

EXHIBIT A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-10547
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 24 2009
THOMAS K. KAHN
CLERK

D.C. Docket No. 04-60573-CV-FAM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

CONTINENTAL ASSURANCE COMPANY,
MIDLAND LIFE INSURANCE COMPANY,
SOUTHWESTERN LIFE INSURANCE COMPANY,
VALLEY FORGE LIFE INSURANCE COMPANY,
all now know as Reassure America Life,

Intervenors-Appellants,

versus

MUTUAL BENEFITS CORP.,
LESLIE STEINGER, a.k.a. Leslie Steiner,
VIATICAL SERVICE, INC., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

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Before TJOFLAT, EDMONDSON, and COX, Circuit Judges.

PER CURIAM:

The Securities and Exchange Commission (“SEC”) initiated this securities fraud action against Mutual Benefits Corporation (“MBC”), a company involved in the viatical settlement industry. As a result of this action, the district court appointed a Receiver, Roberto Martinez (“Receiver”). The Receiver began the process of disposing of MBC’s policies. A group of insurance companies opposed the Receiver’s plan for disposition, and petitioned the district court to intervene. The district court granted the motion.

The Receiver obtained approval from the district court to distribute all but five of MBC’s policies. On December 10, 2008, the Receiver filed a motion to Approve Auction Sales of Policies and Notice of Sales (“Motion”) which essentially sought approval from the district court of asset purchase agreements which would allow the Receiver to sell the policies. The insurance companies objected to this Motion. The district court granted the Receiver’s Motion on January 6, 2009, and entered the order which permitted the Receiver to sell the disputed policies. The insurance companies appeal that sale order. The policies have been sold to a third-party; the sale is complete.

As a threshold matter, we must determine whether the insurance companies' appeal is moot.¹ The Receiver contends that the appeal is moot because the sale to the third-party buyer is completed, and the insurance companies did not seek a stay of the sale order from this court as they could have under Fed. R. App. P. 8(a)(2). The policies are no longer owned by the Receiver; instead, they have been transferred to the third-party buyer found to be a good-faith purchaser.

“It has long been settled that a federal court has no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of California v. United States*, 506 U.S. 9, 12, 113 S. Ct. 447, 449 (1992) (quotations and citations omitted). “For that reason, if an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.” *Id.* (quotations and citations omitted). As the disputed policies have already been sold to a third-party purchaser, we are unable to grant “effectual relief.” Consequently, this appeal is moot and must

¹ We have previously held that similar appeals of previous sale orders were moot. *See* No. 07-15112, *SEC v. Mutual Benefits Corp.*, Order filed Aug. 1, 2008 (noting that “[w]e have carefully considered the Insurers’ arguments that some exceptions to the mootness doctrine apply, and find them meritless. Accordingly, these appeals are dismissed for want of jurisdiction because they are MOOT.”)

be dismissed because this court has no authority to issue an opinion on the merits.

See In re Kahihikolo, 807 F.2d 1540, 1542 (11th Cir. 1987).

We have considered the insurance companies' arguments that some exceptions to the mootness doctrine apply. We find them unconvincing.

APPEAL DISMISSED FOR WANT OF JURISDICTION AS MOOT.