

## Findings of Fact and Law – Excerpts Regarding Individual Deposit Recordkeeping Requirement.

96. Mr. Morisse believed the trust instrument required the seller, NPS, to keep evidence of the amounts on deposit for a particular customer. BT Vol. V, 94:16-19. He was asked, “And do you believe that your view that NPS is who is supposed to keep information about the amount held in trust for each particular consumer, do you believe that that is reflected in the trust instrument, itself?” Mr. Morisse answered “Yes.” BT Vol. V, 94:20-24. This mistaken belief by Mr. Morisse was a breach of trust.

111. Section 4.3 of the Trust Agreement stated: “Trustee shall at all times maintain accurate books and records reflecting all transactions in any way pertaining to the trust.”<sup>12</sup> Ex. P-168. Mr. Morisse believed he maintained accurate books and records reflecting the transactions pertinent to the trust. BT Vol. V, 95:8-11. He described his process in that “receipts and disbursements were reflected in transactions descriptions, booked to the trust accounting system, and reported in the statements.” BT Vol. V, 95:13-15. He did not say the Bank made records of assets kept by the Bank. Mr. Morisse believed relying on material in the monthly packets satisfied the requirements of the Trust Agreement. Section 4.3 specifically referred to accurate books and records reflecting transactions. Ex. P-168. Mr. Morisse provided Seller (NPS) an annual statement of account, showing all investments, receipts, disbursements, and other transactions effected by the trustee during the year covered by the statement, as required by the Trust Agreement. Ex. P-101D, pg. 1602; BT Vol. V, 96:13-20.

12 Section 4.3 of the Trust Agreement read: “Trustee shall at all times maintain accurate books and records reflecting all transactions in any way pertinent to the trust and shall provide the seller an annual statement of account showing the conditions of the trust and all investments, receipts, disbursements and other transactions effected by the trustee during the year covered by the agreement, the trustee shall furnish any owner, upon written request from the owner, with information regarding the amount of his account held in trust. This information, shall be first provided to trustee by Seller.” Ex. P-168, pg. 10.

114. The second duty of the trustee was “to administer the trust per the statute.” BT Vol. V, 106:6-9. Next to the last sentence of 436.031.1, which concerned a trustee maintaining adequate records of all payments received, Mr. Morisse made a notation, which he described as “Trustee - - oh, ‘duty to maintain records,’ so the note there is that trust system entries and statements would satisfy perform - - would exemplify or embody that duty.” BT Vol. V, 107:5-8. Mr. Morisse defined “trust system entries,” as “each trust department or trust company maintains its records on a trust accounting system, which is a computer software particularly designed for use by trust companies and trust organizations. And so entries are made into this trust accounting system that encompass the entirety of administrative activities as well as investment management activities. When those entries are entered into the trust accounting system, it remains as a constant in that trust accounting system. In other words, it can’t be changed, unless there’s an adjusting entry which reflects in the data for that trust accounting system. So that whether we see a transaction on the computer screen that I described, which is pulled up from data from that screen, that’s going to match word-for-word and dollar-for-dollar information printed on the statements that’s mailed to the appropriate parties. BT Vol. V, 107:9-108:3. Mr. Morisse’s belief was “we were meeting that obligation [in] that transactions and activities posted to the trust accounting system would be appropriately maintained and be able to be accounted for as needed.” BT Vol. V, 108:4-7. Mr. Morisse thought the trust accounting system met the adequate records described under the statute. BT Vol. V, 108:8-10.

115. The top paragraph of 436.031.1 stated “Payments regarding two or more contracts may be deposited into and comingled in the same preneed trust so long as the trust’s grantor is the seller of all such preneed contracts and the trustee maintains adequate record of all payments received.” Ex. D-5. One of Mr. Morisse’s handwritten notes acknowledged this trustee duty. BT Vol. II, 122:7-9. He testified maintaining adequate records of all payments received was an obligation of Allegiant Bank’s trust department, regardless of whether an investment advisor was appointed. BT Vol. II, 122:10-14. Mr. Morisse knew he was required to maintain adequate books of account of all transactions through the trust and pertaining to the trust. BT Vol. II, 122:22-123:1. Mr. Morisse never maintained account specific records for each consumer. He never knew how much money was on deposit at Allegiant for each consumer.

120. Chapter 436 referenced maintaining books and records. Ex. D-5. The first sentence of Section 436.031.5 read, “The Trustee of a preneed trust shall maintain adequate books of accounts of all transactions administered through the trust and pertaining to the trust generally.” *Id.* Mr. Morisse erroneously claims he kept track of every transaction administered through the trust “through the entries into the trust accounting system.” BT Vol. V, 112:20-24. As to maintaining other adequate records pertaining to the trust generally, Mr. Morisse used “the monthly packets and information or data, including information provided by NPS, affidavits, exhibits, death certificates, cancelled checks, et cetera.” BT Vol. V, 112:25-113:5. The Bank also maintained the wire transfer request forms. BT Vol. V, 113:6-8. All of the records maintained at the Bank were in “computer form” including the monthly trust statements. BT Vol. V, 113:9-12.

121. Mr. Morisse said he was not aware of an obligation requiring Allegiant Bank to maintain specific records by customer of specific amounts on deposit.<sup>13</sup> BT Vol. V, 113:23-114:1. Section 436.031.5 stated, “The Seller shall furnish to each contract purchaser, within fifteen days after receipt of the purchaser’s written request, a written statement of all deposits made to such trust regarding such purchaser’s contract.” Ex. D-5. Mr. Morisse believed he was not required to keep specific customer account information. BT Vol. V, 113:23-114:1. Mr. Morisse was mistaken.

13 In addition to cited provisions of the Statute, Section 4.3 of the Trust Agreement specifically provides “. . . the Trustee shall furnish any owner, upon written request of the owner, with information regarding the amount of his account held in trust. This information shall first be provided to Trustee by Seller.” This was the source of information so Allegiant could take that information and use it to maintain adequate records.

122. Mr. Morisse did not maintain a written statement of deposits made to the Trusts regarding each purchaser’s contract because he did not believe it was required by the statute. BT Vol. V, 114:22-115:1. It was his view the statute required NPS, as Seller, to keep those records, and he believed his interpretation of the statute was the same as his interpretation of Section 4.3 of the Trust Agreement. BT Vol. V, 115:2-9. Even though the Trust Agreement was more restrictive than the statute, he still believed both the Trust Agreement and the Statute supported his record-keeping approach regarding deposits of individual consumers. BT Vol. V, 115:8-13. The language cited from the Statute by Mr. Morisse pertained to collection and administration of payments made under a preneed contract. This did not abrogate the trustee’s duty to maintain records of deposits to the trust after getting the information from Seller, as provided under the Trust Agreement for the trustee to furnish information to the contract purchaser.

302. Allegiant violated the industry standard of care by not maintaining consumer-level deposit records, because, as here, where there are multiple beneficiaries of a trust, the trustee must keep records of the individual deposits made for each consumer. BT Vol. XIII, 76:2-9, 77:3-8; BT Vol. VIII, 47:2-48:2.

*Q. Allegiant's Failure to Maintain Adequate Records*

510. Allegiant had an obligation to maintain accurate books and records reflecting all transactions in any way pertinent to the Trusts. Allegiant understood it had this recordkeeping responsibility. JSF. Under custom and practice in the industry, Allegiant was required to maintain adequate books of account of all transactions in the Trusts. *Id.*

515. Chapter 436 only permitted funds from multiple preneed contracts to be comingled in a single trust account if the trustee maintained "adequate records of all payments received." Mo. Rev. Stat. § 436.031.1. Chapter 436 further specified the trustee "shall maintain adequate books of account of all transactions administered through the trust and pertaining to the trust generally." Mo. Rev. Stat. § 436.031.5. Allegiant, however, made the conscious decision it did not need to know how much money was being deposited into trust for each individual consumer. Ex. P-2391, 200:22-201:10.

528. Mr. Morisse understood, at the time of trial, the term "owner" in the Trust Agreement was the consumer who bought the contract. BT Vol. V, 97:1-6. He knew the owner could get information about the amount in their account held in trust. BT Vol. V, 97:7-10. Mr. Morisse, without any doubt, believed and confirmed NPS, as Seller, was supposed to maintain the records about the amount of each consumer's account held in trust. BT Vol. V, 97:11-14. He based his answer on Section 4.3 of the Trust Agreement which stated, in the last sentence, "this information shall first be provided to the trustee by the seller." BT Vol. V, 97:15-18. According to Mr. Morisse, "That means that the trustee needs to get the information from the seller." BT Vol. V, 97:19-21. In the ordinary course of business, contract owners paid money to NPS under their contracts. NPS then was required to inform Allegiant Bank so Allegiant could maintain records about the amount of each consumer's account held in trust.

529. Upon receipt of requests for information from consumers, Mr. Morisse called NPS and advised "them that we had received a request and for confirmation of the amount on deposit." BT Vol. V, 99:2-3. Mr. Morisse did not believe the trust instrument required him to keep account-specific information by consumer about what was on deposit. BT Vol. V, 99:4-7.

530. This process was followed when an attorney contacted Mr. Morisse on behalf of Betty Davis, a preneed consumer beneficiary, regarding the amount of Ms. Davis's contract money on deposit. BT Vol. XIX, 113:10-114:4; Ex. P-36; Ex. P-714; Ex. P-720. Ms. Davis had paid \$6,392 for her preneed contract. BT Vol. XIX, 114:7-16, Ex. P-714, pg. 2. In response, Mr. Morisse contacted Angie Hall, at NPS, and requested information on the amount in trust. BT Vol. XIX, 114:20-115:1; Ex. P-36. Ms. Hall responded the amount in Trust IV for Ms. Davis was \$5,112, which is 80 percent of the \$6,392 contract price paid by Ms. Davis. BT Vol. XIX, 115:11-18, Ex. P-36.

531. Ms. Hall's email was inaccurate. Rather than purchasing a paid-in-full policy, a multi-pay policy was purchased with an initial premium amount due of \$100, with the remaining contract money paid by Ms. Davis used, by NPS, for other purposes such as paying renewal premiums on other life insurance policies. BT Vol. IX, 97:21-98:23, 101:10-13, 102:12-17.

Allegiant repeatedly violated its duties by systematically failing to maintain control over the trust assets, protect the trust assets, and maintain the records required of preneed trustees under Chapter 436, the Trust Agreement, and the industry standard of care. Allegiant began its trusteeship by failing to properly interpret its responsibilities under Chapter 436 and the Trust Agreement.

Allegiant had an obligation to maintain accurate books and records reflecting all transactions pertinent to the Trusts, and it utterly failed to do so. It had no record of trust deposits for each consumer, it did not maintain adequate records of the Lincoln insurance policies, and it failed to reconcile the trust transactions with the little information it did receive in the monthly packets from NPS.

NPS sent a monthly “netting form” to Allegiant. It showed a gross amount of deposits for a group of preneed consumers but did not list any specific details related to consumers. Allegiant never received any supporting detail for these numbers, and did not ask for any details. This failure to maintain consumer-level deposit records was a breach of duty.

35 The Trust Agreement provided “With each deposit, Seller will provide a breakdown of how much of said deposit is to be created to each “Owner” described by number and name of Owner.”

Allegiant breached its duties in failing to keep “adequate records of all payments received” into the preneed Trusts and to “maintain adequate books of account of all transactions administered through the trust and pertaining to the trust generally,” as required by Chapter 436. Allegiant never attempted to confirm distributions were for the proper amount, and could not have done so, even had it tried, because of its lack of record-keeping. Allegiant kept no records regarding the amount deposited for each individual consumer, engaged in no reconciliation of records, did not identify whether the insurance policies were fully paid-up or had ongoing premium obligations, did not accurately report the market value assets, did not have an understanding as to why funds were being wired out of the Trusts, and did not ensure the statutorily-required test for income distributions was satisfied before distributing funds to NPS. Allegiant kept no records that would allow it to comply with Chapter 436’s provisions governing distributions.

Chapter 436 provided no income distribution could be made from a trust to a seller if the distribution would reduce the aggregate market value of all property held in the preneed trust below the sum of all deposits made to the trust. Mo. Rev. Stat. § 436.031.3. To conduct this test, Allegiant needed to know the aggregate market value of all property held in the Trusts, as well as the sum of all deposits made into the Trusts. JSF. Allegiant never performed a calculation to determine whether the trust was underfunded by having fewer assets than the total amount of consumer deposits. Allegiant did not maintain records sufficient to determine the market value of the trust assets or the sum of deposits made into the Trusts. It could not calculate the market value test, even if it had wanted to do so. If Allegiant had calculated the market value test, it would have discovered the Trusts were significantly underfunded when Allegiant took over as trustee, and continued to decrease in value over Allegiant’s tenure. There was never a time when income distribution could be made. Yet, Allegiant regularly distributed income to NPS. Allegiant breached its duties by failing to properly satisfy Chapter 436’s market value test when distributing income to NPS.