

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.,
SKS CONSULTING, INC., and
CAMDEN CONSULTING, INC.

Relief Defendants.

MOTION TO EXPAND RECEIVERSHIP TO INCLUDE LIVOTI ENTITIES

Roberto Martinez, Esq., Court-Appointed Receiver of Mutual Benefits Corporation, Viatical Benefactors, LLC and Viatical Services, Inc. moves this Court to expand the Receivership to include Anthony M. Livoti, Jr. and Anthony M. Livoti, Jr., P.A. in their capacity as owner and/or trustee for insurance policies purchased by investors through MBC and in their capacity as owner and/or trustee

Copies to:

RM
CM
Mari

MC
JK
Ellic

Colson Hicks Eidson

255 Aragon Avenue, 2nd Floor, Coral Gables, Florida 33134-5008 Telephone: (305) 476-7400 Fax: (305) 476-7444

8/9/04

of bank accounts holding monies for the payment of premiums on those insurance policies. The Receiver states as grounds:

1. On May 20, 2004, the Receiver filed an Emergency Motion To Amend Order Appointing Receiver Regarding Maintenance of Insurance Policies and Benefits [the “Emergency Motion”][DE #47]. Among other things, the Emergency Motion sought (a) to require all insurance companies issuing policies encompassed by the Receivership to provide lapse notices to the Receiver directly; (b) to require such insurance companies to pay the benefits of any policies which mature to an interest bearing account under the control of the Receiver; and (c) to require such insurance companies to accept claims forms executed by the Receiver in lieu of execution by any beneficiaries named therein.

2. As the Emergency Motion explained, some investors may be entitled to interests in policies assigned to other investors because their funds may have been used to pay premiums on the policies assigned to such other investors. *See, e.g., Liberte Capital Group v. Capwill*, 229 F.Supp.2d 799 (N.D. Ohio 2002). The purpose of the Emergency Motion was to preserve the rights of *all* investors by requiring insurance companies to accept claims forms for matured policies from the Receiver and to pay benefits directly to the Receiver, pending resolution of these issues by the Court.

3. By order dated May 20, 2004 (D.E. #48), this Court granted the Emergency Motion.

4. The Receiver has undertaken to give notice of this Court’s order to all insurance companies issuing MBC-related policies.

5. Some insurers have questioned the Receiver’s authority with respect to such policies where the Receivership Entities are not the owners or beneficiaries of those policies. Copies of some

correspondence from insurers to that effect is attached as Exhibit A.

6. As detailed in the Receiver's Second Report, beginning in approximately 1996, Anthony M. Livoti, Jr., P.A., as trustee, entered into an agreement with MBC whereby Livoti agreed to act as owner of policies purchased through MBC (the "Livoti Policies") and also agreed to make the payment of premiums on those policies from funds escrowed at the time of closing and transferred to Livoti's control (the "Livoti Accounts"). Receiver's Second Report at 3. As of June 11, 2004, there were 5,129 such policies, requiring annual premiums of \$12,481,862, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due. Receiver's Second Report at 6.

7. Neither Anthony M. Livoti, Jr. nor Anthony M. Livoti, Jr., P.A. has any interest in the Livoti Policies or the Livoti Accounts other than as trustee for investors.

8. This Court has already determined that MBC's sale of policies to investors constituted the sale of unregistered securities. Therefore, the Livoti Policies and the Livoti Accounts are directly traceable to this illegal conduct.

9. The Receiver believes that it was the intent of this Court's original Receivership Order, as well as the May 20, 2004 order amending the Receivership Order, to give the Receiver full control and authority over all insurance policies purchased through MBC (including the Livoti Policies), as well as all bank accounts holding monies ostensibly for the payment of premiums on those policies (including the Livoti Accounts). This Court can ensure that the Receiver has such control and authority over all Livoti Policies and the Livoti Accounts by expanding the Receivership to include Anthony M. Livoti, Jr. and Anthony M. Livoti, Jr., P.A. in their capacity as owner and/or

trustee of the Livoti Policies and in their capacity as owner and/or trustee of the Livoti Accounts.¹

10. This Court has authority to utilize equitable relief from a non-party against whom no wrongdoing is alleged if it is established that the non-party possesses illegally obtained monies but has no legitimate claim to them.” *SEC v. Cherif*, 933 F.2d 403, 414 n.11 (7th Cir. 1991). Such non-parties include a “trustee, agent or depositary . . . who has possession of the funds which are the subject of litigation” *Id.* at 414. The authority to utilize such equitable relief in an SEC enforcement action includes appointment of a receiver. *Los Angeles Trust Deed & Mortgage Exchange v. SEC*, 285 F.2d 162 (9th Cir. 1960).

11. Indeed, in Paragraph 30 of this Court’s May 4, 2004 Order Appointing Receiver, this Court recognized such authority and directed:

In the event that the Receiver discovers that funds of persons who have invested in MBC, VBLLC and VSI have been transferred to other persons or entities, the Receiver *shall* apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds.

As detailed above, investor funds, the proceeds of the sale of unregistered securities, have been transferred to Anthony M. Livoti, Jr. and/or Anthony M. Livoti, Jr., P.A., as trustee. Those funds are currently held by Anthony M. Livoti, Jr. and/or Anthony M. Livoti, Jr., P.A., as trustee in the Livoti Accounts. In addition, the Livoti Policies were purchased with the proceeds of the sale of

¹Anthony M. Livoti, Jr. as well as Anthony M. Livoti, Jr., P.A. is included in this motion because various lawsuits have been filed against Anthony M. Livoti, Jr. in his capacity as policy owner. It thus appears that some policies may have been issued in the name of Anthony M. Livoti, Jr. instead of Anthony M. Livoti, Jr., P.A.

unregistered securities. Pursuant to Paragraph 30, the receivership should be extended over Anthony M. Livoti, Jr. and/or Anthony M. Livoti, Jr., P.A., as trustee, so that the Receiver has full control over the Livoti Accounts and the Livoti Policies.

12. In addition, the Receiver notes that Mr. Livoti has billed the Receiver \$10,000 per month for May, June and July "for services rendered" in signing checks on the Livoti Accounts for payment of premiums due on the Livoti Policies. See Correspondence attached as Exhibit B. In that same correspondence, Mr. Livoti has informed the Receiver: "If we do not come to an agreement [regarding payment for these services] within 10 days, you will leave me no choice but to decline to continue to do the work and I will seek redress through the courts." Expanding the receivership to include Anthony M. Livoti, Jr. and Anthony M. Livoti, Jr., P.A. in their capacity as owner and/or trustee of the Livoti Policies and in their capacity as owner and/or trustee of the Livoti Accounts will ensure that premiums on the Livoti policies will continue to be paid expeditiously, under the authority of the Receiver, and at a reasonable cost to the Receivership. It will also avoid the unnecessary duplication of expenses in light of the fact that the Receivership has been signing all the checks for payment of premiums from the Livoti Accounts and has recently assumed, as well, the administrative responsibilities of mailing those checks to the insurance companies.

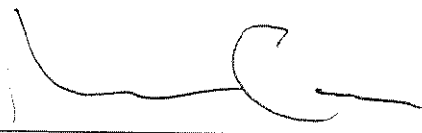
13. In short, expanding the Receivership to include Anthony M. Livoti, Jr. and Anthony M. Livoti, Jr., P.A. in their capacity as owner and/or trustee of the Livoti Policies and in their capacity as owner and/or trustee of the Livoti Accounts will eliminate any question as to the control and authority over the Livoti Policies and the Livoti Accounts, all of which are directly traceable to the illegal sale of unregistered securities. It will give the Receiver unquestioned authority to (a) to

require all insurance companies issuing policies encompassed by the Receivership to provide lapse notices to the Receiver directly; (b) to require such insurance companies to pay the benefits of any policies which mature to an interest bearing account under the control of the Receiver; and (c) to require such insurance companies to accept claims forms executed by the Receiver in lieu of execution by any beneficiaries named therein, so that the Receiver may at the present time maintain the *status quo* with respect to such assets. Finally, it will ensure that premiums are paid on the Livoti Policies.

Wherefore, for the reasons stated, Roberto Martinez, Esq., Court-Appointed Receiver of Mutual Benefits Corporation, Viatical Benefactors, LLC and Viatical Services, Inc. Roberto Martinez, Esq., Court-Appointed Receiver of Mutual Benefits Corporation, Viatical Benefactors, LLC and Viatical Services, Inc. moves this Court to expand the Receivership to include Anthony M. Livoti, Jr. and Anthony M. Livoti, Jr., P.A. in their capacity as owner and/or trustee of the Livoti Policies and in their capacity as owner and/or trustee of the Livoti Accounts.


Respectfully submitted,

COLSON HICKS EIDSON
Counsel for Receivership Entities
255 Aragon Avenue
Second Floor
Coral Gables, FL 33134-5008
Telephone: (305) 476-7400
Facsimile: (305) 476-7444

By 
MARC COOPER
Fla. Bar No.: 198358

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail on this 9th day of August, 2004, to counsel on the attached service list.

By: 

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SERVICE LIST

Case No.: 04-60573 CIV-Moreno

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Relief Def. Kensington Mgmt & Rainey Consulting
Corp.*

EXHIBIT A



JEFFERSON PILOT
FINANCIAL

Jefferson Pilot Financial
PO Box 21008
Greensboro, NC 27420

336 691 3000

June 21, 2004

KOZYAK TROPIN & THROCKMORTON, P.A.
ATTENTION: KENNETH HARMANN
2800 FIRST UNION FINANCIAL CENTER
200 SOUTH BISCA YNE BOULEVARD
MIAMI FL 33131-2335

RE:

Jefferson Pilot Life Insurance Company,
Policy Number TP4432080
Claim Number 437743

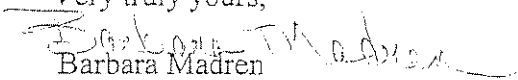
Dear Mr Hartmann:

Jefferson Pilot is in receipt of your correspondence dated May 10, 2004 and June 15, 2004, sent in connection with the above-referenced policy. We understand that you represent Roberto Martinez, the court appointed Receiver for the Mutual Benefits Corp., Viatical Services, Inc., and Viatical Benefactors, LLC. We are also in receipt of the recent Court Order empowering you to receive any policy benefits to which investors of those companies may have an interest.

Upon review of our policy file, we have no documentation to suggest that our policy owner or our named beneficiaries are investors of those companies. None of those company names appear in our file and none of them are named as owner or beneficiary of policy.

If you can provide us with documentation to confirm that the Court's Order applies to our policy, we will be happy to review it and to comply with the Order, as applicable. Otherwise, we will have to pay benefits to our named beneficiaries, as required by the policy. We would appreciate your prompt attention to this matter so that we can avoid undue delay in resolving this claim. We will look forward to hearing from you.

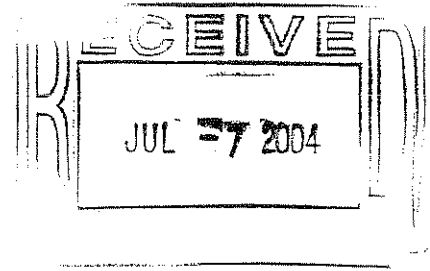
Very truly yours,


Barbara Madren



Allstate.

Workplace Division



July 2, 2004

David P Milian
Kenneth R Hartmann
Kozyak Tropin & Throckmorton P A
2800 First Union Financial Center
200 South Biscayne Blvd
Miami FL 33131-2335

Insured:
Policy #: 90 18048270
Claim #: 04-D-14


Dear Sirs:

We are in receipt of your letters dated May 10, 2004 and June 2, 2004 and the court orders enclosed.

Our documentation regarding this policy indicates that neither the owner, the payor or the beneficiary is any of the companies listed as being in receivership in the court orders, or any of the other named defendants. Without additional information, we are not able at this time to determine conclusively that the interest of any of the parties involved in this policy are subject to these orders.

Please provide us with information that shows the connection of either the policy owner or beneficiary to Mutual Benefits Corp of Viatical Benefactors, LLC so that we may be able to make this determination.

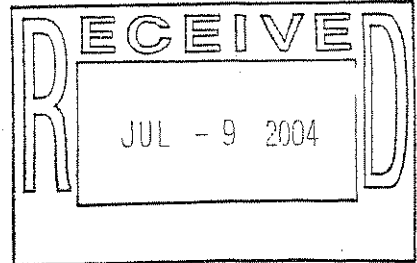
Sincerely,


Susannah Marchy
Individual Claims Dept

FAXED TO MUM



David P Milian Esq.
Kozyak Tropin & Throckmorton, P. A.
2800 First Union Financial Center
200 South Biscayne Boulevard
Miami, FL 22121-2335



Re: Insured 963 305 708 A
962 905 512 A
831 186 931 UL

Dear Attorney Milian,

This will acknowledge your letter of June 2, 2004.

Anthony M Livoti Jr. P.A. is the owner of policies 962 905 512 A and 831 186 931 UL.
Mutual Benefits is the owner of policy 963 305 708 A.

The issue as to the effect of the court order appointing a receiver for Mutual benefits Corp. and other entities on policies owned by Anthony M Livoti Jr. P.A. who is not one of the named defendants or relief defendants, is being reviewed. Can you explain the basis for the receiver's claim on the polices owned by Anthony M. Livoti Jr. P.A .and submit copies of any documents in support of the receiver's claim to the proceeds of the policies for review. Please be advised that MetLife as already effected claim payment on the policies issued on the life of _____ prior to the receipt of your faxed letter to us dated May 10, 2004.

If you have any questions, please feel free to contact me at 401-827-3339.

Sincerely,

Dan Houle
Claims Unit

July 6, 2004

Client:	<u>MLC</u>	_____
Matter:	<u>3298</u>	_____
Number:	<u>101</u>	_____
Corr:	<u>(circle)</u>	Pldgs. Bill
Other:	<u>7/10</u>	_____
Attachments Removed		Y

By Facsimile and First Class Mail

May 11, 2004

David P. Millan, Esquire
Kozyak Tropin & Throckmorton, P.A.
2800 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, FL 33131

Client: MBC
Matter: 3298
Number: 101
Corr. _____ Pkgs. _____ Bill _____
Other: SUB-FILE: COLL.
Attachments Removed FILED

Re: Order Appointing Receiver
Our Insured: _____ Claim No. 2003-266-056

INSURANCE
CO. S

Dear Mr. Millan:

Your letter of May 10, 2004 along with the accompanying court order ("the Order") has been referred to me for response.

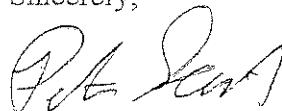
_____ was insured for \$492,699.00 under Reliance Standard Life Insurance Company ("RSL") policy number 0819691A. On or about May 7, 2004 and prior to the date of your letter, benefit checks totaling \$435,899.00 were mailed to 20 of the 22 named beneficiaries under this policy. Currently, only \$56,800.00 remains unpaid pending our receipt of appropriately completed claim forms from the remaining two beneficiaries.

Please note that according to our records, the above policy was not owned by Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC") and/or Viatical Services, Inc. ("VSI") at the time of _____ death. As such, the Order would not appear to apply to the above policy or any proceeds paid thereunder.

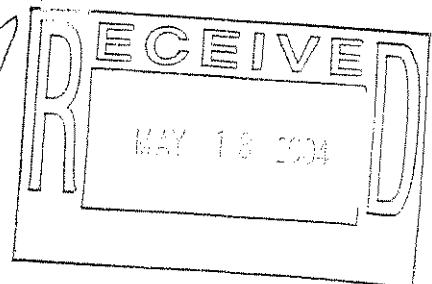
It may still be possible to successfully stop payment on at least some of the benefit checks mailed on May 7, 2004, but time is off the essence. **Please notify us immediately if you would like us to attempt to stop payment on any of these benefit checks.** If so, please also provide any information which might indicate a connection between MBC, VBLLC and/or VSI and the owner of the above policy on the life of _____

Thank you for your prompt attention in this matter.

Sincerely,



Peter Sailor
Claims Department





First Colony Life Insurance Company
A GE Financial Assurance Company

Law Department
3700 Albert Lankford Drive
Lynchburg, VA 24501
Toll Free (888) 325-5423 Fax (434) 948-5919

Via Facsimile and First Class Mail
(305) 372-3508

May 19, 2004

David P. Milian, Esquire
Kozyak Tropin & Throckmorton, P.A.
2800 First Union Financial Center
200 South Biscayne Boulevard
Miami, FL 33131-2335

Re: Connie J. Hall - Policy No. 1769223

Dear Mr. Milian:

Thank you for speaking with me last week concerning the Mutual Benefits et al. receivership and issues pertaining thereto. I had called you in reference to your letter to First Colony of May 10, 2004 concerning Policy No. 1769223, insured

As I told you during our conversation, the company had already paid the proceeds of this policy before receiving your letter.

The owner of the policy, as we discussed, was Anthony Lovati. You had indicated that you would fax to me documents indicating Lovati's relationship to at least one of the entities in receivership. I have not yet received these documents from you, and they would be most helpful to us as we have a number of policies owned by Mr. Lovati. I am sure you are receiving many requests for information, and will greatly appreciate any help you can provide.

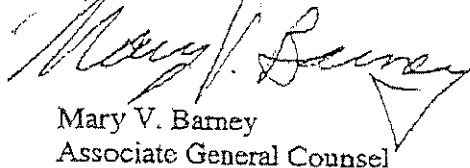
You had also indicated that from now on, we would likely hear from the receiver before a claim is filed on any policy where the insured has died. I did not entirely understand what the claims department would be receiving and from whom. If you could provide a brief explanation in writing so that I can inform the claims department, that would be very helpful. I would also like to know whether there are plans to notify insurers directly of all in-force policies caught up in the receivership once those policies are identified.

David P. Milian, Esquire
May 19, 2004
Page 2 of 2

One further point— if notice on another policy with a death claim goes out, it should be sent to the claims department, not simply to First Colony. That will expedite matters.

Thank you very much for your help, and I look forward to hearing from you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mary V. Barney". The signature is written in dark ink and is positioned above the typed name and title.

Mary V. Barney
Associate General Counsel

MVB/bc

EXHIBIT B

F

LAW OFFICES
KOZYAK TROPIN & THROCKMORTON, P.A.
PROFESSIONAL ASSOCIATION
2600 FIRST UNION FINANCIAL CENTER
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MIAMI, FLORIDA 33131-2335

KENNETH R. HARTMANN
DIRECT DIAL (305) 377-0657

TELEPHONE (305) 372-1800
TELECOPIER (305) 372-3508

August 2, 2004
VIA FACSIMILE

Anthony J. Livoti, Jr., Esq.
Law offices of Anthony Livoti, Jr., P.A.
721 N.E. 3rd Avenue
Fort Lauderdale, FL 33304
(954) 463-3777

David J. Bogenschutz
Bogenschutz & Dutko
600 S. Andrews Ave., Suite 500
Ft. Lauderdale, FL 33301
(954) 764-5040

Re: New Procedure for Premium Payments

Gentlemen:

The Receiver has requested that I contact you regarding a change in the current operational procedures for the payment of premiums from the Livoti Premium Escrow Accounts at Citibank. Going forward, the Receiver will be responsible for the mailing of all premium payments, including payments to be mailed via U.S. Postal Service and via Federal Express.

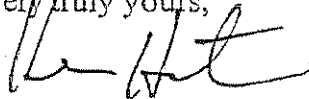
Louise Lilja, from Mr. Livoti's office, will continue to cut the checks based on the check request instructions she receives from VSI. She will then send the checks to MBC with the courier for the Receiver or his designee to sign. Once the checks are received, reviewed and signed, they will be mailed directly from the MBC offices. The original check request and a carbon copy of the signed check will be returned to Louise for reconciliation purposes. In other words, the additional step of returning the signed checks to Louise for mailing will no longer be necessary.

We believe this revised procedure will substantially reduce the time needed to be devoted by Louise for premium payment processing. In addition, this procedure will expedite the receipt of premium payments by the insurance companies in that the checks will be mailed from MBC the same day they are signed. Finally, the likelihood of any checks being lost or mishandled will be diminished by eliminating the additional trip by the courier to Mr. Livoti's office.

Anthony M. Livoti, Jr.
David J. Bogenschutz
August 2, 2004
Page 2

The Receiver would like to implement this procedure as soon as possible. Accordingly, if you have any objections please advise me immediately. Otherwise, the revised procedure will commence on Wednesday, August 4th.

Very truly yours,



Kenneth R. Hartmann

KRH/ccm

cc: Roberto Martinez, Receiver
Carmen Contreras-Martinez, Esq.
Ameer Khan
Monica Bruce

3298/101/242359

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 OF
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 MEMBER OF FLORIDA, NEW YORK
 & WASHINGTON D.C. BARS

OF COUNSEL

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 MEMBER OF FLORIDA &
 WASHINGTON D.C. BARS

OF COUNSEL

DONALD E. OSWALD
 MEMBER OF FLORIDA BAR

JASON BARNETT
 MEMBER OF FLORIDA BAR

JOSEPH P. WAGONER
 MEMBER OF FLORIDA BAR

August 3, 2004

Kenneth Hartman, Esq.
 Kozyak Tropin & Throckmorton, P.A.
 200 South Biscayne Boulevard
 Miami, FL 33131-2335

Re: New Procedure for Premium Payments

Dear Mr. Hartman:

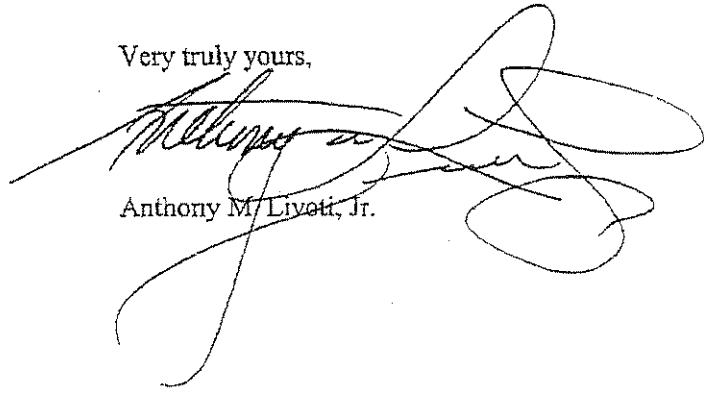
I am in receipt of your letter faxed to me at 6:21PM on August 2nd with a deadline of August 4th to agree or to object to the new procedures. Thank you for a reasonable time to respond. I object to the new procedures.

As you are aware, my office has been doing the checks since May 19th and we have noticed that when they are returned to my office for mailing and collating, there is a delay of as much as two weeks since preparation. I am concerned that those delays in timely mailing the premium payments will result in policy losses. Since I am the one contractually responsible for the timely payments, I want a court order protecting me and absolving me of liability should the Receiver fail to make a timely payment.

Additionally, I want to be paid for the work that my office continues to do on a daily basis. I am doing the exact work that I was doing for Mutual Benefits and I was paid \$10,000 per month. Since my office has undertaken this on behalf of the Receiver, I have expended a total of \$1,736.75 through August 2nd on postage, checks, and Federal Express as well as an average of 6 hours per day for my secretarial staff. On occasion, that number of hours has been higher due to hundreds of checks being returned in one day for mailing.

Prior to me continuing to provide these services, it will be necessary for us to come to an agreement to pay me for the time and money already expended, and to continue forward.

Very truly yours,



Anthony M. Livoti, Jr.

AML/lla

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August 5, 2004

Ken Hartmann, Esq.
Kozyak Tropin & Throckmorton, P.A.
200 South Biscayne Boulevard
Miami, FL 33131-2335
VIA FAX ONLY 305 372 3508

RE: New Procedure for Premium Payments

Dear Mr. Hartmann:

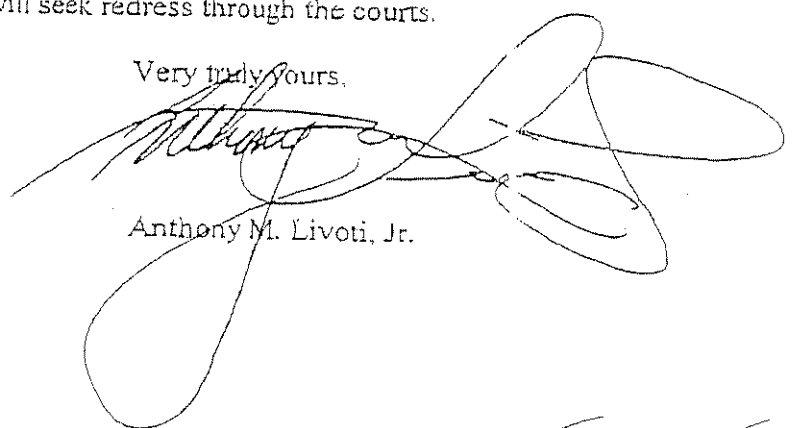
In your fax to me of August 2nd, you asked if I objected to the new procedure of Mutual employees mailing out the premium payments. Despite your short notice, I objected to the change in procedure in writing dated August 3rd. However, you have apparently ignored my objections and started the new procedure anyway.

I also raised the issue about reimbursement for my out of pocket costs as well as payment for my services. You have apparently ignored that request as well. However, my office received a call from Carmen requesting that I invoice the Receiver for services. I have herewith enclosed my invoice accordingly.

You will note that all of the secretarial services, postage, etc. are included in my invoice. I am providing the exact services to the Receiver as I did to Mutual Benefits. I believe the amount billed is appropriate to the services rendered.

If we do not come to an agreement within 10 days, you will leave me no choice but to decline to continue to do the work and I will seek redress through the courts.

Very truly yours,



Anthony M. Livoti, Jr.

AML/lla

Copies to:

RM

CM

Mari 8/5/04

MC

JK

Ellie