

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60473-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 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.

SECOND REPORT OF RECEIVER

Roberto Martínez, court-appointed receiver (the “Receiver”) of Mutual Benefits Corp. (“MBC”), Viatical Benefactors, LLC (“VBLLC”) and Viatical Services, Inc. (“VSI”), (collectively the “Receivership Entities”) hereby submits his Second Report of Receiver.

INTRODUCTION

The Receivership Entities currently administer 7,322 insurance policies with a

total face value of approximately \$1,560,000,000 associated with approximately 30,000 different investors.¹ The Receiver has made all premium payments due on all the policies. As of June 18, 2004, the Receivership Entities also control, directly or indirectly, approximately \$213,000,000 in bank accounts, approximately \$109,000,000 of which is held commingled in various accounts styled as "premium escrow accounts." As set forth below in greater detail, the various accounts designated to pay the premiums on 6,356 of the insurance policies likely will be depleted of funds in approximately two to fifteen months, depending on the policies. Until such time as the Receiver is in the position to evaluate the policies and the appropriate treatment of these assets, there are certain steps that the Receiver believes should be taken to further protect the purchasers and potential purchasers of the insurance policies. Those steps are set forth in the Motion for Authority to Continue to Pay Premiums, Address Other Operational Issues, Retain Professionals and Commence Collection Litigation filed contemporaneously with this report (the "Operations Motion").

This report will provide the Court with the financial and operational background necessary to evaluate the request for relief set forth in the Operations Motion, as well as to provide a status report on litigation matters.

I. INSURANCE POLICIES AND PAYMENT OF PREMIUMS

Summary

Attached at Tab A is a chart containing the inventory and summary of all insurance policies over which MBC has direct or indirect control, beginning with the earliest policies (purchased in 1994) through policies purchased as recently as May 4,

¹ The insurance policy data in this report is derived from the database of VSI as of June 11, 2004. The number of investors is derived from an analysis of that database and MBC's general ledger accounting system as of June 16, 2004.

2004. This chart does not include matured policies.

Premiums must be paid in order to avoid any policy lapsing except for those policies that have a cash value, and the premiums for which are paid through the cash value of the policy, until exhausted. Since May 5, 2004, the Receiver has continued making all premium payments that have become due and has signed checks totaling approximately \$ 3,065,000 for the payment of premiums.

The manner in which MBC has arranged for the payment of the premiums has changed over time, as follows:

- **Policies Paid Out of the MBC Operating Account** - The policies sold to investors by MBC in the earlier years, from 1994 through 1997, were, and continue to be, paid from the MBC Operating Account.
- **Policies Paid Out of the Livoti Accounts** - Beginning in approximately 1996, Anthony M. Livoti, Jr., P.A. ("Livoti"), as trustee, entered into an agreement with MBC whereby, in addition to serving, at times, as the owner of most of the policies, Livoti also agreed to make the payment of premiums from funds escrowed at the time of closing and transferred to Livoti's control (the "Livoti Accounts").
- **Policies Paid Out of the UPBNA Accounts** - All other premiums are paid through the premium escrow account maintained at Union Planters Bank, N.A. ("UPBNA"). The funds in that account are made up of monies escrowed for the payment of premiums for policies purchased by or through MBC beginning around June, 2002 when MBC entered into an escrow agreement with American Express Tax and Business Services, Inc. ("AETBS") whereby, among other

services, AETBS set up a premium escrow account at Bank of America to pay premiums from funds escrowed at the time of closing. In approximately April, 2003, the funds in the AETBS premium escrow account were transferred to the premium escrow account set up at UPBNA, where funds from policies purchased after April 2003 are also escrowed for the purpose of paying premiums.²

A. The MBC Operating Account

The chart labeled "Policies Paid Out of the Mutual Benefits Corp. Operating Account," attached at Tab E, sets forth an inventory and summary of the policies whose premiums are paid out of the MBC Operating Account.³ These policies do not have escrow accounts for the payment of premiums, and, no monies appear ever to have been escrowed by MBC for the payment of these premiums. As of June 11, 2004, there were 1,227 such policies, requiring annual premium payments of \$952,329.11, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due.⁴

The funds for the Operating Account are solely derived from the operations of MBC and come almost exclusively⁵ from the amounts paid to MBC from each closing on the purchase of an insurance policy whose death benefit is purchased by a new purchaser of a viatical settlement agreement. In other words, the revenue to MBC from a new

² Copies of the escrow agreements between MBC and AETBS and UPBNA, are attached at Tabs B and C, respectively. In December, 2001 MBC established an escrow relationship with Citibank, N.A. A copy of the agreement is attached at Tab D. However, the Receiver has not yet been able to determine whether the premium escrow account described in the agreement is the MM2 account maintained at Citibank (see below) or is a different account that was closed prior to the Receiver's appointment

³ The investors either own the policies outright, where listed, or are the named beneficiaries under the policies or by agreement with MBC or Livoti.

⁴ This amount includes the premium payments on Group Policies, which premiums are paid by the insured or the insured's employers. The insured is then required to submit documentation for reimbursement.

⁵ MBC also owns an interest in certain policies and receives distributions when certain policies mature, as well as other payments or distributions made to owners of insurance policies.

viatical settlement contract funds the payment of the premiums on the "older" insurance policies paid from the MBC Operating Account.

The MBC Operating Account also pays to obtain death certificates, pays for medical records, and pays the incentive payments to insureds to obtain their assistance in getting their medical records, regardless of when the insurance policy was purchased or whether funds to pay the associated premiums, if any, have been escrowed. In the year 2003 the non-premium payments from the MBC Operating Account totaled \$752,365.67.⁶

The MBC Operating Account also pays all of the operating expenses of MBC. During the four months in 2004 preceding the receivership, the average of the MBC monthly operating expenses was \$7,921,469.98. This amount reflected such monthly variable expenses of \$4,822,569.26 for purchaser commissions (for finding investors), \$988,635.32 for consulting fees, \$424,742.48 for legal fees, \$149,191.85 for lobbying fees, and \$214,543.75 for political contributions and \$209,083.21 for travel.

In order to conserve cash, and consistent with maintaining the status quo to the extent practicable under the circumstances, the monthly operating expenses of MBC during the receivership have been trimmed as low as possible, to approximately \$500,000 which amount includes the payment of the insurance premiums. This amount excludes the payment of open accounts payable incurred prior to the receivership, totaling approximately \$1,100,000, which amount includes legal fees of \$433,661.70 and lobbying fees of \$176,672.95. The Receiver will not pay these accounts payable without further instruction from the Court.

⁶ The MBC operating expenses data is derived from MBC's general ledger accounting system.

On May 3, 2004, the day before entry of this Court's Order Appointing Receiver ("OAR"), the State of Florida Office of Insurance Regulation issued an Emergency Cease and Desist Order (the "Cease and Desist Order") suspending MBC's viatical settlement provider's license on an emergency basis for 90 days pending further regulatory action. Since that time, MBC has been prohibited from selling new viatical settlement contracts. As a result, MBC has not generated any revenue throughout the entire receivership period, although expenses and premiums continue to be paid from the MBC Operating Account.

The combined cash balances, as of May 31, 2004, for the MBC Operating Account and unrestricted Money Market Account total \$4,544,075.15. At the average rate of \$500,000 of expenses per month, excluding the payment of the pre-receivership accounts payable, and without new funding, MBC's cash balance available for operations will be depleted in approximately ten months.⁷

B. The Livoti Accounts

The chart labeled "Policies Paid Out of the Livoti Accounts," attached at Tab F,⁸ sets forth an inventory and summary of the policies whose premiums are paid out of the escrow accounts established by Livoti. As of June 11, 2004, there were 5,129 such policies, requiring annual premium payments of \$12,481,862.44, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due.⁹ The escrow balances as set forth in the VSI database, corresponding to these

⁷ The fees of the Receiver and his professionals are not included in any of these calculations, as a result, the actual exhaustion of funds may actually occur earlier, but how much earlier would depend on a variety of factors including the amount of fees authorized by the Court for payment and whether funds may be recovered from other parties.

⁸ The investors either own the policies outright, where listed, or are the beneficiaries under the policies or by agreement with MBC or Livoti.

⁹ This amount includes the premium payments on the Group Policies, requiring the submission of

policies, total \$5,724,307.40,¹⁰ although, as set forth below, the actual cash balances of the premium monies to pay these policies total approximately \$8,000,000.

According to VSI and Livoti, the funds used by Livoti to make the premium payments on these policies are maintained in four money market accounts located at three different banks (the "Livoti Accounts"). The money market accounts are referred to by MBC, VSI, and Livoti as MM1 for one of the accounts or MM2 collectively for a group of three money market accounts.

The following are the Livoti Accounts:

Citibank

- 3290205175 – Anthony Livoti Jr. P.A. Attorney Special Account ("Control Checking")
- 3290234214 – Anthony Livoti Jr. P.A. Premium Escrow Account ("MM1")
- 3290015543 – Anthony Livoti Jr. P.A. Premium Escrow Account ("MM2")

RBC Centura

- 706-000-381-1 Anthony Livoti Jr. P.A. Premium Escrow Account ("MM2")

First Southern

- 4053058106 - Anthony Livoti Jr. P.A. Premium Escrow Account ("MM2")

The only factor that determines whether the premium monies were escrowed and deposited in the MM1 account or in the MM2 accounts is the date in which the policy purchase transaction was closed. According to VSI, the law firm of Brinkley, McNerney, Morgan (the lawyers for MBC and VSI) informed VSI that those transactions that closed

documentations from the insureds or their employers for reimbursement of premiums.

¹⁰ The escrow balances reflected in the inventories of policies included in this Second Receiver's Report are derived from the VSI database and do not include all interest earned on escrow accounts and/or other contributions to escrow accounts that do not relate to specific policies. Forensic accounting work related to the reconciliation of these totals to actual bank balances is ongoing.

on or before March 31, 2001 had their premium monies escrowed in the MM1 account (reflecting monies designated for the payment of premiums for the insurance policies acquired on before March 31, 2001, hereinafter the "MM1 policies"), while transactions that closed after March 31, 2001 had their premium monies escrowed in the MM2 accounts (reflecting monies designated for the payment premiums for the insurance policies acquired after March 31, 2001, hereinafter the "MM2 policies").

Livoti transferred funds from the money market accounts weekly to the Control Checking Account from which account the actual premium checks were written. Livoti had control over these accounts, and paid the premiums weekly based on the information provided to him regularly by VSI as to which premiums were due and how much must be paid on such premiums.

However, in his deposition taken on June 8, 2004, Mr. Livoti testified that he would transfer funds to make the premium payments on the MM1 and MM2 policies irrespective of the whether the funds came from the corresponding MM1 or MM2 account. Mr. Livoti testified that he based his decision on which account to draw the monies by using his discretion based generally on the interest yield on the various accounts and his banking relations with the banks holding the funds.¹¹ This appears to be confirmed by a forensic analysis of the bank records.

A review of the bank statements, MBC's records of monthly bank reconciliations of the MM1 and MM2 accounts, and VSI's database containing detailed records of contributions to the premium escrow accounts and payments made out of and credits to the premium escrow accounts, it appears that funds escrowed for the payment of the premiums for the MM2 policies were being used to pay premiums for the MM1 policies

¹¹ See Deposition of Anthony M. Livoti, Esq., at pp. 75-78.

throughout 2003 and 2004, reflecting total payments of \$7,661,559 out of the MM2 accounts to pay for MM1 policies. Our forensic analysis has confirmed that from January 1, 2004 through March 31, 2004, all funds deposited into the Control Checking account originated from the MM2 money market funds. During the same period, no funds had been transferred from MM1 to the Control Checking account although the check requests from VSI identified premium payments totaling \$2,516,719.78 for MM1 policies.

At the time the Receiver took control of the Receivership Entities, the Control Checking account had a balance of \$407,086, the MM1 account contained \$819,070 and the three MM2 accounts contained \$8,061,243, for a total of \$9,287,399. As of June 10, 2004, the Control Checking account has a balance of \$407,086, the MM1 account contains \$447,475 and the three MM2 accounts contain \$7,285,618 for a total of \$8,140,179.

VSI continues to provide the premium payment information to Livoti and to the Receiver. As all the Livoti Accounts have been frozen, Livoti and Citibank cooperated in the creation of a "shadow" control checking account from which the Receiver has continued to make the premium payments. The Receiver has thus far transferred funds from the MM1 Account to fund the payment of premiums on the MM1 Policies and has transferred funds from the MM2 account to pay premiums on the MM2 policies.

If the receivership continues to make the premium payments for the MM1 and MM2 policies from the monies escrowed and designated for the payment of the premiums corresponding to those policies, the MM1 account will be depleted in approximately two months and the MM2 accounts will be depleted in approximately fifteen months.

C. The UPBNA Premium Accounts

Around 2002, MBC decided to use a third party as an escrow agent not only to hold funds to purchase policies, but also to administer the premium escrows and death benefits. The escrow agent relationship appears to have started with Citibank, then AEBTS and finally, in approximately April, 2003, UPBNA took over services as escrow agent.

Under a written agreement with MBC, a copy of which is attached at Tab C, UPBNA established a premium escrow account. The funds in this account come primarily from money transferred to the premium escrow account when the sale of an insurance policy closes and¹² from funds transferred from the former AEBTS premium escrow account. The funds in this account are commingled and not divided into sub-accounts designated either to a particular policy or investor. UPBNA issues premium checks based on check requests that are sent on a regular basis by VSI. As with Livoti, VSI advises UPBNA by fax what premiums are due and how much is to be paid. UPBNA, in turn, would transfer funds out of the premium escrow account to its trust department. Premium payments were then paid by UPBNA trust department checks. The UPBNA premium escrow account was frozen when this Court entered the Temporary Restraining Order on May 3, 2004 (the "TRO").

The chart labeled "Policies Paid Out of the UPBNA Accounts," attached at Tab G,¹³ sets forth an inventory and summary of the policies whose premiums are paid out of

¹² Funds are not always escrowed right away, or sometimes at all, when there is a closing. The reasons could vary from MBC's decision that a premium escrow is not necessary because of cash value in the policy, or because MBC has not placed all the purchasers it intends to place on a policy and so the all the cash isn't identified at the closing.

¹³ In certain instances the investors are listed with the insurance company as the owner and beneficiary of the policy, in some instances the investors are listed with the insurance company as one of the beneficiaries under a policy, but in most instances the investors are not listed as either the owner or beneficiary of the

the premium escrow account established by MBC with UPBNA in approximately April, 2003. As of June 11, 2004, there were 966 such policies, requiring annual premium payments of \$21,876,458, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due.¹⁴ The escrow balance¹⁵ as set forth in the VSI database, corresponding to these policies, totals \$99,559,989.03.¹⁶ The actual bank cash balance of the premium monies at UPBNA to pay these policies total approximately \$101,000,000.

The Receiver has taken over payment of the premiums formally paid by UPBNA, based on information that continues to be provided by VSI. In order to fund the payment of these premiums, the Receiver has transferred sufficient funds from the premium escrow account at UPBNA to a checking account over which the Receiver has sole signing authority. Going forward, funds from the UPBNA premium escrow account will be transferred to a checking account set up at the Bank of America when needed to pay the premiums.

D. Possible Deficiencies in the Life Expectancy Ratings on the Non-HIV Policies

It is impossible to tell whether the monies in the UPBNA premium escrow account are sufficient to pay for the corresponding policies through their maturities. Moreover, VSI has told the Receiver that it cannot tell, and does not know, whether the monies in all the premium escrow accounts, without the infusion of new cash, are

policy, but rather are allocated an interest in the policy by MBC through the Case File Statement, which Case File Statement is used by Livoti or MBC as the basis upon which to allocate proceeds of matured policies.

¹⁴ This amount includes the premium payments on the Group Policies, requiring the submission of documentations from the insureds or their employers for reimbursement of premiums.

¹⁵ This excludes premium escrow monies related to seven policies having a combined face value of \$58,440,000 that either were not fully funded or fully closed at the time of the receivership.

¹⁶ See fn. 9.

sufficient to pay the insurance premiums on all the active policies administered, either directly or indirectly, by the Receivership Entities through their maturity.

Information has come to the attention of the Receiver reflecting that an actuarial and insurance analysis conducted by experts retained by MBC in the months immediately prior to the receivership of a sample of the Non-HIV policies noted deficiencies in the underwriting practices for some the Non-HIV policies resulting in an underestimation of the life expectancies for those policies averaging approximately 2.5 to 3.5 years.¹⁷ If this analysis proves to be correct for the entire pool of the Non-HIV policies, this could have a significant adverse impact on the sufficiency of the monies in escrow for the payment of the premiums on the Non-HIV policies.

E. No Premium Reserve Accounts

Although the MBC State of Florida Viatical Settlement Purchase Agreement states that accrued interest and unused premiums may be retained as a reserve for payment of premiums on those policies where the insured outlives his/her projected life expectancy, there is no separate MBC or Livoti premium reserve account at any bank used by MBC or Livoti.

Furthermore, although the UPBNA Escrow Agreement with MBC provides for a "Premium Reserve Sub-Account" to contain the "earnings on the Premium Escrow Account" and that the "Premium Reserve Sub-Account" is a "sub-account of the of the Premium Escrow Account containing funds not reserved for premium payments on specific Policies," there is no such Premium Reserve Sub-Account maintained with UPBNA. There is only one premium escrow account at UPBNA.

The only "reserve" account controlled by the Receivership Entities is one held by

¹⁷ The Receiver is prepared to submit this document to the Court.

VSI at Northern Trust Bank and the funds in that account totaled \$718,001.63, as of May 4, 2004.

II. ANTHONY M. LIVOTI, JR., P.A. (TRUSTEE)

MBC's State of Florida Viatical Settlement Purchase Agreement states that although there are certain post-closing activities that must be undertaken, such as the payment of premiums, MBC does not perform those services. According to the Purchase Agreement, if the "purchaser" of the Purchase Agreement is not purchasing the entire death benefit payable under a given policy, then the Purchase Agreement specifies the use of Livoti as the "independent trustee" who will perform the post-closing services, including directing the payment of premiums from funds escrowed at the time of closing and transferred to Livoti's control.¹⁸

According to the trust agreement between a "purchaser" and Livoti (the "Livoti Trust Agreement"), Livoti designates VSI to provide post-closing services. The Livoti Trust Agreement provides that the fees for the post-closing services are paid at the time of closing and are provided at no charge to the purchaser and, further, that the trustee is paid a fee for his services at the time of closing as part of the acquisition cost of a policy. A sample of the Livoti Trust Agreement is attached at Tab H. A copy of Livoti's agreement with VSI is attached at Tab I.

Mr. Livoti has told the Receiver, and testified in his deposition, that he entered into a written agreement with MBC in June, 1996, confirming that he would serve as the trustee for the insurance policies. A copy of the agreement between Livoti and MBC is attached hereto as Tab J. According to Mr. Livoti, he does not recall when, but sometime after the original agreement was signed, the Agreement was modified to reflect that MBC

¹⁸ Some Purchase Agreements are state specific, to comply with local law.

would guarantee to Livoti a flat fee of \$10,000 per month to serve as the trustee. If the total of the fees paid to Livoti from the closings do not aggregate to \$10,000 for the month, Livoti sends a monthly bill to MBC for the amount due and owing and MBC is responsible to Livoti for the payment of the balance.

A preliminary review of the records of MBC's financial accounting system shows that from the period from August 30, 1989, through May 5, 2004, excluding fees disbursed at closing, MBC paid Livoti \$305,594.03 in fees and expenses.¹⁹ In addition, Livoti is paid \$200 per policy at closing by the closing agent. According to the VSI database, Livoti is listed as the owner of approximately 7,000 policies.

Mr. Livoti has made several requests of the Receiver and his lawyers for the payment of the balance due from MBC to Livoti for past services and has inquired as to whether the Receiver will continue to honor the \$10,000 guarantee flat fee financial arrangement.

III. CHANGE OF BENEFICIARY INFORMATION

One of the functions performed by MBC personnel is the change in "beneficiary" information. Changes in beneficiary are requested for a variety of reasons – in many cases, as the length of policy maturities extend out past the estimated life expectancy, the purchaser dies and the interest must be transferred to the purchaser's estate or heir or alternate "beneficiary." This change of beneficiary function is performed under two different scenarios depending on whether the purchasers are, in fact, named beneficiaries of a policy, or are holders of certificates identifying fractional interests in a policy.

Where a purchaser is a named beneficiary, a change in beneficiary request

¹⁹ There was an additional disbursement from MBC to Livoti on March 21, 2002 in the amount of \$202,854. Pursuant to the documentation contained in MBC's files, this disbursement was made in connection with an escrow premium shortfall on a policy that was closed in January, 2002.

requires interface with the insurance company, and in many cases, with the other beneficiaries of the policy. MBC handles the change in beneficiary requests, which, depending on the insurance company, could require contacting each named beneficiary of the policy, which in many cases would be numerous.

Where the beneficiary of the policy is a trustee or escrow agent, such as Livoti, AEBTS or UPBNA, then the change of a purchaser's name is handled through what is essentially a computer entry – an amendment to the Case File Statement, which is an internal MBC document reflecting the fractional interest in a policy that has been allocated to a particular purchaser or purchasers. Only a computer entry is necessary in these instances because the purchaser's interest in these policies is derived solely by virtue of the internal MBC allocation, not an actual allocation by the insurance company of an interest.

To this point the Receiver has not made any changes of beneficiary, despite several purchasers' requests, because the Receiver has been concerned that making such changes would in some way create an impression or a precedent that the claimed beneficial interests of the purchasers in the policies ultimately may be recognized by the Court as some form of ownership interest. The Receiver's initial analysis, however, is such that most, if not all, of such "interests" likely may represent claims against the Receivership Entities as opposed to a claim with respect to a particular policy. However, it would be of assistance to the Receivership to process this information as it will make the Receivership claims database more accurate, when it is developed.

IV. CONTIUNED EMPLOYMENT OF PERSONNEL

Prior to May 4, 2004 MBC personnel either performed or coordinated significant

activities both prior to and after the matching of purchaser funds to a viatical or life settlement policy. While all activity leading up the matching of purchaser funds has ceased, there continue to be issues relating to changes in beneficiary and most significantly, the collection of death benefits. The Receiver has been advised that as of June 21, 2004, there are claims forms and death certificates submitted to insurance carriers for approximately \$19 million in death benefits for matured policies, and approximately \$2,000,000 of maturities pending processing requiring the receipt of death certificates, contact with purchasers, and submission of claims forms. The collection process relating to all of these policies further require the disbursements of checks and related duties. Much of this work is done by MBC employees in coordination with the employees at VSI.

As set forth in the First Receiver's Report, the Receiver has reduced the number of employees on the payroll of the Receivership Entities, currently paying ten employees at MBC, seventeen employees at VSI, two employees at VBLLC, and placing the remainder on unpaid leave status, although all health benefits have been continued for all employees until further notice.²⁰ The ten MBC employees on paid status work when needed by the Receiver and so the Receiver has continued to pay their salaries. The Receiver believes it is critical to continue the employment of these employees notwithstanding that the necessity for their services may vary from day to day.

²⁰ The Receiver has retained most of the VSI employees because they are needed to perform the critical functions performed by VSI, especially tracking insureds and directing the payment of premiums, including the important function of determining when and to what extent the cash value or income of policies should be used to pay the premium obligations of a policy.

**V. COLLECTION AND DEPOSIT OF DEATH BENEFITS
AND
MISCELLANEOUS FUNDS**

Death benefits are payable primarily to Livoti, AEBTS and UPBNA as the named beneficiaries under most of the insurance policies. Some death benefits are made payable to purchasers but most of the time those checks are sent to VSI or MBC for delivery to the purchasers. Livoti regularly receives checks that are payable to Livoti as the owner of insurance policies, such as premium refunds, class action settlement payments and dividends.²¹ Mr. Livoti has previously advised the Receiver that such checks are typically deposited in one of several of the premium escrow accounts to supplement premium payments.

Currently the Receiver is holding over \$ 88,000 in checks made out to Livoti, that either were sent to Livoti at VSI or which checks Livoti has provided to the Receiver. The Receiver would like to deposit these checks in an interest bearing account so the funds will be available, if needed, to pay premiums or operate the Receivership Entities. The Receiver has asked Mr. Livoti if he will endorse these checks to the Receiver, but Mr. Livoti has not yet responded.

UPBNA is currently holding a check made out to UPBNA in the amount of \$41,000 representing the proceeds of a matured policy. This check, if not deposited, will become stale. Previously this Court entered an Order Amending Order Appointing Receiver Regarding Maintenance of Insurance Policies and Benefits pursuant to which the Court has directed insurance companies to make all death benefit payments payable to the Receiver. The Receiver, in turn, is to deposit any such checks in a special

²¹ MBC also receives some checks as owner of policies, but deposit of those checks is obviously not an issue for the Receiver.

segregated account. However, some death benefit checks have been issued, or may be issued, in the name of one of the beneficiaries, presumably because the insurance company did not receive a copy of the Court's order or the checks were issued prior to entry of the Court's order.

In the Operations Motion the Receiver seeks the authority to deposit these checks, the death benefits checks and the other Livoti checks. The death benefits checks will be deposited in a special account with other death benefits without having to return the checks to the insurance company for reissuing. The Receiver is concerned about the delay associated with such a request and the relinquishment of control over the funds. Conversely the checks must be deposited before they become stale. The Livoti checks would be deposited in a special account set up by the Receiver for unallocated funds, the use of which will be determined later, and additional court authority sought for disbursement, if necessary.

VI. THE RECOVERY OF FUNDS NEEDED FOR OPERATIONS

As of May 31, 2004, the cash balances in the MBC Operating Account and Money Market Account totaled \$4,544,075.15, the cash balance in the VSI Operating Account totaled \$3,863,024.84, and the cash balance in the VBLLC Operating Account totaled \$300,375. The other accounts are nominally associated with either the payment of premiums or the purchase of policies.

The Receiver and his professionals have made every effort to control expenses that are not related to the preservation of assets or the preservation of the status quo. However, since no operational revenues are being generated by the Receivership Entities, the operational funds of the Receivership Entities are limited and dwindling.

There are, however, certain receivables that could be collected, and assets that could be liquidated, to infuse funds into the Receivership Entities, without interrupting the status quo. For example, Steve Steiner signed a demand promissory note in the amount of \$1.4 million. That money could be collected now.

There also are potential litigation recoveries that would provide funds to the Receivership Entities for operations, the pursuit of which, however, will require further forensic analysis. For example, Camden Consulting, Inc. and SKS Consulting, Inc. each received significant (more than \$13 million) consulting fees from the Receivership Entities within the last four years. Both Steven Steiner and Henry Fecker, a personal friend of Mr. Steiner, testified that minimal, if any, services were performed by these entities for MBC, and thus, the Receiver believes these fees may be subject to recovery as fraudulent conveyances or otherwise.

VII. RETENTION OF TILLINGHAST

Although the Receivership Entities hold approximately \$109,000,000 in total cash balances for the payment of all premiums, the Receiver is very concerned that, without the infusion of new funds, that amount may not be sufficient to pay through maturity the premium payments on all of the 7,322 insurance policies administered by the Receivership Entities. Certainly, as Section I makes clear, various accounts designated to pay the premiums on 6,356 of those policies likely will be depleted of funds in approximately two to fifteen months, depending on the policies. Moreover, these funds are being used to maintain policies, the values of which, due primarily to the life expectancies of their insureds, may not justify the depletion of these cash assets.

The Receiver believes the services of the Tillinghast business group of Towers,

Perrin, Forster & Cosby, Inc., an insurance and actuarial professional group, are essential to evaluate the inventory of insurance policies that are subject to the direct or indirect control of the Receivership Entities. This evaluation is needed in order for the Receiver and the Court to evaluate the optimal use of the receivership's finite cash balances in the payment of the insurance premiums, including, whether there is sufficient cash to pay all premiums through the policies' maturities, whether some policies should be allowed to lapse and whether some or all of the insurance policies should be sold. The Receiver is prepared to submit additional information for the Court's review about the scope and nature of these services, including an overall estimate of the fees and projected timeline for completion of the anticipated services.

VIII. LITIGATION

At the time the Receiver was appointed there were third party, regulatory, and criminal litigation against MBC pending throughout the country, including The State of Florida Department of Insurance Cease and Desist Order (the "Cease and Desist Order") and the Criminal Information filed by the State of Florida Statewide Prosecutor both of which were entered the day before the Receiver was appointed. The Receiver has made every effort to avoid any prejudice to any of the Receivership Entities in connection with the third party litigation and the regulatory and criminal proceedings, to the extent possible or practicable.

A. Third Party Private Litigation

As detailed in the Receiver's first report, the OAR stayed all third party private litigation involving the Receivership Entities and their investors and required that litigation be brought ancillary to the Receivership action. To effectuate this provision,

the Receiver's counsel filed and served this Court's order in 41 cases in 17 different states as well as 1 case in Canada.

After filing the order, the Receiver's counsel contacted MBC's outside counsel in each of these cases to determine the nature and status of each case. There are presently 33 active cases in 14 different states. The Receiver's counsel has coordinated with MBC's outside counsel in each of these cases to ensure that this Court's stay order is enforced.

This Court's stay order, understandably, does not stay the pending case in Canada. Nevertheless, the Receiver's counsel has coordinated with MBC's outside counsel in Canada so as to maintain the status quo with respect to that litigation.

B. Regulatory Litigation

As described in the First Receiver's Report, there were many regulatory actions, both formal and informal, pending against MBC at the time the Receiver was appointed. This Court's stay order did not stay these regulatory actions. Nevertheless, the Receiver's counsel has worked with Dan Goldman, in-house counsel at MBC, with Doug Foss, MBC's outside counsel involved in regulatory matters, and with local MBC outside counsel in many of the states with pending regulatory actions, to maintain the status quo pending this Court's determination with respect to the preliminary injunction.

In addition, the Receiver's counsel, together with MBC's outside counsel, has taken steps necessary to maintain the status quo with respect to the Cease and Desist Order. The Cease and Desist Order was entered the day before the TRO was entered. The Receiver, through counsel, has taken to preserve MBC's rights to seek appellate review of the Cease and Desist Order if the TRO is dissolved. Accordingly, after

consultation with Mr. Goldman and MBC's outside regulatory counsel, the Receiver filed both a Notice of Appeal pursuant to Fla.R.App.P. 9.110(a)(3) and a Petition for Review pursuant to Fla.R.App.P. 9.1100(c)(3).

Anticipating that this Court would decide the preliminary injunction issue before the end of June, the Receiver asked the state appellate court for a thirty day extension of time for MBC to file an amended petition for review. In the event this Court denies the preliminary injunction, this extension will give MBC the opportunity to present appropriate argument to the state appellate court regarding the Cease and Desist Order. The appellate court granted the extension. Pursuant to that extension, the amended petition for review is due to be filed by July 5, 2004. In the event this Court has not ruled on the preliminary injunction by that time, the Receiver intends to ask the state appellate court for an additional extension of time.

C. Criminal Information

The day before the entry of the TRO and OAR the State of Florida Office of Statewide Prosecutor issued a sixteen count criminal information against MBC, charging it with one count of Racketeering and fifteen counts of Investment Fraud. As directed by the Court, the Receiver appeared at the arraignment and requested a postponement of the arraignment. The arraignment was rescheduled for today, Monday, June 28, 2004. The Receiver appeared today at the rescheduled arraignment and, once again, requested a postponement of the arraignment. The arraignment was, once again, postponed. The arraignment is now scheduled to take place on August 4, 2004. At today's arraignment the parties stipulated to extend the applicable speedy trial provisions by the number of

days of delay caused by the postponements requested by the Receiver at the direction of the Court.

IX. PENDING ITEMS

There are a number of pending matters that required the Receiver to make decisions in light of the status of the Receivership and the Receivership Entities.

A. Pending Purchases of Insurance Policies

As of May 3, 2004, the Cease and Desist Order temporarily suspended the license of MBC to serve as viatical settlement provider. As such, MBC has not closed on any insurance policy acquisition pending at the time of the entry of the OAR. All requests for bids have been turned down and the necessary paperwork has been processed to unravel any pending acquisition and return the insurance policies to the viators.

B. Checks from Purchasers and Requests for the Return of Monies

The Receiver has received numerous requests for the return of checks recently received and not deposited as well as for the return of monies held in the purchase escrow account and not yet placed or closed. The Receiver has maintained the status quo related to these requests. Checks received, but not deposited, are being held for safekeeping at MBC and have not been deposited. The monies held in the purchase escrow account since before the receivership, sometimes up to several months, and not placed or closed at the time of the receivership, continue to be held in the purchase escrow account. The funds in the purchase escrow account are controlled by MBC and may not be withdrawn by the investors. The Receiver's initial analysis is that these funds may constitute assets available to pay all investors, and thus the Receiver has declined to return funds to purchasers, notwithstanding some requests to do so.

The Receiver intends to hold these funds, pending further analysis and further instructions from the Court.

X. INQUIRIES

The Receiver has received thousands of inquiries, in the form of telephone calls, letters, e-mails, and numerous unannounced visits at his office, from investors, sales agents, lawyers, promoters, and others, from North America, South America, Asia and Europe, inquiring as to a variety of matters, including the status of the investments, the maturity of the policies, requesting the return of monies, or seeking general information about the receivership and the status of the SEC litigation. These inquiries, whenever possible, are handled by professionals and staff members working with the receivership and many of them are provided written responses that set forth general information about the receivership. In order to assist in answering and responding to these inquiries, the Receiver retained, with the authorization of the Court, the services of the claims administrator, the Garden City Group. The Garden City Group has received and responded to approximately 2,500 e-mails both from investors and their representatives as well as 1,600 live telephone calls. Additionally, over 6,000 additional callers have received information from Garden City Group's voice recording system. The Garden City Group also has received numerous written communication which has been forwarded to counsel to the Receiver for individual response.

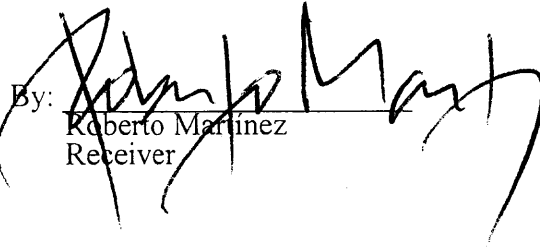
CONCLUSION

The Receiver has made every effort to secure the assets of the Receivership Entities, and, to the extent practicable, maintain the status quo pending resolution of the

preliminary injunction. However, in order to perform these functions some further action is required as outlined here and in the Operations Motion.

DATED this 28th day of June, 2004.

Respectfully submitted,

By: 
Roberto Martinez
Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 28th day of June, 2004 to the following:

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