

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**AFFIDAVIT OF ROBERT A. FLEURY IN SUPPORT OF
LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT WITH MARY A. RODNEY AND RELATED PARTIES
WITH INCORPORATED SUPPORTING MEMORANDUM**

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Liquidator's Motion for Approval of Settlement Agreement With Mary A. Rodney and Related Parties with Incorporated Supporting Memorandum (the "Motion"). As set forth more fully in the Motion, the Liquidator has entered into a Settlement Agreement dated as of November 20, 2013 (the "Settlement Agreement") by and between the Liquidator and Mary A. Rodney ("Rodney"), the Community of Christ aka the Reorganized Church of Jesus Christ of Latter Day Saints, a Missouri exempt religious organization (the "Church") and The Midwest Trust Company in its purported capacity as

successor trustee of the Mary A. Rodney Charitable Remainder Unitrust under Trust Agreement dated June 22, 2002.

3. Pursuant to a Trust Agreement dated June 22, 2002, Mary A. Rodney established the Mary A. Rodney Charitable Remainder Unitrust (the "Trust"). The Trust is the holder of a certain non-recourse promissory note dated December 3, 2003 in the original principal amount of \$1,620,000 made by the Church and payable to the order of The Children's Community Foundation in its capacity as trustee of the Trust (the "Note"). The Note was delivered as payment for the purchase from the Trust of certain real estate located in Hendricks County, Indiana (the "Real Estate"). The Note is secured by a mortgage on the Real Estate (the "Mortgage"). The Note requires annual payments of interest only in the amount of \$129,600 and a single payment of all outstanding principal on December 3, 2033. Noble Trust was appointed co-trustee of the Trust on January 15, 2008.

4. On March 13, 2012, Rodney purported to remove Noble Trust, the Liquidator (to the extent applicable) and The Children's Community Foundation as co-trustees of the Trust and to appoint The Midwest Trust Company ("Midwest") as Trustee of the Trust. The Liquidator contends that the removal of Noble Trust as Trustee was ineffective because the act violated the terms of the Liquidation Order. Faced with conflicting claims as to the identity of the trustee of the Trust, the Church commenced an interpleader action against the Liquidator and Midwest in the District Court of Johnson County, Kansas, Case No. 13CV01980 (the "Interpleader Action"). In addition to the dispute regarding the purported removal of Noble Trust as Trustee, the Liquidator contends that the Note and the proceeds thereof are assets of Noble that are included in the liquidation estate to be administered by the Liquidator in the Liquidation Proceeding.

Rodney contends that the Note and the proceeds thereof are property of the Trust and are not subject to or assets of the liquidation estate.

5. The Liquidator is holding three annual interest payments under the Note totaling \$388,800 paid to Noble Trust by the Church and the Church has paid two annual interest payments totaling \$259,200 to the Kansas Court in the Interpleader Action (collectively, the “Interpleader Funds”).

6. Rodney is also the insured under a life insurance policy issued to the Rodney Irrevocable Life Insurance Trust (the “ILIT”) by American General Life Insurance Company and dated March 18, 2004 (the “Policy”) in the face amount of \$1,000,000. Noble Trust has been the Trust Administrator of the ILIT since November 1, 2003.

7. Between the time when Noble sustained the undisclosed loss of approximately \$15 million due to the soured investments in Sierra Factoring, LLC, and the time when the Banking Department took control of Noble Trust, Noble Trust continued to solicit and accept funds from clients totaling at least \$4.5 million under the same promise of 12% returns that had been made to existing clients. Instead of investing the new clients’ money in legitimate investments, however, Noble Trust used some of these funds to pay fictitious profits to other clients and to redeem principal and pay interest to clients who terminated their relationship with Noble Trust. However, it became subsequently evident to Lindsey that the flow of incoming investments was insufficient to maintain the concealment of the Sierra losses.

8. Lindsey then devised a fraudulent and illegal scheme involving the procurement of a number of life insurance policies with face values generally between \$3 million and \$10 million. At Lindsey’s direction, Noble Trust, acting as trustee or trust protector, caused applications to be submitted to various insurers, including Security Life. Many of the

applications misrepresented the applicants' net worth or income, or averred that coverage was being sought as a means of individual estate planning. Many of the insurance policy applications misstated the source of the premium financing, the terms of the premium financing, or both. In reality, many of the individual insureds were persuaded to apply for insurance in part through promises of profits from the sale of their policies on the lucrative secondary market after the contestability period expired. These insureds had little or no expectation that either they, or any other person with an insurable interest in their lives, would ever receive any death benefit from the policies.

9. In most cases, once the policies were procured and issued, the insureds were not required to pay *any* premiums to keep the policies in force through the end of the two year contestability period. (Following expiration of the contestability period, it is much more difficult for the insurance company to contest the validity of the policy.) Instead, the premiums were paid on their behalf by means of limited-recourse premium financing loans (the "Premium Finance Loans"). Neither the insured nor any other individual had personal liability for repayment of the Premium Finance Loans; recourse was limited to the insurance trust, the sole asset of which was the life insurance policy. The Premium Finance Loans were often funded by other Noble Trust clients and their trusts, investment management accounts or individual retirement accounts. Thus, the insureds under the policies were promised and received "something for nothing" – they paid no premiums, incurred no personal liability for the Premium Finance Loans, and were promised large windfalls for selling their policies after the contestability period expired.

10. When these policies were ultimately placed in force, Lindsey, Balcarres Group,

LLC¹ and others were paid commissions by the respective insurance carriers. In turn, Lindsey used some of the proceeds of these commissions and some of the newly solicited money to fund payments of premiums on insurance policies previously issued for the benefit of some of Noble Trust's other clients. Lindsey used other proceeds to attempt to cover up the Sierra losses by making payments to Noble clients whose funds had been invested in Sierra or equally fraudulent assets that were later substituted for the Sierra investment, to generate the pretense that the investments were still performing according to their terms. It appears to me that Lindsey also intended to sell some of these policies (or the beneficial interests therein) to third parties, and use the sale proceeds to cover up the Sierra losses.

11. Thus, Noble Trust was operated as a Ponzi Scheme that utilized fresh investment funds from its clients and the Commissions to pay fictitious profits to its existing investors, to return principal to investors and to fund limited recourse Premium Finance Loans.

12. Under the Settlement Agreement, the Liquidator will be paid a confidential settlement payment in full and final satisfaction of any and all right, title or interest the Liquidator and/or Noble Trust have in the Note; the Interpleader Action will be dismissed with prejudice and without costs and the Liquidator on the one hand and the Trust, Midwest, Mary Rodney and the Church on the other, shall release each other from any and all claims arising out of or related to the Note, the Trust or the Policy.

13. The Settlement Agreement addresses the Policy, although the terms of the settlement in regard to the Policy are confidential, and provides that the Liquidator will cause Noble Trust to resign as trustee of the Trust. The Settlement Agreement also provides that the

¹ Lindsay also served as president or managing member of Balcarres Group, LLC, a Nevada limited liability company. Both Lindsey and Balcarres were licensed by the New Hampshire Insurance Department and acted as insurance brokers in procuring insurance policies for the benefit of Noble Trust's clients. Pursuant to this Court's Order dated November 13, 2009, the assets of Balcarres were declared to be property of the Liquidation Proceeding.

claims filed by the Trust, the Church and Rodney in the Liquidation Proceeding are assigned to the liquidation estate.

14. By its terms, the Settlement Agreement does not become effective unless and until the entry of a final order (the “Approval Order”) by the Court in the Liquidation Proceeding approving the Settlement Agreement. The Approval Order shall become final on the date that it shall have become non-appealable or, in the event of an appeal(s), on the date that it has been affirmed after all appeals therefrom have been exhausted.

15. In the absence of the Settlement Agreement, the Liquidator would seek to have the Note and the proceeds thereof declared property of the liquidation estate available for ratable distribution to the creditors of Noble Trust. Mrs. Rodney would contend that the Note is the property of the Trust that she established and that the Note and its proceeds should be set apart from the other assets of the liquidation estate and distributed exclusively to the Trust.

16. The Settlement is the result of arms-length negotiations between the parties and their counsel and is a fair, reasonable and adequate resolution of the parties’ dispute. The Settlement Agreement will result in the payment of a material sum to the estate and resolve the Interpleader Action. Therefore, the Settlement Agreement maximizes the value of the liquidation of Noble Trust by creating a fund that will be available to claimants of the estate, subject to further order of the Court, and relieves the estate of further costs and from the inherent uncertainty of the pending litigation. The Liquidator believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator’s judgment.

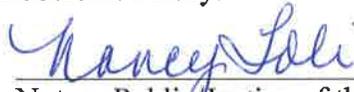
Signed under the pains and penalties of perjury this 21st day of February, 2014.



Robert A. Fleury

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

Signed before me on February 21, 2014 by Robert A. Fleury.



Notary Public Justice of the Peace
My Commission Expires:



CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.¹

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Christopher M. Candon

¹ Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service on claimants and other parties in interest.