

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

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

Relief Defendants.

**RECEIVER'S MOTION TO AUTHORIZE PROCEDURES FOR
RE-DESIGNATION OF BENEFICIAL INTERESTS IN INSURANCE POLICIES**

EXPEDITED RELIEF REQUESTED

The Receiver requests an expedited hearing on this Motion because the proposed purchaser for a group of approximately \$119 million (face value) policies of the Receivership estate has required, as a condition of its purchase agreement, that an order approving same be entered on or before February 16, 2007. Furthermore, such relief is needed in order to ensure proper billing for policies retained by investors.

Roberto Martínez, court-appointed receiver (the “Receiver”) of Mutual Benefits Corp. (“MBC”), Viatical Benefactors, LLC (“VBLLC”), Viatical Services, Inc. (“VSI”), Anthony Livoti, Jr., P.A. and Anthony Livoti, Jr., solely in their capacity as trustee, all of which collectively are referred to as the “Receivership Entities,” moves for the Court to approve of procedures for the redesignation of ownership and beneficial interests in insurance policies administered by the Receivership entities (the “Policies”)¹ consistent with the policy disposition process directed by this Court. Specifically, the Receiver seeks the entry of an order designating the Receiver or his designee as Policy Owner or Absolute Assignee and “Nominal Beneficiary” with respect to all Policies, with the Receiver then having the responsibility to maintain information regarding the ultimate beneficiaries and to service and administer the Policies (including distribution of death benefits upon maturity) accordingly, consistent with the Court’s September 14, 2005 Order on Disposition of Policies and Proceeds (D.E. 1339) (the “Disposition Order”) and November 22, 2005 Order Clarifying Disposition Order and Approving Form of Notice (D.E. 1474) (the “Clarification Order”).

The Receiver further requests the entry of an order authorizing the Receiver, alternatively and at his election, to re-designate beneficiaries through written instructions to the insurance companies which have issued the Policies (the “Insurers”) consistent with the disposition process ordered by this Court. Further, the Receiver requests that the Court order that all Insurers are authorized and directed to comply with the directives of this Order to designate the Receiver as Policy Owner / Absolute Assignee and Nominal Beneficiary without further instruction or consent; and to the extent the Receiver elects to re-designate beneficiaries through written instructions, to honor and recognize such designations without necessity of signatures or

¹ A list of the Policies is attached as Exhibit “A” hereto.

consents from existing beneficiaries. Finally, the Receiver requests that the Court order that all insurers be authorized and directed to make payment of any proceeds, including death claim proceeds, to the Receiver or such party as the Receiver designates, upon the earlier of the entry of the requested Order or the Receiver's submission of requested changes to an insurer.

The relief requested herein is essential to facilitate the disposition process directed by this Court and to ensure that benefits are paid to the proper party. In support, the Receiver states:

BACKGROUND

The Disposition Process

On September 14, 2005, this Court entered the Disposition Order, and on November 22, 2005, entered the Clarification Order. These Orders collectively directed that investors be provided an opportunity to vote on whether to keep, sell or surrender the policy(s) in which they had invested, and authorized the manner by which the Receiver was to solicit investors' elections. The decision as to how to dispose of each policy was to be determined by the vote of the majority of the interests in a policy that properly submitted votes with respect to the policy. A Notice to Investors describing the disposition process ordered by the Court, together with a Preference Form giving investors the opportunity to indicate their preference for retaining or selling each policy in which they had invested, was sent to each investor.

In accordance with the foregoing Orders, voting on each of the Policies was conducted, the result of which is summarized as follows:

Total # of Policies Decided:	6,357
Total \$ Face Value Decided:	\$1,450,145,065.39
Total # Policies to Keep:	3,037
Total \$ Face Value to Keep:	\$1,054,421,059.67

Total # Policies to Sell:	3,138
Total \$ Face Value to Sell:	\$383,850,782.72
Total # Policies to Surrender:	119
Total \$ Face Value to Surrender:	\$7,245,530.00

The Court's Disposition Order further directed that if investors voted to retain their interests in a policy by a majority vote, dissenting investors who had voted to sell would have their interest submitted for auction to the other investors in the policy. To facilitate this process, the Receiver has designed and implemented a procedure for investors to submit their interest in a policy for sale, and for other investors in the policy to make competing bids for that interest. If a sale of a dissenting investor's interest in a policy cannot be completed, then the Receiver will follow the directives of the Court in the Disposition Order: first seek to reduce the face value of the policy, and if that is not possible, advise the other investors that they must take over the dissenter's premium obligation or the policy will be sold.

For Policies for which the vote is to sell ("Sell Policies"), the Receiver will continue to make necessary premium payments until the policies can be sold to a purchaser, who will then have the right to designate the beneficiaries in the policy. The Receiver has already selected one portfolio of Policies designated to be sold pursuant to the Court-ordered disposition process, and has received a "stalking horse" offer to purchase approximately \$119 million (face value) of an initial group of policies being offered for sale (the "Initial Auction Portfolio"). A motion to approve that purchase agreement for the Initial Auction Portfolio, and to approve bidding procedures for soliciting higher and better offers, is being filed simultaneously with this Motion.

For Policies for which the vote is to retain the policy ("Keep Policies"), the investors in each such policy will become responsible for paying the administrative obligations and premium

obligations associated with the policies. If an investor fails to pay its pro rata share of the administrative and premium obligations, then that investor's interest may be forfeited and beneficial interests in the policy reallocated to other investors who make up the shortfall (the Notice to Investors makes clear, consistent with the Disposition Order and Clarification Order, that "FAILURE TO TIMELY PAY VSI ADMINISTRATIVE FEES OR PREMIUM PAYMENTS WIL RESULT IN FORFEITURE OF YOUR POLICY INTEREST"). The Receiver has already begun the process of issuing invoices for the administrative fees with respect to the Keep Policies and expects to begin billing for investors' pro rata share of the premium obligations shortly.

RESOLUTION OF RE-DESIGNATION OF INTERESTS IN POLICIES

In the Notice to Investors, the Receiver indicated that nominal ownership of the retained policies would continue to be controlled by the Receiver (subject to the Receiver being able to move prior to termination of the Receivership to appoint a trustee pursuant to a court-approved trust agreement to serve as nominal owner until maturity of all the policies), and that each investor would become a named beneficiary of the policy in which the investor has an interest.

Nonetheless, the Notice to Investors provides for beneficiary changes to be made in several circumstances. For instance, each investor who voted to sell his or her interest, by doing so, indicated his or her consent to changing the beneficiary of the Policy to the Receiver ("If I am a named beneficiary on the Policy I authorize and direct the insurance company issuing the Policy to assign my beneficiary status in the Policy to Roberto Martinez as Receiver."). Likewise, each investor who voted to retain his or her interest, by doing so, indicated their consent to the Receiver changing beneficial interests in the policy, including changes in the individual investor's interest: (a) upon specific written direction; or (b) in the event the investor

forfeited their interest by failing to pay their share of premium payments or administrative costs for the policy after receiving a demand for payment. Accordingly, every investor who has voted to retain a policy has likewise authorized changes to be made in beneficiaries on the policy, including changes in their own interests in certain circumstances.

It is self-evident that the disposition process contemplated by the Disposition Order and Clarification Order will necessarily require that changes in beneficiaries be made in many different circumstances. Specifically, those circumstances include the following:

- With respect to Sell Policies, it will be necessary for all present beneficiaries to be removed so that a purchaser will have the ability to designate beneficiaries, and thereby realize the value of its acquisition.
- With respect to Keep Policies, the interests of investors who fail to pay their administrative or premium obligations will be forfeited; as a result, it will be necessary to reallocate beneficial interests after each billing cycle for a policy. The Receiver already needs to do so with respect to Keep Policies for which all investors have not timely paid the invoice for VSI's administrative fees. This same reallocation may be required each following year on unmatured policies when administrative fees and premiums again come due and some investors fail to pay their share of the premiums or fees.
- The investor-to-investor sale process directed by this Court, by which investors in Keep Policies who elected to sell their interests to other investors in the policy, will also require re-allocation of the beneficial interests in the policies for each transaction that is consummated.

The authority to change beneficiaries presently provided by the completed Notice and Preference Forms is incomplete. First, not all policies have had 100% voter participation. In

fact, of approximately 6,200² policies currently maintained by the Receiver, only 2,025 have had all of the holders of interests in the policies return their preference forms.

The prospect of making each investor a named beneficiary of the Keep Policies in fact presents significant practical difficulties. First, many insurance companies simply refuse to accept designations of fractional beneficial interests, making it impossible to designate multiple beneficiaries where (as is the case for most of the policies) there is more than one investor in a policy. In addition, as described above, the process contemplated by the Disposition Order and Clarification Order contemplates that the interests in Keep Policies will be reallocated on at least an annual basis due to investors' non-payment of administrative fees or premiums. This reallocation would require re-designation of beneficiaries on a recurring basis. In some instances, such reallocations might require the consent and signature of all existing beneficiaries in a policy in order to be effective, a process that would be incredibly cumbersome and time-consuming.

Similar issues are presented with respect to the Sell Policies as well. While the Notice and Preference Form that was provided to investors contains a power of attorney authorizing the Receiver to make beneficiary changes, not all investors returned such forms. As a result, there will be policies for which the election was made to sell the policy where there are presently investors listed as beneficiaries. The Receiver needs to be able to change the beneficiaries in order to effectuate the sale, and will require a Court order directing the appropriate changes to the beneficiaries in such policies.

² There may be some discrepancy in the total number of policies as compared to the total that were decided by vote due to maturities.

RELIEF REQUESTED

As a result of the foregoing issues, the Receiver submits it is necessary and appropriate that the Court enter an order directing that ownership and beneficial interests in all Policies administered through the receivership be changed to the Receiver, or his designee, as Policy Owner or Absolute Assignee and Nominal Beneficiary, so that (i) the Receiver will have the ability to re-designate beneficiaries, including the purchaser of the Initial Auction Portfolio and other subsequent purchasers of policies, without the necessity of obtaining consents from all current third-party beneficiaries; and (ii) necessary adjustments (either as a result of reallocations of interests in Keep Policies, or sale of the Sell Policies) can be made by the Receiver without having to process such changes through each of the insurance companies.

As Policy Owner / Absolute Assignee and Nominal Beneficiary, the Receiver will be responsible for maintaining current and accurate records of the beneficial interests in all policies, consistent with the terms of the Disposition Order. The Receiver will be strictly bound to only make changes to the ultimate beneficiaries as directed in the Disposition Order or as otherwise ordered by this Court, specifically:

- With respect to "Sell Policies," upon the approval of a sale of a policy, to designate the purchaser or its designee as owner of the policy with the full right to designate and/or revoke beneficiaries, including with respect to any policy having an irrevocable beneficiary or investor of MBC currently designed as Policy Owner / Absolute Assignee on the insurer records, whether or not such irrevocable beneficiary has consented to such change.
- With respect to "Keep Policies," upon an investor's failure to timely pay administrative or premium obligations and the consequent forfeiture of the investor's

interest in said policy and reallocation of interests in the policy or ultimate sale of the policy, including with respect to any policy having an irrevocable beneficiary or investor of MBC currently designated as Policy Owner / Absolute Assignee on the insurer records, whether or not such beneficiary of Policy Owner / Absolute Assignee has consented to such change.

- With respect to "Keep Policies" for which an investor has participated in the investor-to-investor sale process and authorized the transfer of his or her interest to another investor, upon the consummation of such transaction and consistent with the terms thereof, including with respect to any policy having an irrevocable beneficiary, whether or not such beneficiary has consented to such change.
- With respect to change of beneficiary requests by existing investors, pursuant to policies to be established by VSI as servicer, including with respect to any policy having an irrevocable beneficiary, whether or not such beneficiary has consented to such change..

In the absence of the relief requested herein, it will be impossible for the Receiver to fully implement the Court's Disposition Order. Sell Policies can not be sold unless the beneficial interests can be conveyed to the purchaser; and the interests in Keep Policies can not be properly allocated unless the Receiver has the ability to readjust interests for investors who fail to satisfy their payment obligations.

The Receiver further requests that the Court order that all Insurers which have issued policies administered by the Receivership are authorized and directed to comply with the foregoing directive to designate the Receiver or his designee as Policy Owner / Absolute Assignee and Nominal Beneficiary without necessity of further instruction or authorization, and

that the order provide that the Insurers are authorized and directed to rely on this Court's Order as authority to do so without necessity of signatures or consents from existing Policy Owners / Absolute Assignees and beneficiaries, whether recorded on the insurers' records as revocable or irrevocable beneficiaries.

The Receiver requests that the Court further order that alternatively, and at the Receiver's election, the Receiver may provide written instructions to Insurers to re-designate Policy Owners / Absolute Assignees and beneficiaries consistent with the disposition process ordered by this Court, and directing all Insurers to honor and recognize such designations without necessity of signatures or consents from existing Policy Owners / Absolute Assignees and beneficiaries.

In addition, and in furtherance of the proposed sale of certain Sell Policies as described in the Receiver's Motion to Approve Stalking Horse Purchase Agreement and Bidding Procedures, the Receiver requests that the Court order that upon the entry of an order approving the sale, that each Insurer with respect to a policy included in such sale give full effect to the Sale Order and recognize all of the Buyer's (or Buyer's designee(s)') claims, options, privileges, right, title and interest in, to and under the Policies and the other Purchased Assets upon consummation of the Closing (including by effecting any change in the named owner and/or beneficiaries of the Policies upon direction by the Receiver or Buyer without the necessity of Buyer having to sign change of owner and/or beneficiary forms (including with respect to any Policy having an irrevocable beneficiary, whether or not such irrevocable beneficiary has consented to such change).

The Receiver further requests that the Court order that all insurers are authorized and directed to make payment of all death claim proceeds to the Receiver or such party as the

Receiver designates, following the earlier of the date the Court grants the relief requested in this Order, or the Receiver's submission of a requested change to an insurer.

INCORPORATED MEMORANDUM OF LAW

Once a receivership has been commenced, the court presiding over the receivership has broad powers to ensure that the administration of the receivership estate is carried out. "When the receivership court takes jurisdiction of the debtor's estate, it has power to issue orders barring actions which would interfere with the administration of that estate. Sec. and Exch. Comm'n v. United Financial Group, Inc., 576 F.2d 217 (9th Cir. 1978). In an equity receivership proceeding, the Court has "broad powers and wide discretion" in crafting relief. Liberte Capital Group, LLC v. Capwill, 148 Fed. Appx. 426, 2006 WL 2062677, **7 (6th Cir. 2005), *citing* Sec. and Exch. Comm'n v. Basic Energy & Affiliated Res. Inc., 273 F.3d 657, 668 (6th Cir. 2001).

In the exercise of that broad discretion, this Court has already entered the Disposition Order which controls how investors' interests in the Policies will be resolved, and directs the Receiver to implement its terms and procedures. That process is now already well underway, with the voting on all policies completed, the investor-to-investor process implemented, and the solicitation of a "stalking horse" offer for an initial group of the "Sell Policies" completed and presented to the Court for approval. The relief requested in this Motion is necessary in order to fully implement and effectuate the Disposition Order, and accordingly may be ordered by this Court. Indeed, in other viatical cases similar relief has been ordered. *See, e.g., Liberte Capital*, 2005 WL 2062677 at **2 ("The scope of the receivership was expanded ... to include related entities and the interests in insurance policies funded by Liberte. *The district court authorized the receiver to direct insurance companies to change ownership-beneficiary status of the policies from the escrow agent to the receiver.*") (emphasis added); *see also* Sec. and Exch. Comm'n v.

Tyler, 2003 WL 21281646 (N.D. Tex. 2003) (recommending granting of receiver's motion for authority to market and sell policies and to transact the business of the policies, including authority to make death claims and receive death benefits). Relief comparable to that sought here was also granted in the case of In re Reliance Financial & Investment Group, Inc., Case No. 02-33249-BKC-PGH, a bankruptcy case of a viatical company presently pending in the United States Bankruptcy Court for the Southern District of Florida. *See* Order for Administration of Life Insurance Policies dated May 29, 2003, copy attached as Exhibit "A", providing *inter alia*:

[Administrator] shall make changes of beneficiaries on the Policies ... in accordance with the provisions of the Settlement Agreement which was made an Order of Court pursuant to the Order Approving Settlement Agreement. In furtherance thereof, Policy Providers shall make changes in beneficiaries on the Policies pursuant to the instructions of [Administrator]. In cases where irrevocable beneficiary designations have been made under a Policy, Policy Providers shall change the beneficiaries in accordance with instructions from [Administrator] without the necessity or requirement to obtain the signatures of the then presently designated beneficiaries for such change of beneficiary so long as, the change of beneficiary designated by [Administrator] is in accordance with the provisions of the Settlement Agreement.

NOTICE

The Receiver, as indicated above, requires the entry of an order authorizing the relief requested herein on an expedited basis in order to go forward with the proposed sale of an initial group of approximately \$119 million (face value) of policies designated as Sell Policies, and furthermore in order to implement the billing of premiums for Keep Policies based on the reallocated interests following forfeiture by investors who failed to pay the VSI administrative fee. This Motion has been served on all parties who have requested service in this proceeding. In order to provide further notice to all interested parties, including Insurers and beneficiaries designated on the Policies, the Receiver further proposes to serve on all such parties a Notice in the form attached hereto as Exhibit "B" describing the relief sought herein and giving such

interested parties a further opportunity to file objections within 20 days after service of the Notice. To the extent any such interested parties file objections, the Receiver would reply to same within 7 days after the 20-day period has expired and would request that the Court then consider such objections and evaluate *de novo* whether to vacate or modify the relief requested by the Receiver herein.

BAR ORDER

The Receiver recognizes that the Insurers may be concerned with the consequences of compliance with the procedures outlined herein. In consideration for Insurers' agreement to comply with and not oppose the relief requested herein, the Receiver is prepared to seek, with respect to each such Insurer who agrees to settlement with the Receiver regarding their compliance with this Order, the entry of a bar order in favor of such Insurer precluding the current beneficiaries on the Policies issued by such Insurer from bringing any claim, action, cause of action, suit, or demand of any nature whatsoever against such Insurer relating or arising from the implementation of this Order. The Court is authorized to enter such a bar order in order to facilitate a settlement consistent with the purposes of the Receivership. *See, e.g., Sec. and Exch. Comm'n v. United Fin. Group*, 576 F.2d 217, 220 (9th Cir. 1978) (receivership court has power to bar actions which would interfere with administration of the estate); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (approving settlement bar order); *In re U.S. Oil and Gas Litigation*, 967 F.2d 489 (11th Cir. 1992) (same); *In re Grau*, 267 B.R. 896 (Bankr. S.D. Fla. 2001) (entry of bar order appropriate to facilitate settlement).

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests the expedited entry of an order:

(1) Directing that the beneficial interests in all Policies administered through the receivership be changed to the Receiver, or his designee, as Nominal Beneficiary;

(2) Authorizing and directing the Receiver (or his designee) to maintain current and accurate records of the ultimate beneficial interests in all policies, consistent with the terms of the Disposition Order, and authorizing the Receiver to make changes to the ultimate beneficiaries consistent with the Disposition Order or as otherwise ordered by this Court, specifically:

- With respect to “Sell Policies,” upon the approval of a sale of a policy, to designate the purchaser or its designee as owner of the policy with the full right to designate and/or revoke beneficiaries, including with respect to any policy having an irrevocable beneficiary, whether or not such irrevocable beneficiary has consented to such change.
- With respect to “Keep Policies,” upon an investor’s failure to timely pay administrative or premium obligations and the consequent forfeiture of the investor’s interest in said policy and reallocation of interests in the policy.
- With respect to “Keep Policies” for which an investor has participated in the investor-to-investor sale process and authorized the transfer of his or her interest to another investor, upon the consummation of such transaction and consistent with the terms thereof.
- With respect to change of beneficiary requests by existing investors, pursuant to policies to be established by VSI as servicer.

(3) Authorizing and directing Insurers to recognize the designation of the Receiver (or his designee) as Nominal Beneficiary for all Policies without necessity of further written instruction or authorization, nor consent of any existing beneficiary, including without limitation any irrevocable beneficiary, and authorizing and directing said Insurers to rely on this Court’s Order as authority without necessity of further instructions or consents;

(4) Authorizing the Receiver to alternatively, and at the Receiver's election, provide written instructions to Insurers to re-designate beneficiaries consistent with the disposition process ordered by this Court, and directing all Insurers to honor and recognize such designations without necessity of signatures or consents from existing beneficiaries; and

(5) In furtherance of the proposed sale of certain Sell Policies as described in the Receiver's Motion to Approve Stalking Horse Purchase Agreement and Bidding Procedures, directing that upon the entry of a an order approving the sale of the Policies, that each Insurer with respect to a policy included in such sale give full effect to the Sale Order and recognize all of the Buyer's claims, options, privileges, right, title and interest in, to and under the Policies and the other Purchased Assets upon consummation of the Closing, including by effecting any change in the named owner and/or beneficiaries of the Policies upon direction by the Receiver or Buyer (including with respect to any Policy having an irrevocable beneficiary, whether or not such irrevocable beneficiary has consented to such change).


Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served in accordance with the attached Receiver's Service List on January 26, 2007.

By: 

David L. Rosendorf

SERVICE LIST OF RECEIVER

Case No.: 04-60573 CIV-Moreno

VIA ELECTRONIC MAIL		
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