

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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**COLSON HICKS EIDSON'S NINTH REQUEST FOR  
INTERIM COMPENSATION TO PAY ATTORNEYS' FEES  
AND COSTS AND THE RECEIVER'S FEES**

**(February 1, 2007 through November 30, 2007)**

**Pursuant to Court Order, all objections to this Application  
must be filed and served within ten (10) days of this  
Application.**

Roberto Martínez, as court-appointed receiver (the "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"), through undersigned counsel and pursuant to the Court's Order Appointing Receiver dated May 4, 2004, hereby requests the Court to enter an order authorizing the Receiver to pay to Colson Hicks Eidson ("CHE") the (i) reasonable attorneys' fees and costs incurred by CHE; and (ii) the Receiver's fees.

Colson Hicks Eidson and the Receiver are seeking authorization for the payment of a **total of \$322,422.47**, which represents **\$294,900 in fees** and the reimbursement of **\$27,522.47 in costs**. This fee application covers the 10-month period, from February 1, 2007 through November 30, 2007, and represents the bulk of the work performed by the Receiver and his counsel for this calendar year for all aspects of the Receivership.

In support of this request, the Receiver states the following:

1. Attached as Exhibit 1 is a Summary of the Fees incurred by CHE in its representation of the Receiver, and the Receiver's fees, from February 1, 2007 through November 30, 2007 (the "Application Period"), as well as a History of Fee Applications by CHE. Costs are posted through November 30, 2007.

2. Attached as Exhibit 2 is a summary of all CHE timekeepers, including the Receiver, their billing rates and the total hours charged by each timekeeper. All time has been billed at a reduced agreed-upon rate. Lawyers are billed at \$350/hour or \$300/hour, representing a substantial reduction from the normal hourly rates currently charged for the Receiver, Roberto Martínez and for attorneys Joseph Matthews, Curtis Miner, and Julie Kane. These rates have not been adjusted upwards since the inception of the Receivership in May 2004 despite the passage of time. In addition, all paralegal fees have been reduced by 15%. The total savings to the receivership reflected in these negotiated discounts for this time period is over \$90,000 in light of the professionals' current billing rates.

3. Attached as Exhibit 3 is a summary of each timekeeper broken down by category. In many instances, time billed to one category could also have been appropriately billed to a

different category or several different categories; however, in some instances, it is very difficult, if not impossible, to divide the time between categories.

4. Attached as Exhibit 4 is a breakdown of the **costs**. The total costs for which CHE seeks reimbursement are **\$27,522.47**.

5. The services rendered in each major category can be summarized as follows:<sup>1</sup>

**COLSON HICKS EIDSON  
LAWYERS and PARALEGALS**

a. **The Spear Safer Litigation: \$129,302.** During this time period, CHE personnel successfully prosecuted an accounting malpractice action against Spear Safer CPA's & Advisors, the former accountants for MBC. This action was litigated before Judge Dimitrouleas in the Broward Division of this District up to the eve of a jury trial and resulted in a **\$3.5 million settlement** for the Receivership. CHE personnel participated in all of the activities preceding a federal civil trial, including depositions of fact witnesses and expert witnesses, documentary discovery and review, and intensive preparation for trial until the matter settled shortly before the final calendar call. CHE personnel also participated in two separate mediations in an effort to settle the case. CHE prosecuted this matter in an extremely cost-effective manner, using only a single attorney and a single paralegal to prepare this matter for trial, with a second attorney becoming involved to assist at trial only shortly before trial was scheduled to begin.

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<sup>1</sup> CHE maintains detailed time records that are kept contemporaneously with the services performed. CHE will retain its detailed time records and will provide them to the Court for review *in camera* at the request of this Court.

b. **Other Civil Litigation**: **\$79,693**. The Receiver has filed a number of proactive lawsuits seeking to recover funds for the benefit of MBC's investors and creditors. A number of these lawsuits have been brought to a conclusion either through settlements or by obtaining judgments in the Receiver's favor during this application period. The Receiver's action against a number of former MBC sales agents has resulted in the recovery of over \$225,000 in commissions paid and is largely concluded; the Receiver's action against American Express cards for the receipt of fraudulent conveyances has resulted in the recovery of \$60,000; and, the Receiver's action against Ocala Breeders Sales for the receipt of fraudulent conveyances has resulted in the recovery of \$52,000. Each of these actions has required the Receiver's professionals to engage in various activities involved in the pursuit of federal civil actions, ranging from discovery and the taking of depositions, to motion practice and oral arguments.

In addition, counsel for the Receiver has spent substantial time in connection with efforts to collect upon the large unpaid Final Judgments obtained by the SEC against Joel Steinger and Leslie Steinger. This includes participation in two separate interpleader actions that are pending in state court in New Mexico and before this Court (after having been transferred from a District Court in Minnesota). In addition, counsel for the Receiver has undertaken a variety of other collection efforts, including undertaking discovery in aid of execution of the judgments, the issuance of writs of garnishment, and participation in a mortgage foreclosure action involving a farm in Ocala, Florida owned by Joel and Leslie Steinger.

Finally, counsel for the Receiver has continued to handle defensive litigation brought by a group of intervening insurance companies in a matter captioned *American United Life Insurance Co., et al. v. Mutual Benefits Corp, et al.*, which sought to void an unspecified number of policies currently being administered by the Receivership Entities. This matter was finally resolved during this application period when the U.S. Supreme Court denied the intervening insurers petition for certiorari. However, the intervening insurance companies have also appealed to the Eleventh Circuit two of the orders entered by this Court approving the sale of certain portfolios of insurance policies. The Receiver has filed a responsive brief on one of those appeals to date. The matters are not yet fully submitted to the Eleventh Circuit and are pending.

c. **Regulatory/Criminal Litigation: \$2,580.** The Receiver continues to receive inquiries and requests for information from regulators around the country who are involved in proceedings against MBC's former sales agents that have required the attention of Receiver's professionals. In addition, the Receiver continues to receive inquiries and requests for information from the U.S. Attorney's Office in connection with its investigation and prosecution of a number of MBC's former officers and agents.

d. **Investor and Agent Communications: \$18,868.** During this time period, CHE professionals have continued to spend substantial amounts of time in communicating with investors and their counsel on a wide variety of matters. Calls, e-mails and letters continue to be directed to CHE professionals on an almost daily basis relating to the Receivership. These communications range from responding to specific questions, concerns and complaints from

specific investors to work on communications with the investors and public as a group, such as maintaining and updating the Receiver's website. A number of these communications and calls are not billed for by CHE professionals.

CHE professionals also recorded time in this category in connection with input and review on Receiver's Reports and other forms and notices being provided to the investors in the course of the disposition process. This category also includes time spent working with investors and their counsel to try to resolve questions, concerns and disputes relating to the disposition process.

e. **Asset Analysis and Recovery/Asset Disposition**: **\$12,460**. Time included in this category reflects the time that CHE personnel have spent involved in the disposition process generally, including reviewing complaints concerning the disposition process and investor-to-investor sales, working on resolving issues raised by various insurers, and issues arising in connection with the sale of policies in the auction process. It also includes time spent in efforts by CHE professionals to identify and locate assets that properly belong to, or should be returned to, the Receivership Entities. In particular, a substantial amount of time in this category was spent in reviewing and analyzing specific life insurance policies to determine whether or not they could be sold in the disposition process.

f. **Business Operations**: **\$6,494**. CHE professionals continue to meet with VSI/MBC personnel to review their business operations, financial statements and to provide advice on specific business-related issues that arise. This category includes time spent addressing personnel issues, advising on miscellaneous bookkeeping and accounting issues, the

handling of escrow accounts, analyzing specific insurance policies and their premium obligations, assuring the uninterrupted payment of premiums for the policies and other operating expenses, and generally keeping in place systems to keep matters organized.

g. **Fee Applications**: **\$6,303**. CHE professionals have expended time overseeing, reviewing and filing the fee applications for all of the professionals associated with the Receivership, for which the Receiver is responsible, over the course of the past year. This category also includes time spent on the instant fee application.

### **THE RECEIVER**

The Receiver is requesting a total of **\$39,200** in fees for his time spent on this matter for this nine-month period. The Receiver, of course, is responsible for administering the Receivership Entities pursuant to the terms of the Order Appointing Receiver and overseeing the work of the professionals and staff working on the receivership. The Receiver has been involved to varying degrees in all aspects of the Receivership described above. In particular, the Receiver meets regularly with the key staff members of VSI/MBC and reviews all aspect of their business operations, their financial condition, and their financial statements, among other things. The Receiver also prepares and/or supervises the preparation of Reports to be filed with the Court, including the 20<sup>th</sup> through 24th Reports of the Receiver filed during this time period. The Receiver has also been closely involved in overseeing various aspects of the disposition and sale process for the insurance policies within the scope of the Receivership.

6. For this application period CHE seeks reimbursement for 706.20 hours of time for lawyers, including the Receiver, and 515.70 hours of paralegal time. The total amount sought during the application period is **\$322,422.47**, which represents **\$294,900 in fees** and the reimbursement of **\$27,522.47 in costs**.

7. I have carefully reviewed the attached exhibits and I am responsible for supervising all of the attorneys in my firm on the case. I certify that the hours expended and the costs incurred were necessary and reasonable to represent the Receiver during the Application Period.

**MEMORANDUM OF LAW**

When determining the award of attorneys' fees, the Court should give consideration to the factors for compensation that the 11<sup>th</sup> Circuit articulated in *In re Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11<sup>th</sup> Cir. 1988) - (1) the time and labor properly employed by the attorneys in processing the case; (2) the quality of services rendered; (3) the scope of the activity and conspiracy under attack; (4) the financial risk involved; (5) the magnitude, complexity and novelty of the issues involved; (6) the beneficial results obtained; and (7) the degree to which, if any, effort were supported by prior governmental action. CHE respectfully suggests that its application meets all the criteria for this interim request for compensation.

**WHEREFORE**, COLSON HICKS EIDSON, by and through the undersigned counsel, respectfully requests that this Court enter an order authorizing the payment of **total of \$322,422.47**, which represents **\$294,900 in fees** and the reimbursement of **\$27,522.47 in costs**, for this Application Period. A proposed order is attached.

Respectfully submitted,

By: Roberto Martínez / LYCAM  
Roberto Martínez  
Receiver

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6<sup>th</sup> day of December, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Curtis B. Miner

<b>SERVICE LIST OF RECEIVER - VIA ELECTRONIC MAIL</b>		
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**EXHIBIT 1**

**SUMMARY OF INTERIM APPLICATION FOR COMPENSATION OF  
FEES AND COSTS OF COLSON HICKS EIDSON, P.A.**

1. Name of Applicant	Colson Hicks Eidson, P.A.	
2. Role of Applicant	Receiver	
3. Name of certifying professional	Roberto Martínez	
4. Date receiver appointed	May 4, 2004	
5. Date of application for employment	May 26, 2004	
6. Date of order approving employment	June 3, 2004	
7. Dates of services recovered	February 1, 2007 through November 30, 2007	
8. Fees requested for this period		<b>\$294,900.00</b>
9. Total expense reimbursement requested for this period		<u>27,522.47</u>
Total fee and expense award requested		<u>\$322,422.47</u>

**HISTORY OF FEE APPLICATIONS**

(See Attached Chart)

**COLSON HICKS EIDSON  
HISTORY OF FEE APPLICATIONS**

App. #	Application Period	Date Submitted	Fees Requested	Costs Requested	Amount Requested	Fees Awarded	Costs Awarded	Date Awarded	Total Amt. Awarded	Date Paid	Amount Paid
1	5/4/04 - 6/18/04	7/2/2004	\$220,751.50	\$6,709.88	\$227,461.38	\$74,000.00	\$6,709.00	10/22/2002	\$80,709.00	11/5/2004	\$80,709.00
						\$146,751.00	\$0.00	12/15/2004	\$146,751.00	1/6/2005	\$146,751.00
2	6/19/04 - 9/30/04	12/15/2004	\$287,905.00	\$9,771.19	\$297,676.19	\$287,905.00	\$9,771.19	6/1/2005	\$297,676.19	9/7/05	\$297,676.19
3	10/1/04 - 1/31/05	3/17/2005	\$371,496.00	\$30,264.16	\$401,760.16	\$371,496.00	\$30,264.16	6/1/2005	\$401,760.16	9/7/2005	\$401,760.19
4	2/1/05 - 5/31/05	7/20/2005	\$320,323.75	\$16,565.65	\$336,889.40	\$300,000.00	\$16,565.00	8/18/2005	\$316,565.00	9/7/2005	\$100,563.62
										11/2/2005	\$216,001.35
5	6/1/06 - 9/30/05	11/9/2005	\$244,126.50	\$20,537.69	\$264,664.19	\$240,000.00	\$20,537.69	2/17/2006	\$260,537.69	2/28/2006	\$260,537.69
6	10/1/05 - 12/31/05	3/7/2005	\$215,142.50	\$26,936.15	\$242,078.65	\$205,000.00	\$26,936.15	5/5/2006	\$231,936.15	5/18/2006	\$121,936.15
								5/22/06			
								corrects prior error			
7	1/1/06 - 5/31/06	7/26/2006	\$372,588.50	\$25,275.99	\$397,864.49	\$300,000.00	\$25,275.00	10/25/2006	\$325,275.00	10/31/2006	\$325,275.00
8	6/1/06 - 1/31/07	5/21/2007	\$148,498.00	\$14,693.31	\$163,191.31	\$135,306.69	\$14,693.31	10/31/2007	\$150,000.00	11/2/2007	\$150,000.00
9	2/1/07 - 11/30/07	12/6/2007	\$294,900.00	\$27,522.47	\$322,422.47						
<b>TOTAL</b>			<b>\$2,180,831.75</b>	<b>\$150,754.02</b>	<b>\$2,331,585.77</b>	<b>\$2,060,458.69</b>	<b>\$150,751.50</b>		<b>\$2,211,210.19</b>		<b>\$2,211,210.19</b>

## EXHIBIT 2

SUMMARY OF TIME BY TIMEKEEPER

<b>PROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	112.00	\$ 39,200.00
Joseph Matthews	\$350.00	32.00	11,200.00
Curtis Miner	\$300.00	513.90	154,170.00
Julie Braman Kane	\$300.00	48.30	14,490.00
<b>TOTAL BY PROFESSIONAL</b>		<b>706.20</b>	<b>\$219,060.00</b>

<b>PARAPROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Michelle Roberto	\$160.00	314.50	\$50,320.00
Maria A. Rodriguez	\$110.00	57.70	6,347.00
Lauren Rosen	\$110.00	143.50	15,785.00
Jennie Hausler	\$110.00	30.80	3,388.00
<b>TOTAL BY PARAPROFESSIONAL</b>		<b>515.70</b>	<b>\$75,840.00</b>

<b>LEGAL SERVICES RENDERED (TOTAL)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Total Professional		706.20	219,060.00
Total Paraprofessional		515.70	75,840.00
<b>TOTAL LEGAL SERVICES</b>		<b><u>1,221.90</u></b>	<b><u>\$294,900.00</u></b>

**EXHIBIT 3****SUMMARY OF PROFESSIONAL AND PARAPROFESSIONAL  
TIME BY ACTIVITY CODE CATEGORY**

<b>ACTIVITY CODE CATEGORY: Receiver (R200)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	112.00	\$39,200.00
<b>ACTIVITY CODE TOTAL</b>		<b>112.00</b>	<b>\$39,200.00</b>

<b>ACTIVITY CODE CATEGORY: Spear Safer</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	308.50	92,550.00
Joseph Matthews	\$350.00	32.00	11,200.00
Michelle Magrudo-Roberto	\$160.00	159.70	25,552.00
<b>ACTIVITY CODE TOTAL</b>		<b>500.20</b>	<b>\$129,302.00</b>

<b>ACTIVITY CODE CATEGORY: Litigation – Third Party (R162)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	155.40	46,620.00
Michelle Magrudo-Roberto	\$160.00	154.80	24,768.00
Lauren Rosen	\$110.00	75.50	8,305.00
<b>ACTIVITY CODE TOTAL</b>		<b>385.70</b>	<b>\$79,693.00</b>

<b>ACTIVITY CODE CATEGORY: Litigation-Regulatory/Criminal (R163)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	8.60	\$2,580.00
<b>ACTIVITY CODE TOTAL</b>		<b>8.60</b>	<b>\$2,580.00</b>

<b>ACTIVITY CODE CATEGORY: Investor/Agent Communications (R170)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Julie Kane	\$300.00	48.30	14,490.00
Curtis Miner	\$300.00	3.30	990.00
Jennie Hausler	\$110.00	30.80	3,388.00
<b>ACTIVITY CODE TOTAL</b>		<b>82.40</b>	<b>\$18,868.00</b>

<b>ACTIVITY CODE CATEGORY: Asset Analysis and Recovery/Asset Disposition (R120 &amp; R130)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	16.60	\$4,980.00
Lauren Rosen	\$110.00	68.00	7,480.00
<b>ACTIVITY CODE TOTAL</b>		<b>84.60</b>	<b>\$12,460.00</b>

<b>ACTIVITY CODE CATEGORY: Business Operations (R150)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	21.50	\$6,450.00
Maria A. Rodriguez	\$110.00	.40	44.00
<b>ACTIVITY CODE TOTAL</b>		<b>21.90</b>	<b>\$6,494.00</b>

<b>ACTIVITY CODE CATEGORY: Fee Applications (R180)</b>			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Mari Rodriguez	\$110.00	57.30	\$6,303.00
<b>ACTIVITY CODE TOTAL</b>		<b>57.30</b>	<b>\$6,303.00</b>

EXHIBIT 4

Summary of Requested Reimbursement of Expenses

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<u>Description</u>	<u>Amount</u>
Filing Fees	1,229.00
Process Service Fees	589.30
Court Reporters and Transcripts	6,955.81
Mediation Held 6/26/07 - Fee - Wetherington, Klein & Hubbart, P. A.	1,600.00
Mediator's Fee - Brian W. Pariser, P. A.	306.25
Photocopies - In-house	8,724.75
Photocopies - Outside Services (actual cost)	1,569.08
Certified Copies	142.50
Online Research Choice Point - \$131.50 Pacer - \$431.36 Westlaw - \$3,134.07 Misc- \$31.80	3,728.73
Delivery Services/Messengers	415.95
Federal Express	624.20
Postage	254.00
Other - Meals	290.02
Other - Miscellaneous (Parking/Mileage)	490.78
Telephone	602.10
<b>TOTAL EXPENSES:</b>	<b>\$27,522.47</b>