudulent Misrepresentation/Omission Against the NPS Defendants

132. Plaintiffs incorporate the preceding numbered paragraphs as if fully restated herein.

133. The NPS Defendants made false representations and omissions of material fact to the Plaintiff and the Class in connection with the sale and administration of the PFBCs that are the subject of this lawsuit.

134. The NPS Defendants misrepresented the characteristics, uses, benefits and qualities of the PFBCs and insurance contracts.

135. The NPS Defendants misrepresented the policies and contracts conferred obligations that they either did not or intended not to honor.

136. The NPS Defendants misrepresented material facts and/or policy provisions to the Plaintiffs relating to the nature and scope of coverage provided under the PFBC and insurance contracts.

137. The NPS Defendants fraudulently suppressed material facts from the Plaintiff and the Class regarding its practice of causing or permitting insurance customers to appoint the NPS Defendants as beneficiaries on Lincoln and Memorial policies.

138. The NPS Defendants obtained policy loans on Lincoln and Memorial policies without the knowledge or authorization of the Plaintiff, the Class or policyholders.

139. The NPS Defendants' misrepresentations regarding PFBCs were calculated to induce consumers and funeral homes to enter into worthless contracts. Had

Plaintiffs known of the misrepresentations they would not have entered into the contracts or any type of business relationship with the Defendants. These misrepresentations were reasonably relied upon in entering into the contracts.

140. The NPS Defendants knew, or should have known, these representations were false when made.

141. As a direct and proximate result of its reliance upon Defendants'

142. Omissions and misrepresentations, Plaintiffs have suffered injury to their businesses or property.

COUNT 2
Negligent Misrepresentation

143. Plaintiff incorporates the preceding numbered paragraphs as if fully restated herein.

144. In the course of conducting business, all Defendants provided (or withheld) information relevant to determining whether funeral homes should enter into the contracts at issue. Each Defendant, because of a failure to exercise reasonable care, conveyed false information to Plaintiff and the other members of the Class.

145. The information provided or omitted was intentionally provided or omitted for the purpose of inducing Plaintiff and the other members of the Class to enter into their respective contracts and other business arrangements with the Defendants. Accordingly, Plaintiff and the other members of the Class were denied the information necessary to make an informed business decision.

146. Plaintiff and the other members of the Class justifiably relied on the information that Defendants provided when deciding whether to provide services pursuant to the PFBCs.

147. Plaintiff and the other members of the Class relied upon the misrepresentations and omissions directed at it and, as a direct and proximate result, have suffered damage to their businesses in an amount to be determined at trial.

COUNT 3
Civil Conspiracy

148. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully restated herein.

149. This claim is asserted on behalf of the Missouri Sub-Class.

150. All of the acts of the Defendants and each of them mentioned herein above were done in combination with Co-Conspirators with the express purpose of defrauding Plaintiff and perpetuating Defendants' unlawful and unfair enterprise.

151. All of the acts and omissions of the Defendants in furtherance of these activities was unlawful and were done with the intent to violate Missouri state and Federal laws.

152. As a result of the acts and omissions of the Defendants in furtherance of the conspiracy which existed between them and their Co-Conspirators, the Plaintiff and the members of the Missouri Sub-Class have been injured and suffered damages in an amount to be determined at trial to their businesses in that they have been deprived of the benefits of preneed funeral contracts and/or payments for funeral services required to be provided by such contracts.

153. All of the acts and omissions of the Defendants were done with the intent to benefit the Defendants and without regard to injury to the Plaintiff or the members of the Missouri Sub-Class such that the Plaintiff and the members of the Missouri Sub-Class are entitled to an award of punitive damages.

COUNT 4
Violation of Missouri Fair Merchandising Practices Act

154. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully restated herein.

155. This claim is asserted on behalf of the Missouri Sub-Class.

156. The acts and omissions of the Defendants in conspiring to defraud and defrauding Plaintiff and the members of the Missouri Sub-Class all constitute acts in violation of the Missouri Fair Merchandising Practices Act, Section 407.020 RSMo, *et seq.*

157. As a result, Plaintiff and the members of the Missouri Sub-Class have been injured in their business and property by the Defendants' unfair practices. Plaintiff and the members of the Missouri Sub-Class have been deprived of the benefits of their property as a result of Defendants' conduct in violation of the Missouri Fair Merchandising Practices Act, Section 407.020 RSMo, *et seq.*

158. There are no legitimate business justifications for Defendants' unlawful and unfair practices.

159. All of Defendants' acts in violation of the Missouri Fair Merchandising Practices Act were committed for the benefit of the Defendants and without regard to injury and loss to Plaintiff and the members of the Missouri Sub-Class such that Plaintiff and the members of the Missouri Sub-Class are entitled to an award of punitive damages and attorney's fees pursuant to Section 407.025 RSMo.

COUNT 5
Federal Racketeer Influenced and Corrupt Organizations Act
(18 U.S.C. § 1962(c) & (d))

160. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully set forth herein.

161. At all times relevant to this Complaint, the Defendants each constituted a “person” within the meaning of 18 U.S.C. § 1961(3).

162. As described previously and set forth in Exhibit B, all Defendants operated directly within or assisted a conglomerate of affiliated companies. All stood to benefit from the scheme practiced on the Plaintiff and the Class.

163. Defendants and others not named as Defendants herein were associated in fact and constituted an “enterprise” within the meaning of 18 U.S.C. § 1961(4), engaging in and affecting interstate commerce. The RICO Enterprise is a continuing organization that consists of Defendants, their officers, agents, representatives, and other individuals including the individual Defendants who assisted in devising and implementing their scheme.

164. At all times relevant to this Complaint, Defendants agreed to and did conduct and directly or indirectly participate in, or aided and abetted, the conduct of the enterprise’s affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c), committing multiple fraudulent and illegal racketeering acts, and for the unlawful purpose of intentionally defrauding Plaintiff, including: interstate mail fraud in violation of 18 U.S.C. § 1343; interstate transportation of stolen, converted, or fraudulently obtained money or goods while knowing of the theft in violation of 18 U.S.C. § 2314; interstate receipt of money or goods of the value of \$5,000 or more, knowing the same to have been stolen, unlawfully converted, or taken in violation of 18 U.S.C. § 2315. These violations included but are not limited to the acts discussed in the prior paragraphs of this Complaint. Defendants engaged in this pattern of racketeering

activity for the unlawful purpose and with the effect of defrauding Plaintiff and the members of the Class.

165. The Defendants operated as an enterprise within the meaning of 18 U.S.C. 1961(4). As set forth in Paragraph 167(a)-(g), this enterprise engaged in, and its activities affected, interstate and foreign commerce. This enterprise sold pre-need funeral benefit contracts in Missouri and other states, to buyers from Missouri and other states, and used United States mail and wires to transmit fraudulent information across state lines.

166. The fraudulent enterprise involved thousands of predicate acts of mail and wire fraud made in furtherance of the scheme. These predicate acts include, but are not limited to, fraudulent misrepresentations made via telephone to coordinate the sale of PFBCs, the mailing of fraudulent PFBCs and a fraudulent scheme to sale, lapse and replace life insurance policies sold by the related NPS Defendants. Particular examples include:

- (a) NPS received, by U.S. Mail, tens of thousands of PFBCs that it did not intend to honor according to the explicit terms of the contract.
- (b) NPS received, by U.S. Mail, at least tens of thousands of PFBCs pre-need contract payments that were not processed, used and/or invested in compliance with the terms of the contract and state law.
- (c) Upon information and belief, NPS inputted into its Contract Tracking System information regarding the pre-need contract payments, and made that information available electronically to another intermediary system located in the same St. Louis, Missouri office where NPS is located.

- (d) The intermediary system imported information from the Contract Tracking System, processed it and produced files of either (1) new insurance policies or (2) premium payment information on existing policies. Those files were routinely e-mailed as text files from NPS's offices in St. Louis to Lincoln's offices in Texas.
- (e) In joining the enterprise, Defendant Wulf Bates worked with the NPS Defendants, including Defendant Sutton, when deciding to purchase, pay for, and lapse the life insurance policies described herein.
- (f) Upon information and belief, this information was imported into NPS' Contract Tracking System, processed and produced in the form of a "batch file" that was sent from St. Louis, Missouri to Lincoln's offices in Austin, Texas. The batch files dictated Lincoln's issuance of policies and what premiums would be processed. In addition, the batch files communicated to Lincoln the decisions the Defendants had made about when to pay premium wither to cause policies to lapse and whether to buy new policies.
- (g) Without the electronic transmission of batch files across state lines, the Defendants' decisions about the policies would not have been effectuated.

167. The pattern of racketeering engaged in by Defendants involved fraudulent acts in support of the above scheme constituting mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343), and financial institution fraud (18 U.S.C. § 1346), all of which is "racketeering activity" as defined in 18 U.S.C. § 1961(1)(b).

168. Collectively, Defendants obtained millions of dollars in ill-gotten gains from the Enterprise. Defendants reinvested these ill-gotten gains in the Enterprise to

expand the scope of the Enterprise, and pay off debts accrued in the course of the operating the Enterprise.

169. Defendants' violations of 18 U.S.C. § 1341, 18 U.S.C. § 1343 and 18 U.S.C. § 1346, all of which is "racketeering activity" as defined in 18 U.S.C. § 1961(1)(b), because the acts were related to each other and had continuity. As alleged herein, the Defendants' violations of these federal statutes had the same or similar purposes, results, participants, victims, or methods of commission; they were interrelated and not isolated events. Defendants' violations of those federal statutes evidence continuity because they amounted to a closed period future with a threat of repetition.

170. Plaintiffs and Class members are persons who or that have been injured in their business or property by reasons of defendants' violations of § 1962(c) and (d) of RICO, as set forth in the Complaint. Pursuant to § 1964(c) of RICO, plaintiffs and Class members are entitled to assert this claim and to recover threefold the damages sustained and the costs of bringing suit, including reasonable attorneys' fees.

COUNT 6

Breach of Fiduciary Agreement and/or Duty Against the Trust Defendants

171. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully restated herein.

172. The very nature of the relationship created between the Trust Defendants and the Plaintiff was a relationship in which the subject matter affected the vital concerns of the Plaintiff.

173. This relationship of trust invoked a fiduciary duty owed to Plaintiff by the Trust Defendants.

174. In doing the acts alleged herein including, but not limited to (i) mishandling the pre-need contract funds received from the individual customers; (ii) failing to pay those funds as premiums to purchase policies; (iii) abdicating their responsibilities to provide independent advice and control over the Trusts' assets by appointing Randall Sutton (President and Director of NPS since June 23, 1983; President of Lincoln from May 26, 2000, through March 31, 2005; Chief Executive Officer of Lincoln since March 31, 2001; and Director of Lincoln since August 19, 1999) as Wulf Bates' agent to perform daily "administrative" functions on behalf of the Trusts; (iv) purchasing stock in Defendant Forever on behalf of the Missouri Trusts; and (v) wasting the assets of the Missouri Trusts by allowing thousands of life insurance policies to lapse for the benefit of the NPS Defendants as described herein; (vi) taking out millions of dollars in policy loans thereby dramatically reducing the cash surrender value of the policies; and (vii) siphoning the assets of the Missouri Trusts and the NPS Defendants for the benefit of the NPS Defendants and their ultimate beneficiary, the RBT Trust II, the Trust Defendants, and each of them, breached the fiduciary duties owed to Plaintiff.

175. As a legal result of the breach of fiduciary duties by the Trust Defendants, and each of them, Plaintiff and the Class have suffered damages according to proof.

176. In doing the acts alleged, the Trust Defendants acted with malice, oppression, and fraud. Such conduct, in conscious disregard of Plaintiff's and the other Class members' rights, justifies an award of punitive or exemplary damages against the Trust Defendants in amounts to be established according to proof.

COUNT 7
Unjust Enrichment

177. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully restated herein.

178. Defendants have not compensated the Plaintiff and members of the Class for costs and expenses they have or will incur in providing funeral and burial-related services.

179. Defendants have been unjustly enriched by collecting fees associated with funeral benefit contracts and failing to compensate the Plaintiff and members of the class for their costs and expenses incurred as a result of providing funeral and burial-related services.

180. The Plaintiff and members of the Class are entitled to a restitution of all fees collected by the Defendants for the sale of pre-need funeral benefit contracts.

COUNT 8
Money Had and Received

181. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully restated herein.

182. The Defendants hold money which in equity and good conscience belongs to the Plaintiff and members of the Class and which the Plaintiff and members of the Class paid because of mistake or wrongful conduct by the Defendants.

183. The Plaintiff and members of the Class are entitled to restitution of all fees and expenses paid because of mistake or wrongful conduct by the Defendants.

COUNT 9
Theft By Deception

184. Plaintiff incorporates by reference the preceding numbered paragraphs as if fully restated herein.

185. The Defendants' conduct as described herein constitutes theft by deception.

186. As a proximate result of the Defendants' theft by deception, the Plaintiff and the members of the Class have suffered damages in amounts to be established at trial.

COUNT 10
Breach of Contract

187. Plaintiffs incorporate by reference the preceding numbered paragraphs as if fully restated herein.

188. Plaintiffs and individual consumers entered into a written contract, and/or an implied-in-law contract for consideration with respective Defendants to provide compensation for funeral and burial-related services.

189. Pursuant to such written, oral and/or implied-in-law agreements, the Defendants agreed to provide compensation for such funeral and burial-related services. Defendants, and each of them, breached their contractual duties by failing to provide such compensation to the Defendants.

190. As a legal result of the breaches of contracts by Defendants, Plaintiffs have incurred damages in the amount of past, present and future costs and expenses for funeral and burial-related services that were not reimbursed by the Defendants in an amount to be established according to proof.

XI. DEMAND FOR JURY TRIAL

191. Plaintiff demands trial by jury on all issues so triable.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of themselves and the other members of the Class, respectfully prays:

a. that the Court determine that this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action be given to the Class;

b. that the acts alleged herein be adjudged and decreed to be unlawful in violation of the federal and state claims asserted herein;

c. that the Class recover three-fold the damages determined to have been sustained by them pursuant to 18 U.S.C. § 1964(c) and state law, and that joint and several judgments be entered against Defendants in favor of the Class;

d. that the Missouri Sub-Class recover punitive damages determined to have been sustained by them pursuant to Missouri state laws, and that joint and several judgments be entered against Defendants in favor of the Class;

e. that the Class recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorney fees as provided by law;

f. that Defendants be enjoined from continuing or resuming their unlawful acts discussed above; and

f. the Class be granted such other, further relief as may be determined to be just, equitable and proper by this Court.

DATED this 20th day of June, 2008.

/s/ J. Michael Ponder

J. Michael Ponder #38066

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