UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04 60573 CIV MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff.

MUTUAL BENEFITS CORP., et al.,

Defendants.

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.

RECEIVER'S MOTION TO APPROVE SALE OF POLICY AND INCORPORATED MEMORANDUM OF LAW (POLICY AP# 99-0007778)

(PEDITED RELIEF REQUESTED)

The Receiver requests that the Court consider this Motion on an expedited basis because (1) the Asset Purchase Agreement will expire if a Sale Order is not entered within 30 days (which will expire on April 7, 2008); and (2) the continued maintenance of the Policy which is the subject of this Motion costs approximately \$60,000 per month.

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 for this court to approve the proposed sale of a certain insurance policy issued by New York Life Insurance and Annuity Corporation (designated by MBC as Policy AP# 99-0007778 and which has a policy number from the issuing insurance company ending in digits "4487") and all related rights, including beneficial interests (the "Policy"), free and clear of all liens, claims, interests and encumbrances, to Silver Point Capital Fund, L.P. ("Silver Point" or "Buyer") for a total of \$8,850,000 (subject to adjustment pursuant to the terms of the Purchase Agreement, as defined below). In support, the Receiver states:

BACKGROUND

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).

THE RECEIVERSHIP ORDER

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. ..."

THE DISPOSITION ORDER

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 These Orders collectively directed that investors be provided an "Clarification Order"). 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.

In accordance with these Orders, voting on each of the policies was conducted, the result of which is that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the "Salable Policies").

THE POLICY AND PRIOR SALE EFFORTS

The Policy which is the subject of this Motion is a universal life insurance policy issued by New York Life Insurance and Annuity Corporation (the "Provider") having a stated face amount of \$50,000,000. The policy is referred to internally by the Receiver as AP# 99-0007778.

On May 21, 2007 the Receiver initiated the sale process for certain of the remaining Salable Policies (a group sometimes referred to as "Bid 2") by sending out a letter soliciting bids for four additional portfolios (each, a "Portfolio") of Salable Policies (the "Bid 2 Policies"), together with a description of the bidding procedures ("Bidding Procedures") to be followed by the Receiver with respect to those Salable Policies. The letter was sent to approximately fifty parties who had expressed an interest in purchasing policies from the Receivership or who were otherwise known to the Receiver to be potentially interested in such purchases. The Mutual Benefits case and potential availability of policies for purchase is well known to interested parties who are potentially in the market for purchase of viaticated policies, including through the advertisement of the prior auction, and the Receiver believes that further marketing was unnecessary in the circumstances.

The four Portfolios in the aggregate consisted of 1,949 Bid 2 Policies issued by various insurance companies or, in the case of group policies, employers, with a total face value of \$241,218,185. The Portfolios included policies that insure the lives of both HIV viators and non-HIV viators, or life settlements.

In order to maximize the value to be realized for the Bid 2 Policies, the Bidding Procedures provided an opportunity for qualified bidders to submit an initial qualifying bid for each or any of the Portfolios, and if multiple qualifying bids were received for any of the Portfolios, for an auction to be conducted in order to determine the highest and best bid for such Portfolio. To be considered as a potential bidder, a party was required to provide: (1) an affidavit of non-affiliation with the Receivership Entities; (2) a confidentiality agreement with respect to information on the policies to be disclosed during due diligence; and (3) proof of financial capability to close the transaction to the Receiver's satisfaction. Parties who satisfied these requirements were provided with due diligence information in computerized form, and an opportunity to conduct on-site file review. Seven entities satisfied the initial qualifications to be considered as potential bidders.

The Bidding Procedures required that all initial bids for any of the Portfolios be submitted by June 18, 2007, and that such bids be accompanied by a deposit in the amount of \$100,000. In addition, each bid was required to be in the form of an asset purchase agreement prepared by the Receiver. If more than one qualified bid was submitted for a particular Portfolio, then the Bidding Procedures provided for the Receiver to conduct an auction on June 22, 2007.

¹ Information on the identity of viators was still redacted from the materials provided to potential bidders.

The Bidding Procedures further provided that upon the conclusion of the auction, the Receiver could (a) determine, in his business judgment, which bid, if any, was the highest bid; and (b) reject, at any time before the entry of a sale order, any bid that (i) was inadequate or insufficient; (ii) was not in conformity with the Bidding Procedures, any order of the Court, or the terms and conditions of the Receiver's asset purchase agreement; or (iii) was contrary to the best interests of the Receiver. If the Receiver advised a bidder that its bid was selected as the "Highest Bid" or "Backup Bid", then such bidder was required to make a deposit equal to 10% of the proposed purchase price within one business day thereafter.

The Policy was one of six (6) policies which had been included in "Portfolio #3" in the prior auction. The six policies that comprised Portfolio #3, including the Policy, had an aggregate face amount of \$64,547,500.00. The Receiver received five qualified bids on Portfolio #3, with a high bid of \$1,500,000. After conducting an auction, the highest qualifying bid submitted for Portfolio #3 was \$4,600,000, submitted by Credit Suisse Securities (Europe) Limited.

After considering the foregoing bids, the Receiver, in the exercise of his business judgment, determined that the Highest Bids submitted on Portfolios #1, 2, and 4 were in the best interests of the Receivership and that the purchase and sale of such Portfolios to Silver Point Capital Fund, L.P. as the party having submitted such Highest Bids, in accordance with the terms of the respective purchase agreements should be approved. Those bids were the subject of a prior motion and order entered by this Court (CP#1924, 1965), and the sale of Portfolios #1, 2 and 4 has been closed.

The Receiver determined that the Highest Bid submitted on Portfolio #3 did not represent sufficient value for that Portfolio and accordingly elected, in his business judgment, not to seek

approval of a sale of Portfolio #3 at that time. All participants in the auction were advised that they could submit higher offers to the Receiver for Portfolio #3 or any of the individual policies therein, and that the Receiver would consider all such offers submitted. The Receiver also recommenced efforts to identify additional potential buyers for the Portfolio #3 policies. Every interested party was advised to submit their highest and best offer to the Receiver, and that the highest and best offer which the Receiver determined represented adequate value for Portfolio #3 or any policy therein would be presented for approval to the Court.

Thereafter, a number of parties contacted the Receiver and made offers for the purchase of certain of the Portfolio #3 policies, including the Policy. The highest and best offer submitted for the Policy was the offer submitted by Silver Point which is the subject of this Motion. The Silver Point purchase offer provides substantially greater consideration than any other offer received with respect to the Policy, and in the business judgment of the Receiver represents appropriate value for the Policy.

THE PURCHASE AGREEMENT

A copy of the Purchase Agreement (without certain attachments) for the proposed sale of the Policy is attached to this Motion as Exhibit "A" (the "Purchase Agreement"). The Purchase Agreement is substantially similar in form to the purchase agreements which were approved by this Court in connection with the sale of Portfolios #1, 2 and 4. Like those purchase agreements, and without intending to paraphrase the entirety of the Purchase Agreement and subject in all respects to the terms and conditions set forth in the Purchase Agreement, some of the key material terms are as follows:

The Buyer is acquiring all right, title and interest in and to the title together with the beneficial interests in the Policy, together with all files, books and records associated therewith (but excluding any records relating to any investors in the Policy), all death benefits and other amounts payable in respect of the Policy after the closing date, and all rights of recourse or recovery relating to the Policy (the "Acquired Assets," as defined with more specificity in the Purchase Agreement);

- If the Policy matures on or prior to the first business day following the entry of Sale Order (as defined below) by this Court, there is a mechanism for terminating the sale:
- At closing, the Buyer assumes all obligations to pay premiums with respect to the Policy arising from and after the first business day following the entry of the Sale Order by this Court;
- At closing, the purchase price shall be adjusted to include an additional amount equal to all prepaid premiums, expenses and charges with respect to the Policy paid by the Receiver for coverage periods after the first business day following the entry of the Sale Order by this Court;
- The Policy is to be sold "as is, where is," without any recourse against the Receiver or the Receivership Entities, and without any representations or warranties except as expressly set forth in the Purchase Agreement; and
- The closing shall occur on the second business day after all conditions to closing have been satisfied or waived.

Two notable differences in this Purchase Agreement, as compared to prior ones approved by the Court, are as follows:

- The purchase price is to be delivered to the trust account of Receiver's counsel at (or prior to) closing, and is to be released when the Provider has accepted and recorded on its books and records the Buyer or its assignee or designee as the sole owner and beneficiary of the Policy.
- The Receiver is required to reimburse the Buyer for its reasonably incurred outof-pocket costs and expenses (not to exceed \$100,000) if the Purchase Agreement is terminated due to a material breach by the Receiver or due to the Policy maturing.

SALE ORDER TERMS

The terms of the Purchase Agreement contemplate the entry of a sale order (the "Sale Order") which approves and authorizes the Receiver to sell and assign the Policy and other Acquired Assets to Buyer in accordance with the Purchase Agreement, and which includes, without limitation, the following findings of fact and conclusions of law:

- Based on the record presented to the Court and all pleadings in the Receivership Proceeding and arguments by counsel and evidence and/or proffers presented and accepted, the Buyer has acted in good faith and is a good faith purchaser of the Acquired Assets;
- The Receiver has the sole and absolute authority, on behalf of the Receivership Entities, to convey all claims, options, privileges, right, title and interest in, to and under the Acquired Assets;
- The sale of the Acquired Assets in accordance with the terms of the Purchase Agreement is approved and Buyer and the Receiver are directed to consummate all of the transactions contemplated thereby;
- At the closing, Buyer will be vested with all claims, options, privileges, right, title
 and interest in, to and under the Acquired Assets, free and clear of all
 Encumbrances (as defined in the Purchase Agreements);
- Buyer and any subsequent owner of the Policy (i) are deemed to be designees of Horizon Life Solutions Inc. under that certain Authorization for Release and Use of Medical and/or Insurance Information that was executed by the insured under the Policy on July 24, 2003, and (ii) shall have the right to from time to time obtain updated medical information from time to time regarding the insured/viator under the Policy including (a) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of the Sale Order and a written request by Buyer or any subsequent owner of the Policy shall be authorized and compelled to immediately release copies to Buyer or any subsequent owner of the Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under the Policy so requested by Buyer or such subsequent owner thereof, as the case may be, for the purpose of monitoring health and predicting life expectancy, and (b) the insured/viator under the Policy being required to provide Buyer and any subsequent owner of the Policy with contact information for the insured/viator, Health Insurance Portability Accountability Act of 1996 compliant medical authorizations, contact information for all physicians or other medical providers who have treated the insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured's/viator's health and medical condition, and Buyer or any subsequent owner of the Policy shall be entitled to seek enforcement of this provision as to any person; and
- The sale of the Acquired Assets is not precluded by or contrary to any prior order issued by the Court and no further consents by any person (including any governmental authority) are required to convey the Acquired Assets to Buyer in accordance with the Purchase Agreement.

A copy of the proposed Sale Order is attached as Exhibit "B."

NOTICE

Simultaneously with the filing of this Motion, the Receiver has sent notice of the proposed sale described herein, including (a) that the Policy is being sold to Buyer free and clear of all Encumbrances (including any beneficial interests), and (b) that following the closing, Buyer and each subsequent owner of the Policy will have the right to effect a change in the named owners and beneficiaries of the Policy (including any irrevocable beneficiaries), to the Provider, and to all Mutual Benefits investors with respect to the Policy. The form of notice is attached hereto as Exhibit "C."

LEGAL AUTHORITY

By virtue of this Court's Disposition Order, the Receiver has been authorized and directed to sell Policies which have been designated for sale in accordance with the election process directed by this Court. Accordingly, the sale contemplated by this Motion has already been authorized by the Court. It is clear that the Receiver of a company 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 implemented by the Receiver with respect to the sale of the Policy were designed to maximize the value of the Receivership's assets, which is the appropriate goal of any such procedure. In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

The Receiver respectfully submits that the sale process implemented for the Policy was reasonable and appropriate and served to foster participation in the sale process, that the offer made by Silver Point with respect to the Policy is the highest and best offer that the Receiver has received for the purchase of the Policy, and that the sale of the Policy to Silver Point in

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9

accordance with the terms of the Purchase Agreement is in the best interests of the Receivership estate and constitutes the best way to maximize the value of the Policy, and accordingly requests that the sale of the Policy to Silver Point be approved.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court enter an Order in the form of the attached Exhibit "B": (1) approving the form and method of notice of the proposed sale as described herein; and (2) approving the sale of the Policy and other Acquired Assets to Silver Point in accordance with the Purchase Agreement.

Respectfully submitted,

COLSON HICKS EIDSON Co-Counsel for the Receiver 255 Aragon Avenue, Second Floor Coral Gables, Florida 33134 Telephone (305) 476-7400 Facsimile (305) 476-7444 E-mail: curt@colson.com

FL Bar No. 0885681

- and -

KOZYAK TROPIN & THROCKMORTON, P.A. Co-Counsel for the Receiver 2525 Ponce de Leon, 9th Floor Coral Gables, Florida 33134 Tel. (305) 372-1800

(305) 372-2508 Fax.

> David L Rosendorf FL Bar No. 996823

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 March 1, 2008.

Ву: ___

David L. Rosendorf

SERVICE LIST OF RECEIVER

Case No.: 04-60573 CIV-Moreno

	WEA ELECTRONIC MAIL	
Alise Meredith Johnson, Esq. Linda Schmidt, Esq. Securities & Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 Fax: (305) 536-4154 E-mail: johnsona@sec.gov schmidtls@sec.gov almonti@sec.gov Counsel for Securities & Exchange Commission	Michael A. Hanzman, Esq. Kenvin Love, Esq. Hanzman Criden & Love, P.A. 7301 SW 57th Court, Suite 515 South Miami, Florida 33143 Fax: (305) 357-9050 E-mail: nhanzman@hanzmancriden.com kiove@hanzmancriden.com Counsel for Scheck Investments LP, et al.	Brian J. Stack, Esq. Stack Fernandez Anderson & Harris, P.A. 1200 Brickell Avenue, Suite 950 Miami, FL 33131-3255 Fax: (305) 371-0002 E-mail: <u>bstack@stackfernandez.com</u> Counsel for Traded Life Policies Ltd.
David L. Rosendorf Eso. Kozyak Tropin & Throckmorton 2525 Ponce de Leon, Suite 900 Coral Gables, Florida 33134 Fax: (305) 372-3508 E-mail: dlr@kttlaw.com Co-counsel for Receiver	Victor M. Diaz, Ir., Esq. Podhurst Orseck Josefsberg et al. City National Bank Building 25 West Flagler St., Suite 800 Miami, FL 33130 Fax:(305) 358-2382 E-mail: ydiaz@podhurst.com ndagher@podhurst.com Counsel for Scheck Investments LP, et al.	J. David Hopkins, Esq. Lord, Bissell & Brook LLP Suite 1900, The Prosecenium 1170 Peachtree Street, N.E. Atlanta, Georgia 30309 Fax: (404) 872-5547 E-mail: dhopkins@lordbissell.com Counsel for Traded Life Policies Ltd.
George Mahfood, Esq. Ferrell Schultz Carter & Fertel 201 South Biscayne Boulevard 34th Floor, Miami Center Miami, Florida 33131 Fax: (305) 371-5732 E-mail: gmahfood@ferrellschultz.com Coursel for Joel Steinger, Leslie Steinger, Peter Lombardi, PJL Consulting Co., Kensington Consulting Co.	Angela Daker, Esq. White & Case, LLP 4900 Wachovia Financial Center 200 S. Biscayne Boulevard Miami, Floirda 33131 Fax: (305) 358-5744 E-mail: adaker@whitecase.com Former counsel for Steven Steiner	Hilarie Bass, Esq. Jacqueline Becerra, Esq. Greenberg Traurig P.A. 1221 Brickell Avenue Miami, Florida 33131 Fax: (305) 579-0717 E-mail: becerrai@gdaw.com bassh@gtlaw.com Counsel for Union Planters Bank, N.A
Robert C. Gilbert, Esq. 220 Alhambra Circle, Suite 400 Coral Gables, FL 33134-5174 Fax: (305) 529-1612 E-mail: rgilblaw@aol.com Special Counsel for Scheck Investments LP, et al.	Edward M. Mullins, Esq. Daniella Friedman, Esq. Astigarraga Davis Mullins & Grossman, P.A. 701 Brickell Ave., 16 th Floor Miami, FL 33131 Fax: (305) 372-8202 E-mail: emullins@astidavis.com dfriedman@astidavis.com Co-counsel for Life Settlement Holding, A.G.	David Levine, Esq. Jeffrey Schneider, Esq. Tew Cardenas LLP The Four Seasons Tower, 15th Floor 1441 Brickell Avenue Miami, FL 33131 Fax: (305) 536-1116 E-mail: ics@tewlaw.com dml@tewlaw.com Counsel Patricia Cook, et al
J. Raul Cosio, Esq. Holland & Knight 701 Brickell Avenue, Suite 3000 Miami, FL 33131 Fax: (305) 789-7799 E-mail: raul.cosio@hklaw.com Counsel for Northern Trust Bank of Florida	Gary Timin, Esq. Squire Sanders & Dempsey, LLP 215 South Monroe Street, Suite 601 Tallahassee, FL 32301-1804 Fax: (850) 222-8410 E-mail: gtimin@ssd.com Counsel for Transamerica Occidental Life	Joel L. Kirschbaum, Esq. Bunnell Wolfe Kirschbaum Keller McIntyre Gregoire & Klein, PA 100 SE 3 rd Avenue, Suite 900 Fort Lauderdale, FL 33394 E-mail: extu@bunnellwoulfe.com Counsel for Diana Steinger.

Christopher J. Klein Baur & Klein, P.A. 100 N. Biscayne Blvd. 21st Floor Miami, FL 33132 Fax: (305) 371-4380 E-mail: cklein@worldwidelaw.com Co-counsel for Life Settlement Holding, A.G.	Daniel Small, Esq. Duane Morris, LLP 200 So. Biscayne Blvd., Suite 3400 Miami, FL 33131 Fax: (305) 960-2201 E-mail: dsmall@duanemorris.com Counsel for Dr. Christine Walsh, et al. (the "Investors Group")	Kenneth D. Post, Esq. Shutts & Bowen 1500 Miami Center 201 S. Biscayne Boulevard Miami, FL 33131 E-mail: kpost@shutts-law.com Counsel for William Penn Life Insurance	
Sandra M. Upegui, Esq. Shutts & Bowen, LLP 201 South Biscayne Blvd. Suite 1500 – Miami Center Miami, Florida 33131 Counsel for Instituto de Prevision Militar Inverma	Joseph A. Patella, Esq. 450 Lexington Avenue New York, New York 10017 E-mail: JosephPatella@andrewskurth.com Counsel for American Express Tax & Business Services, Inc.	J. Randolph Liebler, Esq. Liebler, Gonzalez & Porucundo, P.A. 44 West Flagler Street, 25th Floor Miami, Florida 33130 Fax: (305) 379-9626 E-mail: irl@lgplaw.com Counsel for Bank of America	
Rick Critchlow, Esq. Harry R. Schafer, Esq. Kenny Nachwalter, PA 201 South Biscayne Blvd. 1100 Miami Center Miami, Florida 33131 Fax: (305) 372-1861 Email: roritchlow@kennynachwalter.com hschafer@kennynachwalter.com Counsel for Citibank	Glenn Berger Joshua Reitzas Jaffe & Asher LLP 600 Third Avenue New York, NY 10016 E-mail: GBerger@jaffeandasher.com Counsel for American Express Travel Related Services Company, Inc.	Charles E. Ray, Esq. 887 E. Prima Vista Blvd. Port St. Lucie, FL 34952 Email: charlescray@aol.com Counsel for Aurora Bifulco	
Bruce A. Zimet Esq. 100 S.E.3rd Avenue, Suite 2612 Ft. Lauderdale, FL 33394 Fax: (954) 760-4421 E-mail: bazimetlaw@aol.com Counsel for Leslie Steinger	Wendy L. Furman, Esq. Pett, Furman & Jacobson, P.L. 2101 N.W. Corporate Boulevard Suite 316 Boca Raton, FL 33431 Fax: 994-4311 E-mail: wfurman@pfilaw.com Counsel for American United Life Insurance Co.	John H. Genovese, Esq. Genovese Joblove & Battista, P.A. 100 S.E. 2 nd Street, 36 th Floor Miami, Florida 33131 Fax: (305) 349-2310 Counsel for Great West Growth, LLC, et al.	
Craig Rasile, Esq. Hunton & Williams 1111 Brickell Avenue, Suite 2500 Miami, FL 33131 E-Mail: azaron@hunton.com crasile@hunton.com nutkowskik@whiteandwilliams.com ggitomer@mkbattomeys.com Counsel for Charitable Concepts, Inc., et al.	Eric Ellsley, Esq. Krupnick Campbell Malone Roselli et al 700 SE 3rd Ave Ste 100 Fort Lauderdale Florida 33161 E-Mail: eellsley@krupnicklaw.com Counsel for Certain Investors	Jack Dempsey, Esq. Susan Guerrieri, Esq. Drinker Biddle & Reath, LLP One Logan Square 18th & Cherry Streets Philadelphia, PA 19103 John Dempsey@dbr.com Susan.guerrieri@dbr.com Counsel for American United Life Insurance Co.	
Edward Montoya, Esq. Montoya Law Firm, PA 2600 Douglas Road Penthouse 7 Coral Gables, FL 33134 Email: emontoya@faclaw.com Attorney for the Class	David P. Hartnett, Esq. Hinshaw & Culbertson 9155 S. Dadeland Blvd., Suite 1600 Miami, FL 33156 E-mail: dhartnett@hinshawlaw.com Counsel for Connecticut General, et al.	Carla M. Barrow, Esq. Pardo, Gainsburg & Barrow, LLP One Biscayne Tower – Suite 2475 2 South Biscayne Blvd. Miami, FL 33131 Email: charrow@pgblaw.com Attorney for NAII	
Jay S. Blumenkopf, Esq. Adomo & Yoss 700 S. Federal Highway, suite 200 Boca Raton, FL 33432 E-mail: jblumenkopf@adomo.com Counsel for Allmerica Financial Life, et al.	Charles Wachter, Esq. Fowler white Boggs Banker 501 E. Kennedy Boulevard, Suite 1700 Tampa, FL 33602 B-mail: cwachter@fowlerwhite.com Counsel for John Hancock Life Ins.	Carla M. Barrow, P.A. 1395 Brickell Avenue 8th Floor Miami, FL 33129 E-Mail: carlabarrow@bellsouth.net Counsel for Claimants Maria Antonieta Mejia, et al.	

Curtis B. Miner, Esq. Colson Hicks Bidson 255 Aragon Avenue, Second Floor Coral Gables, Florida 33134 Jeffrey Rubinstein, Esq.
Rubinstein & Associates, PA
1428 Brickell Avenue
Penthouse
Miami, FL 33131
Jeffrey@RubinsteinAssociates.com
Attorneys for Claimants

ASSET PURCHASE AGREEMENT

by and between

ROBERTO MARTÍNEZ,
As the Receiver for Mutual Benefits Corp., Viatical Services, Inc.
And Viatical Benefactors, LLC,
As Seller

And

Silver Point Capital Fund, L.P., As Buyer

March 6, 2008

NYI 6458322v.8

EXHIBIT A

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT dated as of March 6, 2008 is entered into by and between Roberto Martínez, as the Receiver for Mutual Benefits Corp., a Florida corporation ("MBC"), Viatical Services, Inc., a Florida corporation ("VSI"), and Viatical Benefactors, LLC, a Delaware limited liability company ("VBLLC", and together with MBC and VSI, the "Receivership Entities") (in such capacity, "Seller"), and Silver Point Capital Fund, L.P., a Delaware limited partnership ("Buyer"). Seller, together with Buyer, may be referred to collectively as the "Parties".

RECITALS

WHEREAS, Seller is the Receiver for the Receivership Entities under Case No. 04-60573-CIV-MORENO-SIMONTON (the "Receivership Proceeding") in the United States District Court for the Southern District of Florida (the "Court"); and

WHEREAS, Seller was appointed as Receiver for the Receivership Entities pursuant to the Order Appointing Receiver entered by the Court on May 4, 2004 (the "Receivership Order"); and

WHEREAS, pursuant to the Receivership Order, Seller was authorized to take possession of all of the assets of the Receivership Entities, including the "Acquired Assets" (as defined below), and was vested with all power and authority to, among other things, administer and manage the assets and business affairs of the Receivership Entities; and

WHEREAS, pursuant to the Order on Disposition of Policies and Proceeds entered by the Court on September 14, 2005 ("<u>Disposition Order</u>"), Seller has been vested with full power and authority to sell the Acquired Assets; and

WHEREAS, pursuant to the Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies entered by the Court on January 30, 2007 ("Re-Designation Order"), Seller has been designated as the Policy Owner or Absolute Assignee and Nominal Beneficiary (as such terms are used in the Re-Designation Order) with respect to all life insurance policies administered through the Receivership Proceeding, including the Acquired Assets; and

WHEREAS, pursuant to the Order Regarding Future Administration of Certain Insurance Policies Subject to this Proceeding entered by the Court on May 1, 2007 ("Future Administration Order"), the Court has approved certain procedures applicable to specified Listed Insurers (as such term is used in the Future Administration Order) for, among other things, the re-designation of ownership and beneficial interests in certain life insurance policies issued by the Listed Insurers upon the sale of such life insurance policies by Seller; and

WHEREAS, Seller desires to, on behalf of Seller and each Receivership Entity, sell and assign to Buyer, and Buyer desires to purchase from Seller and each Receivership Entity and accept assignment from Seller and each Receivership Entity of, the Acquired Assets, all upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and in consideration of the representations, warranties and covenants contained herein, the Parties, intending to be legally bound thereby, agree as follows:

ARTICLE I DEFINITIONS

"Acquired Assets" has the meaning set forth in Section 2.1 of this Agreement.

"Agreement" means this Asset Purchase Agreement (together with all schedules and exhibits attached hereto, which are deemed a part hereof), as may be amended, modified, supplemented and/or restated from time to time in accordance with its terms.

"Assumed Liabilities" has the meaning set forth in Section 2.3 of this Agreement.

"Bill of Sale, Assignment and Assumption Agreement" means a bill of sale and instrument of assignment and assumption, in form and substance reasonably acceptable to Seller and Buyer, pursuant to which Seller assigns the Acquired Assets to Buyer and Buyer assumes the Assumed Liabilities from the Receivership Entities.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banking institutions in Miami, Florida or New York, New York are authorized or obligated by law to be closed.

"Buyer" has the meaning set forth in the preface above.

"Buyer Paid Premium Amount" means the aggregate amount of premium payments on the Policy made by Buyer, or with respect to which Buyer has reimbursed Seller for such a payment, after the Economic Transfer Date and before the date of (i) the release of the Final Purchase Price to Seller pursuant to Section 3.4 or 6.5(d), as applicable, of this Agreement or (ii) the termination of this Agreement pursuant to Section 8.1 hereof, as applicable; provided, however, for purposes of clarification, Buyer Paid Premium Amount shall not include any Prorated Premium Amount.

"Change of Ownership Forms" means, collectively, any and all forms that are required to be completed to (i) change the ownership of the Policy on the books and records of the Provider to Buyer, or to an assignee or designee thereof of which Buyer has provided Seller with notice prior to the Closing Date, and (ii) change each beneficiary of the Policy on the books and records of the Provider to Buyer, or to an assignee or designee thereof of which Buyer has provided Seller with notice prior to the Closing Date.

"Closing" has the meaning set forth in Section 3.1 of this Agreement.

"Closing Date" means the date of the Closing.

"Confidentiality Agreement" means the Confidentiality Agreement dated May 22, 2007 by and between Seller and Silver Point Capital, L.P., together with the addendum thereto among

David Rosendorf, Silver Point Capital, L.P. and Life Settlement Consulting & Management, LLC.

"Court" has the meaning set forth in the preface above.

"Deposit" has the meaning set forth in Section 2.4 of this Agreement.

"Disposition Order" has the meaning set forth in the preface above.

"Economic Transfer Date" means the first (1st) Business Day following the entry of the Sale Order by the Court.

"Encumbrance" means any lien (statutory or otherwise), claim, Liability, interest, beneficial interest, right, pledge, option, charge, hypothecation, security interest, right of first refusal, mortgage, deed of trust or other encumbrance of any kind or any right or interest of any party.

"Excluded Asset" has the meaning set forth in Section 2.2 of this Agreement.

"Final Purchase Price" means the sum of (i) the Purchase Price and (ii) the Prorated Premium Amount, if any.

"Future Administration Order" has the meaning set forth in the preface above.

"<u>Liabilities</u>" means any and all debts, indebtedness, losses, claims, damages, costs, expenses, demands, fines, judgments, penalties, liabilities, commitments, sales commissions, contracts, responsibilities and obligations of any kind or nature whatsoever, direct or indirect, absolute or contingent, known or unknown, fixed or unfixed, due or to become due.

"MBC" has the meaning set forth in the preface above.

"Parties" has the meaning set forth in the preface above.

"Person" means any individual, partnership, joint venture, association, corporation, business trust, limited liability company, trust, proprietorship, unincorporated association, instrumentality, business organization, enterprise, joint stock company, estate, governmental authority or other entity.

"Policy" has the meaning set forth in Section 2.1(a) of this Agreement.

"Prorated Premium Amount" shall mean the amount of all prepaid premiums, expenses and charges with respect to the Policy which were actually paid by Seller on the Policy prior to the Closing Date for coverage periods after the Economic Transfer Date.

"Provider" means New York Life Insurance and Annuity Corporation.

"Purchase Price" has the meaning set forth in Section 2.4 of this Agreement.

"Purchase Price Adjustments" has the meaning set forth in Section 2.5 of this Agreement.

- "Receiver's Counsel" means Kozyak, Tropin & Throckmorton, P.A.
- "Receivership Entities" has the meaning set forth in the preface above.
- "Receivership Order" has the meaning set forth in the preface above.
- "Receivership Proceeding" has the meaning set forth in the preface above.
- "Re-Designation Order" has the meaning set forth in the preface above.
- "Sale Motion" has the meaning set forth in Section 6.2 of this Agreement.
- "Sale Order" means an order of the Court approving and authorizing Seller to sell and assign the Acquired Assets to Buyer in accordance with the terms of this Agreement.
 - "Seller" has the meaning set forth in the preface above.

"Taxes" means any federal, state, local or foreign net or gross income, minimum, alternative minimum, sales, value added, use, excise, franchise, real or personal property, transfer, conveyance, environmental, gross receipts, capital stock, production, business and occupation, disability, employment, payroll, severance, withholding or other tax, assessment, duty, fee, levy or charge of any nature whatsoever, whether disputed or not, imposed by any governmental authority, and any interest, penalties (civil or criminal), additions to tax or additional amounts related thereto or to the nonpayment thereof, including any obligations under any agreement or other arrangement with respect to any of the foregoing.

"Third Party Beneficiary" means any Person other than Seller or a Receivership Entity that is name as a beneficiary of the Policy.

"Transaction Documents" means collectively this Agreement, the Bill of Sale, Assignment and Assumption Agreement, and any other document executed by Seller or Buyer at the Closing in connection with any of the foregoing.

"<u>Trust Account</u>" means an interest bearing law firm trust account maintained by Receiver's Counsel, from which funds shall be released only in accordance with Section 3.4, 6.5(d) or 8.2, as applicable, of this Agreement.

"VBLLC" has the meaning set forth in the preface above.

"VSI" has the meaning set forth in the preface above.

ARTICLE II PURCHASE & SALE OF ASSETS

2.1. <u>Purchase and Sale</u>. On the terms and conditions set forth herein, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, assign, convey and deliver to Buyer, all of the Acquired Assets at the Closing, such sale being pursuant to a Sale Order entered by the Court which shall authorize the transfer of the Acquired Assets to Buyer free and clear of any

Encumbrances, containing in substance the terms reflected in the attached Exhibit A. For purposes of this Agreement, "Acquired Assets" means all right, title and interest of Seller, each Receivership Entity in and to the following items as in existence on the Closing Date:

- (a) that universal life insurance policy that was issued by the Provider having a stated face amount of \$50,000,000 and a policy number issued by the Provider of and which is referred to internally by the Receiver as AP# 99-0007778 (the "Policy");
- (b) all files, records, documents, instruments, papers, correspondence, communications, books and records evidencing or relating to the Policy, whether in physical, electronic or other form or medium, including without limitation (i) the Policy and all correspondence relating thereto, (ii) all information and records with respect to the health status and whereabouts of each insured under the Policy, (iii) all accounting records, including the accounting and bookkeeping records incident to the ownership, premium payments, and receipts and distributions of proceeds with respect to the Policy made to or received from the Provider, (iv) all documents and instruments in respect of the Policy executed and/or delivered by or to Seller, a Receivership Entity, an insured or a viator (collectively, the "Policy Files"); provided that, Policy Files shall not include any confidential information relating to any third party investor (i.e., a person that is not Seller, a Receivership Entity or any affiliate of a Receivership Entity) owning an interest in the Policy, nor shall Policy Files include the database utilized by VSI to service the Policy (but shall include the data therein solely with respect to the Policy);
- (c) all death benefits, proceeds and other amounts paid or payable under or otherwise in respect of the Policy after the Economic Transfer Date; and
- (d) all rights of recourse or recovery against any third party, and all other claims, rights and causes of action, relating to or arising out of any of the foregoing.
- 2.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement, Seller shall not sell, transfer, assign, convey or deliver to Buyer, and Buyer shall not purchase or accept from Seller, any asset or property of Seller or any Receivership Entity that is not specifically set forth in Section 2.1 hereof (each an "Excluded Asset").
- 2.3. <u>Assumption of Liabilities</u>. On the terms and conditions set forth herein, at the Closing, Buyer shall assume from the Receivership Entities, and agree to thereafter pay, perform and discharge in accordance with their respective terms, all obligations that arise under the Policy from and after the Closing Date, including without limitation, all obligations to pay premiums thereunder which become due on or after the Closing Date (the "<u>Assumed Liabilities</u>").
- 2.4. <u>Purchase Price</u>. Buyer agrees to purchase the Acquired Assets for an amount equal to the sum of (i) \$8,850,000 (the "<u>Purchase Price</u>") and (ii) the Prorated Premium Amount (if any). Within one Business Day of the date of this Agreement, Buyer shall remit to the Trust Account Two Hundred Thousand Dollars (\$200,000.00) (such amount, together with accrued interest thereon, the "<u>Deposit</u>"), to be held in the Trust Account by Receiver's Counsel and disbursed only in accordance with Section 3.4, 6.5(d) or Section 8.2, as applicable, of this Agreement. The Deposit shall be applied to the Final Purchase Price at Closing.

ARTICLE III CLOSING

- 3.1. Closing. Unless this Agreement shall have been terminated pursuant to Section 8 hereof, the closing of the transactions contemplated hereby shall take place at a closing (the "Closing") to be held on (i) the second (2nd) Business Day following the day on which all of the conditions set forth in Article VII hereof have been satisfied or waived by the respective Party (other than any such condition that is to be satisfied at the Closing, but subject to the satisfaction or waiver of such condition) or (ii) such other day as the Parties may mutually agree in writing. The Closing shall be held at the offices of Kozyak, Tropin & Throckmorton, P.A., 2525 Ponce de Leon Boulevard, Miami, Florida 33134, unless the Parties agree otherwise. For all purposes of this Agreement, the sale and assignment of the Acquired Assets by Seller to Buyer, and the assumption of the Assumed Liabilities by Buyer from the Receivership Entities, pursuant to this Agreement shall be deemed effective, and as having occurred, as of 12:00 a.m., Eastern Standard Time, on the Closing Date.
- 3.2. <u>Deliveries by Seller</u>. At the Closing, Seller shall deliver to Buyer: (i) the Bill of Sale and Assignment and Assumption Agreement with respect to the Acquired Assets, executed by Seller; (ii) properly completed and executed Change of Ownership Forms (other than with respect to any information relating to Buyer or any assignee or designee thereof); (iii) a copy of the Sale Order; and (iv) the original Policy and the Policy Files.
- 3.3. <u>Deliveries by Buyer</u>. At the Closing, Buyer shall deliver: (i) to Seller, the Bill of Sale and Assignment and Assumption Agreement with respect to the Acquired Assets, executed by Buyer; and (ii) the full amount of the Final Purchase Price, less the Deposit, in immediately available funds, to the Trust Account of Receiver's Counsel, to be held in trust and released in accordance with the provisions of Section 3.4, 6.5(d) or 8.2, as applicable, of this Agreement.
- 3.4. Release of Final Purchase Price. The Final Purchase Price shall be disbursed from the Trust Account by Receiver's Counsel to Seller upon the later of (i) the occurrence of the Closing and (ii) receipt, by Buyer and Seller, of written notification from the Provider that the Provider has accepted and recorded on its books and records Buyer or, if applicable, an assignee or designee thereof as the sole owner and beneficiary of the Policy, consistent with the Change of Ownership Forms.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the date hereof and as of the Closing Date as follows:

- 4.1. <u>Status as Receiver</u>. Seller is the duly appointed and acting Receiver for the Receivership Entities.
- 4.2. <u>Authority</u>, <u>Power and Binding Effect</u>. Subject to the entry of the Sale Order, Seller has all requisite power and authority, pursuant to the Receivership Order, the Disposition Order, and the Re-Designation Order, to execute and deliver this Agreement and to perform its obligations under this Agreement and the other Transaction Documents, including without

limitation, the power and authority to sell the Acquired Assets to Buyer free and clear of all Encumbrances. Seller has duly executed and delivered this Agreement and each other Transaction Document to which Seller is a party, and when delivered by Seller in accordance with this Agreement, each other Transaction Document to which Seller will be a party will be duly executed and delivered by Seller. Upon entry of the Sale Order, this Agreement and each other Transaction Document when duly executed and delivered shall constitute a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with their terms.

- 4.3. <u>Title to Acquired Assets</u>. Seller has good and valid title to the Acquired Assets and has all claims, options, privileges, right, title and interest in, to and under the Acquired Assets free and clear of any Encumbrances. Seller is recorded on the books and records of the Provider as the sole owner and beneficiary of the Policy. Subject to the entry of the Sale Order, all of Seller's and each Receivership Entity's claims, options, privileges, right, title and interest in to, and under the Acquired Assets, including all beneficial interests in the Policy, will be sold, conveyed, assigned, transferred and delivered to Buyer at the Closing, free and clear of all Encumbrances.
- 4.4. As Is, Where Is. The sale of the Acquired Assets shall be made "as is, where is" without any recourse whatsoever against Seller (but without limiting any representation or warranty of Seller in this Agreement), the Receivership Entities or any of their professionals, employees or agents. None of Seller, the Receivership Entities or any of their professionals, employees or agents shall be construed as having made any representations or warranties as to title, merchantability or fitness for a particular purpose, express, implied or otherwise, unless specifically set forth in this Agreement or any other Transaction Document to which Seller is or will be a party.
- 4.5. <u>Brokers and Finders</u>. Seller has not engaged any broker, finder or financial advisor, or incurred any liability for any fees or commissions to any broker, finder or financial advisor, in connection with this Agreement or the transactions contemplated hereby for which Buyer could be liable.
- 4.6. <u>Status of Policy</u>. The Policy is "in-force," Seller has paid in full all premiums that are due with respect to the Policy, and the Policy has not lapsed. The Policy will not be (or is not, if applicable) in grace on the Closing Date. Seller has not received any loan or cash withdrawal against the cash accumulation value (as stated in a verification of coverage of the Policy) of the Policy since February 13, 2008.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

5.1. Existence and Standing. Buyer is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Delaware with all the requisite limited partnership power and authority to carry on its business as presently conducted by it.

- 5.2. Authority, Power and Binding Effect. Buyer has all requisite limited partnership power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and the other Transaction Documents to which it is or will be a party. Buyer has duly executed and delivered this Agreement, and when delivered by Buyer in accordance with this Agreement, each other Transaction Document to which Buyer will be a party will be duly executed and delivered by Buyer. This Agreement and each other Transaction Document when duly executed and delivered by Buyer shall constitute a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their terms.
- 5.3. No Violation: Consents. The execution, delivery and performance by Buyer of this Agreement and each other Transaction Document to which Buyer is or will be a party and the consummation by Buyer of all of the transactions contemplated hereby and thereby, including without limitation, the purchase and acceptance of the Acquired Assets and the assumption of the Assumed Liabilities by Buyer (a) do not and will not violate any provision of the organizational documents of Buyer; (b) do not and will not result in violation of any of the terms, conditions or provisions of any agreement or instrument to which Buyer is a party or by which Buyer or any of its assets or properties is bound; (c) do not and will not result in a violation of any applicable law, ordinance, regulation, permit, authorization or decree or any order of any court or other governmental agency applicable to Buyer or any of its assets or properties; (d) do not and will not require any consent, waiver, approval, license, order, designation or authorization of, notice to, or registration, filing, qualification or declaration with any governmental authority or other Person to which Buyer or any affiliate thereof, or any asset or property of Buyer, is bound.

5.4. Disclaimer.

- (a) Buyer acknowledges that in making the decision to enter into this Agreement and to consummate the transactions contemplated thereby, Buyer has relied solely on the basis of its own independent investigation of the Acquired Assets and upon the express written representations, warranties and covenants in this Agreement. Buyer has carefully considered and has, to the extent Buyer believes such discussion necessary, discussed with Buyer's professional, legal, tax and financial advisors the suitability of an investment in the Acquired Assets for Buyer's particular tax and financial situation and Buyer has determined that an investment in the Acquired Assets is suitable for Buyer.
- (b) Without limiting Section 6.5 hereof, Buyer assumes the risk that after Closing, the Provider will refuse to pay Buyer or its assignee or designee the death benefits or other amounts payable or otherwise due in respect of the Policy, notwithstanding the entry of the Receivership Order, the Disposition Order, the Re-Designation Order, and the Sale Order.
- 5.5. <u>Financial Ability</u>. Buyer has access to sufficient unrestricted funds, and will at the time of the Closing have sufficient unrestricted funds, to consummate the transactions contemplated by this Agreement.
- 5.6. <u>Brokers and Finders</u>. Buyer has not engaged any broker, finder or financial advisor, or incurred any liability for any fees or commissions to any broker, finder or financial

advisor, in connection with this Agreement or the transactions contemplated hereby for which Seller could be liable.

ARTICLE VI COVENANTS OF THE PARTIES

6.1. General. Seller and Buyer shall use their commercially reasonable efforts to cooperate, assist and consult with each other to consummate the transactions contemplated by this Agreement as promptly as practicable.

6.2. Court Actions.

- (a) Without limiting Section 6.1 hereof, no later than two (2) Business Days following the date hereof, Seller shall file with the Court a motion in the form attached hereto as Exhibit B (the "Sale Motion"), requesting the Court to enter the Sale Order.
- (b) Neither Seller nor Buyer shall file any pleading or take any position in the Receivership Proceeding or with any Governmental Authority contrary to this Agreement (or the transactions contemplated hereby), the Sale Motion or the Sale Order unless Seller and Buyer approve such pleading or position; provided, that, neither Seller nor Buyer shall be required to appeal any order of the Court which has the effect of denying the approval of this Agreement or the Sale Motion. In the event that the Sale Order shall be appealed by any Person (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order), Seller and Buyer shall reasonably cooperate in taking such steps to diligently defend against such appeal, petition or motion and Seller and Buyer shall use their reasonable best efforts to obtain an expedited resolution of any such appeal, petition or motion.

6.3. Access to Policy Files.

- (a) Prior to the Closing, Seller shall allow Buyer, during regular business hours, to make reasonable investigation and inquiry related to the Acquired Assets, including by providing access to the Policy Files and furnishing information as promptly as practicable to Buyer that is reasonably requested by Buyer.
- (b) Buyer acknowledges that the Policy Files contain information of a highly personal nature. Buyer agrees that it shall be bound by and shall comply with the terms of the Confidentiality Agreement, and that both before and after the Closing Date, it shall comply in all material respects with all privacy, confidentiality and other similar laws and regulations governing the use the disclosure of the Policy Files and all other information relating to the Policy or the insured thereunder.
- 6.4. <u>Submission of Change of Ownership Forms: Payment of Certain Post-Closing Premium Amounts.</u>
- (a) Within seven days after the Closing Date, Buyer shall deliver the Change of Ownership Forms to the Provider designating Buyer or its assignee or designee as the owner of the Policy, and providing the Provider with a mailing address for purposes of receiving all

future notices of premium payments due and other written communications from the Provider respecting the Policy.

- (b) Without limiting or modifying anything else in this Section 6.4, Seller shall reasonably cooperate and assist as requested by Buyer in obtaining the Provider's compliance with instructions to the Provider given by Buyer in accordance with and pursuant to this Section 6.4.
- (c) To the extent any premium payment is due on the Policy during the period beginning on the Closing Date and ending on the earlier of (x) the Final Purchase Price being released to Seller pursuant to Section 3.4 or 6.5(d), as applicable, of this Agreement and (y) the termination of this Agreement pursuant to Section 8.1 hereof, Seller shall have no obligation to make any such payment(s); provided, that, any payment so made by Buyer shall be included in the Buyer Paid Premium Amount (except to the extent constituting a Prorated Premium Amount).

6.5. Post-Closing Policy Proceeds and Communications.

- (a) Any proceeds or other amounts in respect of any Acquired Assets, including without limitation any death benefits, received by Seller or any Receivership Entity on or after the Closing Date shall be held by Seller in constructive trust for the benefit of Buyer, and Seller shall promptly notify Buyer in writing of the receipt of any such amount. All such amounts so received by Seller or any Receivership Entity shall be remitted to Buyer within three (3) Business Days of Seller's or any Receivership Entity's receipt thereof.
- (b) Seller shall promptly forward to Buyer any written correspondence, notice or other communication relating to the Acquired Assets that is received by Seller or any Receivership Entity on or after the Closing Date.
- (c) To the extent any party other than Buyer or Seller receives any proceeds or other amounts in respect of the Policy which is an Acquired Asset, Seller shall, upon request of Buyer, reasonably cooperate with Buyer's efforts to recover such proceeds.
- (d) Unless this Agreement has been terminated pursuant to Section 8.1 hereof or Buyer has theretofore consented in writing, none of Seller, any Receivership Entity or any agent or representative of Seller or any Receivership Entity shall notify the Provider of the death of the insured under the Policy or otherwise submit any claim with the Provider to receive any death benefits or other proceeds under or in respect of the Policy. Without limiting Section 6.5(a) hereof, in the event the insured under the Policy dies on or after the Closing Date but prior to the Provider recording Buyer or its assignee or designee as the sole owner and beneficiary of the Policy on the books and records of the Provider, Seller shall cooperate with Buyer to receive (for the benefit of Buyer) the death benefit payable under the Policy, including, if requested by Buyer, submitting a death benefit claim with the Provider. Upon the submission of a death benefit claim to the Provider by Seller, only if such submission is so requested by Buyer, the Final Purchase Price shall be disbursed from the Trust Account to Seller (to the extent the Final Purchase Price had not then been disbursed to Seller pursuant to Section 3.4 hereof).

6.6. Transaction Costs: Taxes.

- (a) Except as otherwise expressly provided for herein, Seller and Buyer will bear their own costs and expenses (including any legal, accounting and other professional fees and expenses) that are incurred in connection with the negotiation, execution and performance of this Agreement and the consummation of the transactions contemplated thereby.
- (b) Notwithstanding anything to the contrary herein, all Taxes and other fees and charges incurred in connection with the transfer to Buyer of the Acquired Assets shall be paid by Buyer. Seller and Buyer shall each be responsible for preparing and filing each tax return required by law to be filed by it, and Seller and Buyer shall cooperate with each other in the preparation, execution and filing of all tax returns regarding any taxes which become payable as a result of the transactions contemplated hereby.
- (c) Subject to Section 6.6(b) hereof, Seller shall be responsible for and pay or cause to be paid when due all Taxes applicable to the Acquired Assets attributable to any Tax period (or portion thereof) ending prior to the Closing Date, and Buyer shall be responsible for and pay or cause to be paid when due all Taxes applicable to the Acquired Assets attributable to any Tax period (or portion thereof) on or after the Closing Date. For purposes of this section, any period beginning before and ending after the Closing Date shall be treated as two separate Tax periods, one ending on the day before the Closing Date and the other beginning on the Closing Date, except that Taxes imposed on a periodic basis (such as property Taxes) shall be allocated on a daily basis.

ARTICLE VII CONDITIONS PRECEDENT

- 7.1. Conditions Precedent to Obligations of Buyer. The obligation of Buyer to purchase and accept the Acquired Assets from Seller, and to assume the Assumed Liabilities from the Receivership Entities, pursuant to this Agreement at the Closing is subject to the satisfaction (or waiver by Buyer) at or prior to Closing of each of the following conditions:
- (a) the representations and warranties of Seller contained in Article IV hereof shall be true and correct in all material respects on the date hereof and on and as of the Closing Date:
- (b) Seller shall have in all material respects performed and complied with each of the covenants, obligations and agreements contained in this Agreement required to be performed or complied with by Seller prior to or at the Closing;
- (c) Seller shall have delivered to Buyer all of the items specified to be delivered by Seller in Section 3.2 hereof;
- (d) no preliminary or permanent injunction or other order issued by any court or governmental authority nor any law promulgated or enacted by any governmental authority shall be in effect which restrains, enjoins or otherwise prohibits the transactions contemplated hereby; and

- (e) the Court shall have entered the Sale Order approving the sale of the Acquired Assets to Buyer pursuant to this Agreement and containing the terms reflected in Exhibit A, and such Sale Order shall not have been reversed, stayed, modified or amended in any manner materially adverse to Buyer.
- 7.2. <u>Conditions Precedent to Obligations of Seller</u>. The obligation of Seller to sell and assign the Acquired Assets to Buyer pursuant to this Agreement at the Closing is subject to the satisfaction (or waiver by Seller) at or prior to the Closing of each of the following conditions:
- (a) the representations and warranties of Buyer contained in Article V hereof shall be true and correct in all material respects on the date hereof and on and as of the Closing Date;
- (b) Buyer shall have in all material respects performed and complied with each of the covenants, obligations and agreements contained in this Agreement required to be performed or complied with by Buyer prior to or at the Closing;
- (c) Buyer shall have delivered the full amount of the Final Purchase Price to the Trust Account and shall have delivered to Seller all other items specified to be delivered by Buyer in Section 3.3 hereof;
- (d) no preliminary or permanent injunction or other order issued by any court or governmental authority nor any law promulgated or enacted by any governmental authority shall be in effect which restrains, enjoins or otherwise prohibits the transactions contemplated hereby; and
- (e) the Court shall have entered the Sale Order approving the sale of the Acquired Assets to Buyer, and such Sale Order shall not have been reversed, stayed, modified or amended in any manner materially adverse to Seller.

ARTICLE VIII TERMINATION

- 8.1. <u>Termination of Agreement</u>. This Agreement may be terminated at any time as follows and in no other manner:
 - (a) by mutual written agreement of Buyer and Seller;
- (b) by Buyer providing written notice of termination to Seller after the thirtieth (30th) day following the date of this Agreement if the Court has not entered the Sale Order containing the terms reflected in <u>Exhibit A</u> prior to the date such notice of termination is delivered to Seller;
- (c) if Seller shall have materially breached or failed to perform or comply with any covenant, obligation or agreement contained in this Agreement, and such breach or failure shall have not been cured within five (5) Business Days after written notice of such breach or failure shall have been provided by Buyer to Seller, then by written notice of termination of Buyer to Seller at any time thereafter (but prior to the date upon which the

conditions to the disbursement of the Final Purchase Price to Seller set forth in Section 3.4 or 6.5(d) of this Agreement have been satisfied); provided, however, that Buyer shall not be entitled to so terminate this Agreement if Buyer shall have materially breached or failed to perform or comply with any covenant, obligation or agreement contained in this Agreement, and such breach or failure shall have not then been cured;

- (d) if Buyer shall have materially breached or failed to perform or comply with any covenant, obligation or agreement contained in this Agreement, and such breach or failure shall have not been cured within five (5) Business Days after written notice of such breach or failure shall have been provided by Seller to Buyer, then by written notice of termination of Seller to Buyer at any time thereafter (but prior to the date upon which the conditions to the disbursement of the Final Purchase Price to Seller set forth in Section 3.4 or 6.5(d) of this Agreement have been satisfied); provided, however, that Seller shall not be entitled to so terminate this Agreement if Seller shall have materially breached or failed to perform or comply with any covenant, obligation or agreement contained in this Agreement, and such breach or failure shall have not then been cured;
- (e) by Buyer or Seller providing written notice of termination to the other Party after the seventy-fifth (75th) day following the date of this Agreement if the conditions for disbursement of the Final Purchase Price to Seller set forth in Section 3.4 or 6.5(d) of this Agreement have not been satisfied prior to the date such notice of termination is delivered to such other Party; provided, however, but without limiting Section 8.1(f), Seller may not provide any such notice of termination pursuant to this Section 8.1(e) if (i) Seller has theretofore delivered to Buyer, or Buyer has theretofore delivered to Seller, written documentation evidencing the death of the insured under the Policy and (ii) Buyer has theretofore deposited, or has theretofore notified Seller that it is prepared to deposit, the Final Purchase Price into the Trust Account; or
- (f) by Seller providing written notice of termination to Buyer no later than the Economic Transfer Date; <u>provided</u>, <u>that</u>, Seller shall have also delivered to Buyer contemporaneously therewith, or prior thereto, written documentation evidencing the death of the insured under the Policy.
- 8.2. Effect of Termination. If this Agreement is terminated pursuant to and in accordance with Section 8.1 hereof, this Agreement will thereupon become null and void (except to the extent provided in this Section 8.2) and there will be no further liability or obligation on the part of the Parties hereto in connection with this Agreement except as set forth in this Section 8.2. Notwithstanding the foregoing, Article I hereof, Sections 6.6(a) and (c) hereof, this Article VIII and Article IX hereof shall survive any termination of this Agreement. Except as provided in the immediately following sentence, if this Agreement is terminated pursuant to and in accordance with Section 8.1 hereof, within three (3) Business Days of such termination, (i) Receiver's Counsel shall remit to Buyer an amount in immediately available funds equal to the sum of (x) the Deposit and (y) the amount (if any) theretofore delivered to the Trust Account pursuant to clause (ii) of Section 3.3, together with accrued interest on such amount described in this clause (y), and (ii) Seller shall remit to Buyer an amount (if any) in immediately available funds equal to the Buyer Paid Premium Amount. Without limiting the immediately preceding sentence, if this Agreement is terminated pursuant to and in accordance with Section 8.1(d)

hereof, then Buyer's Deposit shall be forfeited to Seller, and Receiver's Counsel shall remit the Deposit to Seller, and Seller expressly reserves all rights to seek any and all relief to which Seller may be entitled, including, without limitation, damages and/or specific performance. Without limiting the third sentence of this Section 8.2, if this Agreement is terminated by Buyer pursuant to and in accordance with Section 8.1(c) or (f), Seller shall reimburse Buyer for its reasonable out-of-pocket costs and expenses incurred by Buyer in connection with the transactions contemplated by this Agreement not to exceed \$100,000. Buyer shall, within three (3) Business Days of such termination, provide notice to Seller in writing of such costs and expenses, and Seller shall pay such expenses within three (3) Business Days thereafter. If this Agreement is terminated pursuant to and in accordance with Section 8.1 hereof after the Closing, (i) Buyer shall be deemed (without any further instrument, act or deed) to have reassigned to Seller all right, title and interest in and to the Policy and other Acquired Assets and (ii) Seller (on behalf of the Receivership Entities) shall be deemed (without any further instrument, act or deed) to have re-assumed from Buyer all obligations that arise, and Seller (on behalf of the Receivership Entities) hereby agrees that thereafter Buyer shall have no obligation or other liability to pay, perform or discharge any obligation that arises, under the Policy from and after the date of such termination, including, without limitation, obligations to pay premiums thereunder which became due on or after such date of termination.

ARTICLE IX MISCELLANEOUS

- 9.1. <u>Survival</u>. All of the representations, warranties, covenants and obligations of the Parties contained in this Agreement and the Transaction Documents shall survive the Closing.
- 9.2. Successors and Assigns: No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns; provided, however, that except as expressly set forth herein, no party shall assign any of its rights or delegate any of its obligations created under this Agreement without the prior written consent of the other party hereto, and any such purported assignment or delegation without such consent shall be void. Buyer shall be permitted to assign its rights, in whole or in part, to any one or more Persons, and delegate its obligations under this Agreement, in whole or in part, to one or more affiliates of Buyer, without prior written approval of Seller. Nothing in this Agreement shall confer upon any Person (including any creditor of a Receivership Entity) other than a Party to this Agreement, or a party's permitted successors and assigns, any right or remedy of any nature or kind whatsoever under or by reason of this Agreement.
- 9.3. Notices. Unless otherwise provided herein, any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been given when delivered personally, by telefacsimile or electronic mail (with a confirming copy sent within one (1) Business Day by any other means described in this section) to the party designated to receive such notice, demand or communication, or on the Business Day following the day sent by a nationally recognized overnight courier, or on the third (3rd) Business Day after the same is sent by certified mail, return receipt requested, postage and charges prepaid, directed to the following addresses or to

such other or additional addresses as any Party might designate by written notice to each other Party:

If to Seller:

Roberto Martínez, Receiver

Colson Hicks Eidson 255 Aragon Avenue

Second Floor

Coral Gables, FL 33134 Telephone:

Facsimile:

(305) 476-7400 (305) 476-7444

Email:

bob@colson.com

With a copy to:

David L. Rosendorf, Esq.

Kozyak Tropin & Throckmorton, P.A. 2525 Ponce de Leon Boulevard

9th Floor

Coral Gables, FL 33134

Telephone:

(305) 372-1800

Facsimile:

(305) 372-3508

Email:

drosendorf@kttlaw.com

If to Buyer:

Silver Point Capital Fund, L.P.

Two Greenwich Plaza

Greenwich, CT 06830

Attention: Aviva Shneider and Fred Fogel

Telephone: (203) 542-4029 and (203) 542-4208

Facsimile:

(203) 542-4300

Email: ashneider@silverpointcapital.com and

ffogel@silverpointcapital.com

With a copy to:

Alexi M. Poretz, Esq. Sidley Austin LLP

787 Seventh Avenue

New York, New York 10019

Telephone:

(212) 839-5300

Facsimile:

(212) 839-5599

Email: aporetz@sidley.com

Any rejection, refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Governing Law: Submission to Jurisdiction. 9.4.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida, without regard to any choice of law rules thereof which might apply the laws of any other jurisdiction.

- It is expressly agreed that the Court shall have continuing jurisdiction of all matters related to the Receivership Proceeding and all actions with respect to this Agreement shall be instituted in the Receivership Proceeding in the Court (but without limiting Section 9.4(a) hereof). In furtherance of the foregoing, Seller and Buyer each hereby irrevocably consents and agrees that any legal action, suit or proceeding against it with respect to its obligations or liabilities or any other matter under or arising out of or in connection with this Agreement or any other Transaction Document shall be brought in the Receivership Proceeding, unless the Receivership Proceeding shall not have subject matter jurisdiction thereof, in which case such legal action, suit or proceeding, as the case may be, shall be brought in the United States District Court for the Southern District of Florida or in the courts of the State of Florida, sitting in Miami-Dade County. By execution and delivery of this Agreement, Seller and Buyer each, to the fullest extent permitted by applicable law, hereby (i) irrevocably accepts and submits to the exclusive jurisdiction of the Receivership Proceeding and such other courts in personam, generally and unconditionally with respect to any such action, suit or proceeding, (ii) agrees not to commence any such action, suit or proceeding in any jurisdiction other than the Receivership Proceeding, or if the Receivership Proceeding shall not have jurisdiction, such other courts as are specified in this Section 9.4(b), (iii) waives any objection to the laying of venue of any such action, suit or proceeding therein, and (iv) agrees not to plead or claim that such action, suit or proceeding has been brought in an inconvenient forum.
- 9.5. Entire Agreement. This Agreement, the Confidentiality Agreement, and the other Transaction Documents (a) contain the entire agreement and understanding of the Parties with respect to the subject matter hereof, and (b) supersede all prior negotiations, discussions, correspondence, communications, understandings, drafts and agreements between the Parties relating to the subject matter hereof, all of which are merged into this Agreement.
- 9.6. Amendment; Waiver; Consent. This Agreement may be amended, modified, supplemented or restated only by a written instrument executed by the Parties. The terms of this Agreement may be waived only by a written instrument executed by the Party waiving compliance. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach, whether or not similar, and no such waiver shall operate or be construed as a continuing waiver unless so provided. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- 9.7. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the fullest extent permitted by applicable law, the Parties hereby waive any provision of law which may render any provision hereof prohibited or unenforceable in any respect.
- 9.8. <u>Counterparts</u>. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such

counterparts shall together constitute one and the same agreement, and all signatures need not appear on any one counterpart.

- 9.9. <u>Headings</u>. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit or otherwise affect any of the terms or provisions hereof.
- 9.10. <u>Fiduciary Status of Receiver</u>. Notwithstanding anything herein to the contrary, it is expressly acknowledged and agreed that Roberto Martinez is executing this Agreement and each other Transaction Document in his fiduciary capacity only and neither he nor any of his personal assets or business interests will have any liability hereunder or in connection with the transactions contemplated hereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHERBOF, this Asset Purchase Agreement has been duly executed and delivered by Seller and Buyer as of the date first above written.

ROBERTO MARTÍNEZ, Not in his individual capacity, but solely as Receiver for Mutual Benefits Corp., Viatical Services, Inc. and Viatical Benefactors, LLC

SILVER POINT CAPITAL FUND, L.P.

Name:

Title:

[Purchase Agreement (AP 99-0007778)]

IN WITNESS WHEREOF, this Asset Purchase Agreement has been duly executed and delivered by Seller and Buyer as of the date first above written.

ROBERTO MARTÍNEZ,

Not in his individual capacity, but solely as Receiver for Mutual Benefits Corp., Viatical Services, Inc. and Viatical Benefactors, LLC

ROBERTO MARTÍNEZ

SILVER POINT CAPITAL FUND, L.P.

Ву:___

Title:

EXHIBIT A

CERTAIN TERMS OF SALE ORDER

The Sale Order shall approve and authorize Seller to sell and assign the Acquired Assets to Buyer in accordance with the terms of the Asset Purchase Agreement and shall include, without limitation, findings of fact and conclusions of law that:

- (a) based on the record presented to the Court and all pleadings in the Receivership Proceeding and arguments by counsel and evidence and/or proffers presented and accepted, Buyer has acted in good faith and is a good faith purchaser of the Acquired Assets;
- (b) Seiler has the sole and absolute authority, on behalf of the Receivership Entities, to convey all claims, options, privileges, right, title and interest in, to and under the Acquired Assets:
- (c) the sale of the Acquired Assets in accordance with the terms of the Asset Purchase Agreement is approved and Buyer and Seller are directed to consummate all of the transactions contemplated thereby;
- (d) at Closing, Buyer will be vested with all claims, options, privileges, right, title and interest in, to and under the Acquired Assets, free and clear of all Encumbrances;
- (e) Buyer and any subsequent owner of the Policy shall have the right to from time to time obtain updated medical information regarding the viator/insured under the Policy, including (i) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of the Sale Order and a written request by Buyer or any subsequent owner of the Policy shall be authorized and compelled to immediately release copies to Buyer or any subsequent owner of the Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under the Policy so requested by Buyer or such subsequent owner thereof, as the case may be, for the purpose of monitoring health and predicting life expectancy, and (ii) the insured/viator under the Policy being required to provide Buyer and any subsequent owner of the Policy with contact information for such insured/viator, Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations, contact information for all physicians and other medical providers who have treated such insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured/viator's health and medical condition, and Buyer or any subsequent owner of the Policy shall be entitled to seek enforcement of this provision as to any person; and
- (f) the sale of the Acquired Assets is not precluded by or contrary to any prior order issued by the Court and no further consents by any person (including any Governmental Authority) are required to convey the Acquired Assets to Buyer in accordance with the Asset Purchase Agreement.

Exhibit A-1

NYI 6458322v.8

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EXHIBIT B

FORM OF SALE MOTION

Exhibit B-1

NY1 6458322v.8

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04 60573 CIV MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff.

ν

MUTUAL BENEFITS CORP., et al.,

Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.

RECEIVER'S MOTION TO APPROVE SALE OF POLICY AND INCORPORATED MEMORANDUM OF LAW (POLICY AP# 99-0007778)

Roberto Martínez, court-appointed receiver ("Receiver") of Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC"), Viatical Services, Inc. ("VSP"), and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A., solely in their capacity as trustee (collectively the "Receivership Entities"), moves for this court to approve the proposed sale of a certain insurance policy issued by New York Life Insurance and Annuity Corporation (designated by MBC as Policy AP# 99-0007778 and which has a policy number from the issuing insurance company ending in digits "4487") and all related rights, including beneficial interests (the "Policy"), free and clear of all liens, claims, interests and encumbrances, to Silver Point Capital Fund, L.P. ("Silver Point" or "Buyer") for a total of \$8,850,000 (subject to adjustment pursuant to the terms of the Purchase Agreement, as defined below). In support, the Receiver states:

Case 0:04-cv-60573-FAM

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).

THE RECEIVERSHIP ORDER

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. ..."

THE DISPOSITION ORDER

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.

In accordance with these Orders, voting on each of the policies was conducted, the result of which is that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the "Salable Policies").

THE POLICY AND PRIOR SALE EFFORTS

The Policy which is the subject of this Motion is a universal life insurance policy issued by New York Life Insurance and Annuity Corporation (the "Provider") having a stated face amount of \$50,000,000. The policy is referred to internally by the Receiver as AP# 99-0007778.

On May 21, 2007 the Receiver initiated the sale process for certain of the remaining Salable Policies (a group sometimes referred to as "Bid 2") by sending out a letter soliciting bids for four additional portfolios (each, a "Portfolio") of Salable Policies (the "Bid 2 Policies"), together with a description of the bidding procedures ("Bidding Procedures") to be followed by the Receiver with respect to those Salable Policies (a copy, including the Bidding Procedures, is attached as Exhibit "A"). The letter was sent to approximately fifty parties who had expressed an interest in purchasing policies from the Receivership or who were otherwise known to the Receiver to be potentially interested in such purchases. The Mutual Benefits case and potential availability of policies for purchase is well known to interested parties who are potentially in the market for purchase of viaticated policies, including through the advertisement of the prior auction, and the Receiver believes that further marketing was unnecessary in the circumstances.

The four Portfolios in the aggregate consisted of 1,949 Bid 2 Policies issued by various insurance companies or, in the case of group policies, employers, with a total face value of \$241,218,185. The Portfolios included policies that insure the lives of both HIV viators and non-HIV viators, or life settlements.

In order to maximize the value to be realized for the Bid 2 Policies, the Bidding Procedures provided an opportunity for qualified bidders to submit an initial qualifying bid for each or any of the Portfolios, and if multiple qualifying bids were received for any of the Portfolios, for an auction to be conducted in order to determine the highest and best bid for such Portfolio. To be considered as a potential bidder, a party was required to provide: (1) an affidavit of non-affiliation with the Receivership Entities; (2) a confidentiality agreement with respect to information on the policies to be disclosed during due diligence;1 and (3) proof of financial capability to close the transaction to the Receiver's satisfaction. Parties who satisfied these requirements were provided with due diligence information in computerized form, and an opportunity to conduct on-site file review. Seven entities satisfied the initial qualifications to be considered as potential bidders.

The Bidding Procedures required that all initial bids for any of the Portfolios be submitted by June 18, 2007, and that such bids be accompanied by a deposit in the amount of \$100,000. In addition, each bid was required to be in the form of an asset purchase agreement prepared by the Receiver. If more than one qualified bid was submitted for a particular Portfolio, then the Bidding Procedures provided for the Receiver to conduct an auction on June 22, 2007.

The Bidding Procedures further provided that upon the conclusion of the auction, the Receiver could (a) determine, in his business judgment, which bid, if any, was the highest bid; and (b) reject, at any time before the entry of a sale order, any bid that (i) was inadequate or

¹ Information on the identity of viators was still redacted from the materials provided to potential bidders.

insufficient; (ii) was not in conformity with the Bidding Procedures, any order of the Court, or the terms and conditions of the Receiver's asset purchase agreement; or (iii) was contrary to the best interests of the Receiver. If the Receiver advised a bidder that its bid was selected as the "Highest Bid" or "Backup Bid", then such bidder was required to make a deposit equal to 10% of the proposed purchase price within one business day thereafter.

The Policy was one of six (6) policies which had been included in "Portfolio #3" in the prior auction. The six policies that comprised Portfolio #3, including the Policy, had an aggregate face amount of \$64,547,500.00. The Receiver received five qualified bids on Portfolio #3, with a high bid of \$1,500,000. After conducting an auction, the highest qualifying bid submitted for Portfolio #3 was \$4,600,000, submitted by Credit Suisse Securities (Europe) Limited.

After considering the foregoing bids, the Receiver, in the exercise of his business judgment, determined that the Highest Bids submitted on Portfolios #1, 2, and 4 were in the best interests of the Receivership and that the purchase and sale of such Portfolios to Silver Point Capital Fund, L.P. as the party having submitted such Highest Bids, in accordance with the terms of the respective purchase agreements should be approved. Those bids were the subject of a prior motion and order entered by this Court (CP#1924, 1965), and the sale of Portfolios #1, 2 and 4 has been closed.

The Receiver determined that the Highest Bid submitted on Portfolio #3 did not represent sufficient value for that Portfolio and accordingly elected, in his business judgment, not to seek approval of a sale of Portfolio #3 at that time. All participants in the auction were advised that they could submit higher offers to the Receiver for Portfolio #3 or any of the individual policies therein, and that the Receiver would consider all such offers submitted. The Receiver also re-

commenced efforts to identify additional potential buyers for the Portfolio #3 policies. Every interested party was advised to submit their highest and best offer to the Receiver, and that the highest and best offer which the Receiver determined represented adequate value for Portfolio #3 or any policy therein would be presented for approval to the Court.

Thereafter, a number of parties contacted the Receiver and made offers for the purchase of certain of the Portfolio #3 policies, including the Policy. The highest and best offer submitted for the Policy was the offer submitted by Silver Point which is the subject of this Motion. The Silver Point purchase offer provides substantially greater consideration than any other offer received with respect to the Policy, and in the business judgment of the Receiver represents appropriate value for the Policy.

THE PURCHASE AGREEMENT

A copy of the Purchase Agreement (without certain attachments) for the proposed sale of the Policy is attached to this Motion as Exhibit "B" (the "Purchase Agreement"). The Purchase Agreement is substantially similar in form to the purchase agreements which were approved by this Court in connection with the sale of Portfolios #1, 2 and 4. Like those purchase agreements, and without intending to paraphrase the entirety of the Purchase Agreement and subject in all respects to the terms and conditions set forth in the Purchase Agreement, some of the key material terms are as follows:

- The Buyer is acquiring all right, title and interest in and to the title together with the beneficial interests in the Policy, together with all files, books and records associated therewith (but excluding any records relating to any investors in the Policy), all death benefits and other amounts payable in respect of the Policy after the closing date, and all rights of recourse or recovery relating to the Policy (the "Acquired Assets," as defined with more specificity in the Purchase Agreement);
- If the Policy matures on or prior to the first business day following the entry of Sale Order (as defined below) by this Court, there is a mechanism for terminating the sale:

- At closing, the Buyer assumes all obligations to pay premiums with respect to the Policy arising from and after the first business day following the entry of the Sale Order by this Court;
- At closing, the purchase price shall be adjusted to include an additional amount
 equal to all prepaid premiums, expenses and charges with respect to the Policy
 paid by the Receiver for coverage periods after the first business day following
 the entry of the Sale Order by this Court;
- The Policy is to be sold "as is, where is," without any recourse against the Receiver or the Receivership Entities, and without any representations or warranties except as expressly set forth in the Purchase Agreement; and
- The closing shall occur on the second business day after all conditions to closing have been satisfied or waived.

Two notable differences in this Purchase Agreement, as compared to prior ones approved by the Court, are as follows:

- The purchase price is to be delivered to the trust account of Receiver's counsel at (or prior to) closing, and is to be released when the Provider has accepted and recorded on its books and records the Buyer or its assignee or designee as the sole owner and beneficiary of the Policy.
- The Receiver is required to reimburse the Buyer for its reasonably incurred outof-pocket costs and expenses (not to exceed \$100,000) if the Purchase Agreement is terminated due to a material breach by the Receiver or due to the Policy maturing.

SALE ORDER TERMS

The terms of the Purchase Agreement contemplate the entry of a sale order (the "Sale Order") which approves and authorizes the Receiver to sell and assign the Policy and other Acquired Assets to Buyer in accordance with the Purchase Agreement, and which includes, without limitation, the following findings of fact and conclusions of law:

- Based on the record presented to the Court and all pleadings in the Receivership
 Proceeding and arguments by counsel and evidence and/or proffers presented and
 accepted, the Buyer has acted in good faith and is a good faith purchaser of the
 Acquired Assets;
- The Receiver has the sole and absolute authority, on behalf of the Receivership Entities, to convey all claims, options, privileges, right, title and interest in, to and under the Acquired Assets;

- The sale of the Acquired Assets in accordance with the terms of the Purchase Agreement is approved and Buyer and the Receiver are directed to consummate all of the transactions contemplated thereby;
- At the closing, Buyer will be vested with all claims, options, privileges, right, title and interest in, to and under the Acquired Assets, free and clear of all Encumbrances (as defined in the Purchase Agreements);
- Buyer and any subsequent owner of the Policy (i) are deemed to be designees of Horizon Life Solutions Inc. under that certain Authorization for Release and Use of Medical and/or Insurance Information that was executed by the insured under the Policy on July 24, 2003, and (ii) shall have the right to from time to time obtain updated medical information from time to time regarding the insured/viator under the Policy including (a) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of the Sale Order and a written request by Buyer or any subsequent owner of the Policy shall be authorized and compelled to immediately release copies to Buyer or any subsequent owner of the Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under the Policy so requested by Buyer or such subsequent owner thereof, as the case may be, for the purpose of monitoring health and predicting life expectancy, and (b) the insured/viator under the Policy being required to provide Buyer and any subsequent owner of the Policy with contact information for the insured/viator, Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations, contact information for all physicians or other medical providers who have treated the insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured's/viator's health and medical condition, and Buyer or any subsequent owner of the Policy shall be entitled to seek enforcement of this provision as to any person; and
- The sale of the Acquired Assets is not precluded by or contrary to any prior order issued by the Court and no further consents by any person (including any governmental authority) are required to convey the Acquired Assets to Buyer in accordance with the Purchase Agreement.

NOTICE

Simultaneously with the filing of this Motion, the Receiver has sent notice of the proposed sale described herein, including (a) that the Policy is being sold to Buyer free and clear of all Encumbrances (including any beneficial interests), and (b) that following the closing, Buyer and each subsequent owner of the Policy will have the right to effect a change in the named owners and beneficiaries of the Policy (including any irrevocable beneficiaries), to the

Provider, and to all Mutual Benefits investors with respect to the Policy. The form of notice is attached hereto as Exhibit "C."

LEGAL AUTHORITY

By virtue of this Court's Disposition Order, the Receiver has been authorized and directed to sell Policies which have been designated for sale in accordance with the election process directed by this Court. Accordingly, the sale contemplated by this Motion has already been authorized by the Court. It is clear that the Receiver of a company 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 implemented by the Receiver with respect to the sale of the Policy were designed to maximize the value of the Receivership's assets, which is the appropriate goal of any such procedure. In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

The Receiver respectfully submits that the sale process implemented for the Policy was reasonable and appropriate and served to foster participation in the sale process, that the offer made by Silver Point with respect to the Policy is the highest and best offer that the Receiver has received for the purchase of the Policy, and that the sale of the Policy to Silver Point in accordance with the terms of the Purchase Agreement is in the best interests of the Receivership estate and constitutes the best way to maximize the value of the Policy, and accordingly requests that the sale of the Policy to Silver Point be approved.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court enter an Order in the form of the attached Exhibit "D": (1) approving the form and method of notice of

the proposed sale as described herein; and (2) approving the sale of the Policy and other Acquired Assets to Silver Point in accordance with the Purchase Agreement.

Respectfully submitted,

COLSON HICKS EIDSON
Co-Counsel for the Receiver
255 Aragon Avenue, Second Floor
Coral Gables, Florida 33134
Telephone (305) 476-7400
Facsimile (305) 476-7444
E-mail: curt@colson.com

By: Curtis B. Miner
FL Bar No. 0885681

- and -

By:

KOZYAK TROPIN & THROCKMORTON, P.A. Co-Counsel for the Receiver 2525 Ponce de Leon, 9th Floor Coral Gables, Florida 33134 Tel. (305) 372-1800

Fax. (305) 372-1800 Fax. (305) 372-2508

> David L. Rosendorf FL Bar No. 996823

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 March _____, 2008.

By: _____ David L. Rosendorf

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KOZYAK · TROPIN THROCKMORTON

David L. Rosendorf, Esq. dir@ktilaw.com | 305.377.0651

May 21, 2007

MUTUAL BENEFITS CORP. SOLICITATION OF BIDS

Dear Potential Bidder:

Roberto Martínez ("Receiver"), as the Court-appointed receiver for Mutual Benefits Corp., Viatical Services, Inc. and Viatical Benefactors LLC ("Receivership Entities"), invites interested parties to submit offers to bid on the purchase of four portfolios of viatical insurance policies. The four portfolios collectively consist of approximately 1.949 policies with a face value of approximately \$241,218,185. The Receiver seeks offers to purchase these four portfolios consistent with the Bidding Procedures attached to this letter. This letter and the attached Bidding Procedures set forth information on the process and requirements to qualify as a Potential Bidder and to participate in the Auction of these four portfolios.

Please note that to be considered as a qualified Potential Bidder, you must satisfy certain qualifying requirements and submit a qualifying Bid by <u>June 18, 2007</u> as described in the attached Bidding Procedures. If multiple qualified Bids are submitted, an Auction will be conducted in accordance with the Bidding Procedures on <u>June 22, 2007</u>.

Background

On May 4, 2004, Mr. Martínez was appointed as Receiver for the Receivership Entities in connection with an action filed by the Securities and Exchange Commission against the Receivership Entities in the United States District Court for the Southern District of Florida (the "Court") styled SEC v. Mutual Benefits Corp., et al., Case No. 04-60573-CIV-MORENO. Pursuant to the Order Appointing Receiver ("Receivership Order"), the Receiver was given full and exclusive power, duty and authority to administer and manage the business affairs and assets of the Receivership Entities. You may find the Receivership Order and other related court documents on the Receiver's website at www.mbcreceiver.com.

The Receivership Entities were in the business of entering into and soliciting investments in viatical or life settlement transactions. A viatical settlement is a transaction in which a terminally ill owner of a life insurance policy sells the policy for an amount greater than the cash surrender value of the policy, but lower than the face amount, to an investor, who then receives a

MBC Bid Solicitation May 21, 2007 Page 2

return on its investment upon the maturity of the policy based on the difference between the amount the policy was purchased for and the amount of the death benefit. At the time the receivership was commenced, the Receivership Entities controlled approximately 7,000 policies with a face value of approximately \$1.5 billion, in which approximately 30,000 investors had been assigned fractionalized interests.

On September 15, 2005, the Court entered an Order on Disposition of Policies and Proceeds ("Disposition Order"), which set forth a procedure to afford the MBC investors an opportunity to indicate their preference regarding disposition of the policies in which they were assigned interests. This process, as set forth in detail in the Disposition Order, was completed and approximately 3,700 policies with a face value of approximately \$430 million have been designated to be sold.

On January 30, 2007, the Court entered an Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies ("Re-Designation Order"), pursuant to which the Receiver is designated as the Policy Owner or Absolute Assignee and Nominal Beneficiary with respect to all Policies administered through the Receivership Proceeding, including the Policies in the four portfolios for which the Receiver is currently seeking Bids.

Summary of Portfolios

There are a total of 1,949 different Policies issued by various Insurance Companies or, in the case of group policies, employers, that make up the portfolios being offered for Bids. The 1,949 policies represent a total face amount of \$241,218,185. The portfolios include policies that insure the lives of both HIV viators and Non-HIV viators, or Life Settlements. Below is a breakdown of the Policies in the four portfolios being offered for Bids. Additional detailed information, including premium data, will be made available during the due diligence period.

Individual Portfolios Information

Portfolio # 1

Portfolio #1 is comprised of 538 policies; 523 of which insure the lives of individuals with HIV and 15 of which insure the lives of individuals that are Non-HIV or Life Settlements. The approximate aggregate face amount of these policies is \$55,785,472. Portfolio #1 is comprised of plans of insurance that are Universal Life, Whole Life and Group Universal Life with face amounts ranging from \$2,725 to \$2,000,000. The approximate net cash surrender value of Portfolio #1 is \$560,602.

Portfolio # 2

Portfolio #2 is comprised of 660 policies; 624 of which insure the lives of individuals with HIV and 36 of which insure the lives of individuals that are Non-HIV or Life Settlements. The

MBC Bid Solicitation May 21, 2007 Page 3

approximate aggregate face amount of these policies is \$ 57,187,090. Portfolio #2 is comprised of plans of insurance that are Universal Life and Whole Life with face amounts ranging from \$1,000 to \$3,000,000. The approximate net cash surrender value of Portfolio #2 is \$3,010,226.

Portfolio #3

Portfolio #3 is comprised of six (6) policies insuring the lives of individuals that are Non-HIV or Life Settlements. The aggregate face amount of these policies is \$64,547,500.00. Of these six policies in Portfolio #3, five (5) are Universal Life and one (1) is Term (this term policy is within its conversion period) with face amounts ranging from \$500,000 to \$50,000,000. The approximate net cash surrender value of Portfolio #3 is \$577,481.

Portfolio # 4

Portfolio #4 is comprised of 749 policies; 726 of which insure the lives of individuals with HIV and 23 of which insure the lives of individuals that are Non-HIV or Life Settlements. The approximate aggregate face amount of these policies is \$63,698,123. Portfolio #4 is comprised of plans of insurance that are Term, Employer Group (including Federal Employees Group Life Insurance "FEGLI") and Association Group Term with face amounts ranging from \$2,000 to \$1,000,000.

IMORTANT NOTICE: These figures are approximate as of May 18, 2007 based on information in the VSI database as of that date. Policies are subject to removal from a Portfolio prior to sale in accordance with the Asset Purchase Agreement. Notification of any removed policies will be provided in the course of due diligence and prior to Closing.

Bidding Process & Auction

The Bidding Process is set forth in the attached Bidding Procedures. Without modifying the attached Bidding Procedures (which any Potential Bidder should review in detail), in order to participate in the Bidding Process, a Potential Bidder must first submit: (i) an executed confidentiality agreement; (ii) current financial statements demonstrating the Potential Bidder's financial capacity; and (iii) an executed Affidavit of Non-Affiliation attesting that the Potential Bidder has no relation to any of the Receivership Entities, named Defendants and Relief Defendants and has never been officers, agents, employees, successors, or otherwise were in active or inactive concert or participation with any of them. Within two (2) Business Days after receipt of these items, the Receiver will determine if such materials are satisfactory and upon acceptance thereof, will provide due diligence materials to the Potential Bidder.

Due diligence materials will consist of a chart of the Policies in each Portfolio with relevant information as to each policy, together with other information available to the Receiver relating to the Policies, and a copy of the Asset Purchase Agreement to be executed in connection with the purchase and sale of the Policies. In addition, Potential Bidders may make arrangements to conduct on-site due diligence at MBC's office.

MBC Bid Solicitation May 21, 2007 Page 4

The deadline for submitting a Bid is 5:00 p.m. (prevailing Eastern time) on June 18, 2007. The requirements for a qualified Bid are set forth in the Bidding Procedures. Any Potential Bidder may submit a Bid for any one, some, or all of the four Portfolios presently offered by the Receiver, however, a separate Bid must be submitted for each Portfolio for which a Potential Bidder intends to make a Bid. Each Bid should identify the Portfolio as to which such Bid is submitted.

If the Receiver has received more than one qualified Bid with respect to a particular Portfolio, the Receiver will conduct an Auction at 10:00 a.m. (prevailing Eastern time) on June 22, 2007 at the offices of the Receiver's counsel, Kozyak Tropin & Throckmorton, P.A., 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, Florida, or such other time and place as the Receiver shall notify each Qualified Bidder. The procedures for the Auction are set forth in the Bidding Procedures.

Additional information regarding the process for acceptance of Bids and Court approval, the consequences of a Successful Bidder's failure to consummate the sale, and the procedures for return of deposits are set forth in the attached Bidding Procedures.

If you have any questions regarding the Bidding Process, please direct them to the undersigned. Thank you.

Sincerely,

David Rosendorf, Esq.

Counsel to Roberto Martinez, Receiver

Exhibit A

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the sale of the Acquired Assets identified in the Asset Purchase Agreement by and between Roberto Martínez, as the Receiver (in such capacity, "Seller") appointed by the United States District Court for the Southern District of Florida (the "Court") for Mutual Benefits Corp. ("MBC"), Viatical Services, Inc. ("VSI") and Viatical Benefactors, LLC ("VBLLC") (the "Receivership Entities") and Buyer. Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Agreement.

The sale of the Acquired Assets under the Agreement (the "Sale") is subject to competitive bidding upon the terms and conditions set forth in these Bidding Procedures, and approval by the Court. Seller shall (i) determine whether any person is a Qualified Bidder; (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence regarding the Acquired Assets; (iii) receive Bids from Qualified Bidders; and (iv) negotiate any Bid made to purchase the Acquired Assets (the "Bidding Process"). No person other than a Qualified Bidder will be allowed to participate in the Bidding Process and Seller shall not supply any information regarding the Acquired Assets to any person who is not a Qualified Bidder.

Participation Requirements

In order to participate in the Bidding Process, each interested person (the "Potential Bidder") must deliver to Seller;

- (i) an executed confidentiality agreement in the form attached hereto;
- (ii) current financial statements (audited if available) of (A) the Potential Bidder, or (B) if the Potential Bidder is an entity formed for the purpose of acquiring the Acquired Assets, current financial statement (audited if available) of the equity holder(s) of the Potential Bidder who shall guarantee the obligations of the Potential Bidder, or provide such other form of financial disclosure or credit-quality support information or enhancement acceptable to Seller in Seller's business judgment; and
- (iii) an executed Affidavit of Non-Affiliation attesting that they have no relation to any of the Receivership Entities, named Defendants and Relief Defendants and have never been officers, agents, employees, successors, or otherwise were in active or inactive concert or participation with any of them, in the form attached hereto.

Within two (2) Business Days after a Potential Bidder delivers all the materials set forth above to Seller, Seller shall determine and shall notify the Potential Bidder if such materials are satisfactory to Seller based on Seller's business judgment.

Due Diligence

Upon Seller's acceptance and approval of the materials set forth above, Seller shall deliver to each such Potential Bidder a chart of the Policies included in the Acquired Assets in Microsoft Excel format, which will contain relevant information as to each policy. The chart will include, for each policy, the date of birth of the insured, the last date of contact, the carrier, the type of policy, whether the policy was converted, the face value, the gross and net cash value, the last dividend (if any), the date values were last updated, the due date of cash value guaranteed rates, whether the policy is on premium waiver, the date premium waiver needs to be recertified, the due date of the premium, the mode of premium payment, the amount of the premium, the date the policy was issued, and whether the insured is HIV-positive. Each Potential Bidder will also receive a DVD of scanned Verification of Coverage ("VOC") forms in Portable Document Format ("PDF"), which have been completed by the carrier as to each Policy, when provided by the carrier. In addition, Potential Bidders will receive a copy of the Asset Purchase Agreement to be executed in connection with the purchase and sale of the Acquired Assets.

All Potential Bidders who have been approved by Seller may contact Stephen Fernstrom (contact information below) to schedule an on-site viewing of the actual bidding package files. All bidding packages will be available on a DVD and in paper hard-copy format. The on-site viewing will be held at the MBC office in Pompano Beach, Florida during regular business hours. No alternative arrangements will be made. Approved Potential Bidders are invited, urged and cautioned to inspect all available information prior to submitting a bid.

Initial Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver written copies of its Bid to Seller no later than <u>5:00 p.m.</u> (prevailing Eastern time) on June 18, 2007 (the "<u>Bid Deadline</u>"). Bids shall be delivered to Seller's counsel at:

Kozyak Tropin & Throckmorton, P.A. 2525 Ponce de Leon Boulevard, 9th Floor

Coral Gables, FL 33134

Attention: David L. Rosendorf, Esq. Telefacsimile: (305) 372-3508 Email: drosendorf@kttlaw.com

with a copy to:

Stephen Fernstrom VSI/MBC 43 South Pompano Parkway, #112 Pompano Beach, FL 33069

Tel: (954) 582-0220 Ext 244 Fax: (954) 582-0223

Email: S.Fernstrom@vsi-services.com

Bid Requirements

A bid ("Bid") is a letter from an approved Potential Bidder stating that: (i) the approved Potential Bidder offers to purchase the Acquired Assets on the terms set forth in the Agreement, and setting forth the amount of the Initial Bid; and (ii) the Potential Bidder's offer is irrevocable until 48 hours after closing of the Sale to the Successful Bidder. A Bid must be accompanied by: (i) the Initial Deposit of \$100,000 required by the Agreement; and (ii) written evidence of an unconditional commitment for financing or other evidence of financial ability to consummate the transaction, acceptable to Seller in his sole discretion. Each Bid shall specify the Portfolio as to which the Bid is made. If a Potential Bidder seeks to make a Bid on multiple Portfolios, a separate Bid (satisfying all of the foregoing requirements including an Initial Deposit with respect to each such Bid) shall be submitted as to each Portfolio.

Seller will consider a Potential Bidder to be a "Qualified Bidder" only if in Seller's business judgment the Potential Bidder's Bid meets all of the following requirements:

- the Bid is all cash and does not contain any form of contingent consideration or consideration that is dependent on the maturity of the Policies;
 - the Bid is in the form of the Agreement; (ii)
 - the Bid is not subject to a financing or due diligence contingency; and (iii)
- the Bid is accompanied by such other information as is reasonably (iy) requested by Seller.

Within two (2) Business Days after receipt of a Bid, Seller shall advise the Potential Bidder if they are a Qualified Bidder.

Auction

. If Seller has received more than one Bid from a Qualified Bidder with respect to a particular Portfolio, Seller will conduct an auction (the "Auction"). The Auction shall take place at 10:00 a.m. (prevailing Eastern time) on June 22, 2007 (the "Auction Date"), at the offices of Kozyak Tropin & Throckmorton, P.A., 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, FL, or such other time and place as Seller shall notify each Qualified Bidder.

Only Qualified Bidders shall be allowed to participate in the Auction. Within two (2) Business Days after the Bid Deadline, Seller shall advise each Qualified Bidder of the highest Initial Bid received by Seller from a Qualified Bidder for the purchase of the Acquired Assets. Each Qualified Bidder must inform Seller one (1) business day prior to the Auction Date of its intent to participate in the Auction. Seller may require a Qualified Bidder to provide proof of its financial ability to consummate a transaction in the amount of the highest Initial Bid, if in Seller's business judgment the information already provided by such Qualified Bidder is inadequate. Each Qualified Bidder who has timely advised Seller of its intent to participate in the Auction and who has, in Seller's sole discretion, demonstrated a financial ability to consummate a transaction in the amount of the highest Initial Bid, shall be eligible to participate in the Auction (an "Auction Participant").

At the Auction (i) each Auction Participant will be permitted to increase its Bid; and (ii) all Bids shall be made and received in one room, on an open basis, and all other Auction Participants shall be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant shall be fully disclosed to all other Auction Participants and that all material terms of each Bid will be fully disclosed to all other Auction Participants throughout the entire Bidding Process. Bidding shall be increments of at least 1% of the highest Initial Bid and shall be on an all cash basis and shall not contain any form of contingent consideration or consideration that is dependent upon the maturity of the Acquired Assets.

The Auction shall continue until such time as each Auction Participant has indicated its unwillingness to increase its Bid in accordance with these Bidding Procedures. Upon conclusion of the Auction, Seller shall identify the Bid that in its business judgment based on the requirements of these Bidding Procedures is the highest and best Bid (the "Highest Bid"). Seller shall notify all Auction Participants, prior to the adjournment of the Auction, of the Highest Bid, and of the next highest and best Bid (the "Backup Bid").

Within one (1) Business Day after the conclusion of the Auction, the Bidder who submitted the Highest Bid ("<u>Highest Bidder</u>") and the Bidder who submitted the Backup Bid ("<u>Backup Bidder</u>") shall each remit to Seller a second deposit equal to 10% of their respective final Bids at Auction, less \$100,000.00 (the "<u>Second Deposit</u>"), in immediately available funds, such that each such Bidder's Initial Deposit together with their Second Deposit shall equal 10% of such Bidder's final Bid at Auction.

In the event that the Highest Bidder fails to timely remit the Second Deposit, then its Initial Deposit shall be forfeited and Seller may in his business judgment proceed to sell the Acquired Assets to the Backup Bidder as if the Backup Bidder were the Highest Bidder in accordance with the procedures set forth below. In the event that the Backup Bidder fails to timely remit the Second Deposit, then its Initial Deposit shall be forfeited.

Acceptance of Bid

Seller may (a) determine, in its business judgment, which Bid, if any, if the Highest Bid; and (b) reject, at any time before entry of the Sale Order, any Bid that (i) is inadequate or insufficient, (ii) not in conformity with these Bidding Procedures, any order of the Court, or the terms and conditions of the Agreement, or (iii) contrary to the best interests of Seller. If Seller determines, in his sole discretion, that the Highest Bid represents a transaction which is in the best interests of the Receivership Entities and their creditors, then Seller shall notify the Highest Bidder of his acceptance of such Bid, subject to Court approval. If Seller determines, in his sole discretion, that the Backup Bid

represents a transaction which is in the best interests of the Receivership Entities and their creditors, then Selier shall notice the Backup Bidder of his acceptance of such Bid, subject to Court approval and subject to the failure of the Highest Bidder to timely close on the Sale pursuant to and in accordance with the terms of the Agreement.

Promptly after the conclusion of the Auction and Seller's determination that the Highest Bid (and, if applicable, Backup Bid) represents a transaction which is in the best interest of the Receivership Entities and their creditors, Seller shall file a motion with the Court seeking the entry of a Sale Order approving the selection of the Highest Bidder as the Successful Bidder and authorizing and approving the Sale to the Successful Bidder pursuant to the terms and conditions of the Agreement, and, if applicable, approving the selection of the Backup Bidder. Upon the entry of such Sale Order, the Highest Bidder shall be the "Successful Bidder". Seller shall seek the entry of the Sale Order on an expedited basis as soon as reasonably possible following the conclusion of the Auction. Seller shall have accepted a Bid only when such Bid has been approved by the Court pursuant to the Sale Order.

Subject to Court approval pursuant to the Sale Order, Seller shall effect the Sale of the Acquired Assets to the Successful Bidder in accordance with the terms of the Agreement.

Failure to Consummate Sale

If the Successful Bidder fails to consummate the sale of the Acquired Assets because of a breach or failure to perform on the part of such Successful Bidder, Seller shall be authorized to effect a sale to the Backup Bidder pursuant to the terms of the Backup Bid, as approved pursuant to the Sale Order, without further order of the Court. The Successful Bidder's Initial Deposit and Second Deposit shall be forfeited to Seller, and except to the extent otherwise provided in the Agreement, Seller expressly reserves all rights to seek damages or other relief from such Successful Bidder.

In the event that the Successful Bidder fails to Close by the Closing Date (which is no later than three (3) Business Days after the entry of the Sale Order), Seller, within 24 hours thereafter, shall notify the Backup Bidder of such failure and Backup Bidder shall become the Successful Bidder, and the Closing Date with respect to the Backup Bidder shall be within two (2) Business Days after Seller's transmission of such notice to the Backup Bidder.

Return of Deposits

The Initial Deposit and Second Deposit of the Successful Bidder and the Backup Bidder shall be held by Seller until the later of (i) two (2) Business Days after consummation of the Sale of the Acquired Assets, or (ii) the date upon which the Agreement is terminated in accordance with its terms, subject to the terms set forth in the Agreement. All other Initial Deposits and Second Deposits of all other Auction Participants shall be returned within two (2) Business Days after the conclusion of the Auction.

Contact Information

For Bid Qualification Information Contact:

David Rosendorf, Esq. Counsel to Receiver Roberto Martinez Kozyak Tropin & Throckmorton, P.A. 2525 Ponce De Leon, 9th Floor Coral Gables, FL 33134

Tel: (305) 372-1800 Fax: (305) 372-3508

email: drosendorf@kttlaw.com

For Due Diligence Coordination Contact:

Stephen Fernstrom VSI/MBC 43 South Pompano Parkway, #112 Pompano Beach, FL 33069

Tel: (954) 582-0220 Ext 244 Fax: (954) 582-0223

Email: S.Fernstrom@vsi-services.com

Document 2034-2

CONFIDENTIALITY AGREEMENT BIDDER FOR MUTUAL BENEFITS VIATICAL PORTFOLIOS

AGREEM	ENT dated			, 2007,	by and	among	Roberto			
Martinez, Receiv										
Benefactors, LLC	C, Peter Lon	nbardi, Le	slie Steinger	a/ka/Les	slie Steir	ner, and	Anthony			
Livoti, Jr.,	P.A.	and	related	entities	s ("	MBC"),	and			
		(the "Bidder").								

WHEREAS, the Bidder wishes to undertake due diligence review of records related to the insurance policies in which MBC holds or expects to be awarded beneficial and/or ownership interests (the "Insurance Portfolios"), for the purpose of making an offer to purchase those interests;

WHEREAS, the Bidder has requested to undertake a due diligence review of the Insurance Portfolios by viewing documents and records in the possession of the Receiver and not otherwise subject to review;

WHEREAS, the relevant records contain information of a highly personal nature that could encroach on the privacy rights of the individuals ("viators") insured by the policies that comprise the Insurance Portfolios;

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

- As used herein, "Confidential Information" means all information regardless of the form, date or party from whom it is transmitted, related to any of the insurance policies that comprise the Insurance Portfolios.
- The Bidder shall only use the Confidential Information for the purpose of evaluating a possible acquisition of the Insurance Portfolios. The Bidder shall not disclose any Confidential Information it receives from any source to any person, firm or corporation except employees of the Bidder and its affiliated companies who have a need to know the Confidential Information in connection with the possible acquisition of the Insurance Portfolios, and who have been informed of and agree to comply with the Bidder's obligations hereunder.
- Information shall not be deemed Confidential Information for purposes of this Agreement, and the Bidder shall have no obligation with respect to any such information, which; (a) is already known to the Bidder at the time of its disclosure; (b) is or becomes publicly known through no wrongful act of the Bidder; (c) is independently developed by the Bidder; or (d) the Bidder is advised by counsel is lawfully required to be disclosed to any government agency or is otherwise required to be disclosed by law. Notwithstanding the foregoing, Confidential Information disclosed pursuant to this Agreement shall remain confidential and subject to this agreement, notwithstanding that such information later becomes publicly known through any other lawful means.

- 4. All Confidential Information disclosed by the Receiver to the Bidder pursuant to this Agreement in tangible form (including, without limitation, information incorporated in computer software) shall be and remain property of the Receiver, and all such Confidential Information shall be promptly returned by the Bidder upon receipt of a written request from the Receiver.
- 5. The Bidder acknowledges that nothing herein shall render the Receiver responsible for the accuracy of the Confidential Information.
 - 6. This Agreement shall be governed by the laws of the State of Florida.
- 7. The parties agree that any dispute with regard to this agreement will be subject to the jurisdiction of the United States District Court, Southern District of Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

David Rosendorf, Esq.
Attorney for Roberto Martínez, Receiver for Mutual Benefits Corp. et al.
2525 Ponce De Leon, 9th Floor
Coral Gables, Florida 33134

Tel: (305) 372-1800

Name of Bidder

Address/Phone

MBC - BIDDER AFFIDAVIT OF NON-AFFILIATION

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COUNTY OF)	SS:					
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NOTICE TO INVESTORS & PROVIDER OF PROPOSED SALE OF POLICY AP# 99-0007778

On May 3, 2004 the SEC filed a complaint against Mutual Benefits Corporation ("MBC"), Viatical Services Inc. ("VSI") and Viatical Benefactors, LLC ("VBLLC"). In connection with that Complaint, the federal judge overseeing the SEC case, Judge Moreno, appointed Roberto Martínez as Receiver of MBC, VSI and VBLLC. Mr. Martínez is also the Receiver of Anthony Livoti and Anthony Livoti, P.A. but only in their capacity as named trustee with respect to the MBC policies. The Receiver was charged with the responsibility of overseeing the administration of over 7,000 policies, including the payment of premiums and the collection of death benefits. However, funds for premium payments will soon be exhausted, and the Receiver does not have enough money to continue paying the premiums on all policies until the policies mature.

On September 14, 2005, Judge Moreno entered an Order on Disposition of Policies and Proceeds (the "Disposition Order") directing the Receiver to give investors a choice between (a) selling their interest in a policy, (b) keeping the interest and paying the cost of administering the policy, including, in most instances, the payment of premiums, or (c) surrendering their interest in the policy. Most policies have several investors (in some cases over 100 investors) who have an interest in that particular policy. Under the Disposition Order, if the majority (measured by investment amount) of investors voted to sell a policy, then the investors' interests in the policy were to be assigned to the Receiver and the Receiver would seek to sell the policy, and investors are to receive their pro rata share of the proceeds less any expenses of sale. The Disposition Order provided for the Receiver to file a motion with the Court to approve a sale, and for investors to receive notice of that motion if a policy in which the investors have an interest is being sold.

Pursuant to the Disposition Order, the Receiver sought bids for the purchase of certain of the policies which have been designated for sale. After the conclusion of the marketing process, the Receiver has received a bid of \$8,850,000 for Policy AP# 99-0007778 (the "Policy") from Silver Point Capital, L.P. ("Silver Point"), which the Receiver has determined is the highest and best bid submitted for the Policy. You are receiving this Notice because you have an interest in the Policy for which approval of the proposed sale is sought.

Simultaneously with this Notice, the Receiver filed his Receiver's Motion to Approve Sale of Policy and Incorporated Memorandum of Law Policy (AP# 99-0007778) ("Sale Motion") seeking approval of the sale of the Policy, including all beneficial interests therein, to Silver Point as described above. The Policy is to be sold pursuant to the terms and conditions of an Asset Purchase Agreement ("Asset Purchase Agreement") between Silver Point and the Receiver. The Asset Purchase Agreement contains many terms and conditions that are described in greater detail in the Sale Motion. A copy of the Sale Motion, together with the Asset Purchase Agreement, is available on the Receiver's website, at www.mbcreceiver.com and can be obtained by requesting a copy from the Receiver at MBC, 43 South Pompano Parkway, PMB #112, Pompano Beach, Florida 33069.

The Asset Purchase Agreement provides for the sale of the Policy free and clear of all liens, claims, interests and encumbrances, including any beneficial interests in the policies held by any investor, even investors who did not vote in favor of disposition pursuant to the procedures established in the Disposition Order. Please refer to the Asset Purchase Agreement for all terms and conditions of the sale.

The Sale Motion does not seek to determine how the proceeds of the sale will be allocated and distributed to investors; the Receiver will file a further motion to address that issue after the sale has been completed. Any objections to the sale of the Policy in accordance with the Sale Motion pursuant to the terms and conditions described in the Asset Purchase Agreement must be raised by filing any such objections with the Court. The rules of the Court generally require that any oppositions to a motion be filed within ten days after service of the motion. As calculated under applicable rules, that date would be March _____, 2008. Any person who fails to file with the Court an objection to such sale of the Policy by March _____, 2008 will be deemed to have consented to such sale.

If you do not have any objection to the proposed sale of the Policy as described in this Notice (and as described in greater detail in the Sale Motion), you do not need to take any further action in response to this Notice. Your failure to object will not prevent you from filing a claim in the Receivership, will not constitute a basis for your claim in the Receivership to be denied, and will not result in unfair treatment of you in determining the ultimate recovery on your claim in the Receivership.

Exhibit C

[ATTACH ASSET PURCHASE AGREEMENT (REDACTING INFORMATION IDENTIFYING THE POLICY OR THE INSURED)]

Exhibit D

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.

ORDER GRANTING RECEIVER'S MOTION TO APPROVE SALES OF POLICIES (POLICY AP# 99-0007778)

On March ____, 2008, 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"), filed a motion (the "Sale Motion") requesting this Court to approve the proposed sale of a certain insurance policy issued by New York Life Insurance and Annuity Corporation (designated by MBC as Policy AP# 99-0007778 and which has a policy number from the issuing insurance company ending in digits "4487") (the "Policy") and all related rights, including beneficial interests, free and clear of all liens, claims, interests and encumbrances, to Silver Point Capital Fund, L.P. ("Silver Point" or "Buyer") for a total of \$8,850,000 (subject to adjustment pursuant to the terms of the Purchase Agreement (as defined below)). This Court has considered the Sale Motion, the attached Asset Purchase Agreement

(the "Purchase Agreement"), the representations of the Receiver therein, the record in these cases, and relevant authorities, and makes the following findings and conclusions:

- A. 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, this 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).
- B. 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." That 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. ..."
- C. On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds (DE#1339)(the "Disposition Order"). On November 22, 2005, this 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.

- In accordance with these Orders, voting on each of the policies was conducted, D. the result of which is that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the "Salable Policies").
- E. On May 21, 2007 the Receiver initiated the sale process for certain of the Salable Policies (a group sometimes referred to as the "Bid 2 Policies") by sending out a letter soliciting bids for the Bid 2 Policies, which were divided into four portfolios (each, a "Portfolio"), together with a description of the bidding procedures (the "Bidding Procedures") to be followed by the Receiver with respect to the Bid 2 Policies. The Bid 2 Policies consisted of 1,949 Policies with a total face value of \$241,218,185. The letter was sent to approximately fifty parties who had expressed an interest in purchasing policies from the Receiver or who were otherwise known to the Receiver to be potentially interested in such purchases. The Mutual Benefits case and potential availability of policies for purchase are well known to interested parties who are potentially in the market for purchase of viaticated policies, including through the advertisement of the prior auction, and the Receiver appropriately concluded that additional marketing was unnecessary in the circumstances.
- F. The Bidding Procedures followed by the Receiver for the Bid 2 Policies provided an opportunity for qualified bidders to submit an initial qualifying bid for each or any of the

Portfolios, and if multiple qualifying bids were received for any of the Portfolios, for an auction to be conducted in order to determine the highest and best bid for such Portfolio. The Bidding Procedures required that bids be submitted substantially in accordance with the form of a The Bidding Procedures further provided that upon the specified purchase agreement. conclusion of the auction, the Receiver could (a) determine, in his business judgment, which bid, if any, was the highest bid; and (b) reject, at any time before the entry of a sale order, any bid that (i) was inadequate or insufficient; (ii) was not in conformity with the Bidding Procedures, any order of this Court, or the terms and conditions of the Receiver's specified purchase agreement; or (iii) was contrary to the best interests of the Receiver. If the Receiver advised a bidder that its bid was selected as the "Highest Bid" or "Backup Bid", then such bidder was required to make a deposit equal to 10% of the proposed purchase price within one business day thereafter.

- In accordance with the Bidding Procedures, and after receiving qualifying bids, G. the Receiver proceeded to conduct an auction of each of the Portfolios on June 22, 2007. At the auction, each qualified bidder was given an opportunity to increase its bid with respect to each Portfolio for which it had submitted a qualified bid, with bidding proceeding until each qualified bidder indicating that it would increase its bid no higher. Upon the conclusion of the auction, the highest and next-highest bids as to each Portfolio (with respect to each Portfolio, the "Highest Bid" and the "Backup Bid", respectively) submitted in conformity with the Bidding Procedures were identified.
- H. After considering the bids received, the Receiver, in the exercise of his business judgment, determined that the Highest Bids on Portfolios #1, 2, and 4 were in the best interests of the Receivership and that the purchase and sale of such Portfolios in accordance with the

terms of the Purchase Agreements, should be approved. The Receiver determined that the Highest Bid on Portfolio #3 did not represent sufficient value for that Portfolio and accordingly elected, in his business judgment, not to seek approval of a sale of Portfolio #3 at this time or of any of the "non-conforming" combined bids. The Court has previously found that the foregoing determinations by the Receiver represented a reasonable, appropriate and sound exercise of the Receiver's business judgment.

- The Receiver advised all participants in the auction that they could submit higher I. offers to the Receiver for Portfolio #3 or any of the individual policies therein, and that the Receiver would consider all such offers submitted. The Receiver also re-commenced efforts to identify additional buyers for the Portfolio #3 policies. Every interested party was advised to submit their highest and best offer to the Receiver, and that the highest and best offer which the Receiver determined represented adequate value for Portfolio #3 or any policy therein would be presented for approval to the Court.
- Thereafter, a number of parties contacted the Receiver and made offers for the J. purchase of certain of the Portfolio #3 policies, including the Policy. The highest and best offer submitted for the Policy was the offer submitted by Silver Point which is the subject of the Sale Motion. The Silver Point purchase offer provides substantially greater consideration than any other offer received with respect to the Policy, and in the business judgment of the Receiver, which this Court ratifies and approves, represents appropriate value for the Policy.
- Simultaneously with the filing of his Sale Motion, the Receiver served a Notice to K. Investors & Provider of Proposed Sale of Policy upon all investors who held interests in the Policy and to the Provider that issued the Policy. This Court finds that due and adequate notice

of the sale of the Policy on the terms set forth in the Purchase Agreement has been provided to all interested parties, and that no further notice or opportunity to object is required.

- L. This Court finds that: (i) the sale of the Policy and other Acquired Assets (collectively, the "Acquired Assets", as defined in the Purchase Agreement) in accordance with the Purchase Agreement is in the best interest of the Receivership Entities, the creditors thereof, the investors in the Receivership Entities, and the beneficiaries of the Policy and all other persons and entities with an interest in the Receivership Proceeding; (ii) the sale procedures were designed to obtain the highest and best offer for the sale of the Acquired Assets, and the sale to Buyer on the terms of the Purchase Agreement constitutes the highest and best offer for the Acquired Assets; (iii) the consideration being provided by Buyer for the Acquired Assets, and the terms of the Purchase Agreement, are fair and reasonable, constitute the highest and best offer for the Acquired Assets, and constitute reasonably equivalent value for the Acquired Assets, and (iv) accordingly that the sale of the Acquired Assets to Buyer pursuant to the Purchase Agreement should be authorized and approved.
- M. This Court further finds that Buyer has at all times acted without collusion and in good faith in bidding on, and negotiating the purchase of, the Acquired Assets and is a good faith purchaser of the Acquired Assets and is entitled to all of the protections under law accorded to a party with such status. The Purchase Agreement was negotiated, proposed and entered into by the Receiver and Buyer without collusion and in good faith, and is the end result of arms' length bargaining in which the Receiver and Buyer were represented by competent counsel.

Accordingly, it is hereby **ORDERED**, **ADJUDGED AND DECREED** as follows:

- The Receiver has the sole and absolute authority, on behalf of the Receivership 1. Entities, to convey all claims, options, privileges, right, title and interest in, to and under the Policy and other Acquired Assets.
- The sale of the Acquired Assets to Buyer in accordance with the terms of the Purchase Agreement is approved. The Purchase Agreement and all of the terms contained therein are approved and the Receiver is authorized to consummate all of the transactions contemplated thereby. Without limiting the generality of the foregoing, the Receiver is authorized to (i) execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement and any additional instruments or agreements or documents that may be reasonably necessary or desirable to implement the Purchase Agreement, (ii) take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer and its assigns and designees, or reducing to possession, the Acquired Assets, and (iii) timely comply with all of its obligations under the Purchase Agreement and any such additional instruments, agreements or documents. Any objection to such sale which has not been withdrawn is hereby overruled on its merits.
- The Buyer has acted in good faith and is a good faith purchaser of the Acquired 3. Assets.
- The consideration for the Acquired Assets provided by the Buyer pursuant to the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the laws of the United States, both state and federal.
- The transfer of the Acquired Assets will be a legal, valid and effective transfer of 5. the Policy and other Acquired Assets and will vest Buyer or its assignee or designee, if applicable, with good and valid title and all right, title and interest in and to the Acquired Assets.

At the Closing, Buyer or its assignee or designee, if applicable, will be vested with all claims, options, privileges, right, title and interest in, to and under the Acquired Assets, free and clear of all Encumbrances (as defined in the Purchase Agreement). Any person, including, without limitation, any creditor of or investor in the Receivership Entities, any beneficial interest holder or other holder of the Policy and any insurance company or other entity which issued or is obligated under the Policy and the successors and assigns of any of the foregoing, asserting or having an Encumbrance of any kind or nature against or in any Receivership Entity or the Acquired Assets arising out of, in connection with, or in any way relating to the Receivership Entities, the Policy or other Acquired Assets, or the transfer thereof to Buyer and its successors and assigns, shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Encumbrance against Buyer and its successors and assigns or any subsequent owner of the Acquired Assets.

6. From and after the Closing (as defined in the Purchase Agreement), Buyer and any subsequent owner of the Policy are deemed to be designees of Horizon Life Solutions Inc. under that certain Authorization for Release and Use of Medical and/or Insurance Information that was executed by the insured under the Policy on July 24, 2003, and (ii) shall have the right to obtain updated medical information from time to time regarding the insured/viator under the Policy including (a) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of this Sale Order and a written request by Buyer or any subsequent owner of the Policy shall be authorized and compelled to immediately release copies to Buyer or any subsequent owner of the Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under the Policy so requested by Buyer or such subsequent owner thereof, as the case may be, for the purpose of monitoring health and predicting life

expectancy, and (b) the insured/viator under the Policy being required to provide Buyer and any subsequent owner of the Policy with contact information for such insured/viator, Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations, contact information for all physicians or other medical providers who have treated such insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured's/viator's health and medical condition, and Buyer or any subsequent owner of the Policy shall be entitled to seek enforcement of this provision as to any person, including by way of example, and not limitation, an application for a finding of contempt.

- This Sale Order and the Purchase Agreement shall be binding in all respects upon 7. all creditors of the Receivership Entities, any investor in the Receivership Entities, any beneficial interest holder or other interest holder of the Policy, any insurance company or other entity which issued or is obligated under the Policy, and any other party in interest in the Receivership Proceeding and any of the successors or assigns of the foregoing.
- The failure to specifically include or describe any particular provision of the 8. Purchase Agreement in the Sale Motion or this Sale Order shall not impair or diminish the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.
- 9. The Purchase Agreement and any related agreement, document or other instrument may be modified, amended or supplemented by parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further notice or order of this Court, provided that any such modification, amendment or supplement does not constitute a material modification of the Purchase Agreement.

- 10. The sale of the Policy and other Acquired Assets is not precluded by or contrary to any prior order issued by this Court and no further consents by any person (including any governmental authority) are required to convey the Policy and other Acquired Assets to Buyer or to an assignee or designee thereof, if applicable, in accordance with the Purchase Agreement.
- 11. This Court retains jurisdiction to enforce and implement the terms of the Purchase Agreement, including to resolve any disputes arising under any Purchase Agreement, and to interpret, implement, and enforce the provisions of this Sale Order.
- 12. This Sale Order constitutes an interlocutory or a final judgment in a receivership action and thus this Sale Order shall become effective immediately upon its entry as provided in Rule 62(a) of the Federal Rules of Civil Procedure.
 - 13. The provisions of this Sale Order are non-severable and mutually dependent.

 ORDERED in the Southern District of Florida this _____ day of March, 2008.

HON, FEDERICO A. MORENO UNITED STATES DISTRICT JUDGE

Copies furnished to: Counsel of Record

10

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.,

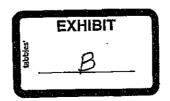
Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.

ORDER GRANTING RECEIVER'S MOTION TO APPROVE SALES OF POLICIES (POLICY AP# 99-0007778)

On March 11, 2008, 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"), filed a motion (the "Sale Motion") requesting this Court to approve the proposed sale of a certain insurance policy issued by New York Life Insurance and Annuity Corporation (designated by MBC as Policy AP# 99-0007778 and which has a policy number from the issuing insurance company ending in digits "4487") (the "Policy") and all related rights, including beneficial interests, free and clear of all liens, claims, interests and encumbrances, to Silver Point Capital Fund, L.P. ("Silver Point" or "Buyer") for a total of \$8,850,000 (subject to adjustment pursuant to the terms of the Purchase Agreement (as defined below)). This Court has considered the Sale Motion, the attached Asset Purchase Agreement



(the "Purchase Agreement"), the representations of the Receiver therein, the record in these cases, and relevant authorities, and makes the following findings and conclusions:

- A. 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, this 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).
- B. 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." That 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. ..."
- C. On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds (DE#1339)(the 'Disposition Order'). On November 22, 2005, this 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.

- D. In accordance with these Orders, voting on each of the policies was conducted, the result of which is that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the "Salable Policies").
- E. On May 21, 2007 the Receiver initiated the sale process for certain of the Salable Policies (a group sometimes referred to as the "Bid 2 Policies") by sending out a letter soliciting bids for the Bid 2 Policies, which were divided into four portfolios (each, a "Portfolio"), together with a description of the bidding procedures (the "Bidding Procedures") to be followed by the Receiver with respect to the Bid 2 Policies. The Bid 2 Policies consisted of 1,949 Policies with a total face value of \$241,218,185. The letter was sent to approximately fifty parties who had expressed an interest in purchasing policies from the Receiver or who were otherwise known to the Receiver to be potentially interested in such purchases. The Mutual Benefits case and potential availability of policies for purchase are well known to interested parties who are potentially in the market for purchase of viaticated policies, including through the advertisement of the prior auction, and the Receiver appropriately concluded that additional marketing was unnecessary in the circumstances.
- F. The Bidding Procedures followed by the Receiver for the Bid 2 Policies provided an opportunity for qualified bidders to submit an initial qualifying bid for each or any of the

Portfolios, and if multiple qualifying bids were received for any of the Portfolios, for an auction to be conducted in order to determine the highest and best bid for such Portfolio. The Bidding Procedures required that bids be submitted substantially in accordance with the form of a specified purchase agreement. The Bidding Procedures further provided that upon the conclusion of the auction, the Receiver could (a) determine, in his business judgment, which bid, if any, was the highest bid; and (b) reject, at any time before the entry of a sale order, any bid that (i) was inadequate or insufficient; (ii) was not in conformity with the Bidding Procedures, any order of this Court, or the terms and conditions of the Receiver's specified purchase agreement; or (iii) was contrary to the best interests of the Receiver. If the Receiver advised a bidder that its bid was selected as the "Highest Bid" or "Backup Bid", then such bidder was required to make a deposit equal to 10% of the proposed purchase price within one business day thereafter.

- G. In accordance with the Bidding Procedures, and after receiving qualifying bids, the Receiver proceeded to conduct an auction of each of the Portfolios on June 22, 2007. At the auction, each qualified bidder was given an opportunity to increase its bid with respect to each Portfolio for which it had submitted a qualified bid, with bidding proceeding until each qualified bidder indicating that it would increase its bid no higher. Upon the conclusion of the auction, the highest and next-highest bids as to each Portfolio (with respect to each Portfolio, the "Highest Bid" and the "Backup Bid", respectively) submitted in conformity with the Bidding Procedures were identified.
- H. After considering the bids received, the Receiver, in the exercise of his business judgment, determined that the Highest Bids on Portfolios #1, 2, and 4 were in the best interests of the Receivership and that the purchase and sale of such Portfolios in accordance with the

terms of the Purchase Agreements, should be approved. The Receiver determined that the Highest Bid on Portfolio #3 did not represent sufficient value for that Portfolio and accordingly elected, in his business judgment, not to seek approval of a sale of Portfolio #3 at this time or of any of the "non-conforming" combined bids. The Court has previously found that the foregoing determinations by the Receiver represented a reasonable, appropriate and sound exercise of the Receiver's business judgment.

- The Receiver advised all participants in the auction that they could submit higher I. offers to the Receiver for Portfolio #3 or any of the individual policies therein, and that the Receiver would consider all such offers submitted. The Receiver also re-commenced efforts to identify additional buyers for the Portfolio #3 policies. Every interested party was advised to submit their highest and best offer to the Receiver, and that the highest and best offer which the Receiver determined represented adequate value for Portfolio #3 or any policy therein would be presented for approval to the Court.
- Thereafter, a number of parties contacted the Receiver and made offers for the purchase of certain of the Portfolio #3 policies, including the Policy. The highest and best offer submitted for the Policy was the offer submitted by Silver Point which is the subject of the Sale Motion. The Silver Point purchase offer provides substantially greater consideration than any other offer received with respect to the Policy, and in the business judgment of the Receiver, which this Court ratifies and approves, represents appropriate value for the Policy.
- K. Simultaneously with the filing of his Sale Motion, the Receiver served a Notice to Investors & Provider of Proposed Sale of Policy upon all investors who held interests in the Policy and to the Provider that issued the Policy. This Court finds that due and adequate notice

of the sale of the Policy on the terms set forth in the Purchase Agreement has been provided to all interested parties, and that no further notice or opportunity to object is required.

- L. This Court finds that: (i) the sale of the Policy and other Acquired Assets (collectively, the "Acquired Assets", as defined in the Purchase Agreement) in accordance with the Purchase Agreement is in the best interest of the Receivership Entities, the creditors thereof, the investors in the Receivership Entities, and the beneficiaries of the Policy and all other persons and entities with an interest in the Receivership Proceeding; (ii) the sale procedures were designed to obtain the highest and best offer for the sale of the Acquired Assets, and the sale to Buyer on the terms of the Purchase Agreement constitutes the highest and best offer for the Acquired Assets; (iii) the consideration being provided by Buyer for the Acquired Assets, and the terms of the Purchase Agreement, are fair and reasonable, constitute the highest and best offer for the Acquired Assets, and constitute reasonably equivalent value for the Acquired Assets, and (iv) accordingly that the sale of the Acquired Assets to Buyer pursuant to the Purchase Agreement should be authorized and approved.
- M. This Court further finds that Buyer has at all times acted without collusion and in good faith in bidding on, and negotiating the purchase of, the Acquired Assets and is a good faith purchaser of the Acquired Assets and is entitled to all of the protections under law accorded to a party with such status. The Purchase Agreement was negotiated, proposed and entered into by the Receiver and Buyer without collusion and in good faith, and is the end result of arms' length bargaining in which the Receiver and Buyer were represented by competent counsel.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

- 1. The Receiver has the sole and absolute authority, on behalf of the Receivership Entities, to convey all claims, options, privileges, right, title and interest in, to and under the Policy and other Acquired Assets.
- 2. The sale of the Acquired Assets to Buyer in accordance with the terms of the Purchase Agreement is approved. The Purchase Agreement and all of the terms contained therein are approved and the Receiver is authorized to consummate all of the transactions contemplated thereby. Without limiting the generality of the foregoing, the Receiver is authorized to (i) execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement and any additional instruments or agreements or documents that may be reasonably necessary or desirable to implement the Purchase Agreement, (ii) take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer and its assigns and designees, or reducing to possession, the Acquired Assets, and (iii) timely comply with all of its obligations under the Purchase Agreement and any such additional instruments, agreements or documents. Any objection to such sale which has not been withdrawn is hereby overruled on its merits.
- 3. The Buyer has acted in good faith and is a good faith purchaser of the Acquired Assets.
- 4. The consideration for the Acquired Assets provided by the Buyer pursuant to the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the laws of the United States, both state and federal.
- 5. The transfer of the Acquired Assets will be a legal, valid and effective transfer of the Policy and other Acquired Assets and will vest Buyer or its assignee or designee, if applicable, with good and valid title and all right, title and interest in and to the Acquired Assets.

At the Closing, Buyer or its assignee or designee, if applicable, will be vested with all claims, options, privileges, right, title and interest in, to and under the Acquired Assets, free and clear of all Encumbrances (as defined in the Purchase Agreement). Any person, including, without limitation, any creditor of or investor in the Receivership Entities, any beneficial interest holder or other holder of the Policy and any insurance company or other entity which issued or is obligated under the Policy and the successors and assigns of any of the foregoing, asserting or having an Encumbrance of any kind or nature against or in any Receivership Entity or the Acquired Assets arising out of, in connection with, or in any way relating to the Receivership Entities, the Policy or other Acquired Assets, or the transfer thereof to Buyer and its successors and assigns, shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Encumbrance against Buyer and its successors and assigns or any subsequent owner of the Acquired Assets.

6. From and after the Closing (as defined in the Purchase Agreement), Buyer and any subsequent owner of the Policy are deemed to be designees of Horizon Life Solutions Inc. under that certain Authorization for Release and Use of Medical and/or Insurance Information that was executed by the insured under the Policy on July 24, 2003, and (ii) shall have the right to obtain updated medical information from time to time regarding the insured/viator under the Policy including (a) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of this Sale Order and a written request by Buyer or any subsequent owner of the Policy shall be authorized and compelled to immediately release copies to Buyer or any subsequent owner of the Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under the Policy so requested by Buyer or such subsequent owner thereof, as the case may be, for the purpose of monitoring health and predicting life

expectancy, and (b) the insured/viator under the Policy being required to provide Buyer and any subsequent owner of the Policy with contact information for such insured/viator, Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations, contact information for all physicians or other medical providers who have treated such insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured's/viator's health and medical condition, and Buyer or any subsequent owner of the Policy shall be entitled to seek enforcement of this provision as to any person, including by way of example, and not limitation, an application for a finding of contempt.

- 7. This Sale Order and the Purchase Agreement shall be binding in all respects upon all creditors of the Receivership Entities, any investor in the Receivership Entities, any beneficial interest holder or other interest holder of the Policy, any insurance company or other entity which issued or is obligated under the Policy, and any other party in interest in the Receivership Proceeding and any of the successors or assigns of the foregoing.
- 8. The failure to specifically include or describe any particular provision of the Purchase Agreement in the Sale Motion or this Sale Order shall not impair or diminish the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.
- 9. The Purchase Agreement and any related agreement, document or other instrument may be modified, amended or supplemented by parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further notice or order of this Court, provided that any such modification, amendment or supplement does not constitute a material modification of the Purchase Agreement.

Case 0:04-cv-60573-FAM

10.

The sale of the Policy and other Acquired Assets is not precluded by or contrary

to any prior order issued by this Court and no further consents by any person (including any

governmental authority) are required to convey the Policy and other Acquired Assets to Buyer or

to an assignee or designee thereof, if applicable, in accordance with the Purchase Agreement.

This Court retains jurisdiction to enforce and implement the terms of the Purchase 11.

Agreement, including to resolve any disputes arising under any Purchase Agreement, and to

interpret, implement, and enforce the provisions of this Sale Order.

This Sale Order constitutes an interlocutory or a final judgment in a receivership 12.

action and thus this Sale Order shall become effective immediately upon its entry as provided in

Rule 62(a) of the Federal Rules of Civil Procedure.

13. The provisions of this Sale Order are non-severable and mutually dependent.

ORDERED in the Southern District of Florida this day of March, 2008.

HON, FEDERICO A. MORENO UNITED STATES DISTRICT JUDGE

Copies furnished to: Counsel of Record

NOTICE TO INVESTORS & PROVIDER OF PROPOSED SALE OF POLICY AP# 99-0007778

On May 3, 2004 the SEC filed a complaint against Mutual Benefits Corporation ("MBC"), Viatical Services Inc. ("VSI") and Viatical Benefactors, LLC ("VBLLC"). In connection with that Complaint, the federal judge overseeing the SEC case, Judge Moreno, appointed Roberto Martínez as Receiver of MBC, VSI and VBLLC. Mr. Martínez is also the Receiver of Anthony Livoti and Anthony Livoti, P.A. but only in their capacity as named trustee with respect to the MBC policies. The Receiver was charged with the responsibility of overseeing the administration of over 7,000 policies, including the payment of premiums and the collection of death benefits. However, funds for premium payments will soon be exhausted, and the Receiver does not have enough money to continue paying the premiums on all policies until the policies mature.

On September 14, 2005, Judge Moreno entered an Order on Disposition of Policies and Proceeds (the "Disposition Order") directing the Receiver to give investors a choice between (a) selling their interest in a policy, (b) keeping the interest and paying the cost of administering the policy, including, in most instances, the payment of premiums, or (c) surrendering their interest in the policy. Most policies have several investors (in some cases over 100 investors) who have an interest in that particular policy. Under the Disposition Order, if the majority (measured by investment amount) of investors voted to sell a policy, then the investors' interests in the policy were to be assigned to the Receiver and the Receiver would seek to sell the policy, and investors are to receive their pro rata share of the proceeds less any expenses of sale. The Disposition Order provided for the Receiver to file a motion with the Court to approve a sale, and for investors to receive notice of that motion if a policy in which the investors have an interest is being sold.

Pursuant to the Disposition Order, the Receiver sought bids for the purchase of certain of the policies which have been designated for sale. After the conclusion of the marketing process, the Receiver has received a bid of \$8,850,000 for Policy AP# 99-0007778 (the "Policy") from Silver Point Capital, L.P. ("Silver Point"), which the Receiver has determined is the highest and best bid submitted for the Policy. You are receiving this Notice because you have an interest in the Policy for which approval of the proposed sale is sought.

Simultaneously with this Notice, the Receiver filed his Receiver's Motion to Approve Sale of Policy and Incorporated Memorandum of Law Policy (AP# 99-0007778) ("Sale Motion") seeking approval of the sale of the Policy, including all beneficial interests therein, to Silver Point as described above. The Policy is to be sold pursuant to the terms and conditions of an Asset Purchase Agreement ("Asset Purchase Agreement") between Silver Point and the Receiver. The Asset Purchase Agreement contains many terms and conditions that are described in greater detail in the Sale Motion. A copy of the Sale Motion, together with the Asset Purchase Agreement, is available on the Receiver's website, at www.mbcreceiver.com and can be obtained by requesting a copy from the Receiver at MBC, 43 South Pompano Parkway, PMB #112, Pompano Beach, Florida 33069.

The Asset Purchase Agreement provides for the sale of the Policy free and clear of all liens, claims, interests and encumbrances, including any beneficial interests in the policies held by any investor, even investors who did not vote in favor of disposition pursuant to the procedures established in the Disposition Order. Please refer to the Asset Purchase Agreement for all terms and conditions of the sale.

The Sale Motion does not seek to determine how the proceeds of the sale will be allocated and distributed to investors; the Receiver will file a further motion to address that issue after the sale has been completed. Any objections to the sale of the Policy in accordance with the Sale Motion pursuant to the terms and conditions described in the Asset Purchase Agreement must be raised by filing any such objections with the Court. The rules of the Court generally require that any oppositions to a motion be filed within ten days after service of the motion. As calculated under applicable rules, that date would be March 27, 2008. Any person who fails to file with the Court an objection to such sale of the Policy by March 27, 2008 will be deemed to have consented to such sale.

If you do not have any objection to the proposed sale of the Policy as described in this Notice (and as described in greater detail in the Sale Motion), you do not need to take any further action in response to this Notice. Your failure to object will not prevent you from filing a claim in the Receivership, will not constitute a basis for your claim in the Receivership to be denied, and will not result in unfair treatment of you in determining the ultimate recovery on your claim in the Receivership.

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