

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al.,

Defendants.

**RECEIVER’S MOTION FOR AN ORDER TO SHOW CAUSE WHY
PACIFIC LIFE INSURANCE COMPANY SHOULD NOT BE HELD IN CONTEMPT**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities, through his counsel, seeks an Order to Show Cause Why Pacific Life Insurance Company (“Pacific Life”) should not be held in contempt of court for refusing to comply with this Court’s August 13, 2020 order.

Background

1. The Receiver first summarized for the Court its the dispute with Pacific Life in his *Motion to Compel Compliance with Subpoena*, [ECF No. 1655] (“Motion to Compel”), which is incorporated herein by reference.

2. By way of brief recitation, before the Receiver’s appointment, ABFP Multi-Strategy Investment Fund LP (“ABFP MSIF”) held Pacific Life policy number VF5152870 (“Policy”). ABFP purchased the Policy on the secondary market before this Court appointed the Receiver. Pursuant to ABFP’s purchase of the policy, Pacific Life must pay the proceeds of the policy, \$1 million, to ABFP MSIF upon the death of the insured.

3. The Court appointed the Receiver on July 27, 2020. [ECF No. 26]. This original appointment did not include the subject ABFP MSIF as an entity under Receivership. It did, however, include ABFP Management Company (“Management”). Management is the sole general partner of ABFP MSIF. As the general partner, Management directed and controlled the operations and assets of ABFP MSIF.

4. In connection with his appointment, the Receiver filed notices of the Receivership in all federal courts in which Receivership assets were located. On August 13, 2020, the Receiver filed a notice of Receivership in the United States District Court for the Central District of California at docket number 2:20-mc-00079. Pacific Life is based in Newport Beach, California within the jurisdiction of the Central District of California.

5. The notice of Receivership, given under 28 U.S.C. § 754, vested the Receiver with the right to exercise authority over all assets owned by Receivership entities within the jurisdiction.

6. The Court ultimately issued an amended order placing ABFP MSIF into the Receivership on September 4, 2020. [ECF No. 238]. The September 4, 2024 order incorporated ABFP MSIF into all existing Receivership orders and proceedings as a “Receivership Entity.” By virtue of this court order, and previously filed notices, the Receiver obtained jurisdiction and control over the Policy at issue.

7. The September 4, 2024, order expanding the Receivership over ABFP MSIF also subjected ABFP MSIF to the Amended Order Appointing Receiver [ECF No. 141]. The Amended Order Appointing Receiver enjoined certain activities including any action to dissipate Receivership Assets.

Accordingly, all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning,

liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

Id. At ¶ 3.

8. The Amended Order Appointing Receiver also (i) prohibits parties from interfering with the Receiver's performance of his duties; (ii) turns over all Receivership Property to the Receiver; (iii) authorizes the Receiver to pursue recovery of assets; *Id.* ¶¶ 15, 29 -31, 43.

9. Despite the court order, and the Receiver's notice filed in the appropriate jurisdiction, Pacific Life terminated the Policy on October 29, 2020. Pacific Life terminated the Policy based on insufficient funding of the Policy by previous management.

10. Pacific Life did not provide the Receiver with notice of termination of the Policy.

11. The Receiver did, however, learn of the low level of funding in the Policy by previous management. The Receiver, through his agents, tendered the payment necessary to satisfy any shortfall in the Policy. On November 6, 2020, only seven days after the purported termination, the Receiver tendered \$38,266.21 to Pacific Life to cure the deficit.

12. For over a month, Pacific Life did not dispute the Receiver's right to continue coverage under the Policy by tendering the shortfall. Yet, without notice, Pacific Life returned \$38,266.21 to the Receiver's account on December 7, 2020. Upon inquiry by the Receiver's agents, Pacific Life indicated it would not accept the tendered funds because the policy had already been terminated.

13. In a December 7, 2020 correspondence, again not received by the Receiver at the time, Pacific Life refused to resume coverage under the Policy with the tendered amount. It instead required the Receiver to prepare and submit a formal application for reinstatement.

14. The Receiver, despite having not received the December correspondence, learned of Pacific Life's demands in January 2021 and immediately sought to submit a formal application for reinstatement.

15. The Receiver's agent asked Pacific Life to identify the exact materials it would require for submission of an application for reinstatement. Beyond identifying the necessary forms and procedures, Pacific Life required the Receiver to obtain the insured's "wet ink" signature on the application.

16. The wet ink signature requirement is not otherwise identified in any of the written materials Pacific Life provided to the Receiver.

17. The demand for a "wet ink" signature in winter 2020/2021 came during a period of peak concern and disruption due to the COVID-19 global pandemic. This was the first winter following the pandemic's onset. There was a marked surge in COVID-19 cases. Public, private, and government entities struggled to balance the need to continue daily operations against the risk and uncertainties relating to the impacts of the disease.

18. The COVID-19 pandemic disrupted the Receiver's ability to locate the insured in winter 2020/2021 to obtain the wet ink signature. Ultimately, the Receiver's agents located the insured's son, who revealed that the insured was in a long-term elder care facility in California.

19. The insured's son agreed to travel to the facility to obtain his father's signatures. The Receiver provided the son with all materials necessary for the insured's signature.

20. When the insured's son went to obtain the signature, the facility prohibited him from entering to see his father. The applicable COVID-19 guidance and regulations restricted nearly all visits to elder care facilities. This included direct family members. Despite multiple attempts, the insured's son could not see his father.

21. The Receiver informed Pacific Life of his inability to obtain a wet signature of the insured on the application for reinstatement. Pacific Life refused to accept any form of electronic signature and continued to insist on a wet-ink signature.

22. COVID-19 regulations remained in place throughout early 2021 that prohibited the insured's son from obtaining his father's signatures. Sadly, the insured died on April 1, 2021, before the full abatement of the COVID-19 restrictions.

23. Pacific Life denied coverage under the Policy.

24. The Receiver informed Pacific Life that its termination of the Policy violated the Amended Order Appointing Receiver by dissipating a Receivership Asset. The Receiver possessed ownership authority over the Policy, and Pacific Life received notice of the Receiver's appointment.

ARGUMENT

The Receiver submits that Pacific Life's termination of the Policy and eventual denial of coverage violates the Amended Order Appointing Receiver. The termination diminished a Receivership Asset. But for Pacific Life's termination the Policy, funds would have been paid to the Receiver for eventual distribution to investors.

i. The Policy Constitutes a Receivership Assets Which Could Not be Impaired Without Court Permission

The Amended Order Appointing Receiver¹ established critical elements of the Receivership. First, it authorized "exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated," of the Receivership Entities. [ECF No. 141 ¶ 1]. It then instructed the Receiver to marshal and preserve the Receivership Entities' assets. *Id.* at p. 1. To facilitate the

¹ The Court placed ABFP MSIF into receivership on September 4, 2020. [ECF No. 238]. Upon the Receiver's appointment, ABFP MSIF became subject to all provisions of the Amended Order Appointing Receiver. *Id.*

goal of returning money to victims the Court also issued an asset freeze. *Id.* At ¶ 3. The Court enjoined

all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

Id. This broad freeze is essential to the Receiver's appointment. It provides the Receiver the opportunity to investigate, identify, and recover Receivership Assets without risk of diminution.

The Amended Order Appointing Receiver empowers the Receiver to take certain actions. This includes the power to investigate the nature, location, and value of all property the Receivership Entities own or in which they have a beneficial interest. *Id.* at ¶ 7(A). It empowers the Receiver to "hold in his possession, custody, and control of all Receivership Property." *Id.* At ¶ 7(C). The Receiver is also tasked with taking the actions necessary and appropriate to preserve Receivership Property and prevent dissipation. *Id.* at ¶ 7(G).

To help the Receiver fulfill his duties, the Court also issued a robust injunction against interference with the Receiver. *Id.* at ¶ 29. The injunction restrains and enjoins any action that would "[i]nterfere with the Receiver's efforts to take control, possession, or management of any Receivership Property. *Id.* at ¶ 29(A). The injunction prohibits any action to:

Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entity, ***attempting to modify, cancel, terminate, call, extinguish, revoke*** or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or ***other agreement executed by any Receivership Entity*** or which otherwise affects any Receivership Property; or

Id. at ¶ 29(c) (emphasis added). The Court’s order provides the Receiver robust protection from any third-party actions that would diminish the value of the Receivership Assets.

The Policy constituted a Receivership Asset subject to these protections. The insured appointed ABFP MSIF as the payor, policyowner, and beneficiary under the Policy. As the beneficiary, but for Pacific Life’s termination, ABFP MSIF stood to receive a distribution upon the insured’s death. ABFP MSIF acquired this interest in July 2018 – before the appointment of the Receiver. Thus, ABFP MSIF’s interest in the Policy constituted a Receivership Asset under the Amended Order Appointing Receiver, with which third parties were enjoined from interfering [ECF No. 238, ECF No. 141 p. 1] (together defining Receivership Asset as all assets of the Receivership Entities, which includes the assets of ABFP MSIF).

ii. Pacific Life Possessed Notice of the Receivership

While Pacific Life is not a named party in the Receivership Action, it received notice of the proceedings sufficient to enjoin it from terminating the Policy. On August 19, 2020, the Receiver filed a Notice of Order Appointing Receiver Pursuant to 28 U.S.C. § 754 (the “Notice”) in the United States District Court for the Central District of California at docket 2:20-mc-00079. Pacific Life is headquartered in Newport Beach, California, which is located within the Central District of California. Thus, the Notice effectively provided Pacific Life notice of the Receiver’s appointment and vested the Receiver with jurisdiction over assets located within that district.

Section 28 U.S.C. §754 provides,

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

The court issued the Amended Order Appointing Receiver on August 13, 2020. [ECF No. 41]. The Receiver timely filed the Notice in the Central District of California on August 19, 2020, within the ten-day period provided by §754. *See also Terry v. June*, No. Civ. A. 303CV00052, 2003 WL 22125300, at *3 (W.D. Va. Sept. 12, 2003) (“Courts having addressed this issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by section 754”); *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1143 (9th Cir. 1996) (holding that the district court’s entry of a permanent appointment order following a temporary appointment order set a new ten-day period running for purposes of §754). Thus, the Receiver properly, and timely, registered his notice.

The “sole purpose” of §754 is to provide notice. *Terry*, 2003 WL 22125300, at *4; *United States v. Ariz. Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984) (identifying that the purpose of § 754 is to provide notice); *see also Carney v. Marin*, No. 3:12–CV–00181 SRU, 2014 WL 1029911, at *4 n.7 (D. Conn. Mar. 17, 2014) (“The defendants’ analysis recognizes that at least one purpose of section 754’s limitations is to ***give notice to out-of-state courts and potential litigants that a federal receiver had been appointed in an out-of-state district.***”) (emphasis added). Circuit courts confirm that a filing under §754 provides constructive notice to those within the district. *SEC v. Equity Serv. Cor.* 632 F.2d 1092 (3d Cir. 1980). This constructive notice can apply even if the receiver fails to strictly comply with the ten-day requirement in §754. *Id.*

The Receiver filed the Notice to inform parties, like Pacific Life, of his appointment. This Notice vested the Receiver with jurisdiction over all Receivership Assets in the district and

provided constructive notice that the assets were under his control. Given this Notice, Pacific Life possessed—at a minimum—constructive knowledge of the Receiver’s appointment and this Court’s oversight of all Receivership Assets, including the Policy.

Independent of the filed Notice, the Receiver provided Pacific Life actual notice of his appointment. On December 11, 2020, the Receiver, through his agents, provided Pacific Life notice of his appointment and control over relevant assets. This correspondence provided Pacific Life with a copy of the Amended Order Appointing Receiver containing the injunction against diminishment of Receivership Assets. The correspondence also identified that the Receiver tendered payment on November 6, 2020, which Pacific Life refused to accept. The correspondence alerted Pacific Life that its termination constituted the diminishment of a Receivership Asset. In other words, Pacific Life knew that its previous actions did not comply with this Court’s orders.

iii. The Court May Hold Pacific Life in Contempt for its Actions.

“[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt.” *Spallone v. United States*, 493 U.S. 265, 276 (1990). A party may initiate contempt proceedings by filing a motion requesting the court to issue an order to show cause why a party should not be held in civil contempt. *Newman v. State of Alabama*, 683 F.2d 1312, 1318 (11th Cir. 1982). “If the court finds that the conduct as alleged would violate the prior order, it enters an order requiring the defendant to show cause why [the party] should not be held in contempt and conducts a hearing on the matter.” *Mercer v. Mitchell*, 908 F.2d 763, 768 (11th Cir. 1990) (emphasis added); *Wyatt ex rel. Rawlings v. Rogers*, 92 F.3d 1074, 1078 (11th Cir. 1996) (stating that the moving party need only allege facts that, if true, would support a contempt finding). This is because courts have “the inherent power to enforce compliance with their orders through civil contempt.” *U.S. Commodity Futures Trading Commission v. Southern Trust Metals, Inc.*, No. 14-

22739, 2017 WL 2875427 at *3 (S.D. Fla. 2017) (citing *Shillitani v. United States*, 384 U.S. 364, 370 (1966)). Finally, “[c]ourts have the inherent authority to control the proceedings before them, which includes the authority to impose ‘reasonable and appropriate’ sanctions.” *Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1335 (11th Cir. 2002) (citing *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1545 (11th Cir. 1993)).

In a civil contempt proceeding, the petitioning party bears the burden of establishing by clear and convincing evidence that: (1) the allegedly violated order was lawful and unambiguous; (2) the contempt defendants had notice of the order; and (3) the contempt defendants violated the order. *F.T.C. v. Levin*, 618 F.3d 1221, 1232, 1235 (11th Cir. 2010). “The focus of the court’s inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.” *Howard Johnson Co. v. Khimani*, 892 F. 2d 1512, 1516 (11th Cir. 1990).

Pacific Life’s conduct satisfies the elements for contempt. First, the Amended Order Appointing Receiver is lawful and unambiguous. It restrains parties from interfering with the Receiver’s operations *SEC v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980) (receivership injunctions fall within the court’s inherent power to prevent interference with the administration of the estate). It is also clear in its terms. Third parties are restrained from acting to “[d]issipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to . . . attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any . . . agreement executed by any Receivership Entity.” [ECF No. 141 at ¶ 29(C)]. The language and purpose of the Amended Order Appointing Receiver are explicit. Third parties like Pacific Life cannot act to terminate, extinguish, or otherwise reduce the value of any Receivership Assets, without the express permission of this Court.

The second element for contempt is similarly satisfied. Pacific Life was on notice of the Receivership. The Receiver filed the Notice of his appointment on August 19, 2020 in the Central District of California. The filing provided Pacific Life constructive notice of the Receiver's control of certain assets, including the Policy. *SEC v. Equity Serv. Corp.*, 632 F.2d 1092 (3d Cir. 1980). It also vested the Receiver, and thus the Receivership Court, with exclusive jurisdiction over the Policy. *See* 28 U.S.C. §754; *see also* [ECF No. 141 ¶ 1] (Court exercising exclusive control over Receivership Assets wherever located). The Receiver's Notice predated Pacific Life's purported termination of the Policy on October 29, 2020. Thus, the Receiver assumed control of the Policy ***while it was still in effect***. Moreover, although the Receiver's providing of constructive notice to Pacific Life predated the Policy's termination, the Receiver subsequently provided actual notice that Pacific Life's termination violated the Amended Order Appointing Receiver. Despite these notices, Pacific Life refused to reverse its actions.

Pacific Life's conduct also satisfies the third element for contempt, given that its termination violated the Amended Order Appointing Receiver. Pacific Life terminated the Policy on October 29, 2020, while it was subject to the Receiver's control and this Court's oversight. The termination has the effect of "[d]issipat[ing] or otherwise diminish[ing] the value of any Receivership Property." [ECF No. 141 at ¶ 29(C)]. Due to the termination, and Pacific Life's refusal to accept the Receiver's efforts to reinstate the Policy, ABFP MSIF did not receive the proceeds under the Policy upon the insured's death. This has caused actual harm to the Receivership Estate and diminished the value of the estate. Indeed, if those proceeds were within the Receivership Estate, the Receiver would have additional funds available to distribute to the victim-investors of ABFP MSIF that submitted and possess allowed claims in the receivership.

iv. The Receiver's Efforts to Avoid a Motion for Contempt have been Unsuccessful

The Receiver files the instant Motion only after having exhausted its efforts to cooperate with Pacific Life to resolve this dispute. The Receiver's team worked first through Pacific Life's customer service team to achieve reinstatement of the subject policy. Customer service transferred this matter to in-house counsel. Following discussions with Pacific Life's in-house counsel, the Receiver served upon Pacific Life a subpoena requesting seven categories of documents narrowly tailored to the issues surrounding the instant policy. Pacific Life unilaterally limited the relevant time period for documents responsive to the subpoena and produced a single document in response to all seven categories.

Pacific Life transferred this matter to outside counsel with whom the Receiver's team engaged in extensive discussions. Pacific Life continued to avoid compliance with the subpoena, and the Receiver was forced to file a motion to compel Pacific Life's compliance (D.E. 1655). Pacific Life refused to file a joint memorandum regarding the discovery dispute, as required by this Court's rules. Following a hearing, Magistrate Judge Bruce Reinhart issued an order (D.E. 1716) granting the Receiver's motion to compel.

Subsequent discussions between undersigned counsel and outside counsel for Pacific Life have proven fruitless. The Receiver is left with no option other than to seek a finding of contempt against Pacific Life in order to obtain the funds that rightfully belong in the Receivership Estate for distribution to victims of the fraud committed by the Defendants in this matter.

CONCLUSION

For these reasons, the Receiver respectfully requests that the Court issue an Order to Show Cause why Pacific Life should not be held in contempt. Pacific Life violated a Court order prohibiting termination of Receivership Assets. It also frustrated the Receiver's attempts to

reinstate the Policy. Its conduct has harmed the Receiver and ultimately diminished the proceeds available for distributions to victims. The Receiver respectfully submits that Pacific Life should be ordered to pay the full proceeds of the Policy that were due upon the insured's death, \$1 million, to the Receivership. The Receiver further requests that Pacific Life be ordered to reimburse the Receivership for all fees and costs expended in pursuing the prior subpoena for records from Pacific Life and the instant motion for contempt, as the investors should not have to bear the burden of Pacific Life's contemptuous conduct.

Local Rule 7.1 Certification

Pursuant to Local Rule 7.1, the undersigned counsel for the Receiver certifies that he has conferred with counsel for the United States Securities and Exchange Commission ("SEC"), as well as counsel for Pacific Life regarding the relief requested in this motion. Counsel for the SEC has confirmed that the SEC does not oppose the relief requested herein. Pacific Life opposes the relief sought by the Receiver.

Dated: March 21, 2025

Respectfully Submitted,

**STUMPHAUZER KOLAYA
NADLER & SLOMAN, PLLC**
Two South Biscayne Blvd., Suite 1600
Miami, FL 33131
Telephone: (305) 614-1400
Facsimile: (305) 614-1425

By: /s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA
Florida Bar No. 056140
tkolaya@sknlaw.com

Co-Counsel for Receiver

**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Telephone: (215) 320-6200
Facsimile: (215) 981-0082

By: /s/ Gaetan J. Alfano
GAETAN J. ALFANO
Pennsylvania Bar No. 32971
(Admitted Pro Hac Vice)
GJA@Pietragallo.com
DOUGLAS K. ROSENBLUM
Pennsylvania Bar No. 90989
(Admitted Pro Hac Vice)
DKR@Pietragallo.com

Co-Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 21, 2025, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA