IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JO ANN HOWARD AND ASSOCIATES, ET. AL.
PLAINTIFFS

V.

CASE NO. 09-CV-1252-ERW

J. DOUGLAS CASSITY, ET. AL.
DEFENDANTS

MOTION TO MODIFY ORDER AND MAKE DISMISSAL OF DEFENDANT CASSITY "WITH" PREJUDICE AND /OR TO REINSTATE DOUG CASSITY AS A DEFENDANT UNLESS BRENT CASSITY IS ALSO DISMISSED WITH PREJUDICE

COMES NOW Defendant Doug Cassity and moves this Court to modify its order dismissing this defendant without prejudice. This defendant has still not been served with a copy of Plaintiffs' Motion by mail, but by immediate return email on July 21, this Defendant informed attorney Pozner that this Defendant opposed the dismissal unless said dismissal was "with prejudice" and would file a motion to that effect. Obviously, attorney failed to so inform the Court, and the Court has issued an order prejudicial to this defendant and others without this defendant having an opportunity to be heard.

Using the criteria presented by the Plaintiffs, the dismissal should be "with" prejudice, not "without " prejudice.

Criteria (1) The fact that the Plaintiffs have already been awarded the $435,000,000 judgment they seek against this defendant and Defendant Brent Cassity (indigent defendants) is a "just" reason for dismissal. But it is a reason that the case should be dismissed "with" prejudice, not dismissed with plaintiff having the right to file again, after they not only have a maximum money judgment, but have caused defendants incarceration and the destruction of Defendants' family life...at some point we are entitled to start again without fear that Texas regulators, Chris and Elizabeth Fuller, who supervise this case will order these or other attorneys to again sue us on the same facts just to continue their reign of terror and shield their wrongdoing. Brent Cassity and Doug Cassity should be dismissed with prejudice.

Criteria (2) It is a compete waste of judicial resources to dismiss this case and provide the plaintiffs with the opportunity to file again...the defendants are indigent and in presenting their case among a group of defendants who have lawyers, at least, we have the opportunity for a fair trial...if the plaintiffs can isolate the indigent defendants and sue us again, the indigent, incarcerated defendants have no chance at a fair trial.

Criteria (3) As stated above, subjecting the indigent defendants to a separate trial prevents the indigent defendants from any ability to present a defense. When the plaintiffs refile against the indigent defendants, the indigent defendants will be forced to file all the motions that attorneys for other defendants now file. Presently, if the indigent defendants believe the attorneys for other defendants have adequately covered the issues, the indigent defendants can piggyback on said filings. When the plaintiffs re-file against the indigent defendants all such motions will have to be filed again and the resources of this Court will have been wasted in this case.

Criteria (4) Dismissal without prejudice gives Plaintiffs a huge tactical advantage. In that, NPS's attorney Howard Wittner has settled and is cooperating with plaintiffs, rather than defending the advice he gave to NPS and the Cassitys. This defendant is the only defendant alive who participated in the negotiation and monitoring of the 1994 Consent Judgment. That being the case, as long as this defendant is part of the case, this defendant can at least provide a narrative as to the facts back in the 1980s and 1990s. When this defendant received a paper copy of Robert Lock's expert opinion, it was clear, Lock, who set up the monitoring practices pursuant to the 1994 Consent Judgment on behalf of the Missouri Attorney General, was committing perjury and working a fraud on the Court.
On the 17th, this Defendant provided an email narrative to family members pointing out Lock's false statements and the legality

of NPS's actions. (Exhibit A...family names redacted) My emails are, of course, monitored by the federal government, and 4 days later, the Pozner law firm, who brags on their web site about how they have worked in partnership with the federal government, to bring down the Cassitys, asked that I be dismissed without prejudice so that I obviously would be denied future access to evidence and the ability to provide my opinion to family members. The plaintiffs risk an adverse judgment if I continue to be in the case. The Plaintiffs, without doubt, will seek a forum in which the indigent defendants are isolated by incarnation with no opportunity to challenge evidence against us.

FOR THE FOREGOING REASONS, this Defendant requests the dismissal be modified to be "with prejudice," to also include defendant Brent Cassity who is in the exact, same circumstance, or in the alternative that this defendant be restored as a defendant in order that he may have some chance at a fair trial and for such other orders as this Court finds just and reasonable.

Dated this 24th day of July, 2014.

Respectfully submitted,

J. DOUGLAS CASSITY, DEFENDANT PRO SE

CERTIFICATE OF SERVICE

Please deliver copy to Judge Webber and all parties as I am incarcerated and have no ability to do so.

TRULINCS 02005045 - CASSITY, JAMES DOUGLAS - Unit: MAR-J-A

FROM: 02005045
TO: CASSITY, [redacted]
SUBJECT: EXPERT TESTIMONY
DATE: 07/17/2014 03:37:06 PM

EXHIBIT A

[redacted], I was finally able to get copies of the Expert Testimony Reports.

When I asked you on what "assumptions" did the experts base their opinion. I meant "causation"...what did you or your mother do or in what conspiracy are you alleged to have participated which "caused" losses to the plaintiffs.

It is alleged that the bank trustees and the company violated Missouri law and the Consent Judgment by unlawfully removing money from the preneed trust which "caused" the damages...if that "assumption" is untrue and Texas and *Elizabeth Fuller* "caused" the damages by refusing to accept new premiums from NPS to cover NPS's future liability and thus putting NPS in receivership when NPS had never in 29 years failed to honor even one preneed death claim...then the bank trustees and the Cassitys owe nothing.

My analysis here is meant to be viewed by your attorneys and I hope your attorneys would pass this email along to [redacted] deposing Bob Lock and the National City's attorneys before Lock is deposed because the National City attorneys are only attorneys who appear to have read Chapter 436 and someone needs to bury Bob Lock before he is allowed to continue his fraud on the court. I was blocked from hearing his and Ommens' depos and, of course, do not have copies...so my comments only reflect Lock's report.

All of the experts, except Lock, "assume" that all NPS withdrawals from Trust IV were illegal. The other experts misquote 436 and refer to general trust principals pursuing a theory that a Missouri preneed trust fund is statutorically created to pay for a client's funeral...it is not, 436 only provides for reimbursement to the seller after the seller has paid for a funeral from seller's own funds (436.045).

The plaintiffs are relying on Lock to prove a violation of 436 and the Consent Agreement... it is Lock who claims "an in-dept knowledge of chapter 436 of the Missouri statutes, which regulates the preneed industry, as well as chapter 214, which regulates endowed care cemeteries." (Page 1, Lock Report.) It is Lock's absolute false testimony which is used by Plaintiffs in an attempt to establish "causation" (violation of 436).

He claims he is on the "cutting edge of applying these statutes in compliance audits...(and) called in to advise the Missouri Attorney General's office...provided training and advice on best accounting practices for depositing and withdrawing money from pre-need trusts, in compliance with chapter 436...(and) consider myself as having an intimate knowledge and expertise in 436 compliance issues." (Lock Report, pp. 1-2)

Bob Lock monitored and reported, monthly, the practices of NPS's preneed trust for 6 years from 1994 to 2000, receiving $100,000s for his "advise on best accounting practices" and not one time did he request or receive an order from the Circuit Court and Attorney General that the practices of NPS, the bank trustees or the Investment Advisor violated any provision of the Consent Judgment or Chapter 436. In fact, his monitoring began in February 1994 and he never requested a hearing by the supervising Circuit Court on any issue or practice regulated by 436 or the Consent Judgment. All practices of the bank trustees, NPS or the Investment Advisor with which he had any question were negotiated to Lock's satisfaction and thereafter monitored by his firm and reported to the Missouri Attorney General and Judge of the supervising Circuit Court; in May 2000 he wrote the Court his monitoring efforts were concluded, but it was noted NPS was to permanently follow the practices monitored under the Consent Judgment by Lock. (see below for cites)

Lock Report
II.1 Lock says he relies on his depo??? Why??? He should rely on his actual monitoring and reports he made from 1993-2000. I have summarized how Lock, giving his "advice on best accounting practices for depositing and withdrawing money from pre-need trusts" monitored every practice he now claims are illegal. Go to Pacer on this case, for the filing made with the court on June 17, 2011, Doc. #726, #726-1through # 726-6 for many of those reports, none of which he cites in his report. I have no ability to attach documents so you will need to print this report off as I refer to it herein.

II.A.Chapter 436 2. Lock's comments are interesting, but miss leading.
Lock says 436.031 states "The trustee shall accept all deposits made to it"...what Lock fails to point out is that (1) 436 does not state how much or what percentage shall be deposited in trust, (2) nor does 436 say when any deposit of any kind shall be made and 436 (3) does not specify whether a deposit shall be in cash, assets or other property. The Pre-1982 law said 80%

cash must be deposited 30 days after receipt as does the new 2009 436 statute, but the law from 1982-2009 had no such cash deposit requirement.

After 1982, when the law was changed to a burial law concept with the seller liable for covering the cost of a funeral, and no exact deposit requirement in trust, NPS made no deposit in trust until 30 days after the funeral contract was paid in full(some contracts were paid out over 10 years). Since 436 was silent as to how, when and what to deposit in trust, Nps's attorneys advised NPS to follow the guideline of the cemetery trust law, 214 (which Lock also claims to be an expert) provided for deposit in trust 30 days after the cemetery contract was paid in full and allowed in kind deposits. So from 1982 until 1994, this was NPS's practice.

From 1982 to 2009, 436 statute is basically a burial insurance statute, not a preneed trust created, like in other states, where money in trust buys a funeral. There is no provision in 436 which provides that funds are held to pay for funerals. Instead the law provides that the seller can charge a fee for providing a funeral at a discount. For example, NPS charged a 12% annual fee on the price of the funeral and agreed to pay for the funeral even if the client has only paid a few dollars before death. If a client had paid in $100 on a $5000 funeral NPS had to pay $4900. The $4900 comes out of NPS's pocket. 436.045 does not say the trust pays for the funeral, but that NPS gets reimbursed with deposits made with respect to a client after NPS paid for the funeral...the deposit could be NPS deposits or a deposit from the proceeds of a life insurance policy purchased to cover NPS's liability or a straight payment without reimbursement if no money was deposted (contract not yet paid in full).

The above background is the reason for the 1992 lawsuit with the state of Missouri. Lock's finding of underfunding of $13m in 1992 was based on his view of deposits and that insurance had to be valued at "cash surrender value" now renewed in this lawsuit. There is no finding in the lawsuit that supported Lock's opinion nor is there such a finding in the Consent Judgment. Instead Attorney General Ommen in his settlement memo of 12-12-93 states "We are removing cash surrender as the test..." for determining aggregate market value (Doc# 726-1, pages 2-4). Only face value is referred to in the Consent Judgment, and was the only test for aggregate market value until NPS was ambushed and the test changed unilaterally in 2008 without going back to the Circuit Court which still had jurisdiction over NPS, the AG and the Consent Judgment.

Pages 4-6 of Lock's report are especially significant. All of the deficiencies he says he investigated and comments he makes are a result of his interviews and review of existing practices from February to May 1994. In fact, at page 6, paragraph 17, after reviewing all his notes which are reported on his pages 4-6 with me, I, in fact, did say if "we" are going to develop new procedures for NPS, the investment advisor and the bank trustees based on the Consent Agreement and use of life insurance, "we" would have to do it, "we" meaning Lock, as the expert, Nps and the AG would have to develop the new procedures because the bank trustees were not parties to the Consent Judgment. Lock promised he would go to work with all parties and develop proper procedures to implement the agreement reflecting proof of deposits and using face value, not cash surrender value as the test for withdrawal of funds under 436.031.

Lock then wrote a letter to the judge and all parties outlining his concerns on May 26, 1994 (i do not have a copy, but it is referred to in his December 14, 1994 letter, Doc # 726-3, paragraph 1.) Between May 24 and December 14th, NPS, the investment advisor and the bank trustee implemented changes in procedure based on Lock's "advice on best accounting practices for depositing and withdrawing money from preneed trusts" (Lock's description of the quality of his advice on page 2 of his report). In paragraph 1 of the December 14th report to the court, Lock says that as of November the bank trustee has changed procedures and and the trustee signs off on the cash deposit report which summarizes the net effect of life insurance in force (see 726-3, pages 5-9 for this report) and the monthly cash deposits and withdrawals receipt (see 726-3, page 10) which details cash in from new business and monthly client payments and cash out for death claim deposits from life insurance and cancelations. Although the money is "commingled," as permitted by 436.031,for purposes of buying life insurance each monthly report attached to the report details the "record of all payments received" from each customer. I do not have a copy of the detail report which was attached but it was always 100s of pages long.

In any event, by December 14th, Lock reported the new procedures that, "we," that being Lock, the AG, NPS, the bank trustee, and the investment advisor had developed to the Judge and said the procedures were "responsive." Lock recommended "no change to the investment advisor procedures". Lock monitored these procedures for 6 years and NPS, the bank trustees and the investment advisor relying on Lock's expertise followed those procedures until 2008, when Elizabeth Fuller issued the "no new premiums order" preventing NPS from paying premiums so that all death claims could be paid by the life insurance in trust.

After reaching agreement on procedures in December 1994, Lock monitored policy loans, surrender and reissue of life insurance in trust, policy loans and at all times allowed withdrawal of cash in trust so long as the aggregate market value (face amount of life insurance in trust) exceeded the amount deposited in trust. One need only compare the face amount in trust from the life insurance in force monthly report (726-3. p.5) with the total deposits in trust (726-3, p.10) to see that NPS was always entitled to withdraw money from trust every month from December 1994 to March of 2008 so long as premiums had been paid

to keep the insurance in force. See 726-5, pp. 5-6 where in 2008 Lock agrees with NPS's attorney that logically, once premiums are paid each month there should be no money in trust.

Reading Doc 726...at all times aggregate market value of funds in trust was face of life insurance in trust. in fact, the only question that the expert Lock raised was that the bank trustee should reduce aggregate market value by the amount of policy loans made to NPS from the face amount of the insurance. But Lock agreed that a "term" policy in the amount of the policy loans would provide the aggregate market value for the $13.5m in policy loans. (726-4. p.5) When NPS was released from monitoring in 2000, the $76m life insurance in trust, was valued at $76m market value, see May 2000 bank statement and NPS was in compliance. In 2008 the $156m of life insurance was valued at $156m market value and enter Texas who knows nothing about the Consent Judgment or 436 and throws NPS into receivership.

All these transactions were in plain view and reported not only to Missouri, but to the SEC (726-2, p. 2). The Missouri Bank Examiner, Don Frances, in his report during monitoring in 1999 referred to market value as face and asked about the withdrawal of $47m from the $58m dollar trust by NPS...face was the only value considered.

Also note how Lock falsifies the language of the Consent Judgment on his page 4, #10....Lock says the CJ "essentially mirrors" 436...absolutely false...436 has no deposit requirement. Also Lock talks about "physical" custody and control....note the statute never refers to either physical or contractual custody or control, leaving that option to the parties.

~~I'm really think you or your attorneys need to get this info to the attorneys who are deposing Lock Monday. If you attorneys can get it to them today or tomorrow maybe they can review over the weekend and catch this liar in enough lies to show NPS and~~ the bank trustees were not the "cause" of NPS's failure. The "cause' was preventing NPS to continue to do business by buying insurance to cover its liabilities like was agreed and monitored.

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James Cassity
Marion USP
Marion, IL 62959

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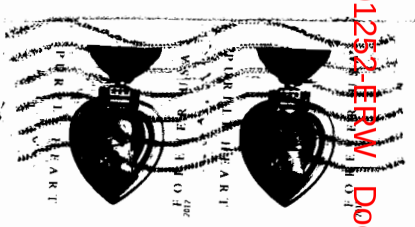

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