

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., et al.,

Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.

**RECEIVER'S MOTION TO APPROVE ENGAGEMENT OF
LIFE SETTLEMENT INSIGHTS, LLC TO CONDUCT
AUCTIONS OF "UNDERSUBSCRIBED KEEP POLICIES"**

EXPEDITED RELIEF REQUESTED

The Receiver respectfully requests that the Court grant the relief requested herein on an expedited basis in that the Receiver's authority to conduct sales of "Undersubscribed Keep Policies" has already been confirmed by prior order of this Court and the engagement proposed herein is in furtherance of that authority.

Roberto Martínez, court-appointed receiver ("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"), moves to authorize the engagement of Life Settlement Insights, LLC ("LSI") to conduct auctions of certain policies which were designated to be kept by the investors through the disposition process, but for which the investors have not paid the required premiums ("Undersubscribed Keep Policies").

In support, the Receiver states:

1. On May 3, 2004 the Securities and Exchange Commission ("SEC") filed an action seeking entry of a temporary restraining order, preliminary injunction, permanent injunction and other relief with respect to the Receivership Entities (DE#1). On May 4, 2004, the Court entered a Temporary Restraining Order and Other Emergency Relief (DE#25), and entered an Order Appointing Receiver (DE#26). On February 14, 2005 this Court entered its Order Granting Motion for Preliminary Injunction (DE#711), sustaining the Report and Recommendation of Judge Garber dated November 10, 2004 (DE#522), as supplemented on November 16, 2004 (DE#529).

2. The Order Appointing Receiver (DE#26) authorizes and directs the Receiver to "take immediate possession of all MBC, VBLLC and VSI property, assets and estate, and all other property of MBC, VBLLC and VSI of every kind whatsoever and wheresoever located belonging to or in the possession of MBC, VBLLC and VSI," and further authorizes and directs the Receiver to "administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court." The Order provides that "[t]itle to all property, real or personal, all contracts, rights of action and all books and records of MBC, VBLLC and VSI and their principals, wherever located within or without this state, is vested by operation of law in the Receiver." It further authorizes the Receiver to "make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging the Receiver's duties. ..."

3. On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds (DE#1339)(the "Disposition Order"). On November 22, 2005, the Court entered its Order Clarifying Disposition Order and Approving Form of Notice (DE#1474) (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 an interest, 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.

4. In accordance with the process directed by the Disposition Order and Clarification Order, more than 3,000 policies with an aggregate face value in excess of \$1 billion were designated to be "kept" ("Keep Policies"). For Keep Policies, the investors in each such policy 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 is 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 WILL RESULT IN FORFEITURE OF YOUR POLICY INTEREST").

5. If the investors in a Keep Policy fail to fully fund the required premium amounts after notice of a shortfall, the Disposition Order directs the Receiver to attempt to sell the non-paying investor's interest to other investors in the policy, to attempt to reduce the face value of the policy, or to attempt to sell the policy. The Notice to Investors provided in connection with the Disposition Order advised that if a policy cannot be sold, "it could be surrendered, and you could lose your entire investment."

6. VSI has implemented the billing process with respect to Keep Policies. The initial billing for VSI's administrative fees were issued before premium billings were issued, and all

investors in Keep Policies who voted to sell were given an opportunity to retain their interests by paying the fees and any subsequent premiums due. Investors who failed to pay the administrative fees were removed from the policy and interests reallocated. The "investor-to-investor" sales process has also been completed with respect to the Keep Policies, wherein the Receiver attempted to facilitate the sale of interests of investors who were not interested in keeping the policy to investors who had indicated a willingness to purchase such interests. For many policies, the billing process has already completed the initial round of billing all investors for their prorated share of the premium obligations, as well as the second round of billing in which those investors who did pay such obligations are given the opportunity to make up any shortfall resulting from non-paying investors in the policy.

7. Once all of those steps are completed, if there are still insufficient funds to pay all premiums, then the policy is at risk of lapsing and the Receiver has been directed to attempt to reduce the face value of the policy (an option only generally available if the policy is a universal policy, and even then may be limited to certain amounts for which the available premium funds are insufficient) or to attempt to sell the policy, surrender the policy or allow it to lapse.

8. During the initial billing cycle, in some instances, the premium payment will be due to the insurance company during or very shortly after the billing cycle described above has been completed. In such instances, if there is any significant delay after determining that a policy is an Undersubscribed Keep Policy, the Receiver may either lose the opportunity to sell the policy, or be required to use receivership funds to pay the premium until there is an opportunity to sell the policy. There is no assurance that the Receiver will be able to recover any receivership funds expended for such premiums from the sale proceeds.

9. On September 14, 2007, the Receiver filed his Emergency Motion to Authorize Dispositions of "Undersubscribed Keep Policies," seeking authority to dispose of Undersubscribed Keep Policies by a variety of methods, including (1) sales of particular Undersubscribed Keep Policies, or groups of such policies, to certain third parties who have expressed an interest in purchasing policies from the Receivership, through an abbreviated auction process (as described further below); and (2) sales of the fractional interest in an Undersubscribed Keep Policy, or groups of such interests, for which the premium obligation has not been funded to said third parties, again through an abbreviated auction process which would require the purchaser to fund the "shortfall" amount with respect to the policy plus some additional amount in consideration for the purchase of the interest in the policy.

10. On September 26, 2007 the Court entered its Order Granting Receiver's Emergency Motion to Authorize Dispositions of "Undersubscribed Keep Policies," which confirmed and ratified the Receiver's authority to dispose of the Undersubscribed Keep Policies through an auction process or otherwise.

11. Consistent with the authority granted by the Court's September 26, 2007 Order, the Receiver has negotiated an agreement with LSI to conduct on-line auctions of Undersubscribed Keep Policies. A copy of the proposed Engagement Agreement with LSI is attached hereto as Exhibit "A". In summary, the Engagement Agreement provides:

- For LSI to conduct internet-based online auctions of Undersubscribed Keep Policies as designated by the Receiver, consistently with rules to be developed by LSI in consultation with the Receiver;

- For LSI to assist in the identification of potential purchasers, subject to

satisfaction of qualifications to be established by LSI and the Receiver;

- For LSI to customize its online auction platform for registering potential purchasers, setting up purchaser accounts, training potential purchasers, launching and conducting online auctions, identifying winning bidders, and providing such information to the Receiver.

12. As compensation for the services to be provided by LSI, LSI shall receive a broker fee equal to seven percent (7%) of the "Value Created" (or 8% in the event that LSI institutes a national advertising campaign with respect to such auction). The "Value Created" is based upon the amount by which the purchase price exceeds the cash surrender value of the policy. Such compensation is payable only upon the Receiver's receipt of the sale proceeds for the policy.

13. Although not specified in the Engagement Agreement, the Receiver and LSI have further agreed that the terms and conditions of the Engagement Agreement shall also apply to any "traditional" auctions which the Receiver and LSI agree shall be conducted by LSI for Undersubscribed Keep Policies.

14. The Receiver has investigated the options available for conducting online auctions of the Undersubscribed Keep Policies and believes, in the exercise of his business judgment, that the proposal made by LSI and the terms thereof, as contained in the Engagement Agreement, are reasonable and represent an appropriate and responsible method of attempting to dispose of the Undersubscribed Keep Policies.

15. By virtue of the September 26, 2007 Order, the proposed disposition of the Undersubscribed Keep Policies and the methods thereof have already been approved by this Court. Accordingly, the only additional relief sought here is for the Court to approve the proposed terms of engagement of LSI.

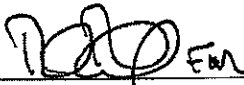
16. As noted in the Receiver's September 14, 2007 Motion, it is clear that the Receiver of a company that was engaged in the viatical business may properly sell the interests in those Policies where in the best interests of the Receivership estate and investors. *See, e.g., Davis v. LifeTime Capital, Inc.*, 2006 WL 1580211 (S.D. Ohio 2006) (describing approval of bidding and sale procedures for receiver's sale of viatical policies); *Quilling v. Trade Partners, Inc.*, 2006 WL 1134227 (W.D. Mich. 2006) (same). The sale procedures proposed by the Receiver with respect to the sale of the Undersubscribed Keep Policies are designed to maximize the value of the Receivership's assets in the face of the timing constraints presented by the Undersubscribed Keep Policies, which is the appropriate goal of any such procedure. *In re Integrated Resources, Inc.*, 147 B.R. 650 (S.D.N.Y. 1992).

17. The relief sought in this Motion does not resolve how the proceeds of any Undersubscribed Keep Policies should be disposed of, which will be the subject of a claims procedure to be approved by the Court pursuant to separate motion and order.

WHEREFORE, the Receiver respectfully requests that the Court approve the Receiver's proposed engagement of LSI to conduct auctions of Undersubscribed Keep Policies pursuant to the terms and conditions of the Engagement Agreement attached hereto as Exhibit "A", as further extended by the agreement of the parties as described in Paragraph 13 of this Motion, and to allow the Receiver to compensate LSI in accordance with the terms of the Agreement without further order of the Court.


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 15, 2008.

By:  _____
David L. Rosendorf

SERVICE LIST OF RECEIVER
Case No.: 04-60573 CIV-Moreno

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Life Settlement Broker Services Engagement Agreement
(Sale of Undersubscribed Keep Policies by Online Auction)

This Agreement is made and entered into as of the Effective Date by and between Mr. Roberto Martinez in his capacity as court-appointed receiver of Mutual Benefits Corporation, Viatical Services, Inc. and others in the case entitled SEC v. Mutual Benefits Corp., et al, Case No. 04-60573-CIV-MORENO/SIMONTON pending in the United States District Court, Southern District of Florida (the "Receiver") and Life Settlement Insights, LLC and its Corporate Affiliates (collectively "LSI").

WHEREAS, the Receiver, with the ongoing assistance of Viatical Services, Inc. ("VSP") is responsible for the administration of life insurance policies for which premiums are paid by investors therein ("Keep Policies");

WHEREAS, in the event that Keep Policies are not fully funded by investors, Receiver has the authority to dispose of such policies;

WHEREAS, Receiver wishes to engage LSI to broker the sale of Keep Policies to buyers in the secondary market for life insurance policies through the use of LSI's proprietary technologies;

Now therefore, in consideration of the mutual covenants herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. Definitions

As used in this Agreement, the following capitalized terms have the meaning given to them below:

- a. "Corporate Affiliates" means any company owned by, or under common ownership with, LSI.
- b. "Effective Date" means the date the last signatory executes and binds the parties to this Agreement.
- c. "Value Created" means the difference between the gross settlement offer and the cash surrender value of a Keep Policy.

3. Duties, Representations and Warranties of LSI

- a. LSI represents that it is duly organized, validly existing and in good standing under the laws of the state of its organization with all requisite power and authority to carry on the business as presently conducted by it and as contemplated by this Agreement. LSI has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, which shall upon execution and delivery constitute a legal, valid and binding obligation of LSI.



b. LSI shall, in consultation with Receiver and VSI, use best efforts to assemble a group of qualified buyers to participate in online auctions for Keep Policies or from which to otherwise obtain offers for such policies. LSI shall take such steps as LSI determines are reasonably necessary to generate interest among potential buyers in acquiring Keep Policies including, but not limited to, national advertising campaigns.

c. Online auctions for Keep Policies shall be conducted in accordance with rules to be developed by LSI in consultation with Receiver and VSI. Receiver agrees that it and VSI shall adhere to all rules so developed.

d. LSI's responsibilities shall include the following, in consultation with the Receiver: customizing an interface for its online auction platform for the sale of Keep Policies; customizing an online registration process; processing buyer registrations; setting up buyer accounts; training approved buyers to use the auction system; loading policy information into the online auction platform; launching bidding events; processing buyer inquiries in real-time; supporting online auctions; determining winning bidders in accordance with online auction rules; and providing the Receiver with winning bidder contact information.

e. LSI makes no representations and warranties concerning the performance of the online auction platform. Receiver agrees that access to the online auction platform shall be limited to those duly authorized to act on Receiver's behalf. During the course of any such auction, LSI shall be entitled to rely upon any submission or any other communication made using Receiver or VSI's user ID or password or otherwise appearing to emanate from Receiver or VSI.

f. LSI maintains its online auction platform solely to facilitate the communication of offers for the sale of life insurance policies. LSI provides no advice or representation to any party participating in any such auction. LSI assumes no responsibility for any negligent, fraudulent, or otherwise wrongful conduct on the part of any buyer participating in the auction. Receiver agrees and acknowledges that offers for the purchase of any Keep Policy will only be obtained from the buyer group assembled at the time such policy is submitted to LSI for disposition and that the best offer made by any buyer in the group represents the best price available for such policy. Receiver further understands and agrees that LSI is not responsible for any bids or offers not honored or accepted by a buyer and no such bid or offer made by a buyer for a Keep Policy is not a bid or offer made by LSI. Receiver hereby releases LSI from any liability with respect to any such auction regardless of whether such liability arises under contract, tort or any other theory.

g. LSI agrees that it shall, consistent with the terms of this Agreement, solicit offers through its online auction platform for the purchase of such Keep Policies as the Receiver requests that LSI make available for purchase through LSI's online auction platform.

4. Duties, Representations and Warranties of Receiver

- a. Receiver agrees to complete and execute all documents, and to perform such further tasks and undertakings, as may be necessary in the course of the disposition of a Keep Policy including, but not limited to, the validation of information pertaining to a policy or such other tasks or undertakings as may be required to comply with a buyer's closing procedures.
- b. Receiver agrees to perform such other duties as mutually agreed to in writing by the parties.
- c. Receiver represents and warrants that:
 - i. Upon approval of this Agreement by the United States District Court for the Southern District of Florida, Receiver has obtained all necessary authority from such Court to enter into this Agreement; and
 - ii. Receiver has the full and exclusive legal authority to dispose of Keep Policies in the event that they are not fully funded by investors and Receiver agrees that it shall not submit to LSI for disposition any Keep Policies unless Receiver is fully and exclusively authorized to do so.

5. Fees for Services

Upon the sale of any Keep Policy, Receiver agrees to pay LSI from the sale proceeds received for such policy, a broker fee equal to seven percent (7%) of the Value Created. If LSI has, at or prior to the time that bids were solicited for the policy, conducted a national advertising campaign to generate interest among potential buyers in acquiring Keep Policies, then Receiver agrees that LSI's fee shall be eight percent (8%) of Value Created. Receiver shall pay LSI the applicable broker fee for the sale of a Keep Policy within thirty (30) days of its receipt of the sale proceeds for such policy.

6. Confidentiality

As used in this section, the term "Confidential Information" shall mean: (a) information regarding a party's business including its financial condition, information systems, plans and strategies, products or services, policy valuation techniques, clients, marketing plans, and business methods and techniques including, but not limited to, such party's trade secrets; (b) any and all designs, ideas, concepts and technology embodied therein; and (c) information that is marked "confidential", "proprietary" or in like words, or that is summarized in writing as being confidential prior to, or promptly after, disclosure to the other party. A party receiving Confidential Information ("Recipient") shall hold such information in confidence and will safeguard it in at least the same manner as a prudent business person would safeguard his or her own confidential information of a similar

nature. Recipient shall not, and shall not permit any of its advisors, administrators, representatives, agents or any other person acting on behalf of Recipient (collectively "Representatives") to, directly or indirectly, report, publish, distribute, disclose or otherwise disseminate the Confidential Information, or any portion thereof, to any third party. The Recipient shall not use, or permit any of its Representatives to use, Confidential Information, or any portion thereof, for the benefit of itself, its Representatives, or any third party, or for any purpose, except as necessary to carry out Recipient's duties and obligations under this Agreement. If the Recipient or any Representative attempts to use or disclose any Confidential Information in contravention of this Agreement, then, in addition to other available remedies, the disclosing party shall have the right to injunctive relief enjoining any such attempt, it being acknowledged that legal remedies are inadequate. Upon request of the other party, each party shall immediately return or destroy all such Confidential Information in its possession. These terms survive the termination of this Agreement. LSI acknowledges that information provided in connection with the Keep Policies is of a highly personal nature, and that it shall comply in all material respects with all privacy, confidentiality and other similar laws and regulations governing the use and disclosure of such information and all other information relating to the policies or any insured thereunder.

7. General Provisions

Neither party is to be considered a partner, joint venturer, employer or employee of the other party for any purpose. Any term in this Agreement which is unenforceable or illegal shall be severed from the Agreement and shall not affect the enforceability of other terms of the Agreement. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by the parties hereto. No waiver of any right or power hereunder, at one or more times, shall be deemed a waiver or relinquishment of such right or power at any other time or times. Except as otherwise expressly provided herein, this Agreement contains the entire agreement between the parties with respect to the subject matters contemplated herein and supersedes all prior oral and written discussions, agreements and arrangements concerning such subject matters. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of Florida, without reference to its conflicts of laws, rules, or choice of laws principles. This Agreement shall be binding on and inure to the benefit of the parties and their respective permitted assigns, and successors. Neither party shall assign or transfer this Agreement, or any of the rights created hereunder, to any other person or entity, or, except as otherwise expressly provided in this Agreement, delegate to any other person or entity the performance of such party's duties, covenants or obligations created hereunder without the other party's prior written consent, which consent shall not be unreasonably withheld. Nothing herein shall prevent the assignment of this Agreement and any of the rights of LSI created hereunder to any person or entity that acquires control of LSI or all or any significant portion of LSI's assets.

8. Termination

This Agreement may be terminated by either party upon 30 days' written prior notice to the other party, provided however, that absent a termination by the Receiver for good cause, LSI shall be authorized to complete the auctions of any policies provided to LSI for sale prior to the effective date of termination and shall be entitled to be compensated for such sales in accordance with the terms of this Agreement.

Notwithstanding the foregoing, the Receiver agrees that absent a termination by the Receiver for good cause, the Receiver shall provide LSI with 120 days' written notice before engaging any other party to provide online auction services for the sale of Keep Policies.

9. Further Agreement

This Agreement may be amended to address brokering services related to the sale of individual investor interests in Keep Policies. Sales of such interests, if any, shall commence and be conducted in accordance with the terms of any such amendment and related court orders.

In Witness Whereof, the parties have executed this Agreement and are bound hereby.

Receiver:

Date

Life Settlement Insights:



I. James Caroi, CEO

Printed Name and Title

Dec 19, 2007

Date