

Mar 16 2005

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 04-60573-CIV-MORENO

IN RE:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

MUTUAL BENEFITS CORP.,
JOEL STEINGER a/k/a JOEL
STEINER, LESLIE STEINGER
a/k/a LESLIE STEINER and
PETER LOMBARDI,

Defendants,

and

VIATICAL BENEFACTORS, LLC,
VIATICAL SERVICES, INC.,
KENSINGTON MANAGEMENT, INC.
RAINY CONSULTING CORP.,
TWIN GROVES INVESTMENTS, INC.,
P.J.L. CONSULTING, INC.,
SKS CONSULTING, INC., and
CAMDEN CONSULTING, INC.

Relief Defendants.

**THIRD INTERIM APPLICATION FOR COMPENSATION OF FEES
AND COSTS OF ACCOUNTANTS FOR RECEIVER**

**Pursuant to Court Order, any objections to this Application
must be filed on or before ten days from the date of service
indicated on the Certificate of Service attached hereto.**

Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants,
LLP ("BDPB"), accountant to Roberto Martínez, court-appointed receiver (the
"Receiver") of Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC") and

Viatical Services, Inc. ("VSI"), (collectively the "Receivership Entities"), hereby requests the Court to enter an order authorizing the Receiver to pay the reasonable accountant's fees and costs incurred by BDPB between October 1, 2004 and January 31, 2005¹ inclusive from the receivership estate, and in support thereof states the following.

By this Application, BDPB requests compensation for services rendered October 1, 2004 through January 31, 2005 (the "Application Period") in the amount of \$266,723.10 for fees to be paid by the Receivership Entities. This amount reflects the application of a ten percent (10%) discount to our standard rates for all professionals and paraprofessionals working on this matter totaling \$29,635.90. Furthermore, BDPB has contributed an additional 88 hours of time *gratis* and *pro bono* to the receivership, representing \$20,951.25 in accounting fees. The total savings to the receivership reflected in these negotiated and voluntary discounts is \$50,587.15.

DESCRIPTION OF SERVICES

During the Application Period, BDPB has rendered extensive and necessary services for and on behalf of the receivership estate, as set forth below.

The following summarizes the services rendered by BDPB during the Application Period:

- Continued analysis of pre-Receivership accounting information for defendant and relief defendant entities.
- Continued analysis of pre-Receivership transactions, including payments to relief

¹ BDPB's request includes 13.5 hours and \$2,085.75 in fees incurred prior to October 1, 2004 that was inadvertently excluded from its Second Interim Fee Application.

defendants, potential related parties and certain others.

- Continued analysis of Viatical investor / insured accounting, flow of funds through various bank accounts.
- Continued assistance with Receivership administration, including development of operating budgets, evaluation of operating expenses, investigation, evaluation and processing of premium payments, preparation of accounting schedules and financial analyses performed in connection with requests by the Receiver.
- Assist Receiver in the preparation of reports filed with the Court and preparation of various Motions filed with the Court.
- Analysis of various tax issues in connection with the preparation and filing of tax returns.
- Analysis and development of investor database and response to related inquiries.
- Continued analysis of policies, life expectancies, mortalities, reserves, and other policy related statistics.
- Daily backup and maintenance of information technology assets.
- Data extraction from Mutual Benefits Corp. accounting system in connection with the preparation of operating reports and tax related filings.

COMPENSATION:

The determination of fees to be awarded is largely within the discretion of the trial court. *Monaghan v. Hill*, 140 F.2d 31 (9th Cir. 1944). This discretion is, however, predicated on the assumption that careful consideration is given to all evidence of the

value of the accountants' services in the light of the factors relevant to a determination. These factors are set forth in *In re Gypsum Cases*, 386 F.Supp. 959 (N.D. Cal. 1974) and *In re Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988), as follows: (1) the time and labor properly employed in the servicing of 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 (6) the degree to which, if any, efforts were supported by prior governmental action. BDPB requests the Court to consider these factors in determining reasonable compensation for the services rendered to date by BDPB, as summarized below:

a. Time and Labor Required - The exhibits attached to this application include: The Summary of Third Interim Application for Compensation of Fees and Costs of Accountants for the Receiver (Exhibit 1); Summary of Professional and Paraprofessional Time (Exhibit 2); and the Summary of Professional and Paraprofessional Time by Activity Code Category (Exhibit 3).²

b. Novelty and Difficulty of Services and Skills Requisite to the Accounting.

The issues presented in this case are novel given the size of the Receivership entities, the difficulty of dealing with the records and the unique nature of the Receivership Entities' businesses. Additionally, certain key accounting staff left the employ of MBC prior to or in connection with the appointment of the Receiver, and were not available to assist the Receiver during this application period.

² BDPB maintains detailed time records that are kept contemporaneously with the services performed. Receiver's counsel will, within ten days, seek to file these detailed records under seal to the Court for review in camera and ex parte.

The extensive experience and capabilities of the professionals involved with this case possess the accounting, financial analysis, tax and consultation skills required for the successful completion of the objectives of the Receiver.

c. The Skill Requisite to Perform the Services Properly. BDPB has staffed the engagement with personnel experienced in accounting, auditing, financial analysis, reporting and disclosure, tax compliance and information technology.

d. The Preclusion of Other Employment by the Professional Due to Acceptance of this Case. BDPB has not been precluded from any other employment due to the acceptance of this case.

e. The Customary Fee. The customary fee for services of the type rendered herein BDPB charges commercial clients on one or more of the following criteria: reasonable fee for services rendered, hourly charges, or fixed fee. To the extent hourly charges are relevant, BDPB commands from commercial clients hourly rates ranging from \$95 an hour to \$350 per hour depending on the level of professional skill required.

f. Whether the Fee is Fixed or Contingent. The fee is contingent inasmuch as the Receiver relies upon a Court Order approving the fee. BDPB has not entered into any agreement to fix a fee.

g. Time Limitations Imposed by the Client or Other Circumstances. BDPB was directed to commence work by the Receiver on May 4, 2004 to assist the Receiver as forensic accountants with respect to any and all litigation consulting services, investigatory accounting services, forecasts, advise on the accounting aspects of litigation matters, tax considerations, valuations and other services as required.

h. The Amount Involved and the Results Obtained - The above summary, together with exhibits, details the time, nature and extent of the professional services rendered by BDPB for the benefit of the investors and creditors.

i. The Experience, Reputation, and Ability of the Professional. BDPB is an established accounting firm comprised of thirteen directors and over 100 personnel. Its professionals and staff working on this case are experienced in matters of this kind. Richard A. Pollack has testified as an expert witness in similar matters where accounting fees were awarded on the same basis as those sought in this application.

j. Undesirability of Case. This case is not undesirable. BDPB is privileged to have the opportunity to serve the Receiver and appear before the Court in this proceeding.

k. Nature and Length of Professional Relationship With Client. BDPB's relationship with the Receiver began on May 4, 2004.

l. Awards in Similar Cases. The amount requested by BDPB is reasonable in terms of awards in cases of similar magnitude and complexity. The compensation which BDPB requests comports with the mandate of the Bankruptcy Code, which directs that services be evaluated in light of comparable services performed in non-bankruptcy cases in the community. Considering the results obtained thus far, this fee request is appropriate. Likewise, as with all major accounting firms, BDPB's overhead expenses are substantial. Much of the fee, which the Court awards BDPB, will merely defray such significant overhead expenses already incurred and paid during the pendency of this case.

k. Government Support - Although the SEC investigated and filed the initial pleadings in this case, BDPB has assisted the Receiver to secure and protect the assets of the Receivership Entities and investigate the operations of the Receivership Entities through investigation and analysis.

CONCLUSION

The Applicant respectfully requests that this Court authorize the Receiver to compensate BDPB for their accountants' fees for reasonable and necessary services rendered during the Application Period in the amount of \$266,723.10 to be paid by the estate of the Receivership Entities.

Respectfully submitted,

Berkowitz Dick Pollack & Brant
Certified Public Accountants and Consultants, LLP
Accountants for the Receiver
200 South Biscayne Boulevard, Sixth Floor
Miami, FL 33131
Tel: (305) 379-7000 Fax: (305) 379-8200



Scott M. Bouchner

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March ¹¹/₆, 2005, the foregoing was electronically filed with the Clerk of the Court, and a notice of electronic filing was sent to:

Laurel M. Isicoff, Esquire
Kozyak Tropin & Throckmorton
Attys. for Receiver
lmi@kttl.com

Linda Schmidt, Esquire
Alise Meredith Johnson, Esquire
Securities & Exchange Commission
schmidtls@sec.gov; johnsona@sec.gov

Faith E. Gay, Esquire
White & Case LLP
Attys. for Camden Consulting
fgay@whitecase.com

George Mahfood, Esquire
Ferrell Schultz
Attys. for Steinger, Lombardi & PJJ
gmanhfood@ferrellschultz.com

and by U.S. Mail to:

Bruce A. Zimet Esq.
BRUCE A. ZIMET, PA
100 S.E.3rd Avenue, Suite 2612
Ft. Lauderdale, FL 33394
Attys. for Leslie Steinger

Richard Ben-Veniste, Esq.
Lee Rubin, Esq.
Mayer Brown Rowe & Maw
1909 K. Street, N.W.
Washington, DC 20006
Attys. for Joel Steinger and Relief Def.
Kensington

Jon A. Sale, Esq.
Ben Kuehne, Esq.
Sale & Kuehne, P.A.
BankAmerica Tower, Suite 3550
100 S.E. 2nd Street
Miami, F L 33131-2154
Attorneys for Peter Lombardi & Relief Def.
PJJ Consulting

By: s/ Curtis B. Miner
CURTIS B. MINER
Fla. Bar No. 0885681
Attorney for Receiver

CURTIS B. MINER
COLSON HICKS EIDSON
255 Aragon Avenue
Second Floor
Coral Gables, Florida 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444
E-Mail: curt@colson.com

EXHIBIT 1

EXHIBIT 1

**SUMMARY OF THIRD INTERIM APPLICATION
FOR COMPENSATION OF FEES AND COSTS OF
BERKOWITZ DICK POLLACK & BRANT**

1	Name of Applicant	Berkowitz Dick Pollack & Brant Certified Public Accountants & Consultants LLP
2	Role of Applicant	Accountants for Receiver
3	Name of certifying professional	Scott Bouchner
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 rendered	October 1, 2004 through February 4, 2005
8	Total fees requested for this period	\$266,723.10
9	Total expenses requested for this period	\$0
10	Total fees and expenses requested to be awarded	\$266,723.10

HISTORY OF FEE APPLICATIONS

Application Number	Application Period	Date Submitted	Amount Requested	Amount Awarded	Date Awarded
1	5/4/04 – 6/18/04	7/2/04	\$228,589.43	\$228,589	10/22/04
2	6/19/04 – 9/30/04	12/15/04	\$193,806.45		
3	10/1/04 – 1/31/05	3/16/04	\$266,723.10		
TOTAL			\$689,118.98		

EXHIBIT 2

**Summary of Professional and Paraprofessional Time
Total per Individual for these Period Only
Exhibit 2**

Name	Director, Associates or Paraprofessional	Total Hours	Agreed Upon Hourly Rate	Fee
Richard A. Pollack	Director	4.50	\$ 315.00	\$ 1,417.50
Andrew Bernstein	Director	0.50	\$ 283.50	\$ 141.75
Gary E. Rosenthal	Director	1.00	\$ 265.50	\$ 265.50
John F. Young	Director	1.70	\$ 265.50	\$ 451.35
Scott M. Bouchner	Director	145.00	\$ 265.50	\$ 38,497.50
Jeffrey Mutnik	Director	24.50	\$ 256.50	\$ 6,284.25
Joseph Schirra	Associate	563.50	\$ 238.50	\$ 134,394.75
Eugene D. Potter	Associate	3.90	\$ 225.00	\$ 877.50
Robert Aceituno	Associate	37.60	\$ 225.00	\$ 8,460.00
Sean Menendez	Associate	34.20	\$ 225.00	\$ 7,695.00
Greg Brogna	Associate	12.00	\$ 202.50	\$ 2,430.00
Adam Firestein	Associate	8.10	\$ 198.00	\$ 1,603.80
Richard Fechter	Associate	22.80	\$ 166.50	\$ 3,796.20
Timothy Burrows	Associate	10.00	\$ 162.00	\$ 1,620.00
Jeffrey Chamoff	Associate	231.50	\$ 148.50	\$ 34,377.75
Brett Stillman	Associate	1.00	\$ 148.50	\$ 148.50
Lourdes Ruiz	Associate	3.90	\$ 130.50	\$ 508.95
Sharon Foote	Associate	21.00	\$ 121.50	\$ 2,551.50
Scott Schneider	Associate	117.00	\$ 121.50	\$ 14,215.50
Denise Stubbs	Associate	37.00	\$ 108.00	\$ 3,996.00
Angie Adames	Associate	13.50	\$ 99.00	\$ 1,336.50
Juan Gonzalez	Associate	7.20	\$ 99.00	\$ 712.80
Marcus Cabral	Associate	3.80	\$ 90.00	\$ 342.00
Nadia Bustos	Associate	7.00	\$ 85.50	\$ 598.50
		1,312.20		
			\$ 203.26	
Total				\$ 266,723.10

EXHIBIT 3

**Summary of Professional and Paraprofessional Time by Activity Code Category
for these Time Period Only
Exhibit 3**

Name	Director, Associate or Paraprofessional	Agreed Upon Rate	Hours	Fee
Activity Code Category: Accounting Assistance				
Scott M. Bouchner	Director	265.50	14.40	\$ 3,823.20
Gary E. Rosenthal	Director	265.50	1.00	265.50
Adam Firestein	Associate	198.00	8.10	1,603.80
			<u>23.50</u>	<u>\$ 5,692.50</u>
Activity Code Category: Case Administration				
Richard A. Pollack	Director	315.00	0.50	\$ 157.50
Scott M. Bouchner	Director	265.50	8.60	2,283.30
John F. Young	Director	265.50	1.70	451.35
			<u>10.80</u>	<u>\$ 2,892.15</u>
Activity Code Category: Tax Issues				
Richard A. Pollack	Director	315.00	4.00	\$ 1,260.00
Scott M. Bouchner	Director	265.50	47.80	12,690.90
Jeffrey Mutnik	Director	256.50	24.50	6,284.25
Sean Menendez	Associate	225.00	34.20	7,695.00
Robert Aceituno	Associate	225.00	37.60	8,460.00
Eugene D. Potter	Associate	225.00	3.90	877.50
Lourdes Ruiz	Associate	130.50	3.90	508.95
Marcus Cabral	Associate	90.00	3.80	342.00
Angie Adames	Associate	99.00	13.50	1,336.50
Juan Gonzalez	Associate	99.00	7.20	712.80
Nadia Bustos	Associate	85.50	7.00	598.50
			<u>187.40</u>	<u>\$ 40,766.40</u>
Activity Code Category: Data Analysis				
Scott M. Bouchner	Director	265.50	46.40	\$ 12,319.20
Timothy Burrows	Associate	162.00	10.00	1,620.00
Richard Fechter	Associate	166.50	4.00	666.00
Sharon Foote	Associate	121.50	21.00	2,551.50
			<u>81.40</u>	<u>\$ 17,156.70</u>
Activity Code Category: Receivership Operations				
Scott M. Bouchner	Director	265.50	5.90	\$ 1,566.45
Joseph Schirra	Associate	238.50	563.50	134,394.75
Denise Stubbs	Associate	108.00	37.00	3,996.00
			<u>606.40</u>	<u>\$ 139,957.20</u>

**Summary of Professional and Paraprofessional Time by Activity Code Category
for these Time Period Only
Exhibit 3**

Name	Director, Associate or Paraprofessional	Agreed Upon Rate	Hours	Fee
Activity Code Category: Information Technology				
Scott M. Bouchner	Director	265.50	1.90	\$ 504.45
Greg Brogna	Associate	202.50	12.00	2,430.00
Jeffrey Chamoff	Associate	148.50	231.50	34,377.75
Brett Stillman	Associate	148.50	1.00	148.50
			<u>246.40</u>	<u>\$ 37,460.70</u>
Activity Code Category: Investigation				
Andrew Bernstein	Director	283.50	0.50	\$ 141.75
Richard Fechter	Associate	166.50	18.80	3,130.20
Scott Schneider	Associate	121.50	117.00	14,215.50
			<u>136.30</u>	<u>\$ 17,487.45</u>
Activity Code Category: Fee Application				
Scott M. Bouchner	Director	265.50	6.00	\$ 1,593.00
			<u>6.00</u>	<u>\$ 1,593.00</u>
Activity Code Category: Preparation of Reports				
Scott M. Bouchner	Director	265.50	14.00	\$ 3,717.00
			<u>14.00</u>	<u>\$ 3,717.00</u>
			<u>1,312.20</u>	<u>\$ 266,723.10</u>

PROPOSED ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO
Magistrate Judge Garber

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP.,
JOEL STEINGER a/k/a JOEL STEINER,
LESLIE STEINGER a/k/a LESLIE STEINER,
and PETER LOMBARDI,

Defendants,

VIATICAL BENEFACTORS, LLC,
VIATICAL SERVICES, INC.,
KENSINGTON MANAGEMENT, INC.,
RAINY CONSULTING CORP.
TWIN GROVES INVESTMENTS, INC.,
P.J.L. CONSULTING, INC.,
SKS CONSULTING, INC., and
CAMDEN CONSULTING, INC.,

Relief Defendants.

**ORDER GRANTING
BERKOWITZ DICK POLLACK & BRANT'S
REQUEST FOR COMPENSATION**

THIS CAUSE came before the Court on Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP's Third Interim Application for Fees and Costs. The Court has heard comments by interested parties, carefully reviewed the Application and case file and is otherwise fully advised in the premises.

THE COURT notes that by prior Order this Court authorized the Receiver to "appoint one or more special agents, employ legal counsel, actuaries, accountants, claims administrators, clerks,

consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and expenses" subject to the approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation.

Pursuant to that provision, by prior Order the Court approved Receiver's application to employ Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP ("BDPB") as Receiver's accountants in this action. In the instant Application, BDPB seeks to have the Court authorize the Receiver to compensate BDPB for services rendered for the period from October 1, 2004 through February 4, 2005. In total, the Application seeks approval of the payment of **\$266,723.10** consisting of \$266,723.10 in fees and \$0.00 in costs.

Accordingly, after due consideration, it is

ORDERED and **ADJUDGED** that Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP's Third Interim Application for Fees and Costs is hereby **GRANTED** and Receiver, Roberto Martínez is hereby authorized to pay Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP the sum of **\$266,723.10** which represents reasonable fees and costs incurred during the Application Period.

DONE and ORDERED in Chambers in the Southern District this ____ day of _____, 2005, in Miami, Florida.

FEDERICO A. MORENO
United States District Judge

Copies furnished to:

All parties on the attached service list.

SERVICE LIST OF RECEIVER

December 10, 2004

Case No.: 04-60573 CIV-Moreno

Laurel M. Isicoff, Esq.
KOZYAK TROPIN & THROCKMORTON
2525 Ponce de Leon Blvd.
9th Floor
Coral Gables, Florida
Tel: (305) 372-1800
Fax: (305) 372-3508
'lmi@kttl.com'
Attorneys for Receiver

Bruce A. Zimet Esq.
BRUCE A. ZIMET, PA
100 S.E.3rd Avenue, Suite 2612
Ft. Lauderdale, FL 33394
Attorneys for Leslie Steinger
Tel: (954) 764-7081
Fax: (954) 760-4421

Faith E. Gay, Esq.
White & Case LLP
4900 Wachovia Financial Center
200 So. Biscayne Blvd.
Miami, FL 33131-2352
Tel: (305) 371-2700
Fax: (305) 358-5744
'fgay@whitecase.com'
Attorneys for Camden Consulting, Inc.

Jon A. Sale, Esq.
Ben Kuehne, Esq.
Sale & Kuehne, P.A.
BankAmerica Tower, Suite 3550
100 S.E. 2nd Street
Miami, FL 33131-2154
Tel: (305) 789-5989
Fax: (305) 789-5987
Attorneys for Peter Lombardi & Relief Def. PJJ Consulting

Linda Schmidt, Esq.
Alise Meredith Johnson, Esq.
SECURITIES & EXCHANGE COMMISSION
801 Brickell Avenue
Suite 1800
Miami, FL 33131
Tel: (305) 982-6322
Fax: (305) 536-4154
'schmidtls@sec.gov'
'johnsona@sec.gov'
Attorneys for Securities & Exchange Commission

Richard Ben-Veniste, Esq.
Lee Rubin, Esq.
Mayer Brown Rowe & Maw
1909 K. Street, N.W.
Washington, DC 20006
Tel: (202) 263-3000
Fax: (202) 263-5333
Attorneys for Joel Steinger & Relief Def. Kensington

George Mahfood, Esquire
Ferrell Schultz
201 South Biscayne Boulevard
Miami, Florida 33131
Tel: (305) 371-8585
Fax: (305) 371-5732
'gmahfood@ferrellschultz.com'
Attorneys for Joel Steinger, Leslie Steinger, Peter Lombardi and PJJ Consulting