

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 7
	:	
HDR HOLDING, INC., <i>et al.</i> ,	:	Case Nos. 19-11396 (MFW)
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	Hearing Date: January 5, 2022 at 2:00 p.m. (ET)
	:	Objection Deadline: December 29, 2021 at 4:00 p.m. (ET)
	:	

**MOTION PURSUANT TO SECTIONS 542(a) AND (e) OF THE BANKRUPTCY CODE
FOR ENTRY OF AN ORDER DIRECTING TRANSAMERICA LIFE INSURANCE
COMPANY TO TURNOVER PROCEEDS TO THE TRUSTEE**

George L. Miller, the chapter 7 trustee (the "Trustee") for the estate of the above-captioned debtors (the "Debtors"), through his undersigned counsel, respectfully submits this motion (the "Motion") for entry of an Order pursuant to sections 542(a) and (e) of the Bankruptcy Code, 11 U.S.C. §101 *et seq.* (the "Bankruptcy Code") requiring Transamerica Life Insurance Company to turn over the Cash Surrender Value of the Policy (as those terms are hereinafter defined) to the Trustee and respectfully represents that:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
3. Venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicate for the relief sought herein is sections 542 (a) and (e) of the Bankruptcy Code.

PROCEDURAL BACKGROUND

5. On June 24, 2019, (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

6. On December 11, 2020, the Debtors’ cases were converted to Chapter 7 pursuant to that *Order (I) Converting the Debtors’ Chapter 11 Cases to Cases Under Chapter 7, (II) Establishing a Deadline for Filing Final Chapter 11 Fee Applications, and (III) Granting Related Relief* [D.I. 413]. On December 16, 2020, Trustee was appointed as Chapter 7 Trustee for the Debtors’ estates. [D.I. 414].

7. The Trustee received a letter dated June 15, 2021 from Transamerica Life Insurance Company (the “Insurer”) advising, *inter alia*, that as of the close of business on June 15, 2021, the cash surrender value of Policy No. 60035952 in the name of Schramm, Inc. (the “Policy”) was \$92,411.43 (the “Cash Surrender Value”). A true and correct copy of the June 15, 2021 letter is attached hereto as Exhibit A and is referenced herein as though set forth in full.

8. On August 11, 2021, counsel to the Trustee sent a letter to the Insurer requesting that the Cash Surrender Value of the Policy be turned over to the Trustee. A true and correct copy of the August 11, 2021 letter is attached hereto as Exhibit B and is referenced herein as though set forth in full.

9. On August 25, 2021, counsel to the Trustee was advised by the Insurer that the Insurer would require that an Order be obtained from the Court in this case prior to turning over the Cash Surrender Value of the Policy to the Trustee.

RELIEF REQUESTED

10. Section 542(a) of the Bankruptcy Code provides that:

Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. §542 (a).

11. Section 542(d) of the Bankruptcy Code provides that:

A life insurance company may transfer property of the estate or property of the debtor to such company in good faith, with the same effect with respect to such company as if the case under this title concerning the debtor had not been commenced, if such transfer is to pay a premium or to carry out a nonforfeiture insurance option, and is required to be made automatically, under a life insurance contract with such company that was entered into before the date of the filing of the petition and that is property of the estate.

11 U.S.C. §542 (d).

12. The cash surrender value of a unmaturred life insurance policy is “property of the estate.” 11 U.S.C. § 541(a)(1); *In re Himel*, 190 B.R. 59 (Bankr. W.D. Pa. 1995).

13. Here, the Cash Surrender Value of the Policy is property of the Debtors’ bankruptcy estate and is not of inconsequential value to the estate. Accordingly, the elements required under 11 U.S.C. §542 (a) authorizing turnover to the Trustee are satisfied. 11 U.S.C. §542 (a).

14. Moreover, to the extent that Section 542 (d) is applicable, the authorization for turnover is also as the Policy is a life insurance policy and the turnover of the Cash Surrender

Value of the Policy could be deemed an exercise to carry out a non-forfeiture option in accordance with the terms of the Policy.

15. Based on the foregoing, the Trustee respectfully requests that, in the interest of the prompt and effective administration of the Debtors' estates, this Court enter an order substantially in the form of the proposed form Order submitted herewith requiring Insurer to turnover to the Trustee the cash surrender value of the Policy.

NOTICE

16. Notice of this Motion has been provided to the United States Trustee's Office, the Insurer, and all parties requesting notice pursuant to Bankruptcy Rule 2002. The Trustee respectfully submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter the relief sought herein and grant to the Trustee such other and further relief that the Court deems just and proper.

Dated: December 22, 2021
Wilmington, Delaware

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