

## Findings of Fact Excerpts - Income Distributions

684. Bank examiners valued the assets in Trust IV, on the date Allegiant Bank became trustee, at over \$58 million, based on the face value of the life insurance. Ex. D-15, pg. 9. Bank examiners concluded, “Since September 23, 1998, approximately \$47M has been distributed from income cash to the Seller.” Ex. D-15, pg. 9. According to Mr. Morisse, wire transfer forms were available to examiners, they discussed the distributions to Seller; the entirety of the process was reviewed including funds to be wired out at the direction of Wulf, Bates & Murphy, the receipt of funds and the faxes related to deposits in the account, reliance on the monthly packet, the insurance verification, the list of insurance policies valued at face value, the affidavit for Mr. Sutton, with respect to deaths and cancellations, as well as death certificates, and that net income distributions were being paid monthly to NPS. BT Vol. V, 169:24-170:24.

781. Chapter 436 provided no income distribution could be made from a trust to the seller 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, below the sum of all deposits made to such trust. JSF; Mo. Rev. Stat. § 436.031.3. To conduct the market value test under Chapter 436 to determine if an income distribution could be made, Allegiant needed to know the aggregate market value of all property held in the Trusts on the distribution date, as well as the sum of all deposits made into the Trusts. JSF. Mr. Morisse did not know what was meant by the “market value test.” BT Vol. IV, 123:12-13. Even though Chapter 436 required the trust assets be valued at their market values, Allegiant substituted face value for this requirement. Ex. P-2391, 180:9-16, 189:2-16.

782. Discretionary distributions were routinely discussed at Trust Committee meetings. BT Vol. XX, 7:8-10. On April 13, 1999, the meeting minutes stated, “Morisse reported . . . a distribution will be made tomorrow from NPS preneed Trust IV to National Prearranged Services, Inc. in the amount of \$500,000.00, for partial distribution of capital gains from sale of investments in Trust IV.” Ex. D-689, pg. 7. The minutes cited Mr. Morisse’s review of Chapter 436.031.3 and the Trust Agreement. Ex. D-689, pgs. 7-8. Mr. Morisse claimed, at all times, he was aware of the following statutory provision: “. . . but no such income distribution shall be made to the seller 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 interest, below the sum of all deposits made to such trust pursuant to subsection 1 of this section.” BT Vol. XX, 8:8-18. It was Mr. Morisse’s understanding face value of all insurance policies held in Trust IV was equal to the amount of deposit – the aggregate amount of deposits to the trust. BT Vol. XX, 8:19-24.

783. It was always incumbent on Allegiant Bank to do the calculation before an income distribution, and if there was not enough money in the trust equaling all deposits, NPS could not get an income distribution. BT Vol. IV, 115:1-7.

784. Allegiant distributed income out of the Trusts to NPS on a routine basis when Allegiant served as trustee. BT Vol. VIII, 189:24-190:2. It distributed approximately \$2,571,731.00 as income to NPS during its tenure. BT Vol. VIII, 198:12-25.

785. When Allegiant Bank took over Trust IV from Mercantile Bank in August 1998, Allegiant valued Trust IV's Lincoln policies at over \$50 million, at face value. BT Vol. XX, 225:16-21. Mr. Morisse believed the starting point, to see if a distribution of income to NPS was allowed, was the \$50 million figure. BT Vol. XX, 226:15-17. Allegiant never requested an actuary or a life insurance professional confirm the value of the policies. BT Vol. XX, 226:21-24.

Mr. Morisse did not understand the market value test. His recklessness in administering the Trusts caused millions of dollars in losses to the Trusts. He was authorizing distributions from the Trusts to NPS when the aggregate market value of all property held in the Trusts was reduced below the sum of all deposits made to the Trusts.

788. Under Mr. Morisse's belief, NPS was entitled to distributions of income and realized capital gain from the Trusts at Allegiant Bank, as shown on a monthly distribution of income form dated April 12, 2001. BT Vol. XX, 72:1-8; Ex. P-101D, pg. 677. Mr. Morisse believed these transfers out of Trust IV were appropriate. BT Vol. XX, 72:9-11. NPS received an income distribution every month if there was net income in the income column of the accounting statement. BT Vol. XX, 72:23-73:1.

789. On March 29, 2002, a distribution of principal for \$100,000.00 was made to NPS. Ex. P-101D, pg. 768. It was at the direction of the investment advisor. *Id.* There was never a calculation, in this trust, which was in the hole, to determine if it had less assets than all the deposits for all consumers. BT Vol. IV, 120:9-13.

790. Chapter 436's requirement the aggregate market value of the trust assets must exceed the sum of all deposits made into the trust before income distributions are allowed was never met during Allegiant's period as trustee.