

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
 20<sup>TH</sup> JUDICIAL DISTRICT AT NASHVILLE  
 PART II

STATE OF TENNESSEE, )  
*ex rel.* JULIE MIX MCPEAK, solely in her )  
 official capacity as Commissioner of )  
 Commerce & Insurance, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GALILEE MEMORIAL GARDENS, )  
 JM&M SERVICES, INC., )  
 LAMBERT MEMORIAL CO., aka )  
 LAMBERT MEMORIALS, INC. )  
 LAMBERT & SONS, INC. )  
 JEMAR LAMBERT, MARJE LAMBERT, )  
 and MARY H. LAMBERT, and ALL )  
 PERSONS ACTING IN CONCERT )  
 WITH THEM, )  
 )  
 Defendants. )

No. 14-102-II

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RECEIVER’S FURTHER RESPONSE OPPOSING MOTION BY FUNERAL HOME CLASS  
 ACTION PARTIES TO INTERVENE TO LIFT STAY, FILED BY R.S. LEWIS AND SONS  
 FUNERAL HOME et al., WITH SUPPLEMENT BY EDWARDS ENTITIES.

Julie Mix McPeak, in her official capacity as Commissioner of Commerce and Insurance for the State of Tennessee, appointed Receiver (“Receiver”) of the cemetery known as Galilee Memorial Gardens including the listed entities conducting the business of that cemetery (“Cemetery”), and her Special Deputy Receiver, through counsel, hereby responds with this further Opposition to the Motion, set for November 1, 2017 requesting to intervene for the purpose of lifting this Court’s stay of litigation against the receivership and Cemetery.

The Rule 24 Motion and Memorandum to Intervene for the Limited Purpose of Lifting this Court’s Stay as to the Receivership and the ‘Galilee’ Defendants was filed September 22, 2017

by Funeral Homes who are named defendants and participants in the *Akilah Wofford* or other Shelby County cases, movants R.S. Lewis and Sons Funeral Home, et al. (the Funeral Homes' Motion). The Funeral Homes' Motion addresses whether and the extent to which the Receivership ought to be exposed to any litigation outside this Court. On October 2, 2017, the "Edwards Entities" (M.J. Edwards & Sons Funeral Home, Inc., M.J. Edwards-Whitehaven Chapel, Inc. d/b/a/ M.J. Edwards Whitehaven Funeral Chapel, and M.J. Edwards Hillside Chapel, Inc. d/b/a/ M.J. Edwards Funeral Home Stage Road Chapel) filed the "Supplemental Memorandum in Support of Rule 24 Motion and Memorandum to Intervene for the Limited Purpose of Lifting This Court's Stay as to the Receivership and the Galilee Defendants."

The Receiver had filed an initial objection to the Funeral Homes' Motion on September 29, 2017. Currently the Special Deputy Receiver, Mr. Moore, is to be deposed as sought originally by the *Wofford* Plaintiffs, under the conditions approved by the *Wofford* Plaintiffs and the Receiver in an Agreed Order entered by this Court on October 9, 2017. However, the broader requests for relief from stay entailed in Funeral Homes' Motion were postponed and continued to the instant setting of November 1, 2017. Mr. Moore's deposition is now scheduled for November 7, 2017, chosen as one of his very few available days through the end of the year, and the Receiver's Motion for Protective Order concerning the *Wofford* Plaintiffs' subpoena out of this court for testimony and documents of the receiver and cemetery will also be heard on November 1st.

THE CURRENT POINTS OF DISPUTE OVER MAINTAINING THIS COURT'S STAY

As stated by the Funeral Homes, they conceive the issues as going beyond the deposition of Mr. Moore, for considerations related to this Court's stay and the Shelby County class action. These are framed by the Edwards Entities as follows:

1. Whether Plaintiffs will be able to proceed in the Shelby County case with their requested relief that pertains to the management of the cemetery grounds, and further disposition of remains.

2. The scope of documents which Mr. Moore may be required to produce. The Edwards Entities respectfully submit that they should be entitled to see Mr. Moore's files regarding the Receivership, to the extent such documents are not privileged, in order to prepare for and use for his testimony.

3. Whether Mr. Moore and/or others from the receivership may be required to testify at a trial of the Shelby County class action. If he will not be available to testify at trial, the Edwards Entities have contended that they will need to be deposed for evidence. In that event, the Edwards Entities have reserved the right to request that he be deposed twice, once for discovery, as Plaintiffs apparently are requesting, and again for evidence.

As for item 2., the issue is believed moot, through the agreed setting of Mr. Moore's deposition, and activities underway to respond to the *Wofford* Plaintiffs' subpoena for documents with the deposition. The Receiver is in process of reviewing and furnishing voluminous materials to respond and has filed the Motion for Protective Order (also to be heard November 1, 2017, and perhaps unopposed) to safeguard confidential information viewed by the litigants.

The Receiver vigorously opposes items 1. and 3. above. The single deposition that has been agreed to by the Receiver at this point regarding Mr. Moore has demanded substantial resources from the Department of Commerce and Insurance, Counsel to the Receiver, the Tennessee Attorney General's Office, and Mr. Moore. In light of the distraction and effort to accommodate this single deposition, along with the undertaking of reviewing and producing thousands of pages of cemetery records and receivership documents, the Receiver objects to lifting this Court's stay on discovery and involvement by the Receiver in any further proceedings, including trial. If the past month of nearly non-stop activity and preparation is any guide, there is no doubt such lifting of the stay would strain the scarce resources of the Receiver, the Consumer Fund, and interfere with the common goal of winding up this Cemetery's affairs. Most importantly, the Cemetery and

its business entities are solely under the jurisdiction of this Court, and thus any relief purportedly at stake to be issued by the Shelby County court to dictate management of the cemetery grounds and disposition of remains would be void and without effect. This is a direct outgrowth of the nature and plain meaning of cemetery receivership itself reflected by the statute authorizing cemetery receivership by the Commissioner, Tenn. Code Ann. § 46-1-312.

As such, continued naming of the Cemetery entities as defendants in any proceedings in Shelby County is stayed, barred and unable to support any legal judgment against the Cemetery entities. To the extent that some or all of the Plaintiffs have indicated that they wish to obtain equitable relief involving the grounds of the cemetery through the class action, such relief is impossible and cannot be granted by any court other than this one. The General Assembly has made it clear where sole jurisdiction for such a request lies and it is with this Court. The Plaintiffs in the Shelby County cases (*Wofford*) have also expressed that they will not or cannot remove the Cemetery as named defendants, even though the purpose of this is murky and increasingly prone to misunderstanding. The Receiver perceives a quandary that this naming was a back-door to active litigation to bind the Cemetery and compel participation. This course contrasts with other plaintiffs who, as reflected in the court docket, complied with this Court's injunctions and stays previously, and dismissed all the Galilee entities from their lawsuits in Shelby County.<sup>1</sup> The

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<sup>1</sup> *Ruby Lott vs. Galilee Memorial Gardens* Circuit court action CT 004195-14 filed on October 3, 2014, entered an order of dismissal as to Galilee Memorial Gardens, JM&M Services, Inc., Lambert Memorial Co, and Lambert & Son, Inc. on October 28, 2014. *Erica Williams vs. Galilee Memorial Gardens*, CT 003142-14, filed July 18, 2014, indicates that after notice of voluntary nonsuit the court entered an Order of Voluntary Nonsuit as to Defendant Galilee Memorial Gardens, JM&M Services Inc Lambert Memorial Co aka Lambert Memorial Inc. and Lambert & Sons Inc, only, on July 25, 2014. The *Stephens* case filed by these same *Wofford* plaintiffs counsel was supposed to be stayed as it was secondary to the *Wofford* class action. The various service lists provided by some Funeral Homes reflected other cases still. Receiver's counsel was informed in March 9, 2015 by Stanley Less, attorney for *Shirley Hayslett vs. Galilee et al*, Shelby CT -003524-14, that that lawsuit was filed to preserve the statute of limitations, but that they did not intend to take any action in furtherance of the lawsuit unless the stay were lifted. It was also represented that no answer was required, and no discovery would be undertaken.

Receiver's knowledge of these cases is fairly superficial precisely because this Court has justly protected the receiver from such interference.

When the Edwards Funeral Homes clarified their goals in their latest submission to this Court, it confirmed the Receiver's concerns that a far greater scope of interference is now intended by all the Shelby County parties for their litigation. Instead of only seeking facts gained by the Deputy Receiver about the Cemetery, (something that was manageable, short in duration, embodied in the Receiver's reports, and perhaps helpful to eliciting true premises for the Shelby County proceeding), both sides of the class action parties now seemingly seek to extinguish all of this Court's protections for the receivership case and especially the Galilee entities with a trial date now in view. (The Shelby County Chancery Court has set an April 30, 2018 jury trial start date since the instant Motions were filed).

It should be noted that the Receiver has *no objection* to the discovery that may be required on extant persons who ran the cemetery, performed burials, or owned it prior to the receivership, so long as burden is not placed on the receivership to participate or to need to defend them in some manner. The individual Lambert defendants in the Receivership case were not personally under receivership and not protected individually from suit by the stays of the order. If they are called upon to interpret or explain the records of the cemetery or its practices, some means of doing that should be possible after the production by the receiver. Indeed, they may have been deposed already in some of the Shelby County matters. The Receiver of course reserves authority to, and likely does differ substantially in the proper impression or conclusions to be formed about the cemetery, and may contradict their information.

Accordingly, the Receiver's position is as follows:

1. Lifting the stay for all purposes concerning the Galilee Memorial Gardens cemetery, and the entity names through which its business was conducted (i.e. the named respondents in the caption of this receivership case) is *inconsistent with* this Court's sole jurisdiction under Tenn Code Ann. § 46-1-312. It contravenes the intended scope and purpose of such jurisdiction as shown by the provisions of that statute toward a comprehensive resolution of the cemetery's obligations, and future status through a plan approved by this Court that is found fair and equitable in consideration of the broad range of interests and interested persons and considerations identified in that statute.

2. There are no grounds to lift the stay and injunctions any further against interference with the cemetery and Receiver, and no proper purpose would be served beyond what the Receiver has already allowed for factual development in connection with the deposition of the Special Deputy Receiver's representative, Robert E. Moore, Jr. and the furnishing of cemetery and receivership records for that factual development that is currently being arranged in connection with that deposition.

3. The stay should not be lifted for a second, evidentiary deposition of Mr. Moore. The Funeral Homes have been provided substantial documentation and have had access to the reports filed by Mr. Moore with this Court. Based on these reports, it can be reasonably expected that they can prepare properly, especially in light of the voluminous records requested as part of this deposition, to depose Mr. Moore for trial and that requesting a second deposition of Mr. Moore or that that he, or any other person under the protection of this court, appear at trial will only serve to cause considerable distraction from the Receiver's task in resolving this receivership and is unlikely to result in gain for any party to the outside litigation.

4. The continued naming of the cemetery and its entities as party defendants, although stayed, in any other court's proceeding presents a violation of or dilution of the statutory provisions giving this Court sole jurisdiction, and now violates the injunctive provisions that require all claims against the cemetery and its property and operations be brought in the receivership court. The easiest appropriate course is for the plaintiffs in any outside litigations to non-suit and dismiss any and all cemetery entities. The relief that the Plaintiffs in the outside litigations allege to seek, equitable relief regarding the cemetery itself through the class action, is a legal impossibility as a receivership action brought through Davidson County chancery court is the sole means set out in

Tennessee law for the rehabilitation or liquidation of a cemetery and, as such, the Plaintiffs will never be able to obtain such relief through any other venue.

5. In the view of the Receiver, and this Court previously, the protection of the cemetery and receivership does not prevent the development of facts from the individual Lamberts, (Jemar Lambert, MarJe Lambert, and Mary Lambert).

ARGUMENT

**I. TENNESSEE LAW INVESTS THIS COURT WITH SOLE SUBJECT MATTER JURISDICTION OVER THE CEMETERY RECEIVERSHIP AND THUS THE REMEDIES CONTEMPLATED BY CEMETERY RECEIVERSHIP UNDER TENN. CODE ANN. § 46-1-312.**

The instant case was filed and granted under provisions of Tenn. Code Ann. § 46-1-312 (subsections (a)-(d) attached in appendix). Within subsection (a) of that statute, investing the Commissioner with the powers of receiver as the petition is granted, are strong affirmations of this Davidson County Chancery Court’s exclusive powers and adjudicatory role.

(2) For the purpose of this section, the Davidson County chancery court shall have **exclusive jurisdiction** over matters brought under this section, and that court is authorized to make all necessary or appropriate orders to carry out the purposes of this part.

(3) Receivership proceedings instituted pursuant to this part shall constitute the **sole and exclusive method of liquidating, rehabilitating, or conserving a cemetery**, and no court shall entertain a petition for the commencement of the proceedings unless the petition has been filed in the name of the state on the relation of the commissioner.

(emphasis added).

It is under these provisions that this Court was empowered to enter the Order of Receivership on February 21, 2014, replacing the temporary restraining order against doing business issued at the filing of the case on January 24, 2014. Other provisions of that statute make clear that receivership can serve several broad purposes and flexibility of outcomes to attempt to reform and revitalize

the Cemetery. The Order of Receivership was designed to address deficiencies and grounds that are determined to exist at the Cemetery under the receiver's management and control. This particular receivership for Galilee Memorial Gardens has never been able to resume operations as a cemetery business, because the Receiver has confirmed its lack of financial assets, the degradation of its physical conditions, its lack of vacant burial spaces, and the essential unreliability of its records.

The cemetery receivership statute places all authority in the Receiver to consider and propose plans to this Court for a number of options. However, with an inoperable or fully sold cemetery, there are fewer outcomes that may be viable. The Receiver and this Court, further, are required to consider the overall public interest and the interests of multiple stakeholders with interests in the Cemetery that may be either competing or common, such as persons buried already at the cemetery, their next of kin, descendants, and lot holders and contractual claimants. The Plaintiffs in the Shelby County cases represent persons connected with interments after 2010, whereas Galilee began interring individuals in the 1950s. As such, while the Plaintiffs in these cases may represent a substantial number of people purported to have some interest in the Cemetery, they neither represent nor claim to represent the broad interests that the Receiver must consider in the outcome of this matter. This is part of why it is so important that this Court retain sole jurisdiction of this matter and is supported by the fact that there is nothing about the statutory scheme that would relieve this Court at this point from its sole subject matter jurisdiction to go through the process of ruling upon any plan or other wind-up scenario to finalize the receivership and deal comprehensively with the Cemetery.

In pertinent part, the provisions of Tenn. Code Ann. § 46-1-312(a)(9) invest the Receiver/Commissioner with the statutory role to make overall determinations about an

appropriate strategy for dealing with the cemetery and to seek approval of that plan through recommendations to this Court. The Court in turn must render judgment and give heed to a broad articulated set of stakeholders in the Cemetery.

(9) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the cemetery is appropriate, the receiver shall prepare a plan to effect those changes. Upon application of the receiver for approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned, taking into consideration the overall operation of the cemetery, *and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public.* If the plan is approved, the receiver shall carry out the plan.

(Emphasis added.)

This statute provides the legal justification, out of many practical ones, why the Receiver and Cemetery cannot be made subject to rulings of Shelby County class action or other suits that compete with this comprehensive approach, and with fewer than all the interests that must be considered. Even if the interests of the Shelby County proceedings may be aligned in some respect, there is simply no jurisdiction for that other court to displace the receivership process, and the primacy of the Receiver to propose overall solutions for the Cemetery, if at all feasible.

Subject matter jurisdiction cannot be conferred by waiver or consent. *McCarver v. Insurance Co. of Penn.*, 208 S.W.3d 380, 383 (Tenn. 2006); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996). The Receiver cannot just consent or move this case to Shelby County, nor be dragged into those cases to impose on the cemetery a theoretical obligation that is not consistent with this Court's result taking into account the cemetery as a whole as in this receivership matter. Even before such exclusive jurisdiction provisions were in the code, the Tennessee statutes for state court receivership of funeral homes and cemeteries initiated by the

Commissioner were given deference. A bankruptcy court dismissed a bad faith filing by funeral home/cemetery owner debtors, (and were cause to dismiss not to exist, found abstention warranted), where the state receivership case had been commenced in Chancery Court and the debtor would have been about to lose control to the receiver. *In re Forest Hill Funeral Home & Memorial Park etc.*, 364 B.R. 808 (U.S.Bankruptcy Court, E.D.Ok. 2007). Thus competing courts are not legally acceptable in this arena.

In furtherance of its sole jurisdiction, this Court entered the Stay provisions that are in the Order of Receivership. The Shelby County cases concerned are ones in which the plaintiffs have named the Cemetery and its entities as defendants – and the legal action entailed by this naming has been precisely stayed by this Court’s orders, namely in this Court’s Order of February 21, 2014 Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction. This Order provides in part,

“H. That there be no complaint, counter-complaint or similar action initiated or continued against the Cemetery, the property of the receivership, the Receiver or those of the Receiver’s agents, in connection with this receivership otherwise than by appearing in this cause and with the permission of this Court.”

Similarly, injunctions in the receivership Order prevent the bringing of judicial claims to foreclose, alter or terminate any interest of the Cemetery in any property:

E.8. Obtaining preferences, judgments, attachments or other liens, or making levy against the Cemetery or its assets or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter or terminate any interests of the Cemetery, in any property, whether such acts are part of a judicial proceeding or otherwise, until further order of this Court.

Consequently, attempting to alter the property or interests of the Cemetery in any property elsewhere, including by a judicial proceeding, is enjoined, and by virtue of the lack of any other

court's jurisdiction, void. Parties in some of the pending Shelby County cases took the appropriate action to dismiss the Cemetery by non-suit, upon being informed of these stay provisions.

That stay and related injunctions against interference with the Receiver through discovery or other means has been reaffirmed through additional orders of this Court in light of the *Wofford* and other cases filed in Shelby County, Tennessee. Those Orders, entered on April 14, 2014 and May 11, 2015, respectively, arose out of hearings involving some of the same issues with some of these same Movants before Chancellor McCoy in March 2014 and March 2015. (Copies attached as Exhibits A and B). The May 2015 order clarified that the Commissioner and Department in the non-receiver, or thus strictly regulatory, capacity was not within the receivership court's protection and would be able to respond on their own to any records requests, discovery or other legal matters.<sup>2 3</sup>

**A. The Receiver Objects to Lifting the Stay or Modifying the Injunctions Further For the Same Reasons Stated in the Orders Affirming the Stay - as Essential to Preserving the Receiver and Cemetery from Burdens, Expense and Distraction of the Multiplying Outside Litigations, from Trial elsewhere, and to Uphold this Court's Central Authority over the Cemetery's Resolution.**

The Movant Funeral Homes and the Shelby County class action Plaintiffs have repeatedly gone over this ground with the Receiver and this Court. Nonetheless the statute has not changed,

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<sup>2</sup> The State is not a party in the Shelby County cases as would be consistent with their lack of jurisdiction, and the bar on claims arising from the exercise of regulatory authority, *See e.g.* Tenn. Code Ann. § 9-8-307(a)(2).

<sup>3</sup> That May 11, 2015 Order on Motion for Direction from the Court and on Motion to Intervene for Limited Purpose of Lifting Stay for Discovery and Motion to Lift Stay by Certain Funeral Home Defendants In Shelby County Chancery Court Litigation stated: "...3. Based upon the pleadings, the statements of counsel and the entire record as a whole, this Court finds that the Joinders in Motions and Motions to Intervene are denied. The stay issued in this Receivership cause does not affect any discovery requests in other proceedings to the Commissioner of Commerce and Insurance with regard to anything outside of the subject Receivership. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Joinders in Motions and Motions to Intervene are denied. The Court's ruling does not affect any action that involves the Commissioner of Commerce and Insurance with regard to anything outside the Receivership."

nor even now at this stage of the receivership, neither have the fundamental conditions and legal purposes for shielding the receivership from outside litigation. Chancellor McCoy inquired of some of the Plaintiffs' counsel in a prior hearing, March 2014, (at the time, the *Wofford* and the *Anderson* class action cases had not yet joined forces) about the stay and whether the cemetery entities had been named as party defendants in those actions in addition to the Funeral Homes. Because so many of the same issues were addressed at the early hearing, it is submitted that the same reasoning still applies as stated by the prior Chancellor. The comments are preserved in the Order Denying Motion to Intervene and Reiterating Stay of Proceedings, entered April 14, 2014 which incorporated an excerpted transcript of the oral ruling of March 28, 2014, after extensive argument. (Exhibit A, hereto). The ruling is quoted in part as follows:

[Exhibit A, its attached ruling, from TR Page 9, line 5 numbered to TR Page 13, line 6]

The Court: ...The order should say that the motion to intervene was presented seeking clarification of certain provisions of the order. A hearing was held today with regards to that motion. ***The court found that it would not change its order; that no proceeding that impacts the receiver is permitted by any entity or any party, but to the extent that the motion seeks any further intervention is denied. . . .***

Mr. Siegel [A Plaintiffs' lawyer, *Anderson* litigation]: Okay

The Court: Does that get you where you want to go?

Mr. Siegel: But then the court also stated that we could proceed with the litigation in . . .

The Court: I am not telling you what to do. It's not my job. My job is to deal with the receiver. I did suggest – I make suggestions, but they're not court orders. I did suggest that to the extent you want to proceed in some way in Shelby County, that you check with Mr. Feibelman before you do that so you don't violate the order. To that extent I'm not disturbed. If you don't violate my order, you can do anything that lawyers can do probably.

Mr. Siegel: I guess that was part of my question, because we were advised that perhaps even a filing of our lawsuit may have been a violation of the court's order, and that was really –

The Court: ***Did you put the receiver in as a defendant?***

Mr. Siegel: **No, we did not.**

The Court: ***Where did we hear that?***

Mr. Feibelman: **He put the cemetery in.**

**The Court:** *Oh, you can't do that cemetery. I have my big hand on top of that cemetery because I just put it in Mr. Kustoff's lap. [The former Special Deputy Receiver] That's what I've got. I've got the cemetery. Do not do anything with regards to the cemetery. Sorry.*

Mr. Andrews: Your Honor –

The Court: Yes, sir.

Mr. Andrews: *If I could get a little bit of clarification, I don't think we can voluntarily exclude the cemetery in name.*

**The Court:** *Okay. You are stayed - -*

Mr. Andrews: *We don't want to do anything that requires the receiver to do anything, but I think in terms of having it in the style of the case . . .*

The Court: It's already there?

Mr. Andrews: It is.

The Court: I'm not making you take it out. [repeated]

Mr. Andrews: That's fine. That's all I've got. I wanted to be sure of it. I'm not going to require - -

The Court: When you put the cemetery in, and you filed before the receivership - -

Mr. Andrews: We did.

The Court: That's the state of – a factual situation that comes before me. *I put down basically a stay like you have in bankruptcies. You can take no actions as it relates to the cemetery, but these are the receiver. While you look at him as a gentleman sitting here in the courtroom, he has his hands around the cemetery, the plots.* Now, I don't know – and you can help me here, Mr. Feibelman.

There's a thing called Lambert Memorial Company, a.k.a. Memorials, inc. To the extent that Galilee Memorial owns it, has an interest in it, is in Mr. Kustoff's lap, it's here. Mr. Kustoff does not have Jemar Lambert, Marje Lambert –

Mr. Haynes (their counsel): Marje

The Court: Marje and Mary L. and all persons acting in kind, he doesn't have that.

Mr. Feibelman: We're assuming that all corporate entities are related to what we've just generally called the cemetery, and the individuals are not within our domain.

The Court: **That's what I understood.** *If it is a concrete substance like land, buildings that were involved in Galilee Memorial Gardens, right now, until proven otherwise, Mr. Kustoff has authority over those, so if you've named them, I'm not instructing you to take them out as a party. You are stayed, and if you've ever been involved in a bankruptcy proceeding, this is very similar.*

*You are stayed as to doing anything that affects or impacts them.*

...

(Emphasis added).

The Ruling also discussed a degree of permissible scope of discovery as to the Lamberts, and that if discovery were to try to impact the receiver, the Court imagined it would hear about that. (*id.*, Exh. A at TR pages 13-15). The concerning aspect of the Funeral Homes' Motion now, and as raised by the Plaintiffs as well, is that their positions materialize a threat to obligate and bind the Cemetery and Receiver to ongoing litigation, preparation, and some kind of trial party-status participation in Shelby County, with the design of imposing particular equitable or other relief on the cemetery itself.

As noted, a later order concerning the stay, still affirmed the stay on litigation. After hearing in March 2015, the order dated May 11, 2015, attached hereto as Exhibit B, separated certain issues of the regulatory history with the State of Tennessee, Department of Commerce and Insurance, Regulatory Boards, Burial Services Section, of this cemetery from the Receivership and Cemetery. In that order, while the State in terms of providing the regulatory and licensure history of the cemetery (pre-receivership) was not shielded from discovery or records requests, the receivership and receiver and cemetery were clearly placed under the supervisory umbrella of this Court, that has jurisdiction of the "res" as well as the remedies appropriate to resolution and establishing the future, post-receivership state, of the cemetery.

Current Circumstances Still Fully Justify the Stay: Nothing has changed from the times of these orders to the present, in terms of the need to maintain the stay. As Chancellor McCoy observed even in March 2014, the possibility of rehabilitation of the cemetery, for which the receivership was established and hoped, looked fairly unlikely, and that it was going to be "more like a liquidation" (April 2014 Order Reiterating Stay, TR p. 6 line 13-14) given its condition and prospects. As of now, any rehabilitation of the cemetery in terms of even satisfying its prior pre-need contractual obligations for burial sites has become more remote than it was in 2014. When

the results of the second interment grounds audit were performed by the Special Deputy Receiver with the ground penetrating radar study (See Ninth Interim Report of the Receiver filed June 17, 2016), even the land surrounding the cemetery that was deeded by the Fogelman family trust to the Receiver in May 2015 was found to supply no capacity for additional burials. That land, just as the rest within the original cemetery boundaries, was fully taken up by gravesites.

Besides being contrary to law, it is untenable to draw and bind the Cemetery and the Receiver to participation and/or party status, with any resulting legal obligations under any orders of the Shelby County courts, so long as the receivership case is still pending and not resolved.

Except for the deposition of Mr. Moore, which is to be taken under the Agreed Order with conditions, as a means to provide explanation of the facts and conditions found by the Deputy Receiver about the Cemetery potentially to be introduced at their trial, the Receiver asks to preserve the full scope of insulation of the Receivership Order's injunctions from the Shelby County cases involving the history of the cemetery burials. In short, the Receiver asks this Court to deny all the Funeral Home Motions, to make no change to the stay of litigation in place, and to preserve all protections of the receivership and the Cemetery from the Shelby County actions that are currently in effect.

In further support of this Opposition, the Receiver relies on the whole record of this matter, particularly the original receivership order, and the two prior orders reiterating the stay attached.

Any resolution of the cemetery's status, allowance of claims upon the cemetery, and the adoption of a plan dictating the future of the cemetery and affecting its burial grounds, property, business and the interests of contract holders, lot holders and next of kin, is placed deliberately by the Tennessee legislature within the sole equitable jurisdiction of this Court.

The Shelby County cases have proceeded thus far on this Court's assumption that affected persons might attempt to obtain remedies related to circumstances derived from their relation to the cemetery against wholly separate parties, outside of the receivership case. This did not require the Receiver to be concerned, as the discovery and other burdens of litigation were removed from the receiver by this Court's orders and clarifications. However, doubling back now to affect the Cemetery itself and its property, grounds and gravesites, is directly threatening to this proceeding.

All claims concerning the Cemetery, to the extent they are cognizable and allowed, are to be handled in this single court. Receivership proceedings in the Davidson County chancery court are "the sole and exclusive method of liquidating, rehabilitating, or conserving a cemetery..." Tenn. Code Ann. § 46-1-312(a)(3). Although the Shelby County matters have not been framed as "receiverships" of the cemetery, the relief being sought is quintessentially that of a cemetery receivership as those plans for the cemetery tread upon the provisions of Tenn. Code Ann. § 46-1-312(a)-(d). Rather than seeking monetary relief just from the Funeral Home defendants, the class matters appear framed and litigated now increasingly with an eye to enforcing equitable, physical activities or cooperative remedies that are just the types of matters that this Court is set up to consider. Any attempt to indicate that equitable relief regarding the Cemetery itself might be obtained in any other Court is a legal impossibility, as the General Assembly has made clear its intention that jurisdiction lay solely with this Court. As such, to the extent that the Plaintiffs may have previously indicated that they might seek such relief through the class action through lifting the stay is not a cognizable argument as, even if the stay were lifted, they could never receive such relief through any court other than this one. Moreover this Court in performing its statutory role must consider all the interests involved, including that of the public, including those related to a

substantial majority of burials that occurred at the Cemetery prior to the time-frame the class is apparently interested in since January 1, 2011.

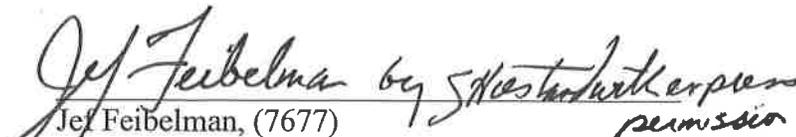
The Cemetery *still* has no assets, and no fund for such litigation to defend, to pay any money damages or effectuate any activities. To remind this Court, this entire matter and the administration of the receivership has had to be funded from the Cemetery Consumer Protection Fund, and with a focus on bringing the cemetery to an achievable, reasonable resolution, considering the poor and inaccurate state of the Cemetery records that have been reconstructed. Defending these actions, exactly the sort of actions that the General Assembly and this Court have stayed by both statute and order, serves only to cause the Fund to incur additional, unnecessary expense and slow down the Receiver and cause a distraction from the continuing task of resolving the matter before this Court.

The wind-down that is in progress still requires further orders of this Court. It cannot be achieved with this particular type of litigation pending to leave any claims outstanding against the Cemetery. Perhaps many types of claims simply cannot be allowed or would be barred categorically, assuming this Court adopts any final recommendation of the receiver against disinterments or other disturbances of burial grounds. Although the recommendations of the Ninth Report speculated that, post-receivership, requests for disinterment might follow the typical judicial process in Shelby County for notices and judicial supervision, the Receiver recommended *against any such* disinterment, because it has not been possible to identify the exact location of persons interred. Thus, whether any other persons would be impacted by a given disinterment request, would be unknown until actually performing such a process. The law already disfavors disinterment, and these circumstances are far from palatable.

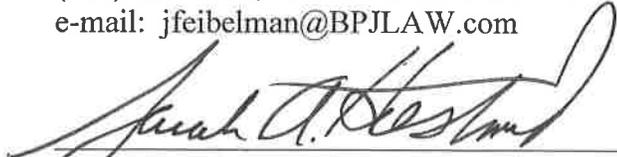
Despite the Shelby County litigants' presumption that this receivership could simply cease now, the Receiver cannot just abandon the receivership case without attempting to formulate and place appropriate conditions on the future of the Cemetery. There are still several loose ends. Frankly, this Court's charge is to find the resolution, in light of all claims. No doubt, the Receiver is hampered in finding any further or final caretaker of the cemetery so long as the outstanding claims or mandatory obligations have not been satisfied, resolved, or otherwise discharged by final order. Those types of provisions have to be ordered by this Court pursuant to its jurisdiction. The Receiver still requires protection to file and set up orderly motions to determine the Cemetery's final resolution through this proceeding, and no other partial or externally imposed resolutions can be countenanced.

Accordingly, there is still no good cause to lift this Court's stay which effectuates the subject matter jurisdiction exclusivity of the Davidson County Chancery Court, especially for vague or open-ended purposes, including subordination to the class action matters. The Receiver has made more-than-reasonable efforts to provide the parties to the outside litigation with information and has incurred substantial distractions in doing so. To further allow these requests is not only unsupported by the law and the previous order of this Court, but would only serve to slow the necessary processes that the Receiver must undergo to carry out what has been ordered by this Court. Wherefore, the Receiver respectfully requests this Court to deny the Funeral Homes' Motion and confirm that the stay against litigation involving the Cemetery or Receiver remains in effect for the duration of this Receivership case.

Respectfully submitted by:

  
Jeff Feibelman, (7677) *by Hiestand with express permission*

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Counsel for the Receiver

#### CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing Response with attachment has been sent via U.S. Mail, postage prepaid, to the following on October 25, 2017, and transmitted via email as indicated.

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---

SARAH A. HIESTAND

STATUTE APPENDIX

**Tenn. Code Ann. Section 46-1-312. Requirements for appointing a receiver to manage a cemetery.**

(a) (1) The Davidson County chancery court, *upon the petition of the commissioner, may appoint the commissioner as receiver to take charge of, control and manage a cemetery registered or required to be registered with the commissioner, upon determining that any of the following grounds exist:*

(A) The cemetery has not maintained trust funds in the manner required by this chapter;

(B) The cemetery has allowed its registration to lapse, or the registration has been revoked;

(C) The cemetery is impaired or insolvent;

(D) The cemetery has refused to submit its books, records, accounts, or affairs to examination by the commissioner;

(E) There is reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplication or use of trust funds or fraud affecting the ability of the cemetery to perform its obligation to perform improvement care or deliver cemetery merchandise or services;

(F) The cemetery has failed to file any report required by this chapter;

(G) The cemetery cannot or will not be able to meet all of its contractual obligations when they come due;

(H) A deficiency exists in the improvement care trust fund of any cemetery or separate geographical site of a cemetery; or

(I) The cemetery is not being operated in compliance with the terms and conditions of an order of the commissioner then in force and effect.

(2) For the purpose of this section, the Davidson County chancery court shall have exclusive jurisdiction over matters brought under this section, and that court is authorized to make all necessary or appropriate orders to carry out the purposes of this part.

(3) Receivership proceedings instituted pursuant to this part shall constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a cemetery, and no court shall entertain a petition for the commencement of the proceedings unless the petition has been filed in the name of the state on the relation of the commissioner.

(4) The commissioner shall commence any such proceeding by application to the court for an order directing the cemetery to show cause why the commissioner should not have the relief prayed for in the application.

(5) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the public may require.

(6) The commissioner may appoint one (1) or more special deputies, who have all the powers and responsibilities of the receiver granted under this section and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of the cemetery and of conducting the proceedings, shall be fixed by the commissioner, with the approval of the Davidson County chancery court, and shall be paid out of the funds or assets of the cemetery. The persons appointed under this subsection (a) shall serve at the pleasure of the commissioner.

(7) The receiver may take such action as the receiver deems necessary or appropriate to reform and revitalize the cemetery. The receiver has all the powers of the owners and directors, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the cemetery.

(8) If it appears to the receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the cemetery by any owner, officer, director or other person, the receiver may pursue all appropriate legal remedies on behalf of the cemetery.

(9) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the cemetery is appropriate, the receiver shall prepare a plan to effect those changes. Upon application of the receiver for approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned, taking into consideration the overall operation of the cemetery, *and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public*. If the plan is approved, the receiver shall carry out the plan.

(b) The receiver so appointed may employ the proceeds from the sale of lots, and all other saleable items and the income from the operation of the cemetery, over and above that portion due the improvement care trust fund, and other special care funds, and the amount reasonably necessary for the operation and maintenance of the cemetery business, to reduce the deficiency in the improvement care trust fund, upon the terms and conditions and in the manner deemed appropriate by the chancellor, taking into consideration the overall operation of the cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public.

(c) If the sole ground for a receivership was a deficiency in the improvement care trust fund, the chancellor shall, upon a showing that the deficiency in the improvement care trust fund has been eliminated, terminate the suspension of the certificate of registration, compensate the receiver, dissolve the receivership, and restore the management of the cemetery to its owner.

(d) Should it appear to the court that it is impossible to correct the deficiency in the improvement care fund, the court may proceed to order the sale of the cemetery as provided in § 46-1-309, or may otherwise order the termination of the use of the land as a cemetery as provided by law.

(e) [Ex parte Seizure provisions not cited]

HISTORY: Acts 1976, ch. 773, § 10; T.C.A., §§ 46-223, 46-2-123; T.C.A., § 46-2-312; Acts 2006, ch. 1012, § 4; 2010, ch. 665, § 1; 2014, ch. 560, §§ 1, 2; 2016, ch. 911, §16.

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
 20<sup>TH</sup> JUDICIAL DISTRICT  
 AT NASHVILLE  
 PART I RECEIVED

STATE OF TENNESSEE,  
*ex rel.* JULIE MIX MCPEAK, solely in her  
 official capacity as Commissioner of  
 Commerce & Insurance,

Plaintiff,

v.

GALILEE MEMORIAL GARDENS,  
 JM&M SERVICES, INC.,  
 LAMBERT MEMORIAL CO., aka  
 LAMBERT MEMORIALS, INC.  
 LAMBERT & SONS, INC.  
 JEMAR LAMBERT, MARJE LAMBERT,  
 and MARY H. LAMBERT, and ALL  
 PERSONS ACTING IN CONCERT  
 WITH THEM,

Defendants.

APR 08 2014

Davidson Co. Chancery Court

No. 14-102-II

CLERK & MASTER  
 DAVIDSON CO. CHANCERY CT.

2014 APR 14 PM 4:10

FILED

CLERK & MASTER  
 DAVIDSON CO. CHANCERY COURT

2017 OCT 25 PM 1:41

FILED

ORDER DENYING MOTION TO INTERVENE  
 AND REITERATING STAY OF PROCEEDINGS

In this matter the Court, on February 21, 2014, entered its Order Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction. This Order provides in part,

H. That there be no complaint, counter-complaint or similar action initiated or continued against the Cemetery, the property of the receivership, the Receiver or those of the Receiver's agents, in connection with this receivership otherwise than by appearing in this cause and with the permission of this Court.



Two class actions have been filed in the courts of Shelby County, Tennessee, namely:

1. Derrick Anderson, Dinah Cherry, Clemente Butts, Joanne Joyner, Gwendolyn Powell, and Gerald Jackson, on behalf of themselves and all others similarly situated V. Galilee Memorial Gardens, JM&M Services, Inc., Lambert Memorial Co., a/k/a Lambert Memorials, Inc., Lambert & Son, Inc., Jemar Lambert, Marje Lambert, and Mary Lambert, R.S. Lewis & Sons Funeral Home, Family Mortuary, Inc., Christian Funeral Directors, Inc., N.J. Ford & Sons Funeral Home, SLS, LLC d/b/a Superior Funeral Home Hollywood Chapel a/k/a SLS Transportation, Love Unlimited Flowers & Etc., and Does 1 through 100 (Circuit Court CT-000873-14) ("the Anderson litigation"), and
2. Akila Louise Wofford, Robert and Priscilla Taylor, Husband and Wife, Joe Johnson, Individually and on behalf of all similarly situated persons V. M.J. Edwards & Sons Funeral Home, Inc., N.J. Ford and Sons Funeral Home, Inc., Christian Funeral Directors, Inc. b/b/a/ Christian Funeral Directors South East, JM&M Services, Inc., Lambert Memorial Co., aka Lambert Memorials, Inc., Lambert & Sons, Inc., Jemar Lambert, Marje Lambert, Mary H. Lambert, "Doe" Funeral Homes 1-50, "Doe" Funeral Directors 1-100, and The Tennessee Commissioner of Commerce and Insurance in her capacity as receiver for the Galilee Memorial Gardens and related entities through which it conducts business. (Chancery Court CH-14-0197)("the Wofford litigation").

The plaintiffs in the Anderson litigation have filed, in this Court, a motion to intervene "for the limited purpose of clarification" of that provision of the Court's order of February 21, 2014 quoted above.

The plaintiffs in the Wofford litigation have filed a notice of appearance in this matter and have advised the court that they have filed a motion to transfer to this court the lawsuit which they have filed in Shelby County.

The Court heard arguments on the foregoing on March 28, 2014. The transcript of the Court's ruling is attached hereto and incorporated herein. In accordance with this ruling,

IT IS THEREFORE ORDERED;

(AW)

for the limited purpose of seeking clarification was heard and any motion

1. The motion of the plaintiffs in the Anderson litigation to intervene in this proceeding is denied; and

2. The quoted portion of the Court's order of February 21, 2014, is reiterated. There is a stay in effect as to any "complaint, counter-complaint or similar action initiated or continued" which affects or impacts the Cemetery or the receivership.

This \_\_\_\_\_ day of April, 2014.

*Carol E. McCoy*

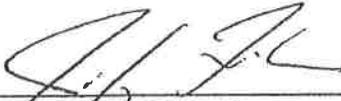
CHANCELLOR

APPROVED AS TO FORM:

  
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COPIES TO ATTORNEYS AND PRO SE LITIGANTS  
AT THE ABOVE ADDRESSES

DATE 4-15-14 CLERK JK

#### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 7<sup>th</sup> day of April, 2014:

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Jeff Feibelman

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IN THE CHANCERY COURT FOR DAVIDSON COUNTY  
20TH JUDICIAL DISTRICT  
AT NASHVILLE  
PART II

STATE OF TENNESSEE, ex rel.  
JULIE MIX MCPEAK, solely in  
her official capacity as  
Commissioner of Commerce &  
Insurance,

Plaintiff,

vs.

NO. 14-0102-II

GALILEE MEMORIAL GARDENS,  
JM&M SERVICES, INC., LAMBERT  
MEMORIAL CO., a/k/a LAMBERT  
& SONS, INC., JEMAR LAMBERT,  
MARJE LAMBERT, and MARY H.  
LAMBERT, and ALL PERSONS  
ACTING IN CONCERT WITH THEM,

Defendants.

TRANSCRIPT OF COURT'S RULING  
Before The Honorable CAROL MCCOY, CHANCELLOR

March 28, 2014

Commencing at 9:00 a.m.

Prepared by:  
Brentwood Reporting Services  
4213 Warren Road  
Franklin, TN 37067  
Reported by: Susan Murillo, CCR

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Also present:

Mr. Elbert Jefferson, Esq.

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1 PROCEEDINGS

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THE COURT: Let me ask you to  
4 address Mr. Haynes' comments about the Lambert  
5 defendants, I guess. As you have said, I don't  
6 have any intention of allowing people to interfere  
7 with the receiver and what he's been ordered to  
8 do. He has quite a few jobs -- finding the  
9 location, finding any assets, if any, finding out  
10 who are the debtors -- I mean creditors, to whom  
11 might have an obligation.

12

The way this usually works is there  
13 are classes of creditors that get paid from  
14 whatever funds are available, and it will probably  
15 be very small. I don't have any jurisdiction  
16 really, as I see it, over what happens to the  
17 Lambert defendants. I have had power of the court  
18 that rose pursuant to a statute that allows the

19 appointment of a receiver.

20 I'm not interested in class actions,  
21 and I'm not inclined to let them intervene in this  
22 proceeding. I'm not changing my order. I believe  
23 that you are correct, that whatever court you are  
24 filed in, you would proceed in those courts as you  
25 want with this exception. You don't violate my

1 order, and that means that you can make no  
2 request, direct or indirect, that interferes with  
3 the duties of the receiver, and the State of  
4 Tennessee, the Commissioner.

5 In this order it says that, in  
6 accordance with the Tennessee Code Annotated  
7 46-1-312 and 46-1-301, the court grants the  
8 Commissioner such other injunctive and equitable  
9 relief as provided herein. If for any reason  
10 there is an action taken in a pending lawsuit  
11 anywhere by anyone that purports to interfere with  
12 Mr. Kustoff's duties, you can immediately apply to  
13 me for a violation of this order.

14 No one is to interfere with what he  
15 does, so therefore it probably would be wise to  
16 check with Mr. Feibelman before you proceed to see  
17 if you might be treading on his toes so that that  
18 doesn't happen. If you want to go ahead, Mr.  
19 Haynes -- I apologize to you, but I'm not too  
20 sympathetic to your clients, and to the extent  
21 that this proceeding wants clarification, these  
22 parties are welcome to proceed as they desire in  
23 advocating their client's rights.

24 I will say it does appear to me, Mr.

25 Feibelman, that what you said is very, very true,

5

1 and that is, whoever is here represented by  
2 counsel is probably already represented by Mr.  
3 Kustoff since that they have suffered emotional  
4 distress. Receiverships don't give rewards for  
5 emotional distress, anything like that, but he has  
6 a duty to help ease that distress that they have.

7 That duty is somewhat within the  
8 equitable powers that this court has. I don't  
9 know what the numbers are. I have heard from one  
10 to 2,000. Then I've heard in excess of 10,000. I  
11 certainly hope it's not that great, but it may be.  
12 There are a number of individuals whose lives have  
13 been touched by this, that would like resolution.  
14 I think of the individuals on that plane, <sup>(Malaysia Flight 370)</sup> who want  
15 resolution.

(Chui)

16 It's going to take a little while.  
17 You already have direction. I've gotten my first  
18 status report. The only thing I would ask is that  
19 when you file the status reports, I don't know  
20 that it's been filed, and the reason that I don't  
21 is because it comes in as an ordinary document.  
22 It gets filed by the clerk. They are dutiful.  
23 They do put it in the file, but it's on the third  
24 floor.

25 But if you send me a copy, I can

1 read it. I've had it. Then I can just dispose of  
2 it. The original does need to go to the clerk,  
3 but I need one to know that it happened, and  
4 because of these proceedings I actually came  
5 across the status report, and I did read it so I

6

6 thank you for that.

7                   One duty that I think Mr. Kustoff  
8 has, that he didn't recognize he was going to  
9 have, is he has to work in tandem with the  
10 district attorney. That usually doesn't happen in  
11 a receivership. My viewpoint of a receivership is  
12 very similar to what Ms. Hiestand said, and that's  
13 this is probably more of a liquidation than a  
14 rehabilitation. Those I do have some familiarity  
15 with, and I can read the handwriting on the wall.

16                   The state has an obligation, and  
17 that's what this is about, and the state is acting  
18 on behalf of the public to remedy some horrible  
19 wrongs. That's Mr. Kustoff's job. I appreciate  
20 you, sir, for serving. I don't know that you've  
21 been handed an easy task, and I want to say to the  
22 attorneys that are here, each of you has expressed  
23 a willingness to cooperate with the receiver.

24                   I want to encourage that. You  
25 represent people whose lives are going to be

1 impacted by what he discovers, or hopefully  
2 discovers, and he may not be at liberty to share  
3 information with you. I would welcome you sharing  
4 information with him. He is going to take  
5 whatever authority he has in going forward, and to  
6 the extent that he applies to me for summary  
7 relief, he is more than likely to get it unless  
8 it's outside the bounds of something that is  
9 really improper.

10                   But he has considerable authority by  
11 virtue of being designated the receiver. Now, Mr.

12 Feibelman, do you need any clarification?

13 MR. FEIBELMAN: I don't think so.

14 We thought it was clear before, and your Honor has  
15 clarified the clarity.

16 THE COURT: Now, I do need an order  
17 that says that the motion to intervene is  
18 respectfully denied. I'm not quite sure where I  
19 am with the Wofford --

20 MR. ANDREWS: If you would like us  
21 to withdraw our motion to transfer-- we read your  
22 order the way Mr. Feibelman read your order, that  
23 we couldn't do anything without coming to this  
24 court. We are happy to withdraw that motion and  
25 go back to Shelby County and try to get at least

1 get a conditional class to toll the statute of  
2 limitations for these people.

3 THE COURT: Let me finish on the  
4 motion to transfer. That has been filed in this  
5 proceeding, right?

6 MR. ANDREWS: Yes, it has, your  
7 Honor.

8 MR. HAYNES: No, your Honor. That's  
9 been filed in Shelby County.

10 THE COURT: Well, you take care of  
11 that. I just don't want any motions hanging out  
12 of my court. Okay. So you are going to take care  
13 of that in Shelby County?

14 MR. ANDREWS: We'll make that go  
15 away.

16 THE COURT: Now, you wanted to say  
17 something?

8

18 MR. SIEGEL: Your Honor, yes, just  
19 to get some clarification on the order, because I  
20 just wanted to emphasize that our motion to  
21 intervene was only for the limited purpose of  
22 seeking clarification from the court so that we  
23 could be heard on that matter, and so when the  
24 court denied the motion to intervene, essentially  
25 the court is saying that we didn't have the right

1 to be heard on the clarification. 9

2 THE COURT: Oh, excuse me.

3 MR. SIEGEL: So I guess I'm asking  
4 for --

5 THE COURT: Let me do this. The  
6 order should say that the motion to intervene was  
7 presented seeking clarification of certain  
8 provisions of the order. A hearing was held today  
9 with regards to that motion. The court found that  
10 it would not change its order; that no proceeding  
11 that impacts the receiver is permitted by any  
12 entity or any party, but to the extent that the  
13 motion seeks any further intervention is denied.

14 MR. SIEGEL: Okay.

15 THE COURT: Does that get you where  
16 you want to go?

17 MR. SIEGEL: But then the court also  
18 stated that we could proceed with the litigation  
19 in ...

20 THE COURT: I am not telling you  
21 what to do. It's not my job. My job is to deal  
22 with the receiver. I did suggest -- I make  
23 suggestions, but they're not court orders. I did  
Page 8

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24 suggest that to the extent you want to proceed in  
25 some way in Shelby County, that you check with Mr.

1 Feibelman before you do that so you don't violate <sup>10</sup>  
2 my order. To that extent I'm not disturbed. If  
3 you don't violate my order, you can do anything  
4 that lawyers can do probably.

5 MR. SIEGEL: I guess that was part  
6 of my question, because we were advised that  
7 perhaps even a filing of our lawsuit may have been  
8 a violation of the court's order, and that was  
9 really --

10 THE COURT: Did you put the receiver  
11 in as a defendant?

12 MR. SIEGEL: No, we did not.

13 THE COURT: Where did we hear that?

14 MR. FEIBELMAN: He put the cemetery  
15 in.

16 THE COURT: Oh, you can't do the  
17 cemetery. I have my big hand on top of that  
18 cemetery because I just put it in Mr. Kustoff's  
19 lap. That's what I've got. I've got the  
20 cemetery. Do not do anything with regards to the  
21 cemetery. Sorry.

22 MR. ANDREWS: Your Honor --

23 THE COURT: Yes, sir.

24 MR. ANDREWS: If I could get a  
25 little bit of clarification, I don't think we can

1 voluntarily exclude the cemetery in name. <sup>11</sup>

2 THE COURT: Okay. You are stayed --

3 MR. ANDREWS: we don't want to do

4 anything that requires the receiver to do  
5 anything, but I think in terms of having it in the  
6 style of the case ...

7 THE COURT: It's already there?

8 MR. ANDREWS: It is.

9 THE COURT: I'm not making you take  
10 it out.

11 MR. ANDREWS: Pardon me, your Honor?

12 THE COURT: I'm not making you take  
13 it out.

14 MR. ANDREWS: That's fine. That's  
15 all I've got. I wanted to be sure of it. I'm not  
16 going to require --

17 THE COURT: When you put the  
18 cemetery in, and you filed before the receivership  
19 --

20 MR. ANDREWS: We did.

21 THE COURT: That's the state of -- a  
22 factual situation that comes before me. I put  
23 down basically a stay like you have in  
24 bankruptcies. You can take no actions as it  
25 relates to the cemetery, but these are the

1 receiver. While you look at him as a gentleman  
2 sitting here in the courtroom, he has his hands  
3 around the cemetery, the plots. Now, I don't know  
4 -- and you can help me here, Mr. Feibelman.

5 There's a thing called Lambert  
6 Memorial Company, a.k.a. Memorials, Inc. To the  
7 extent that Galilee Memorial owns it, has an  
8 interest in it, is in Mr. Kustoff's lap, it's  
9 here. Mr. Kustoff does not have Jemar Lambert,

12

10 Marje Lambert --

11 MR. HAYNES: Marje.

12 THE COURT: Marje and Mary L. and  
13 all persons acting in kind, he doesn't have that.

14 MR. FEIBELMAN: We're assuming that  
15 all corporate entities are related to what we've  
16 just generally called the cemetery, and the  
17 individuals are not within our domain.

18 THE COURT: That's what I  
19 understood. If it is a concrete substance like  
20 land, buildings that were involved in Galilee  
21 Memorial Gardens, right now, until proven  
22 otherwise, Mr. Kustoff has authority over those,  
23 so if you've named them, I'm not instructing you  
24 to take them out as a party. You are stayed, and  
25 if you've ever been involved in a bankruptcy

1 proceeding, this is very similar.

13

2 You are stayed as to doing anything  
3 that affects or impacts them. Now I know Mr.  
4 Haynes, that you think they're going to come after  
5 and try to pierce the corporate veil and something  
6 of that nature.

7 MR. HAYNES: Yes, your Honor.

8 THE COURT: I don't know what  
9 they're thinking. I think that <sup>they</sup> very much ~~they~~   
10 have the concerns of their client at heart, and I  
11 think a lot of people have those concerns at  
12 heart.

13 I'm not going to tell them not to  
14 have that concern. To the extent that they want  
15 to pierce a corporate veil, if it touches his

16 toes, then they're violating my order. That's why  
17 I say, before they do anything, they really need  
18 to check with Mr. Feibelman. Now they might ask  
19 your clients for a lot of documents.

20 They might ask your clients about a  
21 lot of their actions. That's the nature of a  
22 lawsuit. If your clients have it, they provide  
23 it. If it happens to be in Mr. Kustoff's hands,  
24 then you should tell them that, and if they decide  
25 to do anything further, I think I'll be hearing

14

1 it.

2 MR. HAYNES: Okay, your Honor.

3 THE COURT: I'm not going to give  
4 any stay though to discovery or taking depositions  
5 of people that I don't have any authority over.

6 MR. HAYNES: Okay. You're only --  
7 excuse me, your Honor. You're only discussing the  
8 authority to conduct discovery that will implicate  
9 the receivership. Is that correct? I just want  
10 to make sure.

11 THE COURT: Actually, I don't know  
12 what I'm discussing. I'm just telling you at this  
13 point, if they proceed with discovery, they might  
14 ask a bunch of questions. I'm not going to  
15 anticipate what they're going to ask. I can't  
16 imagine that your clients will say anything that's  
17 going to affect Mr. Kustoff. He probably wants to  
18 know all these answers too. He might even sit in.  
19 I don't know.

20 MR. SIEGEL: I think we can help Mr.  
21 Kustoff.

22 MR. ANDREWS: We would welcome him  
23 to sit in, your Honor. David Letterman says, "I  
24 wouldn't give his troubles to a monkey on a hot  
25 rock."

15

1 THE COURT: That's right.

2 MR. HAYNES: To the extent it  
3 touches the assets of the entities in  
4 receivership.

5 THE COURT: If they mention the  
6 assets, they're welcome to talk about it all day  
7 long with your clients. If your clients happen to  
8 know where there are assets, and they want to  
9 share that, but I have a feeling that your clients  
10 are not really going to be saying very much.

11 MR. HAYNES: Thank you.

12 THE COURT: I'm not too sympathetic.

13 MR. ANDREWS: Fifth Amendment, your  
14 Honor.

15 MR. JEFFERSON: Attorney Jefferson  
16 again. Just hypothetically, if a new action were  
17 filed with the corporate entities within -- let's  
18 say we had statutory issues, limitation issues,  
19 but they were actually not served to effect an  
20 issue --

21 THE COURT: Let me tell you the  
22 person to answer that question: Mr. Feibelman.  
23 If you are worried about a statute of limitations,  
24 if you want to get service just to have somebody  
25 served, he is your answer man, not me.

16

1 MR. JEFFERSON: All right.

2 THE COURT: He'll do the best he  
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3 can, but that's where it stays. I've got  
4 authority, and what I've done is I've asked the  
5 state to find somebody that they think can do the  
6 job, and it looks like they have; and he's got  
7 good counsel, so what I'm expecting on my reports,  
8 I'm not expecting any ex parte information.

9           Everything he says is going to be  
10 sent to me. Now, I'm not requiring him to send it  
11 to anybody else, just you, Mr. Haynes, because you  
12 are counsel for some of the defendants. When the  
13 status report comes to me, it's not going to be  
14 disseminated like you would in a bankruptcy where  
15 you have a number of creditors with their counsel.

16           Bankruptcy is set up a little bit  
17 differently, and until he tells me that he  
18 actually has assets, and he's going to have  
19 classes of claimants, then we'll start talking  
20 about sending notices, but right now we're going  
21 to keep those notices to a minimum. He has enough  
22 work to do.

23           MR. FEIBELMAN: Thank you.

24           (Whereupon, this was all that was  
25 heard in the court's ruling, this the 28th day of

1 March, 2014.)

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2

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4 Reporter in and for the State of Tennessee, do  
5 hereby certify that the above proceedings were  
6 reported by me and that the foregoing 18 pages of  
7 the transcript is a true and accurate record to  
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9 I further certify that I am not  
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11 the parties to the action, nor am I in any way  
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IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
20<sup>TH</sup> JUDICIAL DISTRICT AT NASHVILLE  
PART II

STATE OF TENNESSEE,  
*ex rel.* JULIE MIX McPEAK,  
solely in her official capacity  
as Commissioner of Commerce  
and Insurance,

Plaintiff,

VS

GALILEE MEMORIAL GARDENS;  
JM&M SERVICES, INC.; LAMBERT  
MEMORIAL CO. a/k/a LAMBERT  
MEMORIALS, INC.; LAMBERT &  
SONS, INC.; JEMAR LAMBERT;  
MARJE LAMBERT; MARY LAMBERT;  
and ALL PERSONS ACTING IN  
CONCERT WITH THEM,

Defendants.

N.F.  
NO. 14-102 II

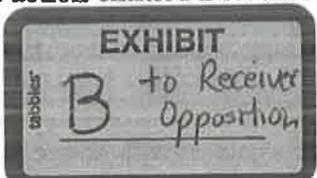
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2015 MAY 11 PM 2:31  
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ORDER ON MOTION FOR DIRECTION FROM THE COURT AND ON MOTION TO  
INTERVENE FOR LIMITED PURPOSE OF LIFTING STAY FOR DISCOVERY AND  
MOTION TO LIFT STAY BY CERTAIN FUNERAL HOME DEFENDANTS IN  
SHELBY COUNTY CHANCERY COURT LITIGATION

THIS CAUSE, having come before this Court on March 27, 2015 upon the following

Motions:

1. Motion for Direction from the Court;
2. Motion and/or Joinders in Motions of certain parties named as defendants in the Shelby County Chancery Court action entitled *Akila Louise Wofford, et al. vs. M.J. Edwards & Sons Funeral Home, Inc., et al.*, No. CH-14-0197, Part III, and/or the Shelby County Circuit Court action entitled *Derrick Anderson, et al. v.*



*Galilee Memorial Gardens, et al.*, to Intervene, Lift Stay, and/or to Seek Guidance from this Court on the extent of the stay issued by this Court in the above entitled action.

3. Based upon the pleadings, the statements of counsel and the entire record as a whole, this Court finds that the Joinders in Motions and Motions to Intervene are denied, ~~and the Court gives guidance to the effect that~~ <sup>the</sup> stay issued in this Receivership cause does not affect any discovery requests in other proceedings to the Commissioner of Commerce and Insurance with regard to anything outside of the subject Receivership.

*Clm*

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Joinders in Motions and Motions to Intervene are denied. The Court's ruling does not affect any action that involves the Commissioner of Commerce and Insurance with regard to anything outside the Receivership.

*Carol L. McCoy*  
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DATE 5-11-15 CLERK T.L.

*with the permission*

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Certified this the 4<sup>th</sup> day of May, 2015.



---

Henry E. Hildebrand IV