

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. )  
JEREMIAH W. (JAY) NIXON, )  
Attorney General, )  
 )  
Plaintiff, )

v. )

Case No. 94-CCO-55012

NATIONAL PREARRANGED )  
SERVICES, INC., )  
 )  
Defendant. )

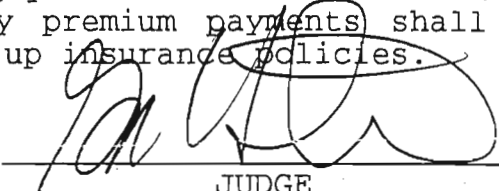
CONSENT MODIFICATION OF JUDGMENT

Now on this 19<sup>th</sup> day of August, 1995, the parties having consented to this modification of judgment, and the Court being fully advised in the premises; and

WHEREAS, the parties believe the following modification is in the best interest of each of them and the people of the State of Missouri,

NOW, THEREFORE, the Court modifies the consent injunction issued on February 1, 1994, in the cause by adding the following additional sentences to paragraph 4 ending on page 7:

Notwithstanding the foregoing provision, NPS may use the additional One Million Dollars (\$1,000,000.00) annually placed into the restricted account, to purchase paid-up insurance policies for customers covered by the existing preneed trust referred to in this section. The paid-up policies shall then remain in such trust and replace corresponding insurance policies which have monthly payment premium schedules. Further, all premium refunds received from the cancellation of the existing policies and the total of all additional amounts which become increasingly available as a result of the reduction in the monthly premium payments shall be used to purchase additional paid-up insurance policies.

  
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JUDGE

DATED: 8/10/95

0 Signed

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. )  
 JEREMIAH W. (JAY) NIXON, )  
 Attorney General, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NATIONAL PREARRANGED )  
 SERVICES, INC., )  
 )  
 Defendant. )

Case No. 94-CCO-55012

CONSENT JUDGMENT

Now on this 1<sup>st</sup> day of February, 1994, the Stipulation for Consent Judgment having been fully executed by Plaintiff's counsel, National Prearranged Services, Inc. ("NPS") and its counsel, and presented to the Court, and the Court being fully advised in the premises, the Court finding that this Consent Judgment will adequately protect the public interest and this Court further finding that it is a court of proper venue having jurisdiction over these matters, and

WHEREAS, the parties to the Stipulation have been engaged in the litigation of the meaning and definition of Chapter 436, RSMo and certain of its sections in the matter of State of Missouri ex rel. Missouri Department of Economic Development, Joseph L. Driskill, Director, Missouri Division of Professional Registration, Randall Singer, Director, and State Board of Embalmers and Funeral Directors v. National Prearranged

Services, Inc. Case No. CV192-1369CC, Cole County Circuit Court (hereinafter "prior litigation"); and

WHEREAS, the parties believe the following Consent Judgment constitutes a fair and adequate settlement of the issues involved between them in this cause of action and such above-stated prior litigation:

WHEREAS, the parties have stipulated and consented to the entry of the Consent Judgment without the taking of proof; and

WHEREAS, the parties agree that it is in the best interest of each of them and the people of State of Missouri that this matter be amicably resolved between the parties; and

WHEREAS, the parties have agreed that after a full examination of the matters and issues in conflict between them, the citizens of the State of Missouri are best served by the execution of this Stipulation for Consent Judgment; and

WHEREAS, the parties have agreed that they will not disclose any matters and documents related to examinations, audits or monitoring, sealed or protected by orders of the Court in the prior litigation and, further, the parties have agreed that such orders do not apply to the public filing of the Stipulation; and

WHEREAS, the parties have agreed that contemporaneous with the entry of the Consent Judgment in this cause, the prior litigation shall be dismissed with prejudice; and

WHEREAS, the parties have hereby waived all claims one against the other and parties to the prior litigation, whether

legal or equitable, regarding any matter directly or indirectly related to this or the prior litigation based on acts or omissions occurring prior to the execution of the Stipulation for Consent Judgment or any violations or alleged violations of Chapters 407 or 436, RSMo, occurring prior to the execution of the Stipulation for Consent Judgment; and

WHEREAS, the parties have agreed and stipulated that they each have not waived any claims one against the other whether equitable or legal regarding any violations or alleged violations of this Consent Judgment or alleged violations of federal or state law occurring after the execution of the Stipulation for Consent Judgment in this cause; and

WHEREAS, the parties have agreed that no Court has ruled that NPS has or has not violated Chapters 407 or 436 in the prior litigation and that NPS has not admitted any violations of Chapters 407 or 436, and specifically denies same; and

WHEREAS, the parties have agreed that this Court is a proper court of venue and jurisdiction under Chapters 407 and 436, RSMo, and state law; and

WHEREAS, the parties have agreed that Chapter 407 is the proper statute for the settlement and judicial enforcement of preneed concerns; and

WHEREAS, the parties believe the following proposed Consent Judgment constitutes a fair and adequate settlement of the issues involved between them in this cause and the prior litigation; and

WHEREAS, the parties have read and reviewed the following proposed Consent Judgment and they understand the nature, terms and contents of said judgment.

NOW, THEREFORE, the Court issues the following final judgment in this cause:

I. FUTURE PRENEED TRUST FUNDING

1. IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that commencing with the date of entry of this Consent Judgment, all funds received from NPS preneed contract purchasers in excess of the first twenty percent (20%) of the face value (exclusive of state audit fees, reporting fees, credit life fees, and discount fees paid in addition to the face amount of the preneed contract as authorized in Chapter 436), so received on, (1) subsequent preneed contracts sold by NPS and its agents, and (2) preneed contracts that the purchasers have not yet paid in twenty percent (20%) of the face value of those contracts, shall be deposited in the form of cash payment by NPS into a preneed trust, separate from the existing preneed trusts of NPS, that complies with the requirements of Chapter 436.

2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no income distribution from the trust shall be made to NPS pursuant to § 436.031.3, RSMo, if, and to the extent that, the distribution would reduce the aggregate market value on the distribution date of all property held in the preneed trust,

including principal and undistributed income, below the sum of all funds received from all purchasers of all preneed contracts referred to in Paragraph 1 to the extent that such funds received exceed twenty percent (20%) of the face value of all preneed contracts referred to in Paragraph 1. Any property held in trust shall be invested and reinvested by the trustee or investment advisor, wholly independent of NPS, exercising such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. In no case shall control of said assets be divested from the trustee, nor shall said assets be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in. NPS shall notify the trustee or investment advisor of these provisions and shall not cause or recommend any investment decisions inconsistent with them.

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that regarding all preneed contracts referred to in paragraph 1, NPS shall deposit all payments in excess of the first twenty percent (20%) of the face value of said preneed contracts (exclusive of the fees more specifically set forth in paragraph 1 hereof) into the preneed trust specified above within

forty-five (45) days after receipt and permit the monitor to verify compliance with this provision.

## II. EXISTING PRENEED TRUST FUNDING

4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall deposit one million dollars (\$1,000,000.00) in cash into its existing preneed trust accounts contemporaneous with the signing of the Stipulation. Further, NPS shall thereafter deposit, within forty-five (45) days of receipt, in cash all funds received from customers on existing preneed contracts and, in addition, such other cash necessary to pay insurance premiums sufficient to fund insurance benefits equal to one hundred percent (100%) of the face value of the preneed contracts. Further, in addition to payment of premiums into existing preneed trusts, NPS shall deposit, beginning on January 2, 1995 and on January 2 in each succeeding year, into a separate fund in a restricted account in Boatmen's National Bank of St. Louis, a federally chartered financial institution, an additional one million dollars (\$1,000,000.00) in cash, which shall be pledged to secure future premium payments, until such time as the monitor has determined upon independent review of NPS' Missouri Preneed books and records that NPS has paid into trust and into such fund accounts cash sufficient to fully fund all projected premium liability for insurance coverage equal to one hundred percent (100%) of the face value of the preneed contracts. Regarding said separate fund, no amount of

principal or interest shall be withdrawn until the monitor has determined that NPS has paid cash sufficient to fully fund all projected premium liability. Thereafter, NPS may withdraw such funds in excess of the cash sufficient to fully fund all projected premium liability for payment of premiums.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall pledge to secure future premium payment of the insurance premium liability for existing preneed trusts, unencumbered assets, in the form of its accounts receivable, (other than that part of the existing receivables which reflect eighty percent (80%) of the face value of the existing preneed contracts referred to in paragraph 1). The monitor shall verify that all such pledged accounts receivable collected shall be deposited within forty-five (45) days after receipt into the existing preneed trusts to fund the insurance premium liability for the preneed contracts in said trusts. The monitor shall be permitted to verify that for each preneed contract in the existing trust that an insurance policy is in force in an amount equal to the face amount of the preneed contract. Further, the monitor shall be permitted to independently verify that all premiums are paid when due.

6. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall also pledge to secure future premium payment of the insurance premium liability for existing preneed trusts, unencumbered assets, in the form of the contractual rights and interests of NPS as general agent for Lincoln Memorial Life

Insurance Company, Statesman National Life Insurance Company, and Memorial Service Life Insurance Company, in all commission renewals due NPS on preneed insurance policies, including all sold by NPS agents (said commissions are projected to be in an amount no less than one million five hundred thousand dollars (\$1,500,000.00) annually.) Such renewal commissions and related information, books, records and documents shall be made available for independent review by the monitor, or the Attorney General upon request with three (3) days advance notice. Further, NPS shall maintain the value of such contractual rights and interests, with receipts and projections of commission renewals no less than Nine Hundred Thousand Dollars (\$900,000.00) annually, until NPS has paid into its existing trusts, and the restricted fund referred to in paragraph 4, cash sufficient to fully fund all projected premium liability for insurance coverage equal to 100% of the face value of the preneed contracts. The monitor shall be permitted to verify the receipt of the renewal commissions.

7. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that assets pledged in compliance with paragraphs 4, 5 and 6 above shall be forfeited to the Plaintiff in the event NPS fails to comply with any provision of this Consent Judgment.

8. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that at such time as the monitor has determined upon independent review of NPS' Missouri preneed books and records that NPS has paid in full all premium liability for insurance coverage equal to one

hundred percent (100%) of the face value of the existing preneed contracts, the terms of paragraphs 4 through 7 and the obligations of the parties in these provisions shall be deemed fulfilled and all monitoring under the Consent Judgment shall terminate.

### III. OTHER ORDERS

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall, upon a refund request made by any NPS preneed contract purchaser, refund, at least, all money paid by the purchaser in excess of the first twenty percent (20%) of the face value of the preneed contract exclusive of the fees more specifically referred to in paragraph 1 hereof.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall pay to KPMG Peat Marwick contemporaneous with the signing of the Stipulation the outstanding amount of six thousand seven hundred forty-eight dollars (\$6,748.00) representing the balance on costs and fees relating to the audit conducted by KPMG Peat Marwick pursuant to the Consent Agreement and Order entered into by the parties on March 26, 1993, in the prior litigation. NPS shall also pay to McBride, Lock and Associates contemporaneous with the signing of the Stipulation all costs and fees related to the monitoring conducted by McBride, Lock and Associates pursuant to the above-referenced Consent Agreement and Order.

11. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall pay as reimbursement of any attorneys' fees and costs to the State of Missouri to the credit of the Merchandising Practices Revolving Fund the sum of five hundred thousand dollars (\$500,000.00) in five equal payments, with the first payment of one hundred thousand dollars (\$100,000.00) contemporaneous with the signing of the Stipulation, and like amounts on the first day of January in each of the four (4) successive years. Such funds shall be available pursuant to § 407.140, RSMo 1986 for the payment of costs and expenses incurred by the Attorney General in the investigation, prosecution and enforcement of the Merchandising Practices Act and to provide funds for consumer education and advocacy programs.

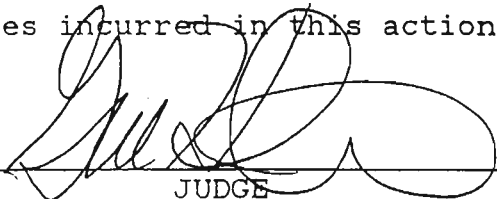
12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall permit McBride, Lock and Associates access at any time during normal business hours to NPS books, records, trust accounts and other appropriate documents relating to the sale of Missouri preneed contracts to monitor compliance with this Consent Judgment. All such information shall remain confidential and shall not be divulged to any person not a party to this action, unless admitted as evidence in any action to enforce this judgment. NPS shall pay all costs and fees relating to the monitoring of compliance with this judgment. If for any reason McBride, Lock and Associates is unwilling or unable to perform the above-mentioned monitoring, an

independent certified public accounting firm shall be selected by the Attorney General to monitor compliance.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS is hereby permanently enjoined from violating any provision or term in this Consent Judgment.

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon motion of either party and a showing that statutory provisions which relate to the matters addressed in this judgment in any legislation enacted into law subsequent to this judgment have been changed, this judgment may be modified to the extent that all preneed contracts sold by NPS after the effective date of such legislation would be subject to the terms of such new legislation.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that NPS shall pay the court costs and fees incurred in this action.

  
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JUDGE

DATED: 2/1/94