

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

**TRONDHEIM CAPITAL
PARTNERS LP
and MTP 401K PLAN, et al.,**

Plaintiffs

vs.

Case No. 4:19 -cv-01413-KOB

**LIFE INSURANCE COMPANY OF
ALABAMA, et al.,**

Defendants

**LIFE INSURANCE COMPANY OF
ALABAMA**

Nominal Defendant

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REPORT OF THE PARTIES' PLANNING MEETING

Counsel for Plaintiffs and Defendants submit this Report in accordance with Federal Rule of Civil Procedure 26(a)(1). The matters on which the parties have not reached an agreement are set out in separate paragraphs.

1. The following persons participated in a Rule 26(f) conference by telephone on September 16, 2020 by telephone.

For Plaintiffs:

Joe Sibley

For Defendants:

Mike Haney

Chuck Dauphin

2. Description of the Nature of the Case.

The Plaintiffs are Trondheim Capital Partners LP, MTP 401K Plan, Mitchell Partners, LP, The Herr Foundation, The Julie M. Herr Revocable Trust, The Jeffrey M. Herr Trust, Jeffrey M. Herr, Bjornsund Ventures, LLC, Nate Tobik, Conant Family Foundation, and Emily Clark. They are shareholders of Life Insurance Company of Alabama (“LICOA”) who have asserted direct and derivative claims against LICOA and some of its directors.

Defendant Life Insurance Company of Alabama (“LICOA”) is an Alabama Corporation whose stock is traded over-the-counter, a/k/a pink sheets. LICOA is a direct and nominal Defendant. The individual Defendants are Marvin Lynn Lowe, Raymond Rudolph Renfrow, Jr., Rosalie Renfrow Causey, Alburta Daugeette Lowe, and Clarence William Daugeette, III. Each is a director of LICOA, but together they do not comprise all of the directors of LICOA.

Plaintiffs make the following direct claims in their Amended Consolidated Complaint (Doc. 25) against the Defendants identified in each count.

Count I - All Plaintiffs assert direct claims against the Director Defendants Daugeette, Causey and Renfrow for breaching their respective duties of loyalty to

LICOA by allowing LICOA to become overcapitalized which allegedly depreciated the value of the stock, by purchasing additional shares of LICOA stock at below the stock's real value, and by keeping the value of the stock depressed so family members could buy additional shares at below market value. Plaintiffs claim these actions devalued their shares by 75%.

Count II - All Plaintiffs seek a dissolution of LICOA due to the alleged illegal, oppressive and fraudulent conduct set out in the pleading which allegedly justifies dissolution under §10A-2-14.30 *Ala. Code* (1975).

Count III - All of the Plaintiffs assert Rule 10b-5 claims against all of the individual Defendants claiming they failed to disclose the intentional suppression of the stock value, the rejection of offers to buy LICOA which allegedly deprived Plaintiffs of a premium return on their investment, and the lack of controls to prevent corporate waste.

Count IV - Plaintiffs Trondheim Capital Partners LP and MTP 401K Plan assert a claim against all of the Defendants for an alleged failure to provide access to corporate records as required by § 10A-2-16.02 *Ala. Code*.

In addition to these claims, all of the Plaintiffs have asserted the following derivative claims in a pleading designated as Derivative Plaintiffs' First Amended Consolidated Derivative Complaint (Doc. 32).

Derivative Count I - Plaintiffs assert Defendants Dauge, Causey and

Raymond Renfrow each breached his/her fiduciary duty as a director by taking a corporate opportunity - i.e, purchased shares in their individual names rather than offering the shares to all shareholders.

Derivative Count II - Plaintiffs assert all Defendants breached their fiduciary duties as directors by failing to assess and evaluate third party offers to buy LICOA.

Derivative Count III - Plaintiffs allege all Defendants breached their fiduciary duty as directors by failing to implement programs to prevent corporate waste such as allowing vacations and personal meals to be paid by LICOA, allowing corporate funds to be spent on too lavish an office space, and allowing the officers to be paid excessive compensation.

The Defendants deny Plaintiffs contentions, affirmatively state the Plaintiffs have not been damaged by any actions of the Defendants, assert the running of the statute of limitations as to each count, and pursuant to Alabama's Business Judgment Rule, rely on the decision of a Special Litigation Committee which investigated the derivative claims and determined that it is not in the best of LICOA to pursue the derivative claims. The Defendants further contend that there is no basis for the dissolution of LICOA or the assessment of a penalty against any Defendant for the alleged failure to timely produce corporate records.

3. Parties' Assessment of the Complexity of the Case.

i. Plaintiff: Plaintiffs contend that this factual complexity of this

case is moderate as to liability but potentially complex with respect to damages because it may be difficult for a lay person to understand how the conduct complained of constitutes damages to Plaintiffs. Plaintiffs believe discovery and expert testimony will flush the complexity of these issues out more as the case progresses.

ii. Defendants: Defendants believe the facts of this case are easily understood but that the legal claims asserted present several issues, including but not limited to the nature of direct versus derivative claims, the consideration to be given the recommendation of the Special Litigation Committee, the type of damages allowed under a Rule 10b-5 claim, the accrual of the statute of limitations for each count and for each Plaintiff, the reliance of each Plaintiff on the alleged wrongs of the Defendants, and the individual liability of each Defendant, if any.

4. Initial Disclosures. The parties have agreed to complete the initial disclosures required by Rule 26(a)(1) by October 1, 2020.

5. Discovery Plan.

(a) Discovery will be needed on these subjects:

i. Plaintiffs:

a. The bona fides of the Special Litigation Committee and the Lightfoot law firm's investigation;

b. The qualifications and expertise of the Director Defendants and their LICOA-employed family members;

c. The reasonableness and justification of the Director Defendants' expenditures and compensation of themselves and their LICOA-employed family members;

d. The going concern value and liquidation value of LICOA and whether the business plan and strategy of management is designed to maximize shareholder value;

e. Communications and interactions with shareholders of LICOA and communications by and among the Director Defendants and third parties; and

f. Document creation and retention policies and practices of LICOA.

ii. Defendants:

a. The bona fides of the Special Litigation Committee and the Lightfoot law firm's investigation;

b. The reliance of each Plaintiff on the alleged wrongs of the Defendants;

c. The impact on each Plaintiff of any of the alleged wrongs of each Defendant;

d. The type of and extent of damages each Plaintiff claims to have suffered;

e. The accrual of each cause of action for each Plaintiff;

(b) Disclosure or discovery of electronically stored information should be handled as follows: Electronically stored information may be produced on disk or flash drive.

(c) Discovery plan: (Defendants' propose such plan subject to and

without waiver of their motion to initially limit discovery to SLC issues):

All discovery commenced in time to be completed by October 31, 2021.

Maximum of 30 interrogatories by Plaintiffs (as a group) to each party.

Maximum of 30 interrogatories by Defendants (as a group) to each party.

Maximum of 30 requests for admission by Plaintiffs to each Defendant

Maximum of 30 requests for admissions by Defendants (as a group) to each party.

Maximum of 30 document requests by Plaintiffs (as a group) to each Defendant.

Maximum of 30 document requests by Defendants (as a group) to each Plaintiff.

Responses to interrogatories, requests for admissions, and document requests will be served within 30 days from the date each is received by counsel. The parties agree to service of all papers required to be served by the Federal Rules of Civil Procedure by email.

Maximum of 15 depositions by plaintiffs and 15 depositions by defendants (not including expert witnesses). More depositions may be taken upon agreement of the parties or upon leave of the Court.

The relatively large number of depositions may be needed due to the number of Plaintiffs and Defendants who are parties in the case.

Each deposition will be limited to maximum of 7 hours, exclusive of breaks, unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) are due from plaintiffs by May 3, 2021.

Defendants are entitled to depose Plaintiffs' experts prior to identifying their experts. Reports from retained experts under Rule 26(a)(2) are due from defendants by August 16, 2021.

Supplementations under Rule 26(e) are due by June 1, 2021.

Discovery may be commenced on discovery to the issues regarding the SLC and the investigation by the Lightfoot law firm immediately. Discovery may be commenced on other matters only on leave of the Court unless and until the Court rules on Defendants' outstanding motions to dismiss, at which time discovery will only be limited by the Federal Rules of Civil Procedure and any rulings affecting the scope of discovery the Court may render.

6. Other Items:

(a) Meeting with the Court: The parties do not request to meet with the Court before a scheduling order is entered.

(b) Amended Pleadings:

The deadline to seek leave for the parties to amend their pleadings shall be February 15, 2021.

(c) Pretrial Conference: The pretrial conference shall be _____, 2021.

(d) Dispositive Motions: All dispositive motions must be filed by October 15, 2021. Unless otherwise agreed to by the parties through counsel, any party responding to a dispositive motion must do so within thirty days of service of the motion. Unless otherwise agreed to by the parties through counsel, the moving party(ies) must file any reply brief within fourteen days of service of the responding brief.

(e) Settlement: At this time, there does not appear to be any prospect of the parties reaching a reasonable settlement.

(f) Mediation at this juncture will not enhance the prospects of the parties reaching a reasonable settlement.

(g) Final dates for submitting Rule 26(a)(3) witness lists, designations of

witnesses whose testimony will be presented by deposition and exhibit lists is 30 days before trial.

- (h) Final dates to file objections under Rule 26(a)(3) is fifteen days before trial.
- (i) The trial date is _____, 20__ and is expected to last six to seven days.
- (j) Protective Order: The parties will provide the Court with a proposed stipulated protective order regarding confidential information.

Dated: September 24, 2020.

Respectfully submitted,

/s/ Sharonda C. Fancher
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