STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY SUPERIOR COURT

No. 10-E-____

Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as Liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC,

v.

Cecil Sweeney, Marge Sweeney, John Sinanis, Stylanos Sinanis, Frank Arnone, Susan Fry Hare, Joseph Mendola, Ardith A. Neustaedter, Ivan Green, Mary Green, Tom Langel, Deeann Langel, Webster Dean, Sterling Mortensen, Sharp Enterprises, Darwin Schweitzer, Sharon Schweitzer, Charles Carlson, and Kevin Sullivan

**PETITION TO SET ASIDE FRAUDULENT TRANSFERS, FOR DAMAGES AND FOR OTHER RELIEF**

Petitioner, Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as Liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC ("Commissioner" or "Petitioner"), by and through its attorneys, Sheehan Phinney Bass + Green, P.A., respectfully requests that the Court set aside certain conveyances of property pursuant to NH RSA 545-A.

**Parties**

1. Peter C. Hildreth is the Bank Commissioner for the State of New Hampshire. His business address is 53 Regional Drive, Concord, New Hampshire 03301. By order dated March 27, 2008 in the related proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053) (the "Liquidation Proceeding"), this Court appointed him as Liquidator (the "Liquidator") for Noble Trust Company ("Noble" or "NTC") and Aegean Scotia Holdings, LLC ("Aegean Scotia").

2. Cecil (Gene) Sweeney is an individual with a last known address of 4419 Turnberry Drive, Lawrence, KS 66047.

3. Marge Sweeney is an individual with a last known address of 4419 Turnberry Drive, Lawrence, KS 66047.

4. John Sinanis is an individual with a last known address of 41555 Burroughs Avenue, Novi, MN 48377.

5. Stylanos Sinanis is an individual with a last known address of 6891 Kirkbridge Hill, West Bloomfield, MI 48322.

6. Frank Arnone is an individual with a last known address of 219 East 103th Terrace, Kansas City, MO 64145.

7. Susan Fry Hare is an individual with a last known address of P.O. Box 4687, Whitefish, MT 59937.

8. Joseph Mendola is an individual with a last known address of 83 Waldron Hill Road, Warner, NH 03278.

9. Ardith A. Neustaedter is an individual with a last known address of 4740 South Ocean Blvd., #415, Highland Beach, FL 33487.

10. Ivan Green is an individual with a last known address of 1190 Hubbard Road, Kuna, ID 83634.

11. Mary Green is an individual with a last known address 1190 Hubbard Road, Kuna, ID 83634.

12. Tom Langel is an individual with a last known address of 1300 Twin Rivers Cut-Off, Manhattan, MT 59741.

13. Deeann Langel is an individual with a last known address of 1300 Twin Rivers Cut-Off, Manhattan, MT 59741.

14. Webster Dean is an individual with a last known address of 3837 Tulsa Way, Fort Worth, TX 76107.

15. Sterling Mortensen is an individual with a last known address of 4842 North Forest Meadow Way, Boise, ID 83704.

16. Sharp Enterprises is, upon information and belief, a corporation with a principal place of business of 5700 Broadmoor Street, Suite 1008, Shawnee Mission, KS 66202.

17. Darwin Schweitzer is an individual with a last known address of 702 Woodbridge Road, Adrian, OR 97901.

18. Sharon Schweitzer is an individual with a last known address of 702 Woodbridge Road, Adrian, OR 97901.

19. Charles Carlson is an individual with a last known address of 2706 S. Teddy Avenue, Meridian, ID 83642-5854.

20. Kevin Sullivan is an individual with a last known address of 1420 Terry St. #1906, Seattle, WA 98101.

**Related Entities**

21. Noble is a non-depository banking institution organized and chartered under the laws of the State of New Hampshire. At all times relevant herein, its principal office was located at 900 Elm Street, Manchester, New Hampshire 03101.

22. Balcarres Group, LLC ("Balcarres") is a Nevada limited liability company. According to records of the New Hampshire Secretary of State, Balcarres has a mailing address of 900 Elm Street, Suite 701, Manchester, New Hampshire 03101.

23. Aegean Scotia is a limited liability company organized under the laws of the State of New Hampshire on January 24, 2003, with a principal place of business at 900 Elm Street, Manchester, New Hampshire 03101. Aegean Scotia was initially owned by Mr. Colin Lindsey ("Lindsey") and Mr. Kerry Piandes ("Piandes"). In 2006, Piandes transferred his interest in Aegean Scotia to Lindsey. Aegean Scotia is Noble's sole shareholder of record.

## Jurisdiction and Venue

24. This Court has jurisdiction over this proceeding pursuant to RSA 395:5; 395:9; 498:1; and 491:7.

25. Venue in this Court is proper under RSA 507:9, because the Liquidator's principal office is located in Merrimack County, and Noble's liquidation proceeding is pending in this Court.

## Factual Background Related to All Claims

26. Noble was chartered on September 11, 2003 as a New Hampshire domiciled nondepository bank authorized by, licensed by, and subject to regulation by the New Hampshire Banking Department (the "Department").

27. During the course of the Department's 2008 examination of Noble, numerous irregularities were discovered in Noble's operations.

28. As a result of the facts uncovered by the Department in its examination, Commissioner Hildreth concluded that Noble was conducting its business in an unsafe and

unauthorized manner and that, in the interest of public safety, Noble should cease transacting business.

29. Accordingly, on February 11, 2008, Commissioner Hildreth commenced the Liquidation Proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble pursuant to RSA 395:1, as well as related injunctive relief against Noble pending the Court's ruling on the Liquidation Petition. On that same day, Commissioner Hildreth appointed Deputy Commissioner Robert A. Fleury as Conservator of Noble, pursuant to RSA 396:5.

30. On March 30, 2008, an Order was issued (the "Liquidation Order") appointing Commissioner Hildreth as Liquidator of both Noble and Aegean Scotia.

31. The Liquidation Order gave the Liquidator broad powers, including:

a. All the powers of the officers and managers of Noble and Aegean Scotia;

b. The exclusive possession, custody, and control, of all property, contracts, and rights of action of Noble and Aegean Scotia; and

c. The right to transfer, invest, or otherwise deal with the assets of Noble and Aegean Scotia so as to effectuate their liquidation.

32. The Liquidator is in the process of marshaling the assets of Noble in order to maximize the value of its assets and its estate for the benefit of its creditors.

33. The Liquidator's investigation into Noble's assets, liabilities and financial affairs revealed that various individuals responsible for running Noble acted in a grossly negligent fashion with client and trust funds; in some cases, defrauded Noble and Noble's clients by concealing the true nature of Noble's investment and loss of funds entrusted to Noble by its clients; and breached their fiduciary and statutory duties as officers, directors and employees of Noble—all of which conduct was detrimental and injurious to Noble, its creditors and its clients.

34. This proceeding arises from a Ponzi scheme perpetrated by certain principals of Noble, including Mr. Colin Lindsey. Mr. Lindsey has confessed to his wrongdoing and is currently incarcerated for his crimes.

35. The Respondents were beneficiaries of this Ponzi scheme. Respondents profited from the Ponzi scheme through the withdrawal of millions of dollars, and knew or should have known that they were reaping the benefits of manipulated purported returns, false documents and fictitious profits. Upon information and belief, Respondents received funds that consisted in a substantial part of the money that had been paid into Noble by other investors and/or gains from fraudulently obtained insurance policies.

36. The Respondents' accounts received unrealistically high and/or consistent annual returns.

37. This action is brought pursuant to NH RSA 545-A, the Uniform Fraudulent Transfers Act and New Hampshire's common law concerning unjust enrichment, conversion and constructive trust, seeking to set aside all payments made to the Respondents so that orderly liquidation of Noble's assets can be completed preventing early investors in the Ponzi scheme from being treated significantly better than the late investors.

**Sierra Notes Investment**

38. Beginning in 2004, Noble began investing funds held in certain Children's Community Foundation ("CCF") trusts, administered by Noble, in Sierra Factoring, LLC, ("Sierra"), a company based in Windsor, Colorado. As Noble continued to solicit and receive funds from other individuals, it continued to invest additional funds in Sierra. Typically, the investments would be made through trusts formed, created or administered by Noble for the benefit of its clients and investors.

39. Sierra purportedly engaged in the purchase of accounts receivable, a lending practice commonly known as "factoring."

40. To generate what it represented was working capital to make the account receivable purchases, Sierra solicited investments through a private placement memorandum (the PPM"), a copy of which was provided to Noble. The PPM represented that investments in Sierra would be used to purchase commercial paper and make asset-backed loans in a manner consistent with the factoring of commercial accounts receivable. The PPM also stated that any investment in Sierra would be a high-risk investment with the distinct possibility of loss.

41. Investments in Sierra were evidenced by short-term promissory notes (the "Sierra Notes") bearing high interest rates ranging, on information and belief, from 12% to 18%.

42. Sierra came to the attention of Noble's officers, directors, and investment committee in 2004 through Thomas Anderson, who was both a director and Chief Financial Officer of Noble. At the time, Anderson and/or AGTAX (Mr. Anderson's tax company) were also performing accounting services for Sierra, and knew and/or advised several of the individuals running Sierra. Anderson's wife worked for Sierra in a capacity that gave her check-writing authority on Sierra's bank accounts. Anderson subsequently left Noble and went to work at Sierra.

43. At all times relevant herein, Noble's board of directors had a Trust Investment Committee and a Trust Oversight Committee. Each committee consisted of all of the members of Noble's board of directors, and each had its own written policies.

44. None of the officers, employees, or directors of Noble engaged in any sort of reasonable inquiry or due diligence into either Sierra's business or the prudence of Noble's investing its clients' funds in Sierra, prior to the time that the initial investments were made.

Although some of the Sierra investments were later approved by the board for some (but not all) of Noble's clients, the directors and officers failed to make sufficient inquiry into Sierra, either in general or with respect to any particular Noble client, that would have allowed them to make reasonable and informed decisions in exercising their respective management, oversight and fiduciary responsibilities.

45. Had they engaged in any such reasonable inquiry or due diligence, they would or should have discovered that Sierra was part of a larger group of affiliated factoring and holding companies known as "Blue Bear" and run by three individuals in Colorado: Virginia Brinkman, Russell Disberger, and David Karst. Each of these factoring companies, on information and belief, was insolvent at the time of Noble's first transaction with Sierra, and was relying on funds provided by new investors (such as Noble's clients) to pay the interest on the short-term promissory notes issued to earlier investors. Upon information and belief, Brinkman, Disberger, and Karst operated a "Ponzi scheme" of which Sierra was a part.

46. Without properly evaluating the propriety of investing in Sierra or the soundness of Sierra's business, Noble's officers and directors caused or permitted Noble to invest over $15 million of Noble's trust funds into Sierra, which investments were evidenced by the Sierra Notes. Noble continued to invest in Sierra through the summer of 2007, even though Blue Bear itself had already filed its own bankruptcy case in the United States Bankruptcy Court for the District of Colorado on August 22, 2005.

47. The Sierra investment ultimately constituted approximately 80% of Noble's clients' funds, and for many clients represented close to 100% of the funds that they entrusted to Noble. Noble's clients were the source of nearly all the funds invested in Sierra. Despite their fiduciary duties, Noble's officers and directors failed to consider whether such a heavily

concentrated investment in Sierra—an entity that had virtually no other source of investors—was either appropriate in and of itself, or appropriately diversified the funds over which Noble and/or Lindsey was trustee.

48. Although Noble had a fiduciary duty to keep its clients informed as to the status of their investments, Noble failed to inform its clients that they held investments in Sierra at all. Rather, Noble identified the Sierra investments (both in its own records and in its communications to its clients) as shares in the "Noble Alternative Income Fund" or the "Noble Loan Portfolio." Such a fund would have had to have been established and reported separately in accordance with Regulation 9 of the Office of the Comptroller of the Currency, 12 C.F.R. §§ 9.1 to 9.101 ("Reg 9"). However, despite using the name "Noble Alternative Income Fund" in its monthly statements and communications with its clients, Noble never properly established such a fund; the Noble directors simply changed the name "Sierra/Noble Loan Portfolio" on its books and records to the "Noble Alternative Income Fund." Each dollar of principal from the Sierra notes was reflected on Noble's books, and on its clients' account statements, as one share of the Noble Alternative Investment Fund.

49. In addition, some of Noble's officers and directors, including Lindsey, Carpenter, Bojarski and Anderson, received commissions from Sierra for every new Noble client whose funds were loaned to Sierra. These commissions violated certain provisions of the PPM, as well as provisions of New Hampshire law, including RSA 384:18. Ultimately, Noble's officers and directors received approximately $850,000 million in illegal commissions relating to the Sierra Notes. In addition, Piandes received a loan of $125,000 from Sierra, creating a conflict of interest with his duties as director of Noble.

50. Sierra ceased making any payments on its obligations to Noble clients altogether in August 2006, when funds from new investors were insufficient to continue to make the interest payments to earlier investors.

51. In fall of 2006, Sierra offered to settle its outstanding obligations to NTC by transferring all of its assets to NTC. Lindsey rejected that offer, and Sierra's faltering financial performance resulted in Lindsey's communications with Sierra becoming more urgent and confrontational. However, not until a year later, on September 28, 2007, did Lindsey and Noble commence a civil proceeding against Sierra and related entities in an attempt to recover the lost Sierra investments, which had already become worthless.

52. During the remainder of 2006 and throughout 2007, Lindsey continued to solicit and accept deposits totaling, at a minimum, $781,564 from at least fourteen new clients under the same promises of 12% returns that had been made to Noble's existing clients. Instead of investing the new clients' money in a manner that was consistent with the fiduciary duty he owed to them, however, Lindsey caused Noble to use the newly obtained client funds to fulfill NTC's obligation to make periodic payments to other Noble clients, and to redeem principal and pay accrued interest to existing clients who terminated their relationship with NTC for reasons that were unrelated to Sierra's failure.

53. Noble's officers and directors did not disclose to Noble's clients that the funds invested in Sierra had been lost. Instead, certain officers and/or directors attempted to hide the losses and recoup them through even more risky and dubious investments.

54. Both Lindsey and Ms. Lisa Elliott ("Elliott") continued to cause Noble to mail to its clients their regular periodic account statements, which continued to reflect the full original

principal amount of the clients' funds as dollar-equivalent shares in the "Noble Alternative Income Fund," without disclosing the Sierra investments or any loss of their principal.

55. Lindsey and possibly others also continued to cause Noble to make payments or distributions to its clients in the same frequency and amount that they had customarily received and expected to receive, as if the Sierra Notes were paying their stated interest according to their terms. Instead of coming from Sierra, however, the payments or distributions that Noble's clients received came from a variety of other sources. In some instances, clients who wanted to redeem the principal and accrued interest in their Noble accounts received checks from Noble funded by money that Lindsey and other Noble officers, employees, and directors had solicited or otherwise received from new Noble clients, or from new funds provided by existing Noble clients. In at least one instance, the recipient of such funds was Elliott, who knew or should have known that the funds she provided to Noble were lost in the Sierra transaction, and that her principal and accrued interest payment was funded by money received from Noble clients. In many instances, Lindsey and other Noble officers, employees, and directors delayed honoring requests by clients to redeem the principal and accrued interest in their accounts.

56. Noble also received funds from Lindsey and his affiliate, Balcarres, for the purpose of continuing to make interest and principal payments to Noble clients whose funds were invested in Sierra Notes.

57. Thus, in effect, to avoid disclosing the fact that Noble had lost its clients' money in a Ponzi scheme, Lindsey and other officers and employees of Noble also utilized another Ponzi scheme, shuttling money from newer clients to longer-established clients.

58. The officers, employees, and directors of Noble were either aware or should have been aware of the magnitude of the losses suffered by Noble's clients and the efforts to conceal

those losses. Those directors and officers who did not directly act to conceal the losses nonetheless failed to take appropriate actions or make appropriate inquiry into the status of Noble's clients' funds invested in Sierra; Lindsey and Elliott's conduct regarding the Sierra investment; the Sierra losses, or the attempts to hide the losses from Noble's clients.

**The Marino Policies**

59. In furtherance of his attempt to conceal the Sierra losses from Noble's clients and regulators, Lindsey hatched a scheme in late 2006 or early 2007 to recoup the Sierra losses by fraudulently procuring or investing in high-premium, high-value life insurance policies. Such insurance policies are generally in face amounts ranging from $5 million to $10 million. Because they are generally used for estate planning purposes, such policies typically require that the prospective insured be at least 70 years old and, because the premiums payable under such policies generally total several hundred thousand dollars per year, that the insured have a personal net worth in an amount at least equal to the value of the policy or policies acquired.

60. The commissions that insurance carriers are willing to pay insurance agents and brokers in connection with such policies are also relatively high, approaching and in some cases exceeding the annual premiums payable under the policy.

61. At all times relevant herein, both Lindsey and Balcarres were licensed to submit applications for insurance to a number of different insurance carriers, and therefore were eligible to be paid commissions for policies that they procured.

62. Between October 2006 and October, 2007, Lindsey caused Noble to acquire or procure certain high value life insurance policies, both in order to allow Noble to ultimately realize the economic value of those policies (by either selling them or receiving the death benefit

payable thereunder), and also to generate commission revenue that could be used to continue to fund payments to Noble clients and thereby conceal the Sierra losses from them.

63. To facilitate Noble's acquisition of such policies, Lindsey entered into an agreement with Gerald Marino ("Marino"), a Florida real estate broker. Marino was the trustee for a $526 million real estate investment trust called the "450 4th Avenue Revocable Trust" (the "450 4th Trust"). For every client referred by Marino who ultimately became a Noble client and purchased a high value life insurance policy through Balcarres, Balcarres agreed to pay Marino a fee. Each policy ultimately issued would be owned through a trust (a so-called Irrevocable Life Insurance Trust or "ILIT") to be established by Noble, with the insured as the settlor and beneficiary and Noble serving as trustee. Each applicant purportedly held a beneficial interest in the 450 4th Trust, and each applicant agreed to transfer to Noble his or her beneficial interest in both any insurance policy that issued, and in the trust to which the policy was issued, all for a prearranged price. To further induce the prospective clients to apply for the policies, Lindsey assured them that Noble or another entity would finance the entire cost of the policy's premiums.

64. Once Marino forwarded the prospective applicants' names to Noble, Lindsey (working along with other officers and employees, including Coravos and Eve Prachar Lindsey), filled out all of the necessary insurance application documents for each applicant.

65. In addition, Noble's officers and employees prepared several documents for the applicants to sign, including: (1) a letter from the prospective insured requesting that Noble sell the insurance policy because he or she "talked it over with family members and they feel uncomfortable about the cost of the premiums"; (2) a bill of sale from the insured to Noble, conveying the insured's beneficial interest in the insurance policy and in the ILIT holding the insurance policy; and (3) a list of questions that the insurer's investigator or premium finance

company might ask of the applicant prior to issuing the policy, along with scripted answers for the applicants to provide in response thereto.

66. The scripted answers on the list of questions provided by Noble included figures for the respective applicant's net worth and annual income, as well a statement that the applicant had no intention of selling or transferring the life insurance policy within the next five years. One or more Noble officers and employees instructed the applicants to make the latter representation while simultaneously preparing and forwarding to the applicants the very legal instruments to accomplish such a transfer.

67. On information and belief, forty-one separate prospective insureds were each furnished with a form letter indicating that they each were the owner of approximately a 4% interest in 450 4th Ave. Revocable Trust—even though, in the aggregate, the sum of those separate interests would have impossibly totaled 164%. In addition, the value of the prospective applicants' respective interests in the 450 4th Trust was incorrectly calculated in the form letters themselves. Rather than calculating the value of the beneficiary's interest in the Trust based on the equity in the property owned by the trust ($254,130,634.15 on the Trust's December 31, 2006 balance sheet), the letters apparently calculated such value based on the gross value of all assets owned by Trust ($526,645,178.35 on the same balance sheet). This patently obvious error resulted in the value of the beneficial interests in the Trust being worth twice as much as they were—assuming that the balance sheet was otherwise fair and accurate.

68. Noble's officers and directors either knew or should have known that that the value of the prospective insureds' alleged interests in the 450 4th Trust was materially overstated, if not altogether non-existent. At least one Noble officer besides Lindsey was aware of the material misstatement of the applicants' purported interest in the 450 4th Trust. Coravos sent

Lindsey a list identifying thirty-eight separate individuals, each of whom Marino represented held beneficial interests in the 450 4th Trust, with their percentage interests ranging from a low of 3.77% to a high of 6.14%. The percentage interest for the thirty-eight individuals on the list totaled 162.69%.

69. Despite Marino's obvious misrepresentation, neither Lindsey nor Coravos made any further inquiry into the truthfulness of the representations made by Marino or the individual proposed insureds that he referred to Noble with respect to the purported interests in the 450 4th Trust. Instead, Coravos continued to arrange for premium financing on at least two of the fraudulent policies, which were ultimately issued to a Mr. Truesdale and a Mr. Marshall. For his part, Lindsey acknowledged to Marino that he knew that the 450 4th Trust percentage beneficial interests were false, but nonetheless continued to work with Marino to procure fraudulent insurance policies on the lives of Marino's referrals.

70. Once a policy was issued and Balcarres received a commission from the insurer, Lindsey and others at Noble would cause a portion of that commission to be sent to Marino (or other similar finders that the Noble officers and employees used). Of this portion, some was paid to the insureds as compensation for their assignment of their beneficial interests in the policies and the ILITs; and the balance was retained by Marino (or the other finders). The other portion of the commission was either used to pay to Noble clients the 12% interest they had been promised on their investment; kept by Lindsey or Balcarres; or used to finance additional insurance policies.

71. During this twelve-month period ending in October, 2007, fourteen insurance policies were issued to ten insureds referred to Noble by Marino. Each application contained materially false and misleading financial information designed to increase the likelihood that the

policies would be issued in the highest face amount possible. Upon the issuance of these policies, Balcarres received approximately $5.6 million in commissions on the first year's premium due under the policies. Of that amount, approximately $2.3 million was paid to Marino; the remaining approximately $3.3 million was used to fund payments to Noble clients (either as periodic interest payments or to redeem their accounts), and to finance high value life insurance policies for other Noble clients.

**The Gryphon Fund**

72. Lindsey and other officers and employees of Noble attempted to hide the nature of this new investment strategy from Noble's clients and regulators by cloaking it under the guise of a new fund called the "Gryphon Fund." The Gryphon Fund was created on Noble's books and records in September 2007 as a "common trust fund" in which Noble clients would receive shares commensurate with their investment in the Sierra Notes.

73. The initial corpus of the Gryphon Fund was established on September 14, 2007, by the nominal contribution of some of the life insurance policies fraudulently procured through Marino. Lindsey initially valued the policies at $2,290,000—the same amount that was paid to Marino. In exchange for the contribution of these policies to the Gryphon Fund, Balcarres received 2.29 million shares in the Gryphon Fund, each valued at one dollar. The very next day after the policies were contributed to the Gryphon Fund, and with no additional infusion of capital or consideration, Lindsey increased the stated value of the Gryphon Fund to $7,336,300, with each share of the Gryphon Fund valued at slightly more than three dollars.

74. Thereafter, in the two weeks leading up to September 30, 2007, Lindsey caused additional contributions to be made to the Gryphon Fund. Those contributions included Noble client accounts holding worthless Sierra Notes, which contributions Lindsey valued at $9.8

million--the face amount of the Sierra Notes held in those accounts. In exchange for these contributions, the contributed client accounts were credited with overvalued shares in the Gryphon Fund.

75. Lindsey then caused the Gryphon Fund to transfer the Sierra Notes it had received to Balcarres. In exchange, Balcarres transferred to the Gryphon Fund certain notes payable to Balcarres in the face amount of $5 million, representing loans that Balcarres had made to some of the ILITs for which Noble served as a Trustee. These ILIT loans were also worth less than their face amount, in part because they included loans that financed premiums on fraudulently procured insurance policies.

76. Some Noble clients did make cash investments into the Gryphon Fund in late 2007 and early 2008, for which their account statements reflected that they received Gryphon Fund shares. The proceeds of those cash investments were quickly used by Lindsey and others at Noble to continue making payments to existing Noble clients. In other cases, cash from the Gryphon Fund was used to pay premiums on life insurance policies held in ILITs for the benefit of other Noble clients. In all cases, the account statements that Noble mailed to these clients reflected only an investment in the Gryphon Fund, and did not disclose the funding of life insurance premiums benefitting other Noble clients' trusts.

77. The Gryphon Fund was not the only method by which Noble used other clients' funds to finance insurance policies. Some Noble clients were individuals who did not create or establish trusts with Noble, and for whom Noble served as investment manager. For those individuals, Lindsey caused the funds they entrusted to Noble to be loaned directly to other ILITs in which Noble was a fiduciary, usually for a two-year term at 12% interest—the standard return promised by Noble to its clients. These loans were not evidenced by written promissory notes,

but were instead recorded as book entries on Noble's accounting system as a debit to the lending client's account and a credit to the borrowing ILIT's account, with corresponding payable and receivable entries. The two-year 12% loan terms—which were reflected on the lending client's account statements—were above-market terms for insurance premium finance loans. Moreover, when Noble did disclose the ILIT loans to insurance carriers in connection with a given ILIT's application to obtain insurance, it routinely misrepresented the ILIT loans as being at lower and more standard terms, such as a five year note with interest at LIBOR (the "London Inter-Bank Offered Rate") plus 1% or 2%. On information and belief, had the actual terms of the ILIT loans been disclosed on the insurance applications, the respective insurance carriers would have found those terms to be generally inconsistent with the applications' representation that the proposed insured had no present intent to sell or transfer the policy being applied for, rendering it less likely that the application would be approved under appropriate insurance underwriting standards.

**The Fraudulent Transfers**

78. Through the Sharp Enterprises IMA, Sharp Enterprises began receiving distributions on or about February 9, 2006. On that date, Sharp Enterprises liquidated $400,000. At varying times throughout February, March and April of 2006, over $1 million dollars in consideration was paid to Sharp Enterprises.

79. Through the Schweitzer IMA, Darwin and Sharon Schweitzer received a $300,000 payment on March 14, 2006 and a $24,200 asset transfer out on September 13, 2007.

80. The Carlson Revocable Trust received an $80,000 distribution on July 27, 2006 and a $28,200 asset transfer out on September 13, 2007. Upon information and belief, Mr. Charles Carlson received the benefit of these distributions.

81. The Sweeney Charitable Trust received distributions of $80,000, $35,000, and $3,300 on November 16, 2006 and a $17,500 distribution on January 10, 2007. The total redemption amount for the Sweeney Charitable Trust was $135,800. Upon information and belief, Cecil (Gene) and Marge Sweeney received the benefit of these distributions.

82. Through the John Sinanis IMA, John Sinanis, received a $156,000 payment on April 24, 2006.

83. Through the Stylianos Sinanis IMA, Stylianos Sinanis, received payments in or around June of 2007 totaling $156,000.

84. Through the Arnone IMA, Mr. Frank Arnone, received a $100,000 payment on July 31, 2007.

85. Through the Hare IMA, Ms. Susan Fry Hare, received $1,150,000 in payouts from January 17, 2006 through February 2, 2006.

86. Through the Mendola IMA, Mr. Joseph Mendola, received $53,700 in payouts on July 18, 2007.

87. Through the Ardith Newstaedter IMA, Ardith Newstaedter, received $75,000 in payouts from February 24, 2006 through July 26, 2006.

88. Through the Ivan and Mary Green IMA, Ivan and Mary Green, received a $100,000 payout on April 10, 2007.

89. Through the LF Limited Partnership, upon information and belief, Thomas and Deeann Langel, received a $200,000 payout on October 23, 2006.

90. Through the Webster Dean IRA, Mr. Webster Dean, received $100,000 in payouts from October 13, 2006 through February 27, 2007.

91. Through the Sterling Mortensen IRA, Sterling Mortensen, received $400,000 on February 23, 2007.

92. Through the Sullivan IMA, Kevin Sullivan received $21,644 on April 13, 2006.

93. All of the foregoing payments were made by utilizing funds received from other Noble investors. In addition, at some point, Noble operated as Ponzi scheme. Thus, Noble has and/or had an interest in all of the funds set forth above that were transferred to the Respondents.

94. The existence of a Ponzi scheme creates a presumption of actual fraud. See In Re Indep. Clearing House, 77 Br. 843, 860 (Bankr. D. Utah 1987) ("one can infer an intent to defraud future undertakers from the mere fact that a debtor was running a Ponzi scheme. Indeed no other reasonable inference is possible.").

95. A Ponzi scheme existed at the time of the fraudulent transfers set forth above. Accordingly, the transfers set forth above should be avoidable under the Uniform Fraudulent Transfers Act, which has been codified in New Hampshire as RSA 545-A.

96. In the presence of actual fraud, Petitioner should be able to recover all amounts transferred to any of investors, including both the investor's principal investment in the Ponzi scheme and any fictitious profits. "Fictitious profits" refer to money received by the investor that exceeded the principal investment. The term "fictitious" is used because a Ponzi scheme does not ever generate real profits for its investors. The scheme simply uses investments from new investors to pay returns to old investors – giving the illusion of profits.

97. Even if the Court were not to infer an actual intent to defraud by these transfers within the Ponzi scheme, there are certainly sufficient "badges of fraud" from which the Court could infer fraudulent intent. See In Re Coffey's, 157 N.H. 156, 178 (2008).

98. In the absence of actual fraud, Petitioner seeks a finding of constructive fraud, which does not require the element of intent. Constructive fraud is an unintentional deception or misrepresentation that causes injury to another. Noble had an interest in the property transferred to the investors. Additionally, Noble made the transfers without receiving equivalent value in exchange for the transfer obligation and either: a) Noble was insolvent at the time or b) Noble became insolvent as a result of the transfers.

99. Because a Ponzi scheme operates by paying old investors with new investors' money, any payment made to an old investor in excess of the principal initially paid by the investor is a fraudulent transfer because Noble did not receiving anything in exchange for the payment. Repayment of principal should also be recoverable to prevent some investors from recovering a greater return pro rata than other investors.

100. Noble was insolvent at the time of all of the above-referenced transfers and/or became insolvent as a result of the above-referenced transfers.

101. The sum of all of Noble's debts was greater than all of its assets at a fair valuation at the time of each of the above-referenced transfers. Accordingly, Noble was insolvent at the time it made each of the transfers.

102. Furthermore, the Court is entitled to infer insolvency from the mere existence of a Ponzi scheme. See e.g., In Re Independent Clearing House, 77 Br. 843, 871 (Bankr. D. Utah 1987) ("By definition, an enterprise engaged in a Ponzi scheme is insolvent from day one.").

**COUNT I**
**Fraudulent Transfer Pursuant to NH RSA 545-A:4, I**

103. Petitioner incorporates by reference the preceding paragraphs.

104. The transfers, as set forth above, were made with actual intent to hinder, delay or defraud.

105. Accordingly, the transfers should be set aside and the property should be repaid to Noble for a proper distribution through the Liquidation Proceeding.

106. Alternatively, the transfers should be set aside pursuant to RSA 545-A:4, I(b) because the transfer was made without Noble receiving a reasonably equivalent value in exchange for the transfer and Noble was either engaging or was about to engage in a business transaction for which its remaining assets were unreasonably small in relation to the business or transaction; or Noble intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

107. Accordingly, the transfers should be set aside.

**COUNT II**
**Fraudulent Transfer Under NH RSA 545-A:5**

108. Petitioner incorporates by reference the preceding paragraphs.

109. Noble's claim arose before the transfer was made and Noble made the transfers without receiving reasonably equivalent value in exchange for the transfer.

110. Noble was insolvent at the time, or became insolvent as a result of the transfer. See NH RSA 545-A:5, I.

111. Alternatively, the transfers made by Noble were fraudulent because the debts owed to Noble arose before the transfer was made and the transfer was allegedly made to an insider for an antecedent debt, Noble was insolvent at the time and the recipients had reason to believe that Noble was insolvent.

112. Accordingly, the transfers should be set aside.

**COUNT III**

**Unjust Enrichment**

113. Petitioner incorporates by reference the preceding paragraphs.

114. Each of the Respondents would be unjustly enriched if allowed to receive a disproportional amount in excess of what the other victims of the Ponzi scheme received.

115. Equity demands that all funds be returned and, after expense of administration, that the Liquidator create a plan for repayment in equitable amounts to each participant of the Ponzi scheme.

**COUNT IV**

**CONSTRUCTIVE TRUST**

116. Petitioner incorporates by reference the preceding paragraphs.

117. It would be unconscionable for the Respondents to retain the funds transferred to them.

118. The circumstances of this case are sufficient for the court to impose a constructive trust with respect to all funds set forth above that were transferred to the Respondents.

**COUNT V**

**CONVERSION**

119. Petitioner incorporates by reference the preceding paragraphs.

120. Following demand, Respondents have failed to return the funds set forth above and therefore are exercising control and/or dominion over such funds improperly. Accordingly, Respondents have wrongfully converted the funds set forth above.

121. Therefore, Respondents should be ordered to return all such funds.

WHEREFORE, the Petitioner respectfully requests that the Court:

A. Set aside the fraudulent transfers, impose a constructive trust over the funds transferred to Respondents, compel repayment to the Petitioner and award damages to be proven at trial;

B. Award Petitioner its legal fees plus all costs, interest, and expenses; and

C. Grant to Petitioner such and further relief as the Court deems proper and just.

Dated: January 15, 2010

Respectfully Submitted,

PETER C. HILDRETH, BANK COMMISSIONER FOR THE STATE OF NEW HAMPSHIRE, AS LIQUIDATOR FOR NOBLE TRUST COMPANY AND AEGEAN SCOTIA HOLDINGS, LLC.

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