

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-60573 CIV-MORENO/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., and  
CAMDEN CONSULTING, INC.

Relief Defendants.

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**RECEIVER'S REPLY ON MOTION TO AUTHORIZE  
PUBLIC RELEASE OF MILLIMAN MEMORANDUM**  
(Filed Under Seal)

Roberto Martinez, Esq., court-appointed receiver of Mutual Benefits Corporation ("MBC"), Viatical Services, Inc. ("VSI") and Viatical Benefactors LLC ("VBLLC"), has moved this Court to allow him to publicly release a memorandum prepared by Milliman USA [the "Milliman Memorandum"] and to utilize that memorandum as he deems appropriate in the best interests of the Receivership. Defendants and Relief Defendants have objected. This is the Receiver's reply.

**Colson Hicks Eidson**

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1. Milliman USA ["Milliman"], a nationally-renowned firm which provides actuarial and consulting services to the insurance industry, was retained by counsel for MBC before the Receivership to analyze conclusions reached by the Florida Department of Insurance ["DOI"] as a result of its audit of MBC. Milliman was asked to analyze cash flow projections for the payment of premiums on MBC policies. In order to accomplish that task, it first had to determine whether the life expectancy projections ["LE"] MBC placed on policies were accurate. If they were not accurate, Milliman's cash flow projections could not rely on them.

2. The Milliman Memorandum is Milliman's analysis of MBC's life expectancy projections. As detailed in the Milliman Memorandum, Milliman reviewed 30 non-HIV policies. On *all* 30, Milliman's LE was greater than MBC's. On average, Milliman's LE was almost twice that of MBC. Further details are set forth in the Receiver's motion at 2.

3. The Receiver's motion asserts that there is no basis to withhold this important information from the Court, MBC's investors and the public. Defendants' and Relief Defendants' response provides no such basis. All it does is attempt to obfuscate the obvious relevancy of a conclusion by Defendants' own expert that out of 30 randomly selected life-settlement policies, the LEs were wrong on 100% of them, and wrong by a wide margin.

4. **Issues of Privilege.** The Receiver's motion asserted that the Milliman Memorandum is not protected by the attorney-client privilege because it is not a communication between an attorney and his client. Defendants and Relief Defendants make *no* argument to the contrary. The Receiver's motion also asserted that the Milliman Memorandum should not be protected by the work product privilege since it was not intended to remain confidential and because Defendants' own

filings with this Court have recognized the need for and importance of Milliman's analysis. Again, Defendants and Relief Defendants make *no* argument to the contrary.

**5. Issues of Relevancy.** Absent any issue of privilege, the only issue is relevancy. Defendants and Relief Defendants fail to provide any basis for the conclusion that the Milliman Memorandum is irrelevant.

a. Defendants and Relief Defendants argue that “[t]he Milliman memorandum should not be publicly disclosed because it reflected only Milliman’s ‘initial comments’ on the preliminary phase of its engagement.” Response at 3-4. However, Defendants and Relief Defendants acknowledge elsewhere in their response that this is simply not true (“So while the Receiver *may be correct* in asserting that the Milliman memorandum . . . was complete and not a draft . . .”). Response at 5. In any event, as the Receiver’s motion makes plain, Mr. Theodore, the author of the Milliman Memorandum has explained to Receiver’s counsel that Milliman’s underwriting review of the 30 policies described in the memorandum was complete. The only work which had not been completed was to make cash flow projections based on the life expectancies. If there is a dispute in this regard, the Receiver has no objection to the taking of Mr. Theodore’s deposition, which can be easily accomplished over the telephone.

b. Defendants and Relief Defendants argue that Milliman was not retained to analyze life expectancies. Instead, “Milliman was retained to rebut the cash flow projections set forth in the Buttner Hammock report.” Response at 5. But Defendants and Relief Defendants ignore the fact that analysis of MBC’s LEs was a necessary first step in that cash flow analysis, that Milliman completed analysis of MBC’s LEs, and that completed analysis of MBC’s LE shows that MBC’s LEs

were significantly understated in every single one of the policies reviewed. The relevance of that conclusion speaks for itself.

c. Defendants and Relief Defendants argue that the Milliman was retained to demonstrate “that the Lewis & Ellis calculations were absurdly inaccurate and thus so were the Buttner Hammock cash flow projections that derived therefrom.” Response at 4-5. They assert:

What the Milliman memorandum reflects is simply that the Lewis & Ellis life expectancy calculations upon which the Buttner Hammock report were predicated were no where near the life expectancy determinations made by Milliman on its thirty policy sample.

Response at 5. Although the Milliman Memorandum may be used as evidence that the Lewis & Ellis life expectancies are too high, Defendants and Relief Defendants close their eyes to the fact that the Milliman Memorandum at the same time demonstrates that MBC’s life expectancies – the life expectancies which were the basis of MBC’s representations to investors and the predicate for the sale of these policies – were way too low. In Defendants’ words, MBC’s life expectancies “were no where near the life expectancy determinations made by Milliman on its thirty policy sample.” Again, the relevancy of the Milliman Memorandum on this issue is obvious.

d. Defendants and Relief Defendants close their memorandum with a complete *non-sequitur*:

*Although the Milliman life expectancies on the 30 selected policies are longer than those established by licensed physicians after a thorough review of the medical records, there is nothing in the Milliman memorandum to suggest that Mutual Benefits life expectancies were inaccurate.*

Response at 6. Again, the facts cannot be ignored. Milliman was retained by MBC while it was controlled by Defendants. Milliman determined that MBC’s LEs were wrong 30 out of 30 times.

On average, Milliman's LEs were almost twice that of MBC's. Either Milliman is wrong or MBC is wrong. Certainly the Milliman Memorandum is relevant evidence on this issue.

6. Defendants and Relief Defendants seem to be saying that the Receiver must prove that Milliman is right and MBC is wrong *before* the Milliman Memorandum is relevant and should be made public. Obviously, no law supports this bizarre theory of relevancy.

7. The Receiver does not suggest that the Milliman Memorandum is the definitive and conclusive analysis on this issue – the accuracy of MBC's LEs. Instead, it should be made public because this Court, MBC's investors, and the public is entitled to know that there is serious and substantial question as to the accuracy of MBC's LEs, not only on HIV-related policies, but on non-HIV policies as well. And, if there is a serious and substantial question as to the accuracy of MBC's LEs, it necessarily follows that there is a serious and substantial question as to the adequacy of reserves set aside to pay premiums on policies, because those reserves were based on MBC's LEs. The Receiver believes that it is his obligation to investigate these serious and substantial questions, in the words of this Court's order appointing him, to "[i]nvestigate the manner in which the affairs of MBC, VBLLC and VSI were conducted," and to make *all* relevant information on these serious and substantial questions – including the Milliman Memorandum – available for review by this Court, MBC's investors and the public.

8. On this last point, Defendants and Relief Defendants criticize the Receiver for the selective release of the Milliman Memorandum:

The Receiver, however, fails to provide any explanation of how this one memorandum is any different from the *hundreds of other documents* that he is not seeking to disclose . . . .

If Defendants and Relief Defendants are aware of “hundreds of other documents” relevant to the issue of whether MBC’s LEs are accurate, tell the Receiver and the Court what those documents are and the Receiver will be glad to make them public. Instead, Defendants and Relief Defendants list not a single document. This argument – premised on unspecified and undisclosed “hundreds of other documents” – provides no basis to keep the Milliman Memorandum a secret.

WHEREFORE, for the reasons stated here and in the initial motion, Roberto Martinez, Esq., court-appointed receiver of Mutual Benefits Corporation, Viatical Services, Inc. and Viatical Benefactors LLC (“VBLLC”), moves this Court to allow him to publicly release the “Milliman Memorandum” and to utilize that memorandum as he deems appropriate in the best interests of the Receivership.

Respectfully submitted,

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By   
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of August, 2004 to counsel on the attached service list in an envelope marked “Personal & Confidential.”

By   
MARC COOPER

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