

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-60727-CIV-DIMITROULEAS

ROBERTO MARTINEZ,  
as court-appointed Receiver for  
MUTUAL BENEFITS CORP.,  
VIATICAL SERVICES, INC. and  
VIATICAL BENEFACTORS, LLC,

Plaintiff,

v.

SPEAR SAFER CPAs & ADVISORS, a  
Florida Limited Liability Company,

Defendant.

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**SETTLEMENT AGREEMENT AND RELEASE**

This Stipulation of Settlement ("Settlement Agreement" or "Stipulation") is made and entered into among: (1) Roberto Martinez, as court-appointed Receiver (the "Receiver") of Mutual Benefits Corp., Viatical Benefactors, LLC, Viatical Services, Inc., and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A., solely in their capacity as Trustee; and (2) Spear Safer CPA's & Advisors ("Spear Safer") (collectively, the "Settling Parties").

WHEREAS, on May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals;

WHEREAS, on May 4, 2004, the Court entered an Order appointing Roberto Martínez as Receiver for MBC and related entities;

WHEREAS, on May 23, 2006, the Receiver filed a Complaint against Spear Safer in *Roberto Martinez, as Receiver v. Spear Safer CPAs & Advisors*, Case No. 05-60727-Civ-Dimitrouleas (the "Action");

WHEREAS, the Receiver and the Receiver's Counsel have concluded that it would be in the best interests of the Receivership to enter into this Settlement Agreement, because the settlement would be a fair, reasonable and adequate resolution of the Action and all claims against Spear Safer;

WHEREAS, it is the intention of all of the parties to this Settlement Agreement to resolve, compromise and settle all claims of the Receiver against Spear Safer, as more particularly provided below;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the Settling Parties, through their undersigned counsel, subject to Court approval pursuant to the Court's Order Appointing Receiver in *SEC v. Mutual Benefits Corp., et al.*, Case No. 04-60573-Civ-Moreno, to all of the terms and conditions set forth herein, as follows:

**I. SETTLEMENT CONSIDERATION**

A. As consideration for the Release provided in Section II below, as well as for other promises and consideration set forth in this Settlement Agreement, Arch Insurance Company for and on behalf of Spear Safer will pay the Receiver a total of Three Million, Five Hundred Thousand Dollars (\$3,500,000), within ten (10) days of the entry of an Order approving this settlement in *SEC v. Mutual Benefits Corp., et al.*, Case No. 04-60573-Civ-Moreno.

B. In connection with the execution of this Settlement Agreement, the Parties have or will, through their attorneys, execute and file a Joint Stipulation of Dismissal With Prejudice

of the Action. This Joint Stipulation of Dismissal cannot be filed unless and until approval of the settlement is received from the Court in *SEC v. Mutual Benefits Corp., et al.*, Case No. 04-60573-Civ-Moreno.

**II. RELEASE**

A. Upon payment of the consideration identified in Section I above, Spear Safer, and each of its past, present and future officers, directors, managers, operators, owners, shareholders, agents, insurers, employees, servants, persons under their direction or control, representatives and heirs to the aforementioned, successors, and assigns, shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which Roberto Martínez, as court-appointed Receiver of Mutual Benefits Corp., Viatical Benefactors, LLC, Viatical Services, Inc., and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A. solely in their capacity as Trustee, ever had, now have or hereafter can, shall or may have, which relate to the Action or which arise out of Spear Safer's involvement or association with Mutual Benefits Corp., Viatical Benefactors, LLC or Viatical Services, Inc., including but not limited to any claims process to be instituted as part of the Receivership in *SEC v. Mutual Benefits Corp., et al.*, Case No. 04-60573-Civ-Moreno, which the Receiver and each of its officers, directors, managers, operators, owners, shareholders, agents and representatives, ever had, now have or hereafter can, shall or may have such as vicarious liability claims, respondent superior claims, demands, obligations, actions, causes of action, loss of investments, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Receiver now has, or which may hereinafter accrue or otherwise be acquired, on account of, or may in any way arise out of the allegations

contained in the subject Complaint, including, but not limited to, any and all services rendered by Spear Safer to or in connection with their work for Mutual Benefits Corp., Viatical Services, Inc., Viatical Benefactors, LLC., and Anthony Livoti Jr., and Anthony Livoti, Jr., P.A., solely in their capacity as Trustee or any other company, corporation business or entity no matter how remotely related to MBC, its' officers, directors, managers, operators, owners or shareholders, including, without limitation, any and all known or unknown claims for losses sustained by its customers and/or investors which have resulted or may result from the alleged conduct, acts or omissions of Spear Safer.

This release and discharge shall also apply to those mentioned previously and more specifically to Spear Safer's past, and present officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereinafter be affiliated. This release and discharge shall also apply to any company, corporation, business or entity related, merged, owning, or relating in any way to Spear Safer and its Insurers.

B. Upon dismissal of the Actions, Roberto Martínez, as court-appointed Receiver of Mutual Benefits Corp., Viatical Benefactors, LLC, Viatical Services, Inc. and Anthony Livoti, Jr. and Anthony Livoti, Jr. P.A. solely in their capacity as Trustee, and each of its officers, directors, managers, operators owners, shareholders, agents and representatives, shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, including any claims in any claims process to be instituted as part of the Receivership in

*SEC v. Mutual Benefits Corp., et al.*, Case No. 04-60573-Civ-Moreno, which Spear Safer, and each of its past, present and future officers, directors, managers, operators owners, shareholders, agents and representatives, ever had, now have or hereafter can, shall or may have.

C. As further consideration for the payment identified in Section I above, the Receiver also agrees to hold harmless and indemnify Spear Safer from said settlement proceeds, and only from said settlement proceeds, from and for any and all civil actions, causes of action, damages and costs, including reasonable attorneys' fees, incurred in defense of or in settlement of all actions, causes of action, suit or suits, or demands, third party or otherwise, which may be brought or made against Spear Safer arising out of the matters discharged and released hereby. This agreement does not apply to criminal or regulatory actions brought by any governmental, regulatory or law enforcement agencies. However, the Receiver personally affirms that it has no knowledge of any civil, criminal and/or regulatory actions, at the State or Federal level, presently contemplated or already in motion, that have, or may be brought against Spear Safer and each of its past, present and future officers, directors, managers, operators owners, shareholders, agents and representatives now or at any time in the future arising out of any services rendered to MBC.

### **III. MISCELLANEOUS**

#### **A. Reasonable Best Efforts to Effectuate This Settlement Agreement**

The parties to this Settlement and their counsel agree to undertake their reasonable best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement. Pending final approval of this settlement, the

Settling Parties will cease and desist all litigation related activities, other than actions necessary to promptly conclude this matter.

B. No Admission

Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority present or future, by Spear Safer, Glenn Spear, Peter Schroeder, Arch and Butler Pappas Weihmuller Katz Craig, LLP, their past, present and future officers, directors, managers, operators, owners, shareholders, agents, employees, representatives, their predecessors and/or successors. Neither this Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, shall be filed, offered, received in evidence or otherwise used in any action or proceeding or any arbitration, except in connection with the parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident thereto.

C. Non-Disparagement

In further consideration of the payment and release set forth in this Settlement Agreement, the Parties further covenant and agree that they, individually, jointly or by and through any other person, firm, corporation or entity, will not perform any act or say, print or cause to be published or disseminated by any means any conduct or words that are intended, likely to, may or do disparage, detract, defame, damage, destroy, injure or adversely affect the business or good name of the Parties or any of their agents, officers, directors, employees, shareholders, parent companies, subsidiary companies, affiliated companies, insurers, successors and assigns, in connection with the Action or the settlement of the Action. The Receiver's

notification to MBC's investors of the financial terms of this settlement, as required by the Receiver's obligations as a court-appointed representative and under the Order Appointing Receiver shall not be considered "disparagement" within the meaning of this paragraph.

D. Consent to Jurisdiction

The Settling Parties, and their respective counsel, hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement, the applicability of this Settlement Agreement or any issue related to fees and costs.

E. Resolution of Disputes: Retention of Jurisdiction

Any disputes between or among the Settling Parties concerning matters contained in this Settlement Agreement shall, if they first cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement.

F. Choice of Law

All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Florida without regard to its choice of law or conflict of laws principles.

G. Amendment, Waiver

This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of

any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

H. Execution in Counterparts

This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof.

I. Integrated Agreement

This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties.

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IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein above written.

Roberto Martinez, Esq.  
Colson Hicks Eidson  
255 Aragon Ave., 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

\_\_\_\_\_  
Date

*Court-Appointed Receiver for Mutual Benefits Corp;  
Viatical Benefactors, I.I.C.; Viatical Services, Inc.;  
and Anthony Livoti, Jr., Individually and Anthony  
Livoti, Jr., P.A., Solely in their Capacity as Trustee*

Curtis B. Miner, Esq.  
Colson Hicks Eidson  
255 Aragon Ave., 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

\_\_\_\_\_  
Date

*Counsel for Receiver*

  
M. Glenn Spear  
Spear Safer CPAs & Advisors

7/19/2007  
Date

  
Maureen M. Deskins, Esq.  
Butler Pappas Weihmuller Katz Craig, LLP

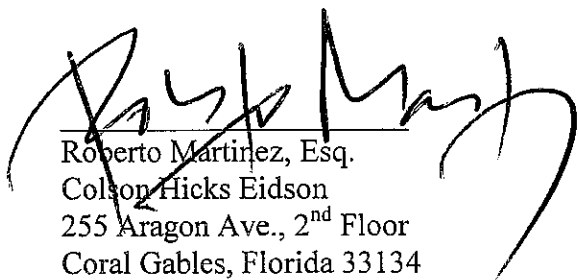
7-19-07  
Date

777 S. Harbour Island Blvd.  
Suite 500

Tampa, FL 33602


*Counsel for Spear Safer CPAs & Advisors*

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein above written.

  
\_\_\_\_\_  
Roberto Martinez, Esq.  
Colson Hicks Eidson  
255 Aragon Ave., 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

7/24/07  
Date

*Court-Appointed Receiver for Mutual Benefits Corp;  
Viatical Benefactors, LLC; Viatical Services, Inc.;  
and Anthony Livoti, Jr., Individually and Anthony  
Livoti, Jr., P.A., Solely in their Capacity as Trustee*

  
\_\_\_\_\_  
Curtis B. Miner, Esq.  
Colson Hicks Eidson  
255 Aragon Ave., 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

7/24/07  
Date

*Counsel for Receiver*

\_\_\_\_\_  
M. Glenn Spear  
Spear Safer CPAs & Advisors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Maureen M. Deskins, Esq.  
Butler Pappas Weihmuller Katz Craig, LLP  
777 S. Harbour Island Blvd.  
Suite 500  
Tampa, FL 33602

\_\_\_\_\_  
Date

*Counsel for Spear Safer CPAs & Advisors*