

**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.

**ORDER GRANTING RECEIVER'S MOTION FOR ENTRY OF
"SALE OF ASSETS, SERVICING AND TRANSFER ORDER"**

On September 25, 2009, the Receiver filed a Motion for Entry of "Sale of Assets, Servicing and Transfer Order", in furtherance of this Court's August 14, 2009 Order Granting Receiver's Motion for Entry of Order Approving Sale of VSI Business and Execution of Servicing Agreement, Transitional Services Agreement and Trust Agreement ("Sale Order", DE#2322). The Court has considered the Motion, the representations and arguments of the Receiver and his counsel, the record in this case, and relevant authorities. Being duly advised, the Court hereby finds and concludes as follows:

1. Based on the record presented at the hearing and all pleadings in the Receivership Proceeding and arguments by counsel and evidence presented, Litai Assets LLC ("Buyer") has acted in good faith and is a good faith purchaser of the Purchased Assets under the Asset Purchase Agreement and a good faith party to the Servicing Agreement and the Transitional Services Agreement.

2. The Court finds that the sale process was conducted by the Receiver in good faith and consistently with the Court's April 3, 2009 Order Granting the Receiver's Motion for Entry of Order Approving Purchase Agreement and Bidding Procedures (DE#2267), wherein the Court approved the Asset Purchase Agreement and the bidding procedures provided for therein. Adequate notice was provided to prospective bidders, both directly and by means of publication in national and local newspapers, and all potential qualified bidders were provided an opportunity to conduct due diligence and submit a competing bid. The Court finds that no competing bid was properly submitted in accordance with the bidding procedures approved by this Court, and accordingly that Buyer is the sole qualified bidder for the Purchased Assets.

3. Seller has the sole and absolute authority to, on behalf of the Receivership Entities, the Keep Policy Investors and the Third Party Beneficiaries, convey all claims, options, privileges, right, title and interest in, to and under the Purchased Assets.

4. Seller has the sole and absolute authority to, on behalf of the Receivership Entities, the Keep Policy Investors and the Third Party Beneficiaries, convey all claims, options, privileges, right, title and interest in, to and under the Keep Policies, Policy Files and Trust Cash being assigned to the Trust.

5. The sale of the Purchased Assets in accordance with the terms of the Asset Purchase Agreement and the entering into of the Transitional Services Agreement with the Buyer is approved and Seller shall be directed to consummate all of the transactions contemplated hereby.

6. The selection of Barry Mukamal ("Trustee") as Trustee of the Mutual Benefits Keep Policy Trust (the "Trust"), and the entering into of the Mutual Benefits "Keep Policy" Trust Agreement between the Receiver and the Trustee (the "Trust Agreement"), are approved.

7. The entering into of the Servicing Agreement between the Trustee and the Buyer is approved.

8. At the Closing, Buyer will be vested with all claims, options, privileges, right, title and interest in, to and under the Purchased Assets under the Asset Purchase Agreement, free and clear of all Encumbrances (as defined in the Asset Purchase Agreement).

9. At the Closing, the Trustee will be vested with all claims, options, privileges, right, title and interest in, to and under the Trust Assets, free and clear of all Encumbrances.

10. The Trustee and any subsequent owner of a Keep Policy and the Buyer, acting pursuant to the authority granted to it under the Servicing Agreement shall have the right to from time to time obtain updated medical information regarding the viator/insured under each Keep Policy, including (i) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of the Sale of Assets, Servicing and Transfer Order and a written request by the Trustee or by the Buyer or by any subsequent owner of a Keep Policy shall be authorized and compelled to immediately release copies to the Trustee or the Buyer or such subsequent owner of such Keep Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under such Keep Policy so requested by the Trustee or the Buyer or such subsequent owner thereof, as the case may be, for the purpose of predicting health and life expectancy and (ii) each insured/viator under a Keep Policy being required to provide the Trustee or the Buyer and any subsequent owner of such Keep Policy with Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations and contact information for all physicians and other medical providers who have treated such insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured's/viator's health and medical condition, and the Trustee and the Buyer and each subsequent

owner of a Keep Policy shall be entitled to seek enforcement of this clause (e) as to any person, including by way of example, and not limitation, an application for a finding of contempt; to the extent there is such a then existing Order of the Court for the benefit of Seller, the Sale of Assets, Servicing and Transfer Order will cause such existing Order to be applicable to the Trustee.

11. The sale of the Purchased Assets pursuant to the Asset Purchase Agreement, the entering into of the Transitional Services Agreement, the entering into of the Servicing Agreement, and the entering into of the Trust Agreement (collectively the "Agreements") are not precluded by or contrary to any prior Order issued by the Court and no further consents by any Person (including any Governmental Authority) are required to convey the Purchased Assets to Buyer in accordance with the Asset Purchase Agreement; or to enter into the Transitional Services Agreement, the Servicing Agreement or the Trust Agreement.

12. The Court hereby explicitly exculpates the Buyer, and its officers, directors, employees, shareholders, managers, member(s), successors and assigns from and against any and all obligations, claims, debts, demands, promises, damages, covenants, contracts, promises, agreements, liabilities, interest, expenses, costs, attorneys' fees, actions or causes of action or any nature whatsoever, whether known or unknown, with respect to the operation of any of the Receivership Entities prior to the closing date of the Acquisition and Servicing Agreements, including, without limitation, any and all pending or threatened claims initiated by past investors, Keep Policy Investors, Third Party Beneficiaries and any other parties in relation to any of the activities conducted by any of the Receivership Entities or the Receiver prior to the closing date of the Acquisition and Servicing Agreements.

13. This Sale of Assets, Servicing and Transfer Order shall be binding in all respects upon all creditors of the Receivership Entities, any investor in the Receivership Entities, any beneficial

interest holder or other interest holder of the Policies, any insurance company or other entity which issued or is obligated under the Policies, and any other party in interest in the Receivership Proceeding and any of the successors or assigns of the foregoing.

14. Upon Closing, each insurance company that issued a Keep Policy shall give full effect to this Order and shall recognize the Mutual Benefits Keep Policy Trust as the sole and exclusive owner of all claims, options, privileges, right, title and interest in, to and under the Keep Policies subject only to the rights of the Keep Policy Investors, including by effecting any change in the named owner and/or beneficiary of the Keep Policies upon direction thereof by Seller or the Trustee (including by Buyer as either the Seller's or Trustee's authorized representative), and including with respect to any Keep Policy having an irrevocable beneficiary, whether or not such irrevocable beneficiary has consented to such change.

15. As provided in Section 2 of the Servicing Agreement, the servicing of the Keep Policies by Buyer shall be conducted consistent with the terms of the *Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies* entered by the Court on January 30, 2007 (D.E. 1837), the *Order Regarding Future Administration of Certain Insurance Policies Subject to this Proceeding* entered by the Court on April 30, 2007 (D.E. 1887), the *Order Granting Motion for Clarification and Amendment* entered by the Court on January 3, 2008 (D.E. 2010) and the *Order Granting Receiver's Motion for Amendment of Beneficial Interests Order* entered by the Court on August 18, 2008 (D.E. 2142) (the "Policy Administration Orders"). In furtherance, thereof, the Trustee shall have all of the rights and responsibilities of the Receiver with respect to the Keep Policies as set forth in the Policy Administration Orders, as delegated to him pursuant to the Trust Agreement.


16. Subject to the terms and conditions set forth therein, the Agreements and any related agreement, document or other instrument may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties thereto, and in accordance with the terms thereof, without further notice or order of this Court, provided that any such modification, amendment or supplement is for the purpose of fulfilling the intent of the Agreements and does not constitute a material modification of the Agreements.

17. This Order constitutes an interlocutory or a final judgment in a receivership action and thus shall become effective immediately upon its entry as provided in Rule 62(a) of the Federal Rules of Civil Procedure.

Therefore, it is –

ORDERED that the VSI Sale Motion is granted, and the Receiver and Buyer are authorized to proceed with the sale of the Purchased Assets and the entry of the Agreements as set forth therein and in accordance with the terms of this Order.

ORDERED in the Southern District of Florida this 14th day of December, 2009.


HON. FEDERICO A. MORENO
United States District Judge

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Counsel of Record