

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL DIVISION
CASE NO. 04-60573-CIV-MORENO/GARBER

SECURITIES & EXCHANGE COMMISSION,
Plaintiff,

v.

MUTUAL BENEFITS CORP., *etc.*,
Defendants,

VIATICAL BENEFACTORS, L.L.C., *etc.*,
Relief Defendants.

**LIFE SETTLEMENT HOLDING, A.G.'S AND
TRADED LIFE POLICIES LIMITED'S
COMBINED PROPOSAL FOR DISTRIBUTION OF FUNDS PURSUANT
TO ORDER REQUIRING UNION PLANTERS BANK TO DISBURSE FUNDS**

Life Settlement Holding, A.G. ("LSH") and Traded Life Policies Limited ("TLPL"), through counsel, submit this combined proposal for distribution of funds pursuant to this Court's Order Requiring Union Planters Bank to Disburse Funds issued on February 22, 2005.

INTRODUCTION

In its February 22, 2005, Order Requiring Union Planters Bank To Disburse Funds (the "Disbursement Order"), this Court invited the parties to submit written proposals for distribution by Union Planters Bank, N.A. ("Union Planters") to the pre-purchasers of their respective funds within the Union Planters account titled "Union Planters Bank, N.A. – MBC Purchaser Escrow Account" (the "Purchaser Escrow Account"). LSH and TLPL (collectively "LSH/TLPL") are pre-purchasers who each separately own several million dollars in the Purchaser Escrow Account, and they respectfully urge the Court to cause Union Planters to distribute the pre-purchasers' funds in the Purchaser Escrow Account in the manner described below:

SUMMARY OF PROPOSAL

Since the money in the Purchaser Escrow Account belongs solely to pre-purchasers like LSH/TLPL, and the Court found that such money is not an asset of the Receivership, the Receiver should not participate in the distribution process. Instead, Union Planters should identify each pre-purchaser with funds in the Purchaser Escrow Account by name and address, confirm the amount to be returned to each purchaser, and return the escrowed funds upon receipt of written transfer instructions. The Administrator should not be involved, unless and until his or her services are requested by Union Planters, and in such event, only to the extent needed to assist Union Planters in obtaining the requisite Court-approved Distribution Criteria (“name, address, amount, and transfer instructions”). As to represented pre-purchaser parties such as LSH/TLPL, upon confirmation by Union Planters and such parties of the amount in escrow, Union Planters should wire the funds to counsels’ trust accounts pursuant to written instructions presented to bank counsel by counsel for the represented pre-purchaser(s).

SUMMARY OF RESPONSES TO ISSUES RAISED BY THE RECEIVER

The issues raised by the Receiver on pages 12 and 13 of the Receiver’s Supplemental Brief On Purchaser Escrow Accounts filed on February 16, 2005, do not apply to LSH/TLPL, who are represented by counsel of record and are known to Union Planters. The LSH/TLPL funds are not Receivership Assets and should be returned to them immediately via wire transfers to the trust accounts of their respective counsel of record. As to LSH/TLPL, verification is unnecessary and the issues of pooled investments, releases, set-offs, “roll-over” funds and assurances against disbursements to Defendants and Relief Defendants are inapplicable. Furthermore, the Administrator, to the extent one is necessary, should be a local attorney, proficient in commercial litigation matters, who agrees to act in an efficient, cost effective manner. Although administrative costs should only be borne by those pre-

purchasers who are unable to promptly meet the Distribution Criteria approved by the Court without need for intervention by the Administrator, if the Court decides to impose such costs upon all of the pre-purchasers, a “per pre-purchaser” fee of \$100.00 each will create a fund of \$700,000.00, which should be more than sufficient to administer the distribution of funds.

DISTRIBUTION PROPOSAL

Although LSH/TLPL agree with that portion of the Distribution Order wherein the Court indicated that the distribution should include the appointment of a neutral claims administrator (the “Administrator”), they respectfully submit that the Administrator’s role should be limited to those pre-purchasers who are unable to promptly to meet the Distribution Criteria listed below. Further, LSH/TLPL submit that their money should be returned to them immediately because they are able to promptly meet all Distribution Criteria. As to those pre-purchasers who are unable to promptly meet the Distribution Criteria without intervention by the Administrator, the Administrator’s role should be limited to determination of the Distribution Criteria and the submission of same to Union Planters for distribution of their funds.

The Distribution Criteria should be limited to the following:

- (i) Identification by Union Planters of the pre-purchaser by name and address (the “Identification”); and
- (ii) Provision to Union Planters of an appropriate written transfer instruction from the pre purchaser (or, if applicable, its counsel of record) respecting the pre-purchaser’s funds in the Purchaser Escrow Account (the “Transfer Instruction”); and
- (iii) Agreement between Union Planters and the pre-purchaser as to the sum to be distributed by Union Planters to the pre-purchaser (the “Agreed Distribution Amount”).

As to represented parties, a written wire transfer instruction to counsel's trust account should be deemed to conclusively satisfy the Transfer Instruction and Identification components of the Distribution Criteria.

As to each pre-purchaser, once the Distribution Criteria have been met, Union Planters should forthwith distribute the Agreed Distribution Amount pursuant to the Transfer Instruction. As to each pre-purchaser, in the event Union Planters determines that the Distribution Criteria have not been met, it should advise the Administrator accordingly, and the Administrator should only take such action(s) as are necessary to obtain and provide Union Planters with the Distribution Criteria. In connection therewith, the Administrator should be authorized to take discovery, consider evidence and seek declaratory relief, all being limited to determination of the Distribution Criteria requested by Union Planters.

LSH/TLPL respectfully submit that the foregoing Distribution Proposal is efficient, economical, and appropriate because Union Planters believes that it can presently identify all of the pre-purchasers by name, address, social security number (as to U.S. taxpayers), telephone number and amount deposited in the Purchaser Escrow Account. To refresh the Court's recollection in this regard, it is respectfully reminded of the following deposition testimony of Union Planters' Trust Account Administrator, Sandra Traxler¹:

Q: Ms. Traxler, could you let us know what your job position is at Union Planters?

A: I am a Trust Administrator.

Q: What does it mean to be a Trust Administrator?

A: Administer accounts, I assist in administering accounts in the Trust Department.

¹ The transcript of Sandra Traxler's deposition of February 11, 2005, was filed as Exhibit "C" to LSH/TLPL's and other parties' Combined Supplemental Brief Regarding Union Planters' Purchase Escrow Account, dated February 16, 2005 ("LSH/TLPL Combined Supplemental Brief").

(Traxler depo., p. 3).

Q: So you also dealt with the opening of subaccounts?

A: Yes, I did.

Q: Let's start back at the beginning of the process. What sort of information would you receive from MBC regarding the purchasers?

A: I would receive on a daily basis a purchaser data from MBC.

Q: What would be included?

A: It would give me the account number for MBC that it was titled to the client. It would give me the client's name, address, Social Security, if they were a U.S. citizen. Phone numbers. And the amount they have placed into MBC.

(Traxler depo., pp. 7-8).

Q: For all of the funds that are currently in the purchaser escrow account, do you have any doubts about Union Planters' ability to identify which purchaser deposited those funds?

A: No, we are able to identify who the money belongs to.

(Traxler depo., p. 37)

DISTRIBUTION ISSUES RAISED BY THE RECEIVER

In the Distribution Order, the Court noted that the Receiver raised certain distribution issues on pages 12 and 13 of the Receiver's Supplemental Brief On Purchaser Escrow Accounts filed on February 16, 2005 (the "Receiver's Supplemental Brief"). LSH/TLPL respond to such distribution issues as follows:

**** Verification.** This issue is inapplicable to LSH/TLPL, as they are known to Union Planters and represented by attorneys in this case. As officers of this Court, the undersigned attorneys represent that their respective clients are business entities duly formed and existing under the laws of Austria (LSH) and the Isle of Man, British Isles (TLPL). Union Planters already knows

the identities of LSH and TLPL, and in LSH's case, Union Planters previously conducted due diligence in connection with the opening of a separate LSH account at the bank. Union Planters itself can and should verify the identity of each pre-purchaser. However, as to those pre-purchasers like LSH/TLPL who are already known to Union Planters, verification is not an issue and distribution should be done in the fastest, least burdensome fashion (*e.g.*, as to represented parties, via wire transfer to the trust accounts of their respective counsel of record; and as to non-represented parties, via written transfer instructions pursuant to a notarized or guaranteed signature, coupled with, in the case of an entity, an incumbency certificate or other proof that the person signing has the authority to do so).

**** Pooled Investments.** Upon information and belief, the Receiver is no longer concerned with this issue, at least to the extent that it pertains to LSH/TLPL. In any event, neither LSH nor TLPL deposited pooled funds into the Purchaser Escrow Account, so this issue is inapplicable to them. LSH, an existing Austrian company, caused the deposit of its own funds into the account²; TLPL, likewise caused the deposit of its own funds into the account. Even assuming, *arguendo*, that LSH and TLPL were "pooled investments," their money should be returned to them directly because the money is not part of the Receivership. Also, constitutional equal protection concerns mandate that LSH/TLPL be treated no worse as a corporate entity than individual pre-purchasers.

**** Finality/Releases.** Notwithstanding the Receiver's contentions, neither he, MBC nor Union Planters bargained for a release. The monies are being returned pursuant to court order not

² LSH has its own separate account at Union Planters, from which its funds were transferred, and it is the actual depositor of the monies into the sub-account in its name within the Purchaser Escrow Account. Neither LSH's shareholders nor its creditors have any property interest in the funds in the Purchaser Escrow Account. Likewise, none of LSH's shareholders or creditors own a property interest in LSH's separate relationship(s) with MBC or Union Planters. LSH conducts business with entities other than MBC, and its shares of stock are freely transferable, so it would be impossible, and contrary to Austrian law, practice and procedure, for this Court to cause the return of LSH's money to anyone other than LSH.

settlement, and LSH/TLPL have not and will not receive any consideration for any release. Union Planters is simply going to return deposited funds to the various owners thereof; a release in this context is neither ordinary, appropriate, justified nor necessary.

** **Set-Off.** This issue does not apply to LSH/TLPL, as neither the Receiver nor MBC is in possession of their respective monies. Moreover, LSH/TLPL were not paid commissions by MBC, so the issue is inapplicable to them.

** **“Roll-over” Funds.** LSH/TLPL are not owners of “rolled-over” funds, so this issue is also inapplicable to them.

** **Disbursements To Defendants.** LSH/TLPL are not Defendants, Relief Defendants, or agents of any Defendant or Relief Defendant. As such, this issue is likewise inapplicable to them. Additionally, the Court has already addressed the Receiver’s concerns about the possible distribution of funds to the Defendants. On May 4, 2004, this Court entered a Temporary Restraining Order and Asset Freeze; on February 14, 2005, this Court entered its Order Granting Motion for Preliminary Injunction (the “Injunction”), which maintained the asset freeze as to the Defendants, Relief Defendants, and their respective directors, officers, agents, servants, attorneys, *etc.*, and persons in concert or participation with them.³

** **Administrator.** Since LSH/TLPL are represented by counsel, are already well known to Union Planters and are before the Court, the Administrator does not need to become involved in the process of returning their respective funds to them. Rather, LSH’s/TLPL’s counsel of record can provide Union Planters (or its counsel of record) with written instructions for the wire transfer of their respective funds to the trust accounts of the undersigned. The issue has been decided, so LSH’s/TLPL’s money can and should be returned based upon letters from their respective counsel of record. As to unrepresented pre-purchasers, to the extent that the Administrator is requested by

Union Planters to assist in determining the Distribution Criteria, he or she should be a local, practicing commercial litigation attorney who speaks Spanish and is proficient at simple math (perhaps even a J.D./C.P.A.). The Administrator may need to handle routine declaratory judgments, discovery, evidentiary issues, and related matters, and he or she should not require other counsel to do so. All candidates for this position should be cost-effective and cost-conscious, as this case has already been very costly to pre-purchasers.

**** Costs Of Disbursement.** As more particularly stated in their combined Motion for Attorneys' Fees and Costs to be filed separately herein, LSH/TLPL are known to the Court and to Union Planters, and they have already paid dearly to litigate against the Receiver in this case. The Court has ruled for LSH/TLPL and they should not have to pay another dime to receive their money from the Purchaser Escrow Account. It will cost the Receivership nothing for Union Planters to wire the funds belonging to LSH/TLPL to their respective attorneys' trust accounts. Most other pre-purchasers are also known to Union Planters, so it should likewise be easy for the bank to return their respective funds.

There will be some pre-purchasers who cannot be located or who have died, moved, become incapacitated, *etc.*, and it is only these pre-purchasers who should be charged for administrative costs of returning their funds. LSH/TLPL, therefore, submit that no pre-purchaser who is known to Union Planters and can promptly meet the Distribution Criteria without the intervention of the Administrator should be charged. Rather, only those pre-purchasers who, according to Union Planters, actually require the services of the Administrator should be charged for administrative services.

This Court has already held that the cost of the administration will be borne by the pre-purchasers (Distribution Order, p. 2). To the extent that the Court wishes to impose a distribution

³ LSH/TLPL will continue to abide by these Orders; their respective counsel will do the same.

cost on each pre-purchaser, it should be on a “per pre-purchaser” basis, not on a “*pro rata*” basis. LSH/TLPL have already incurred substantial legal fees and costs, and it would inequitable to charge them on a *pro-rata* basis, especially considering their activity in the case and the inapplicability of an administrative process to them. The amount of administrative work per pre-purchaser will not depend on the amount of funds returned to the pre-purchaser. Rather, administrative costs will depend upon the amount of work required to locate pre-purchasers and otherwise determine the Distribution Criteria.

If this Court is going to charge each pre-purchaser, then LSH/TLPL respectfully suggest a flat fee of \$100.00 per pre-purchaser, to be deducted by Union Planters from each subaccount before or in connection with the wire transfer or other return of the funds. Since approximately 7,000 pre-purchasers own money in the Purchaser Escrow Account, this will create an administrative fund of about \$700,000.00, which is more than sufficient. Union Planters should be entitled to roughly 10% of this money, to defray its costs (based upon \$10.00 per wire transfer).

CONCLUSION

LSH/TLPL respectfully request the Court adopt the foregoing proposal for distribution of funds. Furthermore, because they are able to promptly meet all of the proposed Distribution Criteria, any work by an administrator will be inapplicable to them. LSH/TLPL respectfully request that upon written confirmation by counsel of record of their respective Agreed Distribution Amounts, the Court order Union Planters to wire their respective escrow funds to the trust accounts of their respective counsel of record upon presentation to Union Planters’ counsel of record of signed wire transfer instructions on record counsel’s letterhead.

Additionally, LSH/TLPL respectfully request such other or additional relief as the Court deems appropriate to ensure the most speedy, cost-effective, and efficient return of LSH’s/TLPL’s money.

Dated: March 15, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served, via First Class U.S. Mail, postage prepaid, on the addresses listed on the attached Service List, on this 15th day of March, 2005.

 s/ Gregory S. Grossman

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