

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.

**RECEIVER'S REPLY TO OBJECTIONS TO
MOTION TO APPROVE SALES OF POLICIES
AND INCORPORATED MEMORANDUM OF LAW
("BID 2", PORTFOLIOS #1, 2, AND 4)**

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"), submits this reply in support of his motion to approve the proposed sale of certain insurance policies and all related rights, including beneficial interests (the "Bid 2 Policies"), free and clear of all liens, claims, interests and encumbrances, to the highest bidder at auction with respect to those Bid 2 Policies, Silver Point Capital Fund, L.P. ("Silver Point" or "Buyer") for a total of \$11,000,000 (subject to adjustment pursuant to the terms of the Purchase Agreement), or to the appropriate "Back-Up Bidder" in the event that Silver Point fails to close as provided in the Purchase Agreement (the "Bid 2 Sale Motion," D.E. 1924), and states:

1. On August 9, 2007, the Receiver filed the Bid 2 Sale Motion. The Bid 2 Sale Motion was filed in accordance with the Court's entry of the Disposition Order (D.E. 1339), which authorized and directed the Receiver to sell viaticated insurance policies designated by a majority of the investors in such policies to be sold. The Bid 2 Sale Motion follows the entry of a prior Order – over virtually identical objections by certain non-party insurance companies (the “Objecting Insurers”) – authorizing the sale of an initial portfolio of approximately 1,400 insurance policies (D.E. 1886). That initial sale has now been closed in accordance with the Court's directive.

2. On August 28, 2007, the Objecting Insurers filed their *Insurers' Objection to Motion to Approve Sale of Policies (“Bid 2”, Portfolios #1, 2, and 4)* (the “Objection”).¹ The Objection raises issues identical to those which were already made by the Objecting Insurers and rejected by the Court in connection with the initial sale – in particular, that the Receiver should not be permitted to sell policies without implementing an “anti-fraud” plan; that the Court should have approved the Objecting Insurers' proposed plan of distribution of receivership assets, rather than the procedure approved by the Disposition Order; and that the Objecting Insurers have been denied the ability to take discovery. For the same reasons that these objections were denied in connection with the initial sale of policies by the Receiver, they have no merit now either.

3. First, the Receiver is not operating as a “viatical settlement provider” under Florida law, i.e., a person who effectuates a viatical settlement contract. *See Fla. Stat. § 626.9911*. The Receiver is not currently performing the functions of a viatical settlement provider, is not entering into or soliciting viatical settlement contracts, and has no plans to do so; rather, he is in the process of an orderly liquidation of the Mutual Benefits business under the authority and supervision of the

¹ The Receiver notes that the Insurers are not parties to this action and have not been granted authority to intervene except for the limited purpose of filing a brief in opposition to the Receiver's Motion to Approve Procedures for Disposition of Policies and Distribution of Proceeds.

United States District Court for the Southern District of Florida. As such, he is not subject to the requirements of the Florida statutes applicable to a viatical settlement provider, including the “anti-fraud plan” referred to by the Objecting Insurers. In any event, the Objecting Insurers’ purported desire for the Receiver to adopt an “anti-fraud plan” has no bearing on the Receiver’s authority to sell policies in accordance with this Court’s prior orders. Nor is there any reason why the Objecting Insurers have any standing to object to the proposed sale on this ground (the Receiver has not been advised of any objection to the proposed sale by any regulatory agency).

4. Second, the mere fact that the Objecting Insurers proposed an alternate plan for distribution of the receivership assets does not demonstrate any error in the Court’s entry of the Disposition Order. That order is law of the case, and the Objecting Insurers’ continuing relitigation of the Disposition Order at every opportunity simply represents a continuing disregard of this Court’s prior orders and its authority to direct the disposition process.


5. Finally, for reasons that have already been addressed repeatedly by this Court, the Court has uniformly rejected the Objecting Insurers’ complaints of being denied an opportunity to take discovery. In its Order Granting in Part Intervening Insurers’ Motion for Clarification, Reconsideration and Modification (D.E. 1454), the Court held that the “Insurers’ argument that the Court denied their Due Process rights is unconvincing and unsupported.” In response to the Objecting Insurers’ complaint that they were not permitted to depose the Receiver or the Office of Insurance Regulation, the Court stated that “[t]he Insurers offer no authority, however, supporting their assertion that the Court denied them their Due Process rights.” (Order at 4). Nothing has changed since then. Indeed, in response to the latest wave of discovery propounded by the Objecting Insurers – despite the Court’s prior rulings – the Court entered a protective order prohibiting the discovery from going forward (D.E. 1942).

6. One other objection, in the form of a letter from investor Bertha Nino de Escobar, was filed with the Court. However this objection gives no explanation for the basis of the objection, and accordingly the Receiver respectfully submits that it, like the Objecting Insurers' objections, should be overruled.

WHEREFORE, for the foregoing reasons and those described in the Bid 2 Sale Motion, the Receiver respectfully submits that the objections to the sale of the Bid 2 Policies should be overruled, and that the sale of the Bid 2 Policies should be approved in accordance with the Bid 2 Sale Motion.

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

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 September 14, 2007.

By: 
David L. Rosendorf

SERVICE LIST OF RECEIVER

Case No.: 04-60573 CIV-Moreno

VIA ELECTRONIC MAIL		
<p>Alise Meredith Johnson, Esq. Linda Schmidt, Esq. Securities & Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 Fax: (305) 536-4154 E-mail: johnsona@sec.gov schmidils@sec.gov almonti@sec.gov <i>Counsel for Securities & Exchange Commission</i></p>	<p>Michael A. Hanzman, Esq. Kenvin Love, Esq. Hanzman Criden & Love, P.A. 7301 SW 57th Court, Suite 515 South Miami, Florida 33143 Fax: (305) 357-9050 E-mail: mhanzman@hanzmancriden.com klove@hanzmancriden.com <i>Counsel for Scheck Investments LP, et al.</i></p>	<p>Brian J. Stack, Esq. Stack Fernandez Anderson & Harris, P.A. 1200 Brickell Avenue, Suite 950 Miami, FL 33131-3255 Fax: (305) 371-0002 E-mail: bstack@stackfernandez.com <i>Counsel for Traded Life Policies Ltd.</i></p>
<p>David L. Rosendorf, Esq. Kozyak Tropin & Throckmorton 2525 Ponce de Leon, Suite 900 Coral Gables, Florida 33134 Fax: (305) 372-3508 E-mail: dlr@kttlaw.com <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: vdiaz@podhurst.com ndagher@podhurst.com <i>Counsel for Scheck Investments LP, et al.</i></p>	<p>J. David Hopkins, Esq. Lord, Bissell & Brook LLP Suite 1900, The Proseceium 1170 Peachtree Street, N.E. Atlanta, Georgia 30309 Fax: (404) 872-5547 E-mail: dhopkins@lordbissell.com <i>Counsel for Traded Life Policies Ltd.</i></p>
<p>George Mahfood, Esq. Ferrell Schultz Carter & Fertel 201 South Biscayne Boulevard 34th Floor, Miami Center Miami, Florida 33131 Fax: (305) 371-5732 E-mail: gmahfood@ferrellschultz.com <i>Counsel for Joel Steinger, Leslie Steinger, Peter Lombardi, P/JL Consulting Co., Kensington Consulting Co.</i></p>	<p>Angela Daker, Esq. White & Case, LLP 4900 Wachovia Financial Center 200 S. Biscayne Boulevard Miami, Florida 33131 Fax: (305) 358-5744 E-mail: adaker@whitecase.com <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: becerraj@gtlaw.com bassh@gtlaw.com <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: rgilblaw@aol.com <i>Special Counsel for Scheck Investments LP, et al.</i></p>	<p>Edward M. Mullins, Esq. Daniella Friedman, Esq. Astigarraga Davis Mullins & Grossman, P.A. 701 Brickell Ave., 16th Floor Miami, FL 33131 Fax: (305) 372-8202 E-mail: emullins@astidavis.com dfriedman@astidavis.com <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, 15th Floor 1441 Brickell Avenue Miami, FL 33131 Fax: (305) 536-1116 E-mail: jcs@tewlaw.com dml@tewlaw.com <i>Counsel Patricia Cook, et al</i></p>
<p>J. Raul Cosio, Esq. Holland & Knight 701 Brickell Avenue, Suite 3000 Miami, FL 33131 Fax: (305) 789-7799 E-mail: raul.cosio@hklaw.com <i>Counsel for Northern Trust Bank of Florida</i></p>	<p>Gary Timin, Esq. Squire Sanders & Dempsey, LLP 215 South Monroe Street, Suite 601 Tallahassee, FL 32301-1804 Fax: (850) 222-8410 E-mail: gtimin@ssd.com <i>Counsel for Transamerica Occidental Life</i></p>	<p>Joel L. Kirschbaum, Esq. Bunnell Wolfe Kirschbaum Keller McIntyre Gregoire & Klein, PA 100 SE 3rd Avenue, Suite 900 Fort Lauderdale, FL 33394 E-mail: cxm@bunnellwolfe.com <i>Counsel for Diana Steinger.</i></p>

<p>Christopher J. Klein Baur & Klein, P.A. 100 N. Biscayne Blvd. 21st Floor Miami, FL 33132 Fax: (305) 371-4380 E-mail: cklein@worldwidelaw.com <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: dsmall@duanemorris.com <i>Counsel for Dr. Christine Walsh, et al. (the "Investors Group")</i></p>	<p>Kenneth D. Post, Esq. Shutts & Bowen 1500 Miami Center 201 S. Biscayne Boulevard Miami, FL 33131 E-mail: kpost@shutts-law.com <i>Counsel for William Penn Life Insurance</i></p>
<p>Sandra M. Upegui, Esq. Shutts & Bowen, LLP 201 South Biscayne Blvd. Suite 1500 – Miami Center Miami, Florida 33131 <i>Counsel for Instituto de Prevision Militar Inverma</i></p>	<p>Joseph A. Patella, Esq. 450 Lexington Avenue New York, New York 10017 E-mail: JosephPatella@andrewskurth.com <i>Counsel for American Express Tax & Business Services, Inc.</i></p>	<p>J. Randolph Liebler, Esq. Liebler, Gonzalez & Porouondo, P.A. 44 West Flagler Street, 25th Floor Miami, Florida 33130 Fax: (305) 379-9626 E-mail: jrl@lgplaw.com <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: rcritchlow@kennynachwalter.com hschafer@kennynachwalter.com <i>Counsel for Citibank</i></p>	<p>Glenn Berger Joshua Reitzas Jaffe & Asher LLP 600 Third Avenue New York, NY 10016 E-mail: GBerger@jaffeandasher.com <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: charlescray@aol.com <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: bazimetlaw@aol.com <i>Counsel for Leslie Steinger</i></p>	<p>Wendy L. Furman, Esq. Pett, Furman & Jacobson, P.L. 2101 N.W. Corporate Boulevard Suite 316 Boca Raton, FL 33431 Fax: 994-4311 E-mail: wfurman@pfjlaw.com <i>Counsel for American United Life Insurance Co.</i></p>	<p>John H. Genovese, Esq. Genovese Joblove & Battista, P.A. 100 S.E. 2nd Street, 36th Floor Miami, Florida 33131 Fax: (305) 349-2310 <i>Counsel for Great West Growth, LLC, et al.</i></p>
<p>Craig Rasile, Esq. Hunton & Williams 1111 Brickell Avenue, Suite 2500 Miami, FL 33131 E-Mail: azaron@hunton.com crasile@hunton.com rutkowskik@whiteandwilliams.com ggitomer@mkbattorneys.com <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: ellsley@krupnicklaw.com <i>Counsel for Certain Investors</i></p>	<p>Jack Dempsey, Esq. Susan Guerrieri, Esq. Drinker Biddle & Reath, LLP One Logan Square 18th & Cherry Streets Philadelphia, PA 19103 John.Dempsey@dbr.com Susan.guerrieri@dbr.com <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: emontoya@fnclaw.com <i>Attorney for the Class</i></p>	<p>David P. Hartnett, Esq. Hinshaw & Culbertson 9155 S. Dadeland Blvd., Suite 1600 Miami, FL 33156 E-mail: dhartnett@hinshawlaw.com <i>Counsel for Connecticut General, et al.</i></p>	<p>Carla M. Barrow, Esq. Pardo, Gainsburg & Barrow, LLP One Biscayne Tower – Suite 2475 2 South Biscayne Blvd. Miami, FL 33131 Email: cbarrow@pgblaw.com <i>Attorney for NAI</i></p>
<p>Jay S. Blumenkopf, Esq. Adorno & Yoss 700 S. Federal Highway, suite 200 Boca Raton, FL 33432 E-mail: jblumenkopf@adorno.com <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: cwachter@fowlerwhite.com <i>Counsel for John Hancock Life Ins.</i></p>	<p>Carla M. Barrow, P.A. 1395 Brickell Avenue 8th Floor Miami, FL 33129 E-Mail: carlabarrow@bellsouth.net <i>Counsel for Claimants Maria Antonietta Mejia, et al.</i></p>

<p>Curtis B. Miner, Esq. Colson Hicks Eidson 255 Aragon Avenue, Second Floor Coral Gables, Florida 33134</p>	<p>Jeffrey Rubinstein, Esq. Rubinstein & Associates, PA 1428 Brickell Avenue Penthouse Miami, FL 33131 Jeffrey@RubinsteinAssociates.com <i>Attorneys for Claimants</i></p>	
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