UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

VIATICAL BENEFACTORS, LLC,
VIATICAL SERVICES, INC.,
KENSINGTON MANAGEMENT, INC.,
RAINY CONSULTING CORP.,
TWIN GROVES INVESTMENTS, INC.,
PJL CONSULTING, INC.,
CAMDEN CONSULTING, INC.,

Relief Defendants.
_____/

**DEFENDANTS' AND RELIEF DEFENDANTS'
RESPONSE TO THE FOURTH REPORT OF RECEIVER
and
SUPPLEMENT TO DEFENDANTS' MOTION AND MEMORANDUM
TO TERMINATE RECEIVERSHIP AND ASSET FREEZE, ETC.**

Defendants, Joel Steinger, Leslie Steinger, Peter Lombardi, and Relief Defendants, Kensington Management, Inc., Rainy Consulting Corp., Twin Groves Investments, Inc., PJL Consulting Corp., and Camden Consulting, Inc., hereby submit this Response to the Fourth Report of the Receiver, and Supplement their Motion to Terminate Receivership, Asset Freeze, Etc., filed on June 18, 2004, and state the following:

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TERMINATE THE RECEIVERSHIP

More than six months elapsed between the Third and Fourth Reports of the Receiver. During that six month period, the Receiver failed to provide this Court or the parties with any periodic financial statements or any other form of report concerning the financial condition and the affairs of Mutual Benefits Corp. Moreover, he still has not filed a statement of income and expenses, or a balance sheet, reflecting activities since June 2004. After this inexplicable delay, the Receiver now portrays a seriously deteriorated financial situation which is hopelessly beyond his control. Instead of offering a concrete plan to resolve these urgent difficulties, the Receiver asks the Court to hold hearings to hire yet another group of high-priced experts to perform a valuation of the Mutual Benefits Corp. insurance portfolio.

This *ex parte* and overbroad receivership was ill-advised and unwarranted from the outset. The defendants' urged the Court to terminate it seven months ago, but the Court has not yet resolved that motion. Defendants' will not repeat here the compelling reasons previously presented for terminating the receivership. It is now inescapable, however, that the time has come to terminate this wholly ineffective and wasteful receivership. It is indisputable, and the Receiver concedes, that significant changes in the operation of Mutual Benefits Corp. must occur, including the potential liquidation of some or all of its assets. The Receiver has no authority to dispose of or to liquidate assets of Mutual Benefits Corp. or of its investors, and it would be inappropriate at this stage to allow him to do so. An SEC receivership is simply the wrong method to accomplish these tasks.

For more than forty years, the Federal Courts have recognized that it is generally inappropriate for a receiver appointed in a Securities and Exchange Commission enforcement action to undertake and to oversee the liquidation of a defendant corporation. *See SEC v.*

American Board of Trade, Inc., 830 F.2d 431, 436-438 (2d Cir. 1987); *SEC v. An-Car Oil Co., Inc.*, 604 F.2d 114, 119-120 (1st Cir. 1979); *Esbitt v. Dutch-American Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir. 1964); *Los Angeles Trust Deed Mortgage Exchange v. SEC*, 285 F.2d 162, 182 (9th Cir. 1960). These courts, and others, have repeatedly emphasized that the appropriate method for any liquidation process is through the Bankruptcy Court and under the Bankruptcy Code.

The Court should terminate the receivership immediately, order the Receiver to turn over the operation of Mutual Benefits Corp. to its pre-receivership management, and allow that management to file a petition under Chapter 11 of the Bankruptcy Code to reorganize the company.

ALLOW ACCESS TO POLICY AND FINANCIAL INFORMATION

In light of the Receiver's failure to analyze policy values and costs, despite having retained an accounting firm, the Court should allow defendants immediate access to this information. Defendants will conduct an analysis of policy values and premium stream requirements, as well as the overall financial condition of the company. The defendants should be prepared to proceed with presentation of evidence within 30 days of receiving complete access to the required information. If the Court is not already convinced of the bases for termination of the receivership, this evidence is essential to demonstrate the need to terminate the receivership.

ALLOW DEFENDANTS TO SUPPLEMENT THE PRELIMINARY INJUNCTION RECORD

Defendants have objected to the Report and Recommendation of Magistrate Garber on the ground, *inter alia*, that the Report does not contain an accurate assessment of the viability of Mutual Benefits Corp. as of May 4, 2004. *See* Defendants' and Relief Defendants' Objections to

Preliminary Injunction Report and Recommendation at pp. 7-9. The SEC offered no evidence to the Court concerning the financial condition of Mutual Benefits Corp other than the amounts of funds held in various accounts and some very speculative evidence about the cost of future premiums. The SEC did not even attempt to prove that investors in viatical policies sold by Mutual Benefits Corp. suffered any losses.

Unless the Court is immediately prepared to dissolve the temporary restraining order and deny the motion for preliminary injunction, the Defendants request permission pursuant to 28 U.S.C. § 636(b) (1) to supplement the record of the hearing on the preliminary injunction to present evidence concerning the financial condition of Mutual Benefits Corp. as of May 4, 2004, and as to its current financial condition, including the value of its insurance portfolio and the cost of future premiums.

THE *EX PARTE* ASSET FREEZE MUST BE DISSOLVED

The asset freeze order issued *ex parte* by this Court on May 4, 2004, contains no provision for its automatic termination within ten (10) days as required by Rule 65(b), and has been in effect continuously for more than eight months. It is a *de facto* preliminary injunction and has operated as such. Close scrutiny of the evidence offered by the SEC at the hearings conducted before Magistrate Judge Garber in June and July 2004, demonstrates that the SEC has failed to offer any proof of investor losses which justifies the imposition of a freeze of virtually all assets of the defendants and relief defendants for an indeterminate period of time.

One of the principal purposes for an asset freeze is to preserve funds that are subject to disgorgement. *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990). However, due process concerns, particularly in a case involving an *ex parte* order, require that the scope and length of the freeze be limited. The freeze may not be imposed "for whatever period of time the

Commission may take to prepare for trial." *Id.* at 1042-1043. Here the *ex parte* asset freeze has been in effect for more than eight months and a trial on the merits is no where in sight. Where the SEC has offered no evidence of loss to investors to support a disgorgement claim, an eight month *ex parte* asset freeze violates due process of law and must be terminated.

THE *EX PARTE* TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION MUST BE DISSOLVED

Defendants and relief defendants continue to oppose the temporary restraining order and the issuance of a preliminary injunction, but will not reargue their bases for opposition in this document. The ex parte temporary restraining order violates due process of law and the SEC has not met its burden for the issuance of a preliminary injunction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to the parties on the attached Service List, this 28th day of January, 2005.

Respectfully submitted,

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