

Jul 26 2006

CLARENCE MADDOX
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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.

**COLSON HICKS EIDSON'S
SEVENTH REQUEST FOR INTERIM COMPENSATION
TO PAY ATTORNEYS' FEES AND COSTS
AND THE RECEIVER'S FEES
AND MEMORANDUM IN SUPPORT**

(January 1, 2006 through May 31, 2006)

**Pursuant to Court Order, all objections to this Application
must be filed and served within ten (10) days of this
Application.**

Colson Hicks Eidson

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

Roberto Martínez, as court-appointed receiver (the "Receiver") of Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC"), Viatical Services, Inc. ("VSI") and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A. solely in their capacity as trustee (collectively the "Receivership Entities"), through undersigned counsel and pursuant to the Court's Order Appointing Receiver dated May 4, 2004 (the "OAR"), hereby requests the Court to enter an order authorizing the Receiver to pay to Colson Hicks Eidson ("CHE") (i) reasonable attorneys' fees and costs incurred by CHE; and (ii) the Receiver's fees, for the 5-month period between January 1, 2006 through May 31, 2006, and in support thereof states the following:

1. Attached as Exhibit 1 is a Summary of the Fees incurred by CHE in its representation of the Receiver, and the Receiver's fees, from January 1, 2006 through May 31, 2006 (the "Application Period"). Costs are also posted through May 31, 2006.

2. Attached as Exhibit 2 is a summary of all CHE timekeepers, including the Receiver, their billing rates and the total hours charged by each timekeeper.

3. Attached as Exhibit 3 is a summary of each timekeeper broken down by category. In many instances, time billed to one category could also have been appropriately billed to a different category or several different categories; however, in some instances, it was very difficult, if not impossible, to divide the time between categories. All time has been billed at the reduced agreed upon rate. Lawyers are billed at \$350/hour or \$300/hour, representing a reduction from their normal hourly rates of 30% for Mr. Martinez and 15% for Ms. Kane and Mr. Miner. In addition, the paralegal fees have been reduced by 15%. The total savings to the receivership reflected in these negotiated discounts for this time period is **\$87,180.50**.

Furthermore, Mr. Martínez has not charged for numerous hours spent in responding to a variety of e-mails and telephone calls received daily from investors and other interested parties relating to the receivership.

4. Attached as Exhibit 4 is a breakdown of the costs. Total costs for which CHE seeks reimbursement are **\$25,275.99**.

5. The services rendered in each major category can be summarized as follows:¹

I
COLSON HICKS EIDSON
LAWYERS and PARALEGALS

a. Litigation-Third Party. **\$113,716.00**. The Receiver has filed a number of proactive lawsuits seeking to recover funds for the benefit of MBC's investors and creditors. In particular, the following lawsuits initiated by the Receiver are currently pending:

(1) *Receiver v. Joel Steinger, et al.*, Case No. 05-61471 (action to recover the millions of dollars in payments wrongfully diverted from MBC to its former principals and insiders);

(2) *Receiver v. Steven Steiner*, Case No. 05-60276 (action to recover a \$1,160,000 loan that was made from MBC to Steven Steiner);

(3) *Receiver v. Triple Crown Farms, LLC*, Case No. 05-21910, and *Receiver v. Majestic Farms, LLC*, Case No. 05-60833 (actions to recover fraudulent conveyances made from MBC and VBLLC to fund Joel and Leslie Steinger's personal horse farms);

(4) *Receiver v. Shao-Feng Wang, et al.*, Case No. 06-60970 (action for breach of contract to recover advanced commissions paid to a number of sales agents on investors' pre-closing money that has now been returned to the investors by Union Planters Bank); and *Receiver v. Spear Safer & Co.*, Case No. 06-60727 (action for professional negligence against MBC's former outside auditors).

¹ CHE maintains detailed time records that are kept contemporaneously with the services performed. CHE will retain its detailed time records and will provide them to the Court for review *in camera* at the request of this Court.

Each of these actions has required the Receiver's professionals to engage the various activities involved in pursuing federal civil actions, ranging from discovery and the taking of depositions, to motion practice and oral arguments to trial preparation. In particular, during this application period, the Receiver and his counsel spent substantial time researching, preparing and filing a complaint against MBC's former outside auditors, Spear Safer & Co., for professional negligence.

Counsel for Receiver has also participated and managed all ancillary proceedings filed against the Receivership Entities subsequent to the Receivership. In particular, an action was filed by a group of insurance companies, captioned *American United Life Insurance Co., et al. v. Mutual Benefits Corp, et al.*, seeking to void an unspecified number of policies currently being administered by the Receivership Entities. During this application period, the Receiver's counsel spent substantial time preparing an Appellee's Brief in the Eleventh Circuit in response to the Plaintiffs' appeal in this matter.

The Receivership Entities also continue to receive subpoenas in connection with arbitrations and court actions related to MBC and its former sales agents, though not directly against the Receivership Entities. Finally, CHE professionals have had to periodically address matters that have arisen in the numerous civil lawsuits that remain pending, albeit stayed, against the Receivership Entities around the United States. There are presently 65 cases in 27 different states involving the Receivership Entities.

b. Asset Analysis and Recovery. **\$56,638.50**. Time included in this category reflects the efforts of CHE professionals to identify and locate assets that properly belong to, or

should be returned to, the Receivership Entities. Often, time spent on this category is closely related to the Receiver's third-party litigation efforts. Among other things, CHE professionals have investigated the books and records of MBC and VBLLC and have identified several million dollars in payments directly from MBC and VBLLC to vendors for the personal benefit of certain of the individual Defendants in the SEC Action. Many of these payments were disguised in MBC's and VBLLC's books and records as being for "purchaser commissions," when in fact they were for horse- and farm-related expenses for the personal benefit of certain of the individual Defendants.

In addition to carrying out these investigations, CHE professionals have taken steps to recover these assets by bringing (1) an action against the insider Defendants to seek to recover the millions of dollars in MBC and VBLLC assets that they drained from the companies in "consulting" fees or converted from the company for their personal uses, (2) fraudulent conveyance actions against Joel Steingers' horse farms, (3) an action against Steven Steiner for the recovery of a loan, (4) issuing demand letters and preparing actions to be filed against a number of businesses that were the recipients of fraudulent transfers from MBC and VBLLC, and (5) issuing demand letters and preparing actions to be filed against a number of former sales agents who received advances on commissions for money that was deposited by investors into the Union Planters Bank "pre-closing" purchaser escrow account and that has now been returned to the investors. CHE professionals have also been involved in investigating the viability of additional actions against third parties for the recovery of assets for the benefit of the

Receivership estate, by subpoenaing relevant documents, reviewing documents, and conducting investigations.

c. Investor and Agent Communications. **\$52,301.00**. During this time period, Receiver's professionals, pursuant to this Court's Disposition Order, set up a system for the disposition of policies, coordinated with The Garden City Group the mailing out of Notices and Preference Forms to all investors, assisted in the design and implementation of a protocol for inter-investor policy purchase program; received, reviewed and responded to e-mails and calls from the press and prepared press releases; met with representatives of MBC and Receiver's accountants to set up a system for billing investors; and revised and updated the website and FAQs. As a result of the ongoing disposition process, the Receiver and his counsel received a very large volume of telephone calls, emails and letters from investors, their counsel and other interested parties raising questions and concerns about the disposition process. The Receiver's professionals also spent substantial time resolving disputes or other issues raised by investors in connection with the disposition process and their individual investments.

d. Spear Safer: **\$46,955.00**. During this time period, CHE personnel investigated potential claims by the Receivership against its auditors, Spear Safer, for failure to discover MBC's insolvency and potential fraud being committed by its principals; reviewed the auditor's files, met with Receiver's accountants and prepared and filed the Complaint. During this time period, the Receiver began accounting for time spent on this particular category of third-party litigation separately; however, before the separate accounting was set up, there was also time billed under the original category of Third-Party Litigation.

e. Litigation - SEC. \$30,133.00. All time associated with the pending SEC litigation is included in this category. Although the SEC has entered into final settlements with Joel Steinger, Leslie Steinger and Peter Lombardi, it continued to prosecute its action against Steven Steiner. The Receiver's counsel also continued to participate in efforts to collect upon the Final Judgments against Joel and Leslie Steinger, particularly in connection with interpleader actions that have been initiated by banks in New Mexico and Minnesota. While time recorded in this category includes work specifically related to the SEC's action, it also includes work more generally related to the carrying out of the Receiver's responsibilities that must be carried out through Court proceedings in the SEC Action. This includes, generally, the review of pleadings, motions and memoranda, the preparation of motions and memoranda, assisting the Receiver in the preparation of reports, attendance at hearings, and production of documents and responses to other discovery requests. This category also includes, to some extent, work associated with efforts to make sure that death benefits are paid promptly by insurance companies and addressing related motions, disputes and interpleader actions that have arisen as a result of certain insurance companies' reluctance to pay out death benefits to the Receiver on matured policies.

f. Litigation - Regulatory/Criminal. \$8,738.00. CHE timekeepers continue to meet and confer regularly with regulatory and criminal law enforcement agencies in connection with ongoing regulatory and criminal law enforcement actions and investigations. Although the majority of the regulatory matters involving MBC or VBLLC have been brought to a conclusion by the Receiver, the Receiver continues to receive numerous inquiries and requests

for information from regulators around the country who are involved in proceedings against MBC's former sales agents. In addition, the Receiver has received criminal law enforcement inquiries and requests for information that have required the attention of his professionals.

g. Business Operations. **\$5,669.00**. CHE professionals continue to assist the Receiver in administering the business operations of the Receivership Entities, including addressing personnel issues, advising on miscellaneous bookkeeping and accounting issues, analyzing insurance policies and the premium obligations, assuring the uninterrupted payment of premiums for the policies and other operating expenses, effectuating bank transfers, and generally keeping in place systems to keep matters organized. In particular, myriad issues have arisen in connection with VSI's dealings with insurers, ranging from the payment of death benefits to changes of beneficiaries to the resolution of disputes, which require the attention of CHE professionals.

h. Fee Applications: **\$4,968.00**. All time associated with preparing CHE's fee application, as well as the preparation of the fee applications of The Garden City Group and Integrity Services, and reviewing all other applications submitted by Receiver's professionals.

i. Asset Disposition: **\$4,860.00**. Time included in this category primarily reflects the efforts of CHE personnel to comply with this Court's Order on Disposition of Policies and Proceeds. In particular, counsel has had numerous telephone conferences with insurers' counsel regarding the distribution of death benefits and pending interpleader actions, and numerous telephone conferences with investors and their counsel regarding the procedures for distribution of death benefits. In addition, counsel has spent substantial amounts of time

working with the staff of MBC and VSI to implement procedures to carry out the disposition process.

j. Business Litigation: \$590.00. Minimal time was charged to this category which was associated with the review of Insurer's appellate briefs.

II

RECEIVER

The Receiver is responsible for administering the Receivership Entities pursuant to the terms of the OAR and overseeing the work of the professionals and staff working on the receivership.

Since the last fee application the Receiver's has done the following, among other matters: prepared and filed the Eleventh, Twelfth, Thirteenth, Fourteenth, and Fifteenth Reports of the Receiver; implemented the mailing of over 50,000 Notices and Preference Forms to all investors regarding their options for disposition of the active policies; reviewed the results of the Preference Forms and implemented solutions to address several issues arising from the process; updated the website to provide investors with information relating to the disposition process; developed a plan for the sale of policies; implemented the distribution of the death benefits; reviewed and finalized the financial statements for the period ending on December 31, 2005; reviewed the results of the voting on disposition of policies; planned and implemented the sale of the dissenter's interests; developed a plan for VSI's new role in servicing the kept policies; traveled to Tallahassee to confer with the Office of the Attorney General and the Department of Insurance; conferred with the Office of the Statewide Prosecutor relating to the resolution of the

Information; appeared in state court in connection with a Status Conference on the Information; attended many meeting with accountants' for the receivership; addressed and resolved the compensation of the managers at MBC and VSI; reviewed and edited the complaint against Spear Safer; attended several Eleventh Circuit Court of Appeals mediation conferences; attended several conferences with counsel and defendants relating to settlements with the parties; attended many conferences with the MBC Manager relating to personnel and operational issues at MBC; and attended many conferences with the VSI Manager relating to personnel and operational issues at VSI.

The Receiver is requesting **\$48,020.00** for his hours.

6. For this application period CHE seeks reimbursement for 981.65 hours of time for lawyers, including the Receiver, and 648.85 hours of paralegal time. The total amount of fees sought during the application period is **\$372,588.50**, which amount reflects reductions totaling approximately **\$87,180.50**. Total expenses sought by CHE for this application period is **\$25,275.99**

7. I have carefully reviewed the attached exhibits and I am responsible for supervising all of the attorneys in my firm on the case. I certify that the hours expended and the costs incurred were necessary and reasonable to represent the Receiver during the Application Period.

MEMORANDUM OF LAW

When determining the award of attorneys' fees, the Court should give consideration to the factors for compensation that the 11th Circuit articulated in *In re Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988) - (1) the time and labor properly employed by the attorneys in processing 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 (7) the degree to which, if any, effort were supported by prior governmental action. CHE respectfully suggests that its application meets all the criteria for this interim request for compensation. The Receiver, with the assistance of CHE, has stabilized operations, secured assets, and, to the extent possible, maintained the status quo, while communicating regularly with all parties in interest.

WHEREFORE, COLSON HICKS EIDSON, by and through the undersigned counsel, respectfully requests that this Court enter an order authorizing the payment of **\$397,864.49**, representing \$372,588.50 in fees and reimbursement of \$25,275.99 in costs for this Application Period. A proposed order is attached.

DATE: July 24, 2006.

Respectfully submitted,

By: CBMim /for
Roberto Martínez
Receiver

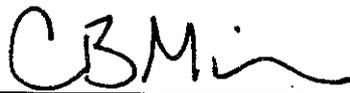
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Colson Hicks Eidson

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on July 26, 2006, the foregoing was electronically filed with the Clerk of the Court, and copies of *Colson Hicks Eidson's Seventh Request for Interim Compensation to Pay Attorneys' Fees and Costs and the Receiver's Fees and Memorandum in Support* was sent via E-mail to all those individuals on the attached Service List.



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SERVICE LIST OF RECEIVER

Case No.: 04-60573 CIV-Moreno

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EXHIBIT 1

**SUMMARY OF INTERIM APPLICATION FOR COMPENSATION OF
FEEES AND COSTS OF COLSON HICKS EIDSON, P.A.**

1. Name of Applicant	Colson Hicks Eidsón, P.A.	
2. Role of Applicant	Receiver	
3. Name of certifying professional	Roberto Martínez	
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 recovered	January 1, 2006 through May 31, 2006	
8. Fees requested for this period		\$372,588.50
9. Total expense reimbursement requested for this period		<u>\$25,275.99</u>
10. Total fee and expense award requested		<u>\$397,864.49</u>

HISTORY OF FEE APPLICATIONS

(See Attached Chart)

HISTORY OF FEE APPLICATIONS
COLSON HICKS EIDSON

App. #	Application Period	Date Submitted	Fees Requested	Costs Requested	Amount Requested	Fees Awarded	Costs Awarded	Date Awarded	Total Amt. Awarded	Date Paid	Amount Paid
1	5/4/04 - 6/18/04	7/2/2004	\$220,751.50	\$6,709.88	\$227,461.38	\$74,000.00 \$146,751.00	\$6,709.00 \$0.00	10/22/2002 12/15/2004	\$80,709.00 \$146,751.00	11/5/2004 1/6/2005	\$80,709.00 \$146,751.00
2	6/19/04 - 9/30/04	12/15/2004	\$287,905.00	\$9,771.19	\$297,676.19	\$287,905.00	\$9,771.19	6/1/2005	\$297,676.19	9/7/2005	\$234,390.00
3	10/1/04 - 1/31/05	3/17/2005	\$371,496.00	\$30,264.16	\$401,760.16	\$367,236.00	\$30,264.16	6/1/2005	\$397,500.16	9/7/2005	\$63,286.19
4	2/1/05 - 5/31/05	7/20/2005	\$320,323.75	\$16,565.65	\$336,889.40	\$300,000.00	\$16,565.00	8/18/2005	\$316,565.00	11/2/2005	\$85,411.16
5	6/1/06 - 9/30/05	11/9/2005	\$244,126.50	\$20,537.69	\$264,664.19	\$240,000.00	\$20,537.69	2/17/2006	\$260,537.69	2/28/2006	\$260,537.69
6	10/1/05 - 12/31/05	3/7/2005	\$215,142.50	\$26,936.15	\$242,078.65	\$205,000.00	\$26,936.15	5/5/2006; and on 5/22/06 to correct prior order	\$231,936.15	5/18/2006	\$121,936.15
7	1/1/06 - 5/31/06		\$372,588.50	\$25,275.99	\$397,864.49						
TOTAL			\$2,032,333.75	\$136,060.71	\$2,168,394.46	\$1,620,892.00	\$110,783.19		\$1,731,675.19		\$1,735,935.19

EXHIBIT 2

SUMMARY OF TIME BY TIMEKEEPER

PROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	137.20	\$48,020.00
Marc Cooper	\$350.00	2.00	700.00
Susan Tarbe	\$325.00	3.20	1,040.00
Julie Braman Kane	\$300.00	135.60	40,680.00
Maureen Lefebvre	\$300.00	165.75	49,725.00
Enid Duany Mendoza	\$300.00	155.05	46,515.00
Curtis Miner	\$300.00	382.05	114,615.00
Barbara Silverman	\$300.00	.80	240.00
TOTAL BY PROFESSIONAL		981.65	\$301,535.00

PARAPROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Maria A. Rodriguez	\$110.00	42.20	4,642.00
Jennie Hausler	\$110.00	19.60	2,156.00
Carol Endres	\$110.00	579.05	63,695.50
Seneca Pardham	\$100.00	2.00	200.00
Phillip Eidson	\$60.00	6.00	360.00
TOTAL BY PARAPROFESSIONAL		648.85	\$71,053.50

LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Total Professional		981.65	\$301,535.00
Total Paraprofessional		648.85	\$71,053.50
TOTAL LEGAL SERVICES		<u>1630.50</u>	<u>\$372,588.50</u>

EXHIBIT 3**SUMMARY OF PROFESSIONAL AND PARAPROFESSIONAL
TIME BY ACTIVITY CODE CATEGORY**

ACTIVITY CODE CATEGORY: Litigation – Third Party			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	267.25	\$ 80,175.00
Maureen Lefebvre	\$300.00	107.00	32,100.00
Carol Endres	\$110.00	13.10	1,441.00
ACTIVITY CODE TOTAL		387.35	\$113,716.00

ACTIVITY CODE CATEGORY: Asset Analysis & Recovery			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	14.40	\$ 4,320.00
Carol Endres	\$110.00	472.35	51,958.50
Phillip Eidson	\$60.00	6.00	360.00
ACTIVITY CODE TOTAL		492.75	\$56,638.50

ACTIVITY CODE CATEGORY: Investor/Agent Communications			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Julie Kane	\$300.00	135.60	\$40,680.00
Curtis Miner	\$300.00	29.55	8,865.00
Enid Duany Mendoza	\$300.00	2.00	600.00
Jennie Hausler	\$110.00	19.60	2,156.00
ACTIVITY CODE TOTAL		184.75	\$52,301.00

ACTIVITY CODE CATEGORY: Receiver			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	137.20	\$48,020.00
ACTIVITY CODE TOTAL		137.20	\$48,020.00

ACTIVITY CODE CATEGORY: Spear Safer			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Susan Tarbe	\$325.00	3.20	\$ 1,040.00
Enid Duany Mendoza	\$300.00	153.05	45,915.00
ACTIVITY CODE TOTAL		156.25	\$46,955.00

ACTIVITY CODE CATEGORY: Litigation SEC			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Marc Cooper	\$350.00	1.00	\$ 350.00
Curtis Miner	\$300.00	12.00	3,600.00
Maureen Lefebvre	\$300.00	58.75	17,625.00
Carol Endres	\$110.00	77.80	8,558.00
ACTIVITY CODE TOTAL		149.55	\$30,133.00

ACTIVITY CODE CATEGORY: Litigation-Regulatory/Criminal			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	24.25	\$7,275.00
Carol Endres	\$110.00	13.30	1,463.00
ACTIVITY CODE TOTAL		37.55	\$8,738.00

ACTIVITY CODE CATEGORY: Business Operations			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	16.00	\$4,800.00
Maria A. Rodriguez	\$110.00	5.40	594.00
Carol Endres	\$110.00	2.50	275.00
ACTIVITY CODE TOTAL		23.90	\$5,669.00

ACTIVITY CODE CATEGORY: Fee Applications			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	2.40	\$ 720.00
Mari Rodriguez	\$110.00	36.80	4,048.00
Seneca Pardham	\$100.00	2.00	200.00
ACTIVITY CODE TOTAL		41.20	\$4,968.00

ACTIVITY CODE CATEGORY: Asset Disposition			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	16.20	\$4,860.00
ACTIVITY CODE TOTAL		16.20	\$4,860.00

ACTIVITY CODE CATEGORY: Business Litigation			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Marc Cooper	\$350.00	1.00	\$350.00
Barbara Silverman	\$300.00	.8	240.00
ACTIVITY CODE TOTAL		1.00	\$590.00