

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., et al.,

Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.

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**RECEIVER'S MOTION TO AUTHORIZE POTENTIAL SALE  
OF VIATICAL SERVICES, INC.**

Roberto Martínez, court-appointed receiver (“Receiver”) of Mutual Benefits Corp. (“MBC”), Viatical Benefactors, LLC (“VBLLC”), Viatical Services, Inc. (“VSI”), and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A., solely in their capacity as trustee (collectively the “Receivership Entities”), moves for this court to confirm the Receiver’s authority to pursue a potential sale of the business of VSI, as part of the process of discharging the duties of the Receiver to administer and ultimately wind up the affairs of the Receivership entities.

In support, the Receiver states:

**BACKGROUND**

**THE RECEIVERSHIP ORDER**

On May 3, 2004 the Securities and Exchange Commission (“SEC”) filed an action seeking entry of a temporary restraining order, preliminary injunction, permanent injunction and other relief

with respect to the Receivership Entities (DE#1). On May 4, 2004, the Court entered a Temporary Restraining Order and Other Emergency Relief (DE#25), and entered an Order Appointing Receiver (DE#26). On February 14, 2005 this Court entered its Order Granting Motion for Preliminary Injunction (DE#711), sustaining the Report and Recommendation of Judge Garber dated November 10, 2004 (DE#522), as supplemented on November 16, 2004 (DE#529).

The Order Appointing Receiver (DE#26) authorizes and directs the Receiver to “take immediate possession of all MBC, VBLLC and VSI property, assets and estate, and all other property of MBC, VBLLC and VSI of every kind whatsoever and wheresoever located belonging to or in the possession of MBC, VBLLC and VSI,” and further authorizes and directs the Receiver to “administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.” The Order provides that “[t]itle to all property, real or personal, all contracts, rights of action and all books and records of MBC, VBLLC and VSI and their principals, wherever located within or without this state, is vested by operation of law in the Receiver.” It further authorizes the Receiver to “make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging the Receiver’s duties. ...”

### **THE DISPOSITION ORDER**

On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds (DE#1339)(the “Disposition Order”). On November 22, 2005, the Court entered its Order Clarifying Disposition Order and Approving Form of Notice (DE#1474) (the “Clarification Order”). These Orders collectively directed that investors be provided an opportunity to vote on whether to keep, sell or surrender the policy(s) in which they had an interest, and authorized the manner by which the

Receiver was to solicit investors' elections. The decision as to how to dispose of each policy was to be determined by the vote of the majority of the interests in a policy that properly submitted votes with respect to the policy.

In accordance with these Orders, voting on each of the policies was conducted, the result of which is that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the "Sell Policies"), and approximately 3,037 policies with a face value of approximately \$1,054,421,059 were designated to be retained by investors (the "Keep Policies"). The Receiver has subsequently been engaged in the process of selling the Sell Policies, and the Court has entered two Sale Orders which collectively approved the sale of approximately \$295 million in face value of policies for total consideration of approximately \$24.6 million. In addition, the Receiver, through VSI, has implemented a process for billing and collecting from each investor in a Keep Policy their proportionate share of the premium obligations with respect to the ongoing cost of maintaining the policy.

### **THE ROLE OF VSI AND POTENTIAL SALE**

VSI, one of the Receivership entities, is responsible for administering the payment of policy premiums, tracking the medical status and whereabouts of the insureds, and, upon the death of an insured, submitting claims to insurance companies to facilitate the distribution of death benefits. Since the Receivership was commenced, the Receiver has continued to maintain the operations of VSI for the purposes of (1) maintaining the Sell Policies until the Receiver is able to dispose of them through sale to a third party; and (2) maintaining the Keep Policies, including the billing of premiums to investors, as well as its original functions of administering premium payments, tracking insureds, and processing death benefit claims. Prior to the Receivership, VSI was compensated by

receiving an administrative fee up front, i.e. when MBC finalized a contract matching an investor with a policy or an interest therein. In connection with the Keep Policies, the Receiver has implemented a process where VSI bills an annual administrative fee to each investor with an interest in a Keep Policy.

The continued servicing of the Keep Policies is a function which will have to be maintained until either every such Keep Policy matures, or until investors in such policies elect to stop funding premium obligations and the Keep Policies are otherwise sold or permitted to lapse. This process may go on for a longer period of time than the other remaining functions of the Receivership, including the prosecution of litigation claims of the Receiver, the sale of the Sell Policies, the liquidation of the remaining Receivership assets, and the distribution of funds to claimants.

As a result, the Receiver has been exploring the possibility of selling the business of VSI. Such a sale would accomplish at least two purposes: (1) it would enable the necessary functions of VSI to be performed post-Receivership until all Keep Policies mature or are otherwise disposed of; and (2) it would enable the Receivership to realize value for the operating business of VSI. There have been several inquiries by interested parties regarding a potential acquisition of VSI, and the Receiver, after requiring the execution of confidentiality and non-disclosure agreements with prospective buyers, has provided information regarding the operations and functions of VSI to such parties in order to enable them to conduct due diligence. The Receiver believes that the business operations of VSI may hold value to a number of interested parties based on VSI's demonstrated capabilities in servicing viaticated insurance policies, the existing portfolio of Keep Policies to be serviced, and the prospect for using VSI's existing infrastructure for additional business.

In pursuing such a sale, the Receiver would seek to ensure that the interests of investors in the Keep Policies would continue to be protected. This would likely include: (1) providing for the Receiver's present ownership and nominal beneficiary status with respect to the Keep Policies to be transferred to some independent third party (such as a trustee or escrow agent); (2) providing for some structure that would establish a fee structure for the continued servicing of the Keep Policies that would be both financially viable for the purchaser, and fair to the holders of interests in Keep Policies; and (3) providing a mechanism for the disposition of future "lapsing Keep Policy" interests in the event that investors fail to pay their ongoing premium or administrative fee obligations. There are a variety of ways in which the goals of protecting the investors in Keep Policies, while enabling the business of VSI to be sold and its value realized for the benefit of the Receivership, could be accomplished, which can be explored through further negotiations with prospective purchasers.

In the event that this Court determines that the potential sale of VSI is appropriate, the Receiver would anticipate that the initial discussions with prospective purchasers would be continued; the Receiver would consider advertising the potential sale to other potentially interested parties and provide an opportunity to conduct due diligence; the Receiver likely would ultimately set a deadline for the submission of purchase offers, and would then evaluate which offer best advanced the interests of the Receivership and its creditors, including the holders of interests in Keep Policies; the Receiver would further seek guidance from the Court as to whether competitive bidding would be appropriate for such a proposed sale, if authorized by the Court.

Before undertaking such further steps, however, the Receiver seeks clarification and guidance from the Court as to whether the Receiver should proceed with exploring the potential sale of the

VSI business, or evaluate other alternatives including the continued maintenance of the Receivership to operate VSI until all Keep Policies have been disposed of.

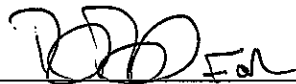
**CONCLUSION**

**WHEREFORE**, the Receiver respectfully requests that the Court set a status conference so that the Receiver and any other interested parties may address the Court with regard to the Receiver's authority to pursue a potential sale of the business of VSI, as part of the process of discharging the duties of the Receiver to administer and ultimately wind up the affairs of the Receivership entities.

Respectfully submitted,

COLSON HICKS EIDSON  
Co-Counsel for the Receiver  
255 Aragon Avenue, Second Floor  
Coral Gables, Florida 33134  
Telephone (305) 476-7400  
Facsimile (305) 476-7444  
E-mail: [curt@colson.com](mailto:curt@colson.com)

By: \_\_\_\_\_



Curtis B. Miner  
FL Bar No. 0885681

- and -

KOZYAK TROPIN & THROCKMORTON, P.A.  
Co-Counsel for the Receiver  
2525 Ponce de Leon, 9th Floor  
Coral Gables, Florida 33134  
Tel. (305) 372-1800  
Fax. (305) 372-2508

By: \_\_\_\_\_



David L. Rosendorf  
FL Bar No. 996823

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served in accordance with the attached Receiver's Service List on March 26, 2008.

By:   
\_\_\_\_\_

David L. Rosendorf

**SERVICE LIST OF RECEIVER**

Case No.: 04-60573 CIV-Moreno

<b>VIA ELECTRONIC MAIL</b>		
<p>Alise Meredith Johnson, Esq. Linda Schmidt, Esq. Securities &amp; Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 Fax: (305) 536-4154 E-mail: <a href="mailto:johnsona@sec.gov">johnsona@sec.gov</a> <a href="mailto:schmidtl@sec.gov">schmidtl@sec.gov</a> <a href="mailto:almonti@sec.gov">almonti@sec.gov</a> <i>Counsel for Securities &amp; Exchange Commission</i></p>	<p>Michael A. Hanzman, Esq. Kevin Love, Esq. Hanzman Criden &amp; Love, P.A. 7301 SW 57<sup>th</sup> Court, Suite 515 South Miami, Florida 33143 Fax: (305) 357-9050 E-mail: <a href="mailto:mhanzman@hanzmancriden.com">mhanzman@hanzmancriden.com</a> <a href="mailto:kllove@hanzmancriden.com">kllove@hanzmancriden.com</a> <i>Counsel for Scheck Investments LP, et al.</i></p>	<p>Brian J. Stack, Esq. Stack Fernandez Anderson &amp; Harris, P.A. 1200 Brickell Avenue, Suite 950 Miami, FL 33131-3255 Fax: (305) 371-0002 E-mail: <a href="mailto:bstack@stackfernandez.com">bstack@stackfernandez.com</a> <i>Counsel for Traded Life Policies Ltd.</i></p>
<p>David L. Rosendorf, Esq. Kozyak Tropin &amp; Throckmorton 2525 Ponce de Leon, Suite 900 Coral Gables, Florida 33134 Fax: (305) 372-3508 E-mail: <a href="mailto:dlr@kttl.com">dlr@kttl.com</a> <i>Co-counsel for Receiver</i></p>	<p>Victor M. Diaz, Jr., Esq. Podhurst Orseck Josefsberg et al. City National Bank Building 25 West Flagler St., Suite 800 Miami, FL 33130 Fax: (305) 358-2382 E-mail: <a href="mailto:vdiaz@podhurst.com">vdiaz@podhurst.com</a> <a href="mailto:ndagher@podhurst.com">ndagher@podhurst.com</a> <i>Counsel for Scheck Investments LP, et al.</i></p>	<p>J. David Hopkins, Esq. Lord, Bissell &amp; Brook LLP Suite 1900, The Proseceum 1170 Peachtree Street, N.E. Atlanta, Georgia 30309 Fax: (404) 872-5547 E-mail: <a href="mailto:dhopkins@lordbissell.com">dhopkins@lordbissell.com</a> <i>Counsel for Traded Life Policies Ltd.</i></p>
<p>George Mahfood, Esq. Ferrell Schultz Carter &amp; Fertel 201 South Biscayne Boulevard 34th Floor, Miami Center Miami, Florida 33131 Fax: (305) 371-5732 E-mail: <a href="mailto:gmahfood@ferrellschultz.com">gmahfood@ferrellschultz.com</a> <i>Counsel for Joel Steinger, Leslie Steinger, Peter Lombardi, P/JL Consulting Co., Kensington Consulting Co.</i></p>	<p>Angela Daker, Esq. White &amp; Case, LLP 4900 Wachovia Financial Center 200 S. Biscayne Boulevard Miami, Florida 33131 Fax: (305) 358-5744 E-mail: <a href="mailto:adaker@whitecase.com">adaker@whitecase.com</a> <i>Former counsel for Steven Steiner</i></p>	<p>Hilarie Bass, Esq. Jacqueline Becerra, Esq. Greenberg Traurig P.A. 1221 Brickell Avenue Miami, Florida 33131 Fax: (305) 579-0717 E-mail: <a href="mailto:becerraj@gtlaw.com">becerraj@gtlaw.com</a> <a href="mailto:bassh@gtlaw.com">bassh@gtlaw.com</a> <i>Counsel for Union Planters Bank, N.A</i></p>
<p>Robert C. Gilbert, Esq. 220 Alhambra Circle, Suite 400 Coral Gables, FL 33134-5174 Fax: (305) 529-1612 E-mail: <a href="mailto:rgilblaw@aol.com">rgilblaw@aol.com</a> <i>Special Counsel for Scheck Investments LP, et al.</i></p>	<p>Edward M. Mullins, Esq. Daniella Friedman, Esq. Astigarraga Davis Mullins &amp; Grossman, P.A. 701 Brickell Ave., 16<sup>th</sup> Floor Miami, FL 33131 Fax: (305) 372-8202 E-mail: <a href="mailto:emullins@astidavis.com">emullins@astidavis.com</a> <a href="mailto:dfriedman@astidavis.com">dfriedman@astidavis.com</a> <i>Co-counsel for Life Settlement Holding, A.G.</i></p>	<p>David Levine, Esq. Jeffrey Schneider, Esq. Tew Cardenas LLP The Four Seasons Tower, 15<sup>th</sup> Floor 1441 Brickell Avenue Miami, FL 33131 Fax: (305) 536-1116 E-mail: <a href="mailto:jcs@tewlaw.com">jcs@tewlaw.com</a> <a href="mailto:dml@tewlaw.com">dml@tewlaw.com</a> <i>Counsel Patricia Cook, et al</i></p>
<p>J. Raul Cosio, Esq. Holland &amp; Knight 701 Brickell Avenue, Suite 3000 Miami, FL 33131 Fax: (305) 789-7799 E-mail: <a href="mailto:raul.cosio@hklaw.com">raul.cosio@hklaw.com</a> <i>Counsel for Northern Trust Bank of Florida</i></p>	<p>Gary Timin, Esq. Squire Sanders &amp; Dempsey, LLP 215 South Monroe Street, Suite 601 Tallahassee, FL 32301-1804 Fax: (850) 222-8410 E-mail: <a href="mailto:gtimin@ssd.com">gtimin@ssd.com</a> <i>Counsel for Transamerica Occidental Life</i></p>	<p>Joel L. Kirschbaum, Esq. Bunnell Wolfe Kirschbaum Keller McIntyre Gregoire &amp; Klein, PA 100 SE 3<sup>rd</sup> Avenue, Suite 900 Fort Lauderdale, FL 33394 E-mail: <a href="mailto:cxm@bunnellwolfe.com">cxm@bunnellwolfe.com</a> <i>Counsel for Diana Steinger.</i></p>



<p>Christopher J. Klein Baur &amp; Klein, P.A. 100 N. Biscayne Blvd. 21st Floor Miami, FL 33132 Fax: (305) 371-4380 E-mail: <a href="mailto:cklein@worldwidelaw.com">cklein@worldwidelaw.com</a> <i>Co-counsel for Life Settlement Holding, A.G.</i></p>	<p>Daniel Small, Esq. Duane Morris, LLP 200 So. Biscayne Blvd., Suite 3400 Miami, FL 33131 Fax: (305) 960-2201 E-mail: <a href="mailto:dsmall@duanemorris.com">dsmall@duanemorris.com</a> <i>Counsel for Dr. Christine Walsh, et al. (the "Investors Group")</i></p>	<p>Kenneth D. Post, Esq. Shutts &amp; Bowen 1500 Miami Center 201 S. Biscayne Boulevard Miami, FL 33131 E-mail: <a href="mailto:kpost@shutts-law.com">kpost@shutts-law.com</a>  <i>Counsel for William Penn Life Insurance</i></p>
<p>Sandra M. Upegui, Esq. Shutts &amp; Bowen, LLP 201 South Biscayne Blvd. Suite 1500 – Miami Center Miami, Florida 33131  <i>Counsel for Instituto de Prevision Militar Inverma (Via U.S. Mail)</i></p>	<p>Joseph A. Patella, Esq. 450 Lexington Avenue New York, New York 10017 E-mail: <a href="mailto:JosephPatella@andrewskurth.com">JosephPatella@andrewskurth.com</a> <i>Counsel for American Express Tax &amp; Business Services, Inc.</i></p>	<p>J. Randolph Liebler, Esq. Liebler, Gonzalez &amp; Poruoundo, P.A. 44 West Flagler Street, 25<sup>th</sup> Floor Miami, Florida 33130 Fax: (305) 379-9626 E-mail: <a href="mailto:jrl@lgplaw.com">jrl@lgplaw.com</a> <i>Counsel for Bank of America</i></p>
<p>Rick Critchlow, Esq. Harry R. Schafer, Esq. Kenny Nachwalter, PA 201 South Biscayne Blvd. 1100 Miami Center Miami, Florida 33131 Fax: (305) 372-1861 Email: <a href="mailto:rcritchlow@kennynachwalter.com">rcritchlow@kennynachwalter.com</a> <a href="mailto:hschafer@kennynachwalter.com">hschafer@kennynachwalter.com</a> <i>Counsel for Citibank</i></p>	<p>Glenn Berger Joshua Reitzas Jaffe &amp; Asher LLP 600 Third Avenue New York, NY 10016 E-mail: <a href="mailto:GBerger@jaffeandasher.com">GBerger@jaffeandasher.com</a> <i>Counsel for American Express Travel Related Services Company, Inc.</i></p>	<p>Charles E. Ray, Esq. 887 E. Prima Vista Blvd. Port St. Lucie, FL 34952 Email: <a href="mailto:charlescraay@aol.com">charlescraay@aol.com</a> <i>Counsel for Aurora Bifulco</i></p>
<p>Bruce A. Zimet Esq. 100 S.E.3rd Avenue, Suite 2612 Ft. Lauderdale, FL 33394 Fax: (954) 760-4421 E-mail: <a href="mailto:bazimetlaw@aol.com">bazimetlaw@aol.com</a> <i>Counsel for Leslie Steinger</i></p>	<p>Wendy L. Furman, Esq. Pett, Furman &amp; Jacobson, P.L. 2101 N.W. Corporate Boulevard Suite 316 Boca Raton, FL 33431 Fax: 994-4311 E-mail: <a href="mailto:wfurman@pfjlaw.com">wfurman@pfjlaw.com</a> <i>Counsel for American United Life Insurance Co.</i></p>	<p>John H. Genovese, Esq. Genovese Joblove &amp; Battista, P.A. 100 S.E. 2<sup>nd</sup> Street, 36<sup>th</sup> Floor Miami, Florida 33131 Fax: (305) 349-2310 Email: <a href="mailto:jgenovese@gjb-law.com">jgenovese@gjb-law.com</a> <i>Counsel for Great West Growth, LLC, et al.</i></p>
<p>Craig Rasile, Esq. Hunton &amp; Williams 1111 Brickell Avenue, Suite 2500 Miami, FL 33131 E-Mail: <a href="mailto:azaron@hunton.com">azaron@hunton.com</a> <a href="mailto:crasile@hunton.com">crasile@hunton.com</a>  <a href="mailto:rutkowskik@whiteandwilliams.com">rutkowskik@whiteandwilliams.com</a> <a href="mailto:ggitomer@mkbattorneys.com">ggitomer@mkbattorneys.com</a> <i>Counsel for Charitable Concepts, Inc., et al.</i></p>	<p>Eric Ellsley, Esq. Krupnick Campbell Malone Roselli et al 700 SE 3rd Ave Ste 100 Fort Lauderdale Florida 33161 E-Mail: <a href="mailto:eellsley@krupnicklaw.com">eellsley@krupnicklaw.com</a> <i>Counsel for Certain Investors</i></p>	<p>Jack Dempsey, Esq. Susan Guerrieri, Esq. Drinker Biddle &amp; Reath, LLP One Logan Square 18<sup>th</sup> &amp; Cherry Streets Philadelphia, PA 19103 <a href="mailto:John.Dempsey@dbr.com">John.Dempsey@dbr.com</a> <a href="mailto:Susan.guerrieri@dbr.com">Susan.guerrieri@dbr.com</a> <i>Counsel for American United Life Insurance Co.</i></p>
<p>Edward Montoya, Esq. Montoya Law Firm, PA 2600 Douglas Road Penthouse 7 Coral Gables, FL 33134 Email: <a href="mailto:emontoya@fnclaw.com">emontoya@fnclaw.com</a> <i>Attorney for the Class</i></p>	<p>David P. Hartnett, Esq. Hinshaw &amp; Culbertson 9155 S. Dadeland Blvd., Suite 1600 Miami, FL 33156 E-mail: <a href="mailto:dhartnett@hinshawlaw.com">dhartnett@hinshawlaw.com</a>  <i>Counsel for Connecticut General, et al.</i></p>	<p>Carla M. Barrow, Esq. Pardo, Gainsburg &amp; Barrow, LLP One Biscayne Tower – Suite 2475 2 South Biscayne Blvd. Miami, FL 33131 Email: <a href="mailto:cbarrow@ngblaw.com">cbarrow@ngblaw.com</a> <i>Attorney for NAIL</i></p>
<p>Jay S. Blumenkopf, Esq. Adorno &amp; Yoss 700 S. Federal Highway, suite 200 Boca Raton, FL 33432 E-mail: <a href="mailto:jblumenkopf@adorno.com">jblumenkopf@adorno.com</a>  <i>Counsel for Allmerica Financial Life, et al.</i></p>	<p>Charles Wachter, Esq. Fowler white Boggs Banker 501 E. Kennedy Boulevard, Suite 1700 Tampa, FL 33602 E-mail: <a href="mailto:cwachter@fowlerwhite.com">cwachter@fowlerwhite.com</a>  <i>Counsel for John Hancock Life Ins.</i></p>	<p>Carla M. Barrow, P.A. 1395 Brickell Avenue 8<sup>th</sup> Floor Miami, FL 33129 E-Mail: <a href="mailto:carlabarrow@bellsouth.net">carlabarrow@bellsouth.net</a>  <i>Counsel for Claimants Maria Antonieta Mejia, et al.</i></p>

Curtis B. Miner, Esq.  
Colson Hicks Eidson  
255 Aragon Avenue, Second Floor  
Coral Gables, Florida 33134  
Email: [Curt@colson.com](mailto:Curt@colson.com)

Jeffrey Rubinstein, Esq.  
Rubinstein & Associates, PA  
1428 Brickell Avenue  
Penthouse  
Miami, FL 33131  
[Jeffrey@RubinsteinAssociates.com](mailto:Jeffrey@RubinsteinAssociates.com)  
*Attorneys for Claimants*