

**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.

DECLARATION OF JEAN-MICHEL PAUL

I, Jean-Michel Paul, pursuant to 28 U. S. C. § 1746, hereby declare under penalty of perjury that the following information is true and correct:

1. I have personal knowledge of the facts stated in this declaration.
2. I am a Chartered Financial Analyst with a PhD in Finance and Real Estate from the University of California at Berkeley and a graduate of the Solvay School of Commercial Engineering.
3. I am the founder of Acheron Capital Limited (“Acheron Capital”), the investment adviser of Acheron Portfolio Trust (“APT”). I am responsible for devising and modeling the investment strategy of the APT, was established in 2006 and is in number of policies the largest owner of life settlements in the United States. The exclusive beneficiary of the Acheron

Portfolio Trust is the Acheron Portfolio Corporation (“APC”), a company listed on the Luxembourg Stock exchange with a market capitalization in excess of \$100 million.

4. APC invests in US life insurance policies that it holds in U.S. based trusts called Acheron Portfolio Trust and the Lorenzo Tonti 2006 Trust. APC grants the life insurance policies it acquires to APT or the Lorenzo Tonti 2006 Trust. APT is the largest owner (by number) of life insurance policies in the United States, with interests in over 5,500 policies.

5. APT has a very long term investment horizon, holding its policies until the death of the insured (which can be 20 year or longer horizon). APC’s capital is committed on a long term basis to reflect the long term nature of investments in life insurance policies, meaning that APC has no short term pressure for trading for capital gains.

6. APT’s pool of insurance policies include in excess of 2,800 wholly owned policies purchased from the Receivership Entities, which continue to be serviced by Viatical Services, Inc. (“VSI”) and 1200 fractional interests acquired from the Receivership Entities, also serviced by VSI.

7. APT owns in excess of 2100 policies that are serviced by an unaffiliated servicer (including 1,000 whole policies purchased from the Receivership Entities, and 1,000 whole policies purchased from other parties).

8. APT is the largest owner of life insurance policies that are serviced today by VSI with an interest in approximately half of the fractional policies (“Keep Policies”) currently being serviced by VSI (1200 policies out of remaining 2500 policies) and a corresponding face value of approximately \$180 million.

9. That makes APT the largest “Keep Investor” and the largest investor in fractional policies from the MBC receivership, both in terms of policies and in terms of value in the

Receivership estate. APT's interests are aligned with the other Keep Investors.

10. The face value of MBC policies that are serviced by VSI is approximately \$900 million.

11. To date, it has been the Receiver's and the Court's main goal to protect this value and to require a commitment to the long term servicing of these policies.

12. One of the primary means by which the Receiver and the Court have protected this value is through Viatical Services Inc. (VSI), which provides services aimed at maintaining the value of the life insurance policies for the Owners of policies. It has successfully done so in the course of the past four years.

13. As the Receiver has previously explained in Court filings: "The single most important responsibility for VSI is to protect that \$929 million in assets for the investors. If a policy were to lapse due to VSI's failure to collect the premium payment due, the investment of all of the investors on that policy could be lost. Or, if a policy were to lapse due to VSI's failure to submit a collected premium to the insurance company on time, the investment of all of the investors on that policy could be lost. Or if VSI were to lose contact with an insured or failed to learn of a policy's 'maturity' resulting from the death of an insured, the payment of death benefits to all investors on that policy would be at risk. Fortunately, none of these events has happened to date." (See "Receiver's Report to Investors About the Administrative Fees They Are Being Charged", at p. 2; DE 2109-2)

14. After the sale of the business of VSI, this value can only be protected if a number of important conditions are met:

- a. The servicing of the life insurance policies must be performed by a dedicated and proven team of servicing professionals.

- b. The organization providing the servicing for the life insurance policies must be focused exclusively on providing services for US life insurance policies. It cannot be engaged in any other business or back-office operations.
 - c. The cost of servicing the life insurance policies, which is borne by the owners of policies, must be stable for the long term.
 - d. The servicer must be profitable on a stand alone basis so that the owners of policies are assured of the long term continuity of a high level of service. Therefore the organisation providing the servicing must service a very large number of policies in order to achieve the necessary economies of scale.
 - e. An errors and omissions insurance policy must be in place that protects the life insurance policies from possible servicing errors.
 - f. The rules set out by the Court in respect of the servicing of the MBC life insurance policies should continue to be applied after the sale of the business of VSI.
15. In addition, a smooth transition from Receiver ownership to private ownership must be achieved for the business of VSI. This means that:
- a. A strong actionable business plan must have been developed with the deep involvement of the existing management team of VSI. This must have been built on the basis of an extensive commercial and operational due diligence process of the business of VSI.
 - b. Strong assurances must be in place to the effect that the existing management team of VSI will remain in place for the long term.

16. The interest between the owner of VSI and the investors whose policies VSI services should be aligned.

APC's And The Keep Investors' Reliance

17. APC has bought fractional interests in MBC life insurance policies from the Receiver of MBC in the course of the past 18 months for a total value of approximately \$16 million. APC made these purchases in reliance on the Receiver's representations that the servicer will be managed in a manner that will maintain the value of the life insurance policies for the Owners of policies. In a number of these auctions, APC was the only bidder. Without these purchases by APC, a significant number of the MBC Receivership policies would have lapsed – resulting in the complete loss of investment by the other MBC investors that are invested in the same fractional policies. APC would not have bought any fractional interests in MBC life insurance policies if it had known that Silverpoint might one day become the owner of the business of VSI, and thus have access to and control over APT's policies.

Silver Point's Conflicts of Interest

18. Silver Point is a large hedge fund staffed by professionals that are highly motivated by very short term capital gains achieved by buying and selling assets. It has recently encountered difficulties and has been facing significant redemption and staff downsizing. Silver Point is well known for aggressively trading distressed assets with an established track record in buying such assets from distressed situations and selling them at a profit over a relatively short period of time. One of the many asset classes that Silver Point is trading is U.S. life insurance policies, an area where it competes to acquire policies with APC among others. While they bought several thousand life insurance policies over the years, they have quickly sold many of those policies. In fact, Silver Point has purchased close to 3000 policies from the MBC Receiver

and resold most of those policies to APC. By our calculations, these quick sales earned Silver Point a short term profit but left them currently owning only a few hundred such life insurance policies. In contrast to Silver Point, APC overwhelmingly retains its policies for the long term, until they mature. APC has retained over 95% of the policies (in terms of face value) that it has purchased from the Receiver. Those that were sold or lapsed were let go only because they were too small to retain.

19. When the Receiver first indicated his intent to sell VSI in 2008, Silver Point contacted me to determine whether APC would support a bid by Silver Point to buy VSI. I advised Silver Point that APC would not support Silver Point's bid.

20. One reason APC could not support Silver Point's bid is that if Silver Point owned VSI, it would know what APC was doing with its investments and Silver Point would be able to impose itself as a broker on APC's policies and have control over the fees APT pays for servicing.

21. I also believe that Silver Point, as a hedge fund that makes money by buying life policies cheaply and selling them for a short term profit, would have an obvious conflict of interest in running VSI, a business whose intent is to maintain and preserve the long term value of the remaining fractional policies holders. While APT is the largest fractional holder ("Keep Policies"), Silverpoint doe not own a single one.

22. In APT's experience, when it has had policy servicers who also attempt to act as a broker, buying and selling policies, that has led the servicer to seek to administer the transaction to its advantage, and to the disadvantage of APT. APT has had to seek arbitration to resolve disputes that occurred where the servicer also acts as broker.

23. Currently, Silver Point does not have access to the names and contact information for the MBC investors. Neither does APC. If Silver Point wins the bid, then Silver Point will have access to that info. In contrast, if Horo wins, then APC still will not have access to that information. Knowing directly the investors could allow a broker to directly contact them to purchase at a low price. This results in policies being sold at a lower price than if they had been sold in a competitive auction. APC has bought exclusively from auction and when contacted directly by investors has always told them it has to be done through the process put in place by the Receiver.

24. The interest of a servicer who is devoted to preserving the long term value of the Keep Policies is in direct conflict with a broker whose interest is in purchasing the Keep Policies cheaply. This conflict is one of the reasons that the business plan proposed by Silverpoint does not work, as long term investors will obviously be extremely reluctant to put their policies in the controlling hands of a hedge fund seeking short term profits like Silver Point.

25. Silver Point's own submission shows its intent to use VSI as a source of policies to buy. Included in its "first objective and priority in acquiring VSI" is "interacting with Life Settlement Insights and any other brokers or parties that may be hired to offer Keep Policy Holders an opportunity to sell their interests at a fair price." Silver Point Bus Plan, at p. 2. The way Silver Point plans to "turbo-charge the growth" of VSI is by partnering it with Silver Point's "life settlement business", Lotus Life. As Silver Point itself explains on its website for Lotus Life: "Lotus Life purchases life insurance policies of varying sizes including whole life, universal life and survivorship policies. If you are an agent or broker, please contact us to find out if you and your clients meet our program requirements and are eligible for this opportunity. Contact us to learn how Lotus Life makes life liquid." <http://www.lotuslife.com>.

26. This conflict of interest is the primary reason why, if Silver Point prevails in purchasing VSI, APT will remove its policies from VSI and have them serviced elsewhere.

27. It is unacceptable for APT, or any other entity owning policies, to have a hedge fund with differing business interest in more immediate profits than long terms stability, administer its policies. By allowing this, the Court would create great prejudice to the entity that has supported the Receivership by buying keep policies that were lapsing.

28. In my opinion, VSI is not a viable business without the servicing fees provided by APT's policies. I believe Silverpoint business plan to be risky and speculative in nature.

29. In addition, as a Keep Investor, APT is also concerned that Silver Point has not demonstrated a commitment to learning about VIS's servicing business. I was in Court on July 14, 2009, when the Receiver stated, and Silver Point essentially admitted, it had not performed due diligence for their bid for the business.

Silver Point's Business Plan Is Inadequate

30. Silverpoint also admitted in open Court on July 14, 2009, that after a year and a half it still had no business plan on how to run VSI, yet was willing to bid large sum. This is either irresponsible or untrue.

31. While Silver Point came up with a business plan three days later that had errors, omissions and presumptions.

32. The plan recognizes that the VSI business needs to service thousands of additional policies in order to be profitable as the MBC policies mature with the insured's dying. Without adding a substantial number of new policies to be serviced, the business of VSI will not be profitable. Yet Silver Point does not detail any means of obtaining that new business.

33. The plan also wrongly assumes that APC's policies will remain with VSI. If Silver Point's bid is successful, APC has already advised Silver Point that it will withdraw all policies which are serviced by the VSI and have those policies serviced by another service provider. If that occurs, the number of life insurance policies that the business of VSI will be servicing will be too small for the business to make a profit. Silver Point has no credible business plan that shows that VSI can survive as is, let alone without APC.

34. Silver Point is not able to bring to the business of VSI the thousands of additional policies needed to replace this lost business. Silverpoint does not own substantial numbers of life insurance policies. Based on APC participation in the market, I estimate that Silver Point owns approximately 400 life insurance policies. If Silverpoint gets all its life insurance policies serviced by the business of VSI, this new business would not make a significant difference to the revenues of the business of VSI.

35. Silver Point says it will bring additional business to VSI, but it does not specify how it will do so. Which investor would get his life insurance policies serviced by a business owned by an aggressive hedge fund that is focused on buying policies cheaply and making short term profits by reselling those policies? The answer is none: VSI will not be able to find new customers who would be willing to get their policies serviced by Silver Point.

Reduction in Service Levels

36. For the business of VSI to be profitable under Silver Point ownership, Silver Point would have to reduce-the level and the quality of service to the Owners of policies. This would be very detrimental and result into many complaints from remaining investors. Examples of lower quality of service would include: (a) Delays in the invoicing of the insurance premiums or the administration fees to the Owners of policies so that they do not have enough time to pay.

The policies would then be deemed to have lapsed and would be bought at a low price by Silverpoint. (b) Increases in the administration fees or request new fees from the Owner of policies. (c) Discontinuing servicing at the end of the five year forcing a distress sale. There are many other possibilities.

37. A lower level of service would allow Silverpoint to gain control of some of the remaining life insurance policies at distressed valuations or for nothing. This would create a substantial prejudice for the Owners of policies and will result in renewed litigation in the future.

38. I am convinced that if Silver Point gains control of VSI, Silver Point will change the focus of the business of VSI, which will reduce the level of service. In fact, Silver Point's business plan already demonstrates its intention to change focus. This will affect the Owners of policies in many ways and lead them to sell their policies at distressed valuations for Silver Point's sole benefit.

39. Under Silver Point, the business of VSI will be unprofitable, and it will have to either reduce the quality of its services or start performing back-office operations that are not related to life insurance. In either case, the value of the policies will be significantly affected as errors and omissions will happen that will result in complaints and new litigation from the Owners of the policies.

40. I am convinced that Silverpoint will attempt to take control of the remaining MBC life insurance policies, a source of grave concern for APT.

Support for Horo Holdings

41. I believe Horo Holding will preserve and even improve the quality of the services provided by VSI such that the value of the interests of the Owner of policies will be safeguarded.

42. Horo Holdings has developed a sound business plan that has been approved by both the Receiver and the Management of the business of VSI. Horo Holdings has proposed a long term solution for the business of VSI which demonstrate an additional \$8 million of new revenues. APT Directors met with Horo Holdings and visited VSI and were equally convinced by Horo Holdings Business Plan. APC is fully committed to support Horo Holdings acquisition and operation of VSI as it will provide a reliable servicing solution on both a short and long term basis, achieve the highest quality standards possible and preserve the value for the Owners of policies. APC has no ownership or other interest in Horo Holdings. APC's overwhelming interest is in finding a buyer that can run VSI and service these policies in a way that gains efficiencies of scale and so reduces the long term costs to APT and other investors, whose interest are aligned.

43. In particular, Horo Holdings brings the following:

- Experience in turning around operational businesses and buying distressed businesses.
- Not a hedge fund, but a long term operator of 'real world' business.
- Excellent leadership skills.
- Strong focus on managing a limited number of businesses at any point in time.
- Has performed very extensive due diligence on the business of VSI. Spent a minimum of 30 days on the premises of VSI over the past 18 months.
- Has a demonstrated understanding of the servicing business of life insurance policies.
- Has prepared a long term business plan with a clear strategy and detailed projections.
- Has the unconditional support of the entire management team of VSI.
- Has secured new customers for the business of VSI that will provide the necessary economies of scale for VSI to be economical on a stand alone basis over the long term.

44. If Horo purchases VSI, APT has formally committed to providing all of the 5,600 policies it owns to be serviced by the business of VSI. This will automatically generate for the business of VSI additional income of over \$ 8 million over the next 5 years. This by itself will

guarantee the profitability and sustainability of the business of VSI with the same or higher level of service to all Owners of policies. APT has also committed to having all future policies it buys serviced by VSI/Horo.

45. APT's very strong view is that the bid that was submitted by Horo Holdings meets all the criteria listed above that are of capital importance to us for safekeeping the value of the life insurance policies serviced by the business of VSI.

46. APT has relied on the Receiver's stalking horse bid procedures, the bid incentives it provided to Horo, especially Horo's right to have the final bid for VSI, in purchasing at auction more than a thousand fractional interests from the Receiver. APC was the only bidder in most of the auction for those fractional interests, and APC's purchase protected and saved the investments of the other owners of those fractional interests.

47. The reason APC was the only bidder is because these were mainly policies on people with HIV. About 95% of the market place is not interested in buying the HIV policies. The other reason APC was the only bidder is because these were fractional shares of policies. Very few investors in the marketplace buy fractional shares. If APC had not purchased those fractional interests, it is likely that far 50 percent of policies would have lapsed. APC's decision to purchase these policies - despite the fact that they are fractionals - was based on its understanding that the Court would ensure that investors would not be taken advantage of - after VSI was sold. If APC had any idea that the Court would not uphold the bid procedures it approved on April 3, 2009, APC would not have purchased those fractional interests.

48. Any order that allows the stalking horse bid incentives approved by this court are so easily thwarted by a late, non-compliant bid would have a chilling effect on all such auctions in the future. Nobody would bid seriously to become a stalking horse or to outbid the stalking

horse, resulting in huge losses for Receiverships who currently benefit from the stalking horse system. Rather, bidders will just walk into court and say the Court's prior orders should not be followed because they have decided to submit a higher offer, just as Silver Point has done here.

49. The Court should reject Silver Point's attempt to upend the bid procedures approved by this Court on April 3, 2009, should reject the late bid be submitted by Silver Point, and should approve the bid that has been submitted by Horo Holdings.

The declarant says nothing further.

Executed on July 24, 2009

s/Jean-Michel Paul
Jean-Michel Paul