

165. Once NPS got possession of the “roll-over” money into the NPS pre-need trust accounts, the RICO Defendants generally would direct the purchase of Lincoln whole life insurance policies for most of the roll-overs. Some roll-overs were never funded by insurance, despite the RICO Defendants’ misrepresentation to funeral homes that “Proceeds [from the roll-overs] will go to trust, *and subsequently be placed in life insurance within thirty (30) days.*” (emphasis added)

166. The RICO Defendants misrepresented to funeral homes seeking to complete a roll-over with NPS that “There is a double-layer of protection using *trusted* insurance[.]” (emphasis added)

167. For those roll-overs where insurance policies were purchased, the RICO Defendants and/or Promissory Note Defendants would engage in the same schemes described in this Complaint to take the “roll-over” money. Additionally, for all roll-overs, the RICO Defendants and/or the Promissory Note Defendants would take the money from the NPS pre-need trusts and issue promissory notes and/or debentures as set forth previously in this Complaint.

G. *The Investment Advisor Defendants Played a Critical Role in the Scheme to Defraud*

168. The NPS pre-need trusts consisted of a variety of trust accounts established by NPS to supposedly hold the funds collected from the pre-need contract sales as required by state law to be placed in a trust account.

169. Five of these trust accounts, called NPS Pre-Need Trust I through NPS Pre-Need Trust V, were established to purportedly hold funds generated from the sale of pre-need contracts mainly in Missouri.

170. Another account, called the NPS Iowa Trust, was established to hold funds generated primarily from the sale of pre-need contracts in Iowa.

171. Two other trust accounts, called the “Mt. Washington Forever Pre-Need Trust” and the “Mason Securities Association d/b/a Funeral & Cremation Society of America Pre-Need Trust,” were established by subsidiaries of Defendant Forever Network to hold funds generated from the sale of pre-need contracts at the Mount Washington Forever Funeral Home in Independence, Missouri and by Mason Securities Association, respectively. A large portion of the assets of those trusts were Lincoln life insurance policies, and, upon information and belief, Defendants perpetrated the same fraudulent schemes with respect to those policies as with policies held by the other NPS pre-need trusts.

172. Upon information and belief, there were many other trusts associated with Defendants, some of which are additional pre-need trusts. The RICO Defendants may have perpetrated the same fraudulent schemes as to one or more of those additional trusts, thereby further damaging Plaintiffs.

173. The NPS pre-need trusts were legally required to hold funds received from NPS for future funeral services under a Trust Agreement.

174. In 1988, NPS, through Defendant Sutton, engaged Defendants Wulf and Wulf Bates to act as purportedly “independent” investment advisors for the NPS pre-need trusts. Defendants Wulf and Wulf Bates served as investment advisors for all the NPS pre-need trusts and continued to act as investment advisors until NPS was placed in receivership.

175. Defendants Wulf and Wulf Bates were not “independent” investment advisors and they materially participated in and furthered the RICO Defendants’ scheme to defraud.

176. In 1994, Defendants Wulf and Wulf Bates appointed and authorized Defendant Sutton to act as an “investment agent” on behalf of Wulf and Wulf Bates for the pre-need trust funds. At that time, Defendant Sutton was the President of both NPS and Lincoln.

177. As an “investment agent” for Defendants Wulf and Wulf Bates, Defendant Sutton performed, with full authority on behalf of Defendants Wulf and Wulf Bates, daily “administrative functions” relating to the NPS pre-need trust assets that would and should otherwise have required the oversight and approval of Defendants Wulf and Wulf Bates. Defendant Sutton was therefore able to directly manipulate the trust assets for the RICO Defendants, the Fraudulent Transfer Defendants, and the Promissory Note Defendants.

178. Defendants Wulf and Wulf Bates received more than \$600,000 in fees from Lincoln and other Cassity Consortium entities between 2005 and 2008 and received additional compensation from NPS of at least \$15,000 per year. Defendant Wulf and Trip Bates were paid health benefits directly by the same entity within the Cassity Consortium that paid all other Cassity Consortium employees’ health benefits, as if Defendant Wulf and Trip Bates were employees.

179. As purportedly “independent” investment advisors, Defendants Wulf and Wulf Bates owed fiduciary duties to NPS as the entity that settled and funded the NPS pre-need trust accounts, and to the funeral homes and consumers as the beneficiaries of the pre-need trusts. Those fiduciary duties include, without limitation, loyalty, care, good faith, candor, sound business judgment, forthrightness, and fairness, through their direction and control over the trust funds.

180. Defendants Wulf and Wulf Bates authorized improper policy loans, depleted the pre-need trusts' cash in exchange for promissory notes, failed to ensure payment of principal and interest from the notes, disregarded the types of policies being purchased and the value of policies being surrendered, authorized the lapsing of some policies, and ignored the withdrawals made from the NPS pre-need trusts, all in violation of their fiduciary obligations.

181. Defendants Wulf and Wulf Bates knew for at least several years prior to the demise of NPS, Lincoln, and Memorial that the NPS pre-need trusts had insufficient assets and cash inflow from the sale of pre-need contracts to pay the premiums due on the insurance policies, and to pay the funeral benefits. Defendants Wulf and Wulf Bates engaged in various schemes described in this Complaint in order to generate cash necessary to pay such present obligations without regard to the obvious and negative impact these payments would have on the trust assets and the ability of the trusts to pay future obligations to the beneficiaries.

182. Defendants Doug Cassity, Scannell, Lumpkin, and Wittner drafted letters for Defendant Wulf Bates' signature that were purportedly to come from Defendant Wulf Bates as the "independent investment" advisor to the NPS pre-need trusts directing the trusts' actions as to the trusts' assets. These letters were generated to make it look like Defendant Wulf had alone been directing the activities of the trusts when in fact this was not true. The letters were also generated to give the false impression that the RICO Defendants were no longer engaged in the practice of taking policy loans. Defendant Wulf signed some or all of these letters drafted for his signature.

183. An example of a letter drafted by Defendants Doug Cassity, Scannell, Lumpkin, and Wittner for Wulf's signature follows (this example letter was drafted by Defendants Scannell and Doug Cassity):

Dated: May 29, 2007

Mr. Randall K. Sutton
National Prearranged Services, Inc.
10 South Brentwood Blvd.
St. Louis, MO 63105

RE: National Prearranged Services, Inc. Pre-need Funeral Trust

Dear Mr. Sutton:

As the independent investment advisor for National Prearranged Services, Inc. Preneed Funeral Trust I have historically recommended that the Trust purchases life insurance policies to fund the prearranged funeral contracts and exercise its right to request policy loans on those life insurance policies. This confirms that I will no longer advise that NPS or the Trust exercise their right to apply for and receive policy loans.

Sincerely,

[signature]

David R. Wulf

184. As evidenced by the following additional facts, Defendants Wulf and Wulf Bates failed to disclose that they were not independent from NPS and Lincoln, but rather were actually acting in their own interest and in the interest of the other RICO Defendants, rather than in the interests of the pre-need trust beneficiaries:

- a) Defendants Wulf and Wulf Bates directed the investment of millions of dollars of NPS pre-need trust funds into Defendant Wulf's personal investment partnerships.

- b) Defendants Wulf and Wulf Bates directed the investment of NPS pre-need trust funds in over 275,000 shares of stock in Defendant Forever Enterprises.
- c) Defendant Wulf personally owned over 18,000 shares of stock in Defendant Forever Enterprises, one of the entities in the Cassity Consortium that ultimately owned Lincoln.
- d) Defendants Wulf and Wulf Bates relied on NPS computer programs to make their decisions on purchasing life insurance policies from Lincoln.
- e) Defendants Wulf and Wulf Bates did not consider that NPS received a commission from Lincoln for every insurance policy purchased with NPS pre-need trust assets.
- f) Defendants Wulf and Wulf Bates' offices were on the fourth floor of the same St. Louis building that housed NPS, Defendant Forever Enterprises, and Defendant NHE, Defendant LMS, Defendant Forever Network, Defendant Texas Forever, Defendant NPS Agency, Defendant Legacy International, and Defendant Brentwood Heritage.

*H. The Trustee Defendants of the NPS Pre-Need Trusts
Breached Their Fiduciary Duties*

185. The Trustee Defendants or their respective predecessors in interest, at various relevant periods, served as trustees of the NPS pre-need trusts in Missouri and Iowa, and received substantial fees in exchange for providing trust services.

186. During the time each Trustee Defendant (or its respective predecessor in interest) served as trustee of one or more of the NPS pre-need trusts, each had a fiduciary duty to both