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**BEFORE THE ARKANSAS CEMETERY BOARD**

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ARKANSAS SECURITIES DEPT.

**IN THE MATTER OF:**

**STEPHANIE WEBB**

**CASE NO. C-10-136-10-OR01**

**ORDER DISMISSING REQUEST FOR PAYMENT OF OUTSTANDING FEES**

A meeting of the Arkansas Cemetery Board ("Board") was held on December 10, 2009. Among the matters considered was a request by Stephanie Webb ("Webb"), prior court-appointed receiver for Haven of Rest Cemetery, for payment of outstanding court-ordered receivership fees. Webb appeared on her own behalf. Upon consideration of the testimony, the exhibits, and all other matters presented, the Board hereby finds and concludes:

**FINDINGS OF FACT**

1. Webb was appointed as the receiver of Haven of Rest Cemetery by the Circuit Court of Pulaski County, 17<sup>th</sup> Division in Case No. OT-2001-4645 on January 6, 2003, and served as the court-appointed receiver of Haven of Rest Cemetery until February 16, 2007. On December 18, 2006, Webb filed a Motion to Resign as Receiver, which was subsequently granted on January 2, 2007. At a hearing on February 5, 2007, Sam Jarvis was named successor receiver of Haven of Rest Cemetery, to commence immediately upon the expiration of Webb's tenure on February 16, 2007.
2. On December 10, 2009, the Board considered Webb's request for payment of outstanding court-ordered receivership fees that were not paid from the accounts of Haven of Rest Cemetery during Webb's tenure as the court-appointed receiver of Haven of Rest Cemetery. A copy of the Board's transcript is attached as "Exhibit A".

3. Sam Jarvis, the current court-appointed receiver of Haven of Rest Cemetery, has made no request for a loan from the Board's insolvent cemetery loan fund to pay Webb's outstanding court-ordered receiver fees.
4. The Board has no authority to request or require the current court-appointed receiver to pay any debt allegedly owed by Haven of Rest Cemetery; similarly, the Board has no authority to request or require that the current court-appointed receiver request a loan from the insolvent cemetery loan fund and direct that such loaned funds be used to pay Webb.
5. The Board moved to dismiss the request, since the Board was not the proper party to hear the request for payment of outstanding court-ordered receiver fees. Further, the Board has no authority over the Court to require or to request a hearing upon Webb's application for payment of outstanding court-ordered receivership fees.

**CONCLUSIONS OF LAW**

6. Act 1242 of 2001 authorized the Board to segregate \$180,000 within the Board's general operating fund to be known as the insolvent cemetery loan fund.
7. Disbursements of the insolvent cemetery loan fund shall only be used to lend a court-appointed receiver or conservator the funds necessary to assure that a cemetery will be properly maintained. Ark. Code Ann. § 20-17-1025(a).

**ORDER**

The Board hereby dismisses this request for payment of outstanding court-ordered receiver fees by Stephanie Webb.

Dated: May 25, 2010.

**ARKANSAS CEMETERY BOARD**



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William "Bill" Booker, II  
Chairperson



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A. Heath Abshure  
Secretary

ORIGINAL

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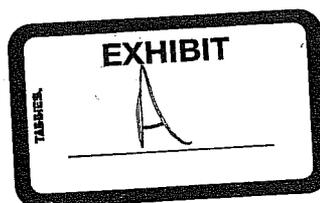
PROCEEDINGS OF AND BEFORE THE  
ARKANSAS CEMETERY BOARD

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December 10, 2009

201 East Markham, 3rd Floor  
Little Rock, Arkansas

Shyloa Myers, RPR, CCR  
Arkansas Lic. No. 710



## BOARD MEMBERS PRESENT:

Chairman, Mr. Bill Booker

Secretary, Mr. Heath Abshure

Dr. Mary McGehee

Mr. Mike Wilcox

Mr. Steve McDonald

Mr. Stephen Whitwell

Mr. John Harris

Mr. B.J. McCoy

## ALSO PRESENT:

KARYN H. TIERNEY

ALIX STEPHENS

Arkansas Securities Department

201 East Markham, Suite 300

Little Rock, AR 72201

1 MR. BOOKER: All right. Of course, we are on a July 1  
2 through June 30 accounting year.

3 MS. McDOUGAL: Correct.

4 MR. BOOKER: Refresh my memory again, now. The  
5 appropriation, is that for a one-year period or for a  
6 two-year period?

7 MS. McDOUGAL: That is a one-year period. You will  
8 have an additional 20,000 appropriation for the second year  
9 of the biennial.

10 MR. BOOKER: Okay. Any questions of Ms. McDougal? Any  
11 further questions, I guess I should say.

12 Thank you.

13 MS. McDOUGAL: Okay. Thank you.

14 MR. BOOKER: All right. The Chair would recommend that  
15 we take just a brief recess. I've learned my lesson by not  
16 taking one before. It's almost 10:30. If we could take a  
17 10-minute break, does that sound all right to the Board?  
18 We'll reconvene at about 10:40. Thank you.

19 (Recess taken.)

20 MR. BOOKER: All right. The Chair notes that the  
21 Board's back in their respective places. We appreciate  
22 everybody being back in a reasonable time.

23 So we'll continue with our agenda. Item No. 4 is the  
24 Haven of Rest cemetery. There are at least a couple of  
25 items we need to discuss about the cemetery today.

1           At our last meeting, I believe Stephanie Webb, the  
2 previous court-appointed receiver, made a proposal, a  
3 request to the Board, and we did not take action on that at  
4 the last meeting. We asked for staff to get quite a bit of  
5 information regarding many things on the history of Haven of  
6 Rest.

7           And we have I think before us probably a record amount  
8 of documentation about Haven of Rest. Obviously, that  
9 process with Haven of Rest has generated a lot of  
10 information. We appreciate the staff for the summary that  
11 has been presented.

12           As to proceeding this morning, I know Ms. Webb is here.  
13 If you would like to come on up to the stand, Ms. Webb. And  
14 does staff have any background information they would like  
15 to present in this matter this morning?

16           MS. TIERNEY: I did provide Ms. Webb with a copy of  
17 what your Exhibit A is, so she does have that so you guys  
18 will be working off the same figures.

19           MR. BOOKER: All right. Ms. Webb, if you would like to  
20 maybe give us a brief synopsis of why you're here this  
21 morning and the nature of your request to the Board.

22           MS. WEBB: Thank you, Chairman Booker. Since my  
23 resignation as the receiver in February of 2007, there were  
24 outstanding receiver fees that were ordered through the  
25 Court that went through the process of going through a

1 petition submitted, copies submitted to all the attorneys on  
2 record and interested.

3 From that petition a court date or hearing was set.  
4 And in lieu of a hearing being set, there was an appropriate  
5 amount of days that everyone would have time to review  
6 everything if there was any questions. If not, then it was  
7 so ordered by the Court.

8 What I have been sending over the course of the past  
9 two years is the outstanding fees that were in fact ordered  
10 by the Court that are due the receivership. And that is  
11 what I had submitted or what was on the agenda from last  
12 quarter.

13 MR. BOOKER: When you say you've been sending, you've  
14 been sending them to the Cemetery Board?

15 MS. WEBB: Yes. I've been sending them, a copy to the  
16 two addresses I have of record for the current receiver, as  
17 well as a copy to the -- first it was the attorney of record  
18 for the Cemetery Board, and then it was to the Secretary of  
19 the Cemetery Board in the Securities Department and then to  
20 the Chairman.

21 MR. BOOKER: Okay. I'd like to be clear. I understand  
22 what the nature of your request is. I understand it may  
23 relate to some fees that you believe were approved by the  
24 Court to be paid.

25 MS. WEBB: Uh-huh.

1           MR. BOOKER: But you want this Board to take what  
2 action?

3           MS. WEBB: To pay these -- the fees that are due, based  
4 upon the troubled cemetery fund loan, which was the normal  
5 process in the past.

6           MR. BOOKER: When you say "pay these fees," now, I want  
7 to be sure we're clear about this.

8           The Board has not really paid any fees in the past  
9 directly, have they?

10          MS. WEBB: No. Those fees came out of the Arkansas  
11 Cemetery Board troubled fund.

12          MR. BOOKER: And those payments that came from the  
13 troubled fund to someone to something, those were in the  
14 form of a loan.

15          MS. WEBB: Uh-huh.

16          MR. BOOKER: That were executed by the troubled  
17 cemetery? By the receiver? Could you help me on that.

18          MS. WEBB: The actual Cemetery Board approved a loan to  
19 be issued from the troubled cemetery to the receiver with  
20 regards to fees that were submitted.

21          MR. BOOKER: All right. So in essence what you're  
22 asking us to do is to loan money to the current receiver of  
23 Haven of Rest and then to tell that receiver that he should  
24 pay these unpaid fees of yours?

25          MS. WEBB: In essence, yes.

1 MR. BOOKER: All right. Now, the current receiver -- I  
2 don't believe is with us today -- has actually not requested  
3 that we loan him these funds, correct?

4 MS. WEBB: No, not to my knowledge.

5 MR. BOOKER: In your experience even when you were the  
6 receiver, were you familiar with the Board directing you as  
7 the receiver to pay certain things?

8 MS. WEBB: Yes.

9 MR. BOOKER: So it's your impression that as the  
10 receiver for Haven of Rest, you were working under the  
11 supervision and authorization of the Cemetery Board?

12 MS. WEBB: No, of the Court.

13 MR. BOOKER: You made periodic reports and  
14 presentations to the Judge?

15 MS. WEBB: Uh-huh.

16 MR. BOOKER: Well, have you made your requests known to  
17 the Judge?

18 MS. WEBB: Yes.

19 MR. BOOKER: Has the Judge had any response?

20 MS. WEBB: Not that I know of that there has been a  
21 hearing or anything scheduled. The hearing that was  
22 scheduled on matters and the status of Haven of Rest, that  
23 issue was not brought up, although it was before the current  
24 receiver and the Court and the Cemetery Board staff.

25 MS. TIERNEY: The status hearing that you attended,

1 Mr. Booker.

2 MR. BOOKER: The status hearing.

3 MS. TIERNEY: Yes, sir. That August 13 status hearing,  
4 I believe, is what Ms. Webb is referring to.

5 MR. BOOKER: Well, is it appropriate at those status  
6 hearings for Ms. Webb to present any information like this  
7 to the Judge about outstanding bills from her time as  
8 receiver? Is that when he would become aware of this?

9 MS. TIERNEY: It's my opinion that she would need a  
10 special hearing for that if she was going to present it to  
11 the Judge.

12 MR. BOOKER: Well, I'm just trying to -- it seems kind  
13 of like we're in sort of a loop here.

14 MS. TIERNEY: Yes, sir, that the Judge would need to --  
15 in my opinion, the Judge would need to rule on that to  
16 require the current receiver to pay a debt.

17 MR. BOOKER: Is it your position, Ms. Webb, that the  
18 Judge has already approved these payments to you?

19 MS. WEBB: No. It is my position that there has not  
20 been a hearing before the current judge regarding these  
21 matters, even though these issues have been presented to the  
22 current receiver and the staff of the Cemetery Board so that  
23 a hearing can be scheduled.

24 MR. BOOKER: All right. So you don't think the Judge  
25 has actually approved the payment of the fees that you're

1 asking for?

2 MS. WEBB: Yes, he has. He has approved -- there is an  
3 order approving the fees, but there is not a hearing set to  
4 hear the matter of the fees, the outstanding fees that have  
5 been paid. It was not brought up -- I believe that it  
6 was -- it was mentioned at the final hearing; but because  
7 the current judge, Judge Matthew Pierce, was not presiding  
8 at the hearing where the resignation was presented, there  
9 was a temporary judge that had stepped in because Judge  
10 Mackey had a family emergency. The matter did not come --  
11 was not discussed at that time.

12 MR. BOOKER: Well, I'm just trying to get some clarity  
13 as to the history of this. But I'm also really searching  
14 for whether or not the Board has ever done this before or  
15 needs more authority to do what you're actually asking us to  
16 do.

17 MS. WEBB: Well, I can say that in the past there have  
18 been issues that have come up with the cemetery. The  
19 cemetery board has asked for certain discovery or  
20 information to be gathered together. It was presented to  
21 the Cemetery Board; and then from that a hearing, a status  
22 hearing was set before the current judge. And that was  
23 through the Cemetery Board, based upon the information that  
24 they had received.

25 Now, that's how it has been done in the past. And then

1 based upon that hearing, there was an order that went out by  
2 the Judge that would direct the receiver however in the  
3 matter -- however he ordered the matter.

4 MR. BOOKER: I guess we're coming down here, though, to  
5 actually the expenditure of funds, particularly from the  
6 troubled loan fund. It seems like the history of every  
7 payment from the troubled loan fund has been in the nature  
8 of a loan to the troubled cemetery who is actually being  
9 operated then by the receiver.

10 MS. WEBB: Uh-uh.

11 MR. BOOKER: While you were the receiver, I'm sure the  
12 loan fund must have originated several loans to the cemetery  
13 and you as a receiver. It was never a loan that was  
14 requested by an outside party, a vendor or a supplier.

15 MS. WEBB: Well, I don't know. I would need to check  
16 the records. Because there was always an issue between when  
17 an audit was done. And there was issues between the  
18 accounting between Rest in Peace and Haven of Rest when it  
19 was a combined cemetery. Then it was segregated, and there  
20 was orders indicating this is to be paid on behalf of a  
21 third party, such as the accountant and the IRS. That has  
22 happened in the past.

23 MR. BOOKER: But did the Board ever instruct you, as  
24 the receiver, that you should pay the attorney?

25 MS. WEBB: It was an order through the Court.

1 MR. BOOKER: All right. So where I'm trying to get  
2 here is, I don't know that the Board can instruct the  
3 current receiver to pay anybody anything.

4 MS. WEBB: Well, that has never been the experience.  
5 It's always been a hearing before the Judge.

6 MR. BOOKER: Right.

7 MS. WEBB: And through an Order.

8 MR. BOOKER: Right.

9 MS. WEBB: But a hearing was set through this Board.

10 MR. BOOKER: All right. So your request -- maybe  
11 you've got two requests. It seems like your initial  
12 request, as I understand it, is that you would like for the  
13 Board to loan money to the current receiver and the cemetery  
14 that theoretically would be used to pay your outstanding  
15 fees?

16 MS. WEBB: Well, let's reverse that. That a hearing be  
17 set before the Judge regarding this matter, and based upon  
18 the results of that hearing, an Order sent forth from the  
19 Judge.

20 MR. BOOKER: Okay. So you would like for our -- this  
21 Board to be the ones that initiates a hearing before Judge  
22 Pierce to discuss the matter of your outstanding fees?

23 MS. WEBB: Yes.

24 MR. BOOKER: All right. Now, I would need some advice  
25 from staff or other Board members of whether or not that is

1 the proper procedure for the Board to have in either  
2 Ms. Webb's case or any other outside party who is -- has  
3 claimed that they have some payment outstanding for the  
4 cemetery.

5 Is that the type of thing that we could do? And  
6 obviously, we do have periodic status hearings before the  
7 Judge. This has never been brought to the Judge as far as  
8 we know? I apologize. I'm somewhat ignorant on this,  
9 because I've only been to one status hearing myself and  
10 don't really know the proper procedures on these things.

11 MR. WHITWELL: If it please, the receiver is not this  
12 Board's receiver, correct?

13 MS. TIERNEY: That's correct.

14 MR. WHITWELL: It is His Honor Matthew Pierce's  
15 receiver and operates under the authority of the Circuit  
16 Court.

17 MS. TIERNEY: That's correct.

18 MR. WHITWELL: So we don't have the ability or  
19 authority to direct this receiver to do anything; is that  
20 correct?

21 MS. TIERNEY: That is correct.

22 MR. WHITWELL: Now, with respect to the Court's  
23 authority, does staff believe that this Court has the  
24 authority to require these Board members to vote in favor of  
25 making a loan under the troubled cemetery loan fund?

1 MS. TIERNEY: No, sir, that is not my opinion, that the  
2 Court can require the Cemetery Board to loan from the  
3 insolvent loan fund.

4 MR. WHITWELL: Can or cannot?

5 MS. TIERNEY: Cannot. That the Court cannot require.

6 MR. WHITWELL: And the Court can't require the Receiver  
7 to execute a check funds that are not there?

8 MS. TIERNEY: That's correct.

9 MR. WHITWELL: There's been mention of a Court Order.  
10 There is a Court Order that is in existence. What is that  
11 Court Order?

12 MS. TIERNEY: I believe what she's referring to is the  
13 orders that you guys received in the packet, the petition  
14 for receiver fees and the order of those receiver fees. You  
15 should have gotten a copy of each one of those orders in  
16 your packet.

17 MS. McGEHEE: So I have one for '03. I have one from  
18 '03 where the receiver asks for funds for expenses related  
19 to running a cemetery. But the court ordered Ms. Webb to  
20 pay the fees out of the money they were making off the  
21 cemetery. She was told to pay herself.

22 MS. TIERNEY: Yes, ma'am. The Cemetery Board back in  
23 '03 through 2005 did grant Ms. Webb loans from the insolvent  
24 loan fund to pay some of the receiver fees.

25 MS. McGEHEE: Okay.

1 MR. McCOY: Mr. Chairman?

2 MR. BOOKER: Yes, sir.

3 MR. McCOY: There are a couple of orders in here that  
4 relate to fees for the receiver. It appears to me that  
5 these orders simply confirm the request. It doesn't order  
6 payment. I think the presumption is that if the -- if the  
7 expenses are legitimate, then they should be paid from  
8 income generated by the receiver.

9 MS. WEBB: That's correct.

10 MR. McCOY: It's my understanding that the payments  
11 from the insolvent cemetery funds were loans; is that  
12 correct?

13 MS. WEBB: That's correct.

14 MR. McCOY: And they were loans to the receiver?

15 MS. WEBB: That's correct.

16 MR. McCOY: Have any of those loans been paid?

17 MS. WEBB: No.

18 MS. McGEHEE: How much -- what is the total of the  
19 loans?

20 MS. TIERNEY: The total amount of loans?

21 MS. McGEHEE: To the Webbs.

22 MS. TIERNEY: Exhibit D has a list of all loans that  
23 were approved by the Board.

24 MS. McGEHEE: To the Webbs?

25 MS. TIERNEY: To all receivers of Haven of Rest or Rest

1 in Peace.

2 MR. McCOY: I just asked that question because it seems  
3 to me that the Webbs on their own initiative have to  
4 petition the Court to consider or to reconsider their bill.  
5 I haven't seen anything in any of these orders that would  
6 lead me to believe that the Court has ever order the  
7 Arkansas Cemetery Board to pay the receiver anything.

8 MS. McGEHEE: This letter that you include in the  
9 packet, Exhibit B, dated January 16, '08, says here under  
10 the response -- this was an opinion on behalf Ms. Webb.  
11 This says that the -- a claim for Receiver's fees is a claim  
12 payable from the assets in the hands of the receiver. So  
13 the receiver -- when you take over the receivership, you are  
14 actually taking over the receivership as a business.

15 You were running Haven of Rest as a business to turn a  
16 profit, right?

17 MS. WEBB: That's correct.

18 MS. McGEHEE: I was wondering about this when I was  
19 reviewing the materials last night. Before you -- had you  
20 ever had any experience running a cemetery before you took  
21 over Haven of Rest as a receiver?

22 MS. WEBB: As receiver, no.

23 MS. McGEHEE: I was wondering before you became  
24 receiver, did you look at the books to determine if it was  
25 possible to even turn a profit from running Haven of Rest?

1 MS. WEBB: When I received the books of Haven of Rest,  
2 there weren't any. There were limited -- it was a  
3 spreadsheet that was given to me by the temporary receiver,  
4 which was the Secretary of the Securities Department,  
5 Mr. Charles Handley.

6 MS. McGEHEE: Okay. I'm saying based on what you saw  
7 on that spreadsheet, were you certain that you could make a  
8 profit running Haven of Rest? If you go into business to  
9 make a profit, before you take over that business, it seems  
10 like you would have some indication whether or not you can  
11 make money.

12 MS. WEBB: Well, at that point it wasn't -- my  
13 instructions were not given to prepare some type of  
14 recommendation of profits to be made on the cemetery. I was  
15 to operate it.

16 MS. McGEHEE: Okay. Maybe I'm not understanding. When  
17 you take over as receiver, then you have the assets -- they  
18 don't belong to you, but you said you were running it and  
19 trying to run it to make a profit.

20 MS. WEBB: Well, when I took over the receivership, my  
21 instruction was to gather the assets, because there weren't  
22 any as far as -- that was why the cemetery was in the  
23 condition and the situation that it was before the courts.  
24 So one of my responsibilities was to gather the assets and  
25 protect them, as well as operate the cemetery in the

1 interest of interment right holders.

2 MR. McCOY: Did the cemetery generate any money?

3 MS. WEBB: Yes, it did.

4 MR. McCOY: During your tenure as receiver, all of the  
5 funds generated by the cemetery were spent?

6 MS. WEBB: Yes, they were.

7 MR. McCOY: And then you came to the Arkansas Cemetery  
8 Board and asked for loans in order to carry on the business  
9 of the receivership?

10 MS. WEBB: That is correct.

11 MR. BOOKER: Are there any other questions by Board  
12 members? Does the staff have any recommendation or  
13 information that they would like to impart to the Board?

14 MS. TIERNEY: No, sir, unless the Board does have  
15 questions for the staff.

16 MS. WEBB: I would like to say one thing. Because  
17 Haven of Rest in this receivership is a unique animal and it  
18 really hadn't occurred before, I'm basically trying to go  
19 through the procedures as far as they were presented to me  
20 as far as what I should do. I'm not saying that this is  
21 hard and written in stone, that this is the correct  
22 procedure. We're all kind of still kind discovering what we  
23 need to do.

24 But if it is not the authority to this Board the make  
25 any recommendations -- one of the things that I did was to

1 get my representative, the letter that you referred to, to  
2 find out what -- what are the legal rights, what are the  
3 ramifications -- from a citizen, at this point what can you  
4 do?

5 And I received that opinion, and I'm basically acting  
6 upon that coming before this Board. If there is no  
7 authority that this Board can do, then this Board just needs  
8 to tell me that so I can go to the next step. But I don't  
9 think it would have been prudent on my part to go to another  
10 step without knowing that I'm taking the proper procedure  
11 based upon what the Attorney General had presented to me.

12 MR. BOOKER: I appreciate you mentioning that.

13 Mr. Whitwell, did you have a motion?

14 MR. WHITWELL: I would like to make a motion that  
15 whereas this Board does not have authority over the Judge or  
16 the Circuit Court with respect to its receiver or its  
17 finding or orders, whereas we don't have the authority to  
18 require or request that the Court enter a hearing upon  
19 Ms. Webb's application, I would move that her request before  
20 this particular body be dismissed.

21 MR. McCOY: I second that motion, Mr. Chairman.

22 MR. BOOKER: It's been moved by Mr. Whitwell, seconded  
23 by Mr. McCoy that the Board dismiss the application by  
24 Ms. Webb.

25 Is there any further discussion of the motion? Any

1 questions? If not, all in favor please signify by saying  
2 aye.

3 BOARD IN UNISON: Aye.

4 MR. BOOKER: Any opposition?

5 (No opposition.)

6 MR. BOOKER: Thank you very much, Ms. Webb.

7 MS. WEBB: Thank you.

8 MR. BOOKER: There is a Part B to Haven of Rest. It  
9 says, Consider any other matters regarding Haven of Rest  
10 Cemetery. Sometimes that's been significant other  
11 information. I know that in our material today we were  
12 given quite a bit of material from staff.

13 Is there any other comment that staff would like to  
14 make about the current status of the cemetery?

15 MS. TIERNEY: No, sir. I know that Friends of Haven of  
16 Rest are working towards moving to become the receiver of  
17 Haven of Rest cemetery. I know they've, you know, asked for  
18 information from the staff and from different Board members  
19 on that and they're working towards it, but I don't believe  
20 anything that the Board needs to be considered today has  
21 been brought before the Board.

22 MR. ABSHURE: I would like to congratulate B.J. and his  
23 group. I saw an excellent, excellent article in the paper  
24 either earlier this week or last week. You look like you're  
25 doing some really excellent work getting a lot of

1 built down into that system. But it is a very complicated  
2 section of the code, as Mr. Whitwell alluded to there. But  
3 generally, I think you're having more sophisticated  
4 investors and more advice available to you as you're making  
5 these decisions for a life insurance company than a typical  
6 person making these decisions over these perpetual care  
7 cemetery funds.

8 That's where we need to be sure we are trying to  
9 connect the rules and regulations of the statute with what  
10 we're trying to accomplish and that it can be understood and  
11 reasonably complied with by people in our industry. Because  
12 the best rules and regulations, if they're not adhered to,  
13 really don't mean anything if they're not easily understood.

14 Okay. Any other discussion of that? If not, is there  
15 any other business that needs to come before the Board?

16 MS. TIERNEY: The staff has none.

17 MR. BOOKER: Thank you. I apologize for not being able  
18 to adjourn at 12:15 -- yes, sir, Mr. Webb?

19 MR. WEBB: May I approach?

20 MR. BOOKER: Yes, sir.

21 MR. WEBB: Mr. Chairman and Secretary, I have one  
22 question pertaining to receivership, especially post  
23 receivership of -- I mean, our receivership of Haven of Rest  
24 where a receiver is being replaced with a receiver that may  
25 be out operating now.

1           The first question -- and I pose this to you,  
2 Mr. Secretary, and you, Mr. Chairman: When a receiver is  
3 requested from the Cemetery Board -- or what's the procedure  
4 as far as appointing a receiver from this Cemetery Board?  
5 I'm talking about the Cemetery Board now and if it concurs  
6 with the Cemetery Board in the past. I mean, which is a  
7 year or so ago, if you understand what I'm saying.

8           MR. ABSHURE: I guess is your question: What does the  
9 Cemetery Board do when it seeks the appointment of a  
10 receiver?

11          MR. WEBB: Yes, sir.

12          MR. ABSHURE: It would make a petition.

13          MR. WEBB: A petition?

14          MR. ABSHURE: To the Court.

15          MR. WEBB: Yes, sir. And do that alleviate the  
16 responsibility of the Cemetery Board where it pertains to  
17 the operation of a cemetery by the receivership? Who  
18 regulates that receiver?

19          MR. ABSHURE: The Court.

20          MR. WEBB: The court. What experience, if I may ask if  
21 you may know, do the courts have with how cemeteries run?  
22 Where do they get their information from?

23          MR. ABSHURE: From the receiver. If the Court appoints  
24 the receiver, the receiver is in effect the appointee of the  
25 Court.

1 MR. WEBB: Yes, sir.

2 MR. ABSHURE: He reports to the Court.

3 MR. WEBB: Yes, sir.

4 MR. ABSHURE: The receiver's responsibility in terms of  
5 reporting things of that nature is to the Court. I mean,  
6 the Cemetery Board has no authority over that receiver at  
7 all outside of that receiver's position as in effect the  
8 operator of a perpetual care cemetery.

9 MR. WEBB: Okay. Is that -- is that -- is that the way  
10 the rules are now or have they always been --

11 MR. ABSHURE: They've always been that way.

12 MR. WEBB: They've always been that way. So upon the  
13 appointment of the receiver, who's regulating the receiver  
14 as far as to say if that receiver is operating in a prudent  
15 manner or just operating ad hoc?

16 MR. ABSHURE: If the conduct at issue is conduct that  
17 is regulated by the Cemetery Board and falls within the  
18 jurisdiction of the Cemetery Board and the remedies that the  
19 Cemetery Board has at hand -- for example, the receiver is  
20 not cutting the grass. Really, that's shared; because for  
21 somebody to go to the Court and say, Look, the receiver is  
22 not cutting the grass. But at the same time the Cemetery  
23 Board has jurisdiction over the maintenance of perpetually  
24 maintained cemeteries, so that would be us.

25 In terms of -- in your case ordering the receiver to

1 pay a specific bill, that's never the Cemetery Board.

2 MR. WEBB: I really wasn't asking pertaining for  
3 receivership fees. I'm just trying to get some kind of  
4 clarity as to what's the Board's responsibility as the  
5 Cemetery Board towards a receivership?

6 MR. ABSHURE: A receiver?

7 MR. WEBB: Yes. And if I may add, and when that  
8 receiver is appointed, who sets the rules and regulations  
9 for that receiver? Is that something written in the state  
10 laws or is that something that --

11 MR. WHITWELL: If I may just briefly, I think you may  
12 be asking for some legal opinions which the Board does not  
13 have the authority -- it would be improper for us to issue a  
14 legal opinion with respect to some of those inquiries that  
15 you've made. That's just my comment.

16 MR. WEBB: Well, I am not asking for any legal advice.  
17 I'm just trying to figure from the Board's perspective  
18 what -- you know, which -- I would imagine would be in you  
19 all's rules and regulations when are you not responsible --  
20 but I guess that would be legal.

21 So when is the Board hands off when it comes to a  
22 receiver that was requested? And is that -- is that a --

23 MR. ABSHURE: Is your question that because the Board  
24 petitions for the appointment of the receiver that the Board  
25 somehow maintains a special relationship vis-a-vis that

1 cemetery and that receiver and some sort of special  
2 jurisdiction over the receiver that the Board doesn't have  
3 over other cemeteries?

4 MR. WEBB: Yes.

5 MR. ABSHURE: The answer I think is none. I mean, when  
6 the Court appoints a receiver, that is in effect the  
7 operator of a cemetery that we would treat just like any  
8 other perpetually maintained cemetery.

9 MR. BOOKER: It seems like at that point in time the  
10 receiver becomes the operator of the cemetery and would be  
11 subject to the same rules and regulations. The Board saw  
12 fit in the past when they thought the operator of a  
13 cemetery, another commercial enterprise, was not operating  
14 the cemetery in what we thought was the best interest of the  
15 public, the Board then stepped in there and asked the Court,  
16 Do you agree with us? If you do, then would you appoint a  
17 receiver over this cemetery?

18 The Court then decides who do they think is a competent  
19 person to appoint as the receiver, slash, operator of the  
20 cemetery. Then that person simply becomes like every other  
21 cemetery as far as we're concerned: Comply with the  
22 Arkansas laws and the rules and regulations.

23 MR. WEBB: That's where I -- that's the point I'm  
24 making. I was just simply -- I really wanted an answer to  
25 if that person is operating outside of the laws of how a

1 cemetery would normally operate as far as recordkeeping and  
2 everything, the Board don't have anything to do with that  
3 operation where it pertains to keeping track of a  
4 daily-operating cemetery that's operating as a well-oiled  
5 wheel? The Board don't have any jurisdiction over the --  
6 how that cemetery is operated as far as the way the person  
7 is selling plots, how they're operating the cemetery that  
8 may be breaking laws, is what I'm saying, once it goes into  
9 receivership?

10 Because if that's the case, we're all operating -- then  
11 anyone can operate ad hoc; because, I mean, if you're  
12 regulating and it goes into receivership, the Court is not  
13 experienced in operating cemeteries.

14 So are you saying that once it goes into receivership  
15 it can just operate ad hoc?

16 MR. BOOKER: No. I would say this, though, that Haven  
17 of Rest is really not all that unique of an experience in  
18 that there is any enterprise in a receivership. No court is  
19 an expert in running any business. So the system is set up  
20 for the Court to appoint a receiver whose job it is to try  
21 to protect, maintain, and operate that business really under  
22 two oversights; of course, the Court has oversight in that  
23 regard, but still the basic rules and regulations that  
24 pertain to whatever that enterprise might be -- in this  
25 particular case, it's a cemetery. The State still should be

1 in compliance with whatever the applicable rules and  
2 regulations are.

3 But let me say that just as a general statement, any  
4 business that finds itself in need of this type of oversight  
5 and this type of protection, there must be some underlying  
6 base problem with the business.

7 MR. WEBB: Yes.

8 MR. BOOKER: Otherwise, it would still be commercially  
9 viable and operating. So there are always going to be  
10 special unique challenges that come to operating any entity  
11 that's in a receivership. I would say it's just a general  
12 nature of whatever the problem was that led for it to be in  
13 receivership.

14 MR. WEBB: Okay. So then I'll I appreciate your  
15 answers, because I appreciate your time. The only other  
16 question I have so I have this clear in my mind: If the  
17 cemetery is operating under a receivership, you're saying  
18 that the Cemetery Board really don't have any -- any kind of  
19 as far as what you might call if they wanted to do an audit  
20 on the cemetery, they can't do that up under a receivership?

21 MR. BOOKER: I think they could.

22 MR. WEBB: The Cemetery Board could?

23 MR. BOOKER: I think the Board, if it thought it needed  
24 to, could ask our staff to do that.

25 MR. WEBB: Okay. That's all I have.

1 MR. BOOKER: Is there any other business that needs to  
2 come before the Board?

3 MS. TIERNEY: I do not believe so, sir.

4 MR. BOOKER: If not, we will stand in adjournment.

5 Thank you.

6 (Proceedings adjourned at 12:25 p.m.)

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