

Neal Jacobson
Admitted *Pro Hac Vice*
New York Bar No. 2342772
Matthew J. Gulde
Illinois Bar No. 6272325
B. David Fraser
Texas Bar No. 24012654
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-1409 (BDF)
(817) 978-4927 (fax)
Jacobsonn@sec.gov
Attorneys for Plaintiff Securities and
Exchange Commission

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	
	§	
	§	Chapter 11 Case
	§	
LIFE PARTNERS HOLDINGS, INC.,	§	Case No. 15-40289-rfn-11
	§	
	§	
	§	
Debtor.	§	

**OBJECTION OF SECURITIES AND EXCHANGE COMMISSION TO MOTION BY
CERTAIN SHAREHOLDERS FOR RECONSIDERATION OF SPECIFIC FINDINGS
OF FACT AND CONCLUSIONS OF LAW IN ORDER GRANTING THE MOTION OF
THE SECURITIES AND EXCHANGE COMMISSION FOR APPOINTMENT OF A
CHAPTER 11 TRUSTEE**

The Securities and Exchange Commission (“SEC”), objects to the motion by “certain shareholders” for reconsideration of specific findings of fact and conclusions of law in the order granting the motion of the SEC for the appointment of a Chapter 11 Trustee (the “Reconsideration Motion”) (Dkt. #237).

Summary

The Reconsideration Motion belatedly seeks the introduction of hearsay email evidence that was available to Gary Aguirre, counsel to the certain shareholders, well before the close of the record on the SEC's motion for appointment of a Chapter 11 Trustee on March 3, 2015, for the sole purpose of amending the Court's finding that it was Mr. Aguirre who first suggested the filing of the Debtor's Form 8-K on February 23, 2015, which the Court later found to be misleading.¹ Accordingly, the proffered evidence is neither admissible, nor is it newly discovered evidence that would support altering the Court's findings of fact and conclusions of law issued from the bench on March 9, 2015. Moreover, the emails proffered by Mr. Aguirre are wholly consistent with the Court's findings and conclusions. Accordingly, the Court should deny the Reconsideration Motion.

Argument

The Reconsideration Motion relies on Fed. R. Bankr. P. 9023, which incorporates by reference Fed. R. Civ. P. 59 for altering or amending a judgment. Reconsideration Motion at 2. The motion, however, is more appropriately a motion under Fed. R. Civ. P. 52(b) to alter or amend findings after a bench trial (incorporated by reference by Fed. R. Bankr. P. 7052). In any event, the high burden of proof that Mr. Aguirre must meet for the relief requested is similar under either rule. *Compare Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986) ("The purpose of motions to amend [under Rule 52(b)] is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence. . . . This is not to

¹ Although the Reconsideration Motion is brought in the name of the "certain shareholders" that Mr. Aguirre represents, it appears to be a motion by Gary Aguirre to amend findings of fact concerning his role in the Debtor's issuance of the misleading Form 8-K on February 23, 2015. The Reconsideration Motion does not seek reconsideration of the actual order directing the appointment of a Chapter 11 Trustee.

say, however, that a motion to amend should be employed to introduce evidence that was available at trial but was not proffered, to relitigate old issues, to advance new theories, or to secure a rehearing on the merits.”), *with Montgomery v. Wells Fargo Bank, N.A.*, 459 Fed. App’x 424, 429 (5th Cir. 2012) (“Rule 59(e) serves the purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence. A Rule 59(e) motion used to present newly discovered evidence should be granted only if (1) the facts discovered are of such a nature that they would probably change the outcome; (2) the facts alleged are actually newly discovered and could not have been discovered earlier by proper diligence; and (3) the facts are not merely cumulative or impeaching.”) (internal citations and quotations omitted). The Reconsideration Motion fails to meet the high burden required by Rule 52 and Rule 59 because it neither proffers newly discovered admissible evidence, nor would exclusion of the evidence in question result in a manifest error of fact.²

1. The Purported Evidence was Available Before the Evidentiary Hearing.

According to Mr. Aguirre’s declaration, each of the emails he seeks to introduce was created on or before February 21, 2015, well before the last evidentiary hearing held on March 3 on the SEC’s motion for appointment of a Chapter 11 Trustee. (Dkt. #237-1 at pars. 3-5 & 9-10) Mr. Aguirre was either a recipient, a sender, or was copied on the emails, and thus the emails were known and available to him at or about the time they were written.

The evidentiary record on the SEC’s motion was originally closed on February 19, 2015. On February 24, 2015, the SEC filed its motion to supplement the previously

² The emails consist of purported out of court statements made by agents of LPHI and Mr. Aguirre, none of whom were opposing parties to Mr. Aguirre or to the certain shareholders in connection with the SEC’s motion for appointment of a Chapter 11 trustee. Accordingly, the emails are hearsay. Fed. R. Evid. 801.

SEC’s Objection to Motion for Reconsideration of the Court’s Findings and Conclusions Granting the SEC’s Motion for Appointment of a Chapter 11 Trustee.

closed record with the Debtor's February 23, 2015 Form 8-K, press release, and letter to fractional interest holders. (Dkt. #145) The SEC advised the Court in its motion that counsel to LPHI and to certain shareholders had notified the SEC staff that they objected to inclusion of the supplemental documents in the record "without appropriate explanations in the form of testimony from the securities attorneys and Ms. Pieper as to the legal reasons that the filings were necessary." (Dkt. #145 at p. 7) On February 26, 2015, the Court granted the SEC's motion in part, and scheduled an evidentiary hearing for March 3, 2015. (Dkt. #150) On February 27, 2015, the Debtor filed an objection to the SEC's motion and requested the opportunity to offer testimony regarding the reasons and the basis for the Form 8-K at the March 3 evidentiary hearing. (Dkt. #156 at p. 5) And, on March 2, 2015, Mr. Aguirre, on behalf of the certain shareholders, also filed an objection to the SEC's motion. (Dkt. #160)

Mr. Aguirre has been an active participant in this case from inception, and the record shows conclusively that he had actual notice of the March 3 evidentiary hearing. Despite having had ample opportunity to seek introduction of the known and available evidence in question, Mr. Aguirre chose to appear at the hearing telephonically and failed to seek its introduction into the record. Mr. Aguirre contends that the evidence was not available at that time because it was arguably subject to the joint attorney-client privilege. However, nothing prevented Mr. Aguirre from seeking a ruling from the Court at or prior to the March 3 hearing regarding the purported privileged nature of the pre-existing emails. Accordingly, the proffered evidence is not newly discovered evidence that would support reconsideration of the Court's findings of fact.

2. The Purported Evidence is Consistent with the Court's Findings.

The proffered evidence, even if considered, would admittedly not alter the outcome of the trial and is wholly consistent with the Court's findings of fact. The only findings of fact made by the Court relevant to the Reconsideration Motion are the following:

THE COURT: . . . And the question is, why did [the Form 8-K] go out. It wasn't the Debtor's idea. It was Mr. Aguirre's idea, and he doesn't represent the Debtor. Mr. Aguirre may have pointed Mr. Berman to certain portions of the transcript, but it was Mr. Aguirre who suggested wrongdoing by the U.S. Trustee's office. And no one on behalf of the Debtor challenged that assertion.

. . .

[L]et me turn to the retail investors of LPI. The Debtor has taken a somewhat ambivalent position towards these parties so far. Early on, it was dismissive of their claims, saying they had no claims at all, and they certainly were not creditors of LPHI. But when Mr. Quilling mentioned pooling, the Debtor and Mr. Aguirre became suddenly protective of their interests, insisting that this Court must be mindful of their rights to due process.

March 9, 2015 tr. at p. 23, lines 2-21. The Court thus made the well-supported finding that the Form 8-K was Mr. Aguirre's idea.

Although the emails that Mr. Aguirre seeks to introduce appear to reflect internal conversations regarding fractional interest holders, nothing in those emails indicates that anyone other than Mr. Aguirre suggested the filing of a Form 8-K. At trial, Ms. Pieper and Mr. Berman both testified that it was Mr. Aguirre who first suggested the issuance of the Form 8-K. *See* March 3, 2015 tr. at pp. 74, 79, 97 & 120. Mr. Aguirre's declaration confirms that testimony. *See* Aguirre Declaration (Dkt. 237-1) at par. 9 ("On February 20, 2015, I contacted Douglas Berman (Berman), LPHI's securities counsel, regarding the possibility that LPHI should issue an SEC Form 8-K relating to the risks described by Quilling during his testimony."); par. 10 ("On February 21, 2015, I sent an email to

Berman discussing the possible risks to shareholders and fractional interest holders if the life settlements were included as LPHI assets in the Chapter 11 proceeding.”).

The February 21, 2015 email also confirms that it was Mr. Aguirre who suggested wrongdoing by the Office of the United States Trustee by its appointment of a creditors’ committee comprised of LPI fractional interest holders “without notice to any party.” That allegation regarding the Office of the United States Trustee, including the same misspelling of the word “fractionalized” found in the Form 8-K, was apparently lifted by Mr. Berman straight from the February 21 email that Mr. Aguirre now seeks to introduce.³ See February 21, 2015 email attached to the Aguirre Declaration, Ex. 4 at p. 2 (Dkt. #237-5 at p. 2) (“Without notice to any party, the US Trustee appointed a creditors committee shortly before the hearing, It consists of three disgruntled purchasers of factionalized [*sic*] interests in the life insurance policies which LPI facilitates and manages for investors.”). This is virtually the identical language contained in the Debtor’s Form 8-K. See Form 8-K, attached as Exhibit 1 to the Declaration of Colette Pieper in support of the Reconsideration Motion (Dkt. #226-2 at p. 2) (“Without notice to any party, the U.S. Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) consisting of three purchasers of factionalized [*sic*] interests in the life insurance policies.”). Mr. Aguirre’s proffered evidence is thus consistent with the Court’s finding that Mr. Aguirre first suggested the filing of the Form 8-K and the wrongdoing by the Office of the United States Trustee.

³ The fact that Mr. Aguirre’s suggestion regarding the lack of notice found its way into the Form 8-K without challenge by the Debtor was a material fact supporting the Court’s ultimate decision to appoint a Chapter 11 Trustee in this case.
SEC’s Objection to Motion for Reconsideration of the Court’s Findings and Conclusions Granting the SEC’s Motion for Appointment of a Chapter 11 Trustee.

As mentioned above, the Court also found that the Debtor was dismissive of LPI's retail investors during the trial until Mr. Quilling testified regarding the potential pooling of the fractional interests in the life insurance policies. None of the purported evidence proffered by Mr. Aguirre contradicts the Court's findings regarding the attitude exhibited towards LPI's retail investors in the proceedings before the Court.

Conclusion

Because the proffered evidence is neither newly discovered, nor would its exclusion from the record result in a manifest error of fact, Mr. Aguirre has failed to meet the high burden necessary for the Court to reconsider its findings and conclusions. Accordingly, the SEC requests that the Court deny the Reconsideration Motion, and grant such other and further relief as is just.

Dated: March 27, 2015

Respectfully submitted,

/s/ Neal Jacobson

Neal Jacobson

Admitted Pro Hac Vice

New York Bar No. 2342772

U.S. Securities and Exchange Commission

New York Regional Office

Brookfield Place

200 Vesey St., Suite 400

New York, NY 10281

(212) 336-0095

(212) 336-1329 (fax)

Jacobsonn@sec.gov

Attorneys for Securities and Exchange
Commission

DECLARATION OF SERVICE

I hereby declare that on March 27, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all counsel who have registered with the Court. All others on the attached service list were served a copy by U.S. mail.

/s/ Neal Jacobson

Neal Jacobson

Service List
Life Partners Holding, Inc.

Alexander Dubose Jefferson & Townsend
515 Congress Ave #2350
Austin TX 78701

Allied Insurance Depositors Insurance
1100 Locust Street
Dept 1100
Des Moines IA 50391-2000

Allied Property and Casualty Insurance
1100 Locust Street
Dept 1100
Des Moines IA 50391-2000

American Stock Transfer & Trust
PO Box 12893
Philadelphia PA 19176-0893

Baker & McKenzie LLP
2001 Ross Ave #2300
Dallas TX 75201

Beasley Insurance Co Inc
1270 Avenue of the Americas
12th Floor
New York NY 10020

Broadridge ICS
PO Box 416423
Boston MA 02241-6423

Carrington Coleman Sloman &
Blumenthal
901 Main Street #5500
Dallas TX 75202

Charles E Baruch
Law Office of Chad Baruch
3201 Main Street
Rowlett TX 75088

David Martin
3801 Herwol Avenue
Waco TX 76710

David Santacroce
c/o Marc Gross / Jeremy Lieberman
Pomerantz Haudek Grossman & Gross
100 Park Avenue 26th Floor
New York NY 10017-5516

Department of the Treasury
Internal Revenue Service
ATTN James F McCarthy Jr
4050 Alpha Road
Farmers Branch TX 75244

Donald Cassidy MD, Ltd
4795 Cauglin Parkway #200
Reno NV 89519

First Advantage Litigation Consulting
PO Box 935411
Atlanta GA 31193-5411

Fred Dewald
428 Riverview Drive
Waco TX 76712

Gregory Griswold
c/o Brian J Robbins
Robbins Arroyo LLP
600 B Street #1900
San Diego CA 92101

Gregory Griswold et al
c/o Joe Kendall / Jamie McKey
Kendall Law Group
3232 McKinney Avenue #700
Dallas TX 75204

Harold E Rafuse PhD
111 Laurel Oaks Lane
Crawford TX 76638

Harriet Goldstein
c/o Andrew D Abramowitz
Spector Roseman Kodroff et al
1818 Market Street #2500
Philadelphia PA 19103

Horwood Marcus & Berk
500 W Madison St #3700
Chicago IL 60661

HSPG & Associates PC
5400 N Grand Blvd #330
Oklahoma City OK 73112

Illinois National Insurance Co
175 Water Street
New York NY 10038-4969

Indian Harbor Insurance Company
Dept of Regulatory
505 Eagleview Blvd #100
Exton PA 19341-0636

Internal Revenue Service
Centralized Insolvency Operations
PO Box 7346
Philadelphia PA 19101-7346

Jason T Rodriguez
Higier Allen & Laitin
5057 Keller Springs Road
Addison TX 75001

Jay Ethington
Attorney at Law
3131 McKinney Avenue #800
Dallas TX 75204

JMD Resources, LLC
c/o James D Hurst Esq
1202 Sam Houston Avenue
Huntsville TX 77340

Joy Dittberner
c/o Gregory Naspole
Wolfe Haldenstein Adler Freeman
270 Madison Avenue
New York NY 10016

Keith L Langston
Langton Law Firm
109 W Tyler Street
Longview TX 75601

Kyle Mathis & Lucas LLP
8226 Douglas Avenue #450
Dallas TX 75225

Pronske Goolsby & Kathman PC
2200 Ross Avenue #5350
Dallas TX 75201

Scott C Skelton
Skelton Slusher Barnhill
1616 S Chestnut
Lufkin TX 75901

Law Office of Douglas M Berman
4925 Greenville Ave #200
Dallas TX 75206

Law Offices of Trey Martinez Fischer
IBC Centre
130 E Travis St #425
San Antonio TX 78205

Life Partners Holding, Inc.
Brian D Pardo
908 Arlington Drive
Waco TX 76712

Life Partners, Inc.
PO Box 21596
Waco TX 76712

Life Partners, Inc.
204 Woodhew
Waco TX 76712

Malcolm Gray
c/o Samuel Rosen
Harwood Feffer LLP
488 Madison Avenue 8th Floor
New York NY 10022

McLennan County
c/o Diane W Sanders
Linebarger Goggan et al
PO Box 17428
Austin TX 78760-7428

Meadows Collier
Attorneys at Law
901 Main St #3700
Dallas TX 75202

Mediant Communications
PO Box 29976
New York NY 10087-9976

NASDAQ Office of General Council
805 King Farm Blvd
Rockville MD 20850

NASDAQ Stock Market
One Liberty Plaza
New York NY 10006

Official Committee of Unsecured Creditors
c/o Joseph Wielebinski / Jay Ong
Munsch Hardt Kopf & Harr PC
500 N Akard St #3800
Dallas TX 75201-6659

Pardo Family Holdings Ltd
c/o SKP
1745 Broadway 18th Floor
New York NY 10019

Paul Berger
c/o Kevin Michael Young
Prichard Hawkins McFarland et al
Union Squire #600
San Antonio TX 78216

Paul Berger
c/o Roy L Jacobs / Laurence D Pasko
60 East 2nd Street 46th Floor
New York NY 10165

Price L Johnson PC
8750 N Central Expressway
Suite 1010
Dallas TX 75231

Purchase Escrow Services LLC
205 M&B Industrial
Woodway TX 76712

R Scott Peden
1117 Charring Cross
Waco TX 76712

Scott Carlson
c/o Rod L Poirot
Cavazos Hendricks Poirot & Smitham PC
900 Jackson Street #570
Dallas TX 75202

Shackelford Melton McKinley & Norton
3333 Lee Parkway
10th Floor
Dallas TX 75219

Shareholder.com
Lockbox 30200
PO Box 8500
Philadelphia PA 19178-0200

Squire Patton Boggs (US)
PO Box 511269
Los Angeles CA 90051

Squire Patton Boggs (US)
S Cass Weiland / Robert A Hawkins
2000 McKinney Ave #1700
Dallas TX 75201

State of Texas
c/o Texas Attorney General
PO Box 12548
Austin TX 78711

Stewart Scothorn
c/o John D Fraser
Shields Britton & Fraser PC
5401 Village Creek Drive
Plano TX 75039

Strasburger & Price LLP
PO Box 50100
Dallas TX 75250-9989

Tarrant County
c/o Laurie Spindler Huffman
Linebarger Goggan et al
2777 N Stemmons Freeway #1000
Dallas TX 75207

Tad M Ballantyne
5118 Hunt Club Road
Racine WI 53402-2333

Texas Mutual Insurance Co
6210 E Highway 290
Austin TX 78723-1098

Travelers
One Tower Square
Hartford CT 06183

West & Associates LLP
320 South RL Thornton Freeway
Suite 300
Dallas TX 75203

Whitley Penn LLP
8343 Douglas Ave #400
Dallas TX 75225

John Willingham MDL Group
c/o James Craig Orr, Jr
Heygood Orr & Pearson
2331 W Northwest Hwy 2nd Floor
Dallas TX 75220

Danny Birtcher
c/o James Craig Orr, Jr
Heygood Orr & Pearson
2331 W Northwest Hwy 2nd Floor
Dallas TX 75220

David Whitmire
c/o James Craig Orr, Jr
Heygood Orr & Pearson
2331 W Northwest Hwy 2nd Floor
Dallas TX 75220

John Woelfel
c/o James Craig Orr, Jr
Heygood Orr & Pearson
2331 W Northwest Hwy 2nd Floor
Dallas TX 75220

Todd McClain
c/o James Craig Orr, Jr
Heygood Orr & Pearson
2331 W Northwest Hwy 2nd Floor
Dallas TX 75220

US Trustee
Lisa Lambert
1100 Commerce St Rm 976
Dallas TX 75242-1011