

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO/SIMONTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

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.

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**RECEIVER'S EMERGENCY MOTION TO CONTINUE ASSET FREEZE**

Roberto Martínez, 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, brings this Emergency Motion to Continue Asset Freeze.

**INTRODUCTION**

The Receiver brings this Emergency Motion and respectfully requests the Court to continue the Asset Freeze Order in this case with respect to the assets of

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defendants Joel and Leslie Steinger other than those being used to pay the SEC's disgorgement and civil penalties. The SEC has settled with the Steingers. The Receiver has not. The Receiver is eager to see the Steingers pay the SEC immediately and does not seek to delay or affect such payments in any way. However, if the Asset Freeze Order is vacated as to *all* of the Steingers' *other* assets: (a) the Steingers will be left with substantial assets to enjoy, and (b) the investors who they defrauded will be left with little ability to collect against those assets. The Court should thus continue the Asset Freeze Order against the Steingers so that the interests of the defrauded investors can be fully protected and fully vindicated.

#### **BACKGROUND**

On Thursday, December 1, 2005, the SEC filed a Notice of Settlement and of Filing Consents [D.E. 1486], in which it requested that the Court enter Final Judgments of Permanent Injunction and Other Relief against defendants Joel Steinger, Leslie Steinger, Peter Lombardi and their associated consulting companies. The Notice of Settlement was not received by the Receiver's office until Monday, December 5, 2005. Immediately upon receiving the Notice, the Receiver filed a Notice of Intent to File Response Relating to SEC's Notice of Settlement [D.E. 1496].

As it turns out, the Final Judgments had already been signed by the Court before the Receiver received a copy of the Notice of Settlement. The Receiver received copies of the signed Final Judgments through the Clerk's fax-back system late on December 5, 2005. Immediately upon receiving signed copies of the Final

Judgments, the Receiver filed a motion seeking a 10-day stay pursuant to Fed.R.Civ.P. 62(a) of the enforcement of the Final Judgments so that the Receiver would have an opportunity to file a response to the proposed settlements. In particular, the Receiver intended to raise concerns about the proposed vacating of the Asset Freeze Order. The Steingers have never provided a sworn accounting in this action, and the settlement does not require the Steingers to make any disclosures of their assets or representations as to their net worth. The only way to ensure that MBC's investors receive the maximum recoveries available to them under the law from the perpetrators of the fraud against them is to continue the Asset Freeze Order.

The Receiver's aim in pursuing claims against the Defendants is exemplified by the recent settlement-in-principle reached with Peter Lombardi in the Receiver's and Class Counsel's pending actions against him. The principal terms of the settlement are: (a) Lombardi has agreed to pay to the Receivership Estate an amount in addition to the amounts agreed to in the SEC settlement to settle the Receiver's and Class Counsel's claims against him; (b) Lombardi has agreed to provide a sworn financial statement identifying all of his personal assets and has agreed to a forfeiture provision, such that if it is later determined that he has failed to disclose any asset, that asset will be subject to forfeiture and assignment to the Receivership Estate; (c) Lombardi has agreed to provide his cooperation to the Receiver and Class Counsel in their prosecution of pending litigation against other defendants; and (d) upon execution of formal settlement documentation, the Receiver and Class counsel have

agreed to withdraw any objection to the lifting of the Asset Freeze Order against Lombardi, other than with respect to certain properties that Lombardi has agreed to sell and assign the proceeds to the Receivership Estate (and, of course, any assets used to pay the SEC's disgorgement and civil penalties).

The Receiver brings this Emergency Motion to insure that similar benefits can be obtained for the investors from the Steingers.

### **BASIS FOR EMERGENCY MOTION**

The Receiver submits that there is good cause to treat this as an Emergency Motion pursuant to S.D. Fla. Local Rule 7.1.E. Defendants Joel and Leslie Steinger have taken the position that the vacating of the asset freeze took immediate effect on December 1, 2005, and that Rule 62(a)'s 10-day stay does not apply. Over the past 36 hours, the Receiver has been contacted or advised by a number of banks that the Steingers have already sought to close out their existing accounts.

### **ARGUMENT**

#### **THE ASSET FREEZE ORDER SHOULD BE CONTINUED**

In the preliminary injunction entered in this case, this Court held that "[t]he asset freeze is needed to preserve the innocent investor funds and to provide for possible disgorgement and civil penalties." (Order Granting Motion for Preliminary Injunction [D.E. 712] at 2.) While the SEC's interest in obtaining disgorgement and civil penalties has been preserved, the asset freeze is still absolutely essential to "preserve the innocent investor funds."

**A. The Court Has the Authority to Continue the Asset Freeze Order.**

The Court has the authority to continue the asset freeze order at the Receiver's request. An asset freeze is a general equitable remedy, available to any private litigant, and not just the SEC. In *Deckert v. IndependenceShares, Corp.*, 311 U.S. 282 (1940), the Supreme Court held that where some equitable relief is sought, a district court has the power to enter an injunction freezing assets to preserve the status quo, particularly where there were allegations that the assets were in danger of dissipation or depletion such that without a freeze the legal remedy might be inadequate. *Id.* at 289-90.

As the Eleventh Circuit stated in *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 987 (11th Cir. 1995), like *Deckert* a case involving purely private parties: "A request for equitable relief invokes the district court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief" (emphasis supplied). The Court concluded that the district court had authority to freeze assets which could have been used to satisfy an equitable award. *Id.* at 290. In *United States ex rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d 489 (4th Cir. 1999), citing *Deckert*, the Fourth Circuit held that when equitable relief is involved in a case, the district court is authorized to issue an injunction freezing assets, even if money damages are also claimed. *See also SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005) (accepting the reasoning of *Oncology Associates* and finding an asset freeze justified as a means for preserving

funds where equitable relief, as well as money damages, is sought).

Here, the Receiver has brought claims against the Steingers for unjust enrichment seeking disgorgement of profits they received as part of the fraud, for the avoidance of fraudulent transfers, for breach of fiduciary duty and seeking imposition of a constructive trust. Such claims clearly invoke equitable relief. *See, e.g., United States ex rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d at 497-98. (unjust enrichment is recognized as equitable; constructive trust is an equitable remedy; “complaint’s request to void transfers as fraudulent – a form of rescission – is also an equitable remedy.”). Therefore, this Court has the power to continue the freeze on defendants’ assets as a means of preserving the Court’s ability to grant the final relief sought by the Receiver on behalf of the defrauded investors. As discussed below, such a freeze is essential so that the relief ultimately granted does not prove illusory.

In addition, the Receiver has the standing to seek the continuation of the Asset Freeze Order. The SEC has stated its position in this case that “the broad scope of the Court’s order appointing Receiver makes him a party to this action and gives him the authority to bring motions alleging violations of the asset freeze on his own.” (SEC’s Response to Defendants’ Motion to Dissolve [D.E. 291] at 2.) The entry of Final Judgments against three of the individual defendants (though not defendant Steven Steiner) in this case does not bring that standing to an end. A receiver functions as an arm of the court and does not need Article III standing to seek relief related to its receivership duties. *See SEC v. Loving Spirit Foundation, Inc.*, 392 F.3d 486, 490

(D.D.C. 2004). While the receivership remains in place, the receiver's ability to bring actions as part of his receivership duties continues even after courts issue final judgments against defendants. *See id.* Thus, in *Loving Spirit*, the D.C. Circuit held that, in bringing a motion to enforce a consent agreement and judgment after an SEC action was concluded, "the receiver was fulfilling her obligation to protect and preserve the receivership estate -- an action that implicates no Article III considerations. In ruling on the motion, moreover, the district court exercised its 'extremely broad' supervisory power over an ongoing receivership proceeding." *Id.* A receiver's ability to bring actions as part of its receivership duties continues even after courts issue final judgments against defendants. *Cf. SEC v. Loving Spirit Foundation, Inc.*, 392 F.3d 486, 490-91 (D.D.C. 2004) (in bringing a motion to enforce a settlement after the SEC action was concluded, "the receiver was fulfilling her obligation to protect and preserve the receivership estate -- an action that implicates no Article III considerations").

**B. Continuation of the Asset Freeze is Necessary and Warranted.**

A continuation of the asset freeze as to the Steingers is absolutely essential if the defrauded investors' interests are to be fully vindicated. There is very good reason for the Receiver to pursue claims against the Steingers, as set forth below, and a lifting of the asset freeze now will simply allow the Steingers to secrete their assets and to avoid paying on the substantial judgment against them that the Receiver will inevitably obtain.

First, the investors' interests have not yet been vindicated to the full extent possible.<sup>1</sup> The Receiver has filed an action against the Steingers and their consulting companies, as well as other insider defendants (*Roberto Martinez, as Receiver v. Joel Steinger, et al.*, Case No. 05-61471-Civ-Moreno). This action asserts, among other causes of action, equitable claims for unjust enrichment and fraudulent conveyance seeking the disgorgement and return of the tens of millions of dollars that Joel and Leslie Steinger fraudulently siphoned out of MBC and VBLLC in direct and indirect transfers. The Receiver has also filed actions against the horse farms owned and controlled by the Steingers to recover fraudulent conveyances that were made from MBC and VBLLC directly to the horse farms (*Roberto Martinez, as Receiver v. Triple Crown Farms, LLC*, Case No. 05-21910-Civ-Moreno, and *Roberto Martinez, as Receiver v. Majestic Farms, LLC*, Case No. 05-60833-Civ-Moreno). In addition, there is an Investors Class Action pending in which the Steingers and their associated consulting companies are defendants (*Scheck Investments L.P., et al. v. Kensington Management, Inc., et al.*, Case No. 04-21160-Civ-Moreno). While the SEC has settled its action against the Steingers, the Receiver (and the Class Counsel) have not.

In the preliminary injunction, the Court stated that *not* granting the preliminary injunction would result in allowing "those it has found to have participated in widespread fraud . . . at the very least to profit from past wrongdoing." (Order

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<sup>1</sup> As can be seen from the Receiver's and Class Counsel's settlement-in-principle with Peter Lombardi, there are substantial additional sums and other benefits for the investors to be obtained from Lombardi alone -- and Lombardi received *less* in illicit payments from MBC or otherwise than Joel or Leslie Steinger.



Granting Motion for Preliminary Injunction at 4.) The same still holds true. After paying the SEC's disgorgement and civil penalties, the Steingers will be left with substantial personal assets to enjoy:

- According to balances provided by banks with known frozen accounts, even after paying \$9.5 million in disgorgement and civil penalties, Joel Steinger will still have over \$1.5 million in liquid assets.

- Joel and Leslie Steinger have lavish homes in Ft. Lauderdale, Florida, both of which can be executed against in whole or in part despite being homesteads. Joel Steinger valued his home at \$10 million in a 2003 personal financial statement. Leslie Steinger valued his home at \$5 million in a 2003 personal financial statement.

- Joel and Leslie Steinger have a 200-plus-acre horse farm (Majestic Farms, LLC) in Marion County, Florida. They also have a substantial number of thoroughbred racehorses that race at tracks around the country.

- Joel Steinger has an undisclosed interest in Mutual Benefits Offshore Fund, Ltd. Since the inception of this case alone, Steinger has received (funneled through his brother Steven Steiner) \$1.1 million that the Receiver is aware of from the Fund.

- According to a verified divorce petition recently filed by Diana Steinger, there are "marital funds located in off-shore accounts"; Joel Steinger is "funneling marital assets through Majestic Thoroughbred to pay his personal expenses"; and Steinger has been paying his credit card "from unknown sources."

- Diana Steinger's divorce petition also includes a shareholder statement for an offshore investment entity apparently owned by Joel Steinger (Pinchick Finance Activities, N.V.) that had equity of nearly \$1 million in 2000.

In short, there is good reason for the Receiver to pursue his claims against the Steingers and to believe that they have substantial additional assets to be collected.

Second, the Receiver -- and the investors whose interests he has been directed to protect -- will be irreparably harmed if the Asset Freeze Order is lifted now. The Steingers have a history of both hiding assets to avoid creditors and violating court orders that their assets remain frozen. As previously set forth in detail in the Order to Show Cause proceedings, during the asset freeze in this case, Joel and Leslie Steinger caused \$2,825,000 to be withdrawn from Life Settlement Alliance, Inc. in a deceptive manner, including the use of previously little-used bank account at Key Bank in Maine in the name of Henry Fecker III, and the making of payments to third parties for their benefit as opposed to themselves. In her verified divorce petition, Diana Steinger also alleges that Steinger "is attempting to hide marital assets which have been in [his] sole possession and control."

In addition, it is apparent both from Joel Steinger's control of Mutual Benefits Offshore Fund, Ltd. (as well as Diana Steinger's verified divorce petition) that Joel Steinger has had, and continues to have, access to offshore entities in which to secrete his assets. It is also worth noting that Joel Steinger's counsel in the SEC Action has declined to accept service of the Receiver's complaint against Steinger, and Steinger has managed to evade being served by a process server to date, despite attempts at his residence, his brothers' residences and his horse farm.

Third, the strength and likelihood of success of the Receiver's claims against the Steingers is clear. The Court has already made preliminary findings of fact against the Steingers that they were engaged in "widespread fraud." (Order Granting Motion for Preliminary Injunction at 2.) Magistrate Judge Garber's Report & Recommendation, which was adopted by the Court, is also replete with detailed finds of Joel and Leslie Steingers' control over MBC and their participation in the widespread fraud.

Finally, the continuation of the Asset Freeze Order is clearly in the public interest and outweighs any claimed harm to the Steingers. The Receiver does not represent any private interest, but is tasked with a public interest in seeking to recover the maximum amount available for the investors defrauded by the Steingers. "[C]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *United States ex rel. Rahman*, 198 F.3d at 497 (quoting *United States v. First Nat'l City Bank*, 379 U.S. 378, 383 (1965)).

Nor can the Steingers claim any bona fide harm from the continuation of the asset freeze. Their assets have been frozen since May 3, 2004. The continuation of the asset freeze until the Receiver's claims are resolved will not impose any additional or different burden. To the extent they need relief from the asset freeze for particular purposes, they can simply petition the Court. (Although to date, they have simply taken the approach of violating the Asset Freeze Order to meet their needs.)

\* \* \*

WHEREFORE, the Receiver respectfully requests that the Court enter an Order continuing the Asset Freeze Order for Joel Steinger, Leslie Steinger, Kensington Management, Inc., Rainy Consulting Corp., and Twin Groves Investments, Inc. for all assets other than those being used to satisfy the Final Judgments in the SEC Action.

Respectfully submitted,

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By: s/ Curtis B. Miner  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail this 9<sup>th</sup> day of December 2005 to all parties on the attached Receiver's Service List.

s/ Curtis B. Miner  
CURTIS B. MINER

**SERVICE LIST OF RECEIVER**

Case No.: 04-60573 CIV-Moreno

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