

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO/GARBER

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORPORATION, *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

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**RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER INTO  
SETTLEMENT AGREEMENT WITH AMERICAN EXPRESS**

Roberto Martínez, Esq., as Court-appointed Receiver of Mutual Benefits Corp. ("MBC"); Viatical Benefactors, LLC ("VBLLC"); Viatical Services, Inc. ("VSI"); and Anthony Livoti, Jr. individually and Anthony Livoti, Jr. P.A., solely in their capacity as trustee, requests authority from this Court to enter into the a settlement agreement with American Express Travel Related Services Company, Inc. in the case of *Roberto Martinez, as Receiver v. American Express Travel Related Services Company, Inc.*, Case No. 06-61712-Civ-Cohn, which is pending before Judge Cohn. The Receiver states as grounds:

1. On May 4, 2004, this Court entered an Order Appointing Receiver (the "Receivership Order") in this case. The Receivership Order appointed Roberto Martínez, Esq., of the law firm Colson Hicks Eidson, as Receiver.

2. Paragraph 2 of the Receivership Order directs the Receiver to:

Investigate the manner in which the affairs of [the Receivership Entities] were conducted and institute such actions and legal proceedings, for the benefit and on behalf of [the Receivership Entities] and their investors and other creditors, as the Receiver deems necessary . . . against any transfers of monies or other proceeds directly or indirectly traceable from investors in [the Receivership Entities]; provided such actions may include, but not be limited to, . . . disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et seq. or otherwise . . . .

3. In addition, Paragraph 7 of the Receivership Order provides that the Receiver may “settle legal actions . . . in which MBC, VBLLC and VSI or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court.”

4. The Receiver brought an action against American Express Travel Related Services Company, Inc. (“American Express”) to seek to recover \$140,569 in MBC funds that were used to pay personal obligations of Steven K. Steiner, MBC’s former Vice President, incurred on his personal American Express card. The suit was brought under the Florida Fraudulent Transfers Act, Fla. Stat. § 726.105(1)(b). The Receiver did not dispute that American Express was an “innocent recipient” of the transfers; however, the Receiver sought to recover the funds on the grounds that MBC was insolvent at the time of the transfers.

5. The proposed settlement would have American Express pay the Receiver \$60,000 in exchange for a release of the Receiver’s claims. A copy of the proposed settlement is attached as Exhibit A. The Receiver submits that the proposed settlement is fair and equitable and in the best interests of the Receivership Estate.

6. Although the settlement amount represents a significant discount from the full amount sought in the lawsuit, it will allow the Receiver to avoid significant expenses (as well as the risks attendant to any trial). Other than taking a short corporate representative deposition of

American Express, the settlement was obtained without the need for significant fact discovery. More importantly, the Receiver's claim would require proof at trial in the form of expert testimony regarding MBC's insolvency. The expense of having an accounting expert prepare an insolvency report, participate in a deposition, and eventually testify at trial would have been very significant. If the Receiver had filed a number of similar fraudulent transfer lawsuits, the economies of scale would warrant the expert expense – as the same analysis would apply in all of the cases. However, the Receiver has filed only one other fraudulent transfer claim for a relatively small sum. As a result, the cost of the expert testimony would risk eating up a substantial portion of any recovery at trial.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order authorizing the Receiver to enter into a settlement agreement in *Roberto Martinez, as Receiver v. American Express Travel Related Services Company, Inc.*, Case No. 06-61712-Civ-Cohn.

Respectfully submitted,

COLSON HICKS EIDSON  
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By: s/ Curtis B. Miner  
CURTIS MINER  
Florida Bar No. 885681

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail, as set forth on the attached Receiver's Service List in Case No. 04-60573-Civ-Moreno, and by CM/ECF, on this 12th day of July 2007.

s/ Curtis B. Miner  
Curtis B. Miner

**SERVICE LIST**

CASE NO. 06-61712-CIV-COHN/HOPKINS

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*Attorneys for American Express Travel Related Services Company, Inc.*

**SERVICE LIST OF RECEIVER**

Case No.: 04-60573 CIV-Moreno

VIA ELECTRONIC MAIL		
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<p>Jeffrey Rubinstein, Esq. Rubinstein &amp; Associates, PA 1428 Brickell Avenue Penthouse Miami, FL 33131 <a href="mailto:Jeffrey@RubinsteinAssociates.com">Jeffrey@RubinsteinAssociates.com</a> <i>Attorneys for Claimants</i></p>		



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**EXHIBIT A**  
**(STIPULATION OF SETTLEMENT)**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-61712-CIV-COHN/HOPKINS  
(Ancillary Proceeding to Case No.: 04-60573)

ROBERTO MARTINEZ, as court-appointed  
Receiver for MUTUAL BENEFITS CORP.,

Plaintiff,

vs.

AMERICAN EXPRESS TRAVEL RELATED  
SERVICES COMPANY, INC.,

Defendant.

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**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement ("Settlement Agreement" or "Stipulation") is made and entered into among: (1) Roberto Martinez, as court-appointed Receiver (the "Receiver") of Mutual Benefits Corp., Viatical Benefactors, LLC, Viatical Services, Inc., and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A. solely in their capacity as Trustee; and (2) American Express Travel Related Services, Company, Inc. ("AMEX") (collectively, the "Settling Parties").

WHEREAS, on May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals;

WHEREAS, on May 4, 2004, the Court entered an Order appointing Roberto Martinez as Receiver for MBC and related entities;

WHEREAS, on November 14, 2006, the Receiver filed a Complaint in *Roberto Martinez, as Receiver v. American Express Travel Related Services Company, Inc.*, Case No. 06-61712-Civ-Cohn (the "Action");

WHEREAS, the Receiver's Counsel has engaged in an investigation relating to the claims and underlying events alleged in the Action, and is thoroughly familiar with issues relating to the claims asserted in the Complaints;

WHEREAS, the Receiver and the Receiver's Counsel have concluded that it would be in the best interests of the Receivership to enter into this Settlement Agreement with AMEX, because the settlement would be a fair, reasonable and adequate resolution of the Action;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the Settling Parties, through their undersigned counsel, subject to Court approval pursuant to the Court's Order Appointing Receiver in *SEC v. Mutual Benefits Corp., et al.*, Case No. 04-60573-Civ-Moreno, to all of the terms and conditions set forth herein, as follows:

**I. SETTLEMENT CONSIDERATION**

A. As consideration for the Release provided in Section II below, as well as for other promises and consideration set forth in this Settlement Agreement, AMEX will pay the Receiver a total of Sixty Thousand Dollars (\$60,000) within ten (10) business days from the entry of an Order from the Court authorizing the Receiver to enter into this Settlement Agreement.

B. Upon receipt of the consideration identified in Section I.A above, the Receiver shall promptly file a Notice of Dismissal With Prejudice of the Action.

**II. RELEASE**

A. Upon payment of the consideration identified in Section I above, AMEX, and all of its subsidiaries, divisions, affiliates, predecessors and successors, shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which Roberto Martínez, as court-appointed Receiver of Mutual Benefits Corp., Viatical Benefactors, LLC, Viatical Services, Inc., and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A. solely in their capacity as Trustee, ever had, now have or hereafter can, shall or may have, arising from or related to the Action.

**III. MISCELLANEOUS**

A. Reasonable Best Efforts to Effectuate This Settlement Agreement

The parties to this Settlement and their counsel agree to undertake their reasonable best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement. Pending final approval of this settlement, the Settling Parties will cease and desist all litigation activities related to this Action, other than actions necessary to promptly conclude this matter.

B. No Admission

Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority present or future, by AMEX. Neither this

Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, shall be filed, offered, received in evidence or otherwise used in any action or proceeding or any arbitration, except in connection with the parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident to the foregoing.

C. Consent to Jurisdiction

The Settling Parties, and their respective counsel, hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement, the applicability of this Settlement Agreement or any issue related to fees and costs incurred in this Action.

D. Resolution of Disputes: Retention of Jurisdiction

Any disputes between or among the Settling Parties concerning matters contained in this Settlement Agreement shall, if they first cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement.

E. Choice of Law

All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Florida without regard to its choice of law or conflict of laws principles.

F. Amendment; Waiver

This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be

effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

G. Execution in Counterparts

This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof.

H. Integrated Agreement

This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties concerning this Action.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein above written.

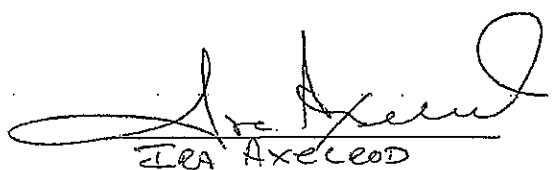
\_\_\_\_\_  
Roberto Martinez, Esq.  
Colson Hicks Eidson  
255 Aragon Ave., 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

\_\_\_\_\_  
Date

\_\_\_\_\_  
Curtis B. Miner, Esq.  
Colson Hicks Eidson  
255 Aragon Ave., 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

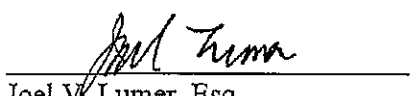
\_\_\_\_\_  
Date

*Counsel for Roberto Martinez, as Receiver*



LISA AXCELROD  
American Express Travel Related  
Services Company, Inc.

9<sup>th</sup> July 2007  
Date



Joel V. Lumer, Esq.  
Mase & Lara, P.A.  
80 SW Eighth Street  
Suite 2700  
Miami, Florida 33130

12 Jul 07  
Date

*Counsel for American Express Travel  
Related Services Company, Inc.*

**PROPOSED ORDER**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO/SIMONTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

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**ORDER AUTHORIZING RECEIVER TO ENTER INTO  
SETTLEMENT AGREEMENT WITH AMERICAN EXPRESS**

THIS CAUSE is before the Court on the Receiver's Motion for Authorization to Enter Into Settlement Agreement With American Express Travel Related Services Company, Inc. This Court, having reviewed the filings, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. The Receiver is authorized to enter into a settlement agreement in the case of *Roberto Martinez, as Receiver v. American Express Travel Related Services Company, Inc.*, Case No. 06-61712-Civ-Cohn, on the terms set forth in the Receiver's Motion



DONE AND ORDERED in Chambers at Miami-Dade County, Florida on this \_\_\_\_\_  
day of July, 2007.

\_\_\_\_\_  
JUDGE FEDERICO MORENO  
UNITED STATES DISTRICT JUDGE

Copies to: All Counsel of Record